

An Agreement

between

the Governments of

the Commonwealth of Australia, the States and the Territories

to continue in existence and provide for the operation of the

## **AUSTRALIAN BUILDING CODES BOARD**

2015

## CONTENTS

|   |           |
|---|-----------|
| <b>Recitals</b>   | <b>2</b>  |
| <b>Operative provisions</b>                                       | <b>3</b>  |
| 1. Preliminary  | 3         |
| 2. Interpretation   | 3         |
| 3. Establishment of the Board                                     | 7         |
| 4. Mission of the Board   | 7         |
| 5. Objectives of the Board  | 7         |
| 6. Functions and powers of the Board                              | 8         |
| 7. Assistance to be provided to the Board by the Administrations  | 10        |
| 8. Appointment of the Chair                                       | 11        |
| 9. Appointment of industry representatives                        | 11        |
| 10. Meetings of the Board   | 13        |
| 11. Conduct of the Board  | 14        |
| 12. Representation on other Bodies                                | 14        |
| 13. Committees  | 15        |
| 14. Funding   | 15        |
| 15. General Manager   | 16        |
| 16. Administration  | 17        |
| 17. Transitional arrangements                                     | 18        |
| 18. Consolidation of, Variations from, and Additions to the NCC   | 18        |
| 19. Changing priorities and projects of the Board                 | 19        |
| 20. Review  | 19        |
| 21. Intellectual Property   | 19        |
| 22. Indemnity Issues  | 19        |
| 23. Not legally binding   | 20        |
| <b>ATTACHMENT A - GOVERNMENT CONTRIBUTIONS 2010-11 TO 2018-19</b> | <b>21</b> |

An *Agreement* made this 18<sup>th</sup> day of April, 2017 to continue in existence and provide for the operation of the Australian Building Codes Board.

**SIGNATORIES FOR EACH OF THE PARTIES**

| <b>SIGNATORY</b>            | <b>POSITION</b>   |
|-----------------------------|---|
| The Hon Craig Laundry MP    | Assistant Minister for Industry, Innovation and Science Commonwealth of Australia                   |
| Mr Mick Gentleman MLA       | Minister for Planning<br>Australian Capital Territory   |
| The Hon Rob Stokes MP       | Minister for Planning<br>State of New South Wales   |
| The Hon Victor Dominello MP | Minister for Innovation and Better Regulation<br>State of New South Wales                           |
| The Hon David Tollner MLA   | Treasurer<br>Minister for Lands and Planning<br>Minister for Mines and Energy<br>Northern Territory |
| The Hon Mick de Brenni MP   | Minister for Housing and Public Works<br>State of Queensland  |
| The Hon John Rau MP         | Deputy Premier<br>Minister for Planning<br>State of South Australia                                 |
| The Hon Ian Hunter MP       | Minister for Water and the River Murray<br>State of South Australia                                 |
| The Hon Adam Brooks MP      | Minister for Building and Construction<br>State of Tasmania   |
| The Hon Richard Wynne MP    | Minister for Planning<br>State of Victoria  |
| The Hon Michael Mischin MLC | Attorney-General<br>Minister for Commerce<br>State of Western Australia                             |

AN *AGREEMENT* made this 18th day of April, 2017 between —

**THE COMMONWEALTH OF AUSTRALIA** (in this *Agreement* called ‘the Commonwealth’),

**THE STATES OF NEW SOUTH WALES, VICTORIA, QUEENSLAND, SOUTH AUSTRALIA, WESTERN AUSTRALIA AND TASMANIA** (in this *Agreement* called individually a ‘State’ and collectively ‘the States’); and

**THE NORTHERN TERRITORY AND THE AUSTRALIAN CAPITAL TERRITORY** (in this *Agreement* called individually a ‘Territory’ and collectively ‘the Territories’).

#### **RECITALS**

- A. The Commonwealth, the *States* and the *Territories* wish to facilitate the development of a more efficient, internationally competitive building and construction industry through reforms to building and plumbing regulation nationally.
- B. The State and Territory governments are primarily responsible for regulating buildings.
- C. To strengthen reforms to building and plumbing regulation nationally, the respective governments of the Commonwealth, the *States* and the *Territories* commit to:
  - i. continuing in existence the Australian Building Codes Board (‘the *Board*’) established by the agreement of the respective governments on 1 March 1994, as amended;
  - ii. the National Construction Code (*NCC*) setting the minimum necessary requirements for the design, construction and performance of buildings throughout Australia;
  - iii. the adoption of the *NCC* by reference on a national basis through relevant State and Territory legislation;
  - iv. the consistent application of the *NCC* across and within each *State* and *Territory*, noting clause 18 of this *Agreement*;
  - v. encouraging increased harmonisation in the administration of the *NCC* across Australia;
  - vi. on the part of the Commonwealth, *States* and *Territories*, seeking commitments similar to those in this *Recital*, from their local governments and other local government-like bodies where they have any administrative responsibility for regulating the building and plumbing industry, and as far as practicable implementing a ‘gateway’ model which prevents local governments and other local government-like bodies from setting prescriptive standards for buildings that override performance requirements in the *NCC*; and
  - vii. continue to provide a free electronic version of the *NCC* to industry and continuing to improve its usability.

