



## **Australian Government**

Senate Economics References Committee's Inquiry into  
Non-Conforming Building Products

Australian Government response to the Interim Report:  
Aluminium Composite Cladding

FEBRUARY 2018

## BACKGROUND

On 23 June 2015, the Senate referred an inquiry into non-conforming building products to the Senate Economics References Committee (the Committee), to examine:

- *the economic impact of non-conforming building products on the Australian building and construction industry;*
- *the impact of non-conforming building products on:*
  - *industry supply chains, including importers, manufacturers and fabricators,*
  - *workplace safety and any associated risks,*
  - *costs passed on to customers, including any insurance and compliance costs; and*
  - *the overall quality of Australian buildings;*
- *possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, with particular reference to the effectiveness of:*
  - *policing and enforcement of existing regulations,*
  - *independent verification and assessment systems,*
  - *surveillance and screening of imported building products, and*
  - *restrictions and penalties imposed on non-conforming building products; and*
- *any other related matters.*

The inquiry lapsed following the dissolution of the Senate (44<sup>th</sup> Parliament) on 9 May 2016, for the general election on 2 July 2016.

On 13 October 2016, the Committee resolved to re-open submissions to the inquiry, under the 45<sup>th</sup> Parliament.

As part of its broader inquiry into non-conforming building products, the Committee adopted additional terms of reference to seek submissions regarding the illegal importation of products containing asbestos, and their impact on the health and safety of the Australian community.

Submissions to the inquiry closed on 18 January 2017.

The Committee was previously required to report on its terms of reference relating to asbestos imports by 28 April 2017, with a full report on all terms of reference by 25 May 2017.

On 30 March 2017, the Senate granted an extension of time for the Committee to report by 31 August 2017 for the interim report on the illegal importation of products containing asbestos, and 31 October 2017 for the final report.

Following the Grenfell Tower fire in London, on 21 June 2017, the Assistant Minister for Industry, Innovation and Science, the Hon Craig Laundy MP, wrote to the Chair of the Committee, Senator Chris Ketter, to request the inquiry be used to conduct a public hearing to specifically examine the non-compliant use of cladding products in Australia.

The Committee agreed to prepare an additional interim report on the implications of the use of non-compliant external cladding materials in Australia as a priority.

On 17 August 2017, the Senate agreed to extend the reporting dates for the interim report on asbestos to 14 November 2017, and the final inquiry report on 30 April 2018.

On 6 September 2017, the Committee released its interim report on aluminium composite cladding, which included the following eight recommendations:

1. The Australian government implement a total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency.
2. The Commonwealth government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.
3. The Building Ministers' Forum give further consideration to introducing nationally consistent measures to increase accountability for participants across the supply chain.
4. That the Commonwealth government consider making all Australian Standards and codes freely available.
5. The Commonwealth government consider imposing a penalties regime for non-compliance with the NCC such as revocation of accreditation or a ban from tendering for Commonwealth funded construction work and substantial financial penalties.
6. The Commonwealth government ensure the Federal Safety Commissioner is adequately resourced to ensure the office is able to carry out its duties in line with the new audit function and projected work flow.
7. The Commonwealth government's decision to give further consideration to Director Identification Numbers and recommends that it expedites this process in order to prevent directors from engaging in illegal phoenix activity.
8. That state and territory government's work together to develop a nationally consistent statutory duty of care protection for end users in the residential strata sector.

The Australian Government has given consideration to the findings and recommendations presented in the Committee's interim report, and tables the following response for the Committee's consideration ahead of the final inquiry report.

## GOVERNMENT RESPONSE

The Australian Government recognises there is genuine community concern about the non-compliant use of combustibile external wall cladding in Australia, and supports the decision of the Committee to specifically examine this issue as part of its broader inquiry into non-conforming building products.

The regulatory framework governing the built environment in Australia centres on the constitutional authority held by state and territory governments. As such, there are constitutional limitations on the extent to which the Australian Government can control building and construction activities.

For this reason, the Australian Government works collaboratively with the state and territory governments to ensure a nationally consistent and cost effective approach to building and construction regulation, through the development and maintenance of the National Construction Code (NCC).

The NCC sets the minimum performance requirements for the design, construction and performance of buildings throughout Australia. The NCC provides the states and territories with model regulation that is fully or partially adopted through their respective legislation and for which they have responsibility for implementing.

Further to the state and territory regulatory frameworks, the Australian Government is responsible for:

- Ensuring Australia's standards and conformance assessment infrastructure is consistent with international trade obligations under the *World Trade Organization Technical Barriers to Trade (WTO TBT) Agreement*;
- Enforcing customs requirements and border controls on imported goods;
- Applying the Australian Consumer Law at a national level, jointly with states and territories;
- Promoting workplace, health and safety (WHS) through the Federal Safety Commissioner, and
- Implementing the *Building and Construction WHS Accreditation Scheme*.

The Prime Minister, the Hon Malcolm Turnbull MP, has sought assurance from State and Territory Premiers and Chief Ministers that all governments will work together to determine the extent to which the non-compliant use of cladding products is an issue across Australia.

The Prime Minister has strongly encouraged all governments to carry out a greater level of auditing of high-rise buildings, and appropriate compliance and enforcement action, to ensure the safety of Australia's built environment.

The Government considers, based on evidence submitted to the Committee and the Committee's findings, that there is a broader issue of non-compliance with the state and territory regulatory framework that is undermining the effective implementation of Australia's world class NCC.

As such, through the Building Ministers' Forum (BMF), all governments have agreed to examine the broader compliance and enforcement problems, within the regulatory and administrative systems, which impair the effective implementation of the NCC, such as:

- licensing and accreditation;
- certification and inspections;
- quality controls and assurance processes; and
- auditing and enforcement practices.

The outcome of the BMF Assessment will be to make recommendations on a range of issues to establish a national best practice model for compliance and enforcement, and improve the building and construction regulatory system.

Notwithstanding the outcome of the BMF Assessment, the Australian Government believes the most valuable course of action to safeguarding our built environment is to ensure:

- qualified and competent practitioners are engaged throughout the construction process;
- our building certification systems are not compromised and are understood by industry;
- our building regulators have the capacity and capability to monitor compliance across the supply chain; and
- our existing regulatory systems are effectively audited and enforced.

### **Building Ministers' Forum**

The Building Ministers' Forum (BMF) is a ministerial-level body consisting of Australian Government, State and Territory Ministers responsible for building and plumbing policy.

The BMF is responsible for overseeing governance of the built environment. As such, one of its primary responsibilities is to establish the strategic priorities for the Australian Building Codes Board (ABCB).

The ABCB was established in 1994 through an Intergovernmental Agreement (IGA), as a cooperative reform of building regulations by the Australian Government and the states and territories.

The IGA recognises that the states and territories have primary responsibility for regulating building and construction. In order to facilitate the development of a more efficient and comprehensive code, the Australian, state and territory governments, through the IGA, commit to provide annual funding contributions towards the operations of the ABCB.

The BMF also considers other policy and regulatory issues impacting the building and construction industries. While Ministers each receive advice from their respective officials, the BMF has recognized the benefits of cooperation and alignment between jurisdictions on issues of national significance.

In addition to the ABCB, the BMF has also established the Senior Officers' Group (SOG) and the Building Regulators' Forum (BRF) to provide policy advice to the BMF and coordinate regulatory matters, respectively.

The reporting arrangements to the BMF are illustrated by the diagram at [Attachment A](#).

### ***Australian Building Codes Board***

The ABCB is a multi-jurisdictional standards writing body, responsible for developing and maintaining the NCC, and providing technical code and standards advice to the BMF.

The ABCB consists of an independent Chair, ex-officio representatives from the Australian, state and territory governments, up to five industry representatives, and one representative of local government.

The ABCB operates in accordance with the IGA, which is updated from time to time. The current version of the IGA is provided at [Attachment B](#).

The ABCB is supported in its work program by the ABCB Office, which resides in the Australian Government Department of Industry, Innovation and Science. The ABCB Office implements the ABCB's decisions and provides the ABCB with technical and administrative support.

### ***Senior Officers' Group***

The BMF established the SOG on 31 July 2015, to investigate and develop a national strategic response to issues of non-conforming building products (NCBP). The formation of the SOG demonstrated a need for jurisdictions to collaborate on policy matters of national significance, beyond that of the NCC and the remit of the ABCB.

The SOG is responsible for developing and providing strategic advice to the BMF on national building and construction policy issues and any other matters requested by the BMF.

The SOG is currently chaired by the Queensland Department of Housing and Public Works, and consists of senior officers from the Commonwealth and each jurisdictions' building authority. The Terms of Reference for the SOG are provided at [Attachment C](#).

### ***Building Regulators' Forum***

The BRF was established to provide an intergovernmental forum for state and territory building regulators to work cooperatively and efficiently on regulatory responses to issues of national significance, in addition to providing the BMF with regulatory advice.

The BRF consists of the senior regulator of each state's and territory's building authority, and representation from relevant Commonwealth agencies.

The BRF is currently chaired by the Victorian Building Authority, and consists of the senior regulator of each jurisdictions' building authority. The Terms of Reference for the BRF are provided at [Attachment D](#).

### **BMF Measures to Improve the Safety of Australia's Built Environment**

The Australian Government has been working in partnership with all governments, through the BMF, to assure the Australian community that our buildings, in particular our high-rise buildings, are safe.

On 16 December 2016, the BMF endorsed the implementation of a comprehensive package of measures to address the health and safety risks associated with the non-compliant use of cladding in high-rise buildings.

As part of the package of measures, the ABCB will implement a number of changes to the NCC, including:

- implementing a more rigorous testing standard for determining the fire safety of external wall assemblies (AS 5113:2016);
- introducing a new Verification Method to demonstrate compliance with the Performance Requirements and achieve equivalence to the existing Deemed-To-Satisfy Provisions by including additional fire safety measures as a condition of using AS 5113 tested external wall assemblies;
- increased stringency for the sprinkler protection of balconies on residential buildings through referencing of a revised standard for automatic fire sprinkler systems (AS 2118.1:2017);
- clarifying language within the NCC relating to the use of external wall claddings and attachments; and
- stricter compliance documentation requirements in the NCC's evidence of suitability provisions.

On 30 June 2017, in response to the concerns raised as a result of the Grenfell Tower fire in London, the BMF agreed to examine the broader compliance and enforcement problems within the building and construction systems that affect the effective implementation of the NCC.

The BMF Assessment will consider and make recommendations on the establishment of a national best practice model for compliance and enforcement for building and construction, to improve the compliance and safety of Australian buildings.

The Terms of Reference for the BMF Assessment are provided at [Attachment E](#).

