



Housing Assistance (Form of Agreement) Determination 2008

Housing Assistance Act 1996

I, JENNY MACKLIN, Minister for Families, Housing, Community Services and Indigenous Affairs, make this Determination under subsection 5(1) of the *Housing Assistance Act 1996*.

Dated 12 June 2008

Jenny Macklin

Minister for Families, Housing, Community Services and Indigenous Affairs

1 Name of Determination

This Determination is the *Housing Assistance (Form of Agreement) Determination 2008*.

2 Commencement

This Determination commences on the day it is made.

3 Revocation of Housing Assistance (Form of Agreement) Determination 2003

This Determination revokes the *Housing Assistance (Form of Agreement) Determination 2003* made under subsection 5(1) of the *Housing Assistance Act 1996* on 15 July 2003 and published in the Gazette on 17 July 2003.

4 Form of Agreement

The form of agreement set out in Schedule 1 is hereby determined to be the form of agreement dealing with the provision of housing

assistance for the purpose of subsection 5(1) of the *Housing Assistance Act 1996*.

Schedule 1 Form of agreement**2003****Commonwealth State****Housing Agreement****2003 Commonwealth State Housing Agreement**

AN AGREEMENT made on the day of 2003

RECITALS

- A. This Agreement is designed to provide strategic direction and funding certainty for the provision of housing assistance across Australia over the period from 1 July 2003 to 31 December 2008.
- B. In developing this Agreement it is recognised that the States are implementing wide ranging reforms to the management and delivery of housing assistance, and that these reforms will continue.
- C. In entering into this Agreement the Commonwealth and the States recognise that the provision of housing assistance to people requiring access to affordable and Appropriate Housing is essential to reduce poverty and its effects on individuals and on the community as a whole. The aim of this Agreement is therefore to provide appropriate, affordable and secure housing assistance for those who most need it, for the duration of their need.
- D. This Agreement recognises the financial contribution that the Commonwealth makes to the provision of housing by States and Territories under this Agreement.
- E. It is also recognised that the Commonwealth and the States must work together to improve housing outcomes for those in need through better linkages between programs under this Agreement and other relevant Commonwealth and State programs, including

- those relating to income support, health and community services. In implementing this Agreement, both the Commonwealth and the States will seek opportunities for coordination of programs within each level of Government and between Governments in order to improve outcomes for those assisted under this Agreement. In delivering assistance, improved linkages with the non-government sector will also be sought.
- F. To inform the provision of housing assistance provided under this Agreement, the Commonwealth and the States will support research and analysis of housing and related issues.
- G. It is proposed that in order to implement this Agreement, the Commonwealth will grant to States Financial Assistance under section 96 of the Commonwealth of Australia Constitution, and like assistance to both Territories. The terms and conditions under which the Financial Assistance is granted are set out in this Agreement, and in Subsidiary Agreements giving effect to this Agreement, including a Bilateral Agreement under subclause 6(1) of this Agreement, made pursuant to subsection 6(3) of the *Housing Assistance Act 1996*.
- H. The Commonwealth will, by 1 July 2008, commence discussions with the States in relation to the funding arrangements that will apply after this Agreement expires.
- I. The Commonwealth and States acknowledge that States will have different priorities for housing assistance provided under this Agreement, according to the different circumstances in each State. Bilateral Agreements will specify these priorities, and the outcomes to be achieved during Grant Years one to five of this Agreement. The outcomes a State is required to achieve during Grant Year six are set out in this Agreement.
- J. Under this Agreement, and in accordance with the Council of Australian Governments' resolution to reduce Indigenous disadvantage by improving program performance, the Commonwealth and the States commit to improving housing outcomes for Indigenous people by implementing Building a Better Future: Indigenous Housing to 2010.
- K. The Commonwealth and the States acknowledge that the Commonwealth's policy is to target Aboriginal Rental Housing Program (ARHP) funds to rural and remote areas where there is high need and where mainstream public housing and private housing are unavailable. For this Agreement, the priority for the ARHP is to ensure that houses are well maintained and managed to achieve health related outcomes for Indigenous people.
- L. Through this Agreement, the Commonwealth and the States will work together to improve access to mainstream housing options (public housing, community housing, private rental and home ownership) for Indigenous people living in urban and regional centres.

IT IS AGREED as follows:

1. GUIDING PRINCIPLES

1(1) The principles guiding the Commonwealth and the States in the development of this Agreement are:

1. to maintain a core Social Housing sector to assist people unable to access alternative suitable housing options.
2. to develop and deliver affordable, appropriate, flexible and diverse housing assistance responses that provide people with choice and are tailored to their needs, local conditions and opportunities.
3. to provide assistance in a manner that is non-discriminatory and has regard to consumer rights and responsibilities, including consumer participation.
4. to commit to improving housing outcomes for Indigenous people in urban, rural and remote areas, through specific initiatives that strengthen the Indigenous housing sector and the responsiveness and appropriateness of the full range of mainstream housing options.
5. to ensure housing assistance links effectively with other programs and provides better support for people with complex needs, and has a role in preventing homelessness.
6. to promote innovative approaches to leverage additional resources into Social Housing, through community, private sector and other partnerships.
7. to ensure that housing assistance supports access to employment and promotes social and economic participation.
8. to establish greater consistency between housing assistance provision and outcomes, and other social and economic objectives of government, such as welfare reform, urban regeneration, and community capacity-building.
9. to undertake efficient and cost-effective management which provides best value to governments.
10. to adopt a co-operative partnership approach between levels of government towards creating a sustainable and more certain future for housing assistance.
11. to promote a national, strategic, integrated and long term vision for affordable housing in Australia through a comprehensive approach by all levels of government.

