

Senate Community Affairs Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Supplementary Budget Estimates 2012-2013, 17 & 19 October 2012

Question: E12-036

OUTCOME 1: Population Health

Topic: WIND FARMS – CONFIDENTIALITY AGREEMENTS

Type of Question: Written Question on Notice

Number of pages: 1

Senator: Senator Back

Question:

- a) The NHMRC has appointed an expert panel, the Wind Farms and Human Health Reference Group. Were members of this review panel required by the NHMRC to sign confidentiality agreements?
- b) In the interests of public transparency, why is this required?
- c) Will the NHMRC please provide the Committee with a copy of the confidentiality agreements?

Answer:

- a) Yes
- b) National Health and Medical Research Council (NHMRC) policy, which applies to all NHMRC committees, requires members sign a deed of confidentiality.

Maintaining confidentiality ensures that members are able to contribute fully and frankly to the consideration of issues without needing to be concerned about selective disclosure of information. Selective disclosure is damaging to the effective functioning of a committee.

Once the Committee has given full consideration to the matter, the final document is released which outlines the process of development followed.

- c) See Attachment A.



Australian Government
National Health and Medical Research Council

DEED OF CONFIDENTIALITY

THIS DEED is made this day of 2012

Between

THE COMMONWEALTH OF AUSTRALIA ('The Commonwealth') as represented by the

National Health and Medical Research Council ('NHMRC') and

..... ('the Member')

WHEREAS

- A. The NHMRC has been established by the *National Health and Medical Research Council Act 1992* ('*NHMRC Act*') and provision has been made under Parts 4 and 5 of that Act for the appointment of members to the Council and its Committees
- B. The Member has been duly appointed to, or is proposed to be appointed to, the Council or any of its Principal Committees (whether or not the Principal Committee or Committees is established under the *NHMRC Act* or under a different Act) or Working Committees.
- C. The Member is also, under a separate declaration, required to disclose certain interests.
- D. In addition to any legislative requirements (e.g. under section 42A of the *NHMRC Act*) it is considered desirable, having regard to good governance and transparency of process, that the Member:
 - (1) preserve and maintain the confidentiality of information to which the Member may have access by virtue of his or her membership of the Council or any of its Committees;
 - (2) undertake certain actions in relation to any conflict of interest; and
 - (3) indemnify the Commonwealth against loss or damage arising out of a breach of this Deed by the Member.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 In this Deed unless the contrary intention appears:

'Confidential Information' means all information made available to the Member by the NHMRC or the Commonwealth for the purposes of the NHMRC, whether orally or in writing, or by any other means whatsoever, and includes information that:

- (a) is by its nature confidential; or
- (b) is designated by the NHMRC or the Commonwealth as confidential; or
- (c) the Member knows or ought to know is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Deed or by any other unlawful means;
- (e) is in the possession of the Member without restriction in relation to disclosure before the date of receipt from the NHMRC or the Commonwealth; or
- (f) has been independently developed or acquired by the Member.

'Conflict' includes any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Member engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Member in performing the work of the Committee fairly and independently.

'Member' includes a person exercising any function in place of, or in substitution for, any other person who is a Member of the NHMRC and also includes a person who is a member of a Principal Committee of the NHMRC and a person who is a member of a Working Committee of the NHMRC.

1.2 No variation of this Deed is binding unless it is agreed in writing between the parties.

1.3 Any reading down or severance of a particular provision does not affect the other provisions of this Deed.

1.4 The laws of the Australian Capital Territory apply to this Deed. The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Deed.

2. PROTECTION OF CONFIDENTIAL INFORMATION

2.1 The Member must not disclose Confidential Information to any person other than current members of the NHMRC, without prior approval in writing from the CEO of the NHMRC or an official of the Commonwealth. In giving written approval the relevant person may impose such terms and conditions as he or she thinks fit.

2.2 The Member shall not use any Confidential Information except for the purpose of fulfilling his or her duties as a Member.

2.3 The obligations on the Member under this clause will not be breached if the Confidential Information is required by law to be disclosed and the disclosure is made pursuant to that requirement. This may involve members who have statutory obligations to their full time employer (eg a State / Territory representative).

- 2.4 Property in any document or thing containing Confidential Information (in the form of a document, article or removable medium) vests or will vest in the Commonwealth. The Member shall:
- (a) secure all copies within his or her control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or termination of his or her appointment to the NHMRC, deliver all copies to the NHMRC or the Commonwealth, or otherwise deal with all copies as directed by the Chairperson or CEO of the NHMRC or the Commonwealth.
- 2.5 Neither the Commonwealth nor the NHMRC gives any undertaking to treat the Member's information, or this Deed, as confidential. The Member acknowledges that the NHMRC or the Commonwealth may disclose information relevant to this Deed, or this Deed itself, to any person:
- (a) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency;
 - (b) if required in connection with legal proceedings;
 - (c) for public accountability reasons, including a request for information by parliament or a parliamentary committee or a Commonwealth Minister;
 - (e) for any other requirements of the Commonwealth.
- 2.6 The Member warrants that he or she has read and understands the provisions of section 80 of the *NHMRC Act*.
- 2.7 The operation of this clause 2 survives the expiration or termination of the Member's appointment.

3. INDEMNITY

- 3.1 The Member shall indemnify the Commonwealth, its officers, employees and agents ('those indemnified') from and against all actions, claims, demands, costs and expenses (including the costs of defending or settling any action, claim or demand) made, sustained, brought or prosecuted against those indemnified where those actions, claims, demands, costs or expenses arise as a result of wilful or deliberate disclosure by the Member:
- (a) in breach of this Deed; or
 - (b) in breach of any of the following legislative obligations which may apply to the Member under section 80 of the *National Health and Medical Research Council Act 1992* or section 30 of the *Research Involving Human Embryos Act 2002*.
- 3.2 The Member agrees that the Commonwealth will be taken to be acting as agent or trustee for and on behalf of those indemnified from time to time.
- 3.3 The indemnity referred to in this clause 3 survives the expiration or termination of the Member's appointment.

4. PUBLIC DISCUSSION

- 4.1 The Member agrees not to speak publicly on behalf of the NHMRC without the express permission of the CEO of the NHMRC.

Executed as a Deed in the Australian Capital Territory

SIGNED, SEALED AND DELIVERED

(1) BY THE COMMONWEALTH

By and on behalf of **THE COMMONWEALTH OF AUSTRALIA** acting through the National Health and Medical Research Council ABN 88 601 010 284 by:

Name of Signatory

Signature

Position of Signatory

in the presence of:

Name of Witness

Signature of Witness

(1) BY THE MEMBER

Name of Signatory

Signature

Position of Signatory

in the presence of:

Name of Witness

Signature of Witness