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Allowed access to project output

Guidance note 2024: X

This guidance note provides information about the circumstances in which an accredited user can provide access to project output shared or created under the DATA Scheme.

As part of a DATA Scheme project, accredited users collect and use data to create project output. Outputs are able to be used by an accredited user who is party to a data sharing agreement in accordance with the agreement. An agreement may also permit an accredited user to provide access to project output to other entities in the following circumstances:

- providing access (including publicly releasing) a copy of output to entities that are not party to the data sharing agreement
- providing output for validation or correction to:
 - the data custodian of source data, or
 - an individual or organisation the data is about.

There are circumstances where access can also be provided by an Accredited Data Service Provider (ADSP) to output produced by the ADSP. Additional guidance will be released by the ONDC on this topic.

Key terminology

There are several key terms used across the three types of access discussed in this guidance note. They are described as follows.

Output

Output of a DATA Scheme project includes data collected, or created by the accredited user, including:

- any copy of the source data collected from the data custodian
- any copy of data produced by an accredited data service provider relating to the project
- any data which is the result, or product, of the accredited user's use of the data, including data which is incidentally created when working towards the project's final output.

Types of output may include de-identified aggregate data represented in a table, a tablebuilder or data visualisation product, a copy of a data set or a unit record data file. For more information on output, see [link forthcoming].


Final output

The final output of a DATA Scheme project is the output specified as the agreed final output in the data sharing agreement for the project.

Access and release

Access occurs where an entity provides another entity with access to output or releases the output. There are several ways that access may be provided.

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Access may be provided directly between entities where access is limited to the receiver only. In such cases, access is provided 'to' an entity. For example, providing an entity with access through a system controlled by the accredited user (for example, a secure environment). Another example is where the accredited user delivers the output to another entity for use on their own systems (for example, a spreadsheet attached to an email).

Access also includes providing open access to the output, for example, publication on a website where it can be accessed by anyone, or publication in a professional journal where it is accessed by its subscribers. This type of access is also referred to as 'open access' or 'release'.

Exit

Outputs of a project remain in the DATA Scheme unless it is released or access to it is provided to a third party (being an entity that is not party to the project's data sharing agreement). The copy of the output provided to a third party exits the DATA Scheme at the time it is accessed.

When data is shared under the DATA Scheme, the DATA Scheme sets requirements about how output is collected and used. Output is no longer regulated by the DATA Scheme once it has exited the Scheme. This means the DATA Scheme no longer controls how the exiting copy of the project output is collected or used.

If a project relied on the authorisation provided by the DAT Act to share, collect and use output, any legislative requirements outside of the DATA Scheme that originally governed the shared data may again apply to the exiting copy.

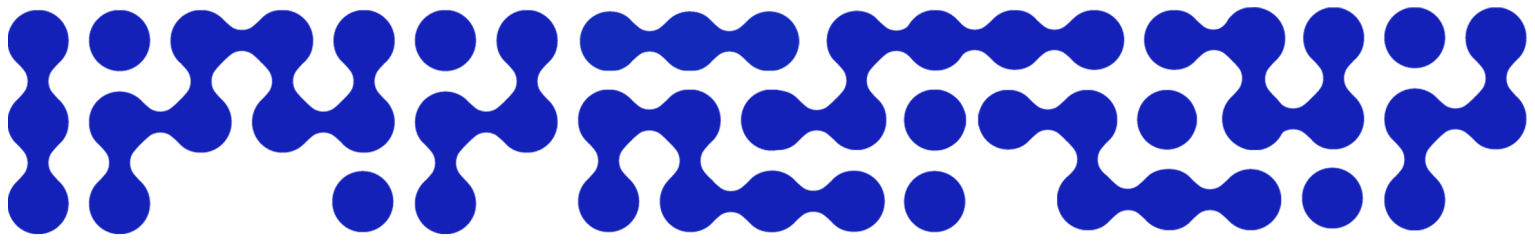
The copy of the output held by the accredited user does not exit the DATA Scheme, even if they remove the output from one system to another (for example, a secure environment controlled by an ADSP to their own systems). In such cases, the accredited user must continue to use its copy of the output only as permitted by the data sharing agreement. However, if the accredited user obtains a copy of the exited output which has been released or accessed (for example, by downloading it from a website), the accredited user may use that copy in the same way as any other entity that accesses the exited copy (i.e. without the regulation of the DATA Scheme).

Where outputs are to exit the DATA Scheme, a data custodian may impose conditions in the project's data sharing agreement. For example, the data custodian may require the user to enter into a general data sharing agreement with the other entity that stipulates how the exiting output is collected and used.

Data sharing agreements

Any uses of outputs, including access, must be authorised by a data sharing agreement. Access, and any conditions on access, must be clearly set out in a data sharing agreement in accordance with the requirements of the DATA Scheme. The specifications may be broad and only need to be as detailed as required by the data custodian.

Additional guidance on what a best practice data sharing agreement should include can be found [link forthcoming].



Providing access to a third party, or releasing output publicly

The DATA Scheme permits a data sharing agreement to include a provision to allow an accredited user to provide access to specified project output to a person or entity (third party), or to release specified project output. For this to occur, three conditions must be met.

