

May 29, 2025

Via email [DATActReview@finance.gov.au](mailto:DATActReview@finance.gov.au)

Please find attached my submission, on behalf of Psithur, to the Statutory Review of the Data Availability and Transparency Act 2022. I offer a considered perspective on the Act's operation, acknowledging its foundational role while expressing profound concern that its current scope and implementation fall short of the transformative potential envisioned by earlier landmark inquiries, particularly the 2017 Productivity Commission report. While progress has been made, Australia's journey towards becoming a data-informed society requires a more ambitious and integrated approach to address enduring challenges in data maturity and legislative completeness.

There are persistent gaps between the DAT Act's current framework and the comprehensive reforms necessary to unlock the full value of Australia's data assets and highlight the continued low data maturity within the Australian Public Service. I advocate for a renewed commitment to foundational data management principles, alongside crucial legislative enhancements such as the implementation of a robust National Interest Dataset framework. My analysis is further contextualized by an understanding of why the DAT Act evolved into its current form, considering the legislative journey, policy choices for incrementalism, and the influence of stakeholder feedback that shaped it from an ambitious vision to a more pragmatic, though arguably compromised, piece of legislation.

I offer a coherent set of integrated recommendations, urging the Review to consider a path of substantial amendment or replacement of the DAT Act to forge a resilient and truly effective data future for the nation.

Thank you for considering my submission. I would welcome further engagement with the ONDC if I might assist.

**Felix Barbalet**

Director

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# Submission to the Statutory Review of the Data Availability and Transparency Act 2022

## I. Introduction: A Generational Opportunity for Data-Driven Transformation

This submission is offered to the Statutory Review of the Data Availability and Transparency Act 2022 (DAT Act) with a mixed sense of optimism and concern.

The review presents a critical juncture for Australia. I take it not just as an opportunity to evaluate the DAT Act, but to reflect on Australia's journey towards becoming a data-informed society and to chart a more ambitious course for the future.

The pursuit of effective data availability and use is not a recent endeavour. It stretches back at least to the Government 2.0 Taskforce in 2009, through the Productivity Commission (PC) Inquiry in 2017, the 2019 Thodey Review, the DAT Act itself and the 2023 Data and Digital Strategy.

These efforts, alongside numerous others, have consistently highlighted the transformative potential of data to enhance public services, drive economic innovation, and empower citizens. Yet, as recent assessments of the APS data maturity reveal, the gap between aspiration and reality remains stubbornly wide.

The DAT Act was intended as a significant step forward, a response to the PC's call for fundamental reform. It has established important institutional architecture, including the Office of the National Data Commissioner (ONDC), and has begun to facilitate data sharing through its accreditation and authorisation mechanisms.

However, the central question for this review, in my opinion, is not just whether the DAT Act has operated as intended, but whether its current scope, design, and implementation are sufficient to achieve the profound shifts envisioned by the PC and so urgently needed by the nation.

The very structure of the DAT Act, incorporating a sunset clause and a statutory review, suggests an initial acknowledgement by policymakers of the Act as an evolving instrument, reflecting a potentially cautious or incremental initial approach to a complex reform agenda.

The Explanatory Memorandum to the original Bill explicitly noted that the sunset

provision was intended to ensure the "DATA Scheme must demonstrate its value to the Australian public to continue into the future".

This submission will argue that while the DAT Act provides a foundational element, it falls short of the comprehensive, transformative agenda required. It will contend that legislative reform, while necessary, is but one component of a much larger ecosystem that must address deeply entrenched cultural, systemic, and leadership challenges.

Drawing on the insights of past inquiries, analyses of current legislative and operational realities (including the factors that shaped the Act's development), and a pragmatic understanding of the APS context, this submission will propose some steps for a path forward.

This path involves not only refining the DAT Act but also embracing the more ambitious elements of the PC's vision and reigniting a commitment to the foundational principles of open government and robust data stewardship.

The sunset provision within the DAT Act compels us to consider its future. This review must be more than a technical exercise; it must be a catalyst for a renewed national commitment to unlocking the immense value of Australia's data assets for the benefit of all Australians.

## II. The Enduring Challenge of Data Maturity: A Cycle of Recognition Without Resolution

The recently released 2024 Australian Public Service (APS) Data Maturity Report paints a sobering, if familiar, picture. An average APS data maturity score of 2 out of 5, categorised as 'developing', signals that while there is an understanding of the importance of data, the capacity to effectively manage and leverage it as a strategic asset remains largely nascent.

This is not merely an administrative concern; it directly impacts the efficacy of policy development, the quality of service delivery, the potential for innovation, and the ability to engage with advanced technologies such as artificial intelligence.

The report's findings that key focus areas such as 'Data Architecture', 'Data analytics', and, most critically, 'Quality, reference, metadata' are languishing at an 'Initial / Ad hoc' level are particularly telling. These are not peripheral issues; they are the bedrock upon which any sophisticated data capability must be built.