- D. The *Ministers* have agreed to meet periodically to:
- i. review outcomes and progress against the *Objectives* and the *Annual Business Plan(s)* of the *Board*; and
  - ii. review the annual reports of *Variations* to the *NCC*.
- E. The Commonwealth, the *States* and the *Territories* will contribute towards the costs of the *Board's* operations in accordance with the provisions of this *Agreement*.

## OPERATIVE PROVISIONS

Now it is hereby agreed as follows –

### 1. Preliminary

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- 1.1. This *Agreement* shall commence on the *Commencement Date*.
- 1.2. On the *Commencement Date* this *Agreement* replaces all *Prior Agreements*.
- 1.3. The proceedings, decisions or actions taken by the *Board* under the *Prior Agreements* are adopted and confirmed as proceedings, decisions or actions of the *Board* continued in existence by this *Agreement*.
- 1.4. Nothing in this *Agreement* affects the continued operation of an *Intellectual Property Deed* or an *Indemnity Deed*.
- 1.5. This *Agreement* may be varied with the written consent of all Parties.

### 2. Interpretation

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#### Definitions and Acronyms

- 2.1. In this *Agreement*, unless the context indicates otherwise:

| <b>TERM</b>         | <b>DEFINITION</b>   |
|---------------------|---|
| <b>ABCB Account</b> | means the Australian Building Codes Board Account, a special account created by a determination of the Finance Minister under section 20 of the <i>FMA Act</i> ;  |
| <b>ABCB Office</b>  | means the part of the <i>Department</i> that is responsible for assisting the <i>Board</i> in undertaking its' functions and exercising its powers under this <i>Agreement</i> ;  |
| <b>Addition</b>     | means any provision, within any Commonwealth, State or Territory legislative and or/regulatory instrument(s), that imposes requirements relating to an aspect of building which is either not regulated by the <i>NCC</i> or which does not materially vary or expand on a matter covered by the <i>NCC</i> ; |

|   |   |
|---|---|
| <b>Administration</b>                   | means: <ul style="list-style-type: none"><li>a) for the Commonwealth: the Commonwealth department or agency that has administrative responsibility for the subject matter of this <i>Agreement</i> ;</li><li>b) for a <i>State</i> or <i>Territory</i>: the relevant department, statutory body, division or agency that has administrative responsibility for the subject matter of this <i>Agreement</i> in a <i>State</i> or <i>Territory</i>;</li></ul> |
| <b>Agreement</b>                        | includes a reference to the clauses and recitals;   |
| <b>ALGA</b>                             | means the Australian Local Government Association;  |
| <b>Annual Business Plan</b>             | means the plan required by clause 6.2.c;  |
| <b>Annual Report</b>                    | means the report required by clause 6.2.d;  |
| <b>APS</b>                              | means the Australian Public Service;  |
| <b>BMF</b>                              | means the Building Ministers' Forum, being the group of Commonwealth, <i>State</i> and <i>Territory Ministers</i> responsible for building and plumbing regulation;   |
| <b>Board</b>                            | means the Australian Building Codes Board continued in existence by this <i>Agreement</i> ;   |
| <b>Chair</b>                            | means the Chair of the <i>Board</i> ;   |
| <b>COAG</b>                             | means the Council of Australian Governments;  |
| <b>COAG Principles</b>                  | means the <i>Best Practice Regulation – A Guide for Ministerial Councils and National Standard Setting Bodies (October 2007)</i> , as amended or replaced;  |
| <b>Commencement Date</b>                | means the date on which this <i>Agreement</i> has been executed by all of the <i>Parties</i> ;  |
| <b>Committees</b>                       | means the Building Codes Committee, the Plumbing Code Committee and any other committees established under clause 13;   |
| <b>Conflict-of-Interest declaration</b> | means a declaration in a form determined by the Commonwealth <i>Minister</i> ;  |
| <b>Conflict-of-Interest guidelines</b>  | means any guidelines adopted by the <i>Board</i> that deal with the management of conflicts of interest with regard to members of the <i>Board</i> ;  |
| <b>Department</b>                       | means the Commonwealth department or agency responsible for administering this <i>Agreement</i> ;   |

|                                   |   |
|-----------------------------------|---|
| <b>FMA Act</b>                    | means the <i>Financial Management and Accountability Act 1997</i> (Cth);  |
| <b>FMA Regulations</b>            | means the <i>Financial Management and Accountability Regulations 1997</i> (Cth);  |
| <b>General Manager</b>            | means the person occupying the position of General Manager established by clause 15 or a person acting in that role;  |
| <b>Indemnity Deed</b>             | means the indemnity deeds entered into by the <i>Parties</i> on 7 November 2000, as amended or replaced from time to time;  |
| <b>Industry Representatives</b>   | means the representatives of the building and construction and plumbing industries who are members of the <i>Board</i> ;  |
| <b>Intellectual Property Deed</b> | means the intellectual property deeds entered into by the <i>Parties</i> on 11 October 1996, amended on 28 August 2008 and as amended further or replaced from time to time;  |
| <b>Minister</b>                   | means: <ul style="list-style-type: none"><li>a) for the Commonwealth: a Minister of State or other member of the Federal Executive Council;</li><li>b) for a State or Territory: a Minister of the relevant State or Territory; or</li><li>c) for the Commonwealth, a State or a Territory: a person nominated by a Minister, as defined in subclause a or b, as his or her representative from time to time;</li></ul> |
| <b>Mission</b>                    | means the mission stated in clause 4;   |
| <b>Natural Phenomena</b>          | means geological, geographical or climatic factors;   |
| <b>NCC</b>                        | NCC means the National Construction Code Series, comprising the Building Code of Australia, Volumes One and Two; and the Plumbing Code of Australia, Volume Three, and other on-site construction requirements, as directed by <i>COAG</i> or the <i>BMF</i> ;  |
| <b>New Variation</b>              | means a <i>Variation</i> that occurs after the <i>Commencement Date</i> ;   |
| <b>Objectives</b>                 | means the objectives stated in clause 5;  |

