MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

AND

THE AUSTRALIAN BUILDING AND CONSTRUCTION COMMISSION
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**Appendix A:** Request details

**Appendix B:** Liaison Contact Officers
This Memorandum of Understanding (MoU) is made on 17th August 2017

Between

The Australian Competition and Consumer Commission (the ACCC)

and

The Australian Building and Construction Commission (the ABCC)

1 Agencies to the MoU

1.1 The Agencies to this MoU are the ACCC and the ABCC, and in this MoU, the term 'Agency' will mean either the ACCC or the ABCC as the context allows.

1.2 The ACCC is an independent Commonwealth statutory authority responsible for enforcing consumer protection and fair trading laws and for promoting competition in the marketplace. Under the Competition and Consumer Act 2010 (Cth) (CCA) and other legislation, the ACCC is responsible for, amongst other matters, taking enforcement action in respect of cartels and other types of anticompetitive conduct in all industries, including the building and construction sectors.

1.3 The ABCC is an independent Commonwealth statutory authority established under the Building and Construction Industry (Improving Productivity) Act 2016 (Cth). The ABCC is responsible for promoting an improved workplace relations framework to ensure that building work is carried out fairly, efficiently and productively for the benefit of all building industry participants, without distinction, and for the benefit of the Australian economy as a whole.

1.4 The ACCC and the ABCC both have regulatory roles and responsibilities in relation to the building and construction sectors and undertake activities that affect those sectors. The work of the Agencies is often complementary and may at times intersect on particular topics, issues or projects, particularly in relation to:

(a) compliance with the CCA by building contractors and subcontractors covered by the Code for the Tendering and Performance of Building Work 2016 (Building Code)

(b) collusive tendering by building contractors and subcontractors covered by the Building Code

(c) other restrictive anticompetitive agreements between participants in the building and construction sectors

(d) unfair contract terms and security of payment compliance

(e) monitoring and reporting in relation to the construction and building sectors.
2 Purpose of the MoU

2.1 The purpose of this MoU is to promote effective co-operation and communication between the Agencies and to assist each Agency in the performance of its roles and responsibilities, including decision-making, and to contribute to the effective regulation of the building and construction sectors.

2.2 This MoU creates a framework to facilitate engagement between the Agencies, including consultation, collaboration and sharing information.

2.3 The Agencies also recognise that mutual cooperation through the sharing of knowledge and expertise will contribute significantly to the ability of both Agencies to effectively and efficiently discharge their respective functions. The Agencies acknowledge that cooperation is subject to the legal, policy and operational limits on the powers of each Agency, including in relation to the collection, use and disclosure of information.

2.4 This MoU does not create any enforceable rights or impose any legally binding obligations on either Agency.

2.5 Nothing in this MoU affects the exercise of the legislative functions or responsibilities of the Agencies.

3 Consultations

3.1 Where appropriate, each Agency will notify the other Agency of any matter that may be relevant to the carrying out by the other Agency of its roles and responsibilities, and keep the other Agency informed of the progress of those matters.

3.2 Where either Agency seeks to consult the other, the Agency required to consult (the consulting Agency) will endeavour to provide the other Agency with at least 7 business days as the period within which the other Agency is to provide comments in response, whilst recognising that, on occasion, comments may be required urgently due to circumstances beyond the control of the consulting Agency.

3.3 The Agencies will continue consultation with each other through:

(a) an annual meeting at Commissioner and senior executive level;

(b) meetings at officer level as agreed between the Agencies on current matters of interest to each Agency, which may include recent law reform, policy issues, recent judgments or current litigation, media releases, intelligence sharing or other matters of mutual interest.

3.4 The Agencies may agree to establish additional regular meetings on relevant topics, or to alter the nature and scope of regular meetings as appropriate. This may occur, for instance, where new issues emerge in the building and construction sectors that warrant additional regular engagement between the Agencies.
3.5 The Agencies will also explore other opportunities for sharing perspectives on matters relevant to both, especially in relation to matters regarding the promotion of competition and fair trading in the building and construction sectors. The Agencies may agree to establish processes applicable to any arrangement to share expertise.

4 Referral of matters

4.1 Subject to any specific legal requirement to the contrary, each Agency, where appropriate, will promptly refer to the other Agency any complaint or enquiry that it receives which is relevant to the roles and responsibilities of the other Agency. If the matter is or becomes relevant to both Agencies, each Agency will inform the other of any subsequent developments as clause 3.1 provides.

4.2 Any such referral will be made in writing and addressed to the relevant Agency’s liaison contact officer (refer to clause 10.1). Where, however, engagement on particular topics regularly occurs between the Agencies via specified persons (such as Regional Managers), it may be appropriate for the Agency to refer a matter on that topic to that specified person.

4.3 Each Agency will maintain an internal record of any such referrals, including the date of the referral and a copy of the written referral.

5 Requests for information, documents or assistance

5.1 Each Agency will consider any reasonable requests by the other Agency (the Requesting Agency) to provide assistance (including the provision of information or documents) on a case by case basis, where such assistance is relevant to the Requesting Agency’s statutory roles and responsibilities. For the purposes of this MoU, the Agency to whom a request has been made by the Requesting Agency is to be referred to as the ‘Requested Agency’.

5.2 Requests are to include the details in Appendix A. The Agencies may consult with each other to clarify the content of any request.