2. OPERATION OF AGREEMENT

Period of Agreement

- 2(1) This Agreement shall be deemed to have come into effect on 1 July 2003 in respect of the Commonwealth and of a State when it is signed on behalf of the Commonwealth, and:
- (a) where the laws of a State require that its Parliament authorises the execution of, or approves, this Agreement, when it has been signed on behalf of the State with the authority of the Parliament of the State or, having been signed on behalf of the State without that authority, is approved by the Parliament of the State; or
 - (b) where the laws of the State do not require that its Parliament authorises the execution of, or approves, this Agreement, when it has been signed on behalf of the State.
- 2(2) Notwithstanding that in this Agreement all the States are named as parties, this Agreement shall operate as an Agreement between the Commonwealth and the party or parties in respect of which it comes into force as fully and effectually as if the party or parties in respect of which it comes into force were the only party or parties so named other than the Commonwealth.
- 2(3) The Agreement covers arrangements for the period from 1 July 2003 to 31 December 2008 inclusive.
- 2(4) The 1999 Housing Agreement shall cease to operate from 1 July 2003 inclusive, except that the obligations arising under Part VIII of the 1984 Housing Agreement, referred to in subclause 1(3) of the 1989 Housing Agreement and in subclause 2(2) of the 1996 Housing Agreement and unperformed prior to 1 July 2003, and any other unperformed obligations under the 1996 Housing Agreement and the 1999 Housing Agreement, will continue to be in force.

Roles and Responsibilities

- 2(5) Under this Agreement, the Commonwealth will have responsibility to:
- (a) ensure that the outcomes pursued through this Agreement are consistent with broader national objectives, particularly in relation to support for individuals and communities;
 - (b) report to the Commonwealth Parliament on the performance against agreed outcomes and targets of housing assistance provided under this Agreement; and
 - (c) advise States of Commonwealth objectives to be achieved under this Agreement and under Subsidiary Agreements under this Agreement.
- 2(6) Under this Agreement the States will have responsibility to:
- (a) develop housing assistance strategies that are consistent with Commonwealth and State objectives and best meet the circumstances of each State;

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- (b) develop, implement and manage services and programs to deliver agreed outcomes; and
 - (c) report on a basis that enables performance assessment by the Commonwealth and by the State, based on agreed performance indicators.
- 2(7) Each State will ensure that arrangements are in place for recognition of consumer rights and responsibilities, details of which are publicly available, and an identified process to action consumer complaints and review decisions. These arrangements will apply equally to State government service providers and to non-government service providers who receive funding under this Agreement.
- 2(8) A State shall determine an agency or agencies (including bodies or organisations that are not authorities of the State) responsible for the performance of this Agreement on behalf of the State. Acts and things that are done by or with respect to the agency or agencies so determined shall, for the purposes of this Agreement be deemed to have been done by or with respect to the State.
- 2(9) The Commonwealth shall provide for, or secure the performance by it and its authorities of, the obligations of the Commonwealth under this Agreement and each of the States shall provide for, or secure the performance by the State and its authorities of, the obligations of the State under this Agreement.

3. OUTCOME MEASURES

- 3(1) The Commonwealth and States agree Bilateral Agreements will be the main instrument for articulating housing assistance outcomes and objectives for Grant Years one to five. Bilateral Agreements will contain an integrated outcomes measurement framework which:
- (a) identifies objectives and outcomes, including efficiency, effectiveness and financial outcomes, for the State to achieve during Grant Years one to five; and
 - (b) details how the State will measure performance in achieving the objectives and outcomes in Grant Years one to five.
- 3(1A) In Grant Year six, a State will:
- (a) continue to achieve its Grant Year five housing assistance objectives and outcomes (and associated strategies, actions and activities) specified in or agreed under its Bilateral Agreement; and
 - (b) will measure its performance in achieving those objectives and outcomes during that Grant Year in accordance with subclause 6(1)(ab)(ii).
- 3(2) The National Housing Data Agreement will continue to remain in force and the Commonwealth and States will:
- (a) provide such data as specified in the National Housing Data Agreement, according to specified standards; and

- (b) provide the specified level of funding for data management and other purposes.
- 3(3) The Commonwealth and States will agree a core set of nationally consistent indicators and other data requirements for the purposes of the National Housing Data Agreement.
- 3(4) Subject to the provisions of the National Housing Data Agreement, the structures and processes of the National Housing Data Agreement will be reviewed in the first Grant Year, with the aim of continuing to develop, refine and improve the National Housing Data Agreement.

4. FUNDING ARRANGEMENTS

Commonwealth Financial Assistance

- 4(1) The Commonwealth will, subject to the provisions of this Agreement, out of moneys appropriated by Parliament for the purpose, and subject to such appropriation, provide to the States during the term of this Agreement, Financial Assistance for housing purposes by way of interest free non-repayable Grants.
- 4(2) Subject to subclauses 4(1), 4(3) and 4(12), the Commonwealth will provide seven hundred and twenty five million, two hundred and thirty thousand dollars (\$725.230 million) in the first Grant Year in the form of Base Funding, excluding any additions to Base Funding in a State under subclause 4(5)(b).
- 4(3) In Grant Years one to five, an amount equivalent to five per cent of each Grant Year's Base Funding will be contingent upon States' meeting the reporting requirements applicable to each Grant Year as set out in subclauses 4(33), 4(34), 4(35), and 4(36) and the planned outcomes agreed for the performance requirements for each Grant Year as specified in subclause 6(1)(c)(vi).
- 4(4) Base Funding in Grant Years one to five will be distributed to the States as follows:
 - (a) one hundred and forty six million dollars (\$146 million) is to be allocated in each Grant Year among the States as far as practicable on an equal per capita basis, but so that no State is allocated less than seven million, three hundred thousand dollars (\$7.3 million); and
 - (b) the balance of the amounts to be allocated shall be allocated in each Grant Year among the States as far as practicable on an equal per capita basis.
- 4(5) Subject to the provisions of this Agreement, the Commonwealth:
 - (a) will provide in the first Grant Year Financial Assistance in addition to its Base Funding set out in subclause 4(2) in the form of Grants for Identified Programs:
 - (i) ninety one million dollars (\$91 million) for ARHP;

- (ii) thirty-nine million, six hundred and fifty five thousand dollars (\$39.655 million) for the Crisis Accommodation Program; and
 - (iii) sixty-three million, nine hundred and ninety thousand dollars (\$63.990 million) for the Community Housing Program; and
 - (iv) an additional ten million dollars (\$10 million) for ARHP.
- (b) may, in Grant Years one to five, also provide to a State or States an amount to fund housing research, innovation and reform priorities, in addition to the amounts specified at subclause 4(2), 4(5)(a) and 4(6).

