



Data Sharing Memorandum of Understanding

Parties

Chief Minister, Treasury and Economic Development Directorate

220 London Circuit, Canberra City

(CMTEDD)

Justice and Community Safety Directorate

220 London Circuit, Canberra City

(JACS)

Community Services Directorate

220 London Circuit, Canberra City

(CSD)

Canberra Health Services

Canberra Hospital, Yamba Drive Garran

(CHS)

ACT Health Directorate

4 Bowes St, Phillip

(ACTHD)

Major Projects Canberra

Callam Offices Level 3, 50 Easty St, Phillip

(MPC)

Transport Canberra and City Services

480 Northbourne Ave, Dickson

(TCCS)

ACT Education Directorate

220 London Circuit, Canberra City

(EDU)

Environment, Planning and Sustainable Development

480 Northbourne Ave, Dickson

(EPSDD)

Background

Introduction

- a. Insights from data are crucial to effective government operations. As data and data processes become more embedded in the design and delivery of government services and operations, so does the creation of more data assets. The utility of these data assets is maximised when data is shared between ACT Government entities, where it is legal, ethical, and safe to do so.
- b. The Data Sharing Policy (Policy) seeks to facilitate the increased use of data in effective government decisions. This Memorandum of Understanding (MoU) seeks to facilitate data sharing by providing an authorising environment for ACT Government staff, and by setting out the overarching and general terms under which data is shared between Parties pursuant to the Policy.
- c. While the MoU provides general terms for data sharing between Parties, the principles of the MoU are also applicable to data sharing with external organisations and partnered agencies.
- d. This MoU makes references to items in the *internal* ACT Data Sharing Agreement Template. The Policy's additional guidance material – the *external* Data Sharing Agreement Template – supports Data Custodian's considerations and data sharing activities with parties external to the ACT Government, and is separate and independent to this MoU.

1. Definitions

In this Memorandum of Understanding, unless otherwise stated:

Data Custodian means any Party that is identified as providing Shared Data under a Data Sharing Agreement to a Data Requestor. Under the ACT Data Governance and Management Policy Framework, Data Custodians are accountable for data governance decisions for datasets and authorising safe data access, use and sharing.

Data Reform Group means the whole of ACT Government group authorised by the Head of Service to drive the ACT Government's data reform agenda.

Data Requestor means any Party that is identified as handling, accessing or using Shared Data under a Data Sharing Agreement provided by a Data Custodian.

Data Sharing Agreement means a specific data sharing arrangement made under this MoU between a Data Custodian and Data Requestor who are both Parties to this MoU.

Data Sharing Policy means the ACT Data Sharing Policy.

Data Sharing Schedule means a document that records a Data Sharing Agreement made pursuant to the Data Sharing Policy.

DDTS Cyber Security means Chief Minister, Treasury and Economic Development Directorate, Digital, Data and Technology Solutions staff responsible for: developing whole-of-government Cyber Security Policy, standards and strategies, providing cybersecurity advice, and implementing and operating whole-of-government security measures.

ACT Government Entity means an ACT public sector body, including an administrative unit, territory authority and statutory office-holder.

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.

Memorandum of Understanding (MoU) means this Memorandum of Understanding.

Party means a party to this MoU.

Permitted Purpose means an agreed purpose for which Shared Data will be provided for a data sharing arrangement under Item 2.1 of the Data Sharing Agreement.

Personal Health Information means that term as defined in the (1997) Health Records (Privacy and Access) Act.

Personal Information means that term as defined in the (2014) Information Privacy Act.

Protective Security means Justice and Community Safety Directorate staff and entity specific security staff responsible for: developing and applying physical security policies and requirements, developing and applying the ACT Protective Security Policy Framework, providing non-cyber security related security advice, and implementing and operating whole-of-government non-cyber security measures.

Sensitive Information means that term as defined in the (2014) Information Privacy Act's Territory Privacy Principles.

Shared Data means the data shared by the Data Custodian to the Data Requestor, detailed at item 4.12 of the Data Sharing Agreement.

2. Term and Variation

- a. This MoU will commence for each Party when they execute this MoU and will continue for the duration of the Data Sharing Policy unless terminated under item 2(d).
- b. This MoU may only be amended if all Parties unanimously agree in writing.
- c. A proposed amendment must be submitted in writing to the Secretariat of the Data Reform Group.

d. Any Party may terminate its involvement in this MoU at any time by providing 30 days written notice to the Secretariat of the Data Reform Group. The Secretariat will provide written notice of this termination to all Parties.

e. In the event a Party terminates its involvement in this MoU:

- i. this MoU continues for all other Parties who have not terminated their involvement,
- ii. any current Data Sharing Agreements entered into by the terminating Party will continue until the specified end date of that Data Sharing Agreement, as detailed at item 3.1 of the Data Sharing Agreement.