It is acknowledged that the Committee supported the BMF's decision to commission the BMF Assessment, and appoint Professor Peter Shergold AC and Ms Bronwyn Weir as the independent experts.<sup>1</sup>

On 30 June 2017, the BMF also directed the Australian Building Codes Board (ABCB) to expedite the implementation of a comprehensive package of measures to prevent non-compliant use of wall cladding on high-rise buildings, through an amendment (as outlined above) to Volume One of the 2016 edition of the NCC (rather than waiting until the release of NCC 2019).

The ABCB Office published the Public Comment Draft for NCC 2016 Volume One Amendment on 18 August 2017, with feedback on the proposed amendment closing on 10 September 2017.

The ABCB Office and the ABCB's technical advisory committees have reviewed the responses received on the Public Committee Draft and recommendations will be made to the ABCB for its November 2017 meeting. As such, the amendment is expected to be adopted in early March 2018.

The ABCB will also publish an updated [Fire Performance of External Walls and Cladding Advisory Note](#) (to reflect the amended provisions), and a new *Evidence of Suitability Handbook*.

In addition, on 6 October 2017, the BMF agreed that all Ministers will use their available laws and powers to prevent the use of aluminium composite panels (ACPs) with a polyethylene (PE) core on class 2, 3, or 9 buildings of two or more storeys, and class 5, 6, 7 or 8 of three or more storeys until it can be demonstrated that manufacturers, importers, installers, working in collaboration with building practitioners, are complying with:

1. the new fire testing standard for external wall cladding products (AS 5113:2016); and
2. a newly established system of permanent labelling on cladding products to prevent product substitution.

To ensure ACP products are supplied and used for the purpose for which they are designed, the BMF agreed to address inappropriate advertising and labelling of PE aluminium composite cladding utilising available laws and powers, and to ask the Legislative and Governance Forum on Consumer Affairs (CAF) to create a national information standard for ACP products.

### **Aluminium Composite Panels**

The Commonwealth Scientific and Industrial Research Organisation (CSIRO) was asked to provide advice on the various types of ACPs currently manufactured. The CSIRO has expertise in the testing of building facade materials, as well as the assessment of the configuration of materials in construction in accordance with relevant building codes and standards.

ACPs are legitimate products with a multitude of uses for example, advertising, signage, interior design features, caravans, refrigeration and freezer applications, and trailers.

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<sup>1</sup> Interim Report, pp. 41.

ACPs are flat sheet materials, faced with thin aluminium sheet (typically 0.5mm thick) on both sides. The thickness of the overall panels are often in the 3 to 4 mm range, but examples up to 6mm are available.

The various types of ACP are distinguished by their core materials, which significantly influence the fire properties of each panel. While some examples of 100 per cent mineral core ACPs have been identified, the majority of ACPs have a core material that is a mixture of a polymer (polyethylene) and mineral fillers or fire retardants. The proportion of the polymer can be as little 1-3 per cent or as high as nearly 100 per cent.

ACPs are described in manufacturer's marketing material as being one of three categories:

1. A2 – ACPs are classified as 'A2' when tested to European fire certification usually have 3 per cent or less of polymer.
2. FR (an abbreviation for fire retardant) – FR-ACPs contain some fire retardant in the core and typically contain around 30 per cent polymer.
3. PE (an abbreviation of polyethylene) – PE-ACPs have a core close to 100 per cent polymer.

A number of ACPs using A2 and FR descriptors are certified for compliance under the CodeMark certification scheme for use externally on Type A and B construction<sup>2,3</sup>, but with specific limitations on their application and use.

A further variant of ACP does not include polymers, but instead uses an aluminium 'honeycomb' core, bonded with adhesive. Some examples of this ACP have been shown to comply with non-combustibility concessions provided in the NCC, and subject to meeting additional requirements of AS 1530.3 'may be used where a non-combustible material is required'<sup>4</sup>.

It should be noted that none of the three descriptions (A2, FR, PE) relate to test methods or provisions in Australia's NCC. 'Non-combustible' is a defined term in the NCC, determined by the test method in AS 1530.1. It is unlikely that any ACP would meet this criteria because in practice, the fire performance of an external wall is not only dependent on the material properties, but also on aspects of the whole system including (but not limited to), sheet fixing method, insulation type, cavity fire barriers, geometry and penetrations.

Accordingly, when engineered appropriately, some ACPs may meet the performance requirements of the NCC for external walls. Further, it is noted that PE-ACPs may also have other applications permitted under the current requirements of the NCC, with examples including as an attachment, signage, interior wall lining and design features.

The Committee's focus was primarily on the ACPs with a 100% PE core; the following responses focus on matters associated with this product type.

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<sup>2</sup> Type A construction is the most fire-resistant, and applies to class 2, 3 and 9 buildings of three or more storeys; and class 5, 6, 7, and 8 of four or more storeys.

<sup>3</sup> Type B construction is the next most fire-resistant, and applies to class 2, 3 and 9 buildings of two or more storeys; and class 5, 6, 7, and 8 of three or more storeys.

<sup>4</sup> NCC, Volume 1, Clause C1.12



## RESPONSE TO THE RECOMMENDATIONS

### Recommendation 1

*The Australian government implement a total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency.*

#### ***Response – Not Supported***

##### *Ban on Importation*

The introduction of border controls to restrict importation of aluminium composite panels with a 100 per cent polyethylene core (PE-ACPs) is not supported by the Australian Government, as it would be neither effective nor practical to implement such restrictions.

It would be impractical for the Department of Immigration and Border Protection (DIBP) and its operational arm, the Australian Border Force (ABF), to screen PE-ACPs for a number of reasons, including:

- the ABF would not be able to reliably or accurately determine the polyethylene content of the ACP core without destructive testing methods and a product design standard;
- ACPs can be imported as raw materials and non-finished forms, before undergoing further manufacturing processes domestically;
- while the tariff system could be amended to specifically identify PE-ACPs, the tariff system could not differentiate goods intended to be used as building products from those used for other purposes (such as advertising). The ABF cannot determine the end use of a product at the border;
- screening would impose a range of costs on industry and slow down clearance times for imported goods; and
- screening would divert resources from enforcement of other border controls (i.e. asbestos, drugs and weapons).

PE-ACPs are suitable for use by Australian businesses in advertising signage and interior design. A ban on the importation of PE-ACPs would have unintended consequences for Australian businesses that currently use such fit for purpose products.

Further, PE-ACPs are not the only type of external wall component that could be considered combustible or hazardous if used in a non-compliant manner with the NCC, many of which are manufactured domestically. As such, the introduction of a ban on the importation of an individual product would not solve the issue of non-compliance with the NCC.

It is also important to note that Australia must act in a manner consistent with our international trade obligations; as such, relevant technical regulations and standards must not be more trade restrictive than necessary, and must not be applied discriminately (i.e. only to imports).

##### *Ban on Sale and Use*

The introduction of a ban on the sale and use of PE-ACPs is also not supported by the Australian Government.

The Australian Government and the SOG have acknowledged that the current regulatory framework places a significant burden on the end of the product supply chain (i.e. on the builder/installer and the building certifier/surveyor).<sup>5</sup> However, a ban on the sale and use of

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<sup>5</sup> Senior Officers' Group, *Strategies to address risks related to non-conforming building products*, pp. 14, February 2016

PE-ACPs would place a disproportionate burden on the beginning of the supply chain, effectively penalising product manufacturers and suppliers rather than making the entire building supply chain more responsible for ensuring products are fit for purpose and used in compliance with the NCC.

A diagram outlining the building product supply chain is provided at [Attachment F](#).

The Australian Government is of the view that the national measures currently being pursued by the BMF, through the work of the SOG, will effectively increase accountability of all participants across the building supply chain, and improve building product conformity and compliance with the NCC.

Manufacturers and suppliers are expected to undertake due diligence to ensure their products conform to Australian standards and regulations; however, beyond specifying the products design and intended purpose there is little within a manufacturers control to ensure these product are installed in compliance with building regulations.

Should manufacturers present false information or make misleading representations about building products or their suitability for use, reforms to state and territory building and construction regulations would assist with addressing the problem. This may include the extension and harmonisation of the powers of building regulators nationally. The Australian Consumer Law (ACL) is a broad principles based framework with strong general prohibitions against misleading conduct and misrepresentations in trade and commerce. Given the specialist nature of building products and usage as well as the specialist regulation of the sector, the Government considers more specific protections are needed in State and Territory building regulations.

The recent legislative reform in Queensland around the chain of responsibility for non-conforming building products is a positive step forward.

As stated above, on 6 October 2017, the BMF agreed to address inappropriate advertising and labelling of PE-ACPs utilising available laws and powers, and to ask the CAF to create a national information standard for these products. This request will be considered by CAF.

## **Recommendation 2**

*The Commonwealth government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.*

### ***Response – Noted***

The Australian Government notes this recommendation, and is supportive of measures to support mobility and alignment of regulation across jurisdictions, however occupational licensing is the responsibility of states and territories.

A consistent occupational licensing scheme across jurisdictions has been previously considered by the Council of Australian Governments (COAG). The Commonwealth moved away from national licensing in 2013 when COAG announced that occupational licensing would remain a state and territory matter which would be addressed through the Council for the Australian Federation. This decision followed extensive state-based consultation, after which the majority of states decided not to pursue the proposed National Occupational Licensing Scheme (NOLS) reform.

The BMF Assessment is expected to consider licensing and accreditation of building practitioners and related professionals, among other matters.

The outcome of the BMF Assessment will be to establish a national best practice model for compliance and enforcement for building and construction, to improve the compliance and safety of Australian buildings. As such, the findings of the BMF Assessment may inform the case for change, and potential options for government intervention.

### **Recommendation 3**

*The Building Ministers' Forum give further consideration to introducing nationally consistent measures to increase accountability for participants across the supply chain.*

#### ***Response – Supported***

The Australian Government supports this recommendation, noting that the state and territory governments have the constitutional authority for the regulatory framework that governs the built environment.

Through the BMF and the SOG, the Australian Government has been working with the states and territories to improve accountability across the building supply chain. The Queensland Government has recently passed an amendment to their building legislation, the *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017* is an example of how jurisdictions can improve regulatory oversight of the building product supply chain.

The purpose of the Queensland legislation is to, among other matters:

- confer responsibilities on the building product supply chain to ensure building products, so far as reasonably practicable, conform to mandatory standards;
- expand the obligations of building practitioners (licensee's) to notify the Queensland building regulator of work health and safety issues; and
- widen grounds for the Queensland building regulator to take disciplinary action against licensees.

