

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING FOR THE PROVISION OF
FIRE SERVICES

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MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING FOR THE PROVISION OF FIRE SERVICES

Date

This Memorandum of Understanding (MOU) is made on _____ June 2012.

Parties

This MOU is made between the following parties:

1. COMMONWEALTH OF AUSTRALIA represented by the Department of Finance and Deregulation (**Commonwealth**)
and the States being:
2. THE STATE OF NEW SOUTH WALES represented by the Ministry for Police and Emergency Services (**NSW**)
3. THE STATE OF VICTORIA represented by the Department of Justice (**VIC**)
4. THE STATE OF QUEENSLAND represented by the Department of Community Safety (**QLD**)
5. THE STATE OF WESTERN AUSTRALIA represented by the Fire and Emergency Services Authority of Western Australia (**WA**)
6. THE STATE OF SOUTH AUSTRALIA represented by the South Australia Fire and Emergency Services Commission (**SA**)
7. THE STATE OF TASMANIA represented by the Department of Police and Emergency Management (**TAS**)
8. THE AUSTRALIAN CAPITAL TERRITORY represented by the Justice and Community Safety Directorate (**ACT**)
9. THE NORTHERN TERRITORY represented by Northern Territory Police, Fire and Emergency Services (**NT**)

Context

This MOU is made in the following context:

- A. Since 1998, Comcover, on behalf of the Commonwealth, has made payments to fire authorities in each State to assist with the provision of fire services.
- B. The Commonwealth has proposed, and the States have accepted, that payments over the next five years will be calculated using a land-based methodology.
- C. To assist each party to meet its accountability obligations, the parties have agreed to enter into this MOU which sets out the roles and responsibilities in relation to the payments to assist in the provision of Fire Services.

- D. The payments fall under the Intergovernmental Agreement on Federal Financial Relations; however, as payments are not linked to the achievement of performance benchmarks or milestones, arrangements for the funding and provision of Fire Services are as agreed in this MOU.
- E. All parties wish this MOU to reflect their intention to abide by the spirit of the agreement reached between them.

1. Interpretation

1.1. Definitions

1.1.1. In this MOU, unless the context indicates otherwise:

Additional Fire Services	means the Fire Services of a State for which a fee or charge is payable for a specific instance of that service and which is legally able to be charged to the Commonwealth;
Australian Government Agency	means Commonwealth entities operating within the General Government Sector under either the <i>Financial Management and Accountability Act 1997</i> (FMA Act) or the <i>Commonwealth Authorities and Companies Act 1997</i> (CAC Act);
Australian Government Sites	means land and buildings owned by the Commonwealth or any Australian Government Agency;
Confidential Information	means information that is marked as confidential or which is by its nature confidential and the receiving party knows, or ought to know, that it is confidential;
CPI	means the most recent full year Consumer Price Index Australia: All Groups published by the Australian Bureau of Statistics (or successor index if replaced) at the time a CPI calculation is to be made under this MOU;
Fire Services	means all fire, emergency and other related services that are provided by a State to property owners and comprises the Standard Fire Services and the Additional Fire Services;
Material	means any thing in relation to which intellectual property rights arise;
Standard Fire Services	means the Fire Services of a State provided without a charge or fee for a specific instance of that service or which includes a charge or fee that is not legally able to be charged to the Commonwealth;

2. Scope of the MOU

- 2.1.1. This MOU details the roles and responsibilities of the parties in respect to the provision of Fire Services to Australian Government Agencies and the payment by the Commonwealth of contributions for the Fire Services.
- 2.1.2. The MOU is intended to apply only to protection of the property of the Commonwealth (including the property of all Australian Government Agencies) within Australia. The MOU is not intended to fund capability other than that required to deliver Fire Services to Australian Government Agencies and does not extend to services that might be provided by the States outside of Australia in response to natural disasters or other international incidents.
- 2.1.3. This MOU is not legally binding. However, the parties are committed to implementing this MOU and meeting their roles and responsibilities.

3. Term

- 3.1.1. This MOU commences on 1 July 2012 and will continue indefinitely until terminated in accordance with clause 9.