Without robust data architecture, consistent metadata, and high-quality data,

ambitions for seamless data sharing, advanced analytics, and AI-driven insights remain distant aspirations. The report itself notes that the lowest scoring area, 'Data Quality, Reference & Metadata', is crucial for many government initiatives and advanced data uses. This observation echoes a sentiment that has been present in discussions about public sector data for over a decade.

This sense of déjà vu is palpable for those who have followed the APS's journey with data - the challenges identified in 2024 bear a striking resemblance to those articulated by the Government 2.0 Taskforce in its 2009 report, "Engage: Getting on with Government 2.0". That Taskforce, fifteen years prior, provided a clear roadmap, identifying core impediments and proposing solutions that directly address the very issues of leadership, foundational data management, and enabling culture that continue to surface.

The Gov 2.0 Taskforce's recommendations were prescient. Its central call for a "Declaration of Open Government" (Rec 1) underscored the need for the highest levels of government to champion public sector information as a national resource. Its emphasis on leadership and coordination through a dedicated lead agency (Rec 2) speaks directly to the 2024 Data Maturity Report's finding that 21% of agencies still lack an appointed senior leader responsible for data. This persistent gap in leadership accountability is a significant impediment to driving APS-wide change.

Furthermore, the Gov 2.0 Taskforce's specific call to "deploy endorsed metadata standards" (Rec 12.2) is a direct precursor to the 2024 report's identification of 'Quality, reference, metadata' as the weakest link.

The failure to systematically implement these foundational elements over a decade and a half suggests a systemic issue not of not knowing what to do, but of a failure in doing – a lack of disciplined execution and sustained commitment.

If this is the bedrock, and it's still crumbling, who is accountable?

The continued low maturity of agencies in 'Data analytics' and the challenges in fostering a proactive data culture suggest that the shift from risk aversion to an enabling mindset remains "developing".

The persistent cycle of identifying similar problems without achieving lasting resolution indicates that superficial or isolated interventions are insufficient. Legislative reform, such as the DAT Act, is insufficient on its own if these foundational capabilities are lacking. The Act provides a framework, but its utility is contingent on these systemic issues being addressed.

The "cycle of recognition without resolution" points to a systemic execution gap within the APS that limits the potential of any data sharing legislation.

The challenge of data maturity in the APS is not merely technical or legislative; it is deeply intertwined with issues of leadership, accountability, culture, and the consistent application of foundational data management principles. Until these systemic issues are addressed with renewed vigour and a commitment to long-term execution, the APS will likely continue to "admire the problem" rather than decisively resolving it.

This statutory review offers another opportunity to break that cycle. My views are not groundbreaking nor novel, as they largely echo those of the Productivity Commission in its 2017 report.

### **III. Revisiting the Productivity Commission's 2017 Vision: A Blueprint for Comprehensive Reform**

The Productivity Commission's (PC) 2017 Inquiry Report, "Data Availability and Use," stands as a watershed moment in Australia's data reform narrative. It provided a comprehensive diagnosis of the systemic impediments hindering the nation's ability to harness the value of its data assets and, crucially, offered a bold and integrated blueprint for transformative change.

#### **A. The PC's Diagnosis: A Multiplicity of Interconnected Barriers**

The PC's core message was unequivocal: "Marginal changes to existing structures and legislation will not suffice... Fundamental and systematic changes are needed" (p. 2, 12;). This assertion remains profoundly relevant to the current statutory review.

The PC did not identify legislation as the sole barrier to data sharing and use. Instead, it meticulously detailed a "multiplicity of interconnected barriers" that collectively "choked the use and value of Australia's data". The PC emphasized that these barriers were not only systemic but also mutually reinforcing, creating a complex challenge.

The Commission explicitly warned that addressing these barriers in isolation would prove insufficient, underscoring the need for a holistic approach to navigate this interconnected web of impediments.

The barriers were:

1. Legislative and Regulatory Complexity: A primary and foundational barrier was the "dense web of legislative requirements", including over 500 secrecy provisions in Commonwealth legislation alone, many of which were deemed no longer "fit for purpose" (Finding 3.2). This complexity, coupled with inconsistent State and Territory privacy laws and the "unwieldy and overly complex" nature of the Commonwealth Privacy Act 1988, created a "chilling effect" on data sharing. The PC noted the Privacy Act's focus was predominantly on the "limitation of threat" rather than "opening up opportunity". Specific limitations, like those on linking health data (section 135AA of the National Health Act 1953) and the mandated destruction of linked datasets, were described as "anachronistic" and wasteful. The legal framework itself was seen as misaligned with a data-driven economy, treating data more as a liability than an asset.
2. Pervasive Culture of Risk Aversion: The PC identified an "entrenched culture of risk aversion" within the public sector (Finding 3.5), where the "default position is to say no as this is SAFE". This was reinforced by a lack of positive incentives for data sharing and an "absence of clear enabling frameworks" or explicit "permission" to be proactive. This culture manifested in "overly cautious interpretation" of laws and burdensome internal approval processes, significantly delaying valuable research and policy work.
3. Fragile Community Trust and Understanding: A critical impediment was the "lack of trust by both data custodians and users in existing data access processes and protections" and broader "fragile community understanding and trust". The PC argued that building "social licence" was paramount, contingent on public belief in institutional integrity, a sense of control over personal data, and an understanding of community-wide benefits (p. 13).
4. Lack of Consistent Leadership and Enabling Frameworks: The absence of "strong and consistent leadership" from both ministerial and senior bureaucratic levels was repeatedly highlighted as a key factor perpetuating the risk-averse status quo.
5. Systemic Shortcomings in Data Usability and Management: The PC found Australia's open data provision to be "below comparable countries" (Finding 1.1), citing issues like poor formatting, infrequent updates, and lack of discoverability. This contributed to fragmented data collection, duplication of effort, and underutilisation of valuable data assets (Finding 3.5). The report also pointed to a lack of skills, inadequate resources, and the hindrance of legacy IT systems (p. 164-165).

