



Australia's Disability Strategy 2021-2031 – Authorised User Confidentiality Deed Poll

1 Context

This Authorised User Confidentiality Deed Poll is made in the following context:

- A. The Australian National University (**ANU**) provides a national service for the collection and preservation of digital research data and to make these data available for secondary analysis by academic researchers and other users.
- B. The ANU:
 - (1) acquires, documents, preserves and disseminates data online to a broad range of social science researchers in the university, government, and other sectors, and
 - (2) adopts, develops and applies standards in line with international best practice.
- C. The Commonwealth as represented by the Department of Social Services requires the provision of data management, storage, access and associated services to deliver the Australia's Disability Strategy (**Survey**), focusing on the Community Attitudes Outcomes Area in the 'Australia's Disability Strategy 2021-2031' (the **ADS**).
- D. The Commonwealth and the ANU have agreed that the ANU will facilitate Applicant's access Datasets. Such access is subject to the terms and conditions set out in this Authorised User Confidentiality Deed Poll.

2 Definitions

In this Deed Poll, unless the context indicates a contrary intention:

ADA means the Australian Data Archive;

Applicant means a person who submits a data access request form to the ANU seeking access to a Dataset;

Authorised User means an Applicant who meets the access criteria specified in the data access request form and is approved for access to data by the Commonwealth, and who has executed this Deed Poll;

Claim means an actual or threatened claim, legal proceeding or related action, and is not limited to proceedings initiated in a court or tribunal;

Commonwealth means the Commonwealth of Australia as represented by the Department of Social Services;

Commonwealth Material means any Material:

- (a) provided by the Commonwealth to the ANU for the purposes of this Deed Poll including Data Documentation, Dataset, and Unit Record Data; or
- (b) copied or derived at any time from the Material referred to in paragraph (a), including where reproduced in a de-identified, aggregated, or classified manner;

Confidential Information or **Commonwealth Confidential Information** means all information in whatever form which the ANU has identified to the Authorised User as confidential, or which the Authorised User knows or ought to know is confidential, but excluding:

- (a) information which is already in the public domain or which becomes part of the public domain otherwise than as a result of an unauthorised disclosure;
- (b) information which is or becomes available to the Authorised User from a third party lawfully in possession of such information and who has the lawful power to disclose such information to the Authorised User on a non-confidential basis;
- (c) information required to be disclosed by law; or
- (d) information which is rightfully known by the Authorised User (as shown by its written record) prior to the date of disclosure to it by the Commonwealth.

Criminal Code Act means the *Criminal Code Act 1995* (Cth);

Data Documentation means Material that contains generalised information about the Datasets (but does not disclose any content from a Dataset), including but not limited to questionnaires and forms, data dictionaries, codebooks and metadata;

Dataset means the datasets, including General Release, Restricted Release datasets and Postcode Data:

- (a) under waves one and two of the Survey, focusing on the Community Attitudes Outcomes Area in the ADS collected by, generated, or provided to the ANU;
- (b) any linked Datasets associated with paragraph (a); and
- (c) any other Datasets the parties agree in writing to be subject to the terms and conditions of this Deed Poll;

Effective Date means the date at which this Deed Poll is executed by both parties, or the date the last party to this Deed Poll executes this Deed Poll;

Eligible Data Breach has the same meaning as under the Privacy Act;

General Release means a release of coded data, which may be captured as new or existing data files:

- (a) where potential Confidential Information or Personal Information is removed; and
- (b) other information has been modified through the application of top coding, aggregation or the use of classification codes;

Intellectual Property Rights means all:

- (a) copyright, rights in relation to inventions (including patents), plant varieties, trade marks (including service marks), designs, circuit layouts, all other rights

resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and

- (b) rights to apply for the registration of any rights set out in paragraph (a), but does not include moral rights or the rights of performers;

Loss means any liability, loss, action, Claim, damage, injury, cost, charge, penalty, expense or diminution in value, including:

- (a) legal costs (on a solicitor and own client basis) and other costs incurred in connection with investigating, defending or settling any action or Claim; and
- (b) that arise from damage or destruction to, or any loss or use of, any property, or injury to or death of any person,
- (c) including indirect and consequential loss such as the loss or corruption of software, systems or data; loss of revenue; loss of profits; failure to realise any expected profits or savings; and any other commercial or economic loss of any kind.

Material includes any data, dataset, tools, processes, procedures, reports and documents;

Personal Information has the meaning given in the Privacy Act and, at the Effective Date, means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not;

Postcode Data means data which may be captured in new or existing data files, of ADS respondents that:

- (a) includes postcodes of their main residential addresses but names and other identifying features of the addresses have been removed or deidentified; and
- (b) contain other potential Confidential Information or Personal Information that may or may not be removed.