4. Roles and responsibilities of the parties

4.1. Fire Services

- 4.1.1. In return for the contributions determined under clause 5.1, each State will provide the Standard Fire Services to all Australian Government Agencies at all Australian Government Sites within that State.
- 4.1.2. Each State will provide the Additional Fire Services to all Australian Government Agencies at all Australian Government Sites within that State, in return for payment in accordance with clause 5.2.

4.2. Service standards

- 4.2.1. The States will seek to ensure that all Fire Services provided to Australian Government Agencies:
- a. are provided promptly in accordance with the urgency of the situation;
 - b. are professionally carried out;
 - c. adopt relevant best practice and meet all applicable performance guidelines; and
 - d. meet all applicable legal requirements.

4.3. Provision of information

- 4.3.1. The Commonwealth will facilitate the provision of such information on Australian Government Sites (including an annual list of owned properties) as the States may reasonably require for the purposes of fire and emergency planning purposes.
- 4.3.2. In accordance with any reasonable request from the Commonwealth, a State will provide reports on the Fire Services that it has provided to Australian Government Agencies under or in connection with this MOU, including any advice or other information about fire prevention and safety issues relevant to the Australian Government Sites attended by the fire and emergency services of that State.
- 4.3.3. This MOU does not alter the ownership of any intellectual property rights in any Material created under, or in connection, with it.
- 4.3.4. Where one party provides Material to another party, the providing party will licence the receiving party to use, reproduce, modify and communicate that Material for the receiving party's purposes, subject to any restrictions communicated by the providing party at the time the Material is provided.

4.4. Confidentiality

- 4.4.1. Subject to clause 4.4.2 no party receiving Confidential Information will, without the prior written authorisation of the providing party, disclose such Confidential Information to any third party.
- 4.4.2. Clause 4.4.1 does not apply to the extent that Confidential Information:
- a. is disclosed by a party to its personnel, solely to enable effective management of this MOU and provision of Fire Services;
 - b. is disclosed by a party to a responsible Minister;
 - c. is disclosed by a party in response to a request by a House or a Committee of Parliament; or
 - d. is authorised or required by law to be disclosed.
- 4.4.3. Where a party discloses Confidential Information to another person pursuant to clause 4.4.2, that party will notify the receiving person that the information is confidential.

4.5. Security

- 4.5.1. The States will ensure that the Fire Services are provided in a way that, as far as reasonably possible:
- a. protects the security of Australian Government Sites;

- b. complies with security arrangements in place at Australian Government Sites;
 - c. meets all Australian Government procedures and directions relating to security that are in effect at Australian Government Sites and which are:
 - i. notified to the State in respect of those sites; or
 - ii. communicated to fire and emergency services at the time of their attendance at the relevant Australian Government Site.
- 4.5.2. Where a party receives Material from the Australian Government that carries a security classification, that party will comply with:
- a. all Australian Government requirements for storing, handling and disposing of such Material; and
 - b. all directions from the Commonwealth in respect to the storage, handling and disposal of such Material.

5. Contributions

5.1. Standard Fire Services

- 5.1.1. The Commonwealth's annual contributions to States for Standard Fire Services will be calculated by the Commonwealth in accordance with the methodology set out in Schedule 2.
- 5.1.2. For the purposes of the calculation of annual contributions, the MOU will be divided into five year periods (based on financial years) as follows:
- a. At the commencement of each five year period, the Commonwealth will calculate the annual contribution in accordance with clause 5.1.1.
 - b. On 1 July in the second year of a five year period, the contribution will be indexed by CPI or such other figure as may be agreed between the parties as a proxy for the CPI and recorded in Item B of Schedule 2.
 - c. On 1 July in the third, fourth and fifth years of the five year period, the contribution will be indexed by the same CPI figure as was determined under clause 5.1.2.b.

Example:

- a. At the commencement of the first five year period (1 July 2012), the Commonwealth calculates the payment to State X as \$1 million.
- b. On 1 July 2013, the CPI is calculated at 4%. The payment to State X for the 2013-2014 financial year is increased to \$1.04 million.
- c. Regardless of the actual CPI in subsequent years, the CPI figure determined on 1 July 2013 of 4% is used for the remainder of the 5 year period. So on 1 July 2014, the payment of \$1.04 million is indexed by 4%.

There is a further indexing by 4% on 1 July 2015 and 1 July 2016. The payment for the 2016-2017 financial year would therefore be: \$1,169,859.