## B. The PC's Comprehensive Reform Agenda: An Integrated Ecosystem

In response to its diagnosis, the PC proposed a comprehensive and transformative reform agenda, designed to move Australia "from a system based on risk aversion and avoidance, to one based on transparency and confidence in data processes, treating data as an asset and not a threat" (p. 2).

Key pillars of this vision included:

1. A New Data Sharing and Release (DSR) Act: The cornerstone was new overarching Commonwealth legislation, the DSR Act, envisioned to "authorise the better sharing and release of data," establish new consumer rights, and create a risk-based institutional framework (Rec 8.1). Critically, it was intended to "override secrecy provisions or restrictions on use that prevent original custodians actively providing access to data" (Rec 8.3), thereby creating a clearer and more enabling legal environment.
2. A Comprehensive Right for Consumers (CCDR): A novel and central recommendation was the creation of a "Comprehensive Right" for consumers (individuals and SMEs) to access their digital data, request edits, and direct its transfer to third parties (Rec 5.1, 5.2). This was framed not just as a privacy measure but as a "fundamental reform to Australia's competition policy in a digital world," designed to enhance consumer choice, foster innovation, and build social licence (p. 2, 14). The PC explicitly warned against decoupling this from other reforms, stating it would make garnering social licence "more difficult" (p. 2).
3. A National Data Custodian (NDC): A new statutory office holder, the NDC, was proposed to provide leadership, guide and monitor the new data access arrangements, proactively manage risks, address ethical considerations, accredit release authorities, and recommend datasets for designation as National Interest Datasets (Rec 6.2, 6.6).
4. Accredited Release Authorities (ARAs): A network of ARAs was envisaged as sectoral hubs of expertise, responsible for the ongoing maintenance, curation, linkage, and de-identification of NIDs and other datasets, facilitating streamlined, risk-based access for trusted users (Rec 6.3, 6.8). These were seen as potentially independent entities with a national focus.
5. National Interest Datasets (NIDs): A formal process for designating high-value public (and exceptionally, private) sector datasets as NIDs was recommended (Rec 7.1). These NIDs would be resourced as national assets, with access and use arrangements under the DSR Act taking precedence over existing restrictions (p. 2). This process was to involve public scrutiny and parliamentary engagement.
6. Driving Cultural Change: A significant thrust was the urgent need for cultural transformation within the public sector to overcome risk aversion,

supported by strong leadership and the clear "permission to be proactive" granted by the new DSR Act (p. 12).

The PC's vision was holistic, directly linking consumer empowerment with the success of public sector data reform. It was a call for a paradigm shift, recognizing that Australia was "failing to capitalise on the immense potential held within its public and private sector data resources".

## IV. The Data Availability and Transparency Act 2022:

### Progress and Persistent Gaps

The Data Availability and Transparency Act 2022 (DAT Act) represents one of the Commonwealth's legislative responses to the Productivity Commission's 2017 call for data reform. Enacted to establish a new scheme for sharing Australian Government data, the DAT Act, and its operationalisation by the ONDC, has made tangible progress in certain areas.

However, when benchmarked against the PC's comprehensive and transformative vision, significant gaps and shortcomings become apparent.

Understanding *why* these gaps emerged requires examining the legislative journey from the PC's ambitious blueprint to the pragmatic, and arguably compromised, DAT Act.

#### A. Stated Objects and Core Mechanisms of the DAT Act

The DAT Act's objects (s3) include promoting better availability of public sector data, enabling sharing consistent with privacy and security safeguards, enhancing integrity and transparency, building confidence, and establishing institutional arrangements.

Its core authorisation mechanisms (Chapter 2, Part 2.2) empower Commonwealth data custodians to share public sector data with accredited users (directly or via an Accredited Data Service Provider - ADSP) for specific purposes: delivery of government services, informing government policy and programs, and research and development (ss13, 13A, 13B, 15).

Sharing is governed by data sharing principles (s16) and must occur under a registered data sharing agreement (s18), with privacy protections (Part 2.4) applied.