Privacy Act means the *Privacy Act 1988* (Cth);

Research Material means any generated data and research findings based on research and the analysis of a relevant Dataset created by an Authorised User of the same Dataset;

Restricted Release means a release of data which may be captured as coded or decoded, new or existing data files:

- (a) from which the names and addresses of ADS respondents have been removed but contain other potential Confidential Information or Personal Information that may or may not be removed;
- (b) may or may not have been modified through the application of top coding, aggregation or the use of classification codes at a more general level; and
- (c) may include information at a more granular level than the General Release;

Unit Record Data means in relation to a Dataset, the de-identified records from the Dataset that may reveal information about an individual natural person because the information in the records has not been aggregated with information about another person.

3 Interpretation

In this Deed Poll, unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Deed Poll;
- (b) a reference to a clause, schedule or context item is a reference, respectively, to a clause of, schedule to or recital of this Deed Poll;
- (c) a reference to a statute or regulation includes an amendment or re-enactment to that legislation and includes subordinate legislation in force under it;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a gender includes reference to every gender;
- (f) a reference to any document or Deed Poll includes a reference to that document or Deed Poll as properly amended, novated, supplemented, varied or replaced from time to time;
- (g) 'includes' and 'including' are not words of limitation; and
- (h) a provision of this Deed Poll will not be interpreted against a party just because that party prepared the provision.

4 Acknowledgement

The Applicant acknowledges and agrees that:

- (a) the Confidential Information is valuable to the Commonwealth for reporting purposes;
- (b) they have no right or interest in any of the Confidential Information other than the right to access and use it on the terms of this Deed Poll.

5 Commencement

This Deed Poll will be taken to have commenced on the Execution Date and will remain in effect unless otherwise indicated in this Deed Poll.

6 Undertakings of Non-Disclosure

- (a) The Applicant must keep Confidential Information secure and confidential at all times.
- (b) The Applicant must not transfer any Dataset or any part of a Dataset outside Australia without the prior written consent of the Commonwealth.
- (c) The Commonwealth may impose any conditions it considers appropriate when giving consent under clause 6(b) and the Applicant must comply with these conditions.
- (d) The Applicant will not be taken to have breached their obligations under this clause 6 to the extent that the Confidential Information is:
 - (i) authorised or required by law or by this Deed Poll to be disclosed; or
 - (ii) in the public domain otherwise than due to a breach of this Deed Poll;
 - (iii) disclosed on a confidential basis within the Applicant's university or organisation to the extent necessary to facilitate compliance with any applicable statutory record keeping requirements relating to the university or organisation, which specifically relates to

- electronic records management or data file management by information technology teams; or
- (iv) disclosed on a confidential basis in connection with their individual research purpose where the recipient of the Confidential Information is an Authorised User of the same Dataset.
- (e) Where the Applicant intends to disclose Confidential Information to another person pursuant to clause 6(d)(i) the Applicant must:
- (i) ensure the extent and manner of the disclosure is strictly limited to what is authorised or required by law; and
 - (ii) the Applicant has:
 - A. given the Commonwealth sufficient notice to enable it to seek a protective order or other relief from disclosure; and
 - B. provided all assistance and co-operation which the Commonwealth reasonably considers necessary for that purpose.
- (f) The Applicant must:
- (i) do all reasonable things necessary, and do all things that may be required by the Commonwealth, to keep the Dataset or Datasets and all other things recording, containing, setting out or referring to any Datasets, under effective control of:
 - A. the Applicant; or
 - B. relevant university or organisational staff who are Authorised Users of the same Dataset;
 - (ii) immediately notify the Commonwealth if the Applicant becomes aware of any unauthorised access to, or use or disclosure of, the Dataset; and
 - (iii) take all reasonable steps to ensure that the Dataset are protected at all times from any unauthorised use or access.

7 Security and Storage

- (a) The Applicant must store the Datasets and all copies of the Datasets, whether full or partial, using one of the following storage options:
 - (i) cloud server which meets appropriate Australian cyber security standards;
 - (ii) secure network;
 - (iii) password protected removable storage device (for example a USB or a hard drive); or
 - (iv) local drive on password protected PC or laptop.
- (b) When not in use, removable drives and printed material containing Unit Record Data must be stored in a locked drawer or cabinet to which only Authorised Users have access.
- (c) The Applicant must keep all removable drives and Data Documentation containing Unit Record Data in a locked drawer or cabinet to which only they or other Authorised Users of the same Dataset have access.

