



**[name of Committee]**  
**Deed of Confidentiality**

THIS DEED POLL is made on the \_\_\_\_\_ day of \_\_\_\_\_ ,

by

\_\_\_\_\_  
*[insert name]*

of \_\_\_\_\_ (the **Confidant**),

*[insert address]*

in favour of and legally enforceable by the **COMMONWEALTH OF AUSTRALIA**  
(**the Commonwealth**) represented by and acting through the Department of Social Services  
(**the Department**), GPO Box 9820 Canberra ACT 2601, ABN 36 342 015 855.

**Recitals**

This Deed Poll is made in the following context:

- A. The **[name of Committee]** (**the Committee**) has been established by the Department for the purpose of:
  - i. *[Insert purpose, function and role of Committee as set out in the Terms of Reference for the Committee]*
- B. The Confidant is a member of the Committee.
- C. The Department holds Confidential Information, which may be provided to members of the Committee including the Confidant. The Committee may also generate information that is confidential to the Commonwealth.
- D. The Department requires the Confidant to preserve and maintain the confidentiality of information to which the Confidant will have access by virtue of his/her/their membership of the Committee.
- E. The Department requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Confidential Information is kept confidential.



## 1. INTERPRETATION

### 1.1 Definitions

#### Operative provisions

In this Deed Poll, unless the context otherwise indicates:

**Activity** includes providing independent, practical, expert, research and professional advice on issues, as well as managing and supporting associated activities [*Insert any further activities the Committee may be expected to undertake as noted in the 'Roles' section of the terms of reference*].

**Commonwealth** includes any department or agency of the Commonwealth, which is from time to time responsible for administering this Deed Poll.

**Confidential Information** means whether or not in material form, any information that is disclosed to the Confidant by the Department or is generated by the Committee or a member of the Committee in that capacity that:

- a. is marked as confidential;
- b. is reasonably designated by the Department or the Committee as confidential;
- c. contains Personal Information; or
- d. the Confidant knows, or ought to know, is confidential.

Confidential Information includes information comprised in or relating to any Intellectual Property Rights of the department (including intellectual property rights in material generated by the Committee).

**Copy** means any Material in which Confidential Information is embodied.

**Department of Social Services Contact Officer** means the person specified (by name or position) in Schedule 1, or any substitute notified by the Department from time to time.

**Intellectual Property Rights** includes any:

- a. copyright;
- b. design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
- c. trade business, company or domain name;
- d. know-how, inventions, process or Confidential Information whether in writing or recorded in any form;
- e. any other proprietary or personal rights, or license, arising from intellectual activity in the business, industrial, scientific or artistic fields.

**Material** includes documents, equipment, software (including source code and object code), goods, information and data stored by any means, including all copies and extracts of the same.

**Personal Information** has the same meaning as it has in the *Privacy Act 1988* (Cth).

**Permitted Person** means any member of the Committee or of the Department's staff, employee, servant or agent.

**Security Incident** means a security breach, violation, contact or approach from those seeking unauthorised access to Confidential Information.

### 1.2 Interpretation

1.2.1 In this Deed Poll, unless the contrary intention appears:

- a. words in the singular include the plural and vice versa;



- b. clause headings or words in bold format are for convenient reference only and have no effect in limiting or extending the language of the provisions;
- c. unless otherwise stated, a reference to legislation is to legislation of the Commonwealth, and includes any statutory modification, substitution or re-enactment of that legislation or legislative provision; and
- d. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

## **2. UNDERTAKING OF NON-DISCLOSURE**

- 2.1 The Confidant must use the Confidential Information only as is reasonably necessary for the purpose of the Activity and participation in the Committee generally, strictly in accordance with this Deed.
- 2.2 The Confidant must not, without the prior written consent of the Department, disclose any Confidential Information to any person, other than to a Permitted Person in relation to the Activity, unless required by law.
- 2.3 The Confidant must not transfer any of the Confidential Information outside Australia or allow persons outside Australia to have access to any Material containing Confidential Information without the prior written consent of the Department.
- 2.4 The Department may impose any conditions it considers appropriate when giving consent under this clause 2 and the Confidant must comply with these conditions.
- 2.5 The Commonwealth may grant consent subject to conditions. In particular, the Commonwealth may require that the Confidant procure the execution of a deed poll substantially in the terms of this deed by the person to whom the Confidant proposes to disclose the Confidential Information.
- 2.6 Where the Confidant is required by law to disclose the Confidential Information, the Confidant must:
  - a. notify the Department's Contact Officer of their intention to disclose the Confidential Information prior to its disclosure, or as soon as possible thereafter if notification could not occur prior to disclosure for reasons beyond the Confidant's control;
  - b. provide full details of the relevant legal requirement and information to be disclosed;
  - c. notify the receiving person that the information is confidential; and
  - d. take any reasonable action requested by, and reasonably cooperate with any action taken by, the Department to challenge, prevent or limit such disclosure.
- 2.7 The Confidant agrees to notify the Department immediately, and provide full details, if the Confidant is aware or reasonably suspects that:
  - a. Confidential Information has, or may have been, accessed, used, modified or disclosed in any way other than as permitted under this Deed Poll; or
  - b. there has been any breach of this Deed Poll.