Queensland's legislation is based on principles agreed by the BMF, and is intended to be used by other jurisdictions as a model to be either adopted in full or revisited as appropriate to accommodate their existing regulatory structure.

While some of the powers and enforcement measures contained in Queensland legislation may already exist in other jurisdictions, the legislation can be a 'best practice' approach to impose consistent obligations on participants of the building product supply chain and improve jurisdictional ability to detect and address non-conforming building products.

The New South Wales (NSW) Government has also recently announced it intends to reform the legislation governing building certification systems in NSW, to improve the requirements relating to the accreditation, investigation, auditing and disciplining of certifying authorities.

The NSW Government intends to replace the existing legislation with a new *Building and Development Certifiers Act*, and will release a draft exposure Bill for public comment in late 2017.

The BMF Assessment will provide recommendations for a national best practice model for the administration of building compliance and enforcement regulations.

#### **Recommendation 4**

*That the Commonwealth government consider making all Australian Standards and codes freely available.*

#### ***Response – Supports in Principle***

The Australian Government supports this recommendation in principle.

#### **Access to the NCC**

The Australian Government notes that the BMF, in May 2014, decided to make the NCC available free online.

This decision has dramatically increased the number of practitioners accessing the NCC, with users increasing from 11,000 (when the NCC was printed and sold) to 160,000 (when the NCC was made free online as a PDF).

The ABCB is also simplifying the design and language of the NCC to make it easier to understand by a wider audience.

To implement this decision, the Australian Government and state and territory governments increased their collective contributions to the operations of the ABCB and the ABCB Office, via the IGA. As such, while the NCC has been made available free online, its development and maintenance is still paid for by all governments.

#### **Access to Australian Standards**

The Australian Government notes that standards are voluntary unless referenced in legislation. It is estimated that one-third of some 7,000 Australian Standards are referenced in legislation, with the majority referenced in state and territory regulation.

Australian Standards must be purchased from commercial distributor SAI Global. Under a Publishing and Licencing Agreement (PLA) with Standards Australia, SAI Global has the exclusive right to distribute Australian Standards until December 2018, with an option for a further five years through to 2023. The Australian Government is not a party to the PLA.

It is also noted that Australian Standards that are made freely available still have to be paid for and that the cost of doing so will be borne by either the taxpayer or the consumer.

It should be noted that whilst the Standards that are referenced in the NCC are not available for free, the mandatory requirements of the NCC can often be satisfied through solutions that do not necessarily rely on the purchase of a Standard. In other words, whilst the NCC references standards, it does not mandate their use.

Ensuring reasonable public access to Australian Standards is fundamental to the reliability of products and services in the economy. Improving access to standards requires the support of Standards Australia and SAI Global in facilitating greater flexibility and cost options available to government.

In July 2017, the COAG Industry and Skills Council (CISC) established a Standards Accessibility Working Group tasked with investigating options for improving standards accessibility. The working group will report back to the CISC by 31 January 2018.

Finally, access to Australian Standards via the National Library of Australia and the state and territory libraries, was restored for private research and study purposes until February 2019.

## **Recommendation 5**

*The Commonwealth government consider imposing a penalties regime for non-compliance with the NCC such as revocation of accreditation or a ban from tendering for Commonwealth funded construction work and substantial financial penalties.*

### ***Response – Noted***

The Australian Government notes this recommendation.

#### *Penalties regime*

It is important to note that the State and Territory governments have responsibility for regulating building and construction activities in their respective jurisdictions, which includes penalising non-compliance with the NCC.

There are constitutional limitations on the extent to which the Australian Government could regulate matters that the NCC deals with.

The BMF has commissioned an expert assessment to consider the broad compliance and enforcement problems within the State and Territory regulatory systems.

The BMF Assessment is not limited to considering the enforcement and penalty regimes of each state and territory. Rather the BMF Assessment is considering the systemic issues causing non-compliance and the compliance monitoring capability of jurisdictions to detect and respond to identified non-compliance. As such, the outcome of the Assessment is expected to inform how jurisdictions can improve both compliance monitoring and enforcement practices across Australia.

#### *Revocation of accreditation / ban from tendering for Commonwealth funded construction*

Under the *Building and Construction Industry (Improving Productivity) Act 2016*, the Federal Safety Commissioner administers the *Building and Construction Workplace Health and Safety Accreditation Scheme* (the WHS Accreditation Scheme).

Under the WHS Accreditation Scheme only builders accredited by the Federal Safety Commissioner can enter into head contracts for building work that is funded directly or indirectly by the Australian Government, subject to certain financial thresholds.

As such, the WHS Accreditation Scheme enables the Australian Government to use its market influence, as a client and provider of capital, to improve WHS across the building and construction industry.

The Australian Government notes the Federal Safety Commissioner made the compliance of building products with the Performance Requirements of the NCC a condition of accreditation in January 2017. The Federal Safety Commission has the power to suspend or revoke the WHS accreditation of companies that fail to meet the NCC's Performance Requirements. This creates a major commercial imperative for compliance amongst those companies seeking to access Commonwealth funded construction projects.

## **Recommendation 6**

*The Commonwealth government ensure the Federal Safety Commissioner is adequately resourced to ensure the office is able to carry out its duties in line with the new audit function and projected work flow.*

### ***Response – Noted***

The Federal Safety Commissioner is adequately resourced to carry out its functions.

### **Recommendation 7**

*The Commonwealth government's decision to give further consideration to Director Identification Numbers and recommends that it expedites this process in order to prevent directors from engaging in illegal phoenix activity.*

#### **Response – Supported**

The Australian Government supports this recommendation.

It is acknowledged that the interim report was released just prior to the Government's announcement of a comprehensive package of reforms to address illegal phoenixing.

The Government's package of reforms includes the introduction of a Director Identification Number (DIN) and a range of other measures to both deter and penalise phoenix activity. The DIN will identify directors with a unique number, which will interface with other government agencies and databases to allow regulators to map the relationships between individuals and entities and individuals and other people.

### **Recommendation 8**

*That state and territory government's work together to develop a nationally consistent statutory duty of care protection for end users in the residential strata sector.*

#### **Response – Noted**

The Australian Government notes this recommendation and agrees in-principle with its intent.

The Government notes that the Committee made this recommendation drawing heavily on the submission of the Owners Corporation, following the High Court of Australia's 2014 decision in *Brookfield Multiplex Limited v The Owners Corporation Strata Plan 61288*.<sup>6</sup>

In essence, the High Court held that the builder of a strata-title apartment complex did not owe a duty of care to the Owners Corporation from latent defects in the common property.

The regulation of strata and common property title is the responsibility of state and territory governments. However, as per the High Court's decision, a duty of care under common law cannot be assumed for strata owners who buy a property that turns out to be defective.

The Government believes that if nationally consistent legal protection for end users of residential strata is to be considered, the most appropriate mechanism is through legislative reform of existing state and territory strata laws.

In addition, the findings and recommendations to be tabled in the final report of the Shergold and Weir assessment of the broader compliance and enforcement problems within the building and construction systems, would be valuable in guiding any such reforms.

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<sup>6</sup> [2014] HCA 36

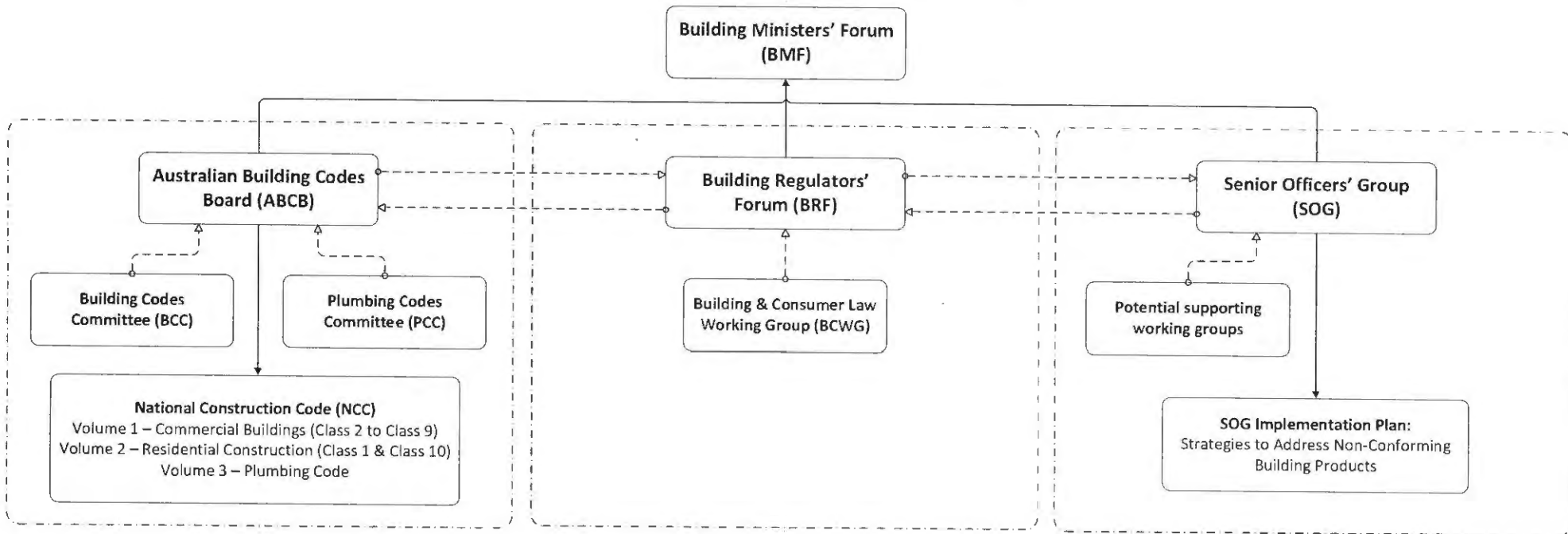
## Reporting Arrangements to the BMF ABCB, BRF and SOG

ATTACHMENT A

The Building Ministers' Forum (BMF) is a ministerial-level body consisting of Commonwealth, State and Territory Ministers responsible for building & plumbing policy.

The BMF is responsible for overseeing governance of the built environment, and considering other policy issues impacting the building & construction industries.

The BMF is chaired by the Commonwealth, with the Department of Industry, Innovation and Science providing secretariat support.



### Purpose: Harmonisation of Technical Codes

The ABCB is the multi-jurisdictional standards writing body, established under an Intergovernmental Agreement (IGA).

The ABCB oversees the development of the National Construction Code (NCC), which incorporates all on-site building and plumbing requirements into a single document. The NCC prescribes the minimum performance requirements for the design, construction and performance of buildings throughout Australia. The NCC calls up relevant standards, as formed by Standards Australia and other standards bodies.