|                                     |  |
|-------------------------------------|--|
| <b>Parties</b>                      | means the Commonwealth of Australia, the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, and the Australian Capital Territory and the Northern Territory;                  |
| <b>Prior Agreements</b>             | means the Agreement of the <i>Parties</i> on 1 March 1994, as amended on 27 July 2001 by the <i>Parties</i> , the Agreement of the <i>Parties</i> on 26 April 2006 and the Agreement of the <i>Parties</i> on 30 April 2012; |
| <b>Productivity Commission</b>      | means the Productivity Commission established by section 5 of the <i>Productivity Commission Act 1998</i> (Cth)  |
| <b>Proposal for Change</b>          | means a process, as defined by the <i>Board</i> , to consider technical proposals to change the <i>NCC</i> and which is consistent with the <i>COAG Principles</i> .   |
| <b>PGPA Act</b>                     | means the <i>Public Governance Performance and Accountability Act 2013</i> which came into force on 1 July 2014 and has replaced the <i>FMA Act</i> and <i>FMA Regulations</i> ;   |
| <b>Regulatory Impact Assessment</b> | means a Regulatory Impact Assessment process as defined by the <i>COAG Principles</i> ;  |
| <b>Regulatory Impact Statement</b>  | means a Regulatory Impact Statement as defined by the <i>COAG Principles</i> ;   |
| <b>Secretary</b>                    | means the Secretary of the <i>Department</i> ;   |
| <b>State</b>                        | means the government of a State;   |
| <b>Sustainability</b>               | means an element of new building work that delivers effective environmental outcomes, or as otherwise defined by the <i>BMF</i> ;  |
| <b>Territory</b>                    | means the government of a Territory; and   |
| <b>Variation</b>                    | means any provision, within any Commonwealth, State or Territory legislative and or/regulatory instrument(s), that materially varies or expands on a matter covered by the <i>NCC</i> .                                      |

## Interpretation

- 2.2. In this *Agreement*, unless the contrary intention appears:
- a. words in the singular include the plural and words in the plural include the singular;

- b. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- c. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- 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;
- e. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

### **3. Establishment of the Board**

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- 3.1. The *Board* established by the *Prior Agreements* is continued in existence by this clause 3.
- 3.2. The *Board* shall consist of between ten and sixteen members including:
  - a. a Chair;
  - b. the head of each Commonwealth, State and Territory *Administration* or their delegate;
  - c. a representative of the Australian Local Government Association (*ALGA*); and
  - d. up to five representatives of the building and construction industry (*'Industry Representatives'*), at least one of whom shall have plumbing expertise.
- 3.3. The *Chair* and the *Industry Representatives* shall be appointed in accordance with clauses 8 and 9. All other appointments to the *Board* are ex-officio.

### **4. Mission of the Board**

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- 4.1. The *Board's Mission* will be to address the following issues in the design, construction and performance of buildings which are listed in order of priority:
  - a. safety and health;
  - b. amenity and Sustainability.

This will be achieved through the *NCC* and the development of effective regulatory systems and appropriate non-regulatory solutions.

### **5. Objectives of the Board**

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- 5.1. The *Objectives* of the *Board* will be to:

- a. develop codes and standards that accord with strategic priorities established by *Ministers* from time to time, having regard to societal needs and expectations;
- b. establish codes and standards that are the minimum necessary to efficiently achieve the relevant *Mission* of ensuring safety and health, and amenity and *Sustainability* objectives;
- c. ensure that, in determining the area of regulation and the level of the requirements:
  - A. there is a rigorously tested rationale for the regulation;
  - B. the regulations are effective and proportional to the issues being addressed such that the regulation will generate benefits to society greater than the costs (that is, net benefits);
  - C. there is no regulatory or non-regulatory alternative (whether under the responsibility of the *Board* or not) that would generate higher net benefits; and
  - D. the competitive effects of the regulation have been considered; and the regulation is no more restrictive than necessary in the public interest.
- d. ensure that *NCC* requirements are:
  - A. performance-based;
  - B. verifiable;
  - C. based on appropriate international standards; and
  - D. expressed in plain English;
- e. ensure that *NCC* requirements are as far as practicable consistent across the *States* and the *Territories*;
- f. encourage reduced reliance on regulation by providing a forum to explore alternative mechanisms for delivering outcomes;
- g. raise awareness of, and provide information to industry and relevant stakeholders on, the development of the *NCC*;
- h. manage or oversee the management of product certification schemes relating to building and plumbing which assist the *Board* with achieving its other objectives listed above.

## **6. Functions and powers of the Board**

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- 6.1. The proceedings and operations of the *Board* shall be directed to the achievement of the *Mission* and *Objectives*.