- d. On 1 July 2017, the second five year period of the MOU will commence. The Commonwealth will recalculate the payment to be made to State X based on the changes to the components of the contributions methodology in Schedule 2 that are determined in accordance with the process set out in clause 8.1.
 - e. On 1 July 2018, the CPI is calculated at 3.5%. The payment for the financial year 2018-2019 is indexed by 3.5% and the indexation cycle continues in accordance with clause 5.1.2.
- 5.1.3. Such contributions will be paid in accordance with "Schedule D - Payment Arrangements" of the Intergovernmental Agreement on Federal Financial Relations which is available at the website set out in Attachment A to Schedule 2.
- 5.1.4. The States will not charge the Commonwealth or any Australian Government Agency for the provision of any Standard Fire Service. Where a State mistakenly invoices an Australian Government Agency for a Standard Fire Service, the State will withdraw that invoice as soon as it becomes aware of the mistake. If such an invoice is paid by an Australian Government Agency before the State becomes aware of the mistake, the State will, on becoming aware of the mistake, promptly reimburse the Australian Government Agency the full amount of the payment.
- 5.2. Additional Fire Services**
- 5.2.1. Each State (through the agency or authority determined by the State) will invoice the Australian Government Agency in control or possession of the Australian Government Site for any Additional Fire Services provided at that site.
- 6. Goods and Services Tax (GST)**
-
- 6.1.1. GST is not payable on contributions for Standard Fire Services.
- 6.1.2. In respect to Additional Fire Services, a State will determine in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* whether GST should be imposed on each supply of Additional Fire Services and if so, provide a tax invoice to the relevant Australian Government Agency.

7. Dispute resolution

7.1. Procedure for dispute resolution

- 7.1.1. The parties agree that where any dispute arises under this MOU between two or more parties, each of the involved parties will take all necessary steps to resolve the dispute by mutual agreement in accordance with this clause 7.
- 7.1.2. In the first instance, any dispute will be addressed between the persons responsible for administration of this MOU for each relevant party involved in the dispute. If the dispute is unable to be resolved at that level, each party involved in the dispute will escalate resolution of the dispute to a senior executive in their organisation.
- 7.1.3. Failing resolution at the senior executive level, the parties involved in the dispute will escalate the dispute for resolution at the Departmental Secretary level.
- 7.1.4. Failing resolution at the Departmental Secretary level, the parties involved in the dispute will escalate the dispute for resolution by the relevant Ministers.

7.2. Costs

- 7.2.1. Each party will bear its own costs of complying with this clause 7.

7.3. Continuation of Fire Services

- 7.3.1. Despite the existence of any dispute, the States involved will continue to provide all Fire Services.

8. Review and liaison

8.1. Five yearly review

- 8.1.1. The Commonwealth will provide to the States its indicative estimate of the components of the contributions methodology included in Schedule 2 at least 18 months prior to each five year anniversary of 1 July 2012.
- 8.1.2. The parties will meet to review this MOU at least 12 months prior to each five year anniversary of 1 July 2012. The components of the contributions methodology to be reviewed are:
- a. the proportion of the value of declared buildings as between the States;
 - b. the total Commonwealth land value;
 - c. the proportional land value in each State; and
 - d. the agreed levy rate.