4(6)(a) Subject to the provisions of this Agreement, the Commonwealth will provide Base Funding and the funding for ARHP, the Community Housing Program and the Crisis Accommodation Program in Grant Years two, three, four and five. With the exception of \$10 million of ARHP funding in each of the first and second Grant Years, referred to in subclauses 4(5)(a)(iv) and 4(6)(b), the amounts of funding will be subject to indexation as well as an efficiency dividend of one per cent. The amounts will be calculated at the commencement of each of Grant Years two to five by altering the amounts allocated in the previous Grant Year as follows:

- Firstly the allocated amounts will be adjusted by the percentage change of the following two indexes rounded to the nearest single decimal place.
 - o (Safety Net Adjustment * 0.40 + The All Groups CPI * 0.60), where:
 - the Safety Net Adjustment is that for the year, December quarter to December quarter, at 1 March of the immediately preceding financial year; and-
 - the All Groups CPI is that for the year, December quarter to December quarter, at 1 March of the immediately preceding financial year.
 - Secondly, after indexation as above, the amounts will be reduced by one per cent to produce the actual amounts payable.
- (b) In the second Grant Year, an amount of \$10 million will be paid for ARHP, in addition to the ARHP amount calculated for the second Grant Year under subclause 4(6)(a).

4(6A) Subject to the provisions of this Agreement, the Commonwealth will provide the following total amounts for the following categories of Financial Assistance in Grant Year six:

- (a) Base Funding of three hundred and eighty eight million two hundred and fifty one thousand dollars (\$388.251 million);
- (b) twenty one million two hundred and thirty thousand dollars (\$21.230 million) for the Crisis Accommodation Program;
- (c) thirty four million two hundred and fifty seven thousand dollars (\$34.257 million) for the Community Housing Program; and

- (d) forty eight million seven hundred and seventeen thousand dollars (\$48.717 million) for the ARHP.
- 4(6B) Subject to the provisions of this Agreement, Base Funding in Grant Year six will be distributed to the States as follows:
 - (a) seventy three million dollars (\$73 million) of Base Funding for Grant Year six is to be allocated among the States as far as practicable on an equal per capita basis, but so that no State is allocated less than three million, six hundred and fifty thousand dollars (\$3.65 million); and
 - (b) the remaining amount of Base Funding for Grant Year six shall be allocated among the States as far as practicable on an equal per capita basis.
- 4(7) Financial Assistance for the Identified Programs referred to in subclauses 4(5)(a), 4(6) and 4(6A)(b) to (d) and additional funds referred to in subclause 4(5)(b) will be divided among the States in accordance with subclause 4(13).
- 4(8) The Identified Programs are designed to provide Financial Assistance for an identified purpose, but would not preclude innovative or more comprehensive strategies to achieve the purpose of a program.
- 4(9) Where the Minister is satisfied with a State's performance with regard to outcomes achieved under an Identified Program, the Minister may agree to provide to that State greater flexibility of arrangements for application of funding under this Agreement.
- 4(10) In relation to any State, the Minister and the relevant State Minister may agree to the untying of any Financial Assistance for Identified Programs stated in subclauses 4(5), 4(6) and 4(6A)(b) to (d).
- 4(11) The Crisis Accommodation Program will be retained as an identified program. However, during the first two Grant Years, it will be reviewed to identify options for the future, particularly in relation to the Supported Accommodation Assistance Program. The Minister will determine arrangements for the review and will advise State Ministers of the arrangements. The Commonwealth will lead the review in consultation with the States.
- 4(12) Where a State is unable to provide its full financial contribution under subclause 4(15), the Commonwealth Base Funding to that State may be reduced by an amount equivalent to the shortfall in the State contribution. The Minister may authorise the re-allocation of an equivalent amount of Base Funding to such other of the States as the Minister determines to be appropriate.
- 4(13) Identified Grants to be allocated in a Grant Year are to be allocated among the States on a basis approved by the Minister. Where the Minister and a State Minister have agreed under subclause 4(10) to untie an Identified Program, the State's allocation under the relevant Identified Program will be added to that State's Base Funding allocation.

- 4(14) The Commonwealth will review the Aboriginal Rental Housing Program in consultation with States and Territories. The distribution of ARHP funds for Grant Years two to five will take account of the ARHP review, assessment of need by using either current data and/or a new distributional method and any transitional arrangements. In accordance with subclause 4(13), the Minister will advise State Ministers by December 2003 of the distribution of ARHP funds for Grant Years two to five.

State Funding Contributions

- 4(15) The amounts of State funding contributions are to equal 48.95% of Base Funding to that State for each Grant Year of the Agreement. The total amount of State housing expenditure (as that term is defined in the *Housing Assistance Act 1996*) for a State for the 2008-09 financial year is the amount referred to in this subclause 4(15) in respect of Grant Year six plus any additional amount that the Commonwealth and that State subsequently agree that State will provide in respect of the second half of that financial year, whether under this Agreement or another agreement.
- 4(16) Funding contributions under this Agreement are to be provided by a State in each Grant Year in which Commonwealth Base Funding specified under subclauses 4(2), 4(6) and 4(6A)(a) is paid. The State contribution shall be by way of interest free, non-repayable Grants and shall be separately identified in State Budget documents or otherwise identified as agreed between the Minister and State Minister.
- 4(17) State contributions in a Grant Year will not include:
- (a) funds which have been used to match funding provided by the Commonwealth otherwise than under this Agreement;
 - (b) funds paid in accordance with subclause 4(16) in a previous financial year except where a State has exceeded the required contribution, that excess may be carried forward and regarded as eligible State contribution in the following year;
 - (c) proceeds derived from the sale of housing and land, and other assets acquired under Previous Housing Arrangements and under this Agreement; and
 - (d) any assets covered by this Agreement or any income earned from the use of those assets;

States are not to include funds obtained and used in accordance with subclauses 4(19) and 4(19A) as part of the funding contributions made under subclause 4(15).

