



# Nationwide House Energy Rating Scheme

## Stakeholder Consultative Group Terms of Reference

2022

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| <b>Governance</b>                   | <p>The Nationwide House Energy Rating Scheme (NatHERS) is administered by the NatHERS Administrator. The Department of Industry, Science, Energy and Resources is the current NatHERS Administrator.</p> <p>The NatHERS Administrator acts on behalf of the NatHERS Steering Committee, who oversees NatHERS activities. The NatHERS Steering Committee consists of representatives from the Commonwealth Government and all state and territory governments.</p>  |
| <b>Directive</b>                    | <p>The NatHERS Stakeholder Consultative Group (SCG) was established by the NatHERS Administrator, on behalf of the NatHERS Steering Committee. The SCG was formed to provide stakeholder and industry views on the development, implementation and continuous improvement of NatHERS.</p> <p>The SCG will provide stakeholder and industry views on:</p> <ul style="list-style-type: none"> <li>• The strategic direction and design settings for NatHERS to ensure the most efficient and effective achievement of the Scheme’s priorities and the Government’s objectives for improving the energy efficiency of residential buildings in Australia.</li> <li>• Implementation issues or risks for NatHERS, including the effectiveness of achieving the Scheme’s outcomes.</li> <li>• Options and opportunities for continual improvement of the delivery of NatHERS, particularly in relation to engaging stakeholders and maintaining industry participation.</li> <li>• The implementation and review of the existing NatHERS Strategic Plan (as required) and development of future strategic plans (when required).</li> <li>• Other matters as requested by the NatHERS administrator.</li> </ul> <p>Note: it is not the role of the SCG to provide feedback on technical aspects of NatHERS, this role is fulfilled by the NatHERS Technical Advisory Committee.</p> |
| <b>Committee Establishment date</b> | <p>October 2017 – First SCG</p> <p>June 2020 – Current SCG</p>   |
| <b>Chair</b>                        | <p>General Manager, Residential Energy Efficiency Branch in the Department of Industry, Science, Energy and Resources.</p> <p>Note: The Chair may delegate the Chair role to another person as appropriate.</p>  |
| <b>Secretariat</b>                  | <p>Managed within the Residential Energy Efficiency Branch, Department of Industry, Science, Energy and Resources.</p> <p>The SCG Secretariat can be contacted via email at <a href="mailto:admin@nathers.gov.au">admin@nathers.gov.au</a>.</p> <p>The Secretariat will be responsible for administration matters, including the development and circulation of the agenda, meeting papers and meeting minutes.</p>  |
| <b>Membership</b>                   | <p>The SCG consists of representatives from relevant industries, including building, appliance and solar industries, Assessor Accrediting Organisations, Software Developers and other NatHERS stakeholders that appropriately reflect the Scheme’s priorities for both new and existing homes. Guest attendees may be invited to contribute to meetings from time to time, at the discretion of the Chair.</p>  |

Members are expected to respond to the NatHERS Administrator's requests in a timely manner. Where this is not possible, the SCG Secretariat should be notified so that alternative measures can be implemented.

#### **Membership period**

Membership of the SCG will be for a period of 2 years from the date of the first meeting with the new members. Calls for new SCG members occurs every 2 years. During this period members and proxies can be replaced by way of the Application for membership process.

#### **Membership extension**

Membership extension of 12 months was advised and endorsed to the current membership on the 14<sup>th</sup> of July 2021, bringing the current membership term to **July 2023**.

#### **Applications for membership**

Individuals and organisations may apply for membership by submitting an 'Expression of Interest' to [admin@NatHERS.gov.au](mailto:admin@NatHERS.gov.au).

#### **Expression of Interest (EOI) process**

Each individual or organisation is to complete all of the application documents outlined below, with 2 applicants for organisations (where possible). One applicant is to be nominated as the member and the other as the proxy, for circumstances where the member may not be available.

Note: only one representative from an organisation is allowed to attend meetings without prior approval.

The application should include:

- **Expression of Interest:** an outline (no more than one page) by the nominating person providing reasons for the nomination and the specific skill set they think they could contribute to the SCG.
- **CV:** a CV (no more than 2 pages) to provide further details of previous experience.
- **Signed Conflict of Interest Declaration and Deed of Confidentiality:** the Conflict of Interest Declaration and Deed of Confidentiality (both attached) require applicants to declare any conflicts of interest, whether real or perceived, and agree to a range of privacy and confidentiality provisions in relation to their duties as a member of the SCG.

