



# Transparency and Confidentiality Policy

Expert Panel for the Implementation Review

Adopted 23 August 2022

# Expert Panel for the Implementation Review

## Transparency and Confidentiality Policy

### 1. Policy Position

- 1.1 The Expert Panel for the Implementation Review (the Panel) is established by Terms of Reference (ToR) approved by the Minister for Planning on 21 July 2022.
- 1.2 Pursuant to clause 15 of the Panel's ToR, the Panel's meetings will not be open to the general public or media to attend.
- 1.3 The ToR are silent as to whether documents considered and/or prepared by the Panel (including but not limited to Agendas, Minutes, Decisions and Agenda Reports) are to be made public or retained in confidence. It is therefore a matter for the Panel's discretion.
- 1.4 The Panel has determined that the starting point for its policy on transparency and confidentiality is for all Agendas, Minutes, Decisions and Agenda Reports (including Attachments) to be made available to the public, except where there are sound reasons for not releasing or for delaying release.
- 1.5 The Panel intends for items which do not come within the specified criteria listed in clause 3 of this Policy to be treated as non-confidential by default and will be released to the public in full.
- 1.6 Publication of the Panel's documents will be made available on its webpage, [www.plan.sa.gov.au/planning\\_review](http://www.plan.sa.gov.au/planning_review).
- 1.7 It is proposed that all Agenda Items, Agenda Reports, Minutes and Decisions which are published will be maintained on the Panel's webpage, as a record of the Panel's activities and decisions.

### 2. Procedure for Confidentiality

#### *Prior to the Meeting*

- 2.1 The person responsible for preparing an Agenda Report will use this Policy to determine the status of the Agenda Item and supporting Agenda Report (including all Attachments). The formatting of the Agenda Report must provide for its categorisation and the reason for that decision (based on the criteria shown in this Policy).
- 2.2 The categories for all Agenda Reports will be:
  - 2.2.1 **Not Confidential – Release Immediately:** These items are not confidential and will be published in full (including Agenda Report in full, with all Attachments) at the same time as the Panel's Minutes and other meeting papers.
  - 2.2.2 **Not Confidential – Release Delayed:** These items will be treated as not confidential, but release of material will be delayed for a specified period to allow for advice to be considered and a decision to be made. The person responsible for preparing the

Agenda Report will be responsible for identifying the timing for release of the material, and ensuring publication has occurred, once the identified “trigger” has been reached. An anticipated date for the “trigger” should be included in the Agenda Report (where noted above). After the identified trigger date, the Principal Advisor will follow up the Agenda Report author to confirm whether publication can proceed.

2.2.3 **Confidential:** In this case, the criteria for confidentiality must be clearly specified in the Agenda Report. The item documentation should also identify whether (or how much of) the Agenda Item and the Agenda Report (and Attachments) should remain in confidence. The Agenda Report and any documentation identified as confidential are withheld for purposes of publication of the Agenda.

2.3 The Chair and the Principal Advisor will review the proposed confidentiality categorisation for each Agenda Item before the meeting. Any proposed changes to the confidentiality categorisation following the review will be addressed between the Chair and the Principal Advisor.

#### *In the Meeting*

2.4 For each Agenda Item, the categorisation for confidentiality will be reviewed at the meeting, allowing any Panel member to question the categorisation noted in the meeting papers. This will be the first order of business in relation to each Agenda Item.

2.5 For Agenda Items that are categorised as *Confidential*, the Panel will consider and resolve to treat the matter as confidential at the meeting.

2.6 For Agenda Items which are categorised as *Not Confidential – Release Delayed*, the Panel should specifically resolve whether (or to what extent) the matter needs to remain confidential, and if so, for how long or identify a trigger that will release the item for publication.

2.7 The consideration and determination of confidentiality status should be the first resolution for every Agenda Item.

2.8 The Agenda Item is then discussed, and any further resolutions made as usual.

#### *After the Meeting*

2.9 If the Panel resolves that the Agenda Item is *Not Confidential – Release Immediately*, then the Agenda Item, Agenda Report (in full, including Attachments), Minutes and Decisions will be published by the Principal Advisor after the meeting, at the time the Minutes would ordinarily be published.

2.10 For items which are designated as *Not Confidential – Release Delayed*, the author of the Agenda Report will advise the Principal Advisor when the identified ‘trigger’ for publication has occurred. The Principal Advisor will then arrange for publication of the relevant documents on the Panel’s webpage, against the relevant Agenda Item.

2.11 If the Panel resolves that the Agenda Item is *Confidential*, then the Agenda Item, Agenda Report (in full, including Attachments), Minutes and Decisions will not be published after the meeting and will be retained in confidence indefinitely.

2.12 The obligation of confidentiality on Agenda Items extends to the Members of the Panel and any other persons in attendance at the meeting, including but not limited to, Panel staff and guest presenters.

### 3. Criteria for Confidential Items

3.1 It is intended that Agenda Items, Agenda Reports, Minutes and Decisions documents falling within the criteria listed below will be maintained as confidential on an ongoing basis:

3.1.1 **Cabinet in Confidence** – matters that have been or are expected to be considered by Cabinet.

3.1.2 **Legal Obligations** - matters which must be considered in confidence to ensure the Panel does not breach any law, order or direction of court or tribunal or other legal obligation or duty.

3.1.3 **Legal Advice or Litigation** - matters involving legal advice, or actual or potential litigation including (without limitation) compliance or enforcement matters.

3.1.4 **Complaints** – matters involving complaints received by the Panel.

3.1.5 **Security and Safety** – matters which, if released publicly, may affect the safety or security of any person or property.

3.1.6 **Personal Information** – matters which would involve the unreasonable disclosure of personal information.

3.1.7 **Commercial in Confidence** – matters which are provided as, marked as or otherwise considered to be commercial in confidence and where there is a public interest in maintaining these documents in confidence.

3.1.8 **Draft Advice or Documents** – matters which involve preliminary, draft, incomplete, work-in-progress or formative reports, advice, plans, presentations or other documents.

3.2 If an item is presented to the Panel for its final approval, but the Panel at its meeting, request it be returned for further consideration, the initial Agenda Report should be determined as confidential under these criteria.

### 4. Communications on behalf of the Panel

4.1 The Presiding Member of the Panel will be the principal spokesperson of the Panel.

4.2 Panel Members are not to make public statements on behalf of the Panel, or otherwise relating to the work of the Panel, in the absence of the express, written consent of the Presiding Member.



**John Stimson**

Chair