Allowable Uses of Assets and Available Funds

- 4(18) For the purposes of subclauses 4(17), 4(19), 4(19A), 4(21), 4(22), 4(23) and 4(24), assets include those funded under Previous Housing Arrangements and under this Agreement.
- 4(19) Assets and available funds for Grant Years one to five, being Commonwealth Financial Assistance and State funding contributions and any net income

earned from the use of assets including net proceeds of any asset sales and other asset realisations, can only be used by a State in accordance with the State's Bilateral Agreement for the following purposes:

- (a) to address housing need, in accordance with the principles outlined in subclause 1(1);
- (b) to establish and maintain the viability of housing providers funded under this Agreement or Previous Housing Arrangements, including the retirement of debt that has been used to fund housing assistance in accordance with this Agreement or in accordance with Previous Housing Arrangements;
- (c) to provide appropriately for asset management in accordance with the principles specified in subclause 1(1);
- (d) to provide funds or transfer assets to non-government organisations and local government for the purpose of providing housing assistance in accordance with the principles specified in subclause 1(1);
- (e) to provide subsidies for consumers who receive housing assistance, including home purchase assistance, in accordance with this Agreement or in accordance with Previous Housing Arrangements;
- (f) to conduct research, advocacy, consumer participation, information dissemination activities, and other like activities pursuant to this Agreement; and
- (g) any other housing-related use as agreed between the Minister and a State Minister.

4(19A) Assets and available funds for Grant Year six, being Commonwealth Financial Assistance and State funding contributions and any net income earned from the use of assets including net proceeds of any asset sales and other asset realisations, can only be used by a State for the provision of housing assistance and the Allowable Uses of funds in accordance with the State's Bilateral Agreement as it applied to Grant Year five.

4(20) The Allowable Uses of funds outlined in subclause 4(19) do not include meeting those parts of any costs of providing housing assistance that may be attributable to obligations arising from the operation of a Tax Equivalent Regime, where that would involve a net reduction in funds available for housing assistance.

4(21) At any time during Grant Years one to five, where a Bilateral Agreement has yet to be agreed in accordance with subclause 6(1)(a), assets can only be used for the purpose of supporting the provision of housing assistance in accordance with Previous Housing Arrangements.

4(22) At any time covered by this Agreement, where a Bilateral Agreement has been agreed in accordance with subclause 6(1)(a), assets can only be used for the purpose of supporting the provision of housing assistance in accordance with that Bilateral Agreement.

4(23) In relation to any State where it is agreed in a Bilateral Agreement that assets or available funds will be used to support Home Purchase Assistance

programs, the management of those programs shall conform to Prudential Standards and Capital Adequacy Requirements that are consistent with banking standards and the underlying risks of the programs.

- 4(24) For the purposes of determining the value of asset sales and asset realisations referred to in subclauses 4(19) and 4(19A), assets shall be deemed to have been sold or realised at their market value. The Minister and a State Minister may agree to waive this requirement on a case by case basis, in writing, to achieve any specific housing related outcome agreed in a Bilateral Agreement.
- 4(25) For the purpose of determining the level of any subsidies for assistance referred to in point (e) of subclause 4(19), the following principles should apply:
- (a) subsidies should be designed to provide greatest assistance to those with the greatest need and to ensure that consumers in similar circumstances receive similar levels of assistance; and
 - (b) subsidies for home purchasers should not exceed subsidies for recipients of Rental Housing under this Agreement.
- 4(26) Where Australian accounting standards would imply that the transfer of assets to a non-government organisation or local government under subclause 4(19)(d) results in a reduction in net assets on the balance sheet of the transferring organisation, the value of that reduction in net assets is included in the value of asset sales and realisations referred to in subclauses 4(19) and 4(19A).

Payment Schedule

- 4(27) Commonwealth Financial Assistance and State funding contributions for each Grant Year will be paid in equal instalments, fortnightly in advance or as otherwise agreed between the Minister and a State Minister.
- 4(28) Payment of Financial Assistance, other than ARHP funding, to a State in each Grant Year will be made only when a Bilateral Agreement is in force with that State and where annual outputs and targets have been agreed where these are required under subclause 6(1)(e). Payments delayed pending execution of a Bilateral Agreement will be paid upon execution of the Bilateral Agreement.
- 4(29) In the first Grant Year, notwithstanding subclauses 4(28) and 4(31), the Minister agrees to commence Financial Assistance, or a proportion of such funding, to a State for a period of up to four months, irrespective of whether a Bilateral Agreement has yet to be agreed.
- 4(30) Where Commonwealth Financial Assistance has been withheld under subclauses 8(1), 8(2) or 8(4), the remaining Commonwealth payments after the sanction has been removed will be adjusted so as to enable expenditure of the remainder of the full Grant Year's funding.
- 4(31) ARHP funds in each of Grant Years one to five will only be paid following submission of an annual Indigenous Housing plan for ARHP and agreement on the contents of that annual plan between the Minister and the State Minister.

