

Memorandum of Understanding

between

Victorian Registration and Qualifications Authority

and

Victorian Building Authority

Information sharing to support the administration of the registration and licensing scheme for building, plumbing and other trade practitioners

RECITALS

- A. The VRQA is a statutory authority established under Chapter 4 of the *Education and Training Reform Act 2006* (Vic) whose functions include the registration and regulation of apprenticeships and traineeships, as set out in Part 5.5.
- B. The VBA regulates building and plumbing practitioners and its functions include the administration of the scheme under Part 11 of the *Building Act 1993* (Vic) for the registration of building practitioners, the scheme under Part 11A of the Building Act for the licensing of building employees and the scheme under Part 12A of the Building Act for the licensing and registration of plumbing practitioners.
- C. The purpose of this Memorandum of Understanding is to facilitate the exchange of information and data between the VBA and VRQA to assist the VBA to administer the registration and licensing schemes for building, plumbing and other trade practitioners and to better engage with Apprentices, and the VRQA to register and regulate the Victorian apprenticeship and traineeship system.

1. Interpretation

1.1. Definitions

In this Memorandum:

Annexure means an annexure to this Memorandum.

Apprentice means a person whom an employer has undertaken to train in an apprenticeship.

Apprenticeship means the training contract between the apprentice and the employer that is lodged with and approved by the VRQA under Part 5.5 of the ETR Act.

Building Act means the *Building Act 1993 (Vic)*.

Chief Executive Officer, VRQA means the person appointed to, holding or acting for the time being in the position of Chief Executive Officer (Director) of the VRQA.

Confidential Information means all information or Data supplied by one Party to the other in connection with this Memorandum, including but not limited to:

- a) Any information designated by the Party providing the information as being confidential.
- b) Any information pertaining to the:
 - i. finances;
 - ii. internal management and structure;
 - iii. personnel, policies and structure;
 - iv. intelligence or other information or Data relevant to the functions; or
 - v. suppliers, contractors and stakeholders, of the Party providing the information.
- c) Personal Information as defined in section 3 of the PDP Act.
- d) Any information which is in the nature of Confidential Information and which the receiving Party ought reasonably to have identified as Confidential Information, but excludes information which:
 - i. is in or subsequently enters the public domain other than as a result of a breach of the obligation of confidentiality set out in this Memorandum by the receiving Party; or
 - ii. is already known to the receiving Party (evidence of which must be provided by the Party seeking to rely on this exclusion).

Data means ‘any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means)’, as defined in the *Victorian Data Sharing Act 2017*.

Disclosing Party means the Party disclosing, transferring or sharing information to the other Party under this Memorandum.

ETR Act means the *Education and Training Reform Act 2006 (Vic)*.

Information Request means a request to collect, access, use, transfer, disclose or share information that is substantially in the form set out in Annexure B.

Law means all relevant Acts of the parliaments of Australia and Victoria, and all regulations, by-Laws, awards and orders made thereunder, and the Lawful requirements of public, municipal and other competent authorities in any way affecting or applicable to this Memorandum.

Memorandum means this memorandum of understanding.

Operational Officers means the persons specified in clause 10.2 of this Memorandum.

Parties means the VRQA and the VBA.

PDP Act means the *Privacy and Data Protection Act 2014 (Vic)*.

Permitted Purpose means the purposes for which a Party may use or disclose information transferred, shared or disclosed to it by the other Party under this Memorandum and as more fully described in an accepted Information Request.

Personal Information has the meaning given to that term in the *Privacy and Data Protection Act 2014 (Vic)*.

Privacy Legislation means Laws in respect of privacy and the protection of personal and health information including, without limitation, the PDP Act, and the *Health Records Act 2001 (Vic)*.

Receiving Party means the Party receiving information from the Disclosing Party under this Memorandum.

Responsible Officers means the persons specified in clause 10.1 of this Memorandum.

Trainee means a person whom an employer has undertaken to train in a traineeship during employment.

Note: Unlike an apprenticeship, a traineeship may be unilaterally terminated by either the employer or the employee by giving written notice. Mutual agreement is not required.

Traineeship means the contracted employment and training arrangement between the trainee and the employer.

VBA means the Victorian Building Authority, a body corporate established under section 193 of the Building Act.

VRQA means the Victorian Registration and Qualification Authority, and includes any successor of the VRQA that has the same responsibility as the VRQA under this Memorandum.

