


MEMORANDUM OF UNDERSTANDING – LICENSING ACARA DATA

**Australian Curriculum, Assessment and Reporting Authority
ABN 54 735 928 084**

and

**Victorian Registration and Qualifications Authority
ABN 89411320250**

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Parties

This MOU is made between the following parties:

1. **Australian Curriculum, Assessment and Reporting Authority** ABN 54 735 928 084 of Level 10, 255 Pitt Street, Sydney, New South Wales (ACARA)
2. **Victorian Registration and Qualifications Authority** ABN 89411320250 of Level 4, Casselden Place, 2 Lonsdale Street, Melbourne Victoria (the Agency)

Context

This MOU is made in the following context:

- A. ACARA's functions under its establishing legislation (*ACARA Act 2008 (Cth)*) include the facilitation of information-sharing arrangements between Australian government bodies in relation to the collection, management and analysis of school data.
- B. The Agency's functions under its establishing legislation (*Education and Training Reform Act 2008 (Vic)*, ETR Act) include the registering of all schools in Victoria and ensuring that registered schools maintain minimum standards by conducting reviews of those schools.
- C. The Agency wishes to utilise ACARA's data (Data) for the purpose of gathering sufficient information about each school that the Agency is registering or reviewing against the minimum standards contained in the ETR Act. This purpose aligns with the Agency's commitment to advancing and protecting the interest of students and supporting the Victorian government's commitment to the goals of promoting equity and excellence through schooling.
- D. ACARA offers to provide the Data to the Agency on the terms set out in this MOU and the Agency accepts the terms.

Operative provisions

In consideration of the mutual promises contained in this document, the parties to this MOU agree as follows:

1. Interpretation

1.1. Definitions

- 1.1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

ACARA	means the Australian Curriculum, Assessment and Reporting Authority;
Additional Requirements	means any additional requirements in relation to Data which are set out in a letter from ACARA to the Agency. A copy of a template letter is in Appendix 1;
Approved Purposes	means any purpose that has as its objective improving student outcomes and ensuring excellence and equality for all students, or assisting with government resource allocation. Specific approved purposes include:- <ul style="list-style-type: none"> - analysis of school performance; - identification of schools with particular needs; - determining where education resources are most needed to lift educational attainment; - identification of best practice and innovation in high-performing schools to support improvements in schools with poorer performance; - conduct national and international comparisons of approaches and performance in the provision of education; and - develop a substantive evidence base on what works in the provision of education;
Authorised User	means the people or class of people in relation to Data who are referred to in a letter from ACARA to the Agency, or such other people approved by ACARA from time to time, being people who are given permission by ACARA to have access to and use the Data for the Approved Purposes. A copy of the template letter is in Appendix 1;
Business Day	means any day on which all banks are open for business generally in Sydney, New South Wales;
Commencement Date	means the date detailed in Item 1 of the Reference Schedule;
Confidential Information	means, in relation to ACARA, information that: <ol style="list-style-type: none"> a. is by its nature confidential; b. is designated in writing by ACARA as confidential; c. is personal information under the Privacy Act 1988; d. the Agency knows or ought to know is confidential, and includes: e. the Data, if in a form which discloses any of the information referred to in paragraphs (a)–(d) above;

- f. other information comprised in or relating to the Data or any Intellectual Property of ACARA or third parties (where that information is provided by the third party on behalf of ACARA) if in a form which discloses any of the information referred to in paragraphs (a)–(d) above; or
- g. information relating to the internal management and structure of ACARA,

but does not include information which:

h. is or becomes public knowledge other than by breach of the MOU, other confidentiality obligations or the Privacy Act 1988; or

i. the Agency can establish by written evidence has been independently developed or acquired by the Agency without breach of any obligation of confidence;

Data

means the data referred to in a letter from ACARA to the Agency, to the extent that it is owned by ACARA or ACARA has the right to license the use of that data. A copy of the template letter is in Appendix 1;

Document

includes:

- a. any paper or other material on which there is writing;
- b. any paper or other material on which there are marks, figures, symbols or perforations having a meaning to persons qualified to interpret them; and
- c. any article, material or media from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property

includes:

- a. all copyright (including rights in relation to phonograms and broadcasts);
- b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and
- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,

but does not include:

d. rights in relation to Confidential Information;

Personal Information

means information or opinion (including information or opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained from the information or opinion;

Principles and protocols for reporting on schooling in Australia	means the principles and protocols for reporting on schooling in Australia agreed at the meeting of the Ministerial Council for Education, Employment, Training and Youth Affairs on 12 June 2009, as revised from time to time;
Term	means the period referred to in Item 2 of the Reference Schedule, unless terminated sooner; and
Unauthorised Person	means a person who is not authorised in writing by ACARA to use the Data.