Reporting Requirements

- 4(32) At the beginning of each Grant Year, States will provide to the Commonwealth a report of their expected financial contribution under the Agreement both in cash and accrual terms.
- 4(33) Within six months of the end of each of Grant Years one to five, States will:
- (a) provide to the Commonwealth independently audited financial reports of housing operations under this Agreement and agree these will use nationally consistent financial reporting frameworks and accounting practices;
 - (b) advise the Commonwealth of the total proceeds from the sale of housing, land and other assets acquired under Previous Housing Arrangements and under this Agreement; and
 - (c) report their actual financial contributions under the agreement both in cash and accrual terms.
- 4(33A) By 31 March 2009 for Grant Year six, States will:
- (a) provide to the Commonwealth financial reports, certified by the responsible Chief Executive Officer, of housing operations under this Agreement and agree these will use nationally consistent financial reporting frameworks and accounting practices;
 - (b) advise the Commonwealth of the total proceeds from the sale of housing, land and other assets acquired under Previous Housing Arrangements and under this Agreement; and
 - (c) report their actual financial contributions under the agreement both in cash and accrual terms.
- 4(34) Within six months of the end of each of Grant Years one to five, each State's responsible Chief Executive Officer will provide certification to the Commonwealth that assets and available funds were used only in accordance with subclauses 4(19), 4(20), 4(21) and 4(22).
- 4(34A) By 31 March 2009 each State's responsible Chief Executive Officer will provide certification to the Commonwealth that assets and available funds were used only in accordance with subclauses 4(19A) and 4(20) for Grant Year six.
- 4(35) Within six months of the end of each of Grant Years one to five, States will provide to the Commonwealth a report:
- (a) demonstrating progress achieved in their respective Bilateral Agreements, including the performance information, targets, outputs and outcomes measures specified at subclauses 3(1) and 6(1)(c)(v);
 - (b) containing the core set of nationally consistent indicators endorsed under the National Housing Data Agreement; and
 - (c) demonstrating progress towards the performance objectives agreed to under subclause 6(1)(c)(vi).
- 4(35A) By 31 March 2009, the States will provide to the Commonwealth a report demonstrating performance against the performance measures for Grant Year

six that are set out in subclause 6(1)(ab)(ii), in a form that is acceptable to the Commonwealth.

- 4(36) In addition to the requirements in 4(35), by 31 March in the Fifth Grant Year, States will provide to the Commonwealth a report demonstrating for the period 1 July to 31 December of the fifth Grant Year progress towards the performance objectives agreed to in 6(1)(c)(vi).
- 4(37) The Commonwealth and States will work together to minimise any duplication in planning and reporting under this Agreement, including in relation to Identified programs.

5. EVALUATION

- 5(1) The operation of this Agreement is to be evaluated in accordance with arrangements to be determined by the Minister and State Ministers. The evaluation will be completed no later than 30 June 2007. The evaluation will consider whether the strategic objectives of the Agreement have been met, having regard to the performance indicators set out in the National Housing Data Agreement and activities and indicators specified in the Bilateral Agreements.

6. BILATERAL AGREEMENTS

Bilateral Agreements under this Agreement

- 6(1) (a) Within the scope of this Agreement, and in accordance with its principles and outcomes, the Commonwealth and each State will negotiate and enter into a Bilateral Agreement for Grant Years one to five. The Bilateral Agreement will be deemed to commence on the commencement date for this Agreement.
- (ab) The parties to this Agreement agree that the Bilateral Agreements entered into under subclause 6(1)(a) will continue to remain in force for Grant Year six on the basis that:
- (i) the provisions (other than those specifying performance measures or indicators, reports and milestones) in each Bilateral Agreement that applied in Grant Year five continue to apply in Grant Year six to the extent the requirements in those provisions are ongoing or are yet to be fully completed. This subclause 6(1)(ab)(i) requires that each State, in Grant Year six, continue to progress the performance of its Grant Year five Identified Program and housing assistance targets, outputs, objectives and outcomes (and associated, strategies, actions and activities) as specified in or agreed under its Bilateral Agreement;
 - (ii) the performance measures for Grant Year six, to be provided to the Commonwealth by 31 March 2009, are the following summary data items endorsed under the National Housing Data Agreement:

- (A) S0 to S3 inclusive, S5 and S6 and OR2 for Public housing and State-owned and managed indigenous housing;
 - (B) OR2 for Community Housing; and
 - (C) C6 for Crisis Accommodation.
 - (iii) there are no milestones for Grant Year six;
 - (iv) the funding for Grant Year six is to be determined in accordance with clause 4 of this Agreement;
 - (v) the reporting requirements for Grant Year six are those set out in subclauses 4(32), 4(33A), 4(34A) and 4(35A); and
 - (vi) to the extent of any inconsistency between the provisions of this Agreement and a Bilateral Agreement, as they apply to Grant Year six, the provisions of this Agreement take precedence.
- (ac) The Bilateral Agreements entered into under subclause 6(1)(a) will expire on the same date as completion of the term of this Agreement.
- (b) Bilateral Agreements will be agreed by the Minister and each State Minister.
- (c) Bilateral Agreements will outline arrangements for the planning by a State of the housing assistance to be provided out of Commonwealth Financial Assistance and out of State Grants and State housing funds. Unless varied by agreement between the Minister and the State Minister, Bilateral Agreements will include the following matters in respect of Grant Years one to five:
- (i) level and nature of housing need in a State;
 - (ii) the environment faced by a State in providing housing assistance, including social, economic and market pressures and the funds and assets available;
 - (iii) the agreed objectives to be pursued in the Bilateral Agreement;
 - (iv) the State's strategic response to subclauses 6(1)(c)(i), (ii) and (iii) for Grant Years one to five;
 - (v) outcomes to be achieved, and performance measures for these outcomes, including outputs and targets, for Grant Years one to five subject to subclause 6(1)(e) below;
 - (vi) outcomes to be achieved and performance measures in the areas of attracting investment from outside the Social Housing system and reducing workforce disincentives for Social Housing tenants. Schedule 1 outlines measures that States could undertake;
 - (vii) linkages with Commonwealth and State programs outside this Agreement which impact on housing outcomes; and
 - (viii) arrangements for the planning and carrying out of any identified housing programs.

