



Regulatory Approach

About the DATA Scheme

The *Data Availability and Transparency Act 2022* (the Act) establishes the DATA Scheme - a best practice scheme for sharing Australian Government data, underpinned by strong safeguards and consistent, efficient processes.

The DATA Scheme is focussed on increasing the availability and use of Australian Government data to deliver government services that put people and business at the centre, inform better government policies and programs, and support world-leading research and development.

The participants of the DATA Scheme (Scheme entities) consist of:

- Data custodians: Commonwealth Government bodies who control public sector data. Data custodians do not opt-in to the DATA Scheme – they are automatically Scheme entities.
- Accredited users: 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: Commonwealth, state and territory government bodies, and Australian universities that provide complex data integration, de-identification and secure data access services to support data sharing. Entities must apply to become accredited as a data service provider.

The Office of the National Data Commissioner is developing Dataplace - a new, a whole-of-government digital platform for Scheme entities and others to manage data requests (www.dataplace.gov.au). It also supports administration of the DATA Scheme. The platform brings together those wanting to get access to Australian Government data (such as researchers and those working on public policy and delivering public services) with Commonwealth agencies who are the data custodians. Dataplace can be used to apply for accreditation, request Australian Government data, develop a data sharing agreement, and monitor data sharing activities.

We are working with Australian Government agencies to support them to build and develop their data inventories, and creating a searchable Australian Government Data Catalogue, to help users find data.

The Act establishes the National Data Commissioner (Commissioner) as an independent statutory officer holder. The Commissioner is responsible for overseeing the DATA Scheme to:

- serve the public interest by promoting better availability of public sector data
- enable the sharing of public sector data consistent with the Privacy Act 1988 and appropriate security safeguards
- enhance integrity and transparency in sharing public sector data
- build confidence in the use of public sector data, and
- establish institutional arrangements for sharing public sector data.



The Commissioner is the regulator of the DATA Scheme and provides advice and guidance about its operation to the Minister, Scheme entities and others. The Commissioner's other functions are to deliver education and tools to support best practice data handling and sharing.

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

Regulatory functions

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 a Scheme entity, and taking enforcement action such as issuing infringement notices and directions, and seeking injunctions as well as civil and criminal penalties. The Commissioner must include information on activities undertaken in relation to their regulatory functions in an Annual Report.

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

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, in response to a complaint or a suspected breach of the Act. The Commissioner also has the power to suspend or cancel accreditation.

The Commissioner must notify the entity as soon as practicable after a decision is made to suspend or cancel their accreditation. The Commissioner may also notify parties to data sharing agreements of the changed status of accredited entities.

The Commissioner can lift suspension via a written notice if appropriate, after an investigation demonstrates that there are no grounds for continuing the suspension.

Handling complaints

The Commissioner has the powers to manage disputes relating to the DATA Scheme. A Scheme entity can make a complaint to the Commissioner if they suspect another Scheme entity has breached the Act or a data sharing agreement ('scheme complaints'). In addition, any person may make a complaint to the Commissioner about any matter relating to the administration or operation of the DATA Scheme ('general complaints'). General complaints also serve as an avenue for members of the public to complain about DATA Scheme entities' conduct.

For scheme complaints, the Commissioner must investigate complaints to assess non-compliance and possible remedies, unless conciliation is more appropriate. Remedies may





include exercising regulatory powers such as providing recommendations, written directions, enforceable undertakings, infringement notices and injunctions.

For general complaints, the Commissioner has the discretion to make preliminary inquiries of any person or entity, request additional information, arrange conciliation or take any other appropriate action.

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.

Assessments and investigations

The Act empowers the Commissioner to conduct assessments and investigations to maintain the integrity of the DATA Scheme. The Commissioner can conduct an assessment on whether a Scheme entity's activities are consistent with the requirements of the DATA Scheme.

Investigations provide a means for the Commissioner to determine whether an entity is breaching or has breached requirements of the DATA Scheme. Investigations occur in response to a scheme complaint, on the Commissioner's own initiative, or as directed by the Minister.

The Commissioner is required to provide written notice to a Scheme entity before starting an assessment or investigation and on completion of one. On completion of an assessment or investigation, the Commissioner makes a written determination setting out findings of an investigation conducted and recommendations to the Scheme entity after completion.

Regulatory powers and enforcement

The Commissioner through their regulatory and enforcement powers can compel any person to produce information and documents. The Commissioner can transfer a matter, including a complaint, to an appropriate body to which it is authorised to disclose information, if the matter is more effectively or conveniently dealt with by the body.

The Commissioner's information gathering power supplements their monitoring and investigation powers derived from the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act), which allow for the collection of information and documents when physically inspecting a premises.

