REVIEW REPORT

A review into the *Accessible Housing Project*: how the governance and processes for developing effective construction and design standards can be improved

FOR: THE AUSTRALIAN BUILDING CODES BOARD (ABCB)

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Board
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1. Executive Summary

1.1 Board Matters has been engaged by the Australian Building Codes Board (**ABCB**) to conduct an independent review of the process undertaken to develop standards for the Accessible Housing Project. This review is to provide information and lessons on improvements which can be implemented in the oversight of similar large projects in future.

1.2 This was not a review of the performance, effectiveness or contribution of the Board, the Accessible Housing Board Steering Committee (**Steering Committee**), the Senior Officers Working Group (**SOWG**), the Building Codes Committee (**BCC**), the ABCB Office staff or any other group or individual involved in this project. The review's purpose was to identify opportunities to improve the governance and processes undertaken in overseeing the development of design, construction or performance standards, using the recent experience of developing the livable housing standard as a case study. This Report outlines what we heard and learned throughout the review without identifying individuals.

1.3 One of the standout observations from this review is the Board Members and the ABCB Office staff are clearly committed to performing their roles to a very high standard. Both Board Members and ABCB Office staff understand the ABCB operates in a very pressured, complex, and nuanced political and governance environment.

1.4 We appreciate feedback has been given in the spirit of assisting the ABCB in identifying genuine opportunities to improve the process and governance around initiatives of this nature and the desire to assist in delivering better design, construction and performance standards for the building industry and wider community.

1.5 The feedback and comments received throughout this review have been used by Board Matters in a deidentified way to ensure the confidentiality of those giving feedback. Some comments have been reframed or paraphrased to ensure the person making the comment cannot be identified.

1.6 We observed during this review the current governance leadership groups (the Board, Steering Committee, SOWG and BCC) have a developed dynamic that encourages the respectful challenging of views and a willingness to listen to different viewpoints. As a general observation, it seems Board Members and committee members can bring their experience and different positions to the decision-making table while understanding their primary fiduciary duty is to act in the ABCB's best interests.

1.7 While we heard many positive things about how the Accessible Housing Project was delivered, we also heard of situations or experiences which were very difficult and stressful for some stakeholders throughout the development of the standard.

1.8 Some external stakeholders remain disheartened by the enormous effort poured into the process for what appears for them, little or no return. Others did not feel heard or understood. Some were anxious about perceived power and influence imbalances throughout the process. Others believe more care should have been taken to ensure those who are not versed in construction matters were included in the conversation, could understand the information being published and were able to meaningfully participate.