- 8.1.3. The parties will seek to consider as part of the review, all issues with, or related to, the MOU that are raised by a party.
- 8.1.4. Where, as a result of the five-yearly review, agreement is not reached between the parties on any revisions to the contributions methodology by the date three months before the end of that current five year period:
- a. subject to clause 8.1.4.b, the Commonwealth's contribution for the first year of the following five year period will be the same for each State as it was in the fifth year of the five year period in which the review was conducted;
 - b. CPI will be applied to the first year of the following five year period at the same rate determined in the current five year period;
 - c. if the parties cannot agree to any revisions to the contributions methodology within six months of the start of the following five year period, then any party may terminate their involvement in the MOU with the provision of a minimum of three months notice provided that such notice period does not expire before 30 June of the year in which it is provided; and
 - d. once the parties agree on any revisions to the components of the contributions methodology, then a reconciliation process will be conducted by the Commonwealth in accordance with clauses 8.1.5 to 8.1.7.
- 8.1.5. Any reconciliation process under clause 8.1.4.d will simply involve, for each State, determining the difference in the Commonwealth's contribution for Standard Fire Services under the new contributions methodology from that determined under clauses 8.1.4.a and 8.1.4.b. Where as a result of this calculation, the Commonwealth has overpaid or underpaid a State, the payment to that State will be adjusted accordingly in the following year.
- 8.1.6. Where a State terminates its involvement in the MOU under clause 8.1.4.c, the Commonwealth may conduct a reconciliation process in respect of that State using the methodology agreed with those States remaining as parties to the MOU and using its reasonable endeavours to identify and fair and equitable payment in respect to the terminating State. This reconciliation process will operate in accordance with clause 8.1.5 with any overpayment or underpayment being repaid by the relevant party, regardless of whether termination of the State's involvement in the MOU has taken effect or not.
- 8.1.7. Where the Commonwealth terminates its involvement in the MOU under clause 8.1.4.c, no reconciliation process will be conducted.
- 8.2. Ad hoc review**
- 8.2.1. The parties may meet to consider this MOU, and issues arising under it, at any time by mutual agreement. Such an ad hoc review may include consideration of any major movements in:

- a. the proportion of the value of declared buildings as between the States, and/or
- b. the total Commonwealth land value.

8.3. Liaison

- 8.3.1. All communications under this MOU should be provided to the relevant parties' Address for Notices as set out in Schedule 1.
- 8.3.2. Each party will promptly respond to any communication from another party in respect of this MOU.

9. Termination

- 9.1.1. Subject to clauses 8.1.4.c and 9.1.3, any party may terminate its involvement in this MOU by giving at least 12 months written notice to all of the other parties of its intention to do so.
- 9.1.2. If, as the result of a termination under clause 9.1.1, there is only one party to the MOU left or the termination is by the Commonwealth, this MOU automatically terminates for all remaining parties.
- 9.1.3. It is the intention of the parties that this MOU continue for a period of at least five years from 1 July 2012 and that no party will exercise its right to terminate its involvement in this MOU independent of the others during that five year period.
- 9.1.4. Notwithstanding clauses 9.1.1 to 9.1.3, all parties together may mutually agree to terminate this MOU at any time.

10. Notices

10.1. Format, addressing and delivery

- 10.1.1. A notice under this MOU is only effective if it is in writing, and dealt with as follows:
 - a. *if given by a State to the Commonwealth* - addressed (and marked for attention) as specified in Item A [Commonwealth's Address for Notices] of Schedule 1 or as otherwise notified by the Commonwealth; or
 - b. *if given by the Commonwealth to a State* - addressed (and marked for attention) as specified in Item B [State Addresses for Notices] of Schedule 1 or as otherwise notified by the relevant State.
- 10.1.2. A notice is to be:
 - a. signed by the person giving the notice and delivered by hand;

- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

10.2. When effective

10.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address; or
- c. *if transmitted electronically* - upon actual receipt by the addressee.

10.2.2. A notice received after 5.00 pm, or on a day that is not a business day in the place of receipt, is deemed to be effected on the next business day in that place.

11. Miscellaneous

11.1. Entire Agreement

11.1.1. This MOU constitutes the entire agreement between the parties and supersedes all communications, arrangements and agreements, either oral or written between the parties with respect to the subject matter of this MOU.

11.2. Variation

11.2.1. A variation to this MOU is required to be made in writing and signed by all parties at the level of the relevant Ministers.

SCHEDULE 1 MOU DETAILS**A. Commonwealth's Address for Notices**

(see clause 10.1.1.a)

Commonwealth	Department of Finance and Deregulation
Physical address	John Gorton Building King Edward Terrace PARKES ACT 2600
Postal address	John Gorton Building King Edward Terrace PARKES ACT 2600
Email	Available on request
Facsimile	(02) 6267 3236

B. State Addresses for Notices

(see clause 10.1.1.b)

New South Wales	Ministry for Police and Emergency Services
Physical address	Level 2, Quad 1, 8 Parkview Drive Sydney Olympic Park NSW 2127
Postal address	PO Box 6976 Silverwater NSW 2128
Email	Available on request
Facsimile	(02) 8247 5951
Victoria	Department of Justice
Physical address	121 Exhibition St Melbourne VIC 3000
Postal address	GPO Box 4356 Melbourne VIC 3000
Email	Available on request
Facsimile	(03) 8685 1300

