



Overview of the DATA Scheme

1. The why and the what of the Act

1.1. Why the Data Availability and Transparency Act was introduced

Data held by the Australian Government is a national asset. The Productivity Commission's 2017 review into improving data availability and use (PC review)¹, found Australia was not making the most of this valuable asset. As a result, widespread community and productivity benefits were being missed.

The PC review found ad hoc and outdated legal and policy frameworks governing the sharing of Australian Government data were acting as a hinderance to its use. For example, there were varying restrictions on the use of data collected, even in the same field. This overarching uncertainty fostered inaction and contributed to a culture that resisted making data more broadly available.

The Productivity Commission recommended a reformed and modernised regulatory framework to support safe and widespread sharing of Australian Government data for public benefit by enabling necessary permissions and shifting attitudes to "treating data as an asset and not a threat" (PC review, p. 2).

The Australian Government responded to the PC review in 2018, committing to reform through new data-sharing laws and creation of the National Data Commissioner role to streamline public data sharing and release, supported by efforts to build public trust.

Along with a recognised champion, this new framework was to overcome three key barriers to data sharing:

- a) legal restrictions preventing Australian Government agencies providing others with access to data, even when the sharing would have been both reasonable and safe
- b) lack of clarity as to who Australian Government agencies could trust to share data with, and
- c) uncertainty about best practices and appropriate safeguards for sharing data safely.

In addition, the Government's response recognised the need for cultural change from Australian Government agencies to ensure support and realise greater data sharing from the proposed whole-of-government framework and reforms.

The Productivity Commission's 5-year Productivity Inquiry, finalised in 2023, identified missed opportunities to maximise the use and availability of Australian Government data.² The Productivity Commission is currently conducting five inquiries to identify and report on priority reforms in each of the areas under the Government's five pillar productivity growth agenda, including through harnessing data and digital technology.³

¹ Productivity Commission, Data Availability and Use: Final Report (31 March 2017) www.pc.gov.au/inquiries/completed/data-access/report.

² Productivity Commission, 5-Year Productivity Inquiry: Advancing Prosperity (17 March 2023) <https://www.pc.gov.au/inquiries/completed/productivity/report>.

³ Productivity Commission, Harnessing Data and Digital Technology: Terms of Reference (13 December 2024) <https://www.pc.gov.au/inquiries/current/data-digital/terms-of-reference>.



1.2. A Scheme for sharing data held by the Australian Government

The Government enacted the reforms through the Act which commenced on 1 April 2022. The objectives of the Act are fivefold, to:

- a) serve the public interest by promoting better availability of Australian Government data,
- b) enable the sharing of Australian Government data consistent with the *Privacy Act 1988* (Privacy Act) and appropriate security safeguards,
- c) enhance integrity and transparency in sharing Australian Government data,
- d) build confidence in the use of Australian Government data, and
- e) establish institutional arrangements for sharing Australian Government data.⁴

The Act establishes the DATA Scheme - a best practice scheme for sharing Australian Government data⁵. The data sharing scheme is underpinned by strong safeguards and consistent, efficient processes. Figure 1 provides an overview of the DATA Scheme.

The purpose of the DATA Scheme is to increase the availability and use of Australian Government data to deliver better government services, policies and programs and world-leading research and development. The Australian Government views the DATA Scheme as a *"critical enabler in building the public's trust in the Government's data sharing practices"*⁶.

The Act establishes the National Data Commissioner as an independent regulator to oversee the Scheme. The Commissioner provides advice and guidance about the Scheme's operation to the Minister, Scheme participants and others. The Commissioner's other function is to deliver education and support for best practice data handling and sharing. The Commissioner is supported by the Office of the National Data Commissioner.

The National Data Advisory Council, comprising ex-officio and appointed members with appropriate qualifications, skills or experience, 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

⁴ DAT Act, s3.

⁵ The DAT Act uses the term 'public sector data' and it is defined (at s9 of the Act) to mean "data lawfully collected, created or held by or on behalf of a Commonwealth body, and includes ADSP-enhanced data'. In this paper, Australian Government data or data held by Australian Government agencies is used synonymously with the Act's definition of 'public sector data'.

⁶ Ministerial Statement of Expectations, 2022, available at: [Ministerial Statement of Expectations for the National Data Commissioner.pdf](#)



Intelligence Organisation.⁷ Data relating to operations by Home Affairs and AUSTRAC, for example, cannot be shared, and data custodians, acting in a specific capacity in relation to the *My Health Records Act 2012* (MHR Act), are barred from sharing data under the DAT Act.⁸

Participants in the DATA Scheme

There are three types of participants in the Scheme.