The Act establishes the National Data Commissioner (NDC) as an independent statutory officer responsible for overseeing the DATA Scheme, including

providing advice, guidance, and regulatory oversight (ss41-45A).

An accreditation framework (ss74-81) governs the suitability of entities to participate as users or ADSPs.

## **B. Achievements and Operational Realities**

In April 2025, the NDC remarked on the three years since the commencement of the Data Availability and Transparency Act, signaling significant progress in operationalizing the DATA Scheme.

As of March 2025, the number of accredited entities stands at 34, comprising 17 Australian Government agencies, 10 state/territory government agencies, and 7 Australian Universities. This growing community underscores the establishment of trusted institutional arrangements for sharing public sector data.

Since the Scheme's inception, there have been over 50 data requests managed through Dataplace and over 20 instances of data sharing.

Enhancements continue for Dataplace, the digital platform for managing requests and agreements, which now has 119 onboarded organisations. The Australian Government Data Catalogue, integrated with Dataplace, serves as a search tool for data held by Australian Government agencies, with 21 agencies now contributing directly to the catalogue.

The Data Inventories Pilot Program also exceeded its targets, supporting 44 agencies. The ONDC has focused on a "facilitative posture" and established a working group to identify and address impediments to scheme uptake.

However, these achievements must be viewed in the context of the scheme's overall uptake and the persistent challenges. The ONDC Working Group's findings highlight that the "role and value proposition of the DATA Scheme is unclear" to many potential participants.

The accreditation process is often perceived as requiring "considerable time and effort," and data sharing agreements as "long and complex".

There's a reported "lack of clarity on how the DAT Act override provisions interact with other secrecy provisions", a critical issue if the Act is to overcome the legislative fragmentation identified by the PC.

Furthermore, states and territories report a lack of "equivalence" in DATA Scheme projects, hindering truly national data sharing efforts.

As noted by the Review Issues paper, a survey indicated that a small number of

Commonwealth entities (19) maintained thousands (11,000) of data sharing agreements outside the DAT Act framework, highlighting its limited penetration and revealed preference that it hasn't changed the playing field for sharing data within the public sector.

These operational impediments suggest that the DAT Act, in its current form and implementation, may be creating new layers of process without necessarily delivering a commensurate increase in data flow or a reduction in perceived risk for custodians.

This reflects, in part, the compromises and complexities introduced during its legislative development, influenced by stakeholder concerns and a cautious governmental approach.

### C. Divergence from the Productivity Commission's Vision

The DAT Act aligns with some aspects of the PC's vision, such as establishing an independent oversight body (the NDC) and providing a legislative basis for sharing.

However, several fundamental pillars of the PC's proposed reforms are notably absent or significantly diluted. The reasons for these divergences are complex, stemming from the government's initial, more cautious response to the PC's ambitious proposals, specific design choices made during legislative drafting, the influence of parliamentary scrutiny and stakeholder feedback, and an overarching preference for an incremental approach to reform.

#### 1. Lack of a Robust National Interest Dataset (NID) Framework:

- The PC envisioned a formal, publicly scrutinised process for designating, funding, and strategically managing NIDs as national assets, with access arrangements under the new DSR Act overriding pre-existing legislative restrictions (Rec 7.1, 7.2).
- The DAT Act lacks such a systemic framework. This stems from the government's initial non-committal response to the full NID architecture, preferring to "establish a framework to identify datasets" and "consider the best way to facilitate sharing" through legislative consultation.
- This signaled an exploratory rather than immediate adoption, likely due to concerns about the NID model's complexity, cost, and governance implications.
- The prevailing incremental reform philosophy also positioned a comprehensive NID system as a potential future development rather than a foundational element of the initial Act.
- The legislative focus shifted towards establishing the *authority* and *process* for sharing (the DATA Scheme) rather than proactively curating

- and mandating access to specific NIDs from the outset.
  - The inherent complexity of NID designation, funding, and cross-jurisdictional governance likely led policymakers to opt for a more flexible, project-based approach initially.
  - This gap limits the potential to unlock high-value, integrated datasets for national benefit.
2. Accredited Data Service Providers (ADSPs) vs. Accredited Release Authorities (ARAs):
- The DAT Act's ADSPs are primarily framed as entities providing specific technical "data services" (e.g., complex integration, de-identification) for individual projects (s11, DAT Act definition of ADSP).
  - This contrasts with the PC's vision of ARAs as proactive, sector-leading hubs of expertise responsible for the strategic curation and ongoing management of NIDs and other key datasets, and for driving data strategy within their domains (Rec 6.3, 6.8).
  - The ADSP model is more reactive and project-based. This shift is partly a consequence of the absence of a robust NID framework, which diminished the primary strategic rationale for ARAs as conceived by the PC.
  - The government's 2018 response also indicated an intention to build upon existing "Integrating Authorities", suggesting a preference for evolving existing structures rather than creating new, potentially independent and powerful ARAs.
  - The ADSP model, drawing from established government and university sectors, aligns with a project-based scheme and allows for tighter governmental control and clearer lines of accountability, with risk remaining with data custodians.
  - This was a less radical and more readily implementable step than establishing a network of PC-style ARAs.
3. Limited Impact on Cultural Change:
- The PC stressed that overcoming the "entrenched culture of risk aversion" required "strong and consistent leadership" and explicit "permission to be proactive".
  - While the DAT Act provides a permission to share, its complex processes, coupled with the ONDC Working Group's finding of an "unclear value proposition", may not be sufficiently potent to drive the profound cultural shift required.
  - The 2024 APS Data Maturity Report's findings of low maturity in key areas like data quality and analytics further suggest that the DAT Act alone has not been a silver bullet for cultural transformation.
  - The Act's focus on managing risks through principles and agreements is