The intention of the EOI process is to ensure the SCG remains representative of a broad range of perspectives and to ensure the membership has the capacity and capability to provide a high level of expertise and advice to the NatHERS Administrator and NatHERS Steering Committee, on relevant topics.

#### **Appointment Process**

The NatHERS Administrator will review all the EOIs and seek acceptance of the applicants from the NatHERS Steering Committee. Successful applicants will then be informed they will be accepted as a full member of the SCG for a given time period.

The NatHERS Steering Committee comprises Commonwealth, state and territory government officials with policy responsibility for NatHERS. The NatHERS Administrator reports to the NatHERS Steering Committee in all aspects of the operation and administration of NatHERS.

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|  | <p>An SCG member may terminate their membership at any time with at least 2 weeks' written notice. If a member of an organisation does decide to leave the SCG, the NatHERS Administrator will recommend the organisation provide a new representative (replacement members are only required to submit signed Conflict of interest Declaration and Deed of Confidentiality), the new representative will not need to be approved by the NatHERS Steering Committee.</p> <p>Where a member does not act in accordance with the Conflict of interest Declaration and Deed of Confidentiality, they may be asked to leave the SCG. The NatHERS Administrator will advise of termination of membership in writing to the member. The Organisation will also be informed in writing of the member(s) termination, however in this situation it is the choice of the NatHERS Administrator (on behalf of the NatHERS Steering Committee) whether a different representative of the organisation is requested or the organisation is removed from the SCG.</p>  |
| <p><b>Accountability</b></p>           | <p>The SCG reports to the NatHERS Administrator. It has no executive power and functions as an advisory committee to assist the NatHERS Administrator and NatHERS Steering Committee in their management of the Scheme.</p> <p>All SCG members and SCG member organisations have the following accountability:</p> <ul style="list-style-type: none"> <li>• Where a perceived or actual conflict of interest, or confidentiality, or privacy breach or data breach occurs, a member must bring this to the attention by way of written declaration to the SCG Chair and the Chair must advise the Secretariat prior to the commencement of a meeting. If this is not possible, then the Chair must, on opening a meeting, request any members to declare whether they have a potential or actual conflict of interest, and that shall be noted in the minutes. The member may also be requested to step out of the meeting as required, until the issue surrounding the conflict of interest is resolved.</li> <li>• To respond to any recommendations or requests of the NatHERS Steering Committee, NatHERS Administrator or SCG Secretariat.</li> <li>• Abide by the provisions of the <a href="#">Privacy Act 1988</a> (Cwth).</li> </ul>   |
| <p><b>Confidential Information</b></p> | <p>Members will respect the confidentiality of materials and conversations for matters declared by the Chair to be 'not in the public domain'. This allows for a robust and frank discussion of issues. All participants in these consultations will:</p> <ul style="list-style-type: none"> <li>• Abide by the confidentiality terms set out in the confidentiality deed.</li> <li>• Respect the confidentiality of information provided by other participants to the consultation.</li> <li>• Engage in consultation in good faith and a transparent manner, demonstrating mutual respect for the expertise, contributions and role of other participants.</li> <li>• Disclose to the NatHERS Administrator any matters that could be perceived to be, or are, conflicts of interest – including actual or potential, direct or indirect effects on the participants themselves or their close associates or clients or business interests – noting this will be done without breaching client confidentiality, and that disclosure to other participants in the consultation committee or group may be warranted.</li> </ul> <p>When other information that is not in confidence is either discussed or provided at SCG meetings, members are, of course, encouraged to share this with other industry representatives or members of their own organisation. It is the responsibility of the SCG member representing their organisation/industry to seek the advice of their organisation's technical group and provide their organisation/industry's feedback when requested.</p> |

