



To correctly execute this Deed:

1. Complete either electronically or in writing
2. Print the entire Deed
3. Sign and date the Deed in **blue or black pen** (Both **Confidant and witness**)
4. Scan the entire signed Deed (10 pages) to create an electronic copy

Email the electronic copy to ada@anu.edu.au and nclresearch@dss.gov.au

Or **post** the hard copy to
Research and Methods
National Centre for Longitudinal Data
PO Box 9820
Canberra ACT 2601

CONFIDENTIALITY DEED POLL

THIS DEED is made in favour of the **Commonwealth of Australia** as represented by the Department of Social Services (**The Commonwealth**)

BY

_____ (the **Confidant**)
Insert title, given name and family name

Insert institutional email address for Notices (15.1)

Australian Data Archive (**ADA**) username _____
Insert ADA username if applicable

Background

- A) The Commonwealth, through the Department of Social Services (**the Commonwealth**), undertakes research and policy development to support the lifetime wellbeing of individuals, families and communities. To support this objective, the Commonwealth funds longitudinal studies that collect information about the lives of Australians and the social, economic, housing and family issues that impact them. The information collected for these studies is collated and put into Datasets.
- B) The Commonwealth offers to provide the Datasets to the Confidant on the terms and conditions set out in this Deed.
- C) The Confidant may, in connection with the Datasets, become aware of Confidential Information that:
 - a) belongs to, or is confidential to, the Commonwealth; or
 - b) is subject to Commonwealth secrecy or privacy laws.
- D) Improper access, use or disclosure of that Confidential Information may:
 - a) cause harm to the Commonwealth or individuals;
 - b) prejudice the Commonwealth's ability to perform its contractual, statutory and other obligations; or
 - c) constitute a criminal offence.

Operative Provisions

1. ACKNOWLEDGEMENT

- 1.1 The Confidant acknowledges the truth and accuracy of the recitals of this Deed in every particular.

2. DEFINITIONS

2.1 In this Deed:

ADA means the Australian Data Archive.

Authorised User means a person who has signed a Deed of Confidentiality substantially in the same form as this Deed and has been given permission by the Commonwealth to access and use the Datasets.

Business Day means a weekday other than a public holiday in the Australian Capital Territory.

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

Confidant means the signatory of this Deed.

Confidential Information means information that:

- a) is by its nature confidential;
- b) is designated in writing by the Commonwealth as confidential;
- c) is Personal Information under the Privacy Act; or
- d) is contained in the Datasets.

Datasets means any or all data from:

- a) General or Restricted Release of the household and person level Unit Record Data from The Household, Income and Labour Dynamics in Australia (HILDA) survey, also known as Living in Australia;
- b) The household and person level Unit Record Data from the HILDA Cross-National Equivalent File (CNEF);
- c) General or Restricted Release of the household and person level Unit Record Data from The Longitudinal Study of Australian Children (LSAC), also known as Growing up in Australia;
- d) General Release of the household and person level Unit Record Data from The Longitudinal Study of Indigenous Children (LSIC), also known as Footprints in Time;
- e) General Release of the household and person level Unit Record Data from The Longitudinal Study of Humanitarian Migrants, also known as Building a New Life in Australia (BNLA);
- f) Any linked datasets associated with any or all of the above.

Deed means this Confidentiality Deed Poll.

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.

Electronic Communication has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

Information System has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

General Release means a release of data from which Personal Information has been removed and other information has been modified by various methods such as top coding and the application of classification codes as set out in the Guidelines.

Guidelines means the National Centre for Longitudinal Data Access and Use Guidelines as amended by the Commonwealth from time to time, published on the Dataverse website available at <https://dataverse.ada.edu.au/dataverse/nclid>

Intellectual Property means copyright (and all associated rights, including moral rights), and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

NCLD means the National Centre for Longitudinal Data in the Australian Government Department of Social Services.

Personal Information has the meaning given in section 6 of the Privacy Act.

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

Privacy Commissioner means the person appointed under section 14 of the *Australian Information Commissioner Act 2010* (Cth) as the Privacy Commissioner.

Registered Australian Privacy Principle code (APP code or APPC) has the meaning given in section 6 of the Privacy Act.

Release means a dataset that differs from another dataset from the same survey in that it contains additional information based on new responses from survey respondents. For the purposes of this Deed, a Release does not include a new version of the same release of the data in which changes have been made to the previously released information from respondents.

Research Material means any final research findings based on the analysis of the Dataset created by the Confidant.

Restricted Release means a release of data from which the names and addresses of respondents have been removed but includes other information at a more granular level than the General Release and access and use of which is governed by stricter requirements.

Term means the term of this Deed, which is from the date of execution of this Deed until:

- a) the Confidant deletes or destroys all copies of the Datasets it holds in accordance with clause 7; or
- b) the Deed is terminated in accordance with clause 14.

Unit Record Data means records about individual respondents from the Datasets, as opposed to aggregated data.