Queensland Department of Community Safety	
Physical address	Cnr Park Road & Kedron Park Road Kedron QLD 4031
Postal address	GPO Box 1425 Brisbane QLD 4001
Email	Available on request
Facsimile	(07) 3405 6219
Western Australia Fire and Emergency Services Authority of Western Australia	
Physical address	4 th Floor 480 Hay St Perth WA 6000
Postal address	PO Box P1174 Perth WA 6844
Email	Available on request
Facsimile	(08) 9323 9344
South Australia South Australian Fire and Emergency Services Commission	
Physical address	Level 6 60 Waymouth Street Adelaide SA 5000
Postal address	GPO Box 2706 Adelaide SA 5001
Email	Available on request
Facsimile	(08) 8463 4086

Tasmania		Department of Police and Emergency Management
Physical address	Level 9 15 Murray Street HOBART TAS 7000	
Postal address	As above	
Email	fire@fire.tas.gov.au	
Facsimile	Available on request	
Australian Capital Territory		Justice and Community Safety Directorate
Physical address	Level 9 12 Moore Street CANBERRA ACT 2601	
Postal address	GPO Box 158 Canberra ACT 2601	
Email	JACSEnquiries@act.gov.au	
Facsimile	Available on request	
Northern Territory		Northern Territory Police, Fire and Emergency Services
Physical address	Available on request	
Postal address	PO Box 39764 WINNELLIE NT 0821	
Email	Available on request	
Facsimile	(08) 8927 0381	

SCHEDULE 2 CONTRIBUTIONS

A. Calculation of Contributions

A.1. Contributions methodology

A.1.1. The methodology for contributions by the Commonwealth are common across each State and is determined in accordance with the formula in item A.1.2.

A.1.2. **Payment for Standard Fire Services** for each State is calculated in accordance with the following formula:

$$\begin{array}{c} \boxed{\text{State proportion of the value of declared buildings}} \\ \times \\ \boxed{\text{The total Commonwealth land value as per Budget Paper 1}} \\ = \\ \boxed{\text{The proportional land value in relevant State}} \\ \times \\ \boxed{\text{Agreed levy rate}} \\ = \\ \boxed{\text{payment}} \end{array}$$

A.1.3. For the purposes of the above formula, the following phrases are defined:

- a. *State proportion of the value of declared buildings* means a State's proportion of the total Australia-wide value of insured Commonwealth owned buildings (shown as a percentage)
- b. *The total Commonwealth land value as per Budget Paper 1* means the Commonwealth's published land value from Budget Paper 1, less Department of Foreign Affairs and Trade's overseas land value
- c. *Agreed levy rate* means the agreed rate to be applied against the proportional land value to determine a payment amount. For the purposes of this MOU, the agreed levy rate is 0.0024.

B. Contributions to each State

B.1.1. Applying the contributions methodology set out in item A of Schedule 2, the contributions that will be paid by the Commonwealth to the States is set out in the following table:

State	2012/13	2013/14	2014/15	2015/16	2016/17
New South Wales	\$3.846m	\$3.980m	\$4.119m	\$4.264m	\$4.413m
Victoria	\$2.709m	\$2.803m	\$2.902m	\$3.003m	\$3.108m
Queensland	\$2.729m	\$2.824m	\$2.923m	\$3.025m	\$3.131m
Western Australia	\$1.217m	\$1.260m	\$1.304m	\$1.350m	\$1.397m
South Australia	\$0.908m	\$0.940m	\$0.973m	\$1.007m	\$1.042m
Tasmania	\$0.238m	\$0.247m	\$0.255m	\$0.264m	\$0.273m
Australian Capital Territory	\$4.612m	\$4.774m	\$4.941m	\$5.114m	\$5.293m
Northern Territory	\$1.473m	\$1.524m	\$1.578m	\$1.633m	\$1.690m

B.1.2. The contributions set out in item B.1.1 are for the first five year period of the MOU. The parties have agreed that a figure of 3.5% will apply as a proxy for CPI for each year of that period commencing in 2013/14. Contributions beyond the 2016/17 year will be determined in accordance with clause 5.1.

