

Victorian Public Sector (VPS) Data Sharing Heads of Agreement

PARTIES

The State of Victoria through the Department of Premier and Cabinet

of 1 Treasury Place, East Melbourne Victoria 3002

(DPC)

and

The State of Victoria through the Department of Treasury and Finance

of 1 Treasury Place, East Melbourne Victoria 3002

(DTF)

and

The State of Victoria through the Department of Health

of 50 Lonsdale Street, Melbourne Victoria 3000

(DH)

and

The State of Victoria through the Department of Families, Fairness and Housing

of 50 Lonsdale Street, Melbourne Victoria 3000

(DFFH)

and

The State of Victoria through the Department of Education and Training

of 2 Treasury Place, East Melbourne Victoria 3002

(DET)

and

The State of Victoria through the Department of Justice and Community Safety

of 121 Exhibition Street, Melbourne Victoria 3000

(DJCS)

and

The State of Victoria through the Department of Jobs, Precincts and Regions

of 121 Exhibition Spring Street, Melbourne Victoria 3000

(DJPR)

and

The State of Victoria through the Department of Transport

of 1 Spring Street, Melbourne Victoria 3000

(DOT)

and

The State of Victoria through the Department of Environment, Land, Water and Planning

of 8 Nicholson Street, Melbourne Victoria 3000

(DELWP)

and

Victoria Police through the Chief Commissioner of Victoria Police

of 311 Spencer Street, Docklands Victoria 3008.

(Victoria Police)

BACKGROUND

- a. As policy work becomes increasingly fast-paced and citizens expect more responsive and integrated services, access to timely data is critical. The COVID-19 experience shows that data can be shared quickly across government to meet urgent needs, with appropriate controls and safeguards in place. The COVID-19 VPS Data Sharing Policy and Data Sharing Heads of Agreement provided a clear framework and authorising environment to help accelerate data sharing and timely evidence-based decisions.
- b. The VPS Data Sharing Policy (Data Sharing Policy) will transition these benefits beyond the COVID-19 context to enable accelerated whole-of-government data sharing. This Agreement is an important part of implementing the Data Sharing Policy, signalling the Parties' willingness to continue to expedite data sharing across government.
- c. This Agreement facilitates expeditious sharing by setting out the general terms under which the Parties will share data under the Data Sharing Policy. Each specific sharing arrangement will be documented in a Data Sharing Schedule, allowing the parties flexibility to specify variables relevant to their particular circumstances, where appropriate.

1. Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this VPS Data Sharing Heads of Agreement

Data Provider means any Party that is identified as providing Shared Data under a Data Sharing Schedule to a Data User

Data Sharing Policy means the *VPS Data Sharing Policy* which adopts a clear responsibility to share on VPS Agencies and requires all VPS Agencies to apply the National Data Sharing Principles in Victoria for the purposes set out in that policy

Data Sharing Arrangement means a specific data sharing arrangement made under this Agreement between a Data Provider and Data User

Data Sharing Schedule means a document in the form set out at **Annexure 1** that records a Data Sharing Arrangement

Data User means any Party that is identified as handling, accessing or using Shared Data under a Data Sharing Schedule provided by a Data Provider

FOI Law means in relation to VPS Agencies, the *Freedom of Information Act 1982 (Vic)* and in relation to Government Agencies, a law that provides comparable general public access to government data held by their respective jurisdictions

Government Agency means an agency of the Commonwealth

Health Information means 'health information' as that term is defined in the *Health Records Act 2001* (Vic)

Intellectual Property Rights means all present and future rights, title and interests in and to copyright, neighbouring rights, trademarks (registered and unregistered), designs (registered and unregistered), all rights in relation to inventions (including patent rights, semi-conductor and circuit layout rights), trade-secrets and know-how, domain names, internet addresses, computer programs, trade or business names, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields

National Data Sharing Principles means the principles set out in the Office of the National Data Commissioner's [Best Practice Guide to Applying Data Sharing Principles](#)

Party means a party to this Agreement, including successor entities, and a party to a specific data sharing arrangement under this Agreement

Permitted Purpose means an agreed purpose for which Shared Data will be provided for a Data Sharing Arrangement under Item 1 of the Data Sharing Schedule

Personal Information means 'personal information' as that term is defined in the *Privacy and Data Protection Act 2014* (Vic), and includes sensitive information as defined in the Information Privacy Principles

Privacy Law means applicable laws which regulate the collection, use, disclosure, sharing and security of Personal Information and Health Information, and includes:

- i. in relation to VPS Agencies, the *Privacy and Data Protection Act 2014* (Vic) which includes the Information Privacy Principles, and the *Health Records Act 2001* (Vic) which includes the Health Privacy Principles, and
- ii. in relation to Government Agencies, laws that provide comparable protection of personal information and health information in their respective jurisdictions.