1.2. Term of the MOU

- 1.2.1. This MOU takes effect on and from the Commencement Date and, unless terminated in accordance with this MOU, will continue in force for the Term.

2. Licence

2.1. Licence

- 2.1.1. ACARA grants to the Agency a non-exclusive, non-transferable licence to use, reproduce, adapt and modify the Data for the Approved Purposes for the term of this MOU.
- 2.1.2. For the avoidance of doubt, the licence granted in clause [2.1.1] does not include a right of sub-licence.

2.2. Restrictions on use of the Data

- 2.2.1. The Agency must not:
- a. use Data in any manner that is inconsistent with the Principles and Protocols for reporting on schooling in Australia; or
 - b. use the Data to undertake analyses which could generate Personal Information, except where the Agency already holds the data containing that Personal Information.
- 2.2.2. The Agency must ensure that only Authorised Users have access to the Data.
- 2.2.3. The Agency must abide by any other Additional Requirements.
- 2.2.4. Any publicly available document incorporating the Data (or any part of the Data) shall be provided to ACARA at or before time of publication for ACARA reference.

2.3. ACARA responsibility for the Data

- 2.3.1. The Data is provided to the Agency on an 'as is' basis and ACARA is not responsible for its accuracy, quality or fitness for purpose.

2.4. Provision of the Data

2.4.1. ACARA will use its best endeavours to arrange the provision of the Data to the Agency as soon as possible after the request has been received by ACARA.

2.4.2. ACARA must notify the Agency immediately in writing of any delay in the arrangement of the provision of the Data. If there is delay the parties will agree on a revised delivery date and appropriate changes to other timing obligations included in the MOU.

2.5. Other information provided by ACARA

2.5.1. If ACARA provides information to the Agency in addition to the Data, this information is provided for information purposes only. ACARA does not have underlying rights to authorise the reproduction, distribution or use of this information. If the Agency wishes to make use of this information, it must satisfy itself as to its right to do so and where relevant, acquire the respective rights.

3. Security requirements

3.1. Security

3.1.1. The Agency acknowledges that the Data has been prepared by or on behalf of ACARA to enable ACARA to perform its statutory functions and contains information that is confidential or that may be in the nature of Personal Information. The Agency must protect the Data and related information so that it is only used for the Approved Purposes and to ensure Unauthorised Persons do not have access to it.

3.1.2. Without limiting the generality of the previous clause, the Agency must:-

- a. when requested by ACARA provide such information ACARA reasonably requires on the security process and procedures the Agency has in place to protect the Data;
- b. comply at all times with any security requirements notified by ACARA from time to time regarding the access, handling and storage of the Data.

3.1.3. The Agency is responsible for the Data until it is returned to ACARA or is destroyed in accordance with ACARA's reasonable directions. ACARA's instructions regarding the return or destruction of Data will be provided in a letter from ACARA to the Agency. A copy of the template letter is in Appendix 1.

3.1.4. This clause [3.1] will survive the expiration or termination of this MOU.

3.1.5. If the Agency is in breach of the requirements of clause [3.1.2], ACARA may terminate this MOU immediately.

3.2. User support

3.2.1. ACARA will provide Authorised Users with technical assistance to permit use of the Data in accordance with this MOU.

4. Confidentiality and Conflict of Interest

4.1. Non-disclosure

4.1.1. In consideration of ACARA disclosing certain Confidential Information to the Agency, the Agency acknowledges and agrees with ACARA:

- a. that all Confidential Information is confidential, is under the management of ACARA, and is of value to ACARA, and that any Confidential Information disclosed to the Agency is only disclosed pursuant to the terms of this MOU;
- b. to keep Confidential Information confidential at all times;
- c. that it must not, other than with the prior written approval of ACARA (which may be granted or withheld in ACARA's absolute discretion), use, disclose, divulge, make a digital or any other copy of, transmit electronically (including via email) or deal with any Confidential Information, nor allow any act, matter or thing to be done or occur whereby any Confidential Information may be made available to an Unauthorised Person, other person, except in accordance with the terms of this MOU; and
- d. that it must observe and be bound by the provisions of this MOU.

