PARLIAMENT OF AUSTRALIA

DEPARTMENT OF PARLIAMENTARY SERVICES

DPS Data Sharing Policy

Date: 21 May 2024
Approved: Secretary

Contact: Digital Recording Services Branch
File: CM Ref. D24/114811

Contents

Date of effect

1. This policy was approved by the Secretary on 21 May 2024.
2. This policy replaces all previous DPS policies and any other related strategies, local guidance, or directions on this subject, unless otherwise specified in this policy.

Policy review mechanisms

3. This document will be reviewed every three years or earlier if required.

Policy background

4. The *Data Availability and Transparency Act 2022* (the Act) establishes a new, best practice scheme for sharing public sector data – the DATA Scheme. The DATA Scheme is underpinned by strong safeguards and consistent, efficient processes. It is focused on increasing the availability and use of public sector data to deliver government services that are simple, effective and respectful, inform better government policies and programs, and support world-leading research and development.

Intent of policy

5. DPS acknowledges that it meets the definition of a data custodian and is therefore a DATA Scheme entity under the Act.
6. This policy is designed to provide information about the DATA Scheme and set out the actions that DPS employees are permitted and obliged to take to ensure compliance with the Act.
7. This policy operates in conjunction with the *DPS Privacy Policy*.

Application

8. This policy applies to all DPS employees, consultants, contracted service providers and their employees.
9. This policy only applies to the sharing of public sector data under the Act.

Policy statement

10. DPS, as a custodian of public sector data, will consider and respond to all requests received from **accredited users** for public sector data within a reasonable period.
11. DPS will ensure that all arrangements to share public sector data to which it is a party:
    a) are covered by a **data sharing agreement** which sets out the detail of the data sharing project, describes how the participants will give effect to the **data sharing principles** and how the project serves the public interest, and satisfies other requirements under the Act
    b) are for one of the three **permitted purposes** for sharing public sector data

c) involve only **accredited users** and, if appropriate, **accredited data service providers**
d) comply the with privacy protections specified in the Act and the Privacy Act 1988, and
e) are registered with the National Data Commissioner.

12. Only **authorised officers,** as defined in section 137 of the Act, may enter into a data sharing agreement.
13. DPS employees, consultants, contracted service providers and their employees must confirm that the criteria for **authorised data sharing,** as defined in section 13 of the Act, are satisfied before any public sector data is shared under the DATA Scheme.
14. DPS employees, consultants, contracted service providers and their employees must comply with **rules** and **data codes** and have regard for any **guidelines** made for the purposes of the DATA Scheme when engaging in conduct for the purposes of the Act.
15. In the circumstance that DPS reasonably suspects or becomes aware that a breach of **scheme data** has occurred, DPS will take reasonable steps to mitigate the **data breach**.
16. DPS will provide the National Data Commissioner the **notices** required to assist in the preparation of the Commissioner's annual report as specified in section 38 of the Act.

Considering requests to share data

17. When considering a request to share data, DPS must confirm that:
    a) the request is from a currently **accredited user** by checking that the requesting entity is listed on the Accredited Entity Register maintained by the Office of the National Data Commissioner at https://www.datacommissioner.gov.au/accredited-entity-register
    b) the data being requested is public sector data and DPS is the data custodian of the data
    c) the owner of the data to be shared agrees that use of the data for the proposed project is appropriate.
    d) should the request be agreed to, the sharing of data would be authorised as required by section 13 of the Act.
    e) sharing the requested data would not affect parliamentary privilege
18. DPS may refuse a request to share data if the items under paragraph 17 cannot be established or for any other reason as allowed by section 25 of the Act.
19. If DPS decides to refuse a request to share data, DPS must give the accredited user written notice of the reason the request was refused no later than 28 days after the decision is made.
20. If DPS agrees to share the requested data a **data sharing agreement** must be entered into.

Data Sharing Agreements

21. DPS must ensure that all agreement to share data, to which it is a party:
    a) meet the definition of data sharing agreements in section 18 of the Act
    b) meet the requirements for data sharing agreements laid out in section 19 of the Act.
22. DPS must ensure that an Australian Privacy Principles (APP)-equivalence term, as defined in subsection 16E(2) of the Act, is included in any data sharing agreement with an entity if conditions (a), (b), or (d) of section 16E of the Act cannot be established.
23. DPS must ensure that any agreement to share data that includes personal information with an **accredited user** that is also an APP entity includes the provision that subsections 37(2)-(3) of the Act are not to apply in relation to the personal information as permitted by subsection 37(4) of the Act.
24. A data sharing agreement has no effect until the agreement is registered with the National Data Commissioner.