- foundational, but without stronger positive incentives and clearer pathways for custodians, risk aversion is likely to persist.
- The Act primarily offers a legislative pathway but lacks strong, tangible positive incentives to overcome deep-seated institutional caution.
  - Persistent low APS data maturity and the perceived complexity of the DATA scheme act as further deterrents.
  - A lack of sustained, high-level championship for cultural shift across the APS, as envisioned by the PC, also contributes, with the Act itself not mandating or resourcing such a campaign.
4. Effectiveness of Legislative Overrides:
- The PC's proposed DSR Act was intended to decisively "override secrecy provisions or restrictions on use" (Rec 8.3).
  - The DAT Act's s23 aims to achieve this, stating its authorisations have effect "despite any other law". However, the ONDC Working Group's finding of a "lack of clarity" on how this override interacts with other laws suggests its practical effectiveness is questionable.
  - This ambiguity stems from the inherent legal difficulty of crafting a single, comprehensive yet precise override for over 500 diverse secrecy provisions.
  - Custodian risk aversion is amplified by this legal uncertainty, as they remain accountable under their primary legislation. A lack of specific guidance, judicial precedent, and complexities in interaction with state/territory laws further muddy the waters.
  - Concerns raised during parliamentary scrutiny about the breadth of the override power and its impact on privacy also likely led to careful wording and an implicit expectation of narrow application.
  - If data custodians remain uncertain about the DAT Act's ability to shield them from penalties under other legislation, they are unlikely to embrace proactive sharing.

The DAT Act, while a step, appears to be a more incremental adaptation—a product of balancing ambitious reform with pragmatic legislative realities, stakeholder pressures, and a preference for a staged rollout — rather than the "fundamental and systematic changes" the PC deemed necessary.

The current statutory review provides an opportunity to assess whether this incremental approach is sufficient or if a bolder realignment with the PC's original, more comprehensive vision is now required to truly unlock Australia's data potential.

## D. Case Study: Metadata, Mandate, and Missed Opportunity – The AGDC Copyright Conundrum

The Australian Government Data Catalogue (AGDC), managed by the Office of the National Data Commissioner (ONDC), is a key piece of infrastructure in this landscape. However, my recent interaction<sup>1</sup> regarding the copyright and reuse of the AGDC's *metadata itself* reveals a potential lack of ambition within the ONDC to proactively drive APS-wide change, allowing crucial enablers of a data-driven ecosystem to "fall through the cracks".

The issue arose from a simple query: "Can I check the copyright applied to the Australian Government Data Catalogue?". The AGDC website linked to the Department of Finance's general copyright page, which stated, "commercial use of the material is not permitted without prior written approval".

This immediately raised a flag: "Why could I not build a commercial product based on the *metadata* published in the ONDC's Data Catalogue?".

This restrictive stance seemed at odds with prevailing government advice. As pointed out in a follow-up, current guidance for government agencies is that "Use of more restrictive licensing arrangements for new material should be reserved for special circumstance only," with a preference for open Creative Commons licenses.

I asked the ONDC to detail "the specific circumstances that led to the application of a restrictive license in this case".

The ONDC's detailed response, after some delay, clarified that for the AGDC metadata, "Intellectual property rights in the catalogue meta-data records are retained by the participating Australian Government agencies and licensed to the ONDC to support the Dataplace platform". Furthermore, "Dataplace users are granted a non-exclusive licence to access and use the catalogue meta-data records only for the intended and lawful purposes set out in Part 3 of the Dataplace Terms of Use".

This explanation, while legally clarifying the *status quo*, highlighted a significant missed opportunity for leadership and APS-wide reform.

The practical implication, as stated in a subsequent email, was that "if I wanted to take the catalog metadata and remix it or build a website around it, or even

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<sup>1</sup> August 2024 - Dec 2024, ONDC Support Desk Ticket SUP-03100

just perform an aggregate analysis of the catalogue metadata, I couldn't do so without contacting each agency who contributes metadata to the catalogue and asking their permission?" Of course, that is not practical for someone outside of Government.

