

# Building Code 2013

## FUNDING AGREEMENT CLAUSES

The Building Code applies to construction projects initiated by Australian Government agencies.

The Building Code also applies to construction projects which have been indirectly funded by the Australian Government subject to the thresholds in Schedule 1 of the Building Code.

Where Funding Entities are not the direct client, but are responsible for administering Australian Government programme expenditure involving construction, the Funding Entity must ensure the grantee or recipient of the Australian Government funding applies the Building Code subject to the thresholds in Schedule 1 of the Building Code.

Funding Entities acting as funding administrators must include provision in funding agreements, requiring recipient organisations and all parties to a project to apply the Building Code.

Similarly, the Building Code applies to pre-commitment lease projects, Build, Own, Operate, Transfer (BOOT) and Build, Own, Operate (BOO) projects initiated by a Funding Entity for the delivery of Australian Government functions or services. In many cases a Funding Entity will be the subsequent tenant of such projects and can request Code compliance in accordance with Section 3.1 of the Supporting Guidelines.

The Building Code also applies to both Public Private Partnerships (PPPs) and Private Finance Initiatives (PFIs) as set out in Section 3.1 of the Supporting Guidelines. The service delivered may be paid for by the Australian Government or directly by the end user.

The Department of Education, Employment and Workplace Relations can provide advice to funding agencies on the Building Code and Supporting Guidelines, including the limited circumstances in which requirements may be waived or varied.

Departments, agencies, prescribed CAC Act bodies and contractors that are required to comply with the Building Code and Supporting Guidelines should include the following clauses in all funding agreements for both directly and indirectly funded projects:

1. In these clauses:
  - a) **'the Building Code'** means the Building Code 2013. The Building Code can be downloaded from [www.employment.gov.au/BuildingCode](http://www.employment.gov.au/BuildingCode)
  - b) **'the Supporting Guidelines'** means the Supporting Guidelines for the Building Code 2013. The Supporting Guidelines can be downloaded from: [www.employment.gov.au/BuildingCode](http://www.employment.gov.au/BuildingCode)
  - c) **'the Organisation'** means the state/territory department, Funding Entity, agency or organisation to which the Commonwealth has directed the Programme Expenditure
  - d) **'the Programme Expenditure'** means the funding provided by the Commonwealth for the Project
  - e) **'the Project Parties'** means all contractors, subcontractors, consultants and employees who perform on site work in relation to the Project
  - f) **'the Project'** means the works to be executed through the Programme Expenditure.
2. Where the Programme Expenditure specifically relates to building and construction activity, subject to the thresholds specified in the Building Code, the Organisation must comply and ensure that the Project Parties comply with the Building Code.
3. The Building Code requires the Organisation to ensure that:
  - a) all requests for tender, expressions of interest, submissions and invitations to join Common Use Arrangements in relation to the Project made by it, or any of the Project Parties, contain the commitment to apply the Building Code as set out in the model tender documents; and
  - b) all contracts entered into in relation to the Project by it, or any of the Project Parties, contain the commitment to apply the Building Code as set out in the model contract clauses.

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4. The Organisation must maintain adequate records of compliance by it, and each of the Project Parties, with the Building Code. The Organisation must permit the Commonwealth and those authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, full access to the premises and records of the Organisation and the Project Parties to:
- a) inspect any work, material, machinery, appliance, article or facility;
  - b) inspect and copy any record relevant to the Project and works governed by this agreement; and
  - c) interview any person
- as is necessary to monitor compliance with the Building Code.

Additionally, the Organisation undertakes that it, and each of the Project Parties will agree to a request from the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.

5. The Commonwealth and those authorised by it, may publish or otherwise disclose information in relation to compliance by the Organisation and the Project Parties with the Building Code. The Organisation must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.
6. While acknowledging that value for money is the core principle underpinning decisions on government procurement, when assessing tenders the Organisation may preference contractors, subcontractors and consultants that have a demonstrated commitment to:
- a) adding and/or retaining trainees and apprentices;
  - b) increasing the participation of women in all aspects of the industry; or
  - c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
7. The Organisation must not appoint a contractor, subcontractor or consultant in relation to the Project where:
- a) the appointment would breach a sanction imposed by the Minister for Employment; or
  - b) the contractor, subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.