2. Purposes of Memorandum

- 2.1. The Parties have entered into this Memorandum pursuant to section 259AB of the Building Act.
- 2.2. The purposes of this Memorandum are to:
 - a. assist the VBA to administer the registration and licensing schemes for building, plumbing and other trade practitioners under the Building Act;
 - b. assist the VRQA to regulate the Victorian apprenticeship and traineeship system;
 - c. assist the VBA to engage with Apprentices from the commencement of their Apprenticeships up until the Apprentices apply for a licence or registration as a building, plumbing or other practitioner; and
 - d. set out a common statement of intent and the commitment of both Parties in respect of supporting pathways to licence or registration of Apprentices;
 - e. set out information exchange procedures and protocols, to enable both Parties to discharge their regulatory responsibilities, consistent with the Victorian Public Sector Data Sharing Policy, which states that Victorian government agencies have a 'responsibility to share' with each other where there is a demonstrated need for the data to improve policy making, service planning and delivery with a clear public benefit, unless there is good reason not to.
- 2.3. This Memorandum is not intended to regulate the way the VRQA or the VBA engage with industry or to fetter their performance of their regulatory functions or use of their powers.

3. Term

- 3.1. This Memorandum has effect on and from the date the last Party signs it and operates until it is terminated in accordance with clause 5 (**Term**).

4. Obligations

- 4.1. The VRQA and the VBA will use their best endeavours to give effect to this Memorandum including the arrangements and procedures set out in Annexure A.
- 4.2. Subject to any legal restrictions on information disclosure by the Parties, the VRQA and the VBA will exchange information and Data and respond to requests for information to assist each other in their roles as set out in this Memorandum, including Annexure A.
- 4.3. The VRQA and the VBA will establish and maintain liaison contacts as more fully described in clause 10 to ensure the effective operation of this Memorandum.

5. Variation and termination

- 5.1. This Memorandum may be varied at any time by agreement of both Parties. Any variations must be in writing and signed by both Parties.
- 5.2. This Memorandum may be terminated:

- a. by a Party by providing 30 days' notice in writing to the other Party; and
- b. immediately, where both Parties mutually agree in writing to withdraw from this Memorandum.

6. No intention to enter legal relations

- 6.1. The Parties agree that they have no intention to create legal relations by entering into this Memorandum.

7. Privacy and Data protection

- 7.1. The Parties respectively undertake that any disclosure, use, storage or transfer of Personal Information and Data shall only be made to the extent permitted by Law and, in particular:

- a. assure each other that any Personal Information and Data disclosed by one to the other in connection with this Memorandum has been collected and disclosed in accordance with applicable Privacy Legislation; and
- b. agree not to use, disclose, store, transfer or handle Personal Information and Data collected in connection with this Memorandum except in accordance with applicable Privacy Legislation (including applicable Data protection standards), or where required or authorised by Law.

- 7.2. At all times, a Party that receives information (including Personal Information) under this Memorandum from the other Party must take reasonable steps to protect that information from misuse, loss, damage or destruction and from unauthorised access, modification or disclosure.

- 7.3. A Party must:

- c. immediately notify the other Party in writing of any actual, suspected or potential Data breach and include in that notice all relevant details including:
 - i. full details of the manner in which the Data breach occurred;
 - ii. the information or Data (including any Personal Information) affected by the Data breach;
 - iii. any security measures applied to the Personal Information affected by the Data breach;
 - iv. the potential effects of the Data breach on the Parties; and
 - v. any other information requested by the other Party.
- d. Each Party must co-operate at its own cost in relation to an investigation of any Data breach, and in the remedy, resolution and notification of such Data breach to the other Party's reasonable satisfaction, including complying with any reasonable direction or request from the other Party.

8. Communication

- 8.1. The VRQA and the VBA agree to meet when requested by the Responsible Officers (as defined in clause 10.1) to discuss issues arising in relation to Apprentices and Trainees employed in Victoria, including issues arising under this Memorandum.
- 8.2. The exchange of information outlined in this Memorandum will, unless agreed otherwise, occur at an operational level between the Operational Officers (as defined in clause 10.2).