## **3. PRIVACY ACT OBLIGATIONS**

To the extent that the Confidential Information includes Personal Information, the Confidant must abide by the provisions of the *Privacy Act 1988* (Cth), including the Australian Privacy Principles set out in that Act, whether or not the Confidant is legally bound to comply with that Act, and as if the definition of Personal Information in that Act includes Confidential Information. Refer to the Australian Privacy Principles on the Australian Government Office of the Australian Information Commissioner website at [www.oaic.gov.au/privacy/australian-privacy-principles/read-the-australian-privacy-principles](http://www.oaic.gov.au/privacy/australian-privacy-principles/read-the-australian-privacy-principles). The Confidant must not do an act, or engage in a practice, that would breach an Australian Privacy Principle if done or engaged in by the Department.



#### **4. RESTRICTIONS ON USE**

The Confidant must use the Confidential Information only for the purpose of participation in the Committee or in relation to the Activity.

#### **5. POWERS OF THE COMMONWEALTH**

##### **Production of Documents**

- 5.1 The Commonwealth may demand the delivery to the Commonwealth of all documents in the possession or control of the Confidant containing the Confidential Information.
- 5.2 The Confidant must immediately comply with a demand under this clause 5.
- 5.3 If the Commonwealth makes a demand under this clause 5, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie and an authority to obtain the documents.
- 5.4 In this clause 5, “documents” includes any form of storage of Information.

##### **Legal Proceedings**

- 5.5 The Confidant acknowledges that the Commonwealth may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this deed poll, including proceedings for an injunction to restrain such a breach.

#### **6. SECURITY**

- 6.1 The Confidant must adhere to the Department’s reasonable requirements in relation to the security of Confidential Information as advised to the Confidant from time to time.
- 6.2 The Confidant must notify the Department immediately if the Confidant becomes aware that a Security Incident has occurred.

#### **7. COPIES**

- 7.1 Property in each Copy vests or will vest in the Commonwealth.
- 7.2 The Confidant must take all necessary steps to secure all Copies against loss and unauthorised access, use, modification or disclosure, and must adhere to the Department’s reasonable requirements in relation to the security of Copies.
- 7.3 The Confidant must not record or copy any Confidential Information, or retain Copies of any Material received in connection with the Activity, without the Department’s prior written consent.
- 7.4 The Department may impose any conditions it considers appropriate when giving consent under clause 7.3, and the Confidant must comply with these conditions.
- 7.5 The Confidant must take reasonable precautions to prevent unauthorised access to, recording of or copying of the Confidential Information in the Confidant’s Recipient’s control.



**8. DEED IN FAVOUR OF**

This Deed Poll is given in favour of the Commonwealth of Australia represented by and acting through the Department.

**9. PERIOD OF CONFIDENTIALITY**

Unless agreed otherwise by the Department in writing, all Confidential Information shall remain subject to the requirements of this Deed until it becomes available from a legal public source without restriction.

**10. AMENDMENT**

This Deed may only be amended or replaced in writing and executed by both parties.

**11. WAIVER**

11.1 No waiver by the Commonwealth of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied.

**12. GOVERNING LAW**

This Deed Poll is to be construed in accordance with and any matter related to it is to be governed by the law of the Australian Capital Territory, and the parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and courts of appeal from them.

**Executed as a Deed Poll.**

SIGNED, SEALED AND DELIVERED by:

\_\_\_\_\_  
*Insert name of Confidant*

\_\_\_\_\_  
*Signature of Confidant*

\_\_\_\_\_  
*Insert name of Witness*

\_\_\_\_\_  
*Signature of Witness*

on \_\_\_\_\_ day of \_\_\_\_\_  
*month, year*



## Schedule 1 to Deed of Confidentiality

### Department Contact Officer

The Department Contact Officer is the person holding or occupying the position of the *[insert position]*, Department of Social Services. The Confidant can contact the Department Contact Officer *[name of Department Contact Officer]* — by:

- **telephone** on *[Department Contact Officer phone number]* or through the Department of Social Services general contact telephone number on 1300 653 227
- **the National Relay Service** to ensure the department's contact numbers are accessible for people who are deaf or have a hearing or speech impairment. For more information, see the department's website at <http://www.dss.gov.au/contact/national-relay-service>
- **email** at *[Department Contact Officer email]* or *[Committee secretariat email]*
- **post** at GPO Box 9820 Canberra ACT 2601



**Australian Government**  

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**Department of Social Services**