The ABCB consists of an independent Chair, ex-officio representatives from the Commonwealth, State and Territory governments, up to five industry representatives, and a representative of Local governments.

The ABCB is supported in its work program by the ABCB Office, which implements the ABCB's decisions and provides the Board with technical and administrative support.

### Purpose: Coordination of Regulatory Responses

The BRF was established to help building regulators work more cooperatively and efficiently across jurisdictions and portfolios on non-conforming buildings products.

The BRF consists of the senior regulator of each jurisdiction's building authority, and is chaired by the Victorian Building Authority.

The BRF is to be supported by a working group of building regulators and consumer law regulators (BCWG) to help identify potential issues that require a coordinated jurisdictional response across both building and consumer law regulatory areas.

While the BRF and BCWG were established in response to a recommendation of the SOG Report on non-conforming buildings products, there are a number of other cross-jurisdictional regulatory issues that affect the implementation of the NCC. The BMF may task the BRF to undertake additional work as required.

### Purpose: Collaboration on Policy

The BMF established the SOG on 31 July 2015, to investigate and develop a national strategic response to issues of non-conforming building products (NCBP).

The formation of the SOG demonstrated a need for jurisdictions to collaborate on matters of national significance, beyond that of NCC and the remit of the ABCB.

The SOG consists of senior officers from the Commonwealth and each jurisdiction's building authority, and is chaired by the Queensland Department of Housing and Public Works.

With the implementation of SOG's work on non-conforming building products now well underway, there are a number of cross-jurisdictional policy issues affecting Australia's building and construction industries which the SOG collaborate on, as tasked by the BMF.





An Agreement

between

the Governments of

Commonwealth of Australia, the States and the Territories  
to continue in existence and provide for the operation of the

**AUSTRALIAN BUILDING CODES BOARD**

2017

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Australian Building Codes Board Intergovernmental Agreement

An *Agreement* made this 31st day of January, 2018 to continue in existence and provide for the operation of the Australian Building Codes Board.

SIGNATORIES FOR EACH OF THE PARTIES

The Hon Craig Laundry MP	Assistant Minister for Industry, Innovation and Science Australian Government
Mr Mick Gentleman MLA	Minister for Planning and Land Management Minister for Police and Emergency Services Minister for the Environment and Heritage Minister for Urban Renewal Australian Capital Territory
The Hon Anthony Roberts MP	Minister for Planning Minister for Housing Special Minister of State State of New South Wales
The Hon Matthew Kean MP	Minister for Innovation and Better Regulation State of New South Wales
The Hon Nicole Manison MLA	Treasurer Minister for Children Minister for Infrastructure, Planning and Logistics Northern Territory
The Hon Mick de Brenni MP	Minister for Housing and Public Works Minister for Sport State of Queensland
The Hon John Rau MP	Deputy Premier Attorney-General Minister for Justice Reform Minister for Planning Minister for Industrial Relations Minister for Child Protection Reform Minister for the Public Sector Minister for Consumer and Business Services Minister for the City of Adelaide State of South Australia

Australian Building Codes Board Intergovernmental Agreement

The Hon Ian Hunter MP	Minister for Water and the River Murray Minister for Sustainability, Environment and Conservation Minister for Climate Change State of South Australia
The Hon Guy Barnett MP	Minister for Resources Minister for Building and Construction. State of Tasmania
The Hon Richard Wynne MP	Minister for Planning State of Victoria
The Hon Bill Johnston MP	Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement State of Western Australia

AN AGREEMENT made this 31st day of January, 2018 between —

**THE COMMONWEALTH OF AUSTRALIA** (in this *Agreement* called 'the *Australian Government*');

**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

### 1. Australian Building Codes Board Intergovernmental Agreement Objectives

- 1.1. Through this *Agreement* the *Australian Government*, the *States* and the *Territories* are facilitating the development of a more efficient, internationally competitive *Building and Construction* industry through reforms to regulation nationally.
- 1.2. This *Agreement* recognises that the *States* and *Territories* have primary responsibility for regulating *Building and Construction*.
- 1.3. To strengthen reforms to *Building and Construction* regulation nationally, the *Parties* commit to:
  - a. continuing in existence the *Board* established by the agreement of the respective governments on 1 March 1994, as amended;
  - b. the *National Construction Code (NCC)* setting the minimum necessary requirements for *Building and Construction* throughout Australia;
  - c. the adoption of the *NCC* by reference on a national basis through relevant legislation;
  - d. the consistent application of the *NCC* across and within each jurisdiction, noting clause 19 of this *Agreement*;
  - e. encouraging increased harmonisation in the administration of the *NCC* across Australia;
  - f. encouraging increased compliance and enforcement cooperation and information sharing between the *States* and *Territories* and where appropriate the *Australian Government*;
  - g. identifying options, as far as practicable, to further limit local government interventions;
  - h. seeking commitments similar to those in this *Recital*, from their local governments or authorities where they have any administrative responsibility for regulating *Building and Construction*; and as far as practicable, implementing a 'gateway' model which discourages the setting of prescriptive

standards for *Building and Construction* that override the performance requirements in the *NCC*; and

- i. continuing to provide a free electronic version of the *NCC* to industry and continuing to improve its usability.
- 1.4. The *Parties* will contribute towards the costs of the *Board's* operations in accordance with the provisions of this *Agreement*.
- 1.5. The respective Ministers of these *Parties* responsible for *Building and Construction* policy, known as the Building Ministers' Forum, are collectively responsible for the policies, decisions and actions to ensure the *Building and Construction* requirements meet the expectations of the community.

## OPERATIVE PROVISIONS

### 2. Interpretation

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#### Definitions and Acronyms

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

<b>ABCB Account</b>	means the Australian Building Codes Board Account, a special account created by a determination of the Finance Minister under section 78 of the <i>Public Governance, Performance and Accountability Act 2016</i> (PGPA)
<b>ABCB Chair</b>	means the Chair of the <i>Board</i> , appointed in accordance with clause 8
<b>ABCB Office</b>	means the Office, which resides in the <i>Department</i> , is funded by the <i>Parties</i> contributions in accordance with this <i>Agreement</i>
<b>Addition</b>	means any provision, within any <i>Australian Government, State or Territory</i> legislative and/or regulatory instrument (s), that imposes requirements relating to an aspect of <i>Building and Construction</i> , which is either not covered by the <i>NCC</i> or 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 <i>Australian Government</i>: the <i>Department</i> or agency that has administrative responsibility for <i>Commonwealth Building and Construction</i> regulation policy;</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 <i>State or Territory Building and Construction</i> regulation policy</li></ul>
<b>Agreement</b>	includes a reference to the clauses and attachments
<b>ALGA Representative</b>	means the representative of the Australian Local Government Association, who is appointed in accordance with clause 10
<b>Annual Business Plan</b>	means the document that details how the <i>Board</i> is going to achieve its goals and objectives for the Financial Year
<b>Annual Meeting</b>	Means a meeting of the <i>BMF</i> to be held by no later than June of each Financial Year required by clause 4.3
<b>Annual Report</b>	means the report required by clause 6.4.e
<b>APS</b>	means the Australian Public Service
<b>BMF</b>	means the Building Ministers' Forum
<b>BMF Chair</b>	means the Chair of the <i>BMF</i> , and the Minister of the <i>Australian Government</i> with responsibility for <i>Building and Construction</i> industry policy
<b>BMF Minister</b>	means the <i>State</i> or <i>Territory</i> Minister(s) with responsibility for <i>Building and Construction</i> industry policy
<b>Board</b>	means the Australian Building Codes Board
<b>Board's Objectives</b>	means the objectives of the <i>Board</i> as set out in in clause 6

<b>Building and Construction</b>	means the design, construction, renovation, alteration or extension of buildings, including plumbing and other service installations.
<b>Chief Executive Officer (CEO)</b>	means the person occupying the position of CEO of the <i>ABCB Office</i> established by clause 16 or a person acting in that role
<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 committees established under clause 14 and includes the <i>Building Codes Committee</i> and the <i>Plumbing Code Committee</i>
<b>Conflict-of-Interest Declaration</b>	means a declaration by the <i>ABCB Chair</i> , <i>Industry Representative</i> or <i>ALGA Representative</i> in a form determined by the <i>BMF Chair</i> declaring that they will: a. take reasonable steps to avoid any conflict of interest (real or apparent) in connection with their membership of the <i>Board</i> ; and b. disclose details of any material personal interest in connection with their membership of the <i>Board</i>
<b>Conflict-of-Interest Guidelines</b>	means the <i>Australian Public Service Code of Conduct Guidelines</i> for managing Conflict of Interest.
<b>Department</b>	means the <i>Australian Government</i> department or agency responsible for administering this <i>Agreement</i>
<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 <i>Building and Construction</i> industries who are appointed in accordance with clause 9.
<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>Intervention</b>	means the process by which local government or other authorities who have any administrative responsibility for regulating <i>Building and Construction</i> , set prescriptive standards that override the performance requirements in the <i>NCC</i>
<b>Minister</b>	means: <ul style="list-style-type: none"><li>a. for the <i>Australian Government</i>: a <i>Minister</i> of State or other member of the Federal Executive Council;</li><li>b. for a <i>State</i> or <i>Territory</i>: a <i>Minister</i> of the relevant <i>State</i> or <i>Territory</i>; or</li><li>c. for the <i>Australian Government</i>, a <i>State</i> or a <i>Territory</i>: a person nominated by a <i>Minister</i>, as defined in subclause a or b, as his or her representative from time to time</li></ul>
<b>Natural Phenomena</b>	means geological, geographical or climatic factors
<b>NCC</b>	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 the <i>BMF</i>
<b>Parties</b>	means the <i>Australian Government</i> , <i>States</i> and <i>Territories</i> collectively
<b>Prior Agreements</b>	means the Agreements of the <i>Parties</i> signed 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, the Agreement of the <i>Parties</i> on 30 April 2012, and the Agreement of the <i>Parties</i> on XX XXXXXX 2017;

<b>Product Certification Schemes</b>	means certification schemes established for the <i>NCC</i> and includes <i>WaterMark</i> and <i>CodeMark</i>
<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>
<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>Risk Management Plan</b>	means the document prepared to identify risks, estimated impact and define response to issues
<b>Secretary</b>	means the Secretary of the <i>Department</i>
<b>SOG</b>	means the Senior Officers Group established by the BMF to perform functions other than those of the ABCB
<b>Sectional Interest</b>	having a current material concern, involvement and or investment in one or more sections of the <i>Building and Construction</i> industry
<b>Services</b>	means systems which include, but are not limited to, the supply or removal of energy, information, water, waste and ventilation.
<b>Variation</b>	means any provision, within any <i>Australian Government, State</i> or <i>Territory</i> legislative and/or regulatory instrument (s), that materially varies or expands on a matter covered by the <i>NCC</i> .
<b>Interpretation</b>	
2.2.	In this <i>Agreement</i> , except where 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.