Overarching Arrangements for Data Sharing

3. Responsibility to share

a. The Parties agree to use best-efforts to meet their responsibilities under the Data Sharing Policy, including to:

- i. ensure their employees are aware of and comply with their responsibility to share data when safe, ethical, and legal to do so;
- ii. encourage their employees to use this MoU and the Data Sharing Policy to effectively share data and ensure the right safeguards and controls are in place;
- iii. ensure their staff share data in line with the ACT Data Sharing Policy, ACT Data Governance and Management Policy Framework, and any legislation or ACT Government Entity specific data sharing policies guiding their data sharing activities.

4. Status of this Agreement

- a. This MoU, including Data Sharing Agreements executed pursuant to it, does not create a legally binding contractual agreement between the Parties. Notwithstanding this, the Parties intend to comply with all terms of this MoU.

5. Addition of new Parties to this Agreement

- a. The Parties agree that any ACT Government Entity can enter into this MoU as an additional Party if:
 - i. The Entity provides written notice of their intention to enter into this agreement to the Secretariat of the Data Reform Group, and
 - ii. The Secretariat of the Data Reform Group notifies all existing Parties to the MoU in writing of this intention.

6. Conflict between this Agreement and a Data Sharing Agreement

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

3. Specific Data Sharing Arrangements

7. Purposes for sharing data

- a. Data can only be shared by the Parties under this MoU for the purposes set out in the Data Sharing Policy.
- b. The Parties acknowledge and agree that at all times, Shared Data, including all findings and outputs, can only be collected, held, managed, used, disclosed or transferred in accordance with relevant privacy laws (as they apply to either the Data Custodian or the Data Requestor) and any other legislation applying to the data in question.
- c. The Data Requestor agrees to only receive, store, use, and disclose the Shared Data for the purposes agreed in the Data Sharing Agreement, except with the written approval of the Data Custodian.
- d. The purposes referred to at clauses 7(a) and (b) applies to any findings and outputs described at Item 4 of the Data Sharing Agreement, as well as any on-sharing that may be permitted under the same Item.

8. Term and Provision of Shared Data

- a. The Data Custodian will provide the Shared Data in the manner and with the frequency in Item 3.2 of the Data Sharing Agreement, and for the term set out in item 3.1 of the Data Sharing Agreement.
- b. The Data Custodian and Data Requestor agree that a Data Sharing Agreement can be terminated as set out in Item 8.1 of the Data Sharing Agreement.
- c. The Data Custodian will advise the Data Requestor of any additional data that may be relevant to the Permitted Purpose that the Data Custodian is aware of.

- d. The Data Requestor 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 Agreement. Any significant changes to the scope of the Shared Data must be agreed and executed in writing between the Parties.
- e. The Data Requestor acknowledges that the Data Custodian is not responsible for any losses incurred in scenarios where the Data Custodian is unable to provide the Shared Data for use in built products.

9. Use and Confidentiality of Shared Data

- a. The Data Requestor may only use the Shared Data to produce the outputs described in the Data Sharing Agreement at item 4.14, and deal with the outputs as described in the Data Sharing Agreement at item 4.15.
- b. If outputs are specified as confidential at item 4.17 of the Data Sharing Agreement, the Data Requestor must keep those outputs confidential and 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.
- c. Notwithstanding items 9(a) and (b), the Data Requestor may, where permitted under law, grant access to the Shared Data:
 - i. subject to any terms in the Data Sharing Agreement, to its employees, agents (including contractors and consultants), volunteers, advisors, officers, officials, or Ministers and ministerial offices, identified in the Data Sharing Agreement at item 4.5. The Data Requestor 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 MoU and the Data Sharing Agreement.
 - ii. in relation to requests to provide information and documents from agencies or entities with legal powers of investigation.
 - iii. to comply with the law, including under Privacy Law or Freedom of Information Law, provided that before doing so, and if legally permissible, the Data Requestor provides the Data Custodian a reasonable opportunity to provide input, including taking any steps necessary to protect the confidentiality of the Shared Data.

10. Data Quality and Metadata

- a. The Data Custodian agrees to inform the Data Requestor of all known data quality issues present in the Shared Data.

- b. The Data Custodian and Data Requestor 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 4.12. The Data Custodian and Data Requestor shall agree on how to remediate any notified data quality issues.
 - i. Alternatively, where confirming data quality issues presents a significant barrier, the Data Custodian and Data Requestor may agree to share data under a 'no warranty' arrangement. The Data Requestor may acknowledge and free the Data Custodian of their obligation under 10.b by making the relevant declaration at Item 4.12 of the Data Sharing Agreement.
 - ii. In agreeing to a 'no warranty' arrangement, the Data Custodian agrees to use best endeavours to make a suitable contact person available to support the Data Requestor's interpretation and use of the Shared Data.
 - iii. In agreeing to a 'no warranty' arrangement, the Data Custodian agrees to review the Project outputs through additional, self-established criteria, to minimise the risk of misinformation.
- c. The Data Custodian agrees to use best endeavours to include appropriate metadata relevant to the Project Purpose in the Shared Data.

