# Guidance note: Victorian Public Sector Data Sharing Heads of Agreement

## General overview

### What is the Victorian Public Sector Heads of Agreement?

The Victorian Public Sector Data Sharing Heads of Agreement (Heads of Agreement) provides a common framework with general terms and conditions under which Victorian Government departments and relevant agencies may share data to inform policy making, service planning and delivery, where there is a clear public benefit.

### Why is the Heads of Agreement needed?

The Victorian Government recognises that data is critical to improving policies and services for the benefit of all Victorians, whether that is in managing and recovering from COVID-19 or in facilitating broader data needs across government. As such, the [Victorian Public Sector Data Sharing Policy](https://www.vic.gov.au/victorian-public-sector-data-sharing-policy) (Policy) was endorsed by the Victorian Secretaries Board to place a clear responsibility on all Victorian Government departments and Victoria Police to share data with each other in the public interest.

The Heads of Agreement commits all Departmental Secretaries as well as the Chief Commissioner of Police to implement the Policy in their organisations. The Heads of Agreement further supports cross-government data sharing by providing an overarching framework to streamline and accelerate data sharing, while ensuring the right safeguards and controls are in place.

### How does the Heads of Agreement accelerate data sharing?

The Heads of Agreement accelerates data sharing and acquisition by:

1. **Reducing time required for multiple negotiations**: having a common framework of agreed terms and conditions avoids the need for separate negotiations and sign-off processes
2. **Providing high-level authorisation**: having a Secretary-level/ head-of-agency agreement in place is a strong signal of the importance and urgency of sharing data to inform policies and services
3. **Managing risks**: having a readily available framework ensures key risks have been considered and appropriate controls are in place
4. **Operationalising the Policy**: committing the parties to promote and encourage a clear responsibility to share within their departments and relevant agencies.

### Who does the Heads of Agreement cover?

The Heads of Agreement has been signed by Secretaries of all nine departments, the Chief Commissioner of Victoria Police (as an agency which is a major contributor to critical government data), as well as a growing list of additional parties (see the [Heads of Agreement web page](https://www.vic.gov.au/victorian-public-sector-data-sharing-heads-agreement) for a current list).

The Heads of Agreement can therefore cover any data sharing arrangement between two or more VPS departments and/or Victoria Police. It also covers any Victorian Government agencies that are considered a part of their portfolio department.

### What if my agency is independent of the departments. Are we covered?

If your agency is considered separate from the departmental structure (such as an independent or oversight body), but is still part of the Victorian public sector, you may elect to come under the remit of the Policy and sign the Heads of Agreement as an additional party. Any Victorian Government agency can choose to enter into the Heads of Agreement by giving notice to the Secretary of the Department of Premier and Cabinet (DPC) under clause 6a) of the Heads of Agreement.

## How the Heads of Agreement works

### How does the ‘Heads of Agreement’ work?

The Heads of Agreement approach sets out agreed general terms and conditions for data sharing, while allowing parties the flexibility to specify terms relevant to their circumstances in annexures to the agreement. Finalisation of the annexures formalises the terms of each specific data sharing arrangement as a separate ‘agreement’.

### How is the Heads of Agreement structured?

Heads of Agreement is structured in three parts:

1. **Part One** operationalises the Policy by requesting that the parties promote the clear responsibility to share and apply the [National data sharing principles](https://www.pmc.gov.au/sites/default/files/publications/data-sharing-principles-best-practice-guide-15-mar-2019.pdf), and to use the Heads of Agreement framework to help accelerate sharing
2. **Part Two** provides general terms common to all data sharing arrangements, covering key issues like proposed purpose, provision, use and confidentiality, rights, and handling and security of shared data.
3. **Part Three** consists of template annexures which relevant parties use to formalise the particular terms of their data sharing arrangement.  It is intended that the template annexures will be improved over time with more guidance and suggested clauses, based on learnings from each arrangement that is notified to DPC.

### Is the Heads of Agreement legally binding?

No. The Heads of Agreement is a memorandum of understanding, and is not intended to be legally binding (see clause 5a)).

### What if we already have an existing agreement or want to use a different agreement. Is the Heads of Agreement mandatory?

No. The Heads of Agreement does not replace or affect any existing data sharing arrangements, nor does it preclude data providers and data users from negotiating and drafting different data sharing agreements that better suit their circumstances.