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- (d) The Minister or the State Minister may seek to renegotiate a Bilateral Agreement. A Bilateral Agreement may be varied only in writing between the Minister and the State Minister.
 - (e) Where outputs and targets in subclause 6(1)(c)(v) have not been specified and agreed in a Bilateral Agreement for each of Grant Years two to five, outputs and targets must be agreed in writing prior to:
 - (i) 1 May 2004, for the second financial year of the Agreement;
 - (ii) 1 May 2005, for the third financial year of the Agreement;
 - (iii) 1 May 2006, for the fourth financial year of the Agreement; and
 - (iv) 1 May 2007, for the fifth financial year of the Agreement.
 - (f) Bilateral Agreements will outline arrangements for community consultation.
 - (g) States will make publicly available within three months of agreeing or varying a Bilateral Agreement the objectives and outcomes to be achieved under the Bilateral Agreement.

Indigenous housing agreements

- 6(2) The parties acknowledge and affirm the Council of Australian Governments' 'National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders' of 7 December 1992 which committed the Commonwealth and the States and Territories to the achievement of service delivery agreements, including Indigenous housing agreements. In Grant Years one to five, Indigenous housing agreements will require an annual Indigenous housing plan, including the matters referred to in subclause 6(1)(c), and specific reporting requirements.
- 6(3) In Grant Years one to five, annual Indigenous housing plans will be based on *Building a Better Future: Indigenous Housing to 2010*. Plans and performance reports will be informed by a common reporting framework. To assist performance reporting, the Commonwealth and States will improve the availability of nationally consistent and comparable data through the *Agreement on National Indigenous Housing Information*. Indigenous housing agreements will be cross-referenced with Bilateral Agreements. As far as is possible, specific reporting requirements included in Bilateral Agreements and this Agreement should avoid duplication of reporting requirements contained in the Indigenous housing agreements.

7. AGREEMENT VARIATION

- 7(1) The provisions of this Agreement may be varied by agreement in writing between the Minister and all State Ministers.

- 7(2) This Agreement may not be varied unless the Agreement as varied is substantially in accordance with the form of agreement in force under section 5 of the *Housing Assistance Act 1996*, in so far as that form is applicable to the State or States concerned.

8. SANCTIONS AND SAFEGUARDS

- 8(1) Where an annual report under subclauses 4(35)(a) and 4(35)(b) provided by a State to the Commonwealth shows a significant divergence of actual and planned performance, the Commonwealth may withhold Financial Assistance to that State relative to the area of the significant divergence. Should Financial Assistance be withheld, the Commonwealth may require the State to report more frequently than annually until the divergence has reduced to a level within an agreed range.
- 8(2) In relation to any State, and after consultation with the State Minister, the Minister can withhold all or a proportion of Financial Assistance if the Minister reasonably believes that a serious or persistent breach of this Agreement has occurred, including where certification provided under subclause 4(34) or 4(34A) shows that an amount of assets or funds has not been used for Allowable Uses.
- 8(3) In relation to any State where certification provided under subclause 4(34) or 4(34A) shows that an amount of assets or Financial Assistance has not been used for Allowable Uses, or if the Minister reasonably believes that such funds or assets have not been used for Allowable Uses, the Minister, after consultation with the State Minister, may require the State to add that amount to its funding contribution or may reduce Financial Assistance to the State by that amount.
- 8(4) Where:
- (a) requirements for specification of outputs and targets under subclause 6(1)(e); or
 - (b) obligations under subclauses 3(2) and 3(3);
- have not been met, including meeting the specified time frames, the Minister may withhold a proportion of Financial Assistance until such time as the requirements or obligations have been met to the satisfaction of the Commonwealth.
- 8(5) Within 28 working days of receiving a proposed Bilateral Agreement, receiving proposed outputs and targets under subclause 6(1)(e) or evidence of rectification of any breach under subclauses 8(1), 8(2) and 8(4), the Commonwealth will respond to a State to:
- (a) indicate agreement to commence or resume provision of any Financial Assistance due to a State; or

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- (b) indicate additional work or changes to strategies sought by the Commonwealth and commence discussion with the relevant State in order to agree action required in order for Financial Assistance to commence or resume.
- 8(6) The parties will, as far as is possible, seek to resolve any disputes arising from this Agreement using internal dispute mechanisms. The parties will use their best endeavours to reach a settlement within the spirit of the Agreement and in an expeditious manner.
- 8(7) Where reporting requirements under subclause 4(33), 4(34) or 4(35) have not been met, for Grant Years one to four, funding to that State in the Grant Year in which a report was due will be reduced by up to five per cent of the previous Grant Year's Base Funding allocation. The Minister will determine whether funding should be reduced and by how much. In such a case, the reduction will occur in the final six months of the Grant Year in which reporting was due.
- 8(8) Where reporting requirements under subclause 4(36), have not been met, funding to that State will be reduced by up to five per cent of that Grant Year's Base Funding allocation. The Minister will determine whether funding should be reduced and by how much. In such a case, the reduction will occur in the final three months of Grant Year five.
- 8(9) In any of Grant Years one to four, where performance has not met the planned outcomes agreed for the performance requirements specified in subclause 6(1)(c)(vi), funding to that State for the Grant Year in which the relevant report was due under subclause 4(35) will be reduced by up to five per cent of the previous Grant Year's Base Funding allocation but will not exceed five per cent of Base Funding minus any penalty applied in subclause 8(7). The Minister will determine whether funding should be reduced and by how much. In such a case, the funding reduction will occur in the final six months of the relevant Grant Year.
- 8(10) In the fifth Grant Year, where performance has not met the planned outcomes agreed for the performance requirements specified in subclause 6(1)(c)(vi), funding to that State will be reduced by up to five per cent of the Base Funding allocation for the Fifth Grant Year but will not exceed five per cent of Base Funding minus any penalty applied in subclause 8(8). The Minister will determine whether funding should be reduced and by how much. In such a case, the funding reduction will occur in the final three months of the Fifth Grant Year.
- 8(11) In Grant Years one to five, in the case of one or more States not performing in the area of attracting investment from outside the Social Housing system or in reducing workforce disincentives, the Minister may authorise the re allocation of funds from non-performing States to those States that have performed adequately.