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| <b>Resourcing</b>                   | <p>The role of SCG members is honorary and there is no sitting fee for meetings. Travel is not expected.</p> <p>Members will cover the costs of their participation in the SCG.</p>   |
| <b>Meetings</b>                     | <p>The SCG will meet at least 2 times per year via teleconference.</p> <p>The SCG Secretariat will be responsible for meeting administration matters. This includes:</p> <ul style="list-style-type: none"> <li>• Circulation of the agenda and meeting papers at least one week prior to the meeting.</li> <li>• Circulation of meeting minutes within 4 weeks of a meeting.</li> </ul> <p>The SCG may be asked to give out-of-session consideration to specific matters from time-to-time and will be offered at least one week to respond to such matters.</p> |
| <b>Review of Terms of Reference</b> | <p>The Terms of Reference, Conflict of Interest Declaration and Deed of Confidentiality will be reviewed each two years prior to the expiry of the SCG and or where a directive, legislative, policy or guidance materials causes such a review.</p>  |

## CONFLICT OF INTEREST DECLARATION

I, *[insert full name]*  
of *[insert business address]*

Declare that to the best of my knowledge, I do not have :

- any financial interest in the *[NatHERS Stakeholder Consultative Group]* (“the Subject”)
- any relatives or friends with a financial interest in the Subject
- any personal bias or inclination which would in any way affect my decisions in relation to the Subject
- any personal obligation, allegiance or loyalty which would in any way affect my decisions in relation to the Subject

(a ‘conflict’), except as set out below :

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

I undertake to make a further declaration detailing any conflict, potential conflict or apparent conflict which may arise during the contract period. Should any conflict appear to compromise me, I agree to abstain from any related decision.

Signed :

Dated :

# DEED OF CONFIDENTIALITY

BY THIS DEED DATED THE ..... day of .....20

BETWEEN

**Commonwealth of Australia** represented by the Commonwealth Department of Industry, Science, Energy and Resources, 10 Binara Street, Canberra, Australian Capital Territory ("the Commonwealth")

AND

*[Insert name and address for service of Confidant]* ("the Confidant")

## RECITALS:

- A. The Confidant is employed by *[insert full name of company, ACN number, registered business address]*;
- B. In the course of the Confidant conducting the *[directive as a member of the NatHERS Stakeholder Consultative Group]* (whether directly or indirectly), the Confidant may become aware of information belonging to or in the possession of the Commonwealth that is confidential.
- C. Improper use or disclosure of that information would severely damage the Commonwealth's ability to perform its governmental functions.
- D. The Commonwealth requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Commonwealth's Confidential Information is kept confidential and that the Confidant performs those Services faithfully and without any conflicting interest.

## AGREED COVENANTS:

### 1. RECITALS

The Parties acknowledge the truth and accuracy of the Recitals in every particular.

### 2. INTERPRETATION

#### 2.1 Definitions

In the interpretation of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following meanings:

"**Confidential Information**" means information that:

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

and includes:-

- (d) information comprised in or relating to any Intellectual Property Rights of the Commonwealth;
- (e) information relating to the financial position of the Commonwealth and in particular includes information relating to the assets or liabilities of the Commonwealth and any other matter that does or may affect the financial position or reputation of the Commonwealth;

- (f) information relating to the internal management and structure of the Commonwealth, or the personnel, policies and strategies of the Commonwealth;
- (g) information supplied to the confidant or information associated with the Services and any information of the Commonwealth to which the Confidant has access other than information referred to paragraphs (d), (e) and (f) that has any actual or potential commercial value to the Commonwealth or to the person or corporation which supplied that information;
- (h) any information relating to the policies, strategies, practices and procedures of the Commonwealth;
- (i) any information in the Confidant's possession relating to the Australian Public Service Commonwealth's clients or suppliers, and like information;

but does not include information which:

- (j) is or becomes public knowledge other than by breach of the Deed;
- (k) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
- (l) has been independently developed or acquired by the receiving party; or
- (m) is in respect of ideas, concepts know-how, techniques or methodologies where disclosure is permitted under the Deed;

"**Intellectual Property Rights**" includes copyright, trade mark, design, patent, semiconductor or circuit board layout rights, trade, business or company names, confidential or other proprietary rights, or any rights to registration of such rights, whether created before or after the date of this Deed and whether created in Australia or elsewhere;

"**notice**" means notice in writing given in accordance with this Deed;

"**Services**" means the provision of stakeholder and industry views as part of the NatHERS Stakeholder Consultative Group, on:

- The strategic direction and design settings for NatHERS to ensure the most efficient and effective achievement of the Scheme's priorities and the Government's objectives for improving the energy efficiency of residential buildings in Australia.
- Implementation issues or risks for NatHERS, including the effectiveness of achieving the Scheme's outcomes.
- Options and opportunities for continual improvement of the delivery of NatHERS, particularly in relation to engaging stakeholders and maintaining industry participation.
- The implementation and review of the existing NatHERS Strategic Plan (as required) and development of future strategic plans (when required).
- Other matters as requested by the NatHERS administrator.;

"**writing**" means any mode of representing or reproducing words, figures, drawings or symbols in a visible form delivered, posted or transmitted electronically.