1.9 We would like to thank those who participated in this review, provided feedback and gave their time generously in the hope, and with the intention of, influencing how the ABCB oversees issues relating to health and safety, amenity, accessibility and sustainability of buildings. This review has identified governance, engagement and operational improvement opportunities. We have taken a forward-looking approach to our recommendations.
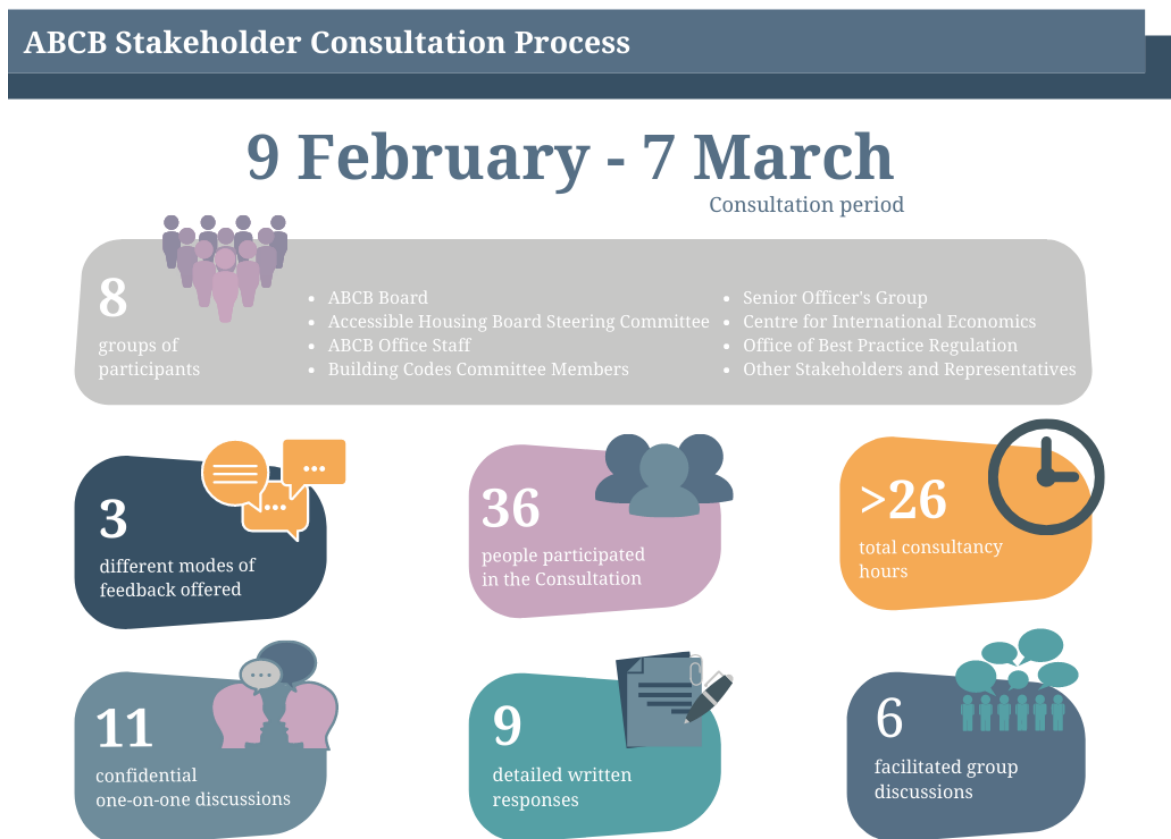
1.10   At the core of it, the Accessible Housing Project was more than an exercise in developing a straight-forward housing design standard. Clear social policy parameters or conditions were not resolved before the standard was drafted. Many spoke about the experience as trying to retro fit policy development and stakeholder consultation into a boiler plate, rigid and inflexible process. We were told the experience was gruelling, stressful and tense at times for some stakeholders. We were told that pressure or influence was applied at times from people deeply invested in the project's outcomes, sometimes with differing views or perspectives.

1.11   In hindsight, some believe the social policy or social benefits aspects related to the livable housing standard should have been delivered as a separate piece of work to drafting the standard. With the social policy aspects resolved first, the Accessible Housing Project could have been focused on converting social benefits into a technical housing design standard. Some reflected this approach may have delivered better outcomes and a different overall experience.

1.12   From the outset, some Board Members sensed the traditional costs and benefit approach to the regulatory impact process was not a good fit for the Accessible Housing Project and a more nuanced approach may have been needed. However, this was not discussed, resolved or debated at board level before the project started.

1.13   On one hand, we accept the Board should not interfere with or micromanage the ABCB Office in how it undertakes ABCB's business. On the other hand, it is squarely the Board's role to oversee and manage strategy and risk including reputational risk for the ABCB. The Accessible Housing Project carried (and still carries) significant risks to the ABCB which the Board was, and still is, required to manage and mitigate. Some of these risks are outlined in more detail in paragraphs 5.13 to 5.20 to this Report.

1.14   In our view, the way initiatives like the Accessible Housing Project are delivered ought to evolve and allow for increased flexibility in approach, communication, process, and outcomes. We are not saying this should come at the expense of the ABCB complying with its Intergovernmental Agreement (**IGA**) or other frameworks within which the ABCB must operate, for example, Office of Best Practice Regulation (**OBPR**) Guidelines.

1.15   Although not within the scope of this review, perhaps this is an opportunity for the Board to contribute to a discussion about how the IGA could be recast to ensure the ABCB's functions and responsibilities better meet stakeholder expectations and improve outcomes, mitigate reputational and other significant risks to the ABCB, and strengthen the ABCB's value in supporting Building Ministers.

2.   Background and Review Methodology

2.1   As part of this review, we completed a desktop review of key process and governance documents provided by the ABCB Office including a draft *Strategic Plan 2022-2027*.

2.2   A stakeholder consultation and feedback strategy was developed in conjunction with the ABCB to gain a deeper understanding of how the project's processes and governance operated. We supplemented the consultation with confidential one-on-one discussions as well as group workshop sessions with some stakeholders to elicit their views of their understanding of the processes, effectiveness, and challenges of the project.

2.3   We consulted as widely as possible and offered different ways in which feedback could be given. **Diagram 1** represents the different ways feedback was provided to Board Matters and how many pieces of feedback were received throughout this review.

2.4 For the purposes of this Report, the term *internal stakeholders* describes the groups or individuals within the ABCB involved in the Accessible Housing Project including the Board, the Steering Committee, the SOWG, the BCC and ABCB Office staff.