Secretary DPC means the Secretary of the Department of Premier and Cabinet Victoria

Shared Data means the data described in the Table at the end of the Data Sharing Schedule for that Data Sharing Arrangement, as amended from time to time

Victorian Protective Data Security Standards means the Victorian Protective Data Security Standards under the *Privacy and Data Protection Act 2014* (Vic)

VPS Agency means a Victorian public sector body, including departments, administrative offices and independent statutory bodies, but excluding a council within the meaning of the *Local Government Act 2020* (Vic).

2. Term and variation

- a) The term of this Agreement will commence for each Party when they execute this Agreement and will continue for the duration of the Data Sharing Policy unless terminated under clause 2(c).
- b) This Agreement may be amended or replaced only in writing executed by all Parties.
- c) Any Party may terminate its involvement in this Agreement at any time for any reason by giving 30 days written notice to the Secretary DPC. The Secretary DPC (or their delegate) will then notify all existing Parties to the Agreement in writing of this termination. In the event a Party terminates this Agreement:
 - i. this Agreement continues for all other Parties who have not terminated
 - ii. each Data Sharing Arrangement entered into by the terminating Party which is in place at the time of termination will continue until the Permitted Purpose of that Data Sharing Arrangement has been fulfilled, unless the Data Sharing Schedule has been terminated in accordance with item 11 of the relevant Data Sharing Schedule.

OVERARCHING ARRANGEMENTS FOR DATA SHARING

3. Purpose of this Agreement

This Agreement sets out:

- i. the clear responsibility to share and the principles established by the Data Sharing Policy,
- ii. the overarching purposes for which data can be shared between the Parties, and
- iii. the general terms under which the Parties will share data, including in relation to data provision and security, privacy and confidentiality, on-sharing and retention/destruction.

4. Responsibility to share and principles

The Parties agree to use best endeavours to meet their responsibilities under the Data Sharing Policy (if applicable), including to:

- i. ensure their employees are aware of and comply with their responsibility to share data,
- ii. encourage their employees to use this Agreement and the Data Sharing Schedule to ensure the right safeguards and controls are in place, and
- iii. promote the use and application of the National Data Sharing Principles in relation to Data Sharing Arrangements, in addition to meeting all other requirements including compliance with Privacy Law and the Victorian Protective Data Security Standards.

5. Status of this Agreement

- a) This Agreement, including any Data Sharing Schedule executed in relation to it, does not create legal relations or constitute a legally binding contractual agreement between the Parties. No Party to this Agreement has the power to obligate or bind any other Party. Notwithstanding this clause, the Parties intend to comply with all of the terms of this Agreement.

- b) The Parties acknowledge and agree that this Agreement does not constitute and may not be construed as constituting an agency, joint venture or partnership between them. Nothing in this Agreement will be deemed to authorise or empower any Party to act as agent for or with any other Party.

6. Addition of new Parties to this Agreement

- a) The Parties agree that any VPS Agency can enter into this Agreement as an additional Party if:
 - i. the VPS Agency provides written notice of the intention to enter into this Agreement to the Secretary DPC, and
 - ii. the Secretary DPC (or their delegate) notifies all existing Parties to the Agreement in writing of this intention.
- b) The Parties agree that any Government Agency can enter into this Agreement as an additional Party if:
 - i. the Government Agency provides written request to enter into this Agreement to the Secretary DPC, and
 - ii. the Secretary DPC agrees that the Government Agency should be allowed to enter into the Agreement and approves the request made under clause 6(b)(i), and
 - iii. the Secretary DPC (or their delegate) notifies all existing Parties to the Agreement in writing of the approval under clause 6(b)(ii).
- c) For the avoidance of doubt, the addition of any new Party does not impose any obligations on any Party to share data or enter into Data Sharing Arrangements with that Party.

7. Conflict between this Agreement and a Data Sharing Schedule

Where a conflict or inconsistency arises between the terms contained in the clauses of this Agreement and any part of a Data Sharing Schedule, the terms of the Data Sharing Schedule prevail to the extent of the conflict or inconsistency.