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

### **3. Commencement**

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- 3.1. This *Agreement* shall commence on the *Commencement Date*.
- 3.2. On the *Commencement Date* this *Agreement* replaces all *Prior Agreements*.
- 3.3. 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*.
- 3.4. Nothing in this *Agreement* affects the continued operation of an *Intellectual Property Deed* or an *Indemnity Deed*.
- 3.5. This *Agreement* may be varied with the written consent of all *Parties*.

### **4. Building Ministers' Forum**

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- 4.1. The *BMF* comprises the group of *Australian Government, State and Territory Ministers* with responsibility for *Building and Construction*.
- 4.2. In implementing this agreement the *BMF* will:
  - a. take account of societal needs and expectations;
  - b. set the strategic policy direction for the *Board*, taking account of any *COAG* agreements;
  - c. set the strategic policy direction for the *SOG*, taking account of any *COAG* agreements;
  - d. at its discretion, direct the *Board* and the *SOG* to work collaboratively on specific national strategic *Building and Construction* issues;
  - e. ensure as far as practicable that the *NCC* requirements are consistently applied across the *States* and the *Territories*, taking into consideration clause 19; and
  - f. encourage reduced reliance on regulation by providing a forum for the exploration of alternative mechanisms for delivering outcomes.
- 4.3. The *BMF* will hold an Annual Meeting to:

- a. agree or amend, where relevant, the Strategic Plan of the *Board*;
  - b. agree or amend, where relevant, the *Risk Management Plan* of the *Board*;
  - c. agree or amend the *Annual Business Plan*, including the work program, of the *Board*, for the next financial year;
  - d. review outcomes and progress against the *Board's Objectives* and the *Annual Business Plan(s)* of the *Board*;
  - e. review the annual reports of *Variations* to the *NCC*; and
  - f. make decisions on recommendations provided by the *Board*.
- 4.4. The *BMF* may hold additional meetings in a financial year; the time and date of the additional meeting(s) shall be determined by the *BMF Chair* in consultation with *State and Territory BMF Ministers*.
- 4.5. The *BMF* may hold its meetings at two or more venues using any technology that gives the *BMF Ministers*, as a whole, a reasonable opportunity to participate.
- 4.6. The *BMF* will operate by consensus of those present at the meeting.
- 4.7. Where the *BMF* does not agree by consensus a majority decision will be sought, through a vote. If a tied vote is achieved, the *BMF Chair* shall cast the deciding vote.
- 4.8. Each jurisdiction with more than one *Minister* represented on the *BMF* must have an agreed jurisdictional position represented as a single vote.
- 4.9. In setting the priorities or projects of the *Board* under clause 4.2, the *Parties* acknowledge the limits on the exercise of power by the *Board* set out in clauses 5.1 through 6.7.

#### **Decisions without meetings**

- 4.10. The *BMF Chair* may write to the *BMF Ministers* seeking their agreement on a *BMF Minister, COAG, SOG or ABCB Chair* proposal for a decision outside of a scheduled meeting.
- 4.11. In seeking the *BMF's* agreement outside of a scheduled meeting, the *BMF Minister, COAG, SOG or ABCB Chair* must provide detailed advice, with supporting documentation, to allow the *BMF* to consider the proposal.
- 4.12. *BMF Ministers* will have no longer than two months from the date of the *BMF Chair's* written notification, unless otherwise specified, within which they are required to consider the proposal and respond to the proposal in writing. If a response is not received within the specified timeframe, it will be taken as abstaining.
- 4.13. Decisions will be made by consensus.
- 4.14. The *BMF Chair* will write to all *BMF Ministers* within one month to advise them of the outcome of the consideration of that proposal.

- 4.15. Where there is no consensus, the matter may be referred to the next meeting of the *BMF*.

#### **BMF changing priorities and projects of the Board**

- 4.16. Where a *BMF Minister* or *ABCB Chair* proposes a change to the *Board's* strategies, priorities and work plan after the *Annual Business Plan* has been agreed, the proponent must provide detailed advice, with supporting documentation, within a reasonable timeframe which allows the *BMF* to consider the proposal.
- 4.17. The *BMF Chair* must seek advice from the *Board* on the resourcing implications together with the impact of the proposal on existing priorities, projects or work plan.
- 4.18. A proposal must be supported by a consensus decision of the *BMF* before the changes contained in the proposal can be made or implemented.

#### **ABCB Review**

- 4.19. The *BMF* may agree to a review of the operations of the *Board* and the *ABCB Office*, including the administration of this *Agreement*.

### **5. Australian Building Codes Board**

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- 5.1. The *Board* established by the *Prior Agreements* is continued in existence by this clause.
- 5.2. The *Board* shall consist of between ten and sixteen members including:
- a. an independent *ABCB Chair*;
  - b. the head of each *Australian Government, State and Territory Administration* or a person, with the authority and seniority to make decisions on behalf of their administration, nominated by the head to be a member;
  - c. a representative of the *ALGA*; and
  - d. up to five *Industry Representatives*, at least one of whom shall have plumbing expertise.
- 5.3. The *ABCB Chair*, the *Industry Representatives*, and the *ALGA Representative* shall be appointed in accordance with clauses 8, 9, and 10. All other appointments to the *Board* are ex officio.

### **6. Board's Objectives**

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- 6.1. The *Board's Objectives* are to:
- a. through the *NCC*, develop and maintain codes and standards;
    - A. that accord with strategic priorities established by the *BMF*;

- B. that address issues relating to the design, construction, performance and liveability of *Building and Construction*; and
  - C. that are the minimum necessary to efficiently achieve:
    - i. safety and health;
    - ii. amenity and accessibility, and
    - iii. sustainability.
  - b. ensure that, in determining any change to the code and the level of the requirements:
    - A. there is a rigorously tested rationale;
    - B. the proposals are effective and proportional to the issues being addressed such that the code will generate benefits to society greater than the costs (that is, net benefits);
    - C. there is no regulatory or non-regulatory alternative that would generate higher net benefits; and
    - D. the competitive effects of the code have been considered; and the code is no more restrictive than necessary in the public interest.
  - c. ensure that *NCC* requirements are:
    - A. performance-based;
    - B. verifiable;
    - C. based on appropriate international standards; and
    - D. expressed in plain English.
  - d. provide a forum to explore alternative mechanisms for delivering *Building and Construction* outcomes;
  - e. raise awareness of, and provide information to industry and relevant stakeholders on, the development and implementation of the *NCC*;
  - f. manage or oversee the management of product certification schemes relating to *Building and Construction* that are consistent with the strategic priorities set by the BMF and assist the *Board* with achieving its *Objectives* listed above.
- 6.2. The proceedings and operations of the *Board* must be directed to the achievement of the *Board's Objectives*.

### **Functions of the Board**

- 6.3. To achieve the *Board's Objectives* the *Board* will:
- a. give effect to the Strategic Plan, the *Risk Management Plan* and the *Annual Business Plan* agreed to by the BMF;

- b. develop, advise and make recommendations to the *BMF* on matters consistent with the *Board's Objectives*;
- c. make decisions on matters relevant to the *NCC*:
  - A. in accordance with directions given through the *BMF*; and
  - B. that are consistent with the *Board's Objectives*;
- d. develop, publish and maintain the *NCC*;
- e. implement the *BMF's* strategic direction and approved work programs, monitor the annual budgets, and priorities for the *ABCB Office*;
- f. implement and monitor the three yearly amendment timetable for the development and publication of the *NCC*;
- g. amend the *NCC* during the three yearly amendment timetable in circumstances where:
  - A. failure to publish and make the relevant amendment would expose the community to significant safety or health risks;
  - B. the text of the *NCC* contains significant factual or technical errors; or
  - C. by direction of the *BMF*
- h. support consultation with governments, industry, consumer groups and other organisations in the implementation of the work program; and
- i. provide strategic guidance to the *CEO* in the fulfilment of his or her duties.

#### **Reporting Requirements for the Board**

- 6.4. At each year's Annual Meeting of the *BMF* the *Board* will provide:
- a. a report on the progress of projects and status of agreed priorities against the agreed *Annual Business Plan* for the financial year;
  - b. a report on the overall performance of the *Board* against the agreed *Risk Management Plan*, including reporting on the risk mitigation strategies for *Product Certification Schemes* administered by the *Board*;
  - c. a report on the overall performance of the *Board* in achieving outcomes in accordance with the *Board's Objective*;
  - d. an *Annual Business Plan*, including estimated budget, for the following financial year (including a forward work program for the following two financial years);
  - e. an *Annual Report* regarding the *Variations* from the *NCC* reported by the *States* and *Territories* under clause 19, which will:
    - A. highlight any *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 Construction* regulation between the *States* and *Territories*.
- 6.5. As soon as practicable, but no later than 31 August of the following financial year, the *ABCB Chair* will also provide the *BMF Chair*, for distribution to *BMF Ministers* (out of session), the financial statements, including variances between budgeted and actual, against the *Annual Business Plan* for the previous financial year.
- 6.6. The *ABCB Chair*, on behalf of the *Board*, will report to the *BMF Chair* any amendment the *Board* makes to the *NCC* outside of the three year amendment cycle, set out in clause 6.3.g.

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

- 6.7. 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 action 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*; and
  - c. consult with the Office of Best Practice Regulation or its equivalent body.

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

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- 7.1. Each of the *Administrations* is responsible for providing support appropriate to facilitate the work of the *Board*, including:
- a. liaising and co-operating with the *CEO* of the *ABCB Office*; and
  - b. providing timely advice on:
    - A. the implications of proposals of the *Board* that 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*.

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

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- 8.1. The *ABCB Chair* must:
- a. be independent from *Sectional Interests*; and
  - b. have a capacity to advance the work of the *Board*.