### **Functions**

- 6.2. To achieve the *Mission* and *Objectives* the *Board* will:

- a. develop, advise and make recommendations to the *Ministers* on matters consistent with the *Mission* and *Objectives*;
- b. make decisions on matters relevant to the *NCC* :
  - A. in accordance with the *COAG Principles* and any other Ministerial direction given through the *BMF*; and
  - B. that are consistent with the *Objectives*;
- c. prepare and furnish in respect of each financial year to the *BMF* for its endorsement, an *Annual Business Plan* (including a forward work program for the following two financial years) which shall give details of progress, projects, priorities, expenditure and overall performance in the achievement of *Objectives*;
- d. prepare and furnish an *Annual Report* to *Ministers* regarding the *Variations* from the *NCC* reported by the *States* and *Territories* under clause 18. In particular, this report must:
  - A. highlight any *New Variations* from the *NCC* and the non-adoption of *NCC* amendments, by the *States* and *Territories*;
  - B. identify areas of duplication and inconsistency in State and Territory legislation; and
  - C. identify opportunities for greater consistency in building and plumbing regulation between the *States* and *Territories*;
- e. provide overall direction, approve work programs, approve and monitor annual budgets, and determine priorities;
- f. reach agreement on a three yearly timetable for the development and delivery of amendments to the *NCC*;
- g. provide for a work program of consultation with governments, industry, consumer groups and other organisations; and
- h. provide strategic guidance to the *General Manager* in the fulfilment of his or her duties.

## **Powers**

### 6.3. The *Board*:

- a. may, subject to clause 6.4, deal with such matters or arrange for the performance of such tasks related to the *Objectives* as the *Board* may, from time to time, deem necessary; and
- b. may, subject to clause 6.5, clause 6.6 and clause 6.7 publish and make amendments to the *NCC*.

### **Limits on the exercise of powers**

- 6.4. The *Board* may not act in a manner that is inconsistent with the *PGPA Act* and delegated legislation, in particular the *Board* cannot:
- a. approve spending proposals under section 23 of the *PGPA Act* or give agreement for a spending proposal under section 60 of the *PGPA Act*; or
  - b. enter into contracts or other arrangements under which relevant money is or may become payable in the name of the Commonwealth or in the name of the *Board*.
- 6.5. The *Board* will comply with the *COAG Principles* in addressing regulatory reform. In particular, the *ABCB Office* under the direction of the *Board* will:
- a. conduct Regulatory Impact Assessments, which will:
    - A. assess whether government intervention is necessary or desirable; and
    - B. quantify the impact of government action;
  - b. where required, prepare *Regulatory Impact Statements*, which will follow the *COAG Principles*;
  - c. state the method of and timing for review of the regulation; and
  - d. consult with the Office of Best Practice Regulation in the Commonwealth Department of Finance and Deregulation, or its equivalent body.
- 6.6. Subject to clause 6.7, the Board may publish and make amendments to the NCC in 2015 and then three yearly from 2016 thereafter.
- 6.7. The Board may publish and make amendments to the NCC in contravention of clause 6.6, in exceptional circumstances, on a case by case basis, where a majority of the Board agrees an amendment is warranted, before three years has elapsed on the basis that:
- a. failure to publish and make the relevant amendment would expose the community to significant safety or health risks; or
  - b. the text of the NCC contains significant factual or technical errors.

### **7. Assistance to be provided to the Board by the Administrations**

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- 7.1. Each of the *Administrations*, shall have the general responsibility for providing support appropriate to facilitate the work of the *Board*, including:
- a. liaison and co-operation with the *General Manager*; and
  - b. timely advice on:
    - A. the implications of proposals of the *Board* which affect or are affected by legislation of the *State* or *Territory*; and
    - B. other matters as requested by the *Board*.

- 7.2. Each of the *Administrations* will meet a mutually agreed timetable for development and delivery of amendments to the *NCC*. *Administrations* may individually adopt amendments to the *NCC* ahead of an agreed timetable.

## **8. Appointment of the Chair**

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- 8.1. The *Chair* must be:
- a. independent from sectional interests; and
  - b. have a capacity to advance the work of the *Board*.
- 8.2. If the position of *Chair* is vacant or is likely to become vacant, the Commonwealth *Minister* is responsible for nominating a person as his or her preferred candidate for the position of *Chair*.
- 8.3. The Commonwealth *Minister* must advise the State and Territory *Ministers* of his or her preferred candidate.
- 8.4. In the event a State or Territory *Minister* disagrees with the Commonwealth *Minister's* preferred candidate, the State or the Territory *Minister* may nominate an alternative person and will advise the Commonwealth *Minister* and the other State and Territory *Ministers* of his or her preferred candidate.
- 8.5. A candidate will be required to make a *Conflict-of-Interest declaration* to the Commonwealth *Minister* prior to being appointed.
- 8.6. Where a majority of *Ministers* agree on a candidate to be appointed as the *Chair*, the Commonwealth *Minister* will appoint that person as *Chair* for a period of up to five years.
- 8.6.1. Each jurisdiction represented on the BMF can only exercise a single vote on the appointment of the Chair of the Board.
- 8.7. In the event a majority of *Ministers* are unable to agree on a candidate to be appointed as *Chair*, the process described in clauses 8.1 to 8.6 shall be repeated until a candidate is agreed.
- 8.8. A person ceases to be the *Chair* and a member of the *Board* if he or she:
- a. resigns the office by instrument in writing to the Commonwealth *Minister*;
  - b. is unable to perform the required duties due to illness or incapacity; or
  - c. is otherwise removed from office by the Commonwealth *Minister*, after consultation with the State and the Territory *Ministers*.