3. INTERPRETATION

3.1 In this Deed:

- a) headings are for convenience only;
and unless the context indicates a contrary intention:
- b) a reference to a "person" includes a reference to a partnership or incorporated body as well as an individual;
- c) all references to clauses are clauses of this Deed;
- d) where any word or phrase has been given a defined meaning, any other part of speech or other grammatical form about that word or phrase has a corresponding meaning;
- e) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that amended statute or other legislation;
- f) each provision of this Deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision, that is, the contra proferentem rule does not apply to this Deed.

4. COMMENCEMENT

4.1 This Deed will be taken to have commenced on the date of the execution of this Deed or the date received by the Commonwealth whichever is the latter, and will continue in effect for the Term.

5. DATA QUALITY

5.1 The Datasets are provided to the Confidant on an as is basis and the Commonwealth and the ADA is not responsible for their accuracy, completeness, quality or fitness for purpose.

6. UNDERTAKING OF NON-DISCLOSURE

6.1 The Confidant must keep Confidential Information secure, secret and confidential at all times.

- 6.2 The Confidant must not transfer a Restricted Release of the Datasets or any part of a Restricted Release of the Datasets outside Australia or allow persons outside Australia to have access to a Restricted Release of the Datasets without the prior written consent of the Commonwealth.
- 6.3 The Commonwealth may impose any conditions it considers appropriate when giving consent under this clause 6 and the Confidant must comply with these conditions.
- 6.4 The Confidant will not be taken to have breached their obligations under this clause 6 to the extent that the Confidential Information is:
- a) authorised or required by law or by this Deed to be disclosed; or
 - b) in the public domain otherwise than due to a breach of this Deed.
- 6.5 Where the Confidant intends to disclose Confidential Information to another person pursuant to clause 6.4(a) the Confidant must:
- a) ensure the extent and manner of the disclosure is strictly limited to what is authorised or required by law; and
 - b) the Confidant has:
 - i. given the Commonwealth sufficient notice to enable the Department to seek a protective order or other relief from disclosure; and
 - ii. provided all assistance and co-operation which the Commonwealth reasonably considers necessary for that purpose.
- 6.6 The Confidant must:
- a) do all reasonable things necessary, and do all things that may be required by the Commonwealth to keep the Datasets and all other things recording, containing, setting out or referring to any Datasets, under effective control of the Confidant;
 - b) immediately notify the Commonwealth if the Confidant becomes aware of any unauthorised access to, or use or disclosure of, the Datasets;
 - c) take all reasonable steps to ensure that the Datasets, are protected at all times from any unauthorised use or access.

7. SECURITY AND STORAGE

- 7.1 The Confidant must store the Datasets in a manner specified in the Guidelines.
- 7.2 The Confidant must comply with all requirements set out in the Guidelines regarding storage of copies of the Datasets on a cloud server.
- 7.3 The Confidant must keep all removable drives and Documents containing Unit Record Data in a locked drawer or cabinet to which only the Confidant has access.
- 7.4 The Confidant must destroy or delete all copies of any Datasets to which they have been granted access that they no longer require for their individual research purposes.
- 7.5 The Confidant acknowledges that they are personally responsible for the Datasets to which they have been granted access, until the Confidant has deleted or destroyed the Datasets in accordance with the requirements set out in the Guidelines and notified the Commonwealth of the same.

8. PERMITTED USE AND RESTRICTIONS

8.1 The Confidant 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 individuals in the Unit Record Data;
- c) publish any information that may lead to possible identification of respondents; or
- d) without the prior written consent of the Commonwealth, disclose the Datasets in part or in full to any person, other than an Authorised User of the same Dataset to which the Confidant has been granted access

8.2 The Confidant may publish 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.

8.3 The Confidant may not publish in any form, any part of the Unit Record Data other than as specified in clause 8.2.

8.4 The Confidant must only use the Datasets for their individual research purposes.

8.5 The Confidant may modify or copy/reproduce the Dataset for their individual research purposes, but may not modify or copy/reproduce the Dataset for any other reason.

8.6 The Confidant must only publish Research Material that disaggregates to a level of geography as set out in the Guidelines regardless of the level of geography available in the Dataset.

8.7 Subject to the terms of the Deed, the Confidant may publish data from the Datasets in their Research Material in aggregated or derived form.

9. CRIMES ACT

9.1 The Confidant acknowledges that:

- a) there are various computer offences prescribed under the *Criminal Code Act 1995* (Cth), which may attract a substantial penalty, including imprisonment;
- b) the giving of false and misleading information is a serious offence under the *Criminal Code Act 1995* (Cth);
- c) they are aware of the relevant provisions of the *Crimes Act 1914* relating to the unauthorised access, use or disclosure of information, and covenants and agrees not to breach these provisions; and
- d) the publication or communication by the Confidant of any fact or Document which has come to their knowledge or into their possession or custody by virtue of this Deed (other than to a person to whom the Confidant is authorised to publish or disclose the fact or Document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two (2) years imprisonment.