## 2.2 General

Unless the contrary intention appears:

- (a) monetary references are references to Australia currency;
- (b) the clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its subclauses;
- (d) words in the singular number include the plural and vice versa;



- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (g) a reference to a clause or subclause is a reference to a clause or subclause of this Deed; and
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

### **3. NON DISCLOSURE**

- 3.1 The Confidant must not disclose the Confidential Information to any person without the prior written consent of the Commonwealth.
- 3.2 The Commonwealth may grant or withhold its consent at its discretion.
- 3.3 If the Commonwealth grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Commonwealth may require that the Confidant procure the execution of a Deed substantially in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.
- 3.4 If the Commonwealth grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.5 The obligations of the Confidant under this Deed shall not be taken to have been breached where the Confidential Information is legally required to be disclosed.

### **4. RESTRICTION ON USE**

- 4.1 The Confidant will use the Confidential Information only for the purpose of its dealings with the Commonwealth (whether directly or indirectly).

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

#### **Production of Documents**

- 5.1 The Commonwealth may demand (without needing to reduce the demand to writing) the delivery up 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, whether visible to the eye or not.

#### **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, including proceedings for an injunction to restrain such breach.

### **6. SURVIVAL**

- 6.1 This Deed will survive the termination, suspension or completion of the Services.

**7. CONFLICT OF INTEREST**

- 7.1 The Confidant warrants that before entering into this Deed it has disclosed to the Commonwealth all the past, current and anticipated interests of the Confidant which may conflict with or restrict the Confidant in performing Services to the Commonwealth fairly and independently.
- 7.2 The Confidant shall not during the course of this Deed engage in any activity or obtain any interest likely to conflict with or restrict the Confidant in providing Services to the Commonwealth fairly and independently and shall immediately disclose to the Commonwealth such activity or interest

**8. WAIVER**

- 8.1 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.

**9. REMEDIES CUMULATIVE**

- 9.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

**10. VARIATIONS AND AMENDMENTS**

- 10.1 No term or provision of this Deed may be amended or varied unless such amendment or variation is reduced to writing and signed by the parties in the same manner as this instrument.

**11. APPLICABLE LAW**

- 11.1 This Deed shall be governed and construed in all respects in accordance with the law of Australian Capital Territory.

**12. NOTICES**

- 12.1 A notice or other communication which may be given to or served on the Confidant under this Deed shall be deemed to have been duly given or served if it is in writing signed by the Commonwealth and is either delivered by hand, posted or a copy transmitted electronically to the Confidant at any registered office of the Confidant or posted to the Confidant's address set out herein or such other address as may be notified in writing to the Commonwealth from time to time.
- 12.2 A notice or other communication which may be given to or served on the Commonwealth under the Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Confidant and is either delivered by hand, posted or a copy transmitted electronically to the Commonwealth at the address set out herein or such other address as may be notified in writing to the Confidant from time to time.
- 12.3 A notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent.
- 12.4 A notice sent by facsimile transmission or transmitted electronically shall be deemed to have been given when the machine on which the notice is sent reports in writing that the notice has been transmitted satisfactorily.

**Executed as a Deed**

SIGNED SEALED AND DELIVERED )  
 )  
by ..... )  
[insert name of Commonwealth representative] ) (signature of Commonwealth representative)  
 )  
in the capacity as ..... )  
[insert Position] )  
 )  
in the presence of ..... )  
[insert name of Witness] )  
 )  
 )  
 )  
..... )  
(signature of Witness) )

SIGNED SEALED AND DELIVERED )  
 )  
by ..... )  
[insert name of Confidant] ) (signature of Confidant)  
 )  
in the presence of ..... )  
[insert name of Witness] )  
 )  
 )  
 )  
..... )  
(signature of Witness) )