- Data custodians – Commonwealth bodies that control Australian Government data. They are automatically designated as data custodians and do not need to be accredited for this role.⁹
- Accredited users – Commonwealth, state and territory government bodies and Australian universities can apply to be accredited as a data user. They can collect and use Australian Government data.¹⁰
- Accredited data service providers – Commonwealth, state and territory government bodies and Australian universities can apply to be an accredited data service provider. They act as intermediaries between accredited users and data custodians providing de-identification, data integration and secure access data services.¹¹

An entity can play more than one role. For example, the Australian Institute of Health and Welfare a Commonwealth body, is automatically designated as a data custodian. It also holds accreditation as both a data user and a data service provider.

Private entities (i.e., bodies corporate), individuals and unincorporated bodies (i.e., partnerships and trusts) are precluded from participating in the Scheme. These preclusions were designed to allow the Scheme time to establish and mature.

Sharing under the Scheme

Under the DATA Scheme, accredited users can request data held by an Australian Government agency (the 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 Ministry 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 sharing the data. An accredited data service provider must be used if the project involves complex data integration.

Legal authorisation and override

The Act removes a key barrier to data sharing by providing a legal authorisation pathway for sharing Australian Government data¹². The Act has an express statutory authority to override Commonwealth, State or Territory laws that would otherwise prohibit the sharing, collection and use of certain data provided the authorisation requirements¹³ of the Act are met, for

⁷ DAT Act, s11(3).

⁸ Data Availability and Transparency Regulations 2022, s7.

⁹ DAT Act, s11(2).

¹⁰ DAT Act s11(4).

¹¹ DAT Act, s11(4).

¹² DAT Act, s23.

¹³ Authorisation requirements at sections 13, 13A and 13B and 13C of the DAT Act.





example a data sharing project must be covered by a data sharing agreement registered by the Commissioner.¹⁴

The 2023 Final Report of the Review of Secrecy Provisions conducted by the Attorney-General's Department identified 875 secrecy provisions in Commonwealth legislation alone (considering the general secrecy offences, specific secrecy offences and non-disclosure duties given criminal liability by section 122.4 of the *Criminal Code Act 1995*)¹⁵. Authorising provisions in legislative frameworks may also limit sharing by prescribing that sharing may only occur for particular purposes, or with particular parties.

¹⁴ See s 13A(a) of the DAT Act.

¹⁵ Attorney-General's Department, *Review of Secrecy Provisions: Final Report* (21 November 2023) <https://www.ag.gov.au/crime/publications/review-secrecy-provisions-final-report>.

