



TISN

FOR CRITICAL INFRASTRUCTURE
RESILIENCE

FACT SHEET

TISN Deed of Confidentiality

The Deed

The TISN for Critical Infrastructure Resilience Deed of Confidentiality was drafted to safeguard the handling of commercially sensitive and security-related information. The Deed operates as a 'safety net' to assist with the creation of an environment of trust and transparency in the TISN.

Information sharing

The Deed is intended to facilitate information sharing within the TISN and assist companies to meet their existing legal obligations. It ensures confidential and commercially sensitive information is properly managed and reasonably protected from unauthorised use or disclosure.

Legal obligations

The Deed is an important tool in allowing businesses to meet their continuous disclosure obligations (CDOs) under the Corporations Act 2001 (Cth) and Australian Stock Exchange (ASX) Listing Rules while sharing information about security procedures and vulnerabilities.

Continuous disclosure obligations enable all investors to have timely access to price-sensitive information. Under the Corporations Act and the ASX Listing Rules, a listed entity is under a general obligation to immediately inform the ASX of information that is likely to have a material effect on its share price. Non-listed entities are required to provide such price-sensitive information to ASIC.

The ASX Listing Rules provide an exemption to allow non-disclosure when a reasonable person would not expect the relevant information to be disclosed, the information is confidential and the ASX has not formed a view that it has ceased to be so, or the information falls within one of the categories specified in the rules.

The Deed is designed to help preserve the 'confidential' status of information discussed within the TISN. Accordingly, it may assist signatories to share information about their vulnerabilities without activating their continuous disclosure obligations. Participants should satisfy themselves that everyone present at a meeting has signed a copy of the Deed before disclosing confidential information.

The precise nature of the information being shared will influence whether the disclosure requirements under the Corporations Act and the ASX Listing Rules apply. Analysis must be undertaken by participating organisations on a case-by-case basis and the need for disclosure assessed on its own particular facts.

The structure of the Deed

The Deed is structured as a 'deed poll', whereby only the recipient of confidential information is a party to the Deed. This provides a framework to allow confidential information to be properly managed and protected without undue process.





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TISN Deed of Confidentiality (cont')

Generally, a person who is not a party to an agreement cannot enforce it. However in certain circumstances, such as the execution of a deed poll, non-parties can sue on the agreement. The effect of signing the Deed is that the signatory enters into an agreement with all other signatories of the Deed to maintain the confidentiality of the information shared within the TISN. The party disclosing information has direct contractual rights against the recipients and, as a last resort, is able to sue for any breach of confidentiality.

Participation in the TISN is voluntary and any information participants share is done so at their discretion. The Deed specifically provides that there is no obligation on participants to disclose any information if they do not wish to do so.

Confidential information

Not all information shared within the TISN will be confidential. The Deed only applies where information must remain confidential and have its distribution limited. The Deed does not impose any restrictions on information that is not confidential.

'Confidential information' for the purposes of the Deed means information that is made available in the course of participation in the TISN and that is confidential in nature.

The definition of confidential information is not to be read as having meaning under the Commonwealth Protective Security Manual (PSM). 'Confidential Information' under the PSM refers predominantly to national security information, rather than the type of commercially-sensitive information that is disclosed in the TISN, and is subject to certain security requirements not required for TISN confidential information.

Importance of signing the Deed

TISN participants who have not signed the Deed may have only limited access to information discussed within the TISN. Groups that have adopted the Deed have expressed reservations about sharing information with those that have not. As TISN groups explore and refine their understanding of the interdependencies of various industry sectors, there is a growing possibility that important information of relevance to all TISN participants may not be shared with those who have failed to sign the Deed.

Consistent approach

The Attorney-General's Department is committed to a consistent approach to the Deed. The Deed places certain obligations on TISN participants to maintain the confidentiality of information. For participants to be able to rely on these obligations, they need to remain consistent.

For obligations under the Deed to remain consistent across the TISN, any change to the Deed would need to be agreed to in writing by all participants. For this reason, the Attorney-General's Department does not make changes to the Deed.

Where a company does not wish to sign the Deed, participants may sign in their individual capacity. However, they would be unable to share confidential information with the rest of their company.



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Government representatives

The Deed only applies to private sector participants. Government representatives are not required to sign it due to their extensive existing statutory and other legal obligations for the handling of information. All government representatives who participate in the TISN are, however, required to sign a Government Representative Confidentially Acknowledgement, to expressly acknowledge these obligations.

Disclaimer

The information in this fact sheet is general information only and is not intended to be advice. This information is not adapted to any particular person or organisation's circumstances and therefore cannot be relied upon to be of assistance in any particular case. You should base any action you take exclusively on your own assessments and judgements, after seeking specific legal advice from such experts as you consider necessary or desirable. To the extent permitted by law, the Australian Government has no liability to you in respect of damage that you might suffer that is directly or indirectly related to this fact sheet no matter how arising.