- 8.2. If the position of the *ABCB Chair* is vacant or is likely to become vacant, the *BMF Chair* is responsible for nominating a person as his or her preferred candidate for the position.
- 8.3. The *BMF Chair* must advise all of the *BMF Ministers* of his or her preferred candidate.
- 8.4. In the event a *BMF Minister* disagrees with the *BMF Chair's* preferred candidate, the *BMF Minister* may nominate an alternative person and advise the *BMF Chair* and the other *BMF Ministers* of his or her preferred candidate.
- 8.5. Where a majority of *BMF Ministers* agree on a candidate to be appointed as the *ABCB Chair*, the *BMF* will appoint that person as *ABCB Chair* for a period of up to five years.
- 8.6. The *ABCB Chair* may be reappointed for a period of up to 12 months with the agreement of the *BMF Ministers*.
- 8.7. Each jurisdiction represented on the *BMF* can only exercise a single vote on the appointment of the *ABCB Chair*.
- 8.8. In the event a majority of *BMF Ministers* are unable to agree on a candidate to be appointed as *ABCB Chair*, the process described in clauses 8.1 to 8.4 shall be repeated until a candidate is agreed upon.
- 8.9. The agreed candidate, prior to being appointed as the *ABCB Chair*, will be required to provide the *BMF*, through the *BMF Chair*, with the following declarations:
  - a. Conflict-of-Interest; and
  - b. to perform his or her duties in accordance with the Functions of the *Board*.
- 8.10. The *BMF Chair* will decide the remuneration for the *ABCB Chair*, which will be paid from the *ABCB Account*. In setting the remuneration, the *BMF Chair* will have regard to relevant rates published by the Remuneration Tribunal.
- 8.11. A person ceases to be the *ABCB Chair* and a member of the *Board* if he or she:
  - a. resigns the office by instrument in writing to the *BMF Chair*, or
  - b. is otherwise removed from office by the *BMF Chair*, as set out in clause 8.12.
- 8.12. After consultation with the *State* and the *Territory BMF Ministers*, the *BMF Chair* may remove the *ABCB Chair* from the *Board* if he or she:
  - a. has breached clause 12 of this Agreement; or
  - b. has missed two consecutive official meetings in a year; or
  - c. has failed to perform his or her duties in accordance with the Functions of the *Board*; or
  - d. is unable to perform the required duties due to illness or incapacity; and/or

- e. does not satisfy the *BMF 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*.

## **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 *BMF Chair* will write to *BMF Ministers* and one or more recognised industry representative bodies, agreed by the *BMF*, requesting nominations for an *Industry Representative* and a justification of each nominees' credentials against the considerations set out in clause 9.5.
- 9.2. The *BMF Chair* shall provide the *BMF Ministers* with the list of persons nominated by the jurisdictions and recognised industry representative bodies and request that the *BMF Ministers*, subject to clause 9.3, reach a majority decision on the appointment of new *Industry Representatives* from the list of recommended persons.
- 9.3. Each *State* and *Territory* represented on the *BMF* can only exercise a single vote on the appointment of an *Industry Representative* to the *Board*.
- 9.4. The *BMF Chair* 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 *BMF Chair* will have a deciding vote, and in doing so must provide the reasons for his/her decision.
- 9.5. In appointing persons as *Industry Representatives*, *BMF 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. Where a majority of *BMF Ministers* agree on a candidate in accordance with clause 9.2 and 9.3, the *BMF* will appoint that person as an *Industry Representative* for a period of up to five years.
- 9.7. The agreed candidate, prior to being appointed to the *Board*, will be required to provide the *BMF*, through the *BMF Chair*, with the following declarations:
  - a. Conflict-of-Interest; and
  - b. to perform his or her duties in accordance with the Functions of the *Board*.

- 9.8. The *BMF Chair* will decide the remuneration for the *Industry Representative*, which will be paid from the *ABCB Account*. In setting the remuneration, the *BMF Chair* will have regard to relevant rates published by the Remuneration Tribunal.
- 9.9. An *Industry Representative* may only serve a maximum of two consecutive terms on the *Board*.
- 9.10. An *Industry Representative* ceases to be a member of the *Board* if that person:
- a. resigns the office by instrument in writing to the *BMF Chair*, or
  - b. is removed from office by the *BMF Chair*, after consultation with the *State* and *Territory BMF Ministers* either following a recommendation by the *ABCB Chair* under clause 9.11 or otherwise.
- 9.11. The *ABCB Chair* may recommend that the *BMF Chair* remove an *Industry Representative* from the *Board* if that *Industry Representative*:
- a. has breached clause 12 of this Agreement; or
  - b. has missed two consecutive official meetings in a year; or
  - c. has failed to perform his or her duties in accordance with the *Functions* of the *Board*; or
  - d. is unable to perform the required duties due to illness or incapacity; and/or
  - e. does not satisfy the *ABCB 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. Appointment of ALGA Representative**

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- 10.1. If the position of the *ALGA Representatives* is vacant or is likely to become vacant, the *BMF Chair* will write to the *ALGA* requesting nominations for the vacancy and a justification of each nominee's credentials against the considerations set out in clause 10.5.
- 10.2. The *BMF Chair* shall provide the *BMF Ministers* with the list of persons nominated by the *ALGA* and request that the *BMF Ministers*, subject to clause 10.3, reach a majority decision on the appointment of a new *ALGA Representative* from the list of recommended persons.
- 10.3. Each *State* and *Territory* represented on the *BMF* can only exercise a single vote on the appointment of an *ALGA Representative* to the *Board*.
- 10.4. The *BMF Chair* shall not vote on the appointment of new *ALGA Representative* unless there is a tied vote, in which case the *BMF Chair* will have a deciding vote, and in doing so must provide the reasons for his/her decision.
- 10.5. In appointing a person as *ALGA Representative*, *BMF Ministers* should take the following considerations into account:
- a. only persons who have the appropriate local government expertise to complement the capacity and skill set of the *Board* should be considered;

- b. the 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
  - c. the representative should be able to comply with the relevant requirements of this *Agreement*.
- 10.6. Where a majority of *BMF Ministers* agree on a candidate in accordance with clause 10.2 and 10.3, the *BMF* will appoint that person as the *ALGA Representative* for a period of up to five years.
- 10.7. The agreed candidate, prior to being appointed to the *Board*, will be required to provide the *BMF*, through the *BMF Chair* with the following declarations:
  - a. Conflict-of-Interest; and
  - b. to perform his or her duties in accordance with the Functions of the *Board*.
- 10.8. The *ALGA Representative* may only serve a maximum of two consecutive terms on the *Board*.
- 10.9. The *ALGA Representative* ceases to be a representative of the *Board* if that person:
  - a. resigns the office by instrument in writing to the *BMF Chair*; or
  - b. is removed from office by the *BMF Chair*, after consultation with the *BMF Ministers* either following a recommendation by the *ABCB Chair* under clause 10.10 or otherwise.
- 10.10. The *ABCB Chair* may recommend that the *BMF Chair* remove the *ALGA Representative* from the *Board* if he or she:
  - a. has breached clause 12 of this *Agreement*; or
  - b. has missed two consecutive official meetings in a year; or
  - c. has failed to perform his or her duties in accordance with the *Functions* of the *Board*; or
  - d. is unable to perform the required duties due to illness or incapacity; and/or
  - e. does not satisfy the *ABCB 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*.

## **11. Meetings of the Board**

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

- 11.1. The *Board* shall meet at least twice each financial year, and hold additional meeting(s) for the financial year as required or when the *BMF* calls the *Board* to hold an urgent meeting.
- 11.2. The times and dates of meetings shall be determined by the *Board*.

- 11.3. A *Board* meeting may be held at two or more venues using any technology that gives the members, as a whole, a reasonable opportunity to participate.

#### **Quorum**

- 11.4. The quorum for a meeting is ten *Board* members, so long as more than half the members present are *ex officio*. The quorum must be present at all times during the meeting.
- 11.5. A *Board* meeting cannot proceed if an *ABCB Chair* has not been appointed as per clause 8.
- 11.6. The *ABCB Chair* is expected to chair all *Board* meetings. If he/she is not available, the *Board* members present at the meeting will elect a member to chair the meeting.

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

- 11.7. Each *Board* member or his or her delegate (refer clause 11.24) is entitled to exercise one deliberative vote on any matter for decision, unless:
- a. the member is also acting as a proxy for another *Board* member (clause 11.17).
- 11.8. Participation in the deliberation of an agenda item is limited to *Board* members.
- 11.9. Decisions of the *Board* will be by absolute majority of all *Board* members entitled to attend and vote.
- 11.10. *Ex officio Board* members may, through the *ABCB Chair* or *CEO*, invite observers to *Board* meetings from time to time.
- 11.11. The deliberations and decisions of the *Board* will be recorded in writing and circulated to the *BMF*.
- 11.12. All dissenting positions by *Board* members will be recorded.
- 11.13. Before the *Board* can decide on a proposal to incorporate a new initiative into the agreed work plan for a financial year, the *ABCB Chair* must refer the proposal to the *BMF* for agreement and/or amendment.
- 11.14. Where a significant non-technical proposal is made that, if agreed, would determine a policy position of the *Board* and does not have the unanimous support of the *Board*, the proposal will be referred to the *BMF* for consideration and direction if not previously agreed by the *BMF*.
- 11.15. If the *ABCB Chair* is of the view that a decision on the proposal is urgent, he or she may ask the *BMF Chair* to write to the *BMF Ministers* and seek a decision on the proposal outside of a scheduled meeting in accordance with clause 4.10.
- 11.16. *Board* members must not participate in any deliberations or vote in any matters in which they may have or may be perceived to have a *Conflict-of-Interest* (clause 12).
- 11.17. The *CEO* of the *ABCB Office* will:

- a. attend all *Board* meetings;
- b. report on the actions of the *ABCB Office* and its progress against the agreed work plan and budgets;
- c. provide information and advice to the *Board* as requested; and
- d. via the *ABCB Office*, provide the secretariat services for the *Board* meeting.

**Proxy voting for the ABCB Chair, Industry Representatives, and ALGA Representative**

- 11.18. The ABCB Chair, Industry Representatives and ALGA Representative may nominate a *Board* member who is an Industry Representative or ALGA Representative as their proxy at a meeting of the *Board*.
- 11.19. In order for a nomination of a proxy to be effective, a valid nomination must be received by the *ABCB Office* at least two working days before the *Board* meeting.
- 11.20. A nomination of a proxy is valid if it is signed by the relevant *Board* member and contains the following information:
- a. the member's name and address;
  - b. the proxy's name; and
  - c. the meeting at which the nomination may be used.
- 11.21. A nomination does not have to be witnessed.
- 11.22. A nomination may specify the way the proxy is to vote on a particular resolution.
- 11.23. A proxy nominated in accordance with this clause 11 has the same rights as the *Board* member they are representing at the meeting, including:
- a. to speak at the meeting; and
  - b. to vote.
- 11.24. The *ABCB Office* must send the *ABCB Chair, Industry Representative* or *ALGA Representative* a proxy appointment form for a meeting where the member has requested the form.

**Delegates**

- 11.25. Each *ex officio Board* member may appoint a delegate, for one meeting per financial year.
- 11.26. Any delegate appointed under 11.25 must be delegated the power to make decisions on behalf of their *Administration*.