## **9. Appointment of industry representatives**

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- 9.1. If the position of one or more of the *Industry Representatives* is vacant or is likely to become vacant, the Commonwealth *Minister* as *BMF* Chair will write to the Australian Construction Industry Forum (ACIF) and State and Territory *Ministers* requesting nominations for *Industry Representatives*.

- 9.2. The Commonwealth *Minister* will consolidate the nominations of the ACIF, State and Territory *Ministers* and any persons the Commonwealth *Minister* wishes to nominate into a list of persons nominated for selection as *Industry Representatives* ('list of recommended persons').
- 9.3. The Commonwealth *Minister* shall provide the State and Territory *Ministers* with the list of recommended persons and request that the State and Territory *Ministers*, subject to clause 9.3.1, reach a majority decision on the appointment of new *Industry Representatives* from the list of recommended persons.
- 9.3.1. Each State and Territory represented on the BMF can only exercise a single vote per jurisdiction on the appointment of an Industry Representative to the Board.
- 9.4. The Commonwealth *Minister* shall not vote on the appointment of new *Industry Representatives* unless there is a tied vote or agreement cannot be reached, in which case the Commonwealth *Minister* will have a deciding vote.
- 9.5. In appointing persons as *Industry Representatives*, *Ministers* should take the following considerations into account:
- a. only persons who have the appropriate expertise to complement the capacity and skill set of the *Board* should be considered;
  - b. the *Industry Representatives* should, collectively, bring a wide range of sectoral expertise to assist the *Board* in its deliberations;
  - c. each industry representative should have the capacity to actively contribute to the *Board's* decision-making processes by participating in official *Board* meetings, sub-committees, and representing the *Board* in other relevant forums; and
  - d. each industry representative should be able to comply with the relevant requirements of this *Agreement*.
- 9.6. Each person nominated will be required to make a *Conflict-of-Interest declaration* to the Commonwealth *Minister* prior to being appointed.
- 9.7. Where a majority of *Ministers* agree on a candidate in accordance with clause 9.3, that person will be appointed to the *Board* by the Commonwealth *Minister* for a period of up to five years.
- 9.8. An *Industry Representative* may only serve a maximum of two consecutive terms on the *Board*.
- 9.9. A person ceases to be a member of the *Board* if that person:
- a. ceases to retain the qualification by which membership was attained;
  - b. resigns the office by instrument in writing; or

- c. is removed from office by the Commonwealth *Minister*, after consultation with the State and Territory *Ministers* either following a recommendation by the *Chair* under clause 9.10 or otherwise.
- 9.10. The *Chair* may recommend that the Commonwealth *Minister* remove an *Industry Representative* from the *Board* if that *Industry Representative*:
- a. has breached clause 11 of this *Agreement*;
  - b. has missed two consecutive official meetings or a total of three meetings in a financial year;
  - c. has performed poorly or been unwilling to contribute to the *Board's Mission and Objectives*;
  - d. has failed to declare a conflict of interest; or
  - e. is unable to perform the required duties due to illness or incapacity;
- and
- the *Industry Representative* does not satisfy the *Chair* that he or she should not be removed from the *Board* after being provided 30 days notice to advise in writing why he or she should not be removed from the *Board*.

## **10. Meetings of the Board**

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### **Timing and number of meetings**

- 10.1. The *Board* shall meet at least twice in each financial year.
- 10.2. The times and dates of meeting shall be determined by the *Board*.

### **Conduct of meetings and voting**

- 10.3. Each member of the *Board* or their delegate (refer clause 10.10), including the *Chair*, is entitled to exercise one deliberative vote on any matter for decision.
- 10.4. Decisions of the *Board* will be by absolute majority of all *Board* members entitled to attend and vote.
- 10.5. In the event of an equality of votes in relation to any decision, the vote will be considered to be lost.
- 10.6. The *Chair*, with the agreement of the majority of *Board* members representing the *Administrations*, may invite observers to *Board* meetings from time to time.
- 10.7. The deliberations and decisions of the *Board* will be recorded in writing.
- 10.8. The quorum for a meeting is ten *Board* members, so long as more than half the members present are members representing the *Administrations*.

- 10.9. Members of the *Board*, including the *Chair*, must not participate in any discussions or vote in any matters in which they may have or may be perceived to have a conflict-of-interest (refer clause 11).

### **Delegates**

- 10.10. Subject to clause 10.11, each member of the *Board* who is the head of an *Administration* or his or her nominated delegate, (refer clause 3.2.b) may appoint a delegate.
- 10.11. Any delegate appointed must be delegated the power to make decisions on behalf of their *Administration*.

### **Decisions without meetings**

- 10.12. Decisions of the *Board* may be made by communication between its members without calling a formal meeting, provided that:
- a. all members are consulted on each matter for decision;
  - b. decisions are made in accordance with clause 10.4; and
  - c. all members are informed of the decision made.

## **11. Conduct of the Board**

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### **Code of Conduct**

- 11.1. The members of the *Board* will, to the extent they are applicable, conduct themselves in accordance with the *APS Code of Conduct* and *APS Values* (see sections 10 and 13 of the *Public Service Act 1999* (Cth) respectively).