Herein lies the crux of the "lack of ambition." The ONDC was presented with a clear suggestion for proactive system-wide improvement: "if the ONDC thought it worthwhile, you could ensure that all participating agencies agreed to make the catalogue metadata available under a creative commons license, which would promote better availability of that particular data (the catalog metadata)". This was followed by a direct challenge to the ONDC's perceived narrow remit:

"Could you advise why the ONDC doesn't believe it to be part of its remit to promote and more importantly enable reuse of the catalogue metadata itself?". The ONDC's final response sidestepped this challenge, reiterating that its "core purpose... is to facilitate the discoverability and accessibility of data assets" and that it "cannot provide advice on specific, individual uses of the AGDC".

This interaction serves as a case study. The ONDC, a body established to champion data availability and transparency, appears to interpret its role in a way that maintains existing restrictive practices rather than actively dismantling them for the benefit of the broader data ecosystem.

Instead of seizing the opportunity to lead APS-wide change by advocating for and facilitating open licensing of *catalogue metadata* – a fundamental enabler for innovation and transparency – the ONDC deferred to "someone else" to deal with that barrier.

This approach leaves a critical piece of APS-wide data infrastructure (the catalogue metadata itself) less usable than it could be. It exemplifies how, without ambitious, system-focused leadership, opportunities to drive genuine, practical APS-wide change in data accessibility and reuse can be easily "left to fall through the cracks."

It should be clear that an APS that embraces data and makes it open by default requires more than just facilitating discovery; it requires proactively enabling reuse, even of the very tools designed for discovery.

## V. A Coherent Path Forward: Integrated Recommendations for Transformative Change

To bridge the gap between the current state and the transformative potential of data for Australia, a more comprehensive and integrated approach is required than that currently embodied by the DAT Act alone.

This involves not just incremental adjustments but a strategic adoption of the core tenets of the Productivity Commission's 2017 vision and the foundational principles articulated by the Government 2.0 Taskforce. The following recommendations, drawn from these key reports and analyses of the DAT Act's operation (including an understanding of *why* the Act took its current form), are presented as a coherent package designed to drive meaningful and sustainable change.

They are grouped thematically to address the multifaceted nature of the challenge.

### A. Legislative and Scheme Design Enhancements

The DAT Act itself, or a successor framework, requires significant enhancement to deliver on the original promise of data reform.

1. Establish a Formal National Interest Dataset (NID) Framework:
  - Amend the DAT Act to introduce a clear, transparent, and publicly scrutinised process for the nomination, assessment, designation, dedicated funding, and strategic management of NIDs as national assets.
  - Crucially, access to designated NIDs under this framework must have clear authority to override conflicting secrecy provisions where a compelling public interest case is made.
  - This addresses a core divergence from the PC's vision, acknowledging that the initial cautious approach and focus on an enabling framework over asset curation has limited strategic data unlocking.
2. Strengthen and Clarify Legislative Override Provisions:
  - Review and amend section 23 of the DAT Act concerning the overriding of other laws. Alternatively, the NDC must develop detailed legislative rules or binding data codes to provide unambiguous clarity and certainty on its application, particularly concerning specific Commonwealth, State, and Territory secrecy laws.

- This directly tackles the "lack of clarity" identified by the ONDC Working Group, which persists due to inherent legal complexities and custodian uncertainty.
3. Refine Accreditation and Data Sharing Processes:
- Revise the DAT Act or its subordinate instruments (rules, data codes) to simplify and streamline requirements for accreditation and DSAS, particularly for lower-risk projects or highly trusted/experienced entities. Options include tiered accreditation, risk-based DSA templates, and clearer pathways for expedited approvals.
  - Addresses ONDC Working Group findings that current processes are overly burdensome, a consequence of safeguards built in response to concerns about the Act's broad powers. (I note the ONDC has made progress on this in the six months since the working group findings were published).
4. Enhance State/Territory Participation and Equivalence:
- Amend the DAT Act to include provisions ensuring greater parity and smoother two-way data sharing for State and Territory entities. This could involve pathways for deemed accreditation based on equivalent jurisdictional schemes, principles for mutual recognition of standards, or specific intergovernmental agreements under the DAT Act framework.
  - Addresses the "lack of equivalence" identified by the ONDC Working Group, a barrier to a truly national system.
5. Expand Scope of DATA Scheme Participation and Purposes:
- The Statutory Review should carefully consider feedback on expanding DATA Scheme participation to private and non-government sector entities, and broadening permissible data sharing purposes beyond the current three (delivery of government services, informing policy/programs, research/development - s15 DAT Act).
  - Expanding the scheme would increase its relevance to the community and signal the Government's commitment to driving progress for data maturity in Australia more broadly.
  - Any expansion must be accompanied by robust safeguards and a clear public interest test, with transparency at its core.

## B. Institutional Strengthening and Leadership

Legislation alone is insufficient; institutional capability and clear leadership are paramount.