4.1.2. The Agency must:

- a. take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by ACARA to keep the Confidential Information, including all Documents, and all other things recording, containing, setting out or referring to any Confidential Information, under effective control of the Agency and protected from any unauthorised use or access;
- b. immediately notify ACARA if the Agency becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- c. ensure that Confidential Information is not given to a person who is not an Authorised User; and
- d. if required at any time by ACARA to do so, deliver up to ACARA, or at the option of ACARA destroy, without limitation, all Documents containing any Data in the possession, custody or control of the Agency.

4.1.3. The Agency may retain a copy of the Confidential Information if, and only to the extent to which and for the purpose for which, the Agency is required by law to do so but subject to compliance with clause [4.2.1].

4.1.4. This MOU does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

4.1.5. This clause [4.1] will survive the expiration or termination of this MOU.

4.2. Disclosure as required by law

4.2.1. The Agency may disclose any Confidential Information which the Agency is required by law to disclose, but only if the extent and the manner of the disclosure is strictly limited to what is required by law.

4.2.2. The Agency undertakes to provide ACARA with sufficient notice to enable ACARA to seek a protective order or other relief from disclosure and to provide all assistance and co-operation which ACARA reasonably considers necessary for that purpose.

5. Privacy

5.1. Privacy

5.1.1. The Agency agrees with respect to all Confidential Information made available or provided by ACARA or any other person at any time which comprises Personal Information as defined in the Australian *Privacy Act 1988* (the Act):

- a. to comply as if they were an agency bound by the Act with those provisions of the Act concerning the security, use and disclosure of information;
- b. to co-operate with any reasonable demands or enquiries made by the Privacy Commissioner;
- c. to ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which ACARA has obligations under the Act is made aware of the provisions referred to in clause [5.1.1(a)] above;
- d. to take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only Authorised Users have access to it;
- e. not to transfer such information outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of ACARA;
- f. to immediately notify ACARA when the Agency becomes aware of a breach of security by any individual; and
- g. to notify ACARA of, and co-operate with ACARA in the resolution of, any complaint alleging an interference with privacy.

5.1.2. The Agency's obligations in this clause [5.1] are in addition to, and do not restrict, any obligations it may have under:

- a. the Act; or
- b. any privacy codes; or
- c. privacy principles contained in, authorised by or registered under any law, including any such privacy codes or principles that would apply to the Agency but for the application of the other provisions of this clause [5.1].

5.1.3. This clause [5.1] will survive the expiration or termination of this MOU.

6. Termination

6.1. Termination of MOU

6.1.1. This MOU may be terminated by either party providing at least 14 days' prior notice in writing unless terminated by ACARA in accordance with clause [3.1.5].

6.1.2. Subject to clause [3.1.5], ACARA may terminate this MOU by notice in writing, with effect from the date in the notice, if the Agency fails to remedy a breach of the MOU within 30 days of being given notice by ACARA requiring the breach to be remedied.

Reference Schedule

Item	Subject	Clause	Requirement
1	Commencement Date	1.2.1	
2	Term	1.2.1	For all time

Appendix 1 Template letter

[insert date]

F11/991-3

[Name]
[Job Title]
[Organisation]
[Street Address]
[Suburb State Postcode]

[By courier]

Dear [Name]

ACARA data provided to you

A standing Memorandum of Understanding between ACARA and the Victorian Registration and Qualifications Authority operates to facilitate provision of data in response to requests for data held by ACARA.

I provide you with the data requested under the Data Access Protocols on the terms set out in the signed Memorandum of Understanding – Licensing ACARA Data between ACARA and your Organisation (MOU). In particular, in accordance with the terms of the MOU, I set out below the following:

Data Clauses 1.1.1 and 2.1.1	
Authorised User Clauses 1.1.1 and 2.2.2	
Return or destruction of data Clause 3.1.3	NIL
Additional requirements Clause 2.2.3	NIL

If you have any queries, please do not hesitate to contact me on 61 2 8098 xxxx
or [email]

Yours sincerely

[name tbc]

CEO

Australian Curriculum, Assessment and Reporting Authority

Enc.

Executed by the parties

Date: 24 DECEMBER 2015

Signatures

SIGNED for and on behalf of
**Australian Curriculum,
Assessment and Reporting
Authority** by:)
)
)

Robert Randall, Chief Executive
Officer



Signature

In the presence of:



Name of witness



Signature of witness

SIGNED for an on behalf of
**Victorian Registration and
Qualifications Authority** by:)
)
)

Lynn Glover, Director



Signature

In the presence of:



Name of witness



Signature of witness