### **Conflict-of-Interest**

- 11.2. The *Chair* and *Industry Representatives* are responsible for keeping their respective *Conflict-of-Interest declarations* to the Commonwealth *Minister* up-to-date.
- 11.3. The *Chair* and *Industry Representatives* must make a further *Conflict-of-Interest declaration* should an actual or perceived conflict-of-interest of an ongoing nature arise during the term of their appointment.
- 11.4. Subject to clause 10.9, the *Board* will adopt *Conflict-of-Interest guidelines* to deal with conflicts as they arise in exercising the *Board's* functions and powers.

## **12. Representation on other Bodies**

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- 12.1. The *Board* may be represented on another body or bodies in accordance with resolutions of the *Board*.

**13. Committees**

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- 13.1. There shall be a Building Codes Committee and a Plumbing Code Committee to provide advice to the *Board*.
- 13.2. The *Board* may establish other *Committees*, from time to time, as required.
- 13.3. The composition and operation of the *Committees* shall be determined by the *Board*.
- 13.4. The *Committees* cannot make decisions that vary the *NCC*. Such matters, if considered by the *Committees*, must be referred to the *Board* which will make the ultimate decision.

**14. Funding**

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**Contributions**

- 14.1. Each *Party's* funding contribution to support the operation of the *Board* is set out in Attachment A to this *Agreement*, unless otherwise varied by the *BMF*.
- 14.2. The *Board's* funding shall be provided by:
- a. annual appropriation by the Commonwealth to the Australian Building Codes Board Account (*ABCB Account*); and
  - b. crediting of payments made by the *States* and *Territories* to the Commonwealth for the purposes of the *ABCB Account* to the *ABCB Account*.
- 14.3. The Commonwealth may receive payments from other sources for the purposes of the *Board* or arising from the activities of the *Board*, and these amounts are to be credited to the *ABCB Account*.
- 14.4. Annual contributions of funds are payable by the *Parties* once an appropriation is available, or as soon as practicable after the commencement of each financial year, whichever is the later.

**ABCB Account**

- 14.5. The annual contributions of each *Party* determined under this clause 14 and any other payments paid to the Commonwealth for the purposes of the *Board* will be credited to the *ABCB Account*.
- 14.6. Amounts standing to the credit of the *ABCB Account* may only be drawn down and spent for the purposes of achieving the *Board's Objectives*.
- 14.7. Amounts that may be paid to the Commonwealth and credited to the *ABCB Account* are any amounts:
- a. that are held in trust for, or otherwise for the benefit of, a person other than the Commonwealth;
  - b. appropriated by law for the purpose of crediting the *ABCB Account*,

- c. received in consideration for any service, benefit, activity, transaction or other matter which is congruent with the expenditure purpose of the *ABCB Account*; and
- d. paid to the Commonwealth by any person for the expenditure purposes for the relevant account.

## **15. General Manager**

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### **Appointment**

- 15.1. A *General Manager* shall be appointed by the Commonwealth by the *Secretary*.
- 15.2. The *Secretary* will consult with the *Chair* on the appointment of the *General Manager*.
- 15.3. The *General Manager* will be an *APS* employee.

### **Functions and powers**

- 15.4. The *General Manager* will manage the day to day activities of the *ABCB Office*, including coordinating the activities of the *Board*, and carrying out and managing the implementation of *Board* directives and decisions in accordance with this *Agreement*.
- 15.5. The *Board* may delegate some functions and powers to the *General Manager*.
- 15.6. The *General Manager* shall, with the strategic guidance of the *Board* and in a manner that is not inconsistent with the *PGPA Act*, or the policies of the Commonwealth, co-ordinate, manage and facilitate the implementation of the *Board's* decisions regarding the *Objectives*. In particular, the *General Manager* will have responsibility for:
  - a. Financial management;
  - b. Technical support services;
  - c. Administrative and operational support;
  - d. Management of research projects;
  - e. Consultation and liaison;
  - f. Information dissemination;
  - g. Advice on policy development;
  - h. Management and co-ordination of committee activities; and
  - i. Other matters as determined by the *Board*.
- 15.7. The *General Manager* shall, on request and at least once a year, report to the *Board* on the achievement of the *Objectives* of the *Agreement*.

## **16. Administration**

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### **Delegations and authorisations**

- 16.1. In the absence of a delegation from the *Secretary*, the *General Manager* does not have the power to approve spending proposals under *section 23 of the PGPA Act*.
- 16.2. The *Secretary* may issue the *General Manager* a limited delegation to approve spending proposals and a drawing right to draw down the funds appropriated to the *ABCB Account*.
- 16.3. The *General Manager* may, provided that the *General Manager* has been issued an appropriate delegation by the *Secretary*:
- a. approve spending proposals to the limit of that delegation; and
  - b. draw down the funds appropriated to the *ABCB Account* under an appropriate delegation issued by the *Secretary* to the *General Manager*, consistent with the requirements of the *PGPA Act*.
- 16.4. The *General Manager* shall discharge duties and functions in the administration of the *ABCB Office* and the *Board's Annual Business Plan* in an efficient, effective and ethical manner.