- (d) Subject to any applicable statutory record keeping requirements relating to the Applicant's university or organisation, the Applicant must destroy or delete all copies of any Datasets to which they have been granted access, which they no longer require for their individual research purposes, within 30 days.
- (e) The Applicant acknowledges that they are personally responsible for the Datasets to which they have been granted access, until the Applicant has deleted or destroyed the Datasets in accordance with the requirements at clause 10 and notified the Commonwealth of the same.

8 Restrictions to Use

The Applicant must not:

- (a) perform any matching, sharing, merging or linkage of any of the Datasets without the prior written consent of the Commonwealth;
- (b) attempt to identify any persons in the Unit Record Data;
- (c) publish any information that may lead to possible identification of persons in the Unit Record Data and Dataset;
- (d) without the prior written consent of the Commonwealth (which shall not be unreasonably withheld) disclose the Datasets in part or in full to any person, other than:
 - (i) an Authorised User;
 - (ii) any staff of the Authorised User's university or organisation who require access to the Dataset to facilitate the university or organisation's compliance with any applicable statutory record keeping requirements which specifically relate to electronic records management or information technology teams;
- (e) publish, in any form, any part of the Unit Record Data other than as specified in this Deed Poll.

9 Permitted Uses

- (a) The Applicant must:
 - (i) only use the Datasets for their individual research purposes;
 - (ii) modify, copy or reproduce the Dataset for their individual research purposes, but may not modify, copy or reproduce the Dataset for any other reason; and
 - (iii) publish Research Material to the extent that it does not disclose Confidential Information or Unit Record Data.
- (b) The Applicant may publish data from the Dataset in their Research Material in:
 - (i) aggregated or derived form; and
 - (ii) free text responses contained in the Dataset accompanied by contextual information (e.g., sex or age of respondent) only to the extent that the contextual information does not reasonably identify any individual.

10 Destruction of Data

- (a) If the Applicant no longer wishes to retain access to the data, without limiting the Applicant's obligations at law, the Applicant must deliver to the ANU or the Commonwealth, or destroy or erase, as required by the ANU or the Commonwealth, all documents and any other material (including electronically stored or otherwise) in its possession, power or control which contain or relate to the Confidential Information (which without limitation includes all Datasets, Unit Record Data and/or Data Documentation that the Applicant has been provided access to) other than as necessary to be retained for internal record keeping or file back-up purposes, in which case the obligations under this Deed Poll shall continue to apply to such information.
- (b) The return or destruction of any Confidential Information does not release the Applicant from its obligations under this Deed Poll.

11 Commonwealth Legislation

- (a) The Applicant acknowledges and agrees to comply, in connection with the activities contemplated under this Deed Poll, with the law of the Commonwealth in force, including, but not limited to:
 - (i) the Privacy Act; and
 - (ii) the Criminal Code Act.
- (b) The Applicant acknowledges that:
 - (i) there are various computer offences prescribed under the Criminal Code Act, which may attract a substantial penalty, including imprisonment;
 - (ii) the giving of false and misleading information is a serious offence under the Criminal Code Act; and
 - (iii) they are aware of the relevant provisions of the Criminal Code Act relating to the unauthorised access, use or disclosure of information, and covenants and agrees not to breach these provisions.

12 Intellectual Property and Acknowledgement

- (a) The Applicant acknowledges that the Commonwealth owns all Intellectual Property rights in the Datasets.
- (b) Except where specified under a separate agreement, the Commonwealth does not own the Intellectual Property rights in any Research Material created by the Applicant.
- (c) The Applicant agrees that any of the Research Material produced by the Applicant and made publicly available will include acknowledgement of the Commonwealth Material, where appropriate.

13 Privacy and Protected Information

- (a) In relation to potential Personal Information made available or inadvertently provided to the Applicant at any time by the ANU or the Commonwealth or any other person in connection with the activities contemplated under this Deed Poll, the Applicant agrees to:
 - (i) comply with those provisions of the Privacy Act as if they were an agency bound by the Privacy Act concerning the security, use

and disclosure of information to which the Commonwealth is subject in respect of that information and which affects the performance of this Deed Poll;

- (ii) co-operate with any reasonable demands or enquiries made by the Privacy Commissioner;
 - (iii) take all reasonable measures to ensure that such information is protected against loss and unauthorised access, use, modification, disclosure or other misuse;
 - (iv) not transfer such information outside Australia, or allow parties outside of Australia to have access to it, without the prior written approval of the Commonwealth; and
 - (v) to promptly notify the Commonwealth of, and co-operate with the Commonwealth in the resolution of, any privacy incident or complaint alleging an interference with privacy.
- (b) If the Applicant becomes aware that there are reasonable grounds to suspect there may have been an Eligible Data Breach in relation to any Personal Information held by them as a result of this Deed Poll, the Applicant agrees to notify the Commonwealth in writing as soon as possible, which must be no later than within 3 days.
- (c) Where the Applicant is aware that there are reasonable grounds to believe there has been, or where the Commonwealth notifies the ANU that there has been, an Eligible Data Breach in relation to any Personal Information held by the Applicant as a result of this Deed Poll, the Applicant will:
- (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
 - (ii) unless otherwise directed by the Commonwealth, take all other action necessary to comply with the requirements of the Privacy Act; and
 - (iii) take any other action as reasonably directed by the Commonwealth.
- (d) The Applicant further agrees to not use Personal Information or engage in an act or practice that would breach an Australian Privacy Principle (**APP**) or a registered APP Code (**APPC**), where that section, APP, or APPC is applicable to the Applicant.
- (e) The Applicant's obligations in this clause are in addition to, and do not restrict, any obligations they may have under the Privacy Act.