This type of access enables output to be accessed through, or released by, an accredited user in circumstances where the user originally relied on the Act's legislative override to obtain the source data.

When such access is provided the copy of the output accessed by a third party exits the DATA Scheme (see 'exit' under the key terms above).

Conditions that must be met and specified in the data sharing agreement

Condition 1: The data custodian must ensure the access does not contravene a law of the Commonwealth, a State or Territory.

This condition will generally be met where the data custodian could have themselves shared the project output (or met requests for similar outputs) outside of the DATA Scheme.

This can occur even where the legal authorisation provided by the DATA Scheme was required to share the original source data. In such cases, an accredited user will have been authorised to receive and use the source data within the DATA Scheme to generate the relevant output. Provided the output itself is 'safe' to be accessed or released (that is, access to it or release is not prohibited by another law), then the protections of the DATA Scheme are not required in relation to the output.

This may be the case where output has been modified or treated in a way that it no longer replicates the source data (for example, the output is in the form of aggregated data).

The data custodian may include a requirement in the data sharing agreement that the accredited user submit project output before it is accessed or released so the data custodian can ensure it is as agreed. The access provision 'Submitting output to the data custodian of the source data for confirmation purposes' may support this requirement, which is discussed further below.

A data custodian may wish to note in the data sharing agreement that a condition of access includes seeking a signed undertaking by the third party that the output will only be used as specified. This may also be done by requiring the accredited user to enter into a contract or other legal agreement with the third party.


Condition 2: The data custodian is satisfied the access, or release will be done in accordance with the data sharing agreement.

There are several ways a data custodian may satisfy themselves of this. The data custodian may, for example:

- require the output to be submitted back to them to ensure the output is as agreed, which is discussed further below.

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- prescribe that the output meets certain conditions as set out in a data sharing agreement, or
 - require that the output must be vetted by an ADSP that is providing data services as part of the project.

Condition 3: If the project output proposed for exit contains personal information consent must be obtained from the individual to whom the data relates.

If the output proposed for access includes personal information, access or release can only be provided if the individual has consented to the access or release. This condition applies even if consent would not have been required by the custodian to provide access or release to the output outside of the DATA Scheme.

The party responsible for obtaining consent is to be negotiated between the parties. For more information about personal information please visit the [Office of the Australian Information Commissioner website](#).

For the purposes of the DATA Scheme, personal information has the same meaning as the *Privacy Act 1988*, which is information or an opinion about an identified individual, or an individual who is reasonably identifiable: whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

The requirements for consent in these circumstances are set out in the [Data Availability and Transparency Code 2022](#) (see section 18).

This condition can be disregarded if there is no personal information in the output proposed for access/release (i.e. data is de-identified and aggregated and there is no risk of disclosing the identity of any individual).

Example: An Australian University prepares insights for publication in a medical journal

An Australian University (the accredited user) enters a data sharing agreement with a Commonwealth Government department (the data custodian) to access and use health data. The data sharing project is for the purpose of research and development and includes the preparation of output for inclusion in a journal article which will be published (by a publisher not associated with the university) in a professional journal accessed by subscribers.

The accredited user:

1. Establishes and registers a data sharing agreement with the data custodian which enables this type of access.
2. Accesses data through a secure access data service provided by an accredited data service provider.
3. Prepares aggregate data in the form of a table (the project output), which does not include personal information.
4. Provides the table to the data custodian to confirm output is as agreed.
5. Receives confirmation from the data custodian that the output is as agreed.
6. Provides access to the output by providing a copy of the journal article containing the output to the publisher.
7. The output is released when the journal article containing the output is published.

In this scenario, the output has exited and is no longer regulated by the Scheme when it is collected by the publisher. The copy of the output accessed through the secure access



data service, and the copy of the table retained by the accredited user remains in the Scheme.

Submitting output to the data custodian of the source data for confirmation purposes

The DATA Scheme permits a data sharing agreement to include a provision to allow an accredited user to provide the source data custodian with access to specified project output for the purpose of the data custodian ensuring that the output is as agreed.

In some circumstances it may be required by the data custodian to confirm that output is as agreed before the accredited user provides another entity with access, or releases the output, in accordance with the data sharing agreement. This type of confirmation may assist the data custodian to manage the data sharing agreement and ensure that the controls and risk mitigations in the agreement are fully implemented.

Providing the data custodian with access to the output is referred to in the DATA Scheme as 'submitting' the data to the data custodian. Where data is submitted to the data custodian, the submission is taken to be for the data sharing purpose(s) of the project.


Conditions that must be met and specified in the data sharing agreement

Condition 1: A data sharing agreement that includes this access provision must limit the purpose for which the data custodian may use submitted data to the purpose of ensuring that the output is as agreed.

This access provision provides the data custodian with a limited authorisation to collect and use the submitted output. If the data custodian uses submitted output in a manner not permitted by the data sharing agreement, or without a data sharing agreement, the data custodian may contravene a penalty provision under the Act.

Where output is submitted to the data custodian, it remains under the DATA Scheme and the data custodian's collection and use of the output is regulated by the Scheme. There is no exit with this access provision.