6. Evolve ADSPs towards the Strategic Role of ARAs:
  - The ONDC should develop a strategy, potentially including revised accreditation criteria or guidance, to encourage and enable Accredited Data Service Providers (ADSPs) to evolve into more strategic, sector-focused entities akin to the PC's vision for Accredited Release Authorities (ARAs). This includes responsibilities for data curation, strategic linkage, and facilitating streamlined access to key datasets within their domain.
  - Addresses the gap between the current technical ADSP model (a result of a more controlled, evolutionary approach) and the PC's strategic ARA concept.
7. Reinforce/Expand the National Data Commissioner's (NDC) Role and Resourcing:
  - Ensure the NDC is adequately resourced and empowered to provide strong leadership, proactive guidance (especially on applying override provisions and managing NIDs), and effective oversight of the expanded DATA Scheme. This includes capacity for robust ethical guidance and auditing capabilities.
  - The NDC's role was a key part of the government's response, but its effectiveness is hampered if operational challenges persist or it doesn't consider its role being broad enough.
8. Mandate and Resource Agency-Level Data Leadership:
  - Reiterate and enforce the requirement from the Data and Digital Government Strategy for all agencies to appoint an appropriate senior leader responsible for the organization's data. These roles must be adequately empowered and resourced to drive internal data maturity uplift.
  - Addresses the persistent leadership gap identified in the 2024 Data Maturity Report, a foundational issue hindering cultural change.

## C. Cultural Transformation and Capability Uplift

Deep-seated cultural issues remain a primary barrier.

### 9. Sustained Campaign for Cultural Change and Value Proposition:

- The ONDC, supported by central agencies (like PM&C, Finance, APSC), must lead a sustained, visible campaign to shift APS culture from risk aversion to proactive data use. This includes clearly articulating and demonstrating the tangible "value proposition" of the DATA Scheme and broader data sharing for custodians and users.
- Directly addresses the ONDC Working Group's finding of an "unclear value proposition" and the PC's diagnosis of entrenched risk aversion, acknowledging that the DAT Act alone has not overcome this.

### 10. Invest in Foundational Data Maturity - Quality, Metadata, Standards:

- Significantly increase and sustain Commonwealth investment in programs that build foundational data management capabilities across all APS agencies. This must prioritize data quality, comprehensive metadata, adherence to common data standards, and modern data architecture.
- Responds to the critical findings of the 2024 Data Maturity Report, recognizing that low maturity is a fundamental blocker to the DAT Act's success.

### 11. Promote and Resource "Info-Philanthropy" and Open Data Principles:

- Revisit and actively promote the Gov 2.0 Taskforce recommendation to encourage "info-philanthropy" (Rec 13) and ensure Public Sector Information (PSI) is, by default, open, accessible, and reusable under permissive licences like Creative Commons BY (Gov 2.0 Rec 6). This includes establishing and maintaining data.gov.au as a central portal for discoverable PSI, rather than a proliferation of multiple data catalogues by different agencies.
- Reinforces foundational open government principles that complement the DAT Act's controlled sharing mechanisms.

## D. Accountability and Implementation

Effective implementation requires clear accountability.

### 12. Transparent Reporting on Data Maturity and Reform Progress:

- Mandate transparent, agency-level public reporting on data maturity

assessments and progress against data reform initiatives. This should mirror the transparency advocated for major digital projects from the DTA.

- Transparency drives accountability and improvement, addressing the "cycle of recognition without resolution".

### Consolidated Table of Key Recommendations for the Statutory Review:

The following table consolidates the primary recommendations discussed above, linking them to their original source reports and their relevance to this Statutory Review.

Theme	Specific Action	Original Source(s)	Relevance to DAT Act Review & Issues Paper Questions
Legislative & Scheme Design	Establish a Formal National Interest Dataset (NID) Framework with override provisions	PC Rec 7.1-7.4; Gov 2.0 Rec 6	Addresses major gap (due to initial cautious approach); improves information flows for high-value data; makes DAT Act more effective
Legislative & Scheme Design	Strengthen & Clarify Legislative Override Provisions (DAT Act s23)	PC Rec 8.3; ONDC WG Finding	Critical for overcoming legislative barriers (ambiguity persists due to legal complexity and scrutiny) and risk aversion; makes DAT Act more effective in achieving objects.
Legislative & Scheme Design	Refine Accreditation and Data Sharing Agreement (DSA) Processes	ONDC WG Finding	Reduces burden (a result of safeguards built into a complex Act), improves usability and uptake of DATA Scheme; makes DAT Act more

			effective
Legislative & Scheme Design	Enhance State/Territory Participation and Equivalence	PC Rec 10.2; ONDC WG Finding	Facilitates national data sharing, NIDs; improves data flows, addressing identified operational hurdle.
Legislative & Scheme Design	Cautiously Evaluate Expansion of DATA Scheme Scope (participants, purposes)	Statutory Review Issues Paper Q3; PC Rec	Potential to increase DAT Act value, but requires careful balancing of risks and benefits, reflecting initial scope decisions
Institutional & Leadership	Evolve ADSPs towards the Strategic Role of ARAs	PC Rec 6.3, 6.8	Provides necessary stewardship for NIDs and sectoral data strategy (current ADSP model is more limited due to legislative choices); improves effectiveness.
Institutional & Leadership	Reinforce NDC Role and Resourcing	PC Rec 6.6; Gov 2.0 Rec 2	Ensures effective oversight, guidance, and leadership for a more ambitious data agenda, addressing operational challenges.
Institutional & Leadership	Mandate and Resource Agency-Level Data Leadership	2024 Data Maturity Report finding; Gov 2.0 Rec 2	Drives internal agency accountability and capability uplift for data, tackling a root cause of slow progress
Cultural Change & Capability	Lead Sustained Campaign for Cultural Change & Clear Value	PC Finding 3.5; ONDC WG Finding; Gov 2.0 Report	Addresses entrenched risk aversion (DAT Act alone insufficient); vital for DATA