### **Engagement of Consultants**

- 16.5. Consultants may be engaged by the *Secretary* (or the delegate of the *Secretary*) on behalf of the *Board* to carry out tasks associated with the functions of the *Board*.
- 16.6. The terms and conditions on which consultants are engaged under clause 16.5 must:
- a. be an efficient, effective, ethical and economical use of relevant money and not inconsistent with the *PGPA Act and the policies of the Commonwealth*;
  - b. be in accordance with the *Department's Accountable Authority Instructions*;
  - c. be in accordance with the *Commonwealth Procurement Guidelines*; and
  - d. if the engagement is not by the *Secretary*, be in accordance with any delegation by the *Secretary* of their powers under the *PGPA Act*.

### **Travel and Meeting Costs**

- 16.7. Subject to clause 16.8, travel and other costs incurred by members or members' delegates, members of the *Committee*, or consultants in pursuit of the business of the *Board* may only be paid if approved by the *General Manager*.

- 16.8. Costs for travel will only be approved in accordance with the *Department's* normal travel arrangements and policies.
- 16.9. Subject to any restrictions in any delegation from the *Secretary* or the *Department's* Accountable Authority Instructions, the *General Manager* may, where he or she is requested by the *Board* to appoint a particular person to conduct research or act as a consultant to the *Board*, agree to pay the travel and other costs associated with the services of that person as part of the terms of their engagement.

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**17. Transitional arrangements**

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- 17.1. The members of the *Board* appointed under the *Prior Agreements* will continue as members of the *Board* under this *Agreement* as if they were appointed under this *Agreement*.

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**18. Consolidation of, Variations from, and Additions to the NCC**

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- 18.1. Each of the *Administrations* will take reasonable steps to consolidate all of their mandatory provisions affecting the design, construction and performance of buildings into the consolidated version of the *NCC*.
- 18.2. The *Parties* agree that, as far as practicable:
- a. requirements relating to *Natural Phenomena* should be included in the *NCC* with such requirements to only apply in areas affected by, or those likely to be affected by, those *Natural Phenomena*; and
  - b. reasonable steps should be taken to include *Additions* in the appendix of the *NCC* so that any requirements that apply in addition to the *NCC* are clearly identified.
- 18.3. Each Party commits, as far as practicable, to:
- a. reducing or validating *Variations* to the *NCC* in its legislation:
  - b. restricting *New Variations* from the *NCC*, but where such variations are deemed necessary:
    - A. requiring that any *New Variations* be subject to a *Regulatory Impact Assessment* (subject to any other required regulatory impact assessment processes in their respective jurisdictions); and
    - B. requiring that any *New Variation* be approved by the relevant *Minister*;
  - c. identifying *Variations* (including *New Variations*) from the *NCC* and the non-adoption of *NCC* amendments in their respective jurisdictions and reporting this information to the *Board* on an annual basis.

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**19. Changing priorities and projects of the Board**

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- 19.1. The *Parties* acknowledge that any setting of strategies or priorities by the *Board* or requests for the *Board* to consider matters needs to be done in a way that is consistent with the *COAG Principles*.
- 19.2. In setting strategies, priorities and work plans, the *Board* must act in accordance with any direction from *COAG* or any majority decision by the *BMF*, and be made through the processes set out in clauses 19.3 to 19.7, except in the following circumstances:
- a. where, for reasons of extreme urgency brought about by unforeseen events (such as natural disasters), the *Board* may commission research.
- 19.3. If appropriate and practicable, a *BMF* proponent for a change to the *Board's* strategies, priorities and work plans must submit either:
- a. a Proposal for Change to the Board; or
- b. a business case, with supporting documentation, in a timeframe which allows the *BMF* to consider the proposal.
- 19.4. If the matter has previously been considered by the *Board* and rejected, the proponent must provide reasonable grounds in their submission as to why the *Board's* decision should be revisited.
- 19.5. The *BMF* should seek advice from the *Board* on the impact of the proposal on existing priorities, projects or work plans prior to making a decision.
- 19.6. A proposal must be supported by a majority decision of the *BMF* before the changes contained in the proposal can be made or implemented.
- 19.7. Any changes to the *NCC* that are required by a non-*BMF* proponent, shall be made through the *Board's Proposal for Change* processes.

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**20. Review**

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- 20.1. A review of the operations of the *Board* and the administration of this *Agreement* shall be conducted within 5 years from the *Commencement Date*.

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**21. Intellectual Property**

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- 21.1. This *Agreement* does not affect the ownership of Intellectual Property in any materials created by, under, or for the purposes of the *Board*.
- 21.2. Intellectual Property shall continue to be dealt with in accordance with an *Intellectual Property Deed* between the *Parties*.

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**22. Indemnity Issues**

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- 22.1. This *Agreement* does not provide an indemnity in favour of any member of the *Board* or the manner in which costs will be apportioned under an indemnity.

22.2. Any indemnities or apportionment of costs will be dealt with in separate deeds between the relevant parties.

**23. Not legally binding**

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23.1. The *Parties* do not intend that this *Agreement* should be legally binding.