SPECIFIC DATA SHARING ARRANGEMENTS

8. Purposes for Shared Data

- a) Data can only be shared by the Parties under this Agreement for the purposes set out in the Data Sharing Policy (if applicable).
- b) The Parties acknowledge and agree that at all times, Shared Data can only be collected, held, managed, used, disclosed or transferred in accordance with relevant Privacy Laws (as they apply to either the Data Provider or the Data User).
- c) The Data User agrees to only collect, hold, manage, use, disclose or transfer the Shared Data for the Permitted Purpose and not for any other purpose, except with the express written approval of the Data Provider.

- d) The purposes referred to at clauses 8(a) and (b) applies to any findings and outputs described at Item 2 of Data Sharing Schedule, as well as any on-sharing that may be permitted under Item 6 in the same Schedule.

9. Term and provision of Shared Data

- a) The Data Provider will provide the Shared Data in the manner and with the frequency in Item 3 of the Data Sharing Schedule, and for the term set out in the same Schedule. The Data Provider and Data User agree that the Data Sharing Arrangement can be terminated as set out in Item 11 of the Schedule.
- b) The Data Provider will advise the Data User of any additional data that may be relevant to the Permitted Purpose that the Data Provider is aware of.
- c) The Data User may request changes to the scope of the Shared Data, in which case the Parties will use reasonable endeavours to negotiate amendments to the description in the Data Sharing Schedule. Any significant changes to the scope of the Shared Data must be agreed and executed in writing between the Parties.
- d) The Data Provider and Data User will take steps (if any) in relation to data quality that are set out in Item 5 of the Data Sharing Schedule. The Data Provider and Data User also agree to notify each other of any missing values, inconsistencies, inaccuracies, or other data quality issues in the Shared Data of which they are aware, or become aware, that are not dealt with under Item 5. The Data Provider and Data User shall agree on how to remediate any notified data quality issues.

10. Use and confidentiality of Shared Data

- a) The Data User will only collect, hold, manage, use, disclose or transfer the Shared Data, and will keep any files containing the Shared Data confidential, as set out in Item 4 of the Data Sharing Schedule.
- b) In particular, the Data User may only use the Shared Data to produce the outputs and deal with the outputs in a manner described in Item 2 of the Data Sharing Schedule or on-share the Shared Data as permitted under Item 6 of the same Schedule. If Item 2 specifies that the outputs are confidential the Data User must keep those outputs confidential and the Data User is not permitted to release those outputs to any third parties. The Parties acknowledge that Shared Data may be incorporated in the intended outputs, on the basis that this is in accordance with clause 12. If the Data User wishes to distribute the outputs or on-share the Shared Data outside of the terms of Items 2 or 6, the Data User must obtain the prior written consent of the Data Provider.
- c) Notwithstanding clauses 10(a) and (b), the Data User may, where permitted under law (including Privacy Law), grant access to the Shared Data:

- i. subject to any terms to the contrary in the Data Sharing Schedule, to its employees, agents (contractors and consultants), volunteers, advisors, officers, officials, or Ministers and ministerial offices where this is consistent with the Permitted Purpose,
 - ii. in relation to requests to provide information and documents from agencies or entities with powers of investigation under law, including the office of the Auditor General, the Victorian Ombudsman, or the Independent Broad-based Anti-Corruption Commission, provided that before doing so, and if legally permissible, the Data User provides the Data Provider a reasonable opportunity to provide input, including taking any steps necessary to protect the confidentiality of the Shared Data, and
 - iii. to comply with the law, including under Privacy Law or FOI Law, provided that before doing so, and if legally permissible, the Data User provides the Data Provider a reasonable opportunity to provide input, including taking any steps necessary to protect the confidentiality of the Shared Data.
- d) For the purposes of clause 10(c)(i), the Data User agrees to make all reasonable efforts to ensure all individuals who are granted access to the Shared Data are aware of the obligations under this Agreement and the Data Sharing Schedule.
- e) Where the Data User grants access to the Shared Data to any agent (contractors / consultants) or volunteer under clause 10(c)(i), the Data User must in addition to clause 10(d) ensure the agent or volunteer is legally bound by terms equivalent to the terms set out in this Agreement and the Data Sharing Schedule, in relation to the handling and security of the Shared Data.
- f) For the purposes of clauses 10(c)(ii) and (iii), the Parties agree to cooperate and to provide each other all reasonable assistance that may be required.

11. Rights in relation to Shared Data and Intellectual Property

- a) The Data Provider confirms that it is authorised and legally permitted, and has all necessary rights and consents required, to disclose the Shared Data to the Data User under the terms set out in the Data Sharing Schedule.
- b) Subject to Item 7 of the Data Sharing Schedule, each Party will ensure that:
- i. it is entitled to use any Intellectual Property Rights it may require in the performance of this Agreement and each Data Sharing Schedule,
 - ii. any Intellectual Property Rights created in relation to the Shared Data (including all outputs), will, upon its creation, be managed by that Party that created it, and
 - iii. the other Party will be provided all the necessary licences to use any Intellectual Property Rights which that Party requires to fulfil its obligations under this Agreement and each Data Sharing Schedule.