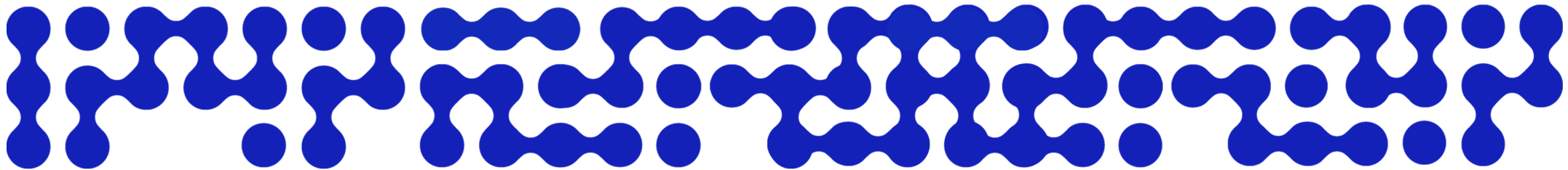
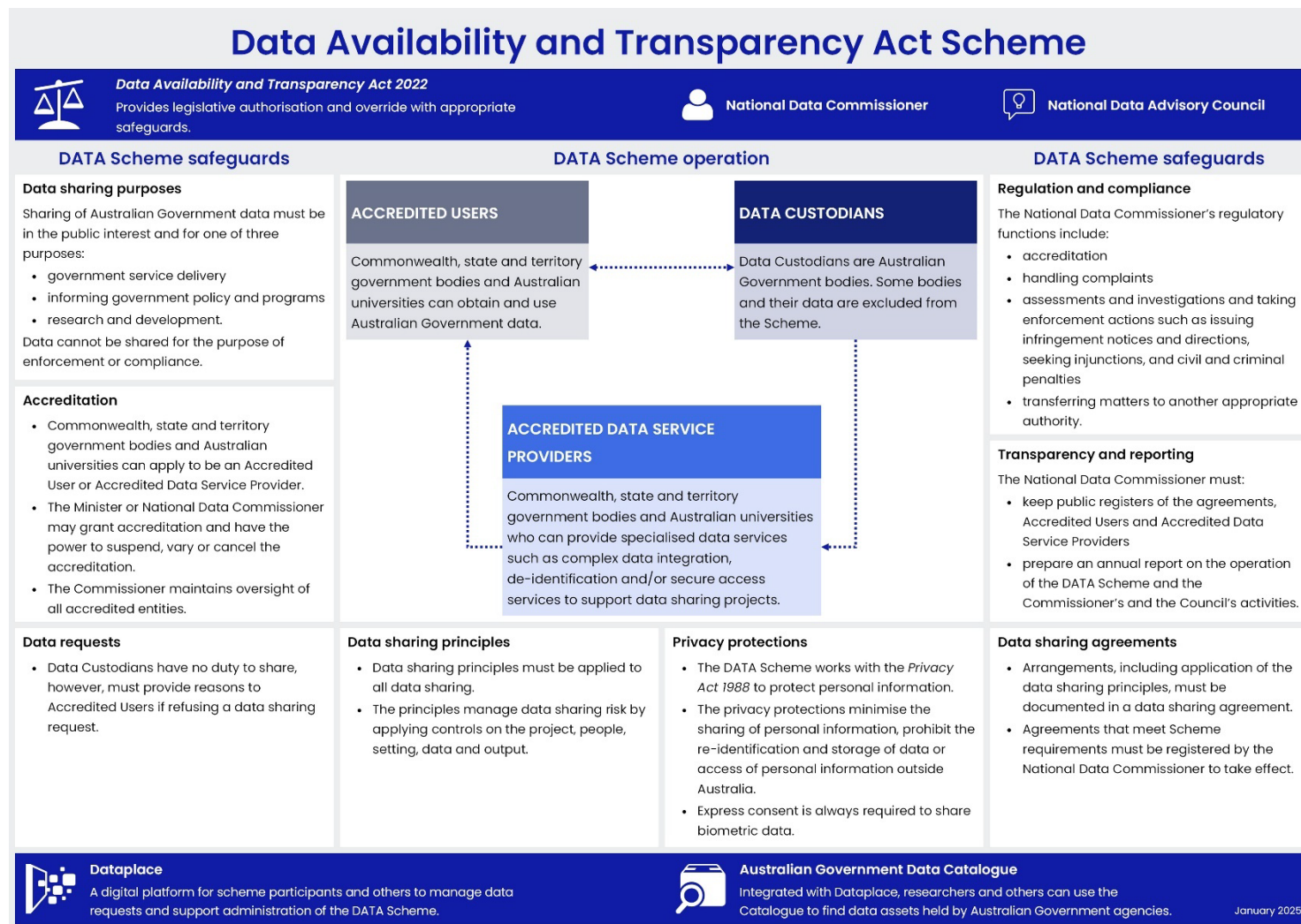


Figure 1: Overview of the DATA Scheme





1.3. DATA Scheme safeguards

The Act is underpinned by key safeguards to ensure safe data sharing under the DATA Scheme to serve the public interest.

Data sharing purposes

Under the Act, data held by Australian Government agencies can only be shared for 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

Only accredited entities can participate in the Scheme. Accredited data users can collect and use Australian Government data. Accredited data service providers can de-identify and integrate data and provide secure access to data. Accreditation ensures users and data service providers are capable of handling Australian Government data and minimising risk of unauthorised access or use. Accreditation is like a trusted tick of approval, signalling to data custodians who they can trust to share data with.

The Minister and the Commissioner are the authorities for accrediting users and data service providers and can impose conditions on accreditation if required. To be accredited as a data users, eligible entities (Australian, state and territory government agencies as well as Australian universities) must meet the following criteria:

- the entity has appropriate data management and governance policies and practices and an appropriately qualified individual in a position that has responsibility for data management and data governance for the entity
- the entities are able to minimise the risk of unauthorised access, sharing or loss of data
- 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.