### What is the duration of Heads of Agreement?

The Heads of Agreement commenced from 16 August 2021 and continues for the duration of the Policy, which will end after an initial three-year period (to April 2024). That means any data sharing arrangement between the signatories made for the purpose of informing policy making, service planning or delivery within this term can benefit from the framework. Each individual data sharing arrangement under Heads of Agreement can have a term as agreed between the data provider and data user. This includes if your arrangement is intended to continue beyond the term of the Heads of Agreement.

## Putting the Heads of Agreement into practice

### We want to use Heads of Agreement for our data sharing arrangement. What should we do?

Agreeing on and formalising the annexures constitutes an ‘agreement’ under the Heads of Agreement for your data sharing arrangement. To do this, data providers and data users may wish to:

1. Review the Heads of Agreement to ensure you are familiar with the general terms and conditions
2. Discuss and agree on how each key issue will be dealt with in the template for **Annexure 1** (including purported purpose, intended outputs, provision and security, information handling, data quality, on-sharing and data retention/ destruction)
3. Document your agreement by completing the template for **Annexure 1** (note that you can change any aspect of the template – as long as the numbering of the items remain the same)
4. If your arrangement involves any personal information or health information, complete the privacy impact assessment under **Annexure 2**
5. In light of the security values identified for the data to be shared under Annexure 1, conduct and document a security risk assessment under **Annexure 3**.

### We’ve completed the annexures. How do we formalise our agreement?

Data providers and data users can choose how they wish to formalise their agreement. The only requirement is that there is a clear record of the final version of the annexures that represents the agreement between the parties.

For example, you may wish to:

1. Have the authorised contact representatives sign and date the final package of annexures as the final agreed version
2. Make a PDF of the signed Heads of Agreement, along with the final signed annexures
3. Have a formal communication (exchange of letters or email) enclosing the PDF as representing the data sharing agreement between the parties
4. Keep copies of both signed Heads of Agreement/ annexures and formal communication for your records
5. **Provie a copy of your final annexures to the Victorian Centre for Data Insights (VCDI)** so that VCDI can keep a central data sharing agreements register through data.insights@dpc.vic.gov.au.

### Do we need to involve our lawyers and/or brief for formal signoff?

The intent of the Heads of Agreement is to avoid the time delay of separate MOU negotiations between lawyers or formal briefing processes associated with high-level signoffs.

However, it is prudent to at least inform your legal team that you are using the Heads of Agreement, ask them if it is still necessary for them to conduct a final legal review and provide them with a copy of the final agreement. You will also need to confirm the appropriate level of authorisation within your organisation to finalise agreement and sign the annexures in light of the risk profile of your data sharing arrangement.

### Is there a central register of agreements, and are there examples of completed annexures we can refer to?

Yes. VCDI is requesting all parties to provide copies of their final agreements to keep a central register to provide visibility of the data shared with associated data providers/ users, a ‘library’ of example terms and conditions, and to continue to improve these templates.

The Heads of Agreement is being used in a wide range of circumstances, from a WoG framework for sharing data under InsightsVictoria (a Single Digital Solution for COVID-19 reporting) to specific bilateral data sharing between two departments. Please contact VCDI at data.insights@dpc.vic.gov.au for assistance.

### How will data sharing under this framework be coordinated?

It is up to each department and Victoria Police as to how each organisation chooses to coordinate data sharing (and use of the Heads of Agreement) across the public sector. For example, consider having a policy about having a central coordination point within your agency, how (if at all) to engage with legal teams, and what level of signoff is required for finalising annexures.

VCDI developed the Policy and Heads of Agreement and will provide central support and guidance for use of the agreement.

### Need help?

The Victorian Centre for Data Insights (VCDI) is available to assist in use of the Heads of Agreement and the Policy. Please direct all queries to data.insights@dpc.vic.gov.au.

The Office of the Victorian Information Commission (OVIC) and Health Complaints Commissioner (HCC) can also assist with issues concerning personal information and health information respectively. OVIC has issued [Guidance for Sharing Personal Information](https://ovic.vic.gov.au/privacy/information-sharing-and-privacy/). The Commonwealth also has helpful online resources, including information about [Sharing Data Safely](https://www.pmc.gov.au/resource-centre/public-data/sharing-data-safety-brochure).