9. Confidential Information

- 9.1. With respect to any Confidential Information disclosed by one Party to the other in connection with this Memorandum, the Parties agree to:
 - a. protect and securely store the Confidential Information in a reasonable and appropriate manner and in accordance with any applicable standards (including under Privacy Legislation);
 - b. use, hold and transmit Confidential Information in accordance with the Privacy Legislation.
 - c. use and reproduce Confidential Information only for the purposes identified in clause 2.2 of this Memorandum; and
 - d. not disclose or otherwise make available Confidential Information other than to its personnel who have a need to know the information to give effect to the purposes identified in clause 2.2 of this Memorandum.
- 9.2. The above paragraph shall not apply to any information which is publicly available or expressly permitted to be disclosed to a third party without restriction.
- 9.3. Upon written request of a Disclosing Party, the Receiving Party must, to the extent that is reasonably practicable and unless otherwise permitted by Law, cease using the Confidential Information of the Disclosing Party and return to the Disclosing Party or destroy (as directed by the Disclosing Party) at the cost of the Receiving Party all the Disclosing Party's Confidential Information.

10. Contacts

10.1. Responsible Officers

The Parties acknowledge that the persons appointed to, holding, or acting for the time being in the following positions will use their best endeavours to facilitate the efficient implementation of this Memorandum:

- a. for the VRQA: Chief Executive Officer (Director)
- b. the VBA, Chief Executive Officer

10.2. Operational Officers

The Parties acknowledge that the persons appointed to, holding or acting for the time being in the following positions will be responsible for the exchange of information at the operational level to enable the implementation of this Memorandum and to receive all queries, consents, approvals, complaints and disputes required or arising under or in connection with this Memorandum:

- a. for the VRQA: Deputy Chief Executive Officer, Training and Skills
- b. for the VBA: Senior Manager Service Delivery, Processing and Assessment

10.3. Change in Responsible Officers and Operational Officers

The VRQA and the VBA may change their Responsible Officers or Operational Officers by notifying the other Party in writing.

11. Review process

- 11.1. The Responsible Officers will meet on an annual basis to discuss the effectiveness of the Memorandum and jointly review the Memorandum on dates and times to be agreed by the Parties.
- 11.2. The Operational Officers will meet every 6 months to jointly review the information sharing process outlined in Annexure A on dates and times to be agreed by the Parties.

12. Disputes

- 12.1. If any dispute arises under or in connection with this Memorandum (**Dispute**) which is not able to be resolved by the Parties' Operational Officers within 14 days of such Dispute arising, the Parties' Responsible Officers (or nominated senior representative) will promptly meet and discuss in good faith with a view to resolving such Dispute.

13. Notices

13.1. Giving a communication

A notice or other communication relating to this Memorandum must be in writing in the English language, and may (in addition to any other method permitted by Law) be sent by pre-paid post, pre-paid courier or by electronic mail as follows:

- a. to VRQA: Chris Ingham, Acting Deputy Chief Executive Officer, Training and Skills, email: Christopher.ingham@education.vic.gov.au
- b. to the VBA: Angela Grozos, Senior Manager, Processing and Assessment, email: Angela.Grozos@vba.vic.gov.au

13.2. Time of delivery

A notice or document shall be taken to be delivered or served as follows:

- a. in the case of delivery in person or by courier, when delivered;
- b. in the case of delivery by post, two business days after the date of posting; and
- c. in the case of electronic mail, if the receiving party has agreed to receipt in that form under this Memorandum and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when acknowledgment of receipt is accurately recorded on the sender's computer.

Signing page

Executed as a Memorandum of Understanding

Signed by Jonathan Kaplan, Chief Executive Officer (Director), Victorian Registration and Qualifications Authority who by signing this Memorandum using an electronic signature acknowledges that, on signing using that method, they are agreeing to this Memorandum:

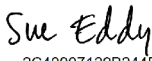


28/3/2023 | 12:55 PM AEST

.....
Signature

.....
Date

Signed by Sue Eddy, Chief Executive Officer, Victorian Building Authority, who by signing this Memorandum using an electronic signature acknowledges that, on signing using that method, they are agreeing to this Memorandum:

DocuSigned by:

2C40907129B244D.....

28/3/2023 | 7:25 AM AEDT

.....
Signature

.....
Date

ANNEXURE A

The Parties will follow the below process to share and exchange information between the Parties during the Term.

1. Information Exchange (Without Request)

- a. During the Term, the parties agree to exchange information, without a request for information, in the following circumstances.
 - i. the VRQA becomes aware of possible breaches of Part 11 of the Building Act for the registration of building practitioners, the scheme under Part 11A of the Building Act for the licensing of building employees and the scheme under Part 12A of the Building Act for the licensing and registration of plumbing practitioners.
 - ii. The VBA becomes aware of possible breaches of Part 5.5 of the ETR Act by an employer of apprentices and trainees.

