

COMMONWEALTH OF AUSTRALIA

*Copyright Act 1968*

IN THE COPYRIGHT TRIBUNAL

FILE NO. CT 2 of 2021

**COPYRIGHT AGENCY LIMITED (ABN 53 001 228 799)**

Applicant

**DEPARTMENT OF EDUCATION (QUEENSLAND) AND THE BODIES LISTED IN  
SCHEDULE A**

Respondents

**ORDER**

**TRIBUNAL:** O'BRYAN J (Deputy President)

**DATE:** 16 MARCH 2023

**WHERE MADE:** MELBOURNE

**THE TRIBUNAL ORDERS THAT:**

1. By 30 March 2023, the Respondents provide to the Applicant a summary of the design of each of the automated data capture system and digital teaching environment solutions they propose to pilot (**Respondents' Solutions**).
2. Access to the summaries of the Respondents' Solution be restricted to the Applicant, its external legal representatives and experts engaged on its behalf upon receipt of a signed confidentiality undertaking in the form annexed to these orders and marked 'B'.
3. By 4 May 2023, the Applicant make any request to the Respondents for additional information about the Respondents' Solutions.
4. By 18 May 2023, the Respondents provide a response to any request made pursuant to Order 3 above.
5. By 3 July 2023, the Applicant provide to the Respondents a summary of any modifications to the Respondents' Solutions that they propose the Respondents pilot at the same time as the Respondents' Solutions (as designed) are piloted.
6. By 3 July 2023, the Applicant provide to the Respondents a summary of the design of any alternative solution to the Respondents' Solutions it proposes the Respondents pilot (**Applicant's Solution**).



7. Access to the summary of the Applicant's Solution be restricted to the Respondents, their legal representatives and experts engaged on their behalves upon receipt of a signed confidentiality undertaking in the form annexed to these orders and marked 'B'.
8. Between 10 to 24 July 2023, the parties confer regarding the pilot of the Respondents' Solutions, any modified version of the Respondents' Solutions by the Respondents, and proposed pilot of the Applicant's Solution, including to agree the information that will be shared with the Applicant following any pilot and the terms on which it will be shared, including the terms of any confidentiality regime.
9. The matter be listed for a further case management hearing at 9.30am on 11 August 2023.

Date stamped: 16 March 2023



'B'

## CONFIDENTIALITY UNDERTAKING

I, **[insert name]** of **[insert address]**, in the State of New South Wales, undertake to the Respondents that, in relation to the information contained in the summaries provided in response to order 1 of the orders made by the Tribunal on 16 March 2023 and marked 'Confidential' (the **Confidential Information**):

1. I will keep the Confidential Information and any documents which record the Confidential Information (**Documents**) confidential at all times.
2. I will not use the Confidential Information or Documents for any purpose other than the sole purpose of the conduct of this proceeding.
3. Subject to paragraphs 3 and 5 below, I will not disclose the Confidential Information or Documents either directly or indirectly to any person.
4. The Confidential Information and Documents may be disclosed by me only to the following persons provided in each case such person has signed a confidentiality undertaking in substantially the same terms as this undertaking and that undertaking has been provided to the solicitors for the Respondents:
  - (a) any employee of a party to the proceedings;
  - (b) external Counsel retained by any party to this proceedings;
  - (c) any partner or employee of any firm of solicitors (including any paralegal or administrative assistant) retained by any party to this proceedings;
  - (d) any independent expert retained by a party to this proceedings;
  - (e) any person employed by the said independent expert's firm; or
  - (f) any other person to whom the Respondents have consented in writing to the disclosure of the Confidential Information and Documents.
5. This undertaking shall not apply to any use or disclosure by me to a third party of any of the Confidential Information or Documents:
  - (a) being an officer or judge of the Court;
  - (b) as otherwise required by law; or
  - (c) as ordered by the Court.
6. To the extent that I have access to the Confidential Information and Documents, I will:
  - (a) use, handle, keep and store the Confidential Information and Documents in such a manner as will preserve their confidentiality;
  - (b) establish and maintain reasonable security measures to safeguard the Confidential Information and Documents from unauthorised access or use; and



- (c) notify the solicitors for the Respondents (or cause them to be notified) of any suspected or actual unauthorised use, copying or disclosure of Confidential Information or Documents of which I become aware.
7. Following the completion of this proceeding, I will promptly:
- (a) return, or cause to be returned, the Documents or any part of them and any copies of the Documents or any part of them in my possession, custody or power, which are in hard copy, to the solicitors for the Respondents;
  - (b) permanently delete the Documents or any part of them and any copies of the Documents or any part of them in my possession, custody or power, which are in electronic form; and
  - (c) continue to keep confidential and secure, and not disclose to any person the Documents or any part of them and any notes, memoranda, summaries, reports, analyses, records and opinions made, or caused to be made, by me in relation to the Documents, any part of them or any information in them,
- except that I may maintain one copy of the Confidential Information (or the note made on inspection of the Confidential Material), confidentially within Banki Haddock Fiora's internal records.
8. The confidentiality obligations in this undertaking shall not apply if, and to the extent that, the Confidential Information or Documents are in, or enter into, the public domain in a way that waives the confidential status of that part of the Confidential Information or Documents other than:
- (a) as a result of the breach of this undertaking or any other undertaking contemplated by this undertaking; or
  - (b) in circumstances where I am aware that the disclosure of the relevant part of the Confidential Information or Documents was in breach of any obligation of confidentiality owed by any person to the Respondents.
9. I will:
- (a) notify the solicitors for the Respondents (or cause them to be notified) of any breach of this undertaking of which I become aware; and
  - (b) provide all reasonable assistance requested by the Respondents and/or its solicitors in relation to any action that the Respondents may take against any person for unauthorised use or disclosure of Confidential Information or Documents provided to me pursuant to this undertaking.
10. I acknowledge that my obligations in this undertaking will continue after the return of any Documents to the solicitors for the Respondents.
11. I may only vary the terms of this undertaking with the written consent of the Respondents (including by its solicitors) or by order of the Court.
12. I irrevocably submit to the jurisdiction of the Court for the purposes of enforcing the terms of this undertaking, which are governed by the laws of the State of New South Wales.



\_\_\_\_\_ 2023  
Dated

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Representative of/position



## SCHEDULE A

Department of Education (New South Wales)  
ACT Education Directorate  
Department of Education and Training (Victoria)  
Department of Education Tasmania  
Department for Education (South Australia)  
Northern Territory of Australia (Department of Education)  
Department of Education (Western Australia)  
Catholic Schools NSW Limited  
Catholic Education Commission of Victoria Limited  
Trustees for Catholic Education Office Archdiocese of Canberra & Goulburn  
Catholic Education Centre (Catholic Education Office Tasmania)  
Catholic Education Office (South Australia)  
Catholic Education Western Australia Limited  
Catholic Education Office (Northern Territory)  
The Corporation of the Roman Catholic Bishops of Queensland (Queensland Catholic Education Commission)  
The Association of Independent Schools of New South Wales Limited  
Independent Schools Queensland Limited  
Association of Independent Schools of the A.C.T.  
Independent Schools Victoria Incorporated  
Independent Schools Tasmania Incorporated  
Association of Independent Schools of South Australia  
Association of Independent Schools of the Northern Territory  
Association of Independent Schools of WA Incorporated  
Seventh-Day Adventist Church (Australian Union Conference) Limited (Adventist Schools Australia)  
Christian Schools Australia Limited