2.5 *External stakeholders* are the groups, individuals, or organisations outside the ABCB involved in the Accessible Housing Project in some capacity including the OBPR, community and other non-government organisations, advocates, consultants and other experts.

Diagram 1

ABCB Stakeholder Consultation Process

9 February - 7 March
Consultation period

8 groups of participants
- ABCB Board
- Accessible Housing Board Steering Committee
- ABCB Office Staff
- Building Codes Committee Members
- Senior Officer's Group
- Centre for International Economics
- Office of Best Practice Regulation
- Other Stakeholders and Representatives

3 different modes of feedback offered

36 people participated in the Consultation

>26 total consultancy hours

11 confidential one-on-one discussions

9 detailed written responses

6 facilitated group discussions

2.6 This review identified challenges that arose during the Accessible Housing Project's delivery, the effects or impacts of which could not meaningfully be quantified or assessed. It is also unlikely most of these challenges will arise again in future initiatives, but they were relevant to the delivery of the Accessible Housing Project. For this reason, we have outlined them below.

2.7 **COVID-19 impacts:** A few stakeholders wondered whether disruptions caused by the COVID-19 pandemic impacted the effectiveness of the project's delivery given the number of face-to-face interactions and meetings were reduced to comply with government health directives.

2.8 **The illness and unfortunate passing of the ABCB's former Board Chair:** A minority of internal stakeholders raised the former Board Chair's illness and unfortunate passing and wondered what impact his absence had at key points in the project's development.

2.9 **A hard delivery deadline:** We were told during the group discussion sessions that a hard deadline was set for the delivery of the livable housing standard, and this was unusual for initiatives of this kind. Some internal stakeholders felt this time pressure negatively impacted the quality of the documents drafted (meaning at times things felt very rushed) and the process overall.

2.10   **Liaising outside normal networks:** Many stakeholders acknowledged this project was the first time the ABCB was required to engage with sectors outside its usual stakeholder networks in the building and construction industry. Many acknowledged there was a need for the ABCB to quickly build effective stakeholder relationships with the disability sector and others.

3.   Project-Specific Values and Guiding Principles

3.1   During this review it was clear that a set of values emerged from the feedback in terms of what stakeholders believed were, or should have been, the underlying principles or drivers guiding the Accessible Housing Project's delivery. These values were *transparency*, *rigour*, *integrity* and *fairness*.

3.2   **Transparency:** Most external stakeholders commented that any assumptions, judgements, policy parameters and even any predetermined Government outcomes ought to have been openly, widely and frequently communicated. Critical decisions should have been publicly explained, including reasons for the decision.

3.3   A few external stakeholders felt there should have been more transparency around how comments and feedback received during the workshops and forums were captured and incorporated into the regulatory impact process. Some external stakeholders perceived meeting minutes were not kept and there were no records of comments and ideas offered during workshops, roadshows or forums.

3.4   External stakeholders felt submissions received during the regulatory impact process should have been made publicly available online as a matter of course. The Options Paper stated responses would not be published[1] and most external stakeholders were puzzled by this decision. In the experience of this cohort of stakeholders, it is common practice in the disability sector for submissions to government agencies to be published and made publicly available.

3.5   Expanding on this, external stakeholders also expected to be able to access submissions (as made) online. Some drew parallels to a parliamentary inquiry process and mentioned submissions made through these processes are published online, as made, in a list view. Others can easily see the list of organisations, individuals and stakeholders who lodged submissions as part of a parliamentary inquiry process and can read or download the submissions.

3.6   As a result of the factors mentioned in paragraphs 3.4 and 3.5, suspicions arose that Building Ministers, Board Members and policy makers did not access some submissions provided to ABCB. There was a sense (rightly or wrongly) submissions, feedback or ideas were cherry picked, diluted or summarised. For such an important piece of work, external stakeholders expected Board Members to have access to, and read, all submissions received during the regulatory impact process. We did not verify whether Board Members had access to all submissions or read them.

3.7   **Robustness:** This project required a robust governance and reporting framework to support the Board and to manage the numerous competing interests at the technical level. Clear roles, functions and responsibilities at the different leadership and governance levels were required to help each part of the ABCB understand their roles.

3.8   Some stakeholders felt communication protocols around acceptable conduct and behaviour during meetings and forums should have been set.

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[1] at page 29

3.9   **Integrity:** The processes supporting the Accessible Housing Project's delivery needed to follow relevant government guidelines and policies, for example OBPR Guidelines, as integrity was seen by many as critical to these types of initiatives.