5.3 The provision of assistance will be subject to operational considerations and the legal obligations of each Agency regarding the collection, use and disclosure of information, imposed by statute or otherwise. In relation to a particular request, the Agencies will advise each other of those relevant obligations and of the application of those obligations to that request.

5.4 An Agency may, in the exercise of its discretion, decline a request, in whole or in part.

5.5 Each Agency will maintain an internal record of requests received from the other, including the nature of the information, documents or assistance requested.

6 Procedure for provision of information, documents or assistance

6.1 Each Agency will use its best endeavours to advise the other Agency in a timely manner whether it will accept or decline a request and, if accepted, a time frame for responding to the request.
6.2 Where the consent of a person is required, or a person is required to be advised of the request before an Agency is able to comply with the request, the Agency will advise the Requesting Agency of this fact before contacting that person.

6.3 An Agency may provide requested information subject to any conditions that it considers appropriate, including:

(a) written restrictions or limitations as to the use, access or storage of the requested information or documents; and

(b) confidentiality requirements relating to the information or documents provided.

6.4 Where a Requested Agency seeks to impose a condition, it must advise the Requesting Agency of that condition prior to providing the information.

6.5 In the event that significant costs may or will be incurred in responding to a request, the Agencies may negotiate a cost-sharing arrangement in relation to the request.

7 Confidentiality of requests and information or documents provided

7.1 An Agency will endeavour to keep confidential a request made to it under this MoU, the content of such a request and any other matters arising from consultation about the request, if requested to do so by the Requesting Agency.

7.2 In exchanging confidential information, being information or documents held by either Agency in circumstances where the Agency is subject to a duty of confidence, whether arising by the application of statute, common law or equity, the Agencies acknowledge the confidentiality requirements of the laws and regulations under which each Agency operates.

7.3 Each Agency will comply with any confidentiality conditions and will not, subject to legal obligations requiring or authorising the disclosure or production, release or disclose confidential information supplied to it under this MoU to a third party without the express written consent of the Requested Agency.

7.4 In the event that the Requesting Agency receives a legally enforceable demand for disclosure of confidential information supplied to it by the Requested Agency under this MoU, before complying with the demand, the Requesting Agency will notify the Requested Agency, unless legal requirements or other circumstances make such a notification impermissible.

8 Permissible use of information or documents

8.1 Each Agency may use information and documents provided to it by the other Agency under this MoU in connection with carrying out its statutory functions or performing its duties, subject to any limitations on use applied as a condition by the other Agency under clause 6.3.

8.2 Each Agency will take reasonable steps to protect any information or documents provided to it under this MoU from being lost, and from any unauthorised use,
9 Term of MoU

9.1 This MoU commences on and from the date when it has been signed by both the Chairman of the ACCC and the Commissioner of the ABCC.

9.2 From its commencement, this MoU will remain in force for a term of three years unless terminated earlier by one or both of the Agencies in accordance with clause 12.

9.3 The term of this MoU may be extended for a further specified period by the Agencies' written agreement.

10 Management of MoU

10.1 Each Agency will ensure that, at all times while the MoU is in force, at least one of its staff members is designated and known to the other Agency as its liaison contact officer for the purpose of this MoU. At the date of this MoU, the liaison contact officers for the Agencies are specified in Appendix B to this MoU.

10.2 Each Agency may change its liaison contact officer, as necessary, by written notice provided to the other Agency.

10.3 The Agencies' liaison contact officers may jointly decide whether to hold a coordination meeting as necessary to discuss matters of common interest.

10.4 The Agencies agree that any dispute arising out of the operation or implementation of this MoU will be discussed and resolved through a process of consultation between the Agencies' liaison contact officers. If the matter remains unresolved, the dispute will be referred to the Chairman of the ACCC and the Commissioner of the ABCC, or their respective nominees.

11 Review and amendment of MoU

11.1 The Agencies will review the operation of the MoU on a periodic basis and will consult with each other with a view to improving its operation where necessary.

11.2 Any term of this MoU may be amended at any time with the mutual written consent of each Agency.

12 Termination of MoU

12.1 Either Agency may terminate this MoU by giving at least 30 days written notice to the other Agency. The termination will take effect on the date that is 30 days after the notice is sent, unless otherwise agreed, in writing, between the Agencies.

13 Publication of MoU

13.1 The Agencies agree that this MoU may be publicised as each Agency considers appropriate including by placing it on the Agency's website.
Signed on this 17th day of August 2017

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Rodney Sims  
Chairman  
ACCC

Nigel Hadgkiss  
Commissioner  
ABCC
Appendix A – Request details

Requests for information, documents or assistance should include

(a) the purpose for which the information, documents, or assistance is sought (identifying the provisions of any relevant law or other legal basis for the Requesting Agency seeking the information);

(b) to whom, if anyone, the documents and information provided may be disclosed or released by the Requesting Agency (specifying the reasons and legal basis for the on-disclosure);

(c) any information in the possession of the Requesting Agency that may:
   (i) assist the Requested Agency in identifying persons who may be adversely affected by the disclosure; and
   (ii) affect the Requested Agency’s obligations to afford procedural fairness (if any) (including specifying whether the request is confidential, and the nature of any such affect); and

(d) the suggested time period for reply and, if the request is urgent, the reasons for the urgency.
Appendix B – Liaison Contact Officers

ACCC liaison contact officer
The liaison contact officer is the General Manager, Commercial Construction Unit

ABCC liaison contact officer
The liaison contact officer is the Regional Manager, Southern.