Example: A commonwealth Government publishes insights informed by integrated data

An accredited user enters into a data sharing agreement with three data custodians to access and use data about Australian communities. The project involves an ADSP that collects the output from the three data custodians and performs integration and de-identification services on the output before sharing it with the accredited user. The accredited user plans to publish insights publicly following analysis. The source data custodians have requested that the project output be submitted for confirmation purposes prior to publication.

The accredited user:

1. Establishes and registers a data sharing agreement with the data custodians which allows this type of access.
2. Collects the output that is produced by the ADSP.
3. Creates project output in the form of aggregate data in tables and graphs that does not include personal information.
4. Submits the tables to each of the data custodians in accordance with the data sharing agreement.
5. Receives confirmation in writing from 2 of the data custodians that they are satisfied the output is as agreed. One of the custodians transfers the output back to the accredited user with a minor correction to terminology.
6. Releases the output by publishing the insights online.

In this scenario, the output has remained under the DATA Scheme for steps 1 to 5. The output exists the Scheme when it is published online.

Providing access to an entity or individual to whom the data relates for validation or correction

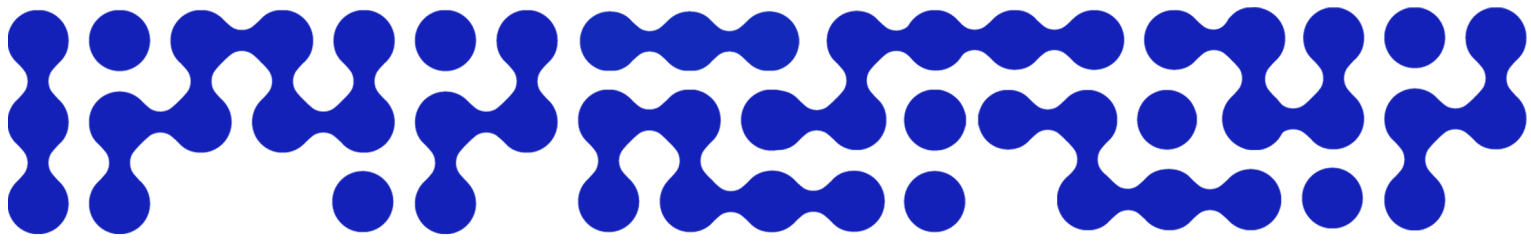
The DATA Scheme permits the data sharing agreement for the project to allow the accredited user to provide access to output (which may be the shared data collected from the data custodian, or a processed form of that data) to the individual or organisation to whom the data relates for validation or correction.

This type of access may be beneficial in delivering data sharing projects which are for the purpose of delivering government services.

Conditions that must be met and specified in the data sharing agreement

Condition 1: An accredited user can provide output for validation and correction purposes only to the following entities or person:

- an entity which carries on a business, or is a not-for-profit entity, to whom the output relates
- an individual to whom the output relates, or a responsible person for such an individual within the meaning of the *Privacy Act 1988*, for example, a parent of the individual.



If there is doubt as to whom the data relates e.g. if there are multiple individuals with the same name and it unclear who the data is about, this type of access should not be provided until the accredited user is certain the information is being sent to the correct individual or organisation.

If the individual or entity does not respond to the accredited user's validation or correction request, the accredited user cannot take the absence of a response as constituting the validation of the output.

Condition 2: The data custodian is satisfied the access, or release will be done in accordance with the data sharing agreement.

To support satisfying this condition, the data sharing agreement may require the accredited user to submit the output to the data custodian. Alternatively, the data custodian may require the output to be vetted by an ADSP providing data services as part of the project.

There is no requirement to obtain consent from individuals or organisations to whom the information relates before disclosing the information to the individual/organisation.

Regulation of the data once accessed

The copy of the output collected by the individual, or entity remains under the Scheme and only exits the Scheme once the entity or individual replies to the accredited user with corrected or validated information.

The copy of the output which is retained by the accredited user continues to be regulated by the Scheme, which means it cannot be used for a purpose not permitted by the data sharing agreement. However, the copy of the corrected or validated output collected by the accredited user is not regulated by the Scheme.

Example: A Territory government body uses output to pre-fill application forms for organisations

A Territory government body (the accredited user) enters a data sharing agreement with a data custodian to use data about businesses located in that territory. The data sharing project is for the purpose of service delivery and the accredited user intends to pre-fill application forms with data about the business it collected from the data custodian. The pre-filled forms will be sent to the businesses the data is about for validation or correction.

The accredited user:

1. Establishes and registers a data sharing agreement with the data custodians that allows this type of access
2. Collects a copy of the source data from the data custodian.
3. Uses the copy to pre-fill application forms.
4. Sends the application form to each relevant business for validation or correction.
5. Collects the corrected or validated forms
6. Assesses the applications for only those businesses that returned their form.

In this scenario, the output has exited the DATA Scheme when it is provided to the businesses. The copy of the validated or updated forms collected by the accredited user are not regulated by the Scheme.

The copy of the source data collected from the data custodian remains and continues to be regulated by the DATA Scheme.





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