2. Information Exchange (With request)

- b. During the Term, a Party's Operational Officer may issue an Information Request to the other Party's Operational Officer.
- c. Upon receiving an Information Request, a Party must assess whether it accepts or rejects the Information Request and notify the other Party in writing no later than 10 Business Days after receiving the Information Request of its decision.
- d. If a Party determines, in its sole discretion, to accept an Information Request, it must transfer the requested information to the other Party in accordance with section 2 of Annexure A.
- e. If a Party determines, in its sole discretion, to reject an Information Request, it must notify the other Party of its reasons for rejecting the Information Request and provide the other Party with an opportunity to re-submit an Information Request that the Party can reassess.
- f. Upon receiving a re-submitted Information Request, a Party must assess whether it can accept or reject the request and notify the other Party in writing no later than 10 Business Days after receiving the re-submitted Information Request of its decision.
- g. If a Party determines, in its sole discretion, to accept the re-submitted Information Request, it must transfer the requested information to the other Party in accordance with section 2 of Annexure A. If the Party rejects the re-submitted Information Request, it is not obliged to consider any further Information Requests that is the same or substantially similar to the rejected Information Request.

3. Transfer of information

No later than 20 Business Days (or an alternative timeframe agreed between the Parties) of a Party agreeing to an Information Request under section 2 of Annexure A, the Disclosing Party must transfer the requested information to the Receiving Party in a machine-readable format or such other format as set out in the relevant Information Request and in accordance with any process set out in the relevant Information Request.

4. Use and disclosure of information and Data

- a. The Receiving Party may only use the information and Data disclosed to it by the Disclosing Party for the Permitted Purpose.
- b. The Receiving Party may only disclose the information:
 - i. to its personnel that have a 'need to know' the information in order to perform their roles and it is disclosed for the Permitted Purpose;
 - ii. to the extent (if any) the Receiving Party is required by Law to disclose any information and notifies the Disclosing Party prior to such disclosure occurring; or
 - iii. to a third party with the Disclosing Party's prior written consent or as specified in an accepted Information Request.

5. Exceptions

The obligations set out in section 3 of Annexure A do not apply to information that:

- a. is disclosed to a Receiving Party by a third party entitled to do so, whether before or after the date of this Memorandum;
- b. was already Lawfully in the Receiving Party's possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly; or
- c. is generally available to the public at the date of this Memorandum or subsequently becomes so available other than by reason of a breach of this Memorandum.

6. Other obligations

- a. The Parties acknowledge and understand that each Party has information collection, handling, access, correction and disclosure obligations under the Privacy Legislation, the *Freedom of Information Act 1982* (Vic) and the *Public Records Act 1973* (Vic) (**Information Acts**) in respect of any information shared or transferred under this Memorandum.
- b. A Party must do all things the other Party may reasonably require from time to time to assist the other Party to comply with its obligations under the Information Acts in respect of such information.
- c. Despite sections 3 and 4 of Annexure A, nothing in this Memorandum is intended to restrict, limit, modify or alter a Party's information sharing or disclosure obligations under any Law or legally binding order of any court, government, semi-government authority or administrative or judicial body, provided that prior to the disclosure of any information belonging to the other Party to the extent practicable and as soon as reasonably possible, the Party:
 - i. notifies the other Party of the full details of the circumstances and content of the proposed disclosure and consults with the Party as to such disclosure;
 - ii. uses reasonable endeavours to comply with any reasonable request by the other Party concerning the proposed disclosure; and
 - iii. gives the other Party a reasonably opportunity to challenge in a

court or other appropriate body the legality of the Party's obligation to disclose the information.

7. Correction and updates to information

The Parties acknowledge and agree that information shared, transferred or disclosed by a Party to the other Party under this Memorandum will be accurate, complete and up to date at the time the information is shared, transferred or disclosed. However, neither Party is responsible for providing updates or corrections to any information it discloses to the other Party unless required by Law.

Annexure B

Information Request Form

This form may be used by a Party's Operational Officer to submit an information request to the other Party's Operational Officer.

Item	Description
Date of request	[insert date]
Party submitting request	[Victorian Building Authority] [VRQA]
Information requested	[insert information party is requesting]
Permitted Purpose	[insert purpose for which information may be used / disclosed by the requesting party]
Permitted third party disclosure	[insert third party/ies that requestor may disclose information]
Date information is required	[insert date information is required by party]
Information format	[insert format of information]
Information transfer process	[insert Data transfer process]
Submitted by [VRQA/VBA] Operational Officer (signature)

Approved by [VRQA/VBA] Operational Officer (signature)
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