|  |
| --- |
| Third party participation in the DATA Scheme Guidance note 2024:x This guidance note provides information about how third parties can participate in a DATA Scheme project**.**  |

Related guidance

|  |
| --- |
| * Allowed access to project output (link forthcoming)
* [Designated Individuals](https://www.datacommissioner.gov.au/data-scheme-guidance/designated-individuals)
 |

Overview

The DATA Scheme (Scheme) has been designed to enable data custodians and accredited entities to share, collect and use data for projects established through Scheme data sharing agreements. Entities that are not party to a project’s data sharing agreement (third party) may also participate in a Scheme project where they:

* use output on behalf of the accredited entity
* assist the accredited user to create output
* work with an ADSP
* provide other data services to a data custodian.

Allowing third parties to participate in Scheme projects enables the parties to a data sharing agreement and those third parties to work together on a Scheme project to support each other’s objectives and achieve mutually beneficial outcomes. For example, it allows parties to a data sharing agreement to leverage the experience, expertise and capacity of a third party, and allows the third party to assist in the delivery of insights which may benefit its own objectives.

Third parties may include entities that are not accredited under the Scheme or Scheme entities that are not a party to a project’s data sharing agreement. Third parties may typically include (but are not limited to) government agencies and universities (whether accredited or not), individuals seconded to these government bodies and universities, research organisations, non-government providers of government services (ie. contractors that may be individuals or body corporates), not-for-profit bodies, and community organisations such as Indigenous community-controlled organisations.

A project’s data sharing agreement may allow an accredited user involved in the project to provide third parties with access to the project output in circumstances where the project output exits the Scheme. This is a related but separate matter that is covered in the ‘Allowed access to project output’ guidance note [link forthcoming].

**How the Scheme authorises third party participation**

Third party participation in a Scheme project can be achieved in the following ways:

* engagement as a contractor for, or establishing a secondment to, the Scheme entity that is a party to a data sharing agreement
* appointing a third party to act as an agent for the Scheme entity that is a party to a data sharing agreement
* a third party entity performing certain services under an ‘approved contract’.

Regardless of the way in which the third party is involved, the third party is considered to be ‘using’ the data on behalf of the Scheme entity that is party to the data sharing agreement. The Scheme entity generally retains responsibility and liability for the actions of the third party under the Scheme as long as the third party acts within their authority.

The Scheme entity’s authorisation extends to employees and officers of the third party, who are considered designated individuals of the Scheme entity. Only designated individuals named in a data sharing agreement will have access to the Scheme data and those designated individuals must act within the scope of their authority as an employee/officer of the third party, and within the scope of the following:

* the third party’s contract with the Scheme entity,
* the project’s data sharing agreement, and
* any accreditation conditions set for the accredited entity.[[1]](#footnote-2)

For further information about who are designated individuals for an entity, see our guidance on [Designated Individuals](https://www.datacommissioner.gov.au/data-scheme-guidance/designated-individuals).

### Contractors and secondments

The authorisation for individuals to act as a designated individual of a Scheme entity is not limited to the entity’s employees but also includes contracted staff. The authorisation will generally also extend to individuals seconded into a Scheme entity, noting that secondment arrangements can take many forms, and the Scheme entity will need to satisfy themselves that the authorisation applies given a particular arrangement.

### Appointing an agent

Any Scheme entity that is party to a data sharing agreement (data custodians and accredited entities) can appoint a third party to act as an ‘agent’. As an agent, the third party has the power to act on behalf of the Scheme entity as though they were the Scheme entity themselves. Agents often have expertise in a specific matter and are engaged to provide trusted advice and expert services. The employees of the agent become designated individuals of the Scheme entity.

An agent does not have to be a party to the data sharing agreement, but the data sharing agreement must specify how the agent’s work will be undertaken, along with the names of the designated individual(s).

Responsibility for all Scheme activity remains with the relevant Scheme entity, so it’s important for the Scheme entity to ensure the agent understands DATA Scheme requirements and obligations and has the capability to perform in accordance with the data sharing agreement.

|  |
| --- |
| **Example 1** An accredited user has entered into a data sharing agreement with a data custodian to collect and use certain data which will be treated and used in a subsequent project. Before the data is used in the subsequent project, the data custodian wants the accredited user to submit the output to them to ensure the output is as agreed and meets the requirements of the data sharing agreement. The data custodian does not have the expertise required to determine whether the output is as agreed, so the data custodian has engaged an agent to collect and vet the submitted output on its behalf.The extension of the data custodian’s authorisation to the agent means that the agent is now a designated individual of the data custodian. |

### Approved contract

Unlike the agent arrangement discussed above, approved contracts apply only to accredited users and accredited data service providers in a data sharing project, not the data custodian(s).

A third party may have an existing contract with an accredited entity that is party to a data sharing project or may establish one solely to deliver services for a Scheme project. That contract can become an ‘approved contract’ for the purposes of the Scheme when authorised by the data custodian through the data sharing agreement for the project. It is important that the data custodian is satisfied that the third party is sufficiently qualified and able to undertake the relevant services and understand their obligations under the Scheme.

To be an approved contract, the contract must be between an individual or body corporate and an accredited entity. When a contract becomes an approved contract, that individual, or the employees of that body corporate, become designated individuals of the accredited entity. The contract determines the designation of those designated individuals, who are limited to acting within the actual scope of the approved contract.

|  |
| --- |
| **Example 2** An accredited user has an ongoing contract (the data analytics contract) with a body corporate (the data analytics provider) to provide consulting services in relation to data analytics. The accredited user enters into two data sharing agreements with different data custodians. The first data sharing agreement authorises the data analytics contract. In the context of activities covered by the first data sharing agreement, employees of the data analytics provider are designated individuals of the accredited user, and their designation is determined by the scope of services in the analytics contract. However, the second data sharing agreement does not authorise the analytics contract and the data analytics contract is not approved under that agreement. In the context of activities covered by the second data sharing agreement, employees of the data analytics provider are not designated individuals of the accredited user. |

The third party may provide certain data services, such as data cleansing, analytics, technical or methodological support. Under the Scheme de‑identification, secure access or complex data integration services can only be performed by an accredited data service provider. Where these data services are included in a contract, they cannot be included in the scope of services performed under an ‘approved contract’.

|  |
| --- |
| **Example 3**A not-for-profit entity (the third party) with niche subject matter expertise has a contract with a state government body to deliver social policy related advisory services, specifically around homelessness and healthcare. The state government body is an accredited user that has successfully requested data under the Scheme for a project for the purpose of research and policy development around homelessness. The state government body wishes to engage the services of the third party to assist with analysis and policy advice. The data custodian is comfortable with the third party collecting and using the data on behalf of the accredited user. The contract and related designated individuals are recorded in the data sharing agreement which authorises the third party to perform the services under the approved contract once the data sharing agreement is registered. |

1. For example, an accredited user may have a condition on their accreditation that requires them to use an accredited data service provider (ADSP) for all their DATA Scheme projects. A third party providing services on behalf of that accredited user are required to use an ADSP, even if they can provide those services themselves. [↑](#footnote-ref-2)