12. Handling and security of Shared Data

- a) At all times, the Data Provider and Data User will only collect, hold, manage, use, disclose or transfer Personal Information and Health Information (or other information restricted or prohibited from disclosure by law) for legally authorised purposes and in a manner that complies with Privacy Law (as it applies to either the Data Provider or the Data User).

- b) Notwithstanding clause 12(a), the Data Provider and Data User will adhere to a collection minimisation principle and only collect, hold, manage, use, disclose or transfer information to the extent that is necessary and relevant to the Permitted Purpose.
- c) Where this information is not needed for the Permitted Purpose, the Data Provider shall ensure that the Shared Data does not contain any:
 - i. Personal Information,
 - ii. Health Information, or
 - iii. other information that is subject to a restriction or prohibition from disclosure by law.
- d) Where Personal Information or Health Information is necessary, and it is legally permissible for the Data User to use this information for Permitted Purpose, a privacy impact assessment shall be conducted and documented in **Annexure 2** to this Agreement. The Data Provider and Data User agree to comply with all conditions and terms of use in Item 4 of the Data Sharing Schedule, which reflects the risk assessment conducted in the privacy impact assessment.
- e) The Data Provider and Data User will protect the Shared Data that has been collected, held, managed, used, disclosed or transferred by them in a way that is consistent with the Victorian Protective Data Security Standards and as set out in Item 3 of the Data Sharing Schedule.
- f) The Data User will conduct a security assessment in consultation with the Data Provider, documented in the form of **Annexure 3** to this Agreement.
- g) In particular, the Data User will make all reasonable endeavours to keep the Shared Data in a secure location within Australia with adequate security controls (including governance, information, personnel, ICT and physical) , to maintain the confidentiality, integrity and availability of the Shared Data, and to protect the Shared Data from misuse, loss, unauthorised access, modification or disclosure.
- h) The Data User will promptly notify the Data Provider in writing if it becomes aware of any misuse, loss, unauthorised access, modification or disclosure of the Shared Data (including by any individual granted access to the Shared Data under clause 10(c)(i)).
- i) The Data User agrees to use all reasonable endeavours to assist the Data Provider to plan and prepare, detect and report, assess and decide and respond to the circumstances listed in clauses 12(h) in a timely manner to mitigate any potential harm to affected persons or organisations.
- j) In addition, the Data User and Data Provider will promptly notify:
 - i. the Office of the Victorian Information Commissioner of incidents that compromise the confidentiality, integrity and/or availability of the Shared Data, in a way that is consistent with their obligations under the Victorian Protective Data Security Standards
 - ii. the Victorian Government Cyber Incident Response Service of incidents that compromise cyber security.

13. Retention and destruction of Shared Data

- a) Once the Permitted Purpose is fulfilled, the Data User will dispose of the Shared Data except where retention is required under the *Public Records Act 1973* (Vic) (or equivalent public record keeping laws in the relevant jurisdiction), and in accordance with Item 8 of the Data Sharing Schedule.
- b) The Data User will provide written confirmation to the Data Provider when the Data User has disposed of the Shared Data in accordance with clause 13(a) in accordance with any assurance mechanism set out in Item 8.

14. Party Representatives

The representatives of the Data Provider and Data User for the purpose of any communications or notices under this Agreement are set out in Item 9 of the Data Sharing Schedule.

15. General

- a) This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.
- b) The Agreement is governed by and is to be construed in accordance with the laws of Victoria.

SIGNED by EUAN WALLACE AM for)
and on behalf of THE DEPARTMENT)
OF HEALTH:)

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Secretary, Department of Health

Date:

SIGNED by JENNY ATTA for and on)
behalf of THE DEPARTMENT OF)
EDUCATION AND TRAINING:)

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Secretary, Department of Education and Training

27 July 2021
Date:

SIGNED by REBECCA FALKINGHAM)
PSM for and on behalf of THE)
DEPARTMENT OF JUSTICE AND)
COMMUNITY SAFETY:)

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) Secretary, Department of Justice and Community
Safety

Date:

SIGNED by JOHN BRADLEY for and on)
behalf of THE DEPARTMENT OF)
ENVIRONMENT, LAND, WATER AND)
PLANNING:)

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) Secretary, Department of Environment, Land,
) Water and Planning

) Date: 24 July 2021
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