11. Rights in relation to Shared Data and Intellectual Property

- a. The Data Custodian confirms that it is authorised and legally permitted, and has all necessary rights and consents required to disclose the Shared Data to the Data Requestor under the terms set out in the Data Sharing Agreement.
- b. Subject to Item 5.2 of the Data Sharing Agreement, each Party will ensure that:
 - i. it is entitled to use any Intellectual Property Rights it may require in the performance of this MoU and each Data Sharing Agreement,
 - 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 MoU and each Data Sharing Agreement.

12. Handling and security of Shared Data

- a. At all times, the Data Custodian and Data Requestor will only collect, hold, manage, use, disclose, or transfer data restricted from disclosure by law for legally authorised purposes and in a manner that complies with all applicable legislation.

- b. Notwithstanding clause 12(a), the Data Custodian and Data Requestor will adhere to a collection minimisation principle and only share data to the extent that is necessary under the Purpose of the Data Sharing Agreement.
- c. Where this information is not needed under the Purpose of the Data Sharing Agreement, the Data Custodian shall ensure that the Shared Data does not contain any:
 - i. Personal Information,
 - ii. Personal Health Information, or
 - iii. other information that is subject to a restriction or prohibition from disclosure by law.
- d. The Data Custodian and Data Requestor will protect the Shared Data that has been collected, held, managed, used, disclosed, and destroyed by them in a way that is consistent with the ACT Protective Security Framework, the ACT Data Governance and Management Policy Framework, and the ACT *Territory Records Act* (2002).
- e. The Data Requestor agrees to meet all their obligations under the ACT Cyber Security Policy, including to:
 - i. where appropriate or requested by the Data Custodian, conduct a privacy impact assessment when the Shared Data contains personal information,
 - ii. where appropriate or requested by the Data Custodian, engage DOTS Cyber Security and/or Protective Security to determine the protective measures required when the Shared Data requires protective measures.
- f. The Data Requestor will ensure the Shared Data is stored and accessed in a secure location 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.
- g. The Data Requestor will promptly notify the Data Custodian in writing if it becomes aware of any misuse, loss, unauthorised access, modification, or disclosure of the Shared Data.
- h. The Data Requestor agrees to use all reasonable endeavours to assist the Data Custodian to plan and prepare, detect and report, assess and decide and respond to the circumstances listed in clauses 12(f) in a timely manner to mitigate any potential harm to affected persons or organisations.
- i. The Parties agree to comply with their responsibilities under any ACT Government Entity specific data breach response plans or processes.

13. Retention and destruction of Shared Data

- a. Once the Permitted Purpose is fulfilled, the Data Requestor will handle the Shared Data in accordance with the terms specified at item 4.4 of the Data Sharing Agreement.
- b. The Data Requestor agrees to fulfill all their obligations required under the Territory Records Act (2002).

14. Data Schedule and Records Management

- a. The Parties agree to register a summary of their Data Sharing Agreement on the online Data Sharing Schedule.
- b. The Parties agree to complete the table at Appendix 1 and provide a copy to the Secretariat of the Data Reform Group (DataGovernanceSecretariat@act.gov.au).
- c. The Secretariat of the Data Reform Group will handle any day-to-day business associated with the maintenance of the Schedule.
- d. Both Parties agree to also maintain their own records of their specific data sharing agreement, and to comply with any records management obligations in their internal policies, and the *Territory Records Act 2002* (ACT).

15. Party representatives

- a. The representatives of the Data Custodian and Data Requestor for the purpose of any communications or notices under this MoU are set out in Item 1 of the Data Sharing Agreement.

16. General

- a. This MoU may be executed in any number of counterparts all of which taken together constitute one instrument.

Signing Page

Signed for and on behalf of the ACT Health Directorate and portfolio agencies by



Rebecca Cross, Director-General

Date

Signed for and on behalf of the Community Services Directorate by

X 

Catherine Rule, Director-General

Date 9 /12/22


Signed for and on behalf of the Justice and Community Safety Directorate and portfolio agencies by

X 

Richard Glenn, Director-General

Date 05/12/22

Signed for and on behalf of the Environment, Planning and Sustainable Development Directorate and portfolio agencies by

X  5 December 2022

Ben Ponton, Director-General

Signed for an on behalf of the Education Directorate and portfolio agencies by

X 

Katy Haire, Director-General

Date

Signed for an on behalf of the Chief Minister, Treasury, and Economic Development Directorate and portfolio agencies by

X 

Kathy Leigh, Director-General

Date

5/1/23

Signed for an on behalf of Major Projects Canberra and portfolio agencies by

X 

Duncan Edghill, Chief Projects Officer

6 December 2022

Date

Signed for an on behalf of Transport Canberra and City Services and portfolio agencies by

X 

Alison Playford, Director-General

Date 9 December 2022

Signed for an on behalf of Canberra Health
Services by

X 

Dave Pepper, Chief Executive Officer

8 December 2022

Appendix 1 – Data Sharing Schedule

Agreement title	Parties	Project description, outcomes sought	Description of shared data	Description of outputs	Description of key protections
<i>Insert rows as required</i>					