14 Termination

- (a) The Commonwealth may, at any time by the notice requirements at clause 15 and at its sole discretion, terminate this Deed Poll and remove the Applicant's access to the Dataset.
- (b) The Commonwealth may immediately terminate this Deed Poll by giving written notice to the Applicant if it suspects or is satisfied that the Applicant has breached any of their obligations under this Deed Poll.
- (c) Subject to any applicable statutory record keeping requirements relating to the Applicant's university, the Applicant must, on receipt of a notice of

termination destroy and delete all copies of the Dataset and notify the Commonwealth of the same. For the avoidance of doubt or confusion, the obligation to delete or destroy copies of the Dataset in this clause does not extend to deletion or destruction of any Research Material.

- (d) The Applicant may terminate this Deed Poll by providing 30 days written notice to the Commonwealth. Upon provision of such notice, the Applicant must destroy or delete all copies of the Dataset accessed or obtained by the Applicant, subject to any applicable statutory record keeping requirements relating to the Applicant's university, and notify the Commonwealth of the same.

15 Notices

- (a) Any notice, request or other communication to be given or served under this Deed Poll must be in writing and:
 - (i) delivered by e-mail as follows and in accordance with:
 - A. ANU: ada@ada.edu.au
 - B. adsdatareporting@dss.gov.au
 - C. Applicant: any valid and ADA-verified email address, including any alternative email address and physical address provided by the Applicant in the execution block under their executed User Confidentiality Deed Poll;
 - (ii) delivered personally - on delivery; or
 - (iii) sent by prepaid post within Australia - 5 Business Days after it was posted; and
- (b) Any electronic notice, request or other communication will be treated as having been given at the time that would be the time of the receipt under the *Electronic Transactions Act 1999* (Cth).

16 No exclusion of law or equity

This Deed Poll must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

17 Remedies cumulative

- (a) The rights and remedies provided under this Deed Poll are cumulative and are not exclusive of any rights or remedies provided by law or any other such right or remedy.
- (b) Subject to this Deed Poll, the rights and obligations of the Applicant and the Commonwealth pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation of the Applicant or the Commonwealth at law or under any other Deed Poll or agreement to which either or both of them are parties.

18 Injunctive relief

The Applicant acknowledges that damages may not be a sufficient remedy for the Commonwealth or relevant ADS respondent for any breach of this Deed Poll and that the Commonwealth and each relevant respondent is entitled to injunctive relief (as

appropriate) as a remedy for any breach or threatened breach by the Applicant, in addition to any other remedies available at law or in equity.

19 Waiver or election

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed Poll by a party does not preclude, or operate as a waiver of, or election preventing, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed Poll.
- (b) A waiver or consent given by a party under this Deed Poll is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of or election not to act on a breach of a term of this Deed Poll operates as a waiver of or election to not act on another breach of that term or of a breach of any other term of this Deed Poll.

20 Severability

If any provision of this Deed Poll is void, voidable, unenforceable or illegal, then that provision is to be severed from this Deed Poll and the remainder of this Deed Poll will continue with full force and effect.

21 Applicable law

This Deed Poll is governed by and is to be construed in accordance with the laws of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

22 Entire agreement

This Deed Poll constitutes the entire agreement between the Applicant and the Commonwealth in connection with its subject matter and supersedes all previous deed polls, agreements, undertakings or understandings between the parties in connection with its subject matter.

THIS DEED POLL is made in favour of the Commonwealth of Australia as represented by the Department of Social Services, ABN 36 342 015 855.

EXECUTED as a Deed Poll

BY

.....
(the **Applicant**)

Insert title, given name and family name

of

.....
Insert university or organisation and physical mailing address for Notices

.....
Insert ADA username if applicable

.....
Insert email address for Notices

.....
Signature of Applicant

on date:/...../20.....

Day / Month / Year

In the presence of:

.....
Name of witness (print)

.....
Signature of witness

on date:/...../20.....

Day / Month / Year