10. COMMONWEALTH LEGISLATION

10.1 Each party acknowledges and agrees to comply, in connection with the activities contemplated under this Deed, with the law of the Commonwealth in force, including, but not limited to:

- (a) the *Privacy Act 1988*;
- (b) the *Criminal Code Act 1995*.

11. INTELLECTUAL PROPERTY AND ACKNOWLEDGEMENT

11.1 The Confidant acknowledges that the Commonwealth owns all Intellectual Property rights in the Datasets.

11.2 Except where specified under a separate agreement, the Commonwealth does not own the Intellectual Property rights in any Research Material created by the Confidant using the Datasets to the extent the Research Material does not include the Unit Record Data.

11.3 The Confidant agrees that any of the Research Material produced by the Confidant and made publicly available will include the relevant acknowledgement set out in the Guidelines, as amended by the Commonwealth from time to time.

12. PRIVACY

12.1 The Confidant agrees with respect to all Confidential Information made available or provided by the Commonwealth or any other person in connection with the activities contemplated under the Deed at any time which comprises Personal Information:

- (a) to 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;
- (b) to co-operate with any reasonable demands or enquiries made by the Privacy Commissioner;
- (c) 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; and
- (d) to notify the Commonwealth of, and co-operate with the Commonwealth in the resolution of, any complaint alleging an interference with privacy.

12.2 The Confidant further agrees to not use Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an Australian Privacy Principle ("APP") (particularly APPs 7 to 10) or a registered APP Code ("APPC"), where that section, APP, or APPC is applicable to the Confidant.

12.3 The Confidant's obligations in this clause are in addition to, and do not restrict, any obligations they may have under:

- (a) the Privacy Act; or
- (b) any:
 - i. privacy codes; or

- ii. privacy principles contained in, authorised by or registered under any law,

including any such privacy codes or principles that would apply to the Confidant but for the application of the other provisions of this clause.

13. PRODUCTION OF DOCUMENTS

- 13.1 For the purposes of this clause, "documents" means any form of storage of information or record of information including, without limitation, storage by electronic means.
- 13.2 The Confidant must immediately comply with a demand under this clause.
- 13.3 The Commonwealth may demand (without needing to demand in writing) that the Confidant deliver up to the Commonwealth all documents in the possession or control of the Confidant containing Confidential Information.
- 13.4 If the Commonwealth makes a demand under this clause, and the Confidant has placed Confidential Information, or is aware that documents containing the Confidential Information are, beyond their possession or control, then the Confidant must provide full particulars of the location of the documents containing the Confidential Information, and the identity of the person who has custody or control of the documents.

14. TERMINATION

- 14.1 The Commonwealth may, at any time by notice and at its sole discretion, terminate this Deed and remove the Confidant's access to the Datasets.
- 14.2 The Commonwealth may immediately terminate this Deed by giving written notice to the Confidant if the Department suspects or is satisfied that the Confidant has breached any of their obligations under this Deed.
- 14.3 The Confidant must, on receipt of a notice of termination destroy and delete all copies of the Dataset and notify the Commonwealth of the same.

15. NOTICES

- 15.1 Any notice, request or other communication to be given or served under this Deed must be in writing and delivered by e-mail as follows:

Commonwealth

ada@anu.edu.au and nclresearch@dss.gov.au

Confidant



Confidant to insert organisational or institutional email address

- 15.2 Any notice, request or other communication will be treated as having been given if:
 - (a) delivered personally - on delivery;
 - (b) sent by prepaid post within Australia - 5 Business Days after it was posted; and
 - (c) sent by Electronic Communication - at the time that would be the time of the receipt under the *Electronic Transactions Act 1999* (Cth).

16. GENERAL

No exclusion of law or equity

- 16.1 This Deed 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.

Remedies cumulative

- 16.2 The rights and remedies provided under this Deed are cumulative and are not exclusive of any rights or remedies provided by law or any other such right or remedy.
- 16.3 Subject to the other covenants of this Deed, the rights and obligations of the Confidant and the Commonwealth pursuant to this Deed are in addition to and not in derogation of any other right or obligation of the Confidant or the Commonwealth at law or under any other deed or agreement to which either or both of them are parties.

Waiver

- 16.4 A waiver by the Commonwealth of any breach of a condition or provision of this Deed will not be deemed to be a waiver of any continuing or subsequent breach of that provision, or a breach of any other provision. The failure of the Commonwealth to enforce at any time any of the provisions of this Deed shall in no way be interpreted as a waiver of such provision.

Severability

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

Applicable law

- 16.6 This Deed 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.

Entire agreement

- 16.7 This Deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous deeds, agreements, undertakings or understandings between the parties in connection with its subject matter.

Executed as a deed poll

Signed, sealed and delivered for and on behalf of

Name of Confidant

Signature of Confidant

of

Organisation and address of Confidant

on

Date: ____/____/20____
Date/ Month / Year

In the presence of:

Name of witness (print)

Signature of witness

on

Date: ____/____/20____
Date/ Month / Year