**ATTACHMENT A TO SCHEDULE 2 - SCHEDULE D - INTERGOVERNMENTAL AGREEMENT ON
FEDERAL FINANCIAL RELATIONS**

Schedule D (Payment Arrangements) of the Intergovernmental Agreement on Federal
Financial Relations is available at:

http://www.federalfinancialrelations.gov.au/content/inter_agreement_and_schedules/current/Schedule_D.pdf

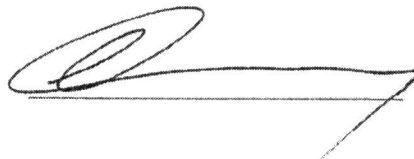
Signatures

Executed as an MOU

SIGNED for and on behalf of the
Commonwealth of Australia by:

GARY GRAY

Name of signatory

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)
) 

In the presence of:

ADAM KIRK

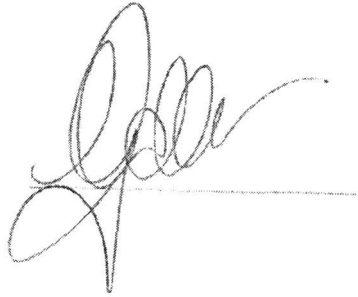
Name of witness

)
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) 

SIGNED for and on behalf of the
State of New South Wales by:

MICHAEL GALLACHER

Name of signatory

)
)
)


In the presence of:

BRAO SCATELLA

Name of witness

)
)
)


SIGNED for and on behalf of the
State of Victoria by:)
)
)
)

)
)
)
)

Name of signatory

Name of signatory

In the presence of:)
)
)

BRAD ADDISON
Name of witness

B. Addison
Name of witness

SIGNED for and on behalf of the
State of Queensland by:

J. M. ...

Name of signatory

)
)
)
[Signature]

In the presence of:

Kelvin Anderson
Director General, DCS.
Name of witness


)
)
[Signature]

Minister, please
sign and date.

SIGNED for and on behalf of the
State of Western Australia by:

Tray Buswell MLA

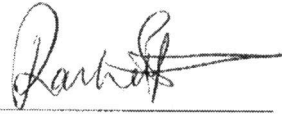
Name of signatory

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In the presence of:

Rachael Tunseck

Name of witness

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SIGNED for and on behalf of the
State of South Australia by:

JENNIFER RANKING

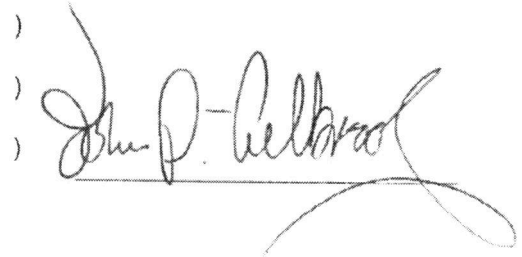
Name of signatory

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In the presence of:

JOHN FULBROOK

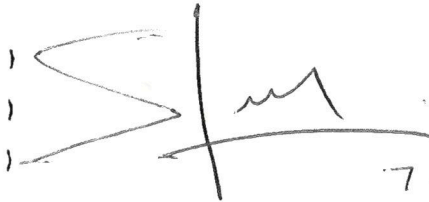
Name of witness

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SIGNED for and on behalf of the
Australian Capital Territory by:

Simon Corbell

Name of signatory

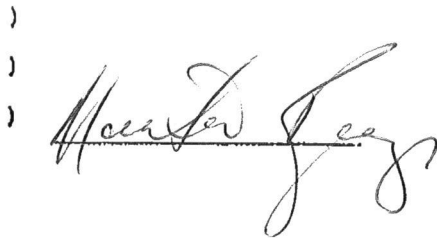
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7.6.13

In the presence of:

MONIKA BOOGS

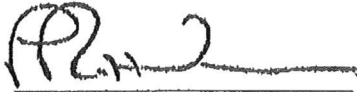
Name of witness

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7/6/13

SIGNED for and on behalf of the
Northern Territory by:

HOW PAUL HENDERSON MLA

)
)
) 

Name of signatory

In the presence of:

ENZA MATARAZZO

)
)
) 

Name of witness