**Decisions without meetings**

- 11.27. 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 11.9; and

- c. all members are informed of the decision made.

### **Changing priorities and projects of the Board**

- 11.28. The *Board* must act in accordance with any direction from the *BMF*, and in accordance with the processes set out in clauses 3.1 to 11.28, except in the following circumstances:
  - a. where, for reasons of extreme urgency brought about by unforeseen events (such as natural disasters), the *Board* may approach the *BMF* out of session for approval to commission research.
- 11.29. Any changes to the *NCC* that are requested by a non-*BMF* proponent, shall be made through the *Board's Proposal for Change* processes.

## **12. Conduct of the Board**

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### **Code of Conduct**

- 12.1. The *ABCB Chair*, the *Industry Representatives* and the *ALGA Representative* will 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).
- 12.2. Ex officio *Board* members will conduct themselves in accordance with the Code of Conduct requirements for their respective jurisdictions.

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

- 12.3. The *ABCB Chair*, *Industry Representatives* and *ALGA Representative* are responsible for keeping their respective *Conflict-of-Interest Declarations* to the *BMF Chair* up-to-date.
- 12.4. The *ABCB Chair*, *Industry Representatives* and *ALGA Representative* 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.
- 12.5. The *Board* must apply the *APS Code of Conduct Guidelines* for managing *Conflicts-of-Interest* to deal with conflicts as they arise in proceedings and operations of the *Board*.

## **13. Representation on other Bodies**

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

## **14. Committees**

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- 14.1. There shall be a *Building Codes Committee* and a *Plumbing Codes Committee* to provide advice to the *Board*.
- 14.2. The *Board* may establish other *Committees*, from time to time, as required.
- 14.3. The *Board* will determine the *Committees* Chairs, composition and operation.
- 14.4. The *Committees* can make recommendations to the *Board*.

- 14.5. *Board* members may attend any meeting of a *Committee* established by the *Board*.

## **15. Funding**

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### **Contributions**

- 15.1. 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*.
- 15.2. The *Board's* funding shall be provided by:
- a. annual appropriation by the *Australian Government* to the *ABCB Account*; and
  - b. crediting of payments made by the *States* and *Territories* to the *Australian Government* for the purposes of the *ABCB Account* to the *ABCB Account*.
- 15.3. 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.
- 15.4. The *Australian Government* 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*.

### **ABCB Account**

- 15.5. The annual contributions of each *Party* determined under clause 15.1 and any other payments paid to the *Australian Government* for the purposes of the *Board* will be credited to the *ABCB Account*.
- 15.6. Amounts standing to the credit of the *ABCB Account* may only be debited for the purposes of achieving the *Board's Objectives*.
- 15.7. Amounts that may be paid to the *Australian Government* 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 *Australian Government*;
  - 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 *Australian Government* by any person for the expenditure purposes of the relevant account.
- 15.8. The *Australian Government* is authorised to enter into contracts, agreements or arrangements on behalf of the *Parties*, under the overall policy direction of the *BMF* and implemented by the *ABCB*, and in accordance with this *Agreement*.



## **16. Chief Executive Officer**

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### **Appointment**

- 16.1. A *CEO* shall be appointed by the *Secretary of the Department*.
- 16.2. The *Secretary* will consult with the *ABCB Chair* on the appointment of the *CEO*.
- 16.3. The *CEO* will be an *APS* employee and must comply with all Commonwealth laws in the performance of his or her role under this Agreement.

### **Functions and powers**

- 16.4. The *CEO* 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.
- 16.5. The *CEO* shall, with the strategic guidance of the *Board* and consistent with the *PGPA Act* and associated instruments and policies, co-ordinate, manage and facilitate the implementation of the *Board's* decisions regarding the *Board's Objectives*. In particular, the *CEO* will have responsibility for:
- a. Financial management of the *ABCB Office*;
  - b. Technical support services;
  - c. Administrative and operational support, including technical and secretariat support for the *Board* and *Committees*;
  - d. Management of research projects;
  - e. Consultation and liaison;
  - f. Information dissemination;
  - g. Technical advice on policy development; and
  - h. Other matters as determined by the *Board*.
- 16.6. The *CEO* must at least once a year, and prior to the June meeting of the *BMF*, report to the *Board* on the achievement of the *Board's Objectives* of the Agreement for the financial year.
- 16.7. The *CEO*, as soon as practicable but no later than 31 July of the following financial year, will provide the *ABCB Chair* (out of session), the financial statements, including variances between budgeted and actual, against the *Annual Business Plan* for the previous financial year.

## **17. Administration**

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### **Delegations and authorisations**

- 17.1. The *CEO* 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.

- 17.2. The *Secretary* will make arrangements to enable the *CEO* to discharge his or her duties and functions under this *Agreement*.
- 17.3. The *Secretary* will issue the *CEO* a delegation to approve commitments, enter into, vary or administer arrangements under the *PGPA Act*.

#### **Engagement of Contractors**

- 17.4. Contractors may be engaged by the *CEO* on behalf of the *Board* to carry out tasks associated with the functions of the *Board*.
- 17.5. The terms and conditions on which contractors are engaged under clause 17.4 must:
- a. be an efficient, effective, ethical and economical use of relevant money and not inconsistent with the *PGPA Act*;
  - 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 his or her powers under the *PGPA Act*.

#### **Travel and Meeting Costs**

- 17.6. The *CEO* may agree to approve travel and other costs incurred by the *ABCB Chair*, *Industry Representatives*, and the *ALGA Representative*, *Committee* members or contractors where those costs are related to the pursuit of the business of the *Board* on a case by case basis.
- 17.7. Approved travel and other costs will be paid in accordance with the *Department's* normal travel arrangements and policies.
- 17.8. Subject to any restrictions in any delegation from the *Secretary* or the *Department's* Accountable Authority Instructions, the *CEO* may, where he or she is requested by the *Board* to engage a particular person to conduct research or provide advice 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.

#### **18. Transitional arrangements**

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- 18.1. 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*.

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

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- 19.1. Each of the *Administrations* will take reasonable steps to consolidate all of their mandatory provisions affecting the design, construction and performance of *Building and Construction* into the *NCC*.
- 19.2. The *Parties* agree that, as far as practicable:

- a. requirements relating to the design, construction and performance of *Building and Construction* in areas affected by, or likely to be affected by, *Natural Phenomena* (“Natural Phenomena Requirements”) should be included in the *NCC*; and
  - b. it should be specified in the *NCC* that *Natural Phenomena* requirements only apply in areas affected by, or those likely to be affected by, *Natural Phenomena*; and
  - c. all 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.
- 19.3. Each Party commits, as far as practicable, to:
- a. reducing or validating *Variations* to the *NCC* in its legislation;
  - b. restrict making a *Variation* from the *NCC*, unless:
    - A. there is a net benefit as evidenced by a *Regulatory Impact Assessment* conducted in accordance with assessment processes in each jurisdiction; and
    - B. the *Variation* is approved by the relevant *Minister*.
  - c. identifying *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.
  - d. reducing, restricting or validating local government or authorities where they have any administrative responsibility for regulating *Building and Construction* interventions to the *NCC*.

## **20. Intellectual Property**

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

**21. Indemnity Issues**

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- 21.1. The *Parties* agree that ex officio members of the *Board* are indemnified by their own *Administration*.
- 21.2. Any indemnities or apportionment of costs relating to the *ABCB Chair, Industry Representatives*, and the *ALGA Representative*, will be dealt with in separate deeds between the *Parties*.
- 21.3. In principle, the *Parties* agree:
- a. to indemnify the *Australian Government* (in proportion to the *Parties*' respective funding contributions made under this Agreement) for any liability incurred as a result of activities performed by the *CEO* and the *ABCB Office*, in carrying out and managing the implementation of the *Board* directives and decisions in accordance with this *Agreement*;
  - b. that, notwithstanding clause 21.3.a, any indemnities the *Parties* provide in favour of the *CEO* and the *ABCB Office* will be reduced proportionately to the extent that any fraudulent, malicious, illegal or negligent act or omission on the part of the *CEO* and the *ABCB Office* contributed to the liability, and
  - c. that the *Australian Government, States and Territories*, collectively, through the *Board* have the capacity to identify and manage risk through the direction that is given by the *Board* to the *CEO* and *ABCB Office* about the manner in which they should implement the *Board's* decisions, noting the need to continue managing risks at each level, refer clauses 6.4.b and 16.4-16.6.

**22. Variation**

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- 22.1. This *Agreement* may be varied with the written consent of all *Parties*.

**ATTACHMENT A**

**GOVERNMENT CONTRIBUTIONS 2017-18 TO 2022-23**

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	TOTAL 2017-18 to 2022-23
<b>Commonwealth</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>\$4,000,000</b>	<b>\$24,000,000</b>
<b>State / Territory</b>							
ACT	\$153,132	\$153,132	\$145,858	\$145,858	\$145,858	\$145,858	\$889,696
NSW	\$936,141	\$936,141	\$1,095,882	\$1,095,882	\$1,095,882	\$1,095,882	\$6,255,810
NT	\$140,925	\$140,925	\$122,139	\$122,139	\$122,139	\$122,139	\$770,406
Qld	\$775,962	\$775,962	\$725,480	\$725,480	\$725,480	\$725,480	\$4,453,844
SA	\$245,954	\$245,954	\$230,531	\$230,531	\$230,531	\$230,531	\$1,414,032
Tas	\$115,084	\$115,084	\$117,803	\$117,803	\$117,803	\$117,803	\$701,380
Vic	\$1,053,290	\$1,053,290	\$1,043,494	\$1,043,494	\$1,043,494	\$1,043,494	\$6,280,556
WA	\$579,512	\$579,512	\$518,813	\$518,813	\$518,813	\$518,813	\$3,234,276
<b>State/Territory Total</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>\$4,000,000</b>	<b>\$24,000,000</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. For 2017-18 to 2018-19, contributions have been calculated using the Australian Bureau of Statistics (ABS) data for building approvals for 2012-13.
3. For 2019-20 to 2022-23, contributions have been calculated using the three year average of ABS data for building approvals for 2013-14 to 2015-16 inclusive.