9 LINKING SERVICES

- 9(1) The Commonwealth, States and Territories will strengthen the links between housing and other relevant services with the aim of improving housing outcomes for those who are in most need by:
- (a) Collaborating across jurisdiction and portfolio responsibilities to maximise the opportunity for people to actively participate in the community, socially and economically;
 - (b) Developing good practice initiatives, policies and procedures that are jointly planned and implemented across programs. These initiatives will strengthen the links between housing programs and planning, transport, employment services, disability and other health and community programs;
 - (c) Positively influencing other Commonwealth State agreements, particularly in the:
 - Commonwealth State and Territory Disability Agreement;
 - Supported Accommodation Assistance Program.
 - Home and Community Care Program; and
 - Australian Health Care Agreements.This may include determining linkage points, common objectives, data sharing, and joint research and development; and
 - (d) Developing partnerships in service delivery.

10 PUBLICITY AND PROTOCOLS

- 10(1) The parties to this Agreement will in all publications, promotional materials and promotional activities relating to this Agreement, acknowledge the financial and other support that that party has received from any other party to this Agreement.
- 10(2) In relation to all publicity, announcements and media releases concerning program and policy developments, new or changed services, or other initiatives related to the objectives of this Agreement for which financial assistance has been provided under this Agreement, the parties agree that significant publication or announcements, including media releases, will be joint unless declined by either the Minister or the State Minister.
- 10(3) If there is any doubt about the significance of a proposed announcement or publication, the parties agree to liaise with each other to determine whether the other party wishes to be jointly involved.

10(4) In relation to publicity, announcements and media releases referred to in this clause, the parties will:

- (a) notify other relevant parties to this Agreement contributing to financial assistance provided under this Agreement of the intention to publish, announce or release information, allowing sufficient time for the other party to respond;
- (b) respond to requests for information and advice from other parties to this Agreement within 10 working days of such requests or as negotiated.

11 INTERPRETATION

11(1) In this Agreement:

“the Minister” means the Minister of State of the Commonwealth for the time being responsible for the administration of this Agreement for the Commonwealth; and

“State Minister” means the Minister of State of a State for the time being responsible for the administration of this Agreement for the relevant State.

11(2) A reference in this Agreement to:

(a) a Minister includes the Minister or other member of the Federal Executive Council; or

(b) a State Minister includes a Minister of the relevant State or other member of the State Executive Council

acting on behalf of, or for the time being acting for, the Minister or State Minister referred to.

11(3) In this Agreement unless the contrary intention appears or the context otherwise requires:

“Allowable Uses” means use of funds and assets for the purposes set out in subclause 4(19);

“Appropriate Housing” means housing which meets the different needs of different households. This includes housing assistance which is appropriate to household size, household type and to special and cultural needs;

“ARHP” means the Aboriginal Rental Housing Program;

“Base Funding” means funding referred to in subclauses 4(2), 4(6) or 4(6A)(a), being Financial Assistance other than for an Identified Program or Identified Grant;

“Bilateral Agreement” means an agreement made under subclause 6(1) of this Agreement;

“Capital Adequacy Requirements” means the excess of assets over liabilities retained by the lender such that it meets commercially determined levels of adequacy, particularly those defined by the Reserve Bank of Australia;

“Dwelling” means a dwelling-house or flat and includes such fences, outbuildings and other improvements and such connections for sewerage,

drainage, water, electricity, gas and other services as are provided or are reasonably required to be provided for the dwelling-house or flat;

“Earned Income” means ordinary income that is earned, derived or received or that is taken to have been earned, derived or received by the person from remunerative work undertaken by the person;

“Existing Housing Agreements” means the agreements referred to in the first Schedule to the form of agreement scheduled to the *Housing Assistance Act 1984*, the 1984 Housing Agreement, the 1989 Housing Agreement and the 1996 Housing Agreement;

“Financial Assistance” means funding provided by the Commonwealth to the States and Territories under the terms of this Agreement in the form of Base Funding and Grants for an Identified Program or Identified Grant;

“Grant” means a payment of Financial Assistance by the Commonwealth to a State, or State funding contributions for the purposes of providing housing assistance in accordance with the terms and conditions of this Agreement;

“Grant Year” means the financial year commencing on 1 July 2003, 1 July 2004, 1 July 2005, 1 July 2006 or 1 July 2007 and the period from 1 July 2008 to 31 December 2008 (inclusive);

“Home Purchase Assistance” means home ownership programs provided by the States and Territories for lower income households under this Agreement or under Previous Housing Arrangements;

“Identified Program” or **“Identified Grant”** means a program or grant for specific identified assistance;

“National Housing Data” means nationally consistent data collected for housing assistance benchmarking purposes;

“National Housing Data Agreement” means the agreement on National Housing Data which took effect on 1 December 1999;

“Previous Housing Arrangements” means the provisions in relation to housing that were made:

- (a) by the Existing Housing Agreements;
- (b) by the *States Grants (Housing) Act 1971*, the *Housing Assistance Act 1973*, the *Housing Assistance Act 1978*, the *States (Works and Housing) Assistance Act 1982*, the *States (Works and Housing) Assistance Act 1983*, the *Housing Assistance Act 1984*, the *States (Works and Housing) Assistance Act 1984*, the *States (Works and Housing) Assistance Act 1985*, the *States (Works and Housing) Assistance Act 1988*, the *Housing Assistance Act 1989* and the *Housing Assistance Act 1996*; and
- (c) under any arrangements entered into pursuant to the *Special Employment-related Programs Act 1982*;