Permitted Data Sharing Purposes

25. Public sector data can only be shared for the following purposes:
    a) delivery of government services
    b) informing government policy and programs
    c) research and development.
26. Delivery of government means delivery of any of the following service by the Commonwealth or a State or Territory
    a) providing information
    b) providing services, other than services relating to payment, entitlement or benefit
    c) determining eligibility for payment, entitlement or benefit
    d) paying a payment, entitlement or benefit.
27. Sharing public sector data for the any of the following purposes is **not permitted**:
    a) an enforcement related purpose as defined by subsection 15(3) of the act
    b) a purpose that relates to, or prejudices, national security within the meaning of National Security Information (Criminal and Civil Proceedings) Act 2004
    c) a precluded purpose prescribed by rule made under the Act.
    d) when sharing the data contravenes or infringes a privilege or immunity of a House of the Parliament, a member of a House of the Parliament, or a committee within the meaning of the *Parliamentary Privileges Act 1987*

Accredited Users

28. Accredited users are Commonwealth, state and territory government bodies, and Australian universities, who are accredited to obtain and use public sector data. Entities must apply to become accredited as a data user.
29. Accredited users appear in the Register of Accredited Entities maintained by the Office of the National Data Commissioner.

Accredited Data Service Providers (ADSP)

30. Accredited data service providers are Commonwealth, state and territory government bodies, and Australian universities. They 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.
31. Accredited data service providers appear in the Register of Accredited Entities maintained by the Office of the National Data Commissioner.

Authorised officers

32. The Secretary is an authorised officer of the Department of Parliamentary Service under section 137 of the Act.
33. The Secretary may, by written instrument, authorise an SES employee or acting SES employee to be authorised officers or do certain things under section 137 of the Act.

Authorised data sharing

34. As a data custodian under the Act, DPS is authorised to share public sector data if all the criteria in section 13 of the Act are satisfied.

Rules, data codes and guidelines

35. Section 133 of the Act enables the Minister to make rules for carrying out or giving effect to the Act.
36. The National Data Commissioner may make codes of practice and guidelines about the DATA scheme.
37. DPS staff must comply with such rules, codes and guidelines when operating under the Act.
38. Rules, data codes and guidelines must be established by legislative instrument and can be found by searching the Federal Register of Legislation at www.legislation.gov.au.

Scheme Data

39. **Scheme data** is:
    a) any copy of data created for the purposes of being shared under section 13 of the Act and held by the sharer, whether or not the data has yet been shared
    b) output of a project, other than a copy that has exited the data sharing scheme under section 20E of the Act
    c) ADSP-enhanced data of a project, other than a copy that has exited the data sharing scheme under section 20E of the Act.

Data Breach Responsibilities

40. Any occurrence of unauthorised access, disclosure, or loss of **scheme data** held by an entity is a **data breach** of that entity under section 35 of the Act.
41. DPS must take reasonable steps to prevent or reduce any harm resulting from a breach (or reasonably suspected breach) as required by section 36 of the Act. This includes breaches of accredited entities that involve scheme data that is output or ADPS-enhanced data of a project in which DPS shared public sector data with or through the accredited entity.
42. Guidance for responding to a **data breach** is provided by the Office of the Australian Information Commissioner and is available at https://www.oaic.gov.au/privacy/privacy-guidance-for-organisations-and-government-agencies/preventing-preparing-for-and-responding-to-data-breaches/data-breach-preparation-and-response/part-3-responding-to-data-breaches-four-key-steps.
43. As the Privacy Act 1988 does not apply to DPS, DPS is not required to give the Information Commissioner any statement under section 26KW of that Act. However, the requirement to give statements to the commissioner should, where possible, be transferred to the entity with whom DPS has agreed to share data as per paragraph 23.
44. DPS must notify the National Data Commissioner if it reasonably suspects or becomes aware that a **data breach** of DPS involving non-personal data has occurred as required by section 38 of the Act.

Notices to the National Data Commissioner

45. After the end of each financial year, DPS must provide the National Data Commissioner with a notice detailing the events and actions taken under the DATA scheme as required by section 34 of the Act.

Interaction with DPS Privacy Policy

46. The handling of personal information by DPS under this Data Sharing Policy will be done in accordance with the DPS Privacy Policy available at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_Parliamentary_Services/DPS_Privacy_Policy, unless otherwise specified in this Data Sharing Policy.