The Commissioner can issue binding directions, including to deal with emergencies or high risk situations. Under the Regulatory Powers Act, the Commissioner can seek injunctions and civil penalties from a court, issue infringement notices or accept and enter into enforceable undertakings in cases where the Commissioner has determined a breach has, or is, occurring. The Commissioner can also refer matters to the Commonwealth Director of Public Prosecutions where a criminal offence may have been committed.

The Commissioner will publish further guidance on their regulatory functions.





Regulation and compliance principles

The following principles guide the Commissioner's regulatory approach:

Proportionality

We take a risk-based approach to our regulatory activities, using information, analysis and expertise to inform our understanding of regulatory risk. Our actions will be proportionate to the conduct and the resulting or potential harm.

Transparency

We are transparent about what action we take and why. Our regulatory action supports transparency when sharing any public data.

Accountability

Our regulatory decision-making takes place within robust governance processes. Participants have access to a range of review and appeal rights. We measure, review, report on and improve our regulatory performance.

Fairness

We balance voluntary compliance with regulatory activities. We seek to be consistent and fair in the performance of our regulatory functions. We are independent, respectful and accessible.

Timeliness

We value quality and efficiency in our activities. We aim to deliver meaningful, fit-for-purpose outcomes within appropriate timeframes.

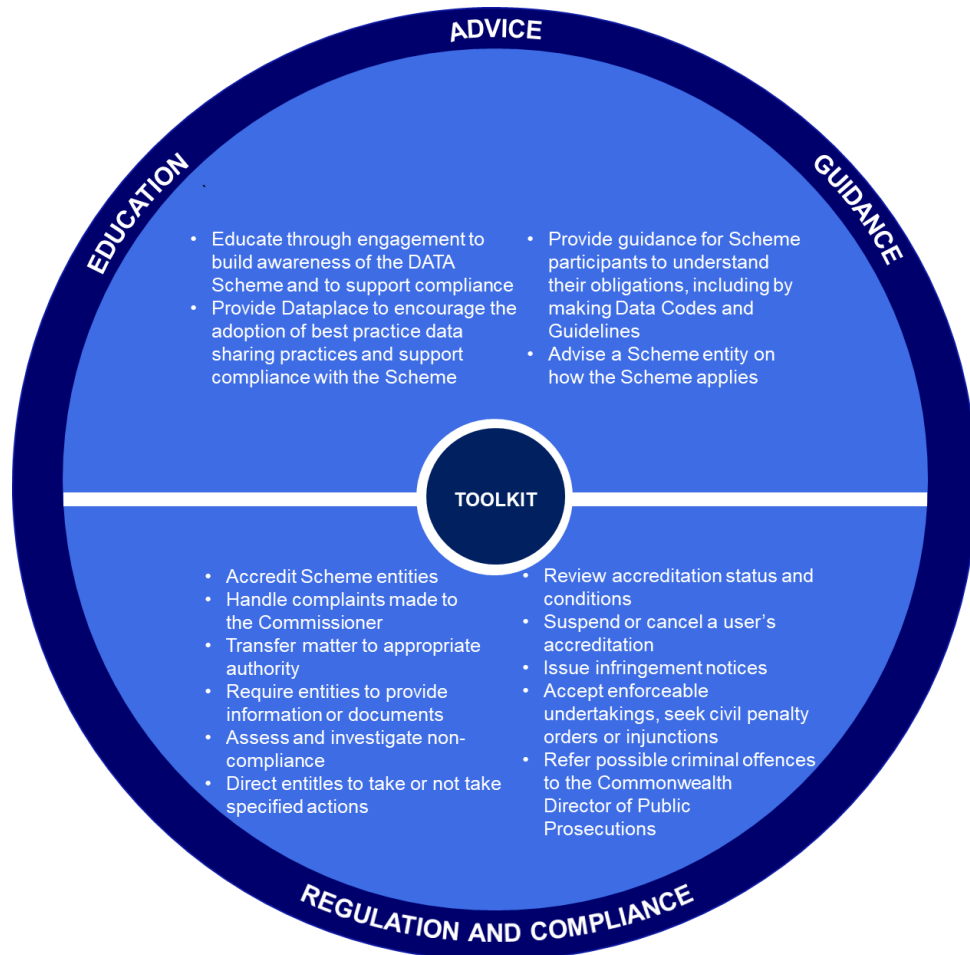
Regulatory activities

The Commissioner's toolkit below captures the range of activities available to the Commissioner to promote compliance with the DATA Scheme. The Commissioner promotes compliance through guidance, advice and education, and will take regulatory and enforcement actions where required and to address non-compliance when necessary. Our





approach ensures that regulatory activities are directed in the most effective manner, guided by our regulation and compliance principles.



Annual priorities

Each year, the Commissioner highlights the activities the Commissioner will prioritise for the coming year. The Annual Regulation and Compliance Priorities identify areas of regulatory focus to support operation of the DATA Scheme.

For 2022-23, these areas 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.

The Regulation and Compliance Priorities are available on the Commissioner's website.