“Prudential Standards” means standards of policy and procedures adopted in State lending programs which meet the minimum standards adopted by the private home lending sector, consistent with the policy objectives of State lending programs;

“Rental Dwelling” means a Dwelling that is included in Rental Housing;

“Rental Housing” means housing for rental which has been provided under Previous Housing Arrangements or is provided under this Agreement;

“Social Housing” means public housing and community housing;

“State” includes Territory where the context permits;

“Subsidiary Agreements” means agreements between the Minister and State Ministers, for the purposes of giving effect to the principles, objectives and outcomes of this Agreement, including those relating to:

- (a) the National Housing Data Agreement; and
- (b) Bilateral Agreements;

“Tax Equivalent Regime” means an arrangement where States require payments from their business entities that are broadly consistent with obligations which would arise under Commonwealth or State tax law if the entities were taxable under that law. This does not include arrangements where Territories make payments of rates or other charges which are made as the equivalent of Local government charges;

“1984 Housing Agreement” means the Agreement between the Commonwealth, the States of Australia and the Northern Territory of Australia dated 12 March 1985, relating to the provision of financial assistance for housing;

“1989 Housing Agreement” means the Agreement between the Commonwealth, the States of Australia, the Northern Territory of Australia and the Australian Capital Territory, dated 15 February 1990, relating to the provision of financial assistance for housing;

“1996 Housing Agreement” means the housing agreements entered into between the Commonwealth and each State and Territory pursuant to the disallowable instrument dated 15 July 1996 made under the *Housing Assistance Act 1996* and relating to the provision of financial assistance for housing;

“1999 Housing Agreement” means the housing agreements entered into between the Commonwealth and each State and Territory pursuant to the disallowable instrument dated 29 June 1999 made under the *Housing Assistance Act 1996* and relating to the provision of financial assistance for housing.

11(4) In this Agreement unless the contrary intention appears:

- (a) a reference to a clause is a reference to a clause of this Agreement, as the case may be;
- (b) a reference to a subclause is, unless otherwise indicated, a reference to the relevant subclause of the clause in which the reference appears;
- (c) words importing a gender include every other gender;
- (d) words in the singular number include the plural and vice versa;
- (e) a reference in this Agreement to a State shall, except where the contrary intention appears and according to the requirements of the context, be deemed to include a reference to the Northern Territory of Australia and to the Australian Capital Territory;

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- (f) in this Agreement, subject to this clause and except where the context otherwise indicates:
 - (i) **“the Commonwealth”** means the Commonwealth of Australia; and
 - (ii) **“the States”** means New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory.
 - (g) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (i) all references to dollars are to Australian dollars.

12 COUNTERPARTS

12(1) This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument for the purposes of subclause 2(2).

SIGNED by the parties as at the date first mentioned at the head of this Agreement.

SIGNED for and on behalf of the)
COMMONWEALTH OF AUSTRALIA)
by the Minister for Families, Housing,)
Community Services and Indigenous)
Affairs in the presence of)_____

Witness

SIGNED for and on behalf of the)
STATE/TERRITORY OF)
by the Minister of)
in the presence of)_____

Witness

SCHEDULE 1

PERFORMANCE REQUIREMENTS IN RELATION TO FIVE PER CENT OF BASE FUNDING

Attracting investment from outside the Social Housing system

Private, community, and local government involvement in the Social Housing system has the potential to leverage additional resources and expertise. This will assist in increasing the availability of affordable Social Housing.

The Commonwealth and each State will negotiate and enter into a Bilateral Agreement for Grant Years one to five that states how they will involve the private sector, community, and local government in the provision of Social Housing. Measures may include, but are not limited to:

- Attracting not for profit contributions to the provision of affordable housing;
- Exploring the use of private, community, and local government investment capital or other mechanisms to direct investment to affordable housing;
- Changes to fiscal measures including the use of State and Territory government charges such as stamp duty and land tax to develop affordable housing opportunities;
- Involving the private sector, community, and local government in urban renewal and stock reconfiguration;
- Engaging external agencies/services/initiatives that may result in identifiable savings to housing programs; and
- Partnerships and joint ventures between State governments and other government, non-government, community or private sector organisations.

Reducing Workforce Disincentives

The Commonwealth, States and Territories agree that reducing barriers to employment and increasing social and workforce participation for Social Housing tenants is an important priority for the term of this Agreement.

States and Territories agree to research and better understand the nature of the barriers to Social Housing tenants accessing employment opportunities. The findings will be used to reduce or remove barriers to employment for Social Housing tenants through a combination of measures including rent reform. States and Territories will introduce rent policies that reduce the workforce disincentives associated with the current link between Earned Income and rent. Strategies to reduce workforce disincentives will include a combination of but are not limited to:

- Improving the location of Social Housing in relation to employment markets;
- Improving access to services and public transport for Social Housing tenants;
- The renewal of public housing estates;

- Allowing tenants to transfer to alternative public housing in order to increase workforce participation opportunities, including interstate transfers; and
- Improving the efficiency and effectiveness of existing workforce incentives in relation to the way rents are calculated.

For Indigenous people, reducing workforce disincentives is a desirable policy direction and special strategies may be required in recognition of the differences in structures and needs of Indigenous households.

The Commonwealth, States and Territories agree to develop a nationally consistent approach to the way rents are calculated, one which also allows flexibility between States and Territories, tenant circumstances and product types. In developing a national approach to the way rents are calculated, the main principles will be:

- Rents remain affordable;
- Methods used to calculate rents are applied fairly across all income support groups;
- Methods used to calculate rents are promoted and clearly explained to tenants, to ensure they are aware of how those methods operate.

States and Territories will demonstrate the effectiveness of measures as part of their annual reporting for Grant Years one to five. The milestones and performance reporting to be achieved during Grant Years one to five will be set out in Bilateral Agreements and will be implemented within the life of this Agreement.