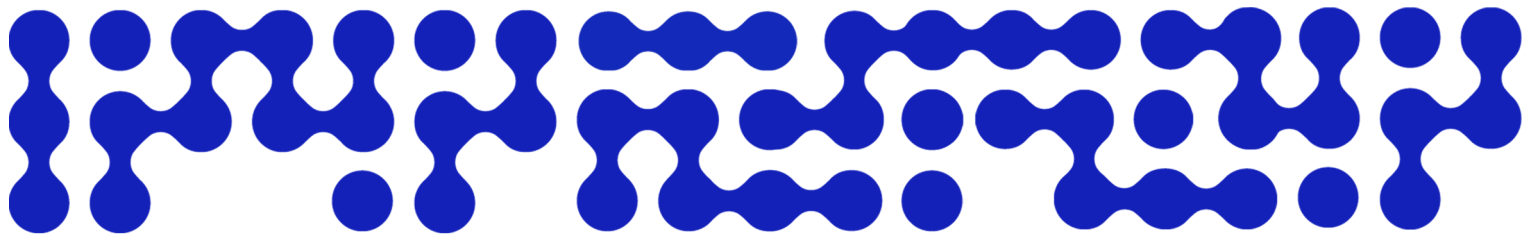
In addition, accredited data service providers must have the necessary policies, practices, skills and capability to perform the following data services:

- deidentification of data services
- secure access data services
- complex data integration services.

Data requests

An accredited user can request data from a data custodian. A data request is used to initiate the consideration of a data sharing agreement. Data custodians must consider and respond to all requests they receive from an accredited user within a reasonable period.





The National Data Commissioner's guidance¹⁶ encourages data custodians to

- consider how they can share data safely taking account of the objects of the Act when considering a request. The first object of the Act is to serve the public interest by promoting better availability of Australian Government data.
- acknowledge receipt of requests within 1 week, consider the request or issue a request for further information or re-scoping of the request within 2 weeks, and, subject to the circumstances of the request, within 1 month provide in principle approval and agree to collaborate on a data sharing agreement or refuse the request.

Data custodians have no duty to share data. Stated otherwise, they have the power to refuse a request. The power must be exercised reasonably and for a proper purpose. Data custodians must provide the requester with a written notice within 28 days after the decision is made giving the reasons for refusal. This approach seeks to ensure data custodians follow due process to consider requests before accepting or rejecting those requests while promoting procedural fairness.

Data custodians are required to notify the National Data Commissioner of any refusals. The Commissioner is required to report publicly on refusals in the Annual Report.

Data sharing principles

The data sharing principles function as a best practice risk management framework that sits at the core of the Scheme supporting data custodians to decide if it is safe to share data (s16). The principles are based on the internationally recognised "five safes". They cover the data sharing project, people, setting, data and output. The principles must be applied in a way that when viewed as a whole, appropriately mitigate the risks of sharing, collecting and using data.

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 does not override the Privacy Act but aligns with it to protect personal information. Robust privacy protections (s16A-16F), work with the Privacy Act to minimise sharing of personal information, prohibit the re-identification of data that has been previously de-identified, and prohibit the storage or access of personal information outside Australia. Express consent is always required to share biometric data.

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

Data sharing agreements

To share data, the data custodian and data user must enter into a data sharing agreement which sets out the details of the data sharing project. The data sharing agreement must describe how the participants will meet the data sharing principles and how the project

¹⁶ DATA Scheme Guidance: www.datacommissioner.gov.au





serves the public interest. The data sharing agreement must be registered by the National Data Commissioner before any data sharing occurs.

A regulated Scheme

To maintain and build trust in the use of Australian Government data, the DATA Scheme is regulated.

The Commissioner must keep public registers of accredited users, accredited data service providers, and data sharing agreements, and provide an annual report on the operation of the DATA Scheme. The annual report must include:

- details of any legislative instruments made
- 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 utilised.

The Commissioner regulates and enforces the Scheme through their regulatory functions. These include:

- accrediting eligible entities as well as suspending, cancelling and renewing accreditation
- 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.

1.4. The Australian Government Data Catalogue and Dataplace

To help realise the Act's objects, the Australian Government funded two foundational programs, administered by ONDC.

- \$11.1 million over 4 years from 2020-21 to develop Dataplace – a digital platform for Scheme participants and others to administer their data sharing. It is not a platform for the exchange of data. The platform is also used by the National Data Commissioner to regulate the DATA Scheme.
- \$16.5 million over 4 years from 2021-22 to make it easier for researchers and others to find data held by Australian Government agencies. The Data Discovery initiative had two parts. The Data Inventory Pilot Program supported Australian Government agencies to develop and improve their inventories of data assets. Funding was also provided to create the Australian Government Data Catalogue. Integrated with Dataplace, the Catalogue is a searchable directory of data assets held by Australian Government agencies.