**SIGNATURES**

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

\_\_\_\_\_  
Signature

18.12.2017  
\_\_\_\_\_  
Date

In the presence of:

Ann Louise Bray  
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 )  
Minister for Police and Emergency )  
Services )  
Minister for the Environment and  
Heritage )  
Minister for Urban Renewal )

Signature

Date

11/12/17

In the presence of:

DANIEL LANDON

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 Anthony Roberts MP )  
Minister for Planning )  
Minister for Housing )  
Special Minister of State )

Signature

Date

25/1/2011

In the presence of:

S. Clark  
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 Matthew Kean MP )  
Minister for Innovation and Better )  
Regulation )

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

8.1.18

*Date*

In the presence of:

JULIA STEWARD  
*Print name of witness*

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

Australian Building Codes Board Intergovernmental Agreement

SIGNED for and on behalf of the )  
Northern Territory by )  
The Hon Nicole Manison MLA )  
Treasurer )  
Minister for Children )  
Minister for Infrastructure, Planning )  
and Logistics )

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

6 October 2017  
*Date*

In the presence of:

CECILIA WOOD  
*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 John Rau MP )  
Deputy Premier )  
Attorney-General )  
Minister for Justice Reform )  
Minister for Planning  
Minister for Industrial Relations  
Minister for Child Protection Reform  
Minister for the Public Sector  
Minister for Consumer and Business  
Services  
Minister for the City of Adelaide

\_\_\_\_\_  
*Signature*  
*6 October 2017*  
\_\_\_\_\_  
*Date*

In the presence of:

CECILIA WOOD  
*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 ) Signature  
Murray  
Minister for Sustainability,  
Environment and Conservation  
Minister for Climate Change

6 Dec 2017  
Date

In the presence of:

Cathy Probst  
Print name of witness

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

Australian Building Codes Board Intergovernmental Agreement

SIGNED for and on behalf of the  
State of Tasmania by )  
The Hon Guy Barnett MP )  
Minister for Resources )  
Minister for Building and Construction )  
)  
)

*Signature /*

6 October 2017  
*Date*

In the presence of:

CECILIA WOOD  
*Print name of witness*

*Signature of witness*

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Australian Building Codes Board Intergovernmental Agreement

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

)  
)  
)  
)  
)

Signature

Date

10/12/17

In the presence of:

Peter Keogh  
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 Bill Johnston MLA  
Minister for Mines and Petroleum;  
Commerce and Industrial Relations;  
Electoral Affairs, Asian Engagement

:  
:  
,  
)  
)  
)

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

6 October 2017  
*Date*

In the presence of:

CECILIA WOOD  
*Print name of witness*

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



# SENIOR OFFICERS' GROUP

## Terms of Reference

The Building Ministers' Forum (BMF) requires an effective mechanism for the provision of coordinated strategic advice in relation to building and construction industry policy issues.

The Senior Officers' Group (SOG) is responsible for developing and providing high level national strategic policy advice to the BMF on building and construction issues of national significance and any other matters requested by the BMF.

### Purpose

The purpose of the SOG is to have in place a group of senior officials from each jurisdiction to provide the BMF with high level national strategic policy advice on national building and construction issues across Australia.

This advice is regarding cross-jurisdictional issues. The outcomes from this work will include policies to improve the harmonisation of administration and the consistency in compliance and enforcement.

The national strategic policy advice of the SOG will complement the technical advice on the National Construction Code (NCC) the BMF receives from the Australian Building Codes Board (ABCB) and the regulatory advice it receives from the Building Regulators' Forum (BRF).

### Functions

The functions of the SOG are to:

- provide the BMF with high level national strategic building and construction policy advice on priority issues determined by the BMF;
- monitor progress with the implementation of SOG initiatives; and
- collaborate with the ABCB and the BRF on national building and construction policy and other matters as directed by the BMF.

### Principles

The SOG will support the BMF by providing enhanced national policy development, collaboration and coordination amongst jurisdictions, by:

- ensuring the efficient use of resources and minimising unnecessary duplication of effort;
- enabling the sharing of information amongst the SOG in a timely manner and in accordance with agreed processes, including consideration of the confidential nature of the information shared;
- working collaboratively with the ABCB and the BRF on building and construction matters where applicable or as directed by the BMF;
- informing each member of policy proposals and issues of mutual interest in a timely manner; and
- promoting a consistent national policy response to building and construction policy, whilst acknowledging jurisdictions may adopt differing approaches or face resourcing constraints.

**Reporting**

The SOG will report directly to the BMF.

**Membership**

To ensure the strategic policy focus of the SOG, membership will consist of two senior building and construction policy officers from each jurisdiction and a senior representative from the Commonwealth.

The members of the SOG will comprise senior executive policy officers to represent their jurisdiction.

It is expected that the SOG membership will be the equivalent level of seniority as the ABCB Board and the BRF. This will ensure that the BMF is provided with comprehensive authoritative advice on national building and construction from a policy, technical and regulatory perspective.

**Meetings**

Responsibility for the SOG Chair and Secretariat function is to be determined biennial basis by the BMF.

SOG members are expected to meet on a regular basis to ensure the successful completion of priority projects within the agreed timelines. Participation in these meetings may be delegated where required; however SOG members are expected to participate wherever practicable. Information may also be circulated and decisions made out of session via written communications.

**Resourcing for SOG Secretariat**

Resourcing for the SOG will be determined by the BMF.

# BUILDING REGULATORS' FORUM

## Terms of Reference

State and territory building regulators and relevant Commonwealth agencies require an effective mechanism for the exchange of information, to establish coordinated responses to building industry issues that affect the building industry, building occupants and the community.

### Introduction

On 19 February 2016, the national Building Ministers' Forum (BMF) endorsed recommendations provided by the Senior Officers' Group (SOG) on non-conforming building products (NCBPs). The SOG had been established and tasked with investigating and identifying strategies to address the issue of NCBPs.

One of the recommendations of the SOG was to establish a national building regulators' forum to focus on the operational aspects of identifying, enforcing and potentially recalling NCBPs.

Building ministers have recognized the benefits of cooperation and alignment by building regulators and have established the Building Regulators' Forum with these broader terms of reference.

### Purpose

The Building Regulators' Forum will provide an intergovernmental forum for state and territory building regulators to work cooperatively and efficiently on regulatory responses to issues of national significance impacting building and construction in Australia.

### Functions

The Building Regulators' Forum will:

- advise the BMF on matters relating to building and construction regulation and implement relevant BMF decisions;
- share information on best practice regulation and enforcement activities between relevant regulators as appropriate, e.g. building regulators, consumer law regulators, other Commonwealth departments and agencies;
- enable improved national coordination of responses relating to NCBPs by:
  - cooperation and information sharing amongst building and consumer law regulators across jurisdictions on consumer law matters where appropriate, to enhance collaboration between building and consumer law regulators (SOG Recommendation 3b);
  - contributing to the development and implementation of a national website and education initiatives (SOG Recommendations 3c and 3d); and
  - evidence provision to relevant Commonwealth entities when all states and territories prohibit a NCBP (SOG Recommendation 4a).

## **Principles**

The Building Regulators' Forum will enhance information-sharing, collaboration and coordination amongst building regulators by:

- ensuring efficient use of resources and minimising unnecessary duplication of effort;
- enabling information to be shared between relevant parties in a timely manner and in accordance with agreed processes, including consideration of the confidential nature of the information shared;
- informing each other of proposals and issues of mutual interest in a timely manner; and
- promoting consistent responses to occurrences of NCBPs, whilst acknowledging jurisdictions may adopt differing approaches or face resource constraints.

## **Membership**

Membership will consist of the senior building regulator or their delegate from each jurisdiction and a senior representative from the Australian Government.

## **Governance**

The Building Regulators' Forum reports directly to the BMF, and will provide BMF papers to the secretariat for distribution.

The BMF may direct the Building Regulators' Forum to:

- undertake additional work as required;
- work with the SOG on matters of policy; and
- the Australian Building Codes Board on matters related to the National Construction Code.

The BMF will review the effectiveness of the Building Regulators Forum (including any work program) on an annual basis.

## **Meetings**

The responsibility for the Building Regulators' Forum is equally shared, with the Chair and Secretariat function being rotated on an annual basis amongst all jurisdictions.

The Building Regulators' Forum will hold at least two meetings each year and attendance is compulsory. Other meetings will be held on an as needs basis as convened by the Chair or those member jurisdictions which deem it necessary. Attendance at these out of session meetings will be optional and based on jurisdictional relevance. Information may also be circulated and decisions made out of session via written communications.

Significant issues with national implications will be reported to relevant entities or escalated to the Building Ministers' Forum.

## BUILDING MINISTERS' FORUM

### Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia

#### Terms of Reference

The independent experts, Professor Peter Shergold AC and Ms Bronwyn Weir, have been appointed by the Building Ministers' Forum (BMF) to undertake an external assessment of the compliance and enforcement systems for the building and construction industry across Australia and the potential for further or additional reforms. Professor Shergold and Ms Weir will provide an initial report to the BMF at its meeting in October 2017. A final report will be provided to the BMF as soon as possible after the October 2017 meeting.

**Compliance systems** are the legislated processes in each jurisdiction intended to ensure that buildings are designed and constructed to comply with the National Construction Code (NCC) and are maintained (as appropriate) in accordance with legislated Australian Standards.

**Enforcement systems** are the legislated processes in each jurisdiction that allow a regulator to detect and remedy non-compliance with the NCC.

Professor Shergold and Ms Weir are engaged to, in consultation with the Commonwealth, state and territory governments, the Australian Building Codes Board and key industry stakeholders:

1. Examine compliance and enforcement problems within the building and construction systems across Australia that are affecting the implementation of the NCC, as they relate to:
  - a. roles, responsibilities and accountabilities of different parties;
  - b. education and training;
  - c. licensing and accreditation;
  - d. accuracy of design and documentation;
  - e. quality control and assurance;
  - f. competencies of practitioners;
  - g. integrity of private certification;
  - h. inspection regimes;
  - i. auditing and enforcement practices; and
  - j. product importation and chain of custody.
2. In undertaking the assessment, Professor Shergold and Ms Weir are to take into account the impact of recent building regulatory reviews and reforms undertaken and implemented by state and territory governments, including but not limited to:
  - a. Australian Capital Territory – Improving the ACT Building Regulatory System Review;
  - b. New South Wales — 2016 Response to the Independent Review of the *Buildings Professionals ACT 2005*;
  - c. Queensland — 2016 Building Plan Review;
  - d. Tasmania — 2017 Building Regulatory Framework;
  - e. Victoria — 2017 Building Regulations Sunset Review;
  - f. Western Australia — 2016 Auditor General Report on Regulation of Builders and Building Surveyors; and
  - g. Senate Economics Committee Inquiry into Non-Conforming Building Products.
3. Based on the outcome of the assessment, consider strategies for improving compliance and enforcement practices and make recommendations for a national best practice model for compliance and enforcement to strengthen the effective implementation of the NCC.



# Building Product Supply Chain

Based on the SOG Report – Strategies to Address Risks Related  
to Non-Conforming Building Products

ATTACHMENT F