**ATTACHMENT A - GOVERNMENT CONTRIBUTIONS 2010-11 TO 2018-19**

| <b>Contributor</b>                        | <b>2010-11</b>     | <b>2011-12</b>     | <b>2012-13</b>     | <b>2013-14</b>     | <b>2014-15</b>     | <b>2015-16</b>     | <b>2016-17</b>     | <b>2017-18</b>     | <b>2018-19</b>     | <b>TOTAL<br/>2010-11 to 2018-<br/>19</b> |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--|
| <b>Commonwealth<br/>State / Territory</b> | <b>\$1,000,000</b> | <b>\$2,750,000</b> | <b>\$2,625,000</b> | <b>\$2,625,000</b> | <b>\$4,000,000</b> | <b>\$4,000,000</b> | <b>\$4,000,000</b> | <b>\$4,000,000</b> | <b>\$4,000,000</b> | <b>\$29,000,000</b>                      |
| ACT                                       | \$107,744          | \$119,439          | \$116,515          | \$116,515          | \$113,592          | \$153,132          | \$153,132          | \$153,132          | \$153,132          | <b>\$1,186,333</b>                       |
| NSW                                       | \$418,583          | \$541,292          | \$510,614          | \$510,614          | \$479,937          | \$936,141          | \$936,141          | \$936,141          | \$936,141          | <b>\$6,205,604</b>                       |
| NT  | \$90,356           | \$95,841           | \$94,470           | \$94,470           | \$93,098           | \$140,925          | \$140,925          | \$140,925          | \$140,925          | <b>\$1,031,935</b>                       |
| Qld                                       | \$433,333          | \$561,310          | \$529,316          | \$529,316          | \$497,322          | \$775,962          | \$775,962          | \$775,962          | \$775,962          | <b>\$5,654,445</b>                       |
| SA  | \$142,993          | \$167,276          | \$161,205          | \$161,205          | \$155,134          | \$245,954          | \$245,954          | \$245,954          | \$245,954          | <b>\$1,771,629</b>                       |
| Tas                                       | \$95,362           | \$102,634          | \$100,816          | \$100,816          | \$98,998           | \$115,084          | \$115,084          | \$115,084          | \$115,084          | <b>\$958,962</b>                         |
| Vic                                       | \$446,838          | \$579,637          | \$546,438          | \$546,438          | \$513,238          | \$1,053,290        | \$1,053,290        | \$1,053,290        | \$1,053,290        | <b>\$6,845,749</b>                       |
| WA  | \$264,790          | \$332,572          | \$315,627          | \$315,627          | \$298,681          | \$579,512          | \$579,512          | \$579,512          | \$579,512          | <b>\$3,845,345</b>                       |
| <b>State/Territory<br/>Total</b>          | <b>\$2,000,000</b> | <b>\$2,500,000</b> | <b>\$2,375,000</b> | <b>\$2,375,000</b> | <b>\$2,250,000</b> | <b>\$4,000,000</b> | <b>\$4,000,000</b> | <b>\$4,000,000</b> | <b>\$4,000,000</b> | <b>\$27,500,000</b>                      |

**NOTES:**

1. A jurisdiction's contribution consists of a base component of \$75, 000 per annum and a pro rata amount based on the total value of building approvals in their respective jurisdiction.
2. In relation to 2010-11 to 2014, contributions were calculated using Australian Bureau of Statistics (ABS) data on construction activity as at FY2007-08. For 2015-16 to 2018-19, contributions have been calculated using latest ABS data in construction activity as for FY 2012-13.

**Signatures**

SIGNED for and on behalf of the )  
Commonwealth of Australia by the )  
Hon Craig Laundy MP Assistant )  
Minister for Industry, Innovation and )  
Science )

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*

Australian Building Codes Board Intergovernmental Agreement

SIGNED for and on behalf of the )  
Australian Capital Territory by )  
Mr Mick Gentleman MLA )  
Minister for Planning and Land )  
Management )

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*

Australian Building Codes Board Intergovernmental Agreement

SIGNED for and on behalf of the )  
State of New South Wales by )  
The Hon Rob Stokes MP )  
Minister for Planning )  
)

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*

Australian Building Codes Board Intergovernmental Agreement

SIGNED for and on behalf of the )  
State of New South Wales by )  
The Hon Victor Dominello MP )  
Minister for Innovation and Better )  
Regulation )

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*

SIGNED for and on behalf of the )  
Northern Territory by )  
The Hon David Tollner MLA ) Signature  
Treasurer )  
Minister for Lands and Planning )  
Minister for Mines and Energy )  
Date

In the presence of:

Print name of witness

Signature of witness

SIGNED for and on behalf of the )  
State of Queensland by )  
The Hon Mick de Brenni MP )  
Minister for Housing and Public )  
Works )  
)

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*

SIGNED for and on behalf )  
of the State of South Australia by )  
The Hon John Rau MP )  
Deputy Premier )  
Minister for Planning )

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*

Australian Building Codes Board Intergovernmental Agreement

SIGNED for and on behalf )  
of the State of South Australia by )  
The Hon Ian Hunter MP )  
Minister for Water and the River )  
Murray )

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*

SIGNED for and on behalf of the  
State of Tasmania by  
The Hon Adam Brooks MP  
Minister for Building and Construction

)  
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)  
)  
)

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*

SIGNED for and on behalf of the )  
State of Victoria by )  
The Hon Richard Wynne MP )  
Minister for Planning )  
)

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*

Australian Building Codes Board Intergovernmental Agreement

SIGNED for and on behalf of the )  
State of Western Australia by )  
The Hon Michael Mischin MLC )  
Attorney-General )  
Minister for Commerce )

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of witness*