	Proposition		Scheme uptake and achieving objects.
Cultural Change & Capability	Invest in Foundational Data Maturity (Quality, Metadata, Standards)	2024 Data Maturity Report finding; Gov 2.0 Rec 12.2; PC Rec 10.3	Non-negotiable for effective data sharing, analytics, and AI; underpins entire data ecosystem, addressing a key systemic weakness.
Cultural Change & Capability	Promote "Info-Philanthropy" and Open Data Principles	Gov 2.0 Rec 6, 13	Complements controlled sharing with broader public access to PSI as a national resource.
Accountability & Implementation	Mandate Transparent Reporting on Data Maturity & Reform Progress	Gov 2.0 Rec 3.3	Drives accountability and continuous improvement in data practices, helping break the "cycle of recognition without resolution".
Accountability & Implementation	Establish Awards and Recognition for Data Innovation	Gov 2.0 Rec 5	Incentivises positive cultural change and showcases best practices.

This integrated suite of recommendations, if adopted, offers a pathway to move beyond the current limitations and harness the transformative power of data for Australia.

It acknowledges the progress made while insisting on the ambition required to meet the challenges and opportunities of a data-driven future.

## VI. Conclusion: Beyond the Sunset - Forging a Resilient Data Future for Australia

The statutory review of the Data Availability and Transparency Act occurs at a pivotal moment. The Act itself contains a sunset provision, requiring it to cease

effect five years after commencement unless a decision is made to continue it.

This provision, as noted in the explanatory memorandum to the DAT Bill, was intended to ensure the "DATA Scheme must demonstrate its value to the Australian public to continue into the future".

This "prove-it" model reflects the incremental and cautious approach taken in the Act's initial formulation.

The critical question for this review, therefore, is not just whether the DAT Act should continue, but how Australia should proceed to build a truly effective and trusted data sharing ecosystem for the long term.

Allowing the DAT Act to sunset without a significantly more robust, comprehensive, and well-implemented successor framework would represent a substantial setback.

It would risk squandering the investments made to date, however modest the returns, and could signal a retreat from the national ambition to leverage data for public good. The progress in establishing the ONDC, the accreditation framework, and the initial data sharing agreements, while limited, provides a foundation upon which to build. To discard this foundation entirely would be a retrograde step.

However, simply continuing the DAT Act in its current form and with its current operational impediments is also an insufficient response.

The 2024 APS Data Maturity Report reveals systemic weaknesses in foundational data capabilities. The ONDC Working Group has identified significant practical barriers to the DATA Scheme's uptake and an "unclear value proposition".

Furthermore, as this submission has argued, the DAT Act in its present iteration—shaped by a complex legislative journey involving cautious policy choices, stakeholder compromises, and an incremental rollout strategy—falls considerably short of the holistic and transformative vision articulated by the Productivity Commission in 2017, particularly concerning a strategic National Interest Dataset framework.

These are not minor omissions; they are core components of a system designed to build broad social licence and unlock deep, systemic value from data.

Therefore, this review should recommend a path of substantial amendment and expansion of the DAT Act, or its replacement with new legislation that fully incorporates the integrated recommendations outlined in Section V of this

submission.

This includes establishing a robust NID framework, strengthening legislative overrides, streamlining processes, and ensuring the institutional architecture (NDC, evolved ARAs) is empowered and resourced to drive change.

It must be unequivocally stated that legislative change, while a critical enabler, is not a panacea. The recurring themes of the past fifteen years point to a deeper challenge: the need for sustained commitment to cultural transformation, visible and unwavering leadership, adequate and consistent resourcing for foundational capabilities (especially data quality, metadata, and skills), and, above all, the disciplined execution of agreed reforms.

Without these, even the most perfectly crafted legislation will fail to deliver its intended impact.

The APS must "break the cycle" of admiring the problem and instead commit to the hard, foundational work of implementation. This Statutory Review is more than an assessment of an Act; it is an opportunity to fundamentally evolve Australia's approach to data.

It is a chance to move from hesitant, incremental steps—which characterized the DAT Act's genesis—to confident, strategic strides towards becoming a leading data-driven nation.

The profound benefits for public service effectiveness, economic innovation, citizen empowerment, and democratic accountability warrant nothing less than a bold, comprehensive, and enduring commitment to this transformative agenda.

The time for admiring the problem is over; the time for decisive, integrated action is now.

Felix Barbalet

29 May 2025

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