3.10   A few external stakeholders claim the documents released by the ABCB during the regulatory impact process did not comply with guidelines established by the former Council of Australian Governments (**COAG**). These guidelines specified consultation processes should make it easy for stakeholder participation. Some external stakeholders asserted the ABCB did not comply with COAG guidelines because, for example, the documents were too technical and incomprehensible to lay people and audio interpreting machines could not transcribe the documents for vision impaired people.

3.11   **Fairness:** It was important to the external stakeholders to feel they were treated fairly. Any perceived or actual imbalances in accessing information or understanding the process should have been addressed and ameliorated. These stakeholders felt that processes or frameworks should have been established to ensure conflicts of interest or perceived biases were acknowledged, discussed, and managed openly.

3.12   A few external stakeholders suggested community consultation sessions be held separately from those attended by industry experts or representatives. To these stakeholders, this would have made them more comfortable to express their views without feeling like there were interrupted, talked down to or judged by industry.

3.13   Our recommendations have been shaped, in part, around these underlying concepts of *transparency*, *robustness*, *integrity* and *fairness* which the feedback suggests would constructive principles for the Accessible Housing Project's delivery. This does not mean these concepts were absent in the project's delivery, but these concepts mean different things for different stakeholders.

4.   Key Learnings

4.1   We are briefed that in 2017, the Building Ministers' Meeting (**BMM**) directed the ABCB to investigate the development of the livable housing standard. The intention was to include features in homes to enable ageing people and those with mobility issues to stay in their homes without having to relocate or undertake expensive renovations. The issue of accessible housing had, by that point, been discussed by Ministers for several years.

4.2   We were advised the ABCB was directed to have the standard be based on the Livable Housing Design Guidelines (**LHDG**). We were also advised the LHDG were developed for industry information rather than regulatory purposes, meaning the LHDG had to be translated into a set of technical requirements. To do this, ABCB Office staff with technical expertise made certain judgement calls. Some judgement calls had significant impacts, for example, increasing construction costs. When the impacts of some of these judgement calls became clearer or known, suspicions were raised in the minds of some external stakeholders about the project's delivery and transparency. When the economic analysis was not going to support the expected outcomes for some stakeholder groups, it was at this point attention turned to perceived mistakes, oversights and process flaws. We did not test these accounts nor critically analyse the economic analysis, as part of this review.

4.3   We were told the ABCB Office developed a project plan at the start of the project which included a research and literature review, engaging consultants and experts, consultation, drafting technical provisions, engaging with ABCB's technical committees, and completing a regulatory impact process. We did not assess the project plan as part of this review.

4.4   There were additional steps included in the project plan, which we were told, were not part of the ABCB's normal project delivery strategy. These extra steps were seen as valuable and innovative. Two examples were holding National Consultation Forums and releasing the Options Paper for public comment prior to developing the Consultation Regulatory Impact Statement (**CRIS**).

4.5   Our observation is the ABCB Office did what it does, and has done for a long time, exceptionally well. It developed a project plan and executed it. Some external stakeholders question whether certain COAG and other guidelines were met (see paragraphs 3.10 and 6.14 in this Report) otherwise, Government-imposed frameworks, policies, rules and guidelines were observed. OBPR endorsed the process undertaken by the ABCB[2]. The hard delivery deadline mentioned in paragraph 2.9 was met.

4.6   However, as already mentioned, this was not a straightforward task of developing a simple housing design standard.

4.7   For the Board, a key learning is many internal stakeholders used terms such as controversial, sensitive, complex and "hot brief" to describe the Accessible Housing Project. We were told some external stakeholders had been lobbying governments for measures to be incorporated in domestic housing construction practices from as early as 2002. It was known, or ought to have been known and understood, from the outset this project carried risks for the ABCB. However, at least initially, there appears to be no formalised risk sensitivity testing at board level, determining whether the tried-and-true approach to developing technical design standards was appropriate in this case.

4.8   Based on the feedback received during this review, we feel the Board would have been well served if it took the opportunity to invest time at the start of the project:

        (a)   to hear and discuss initial or potential concerns about the project including any perceived sensitivities or challenges with it;

        (b)   to test the suitability of the proposed project approach;

        (c)   to stand up appropriate governance structures around the project;

        (d)   to ensure the ABCB Office had a plan to address any skills or process gaps; and

        (e)   to develop a strategy for managing and mitigating project-specific risks.

4.9   As a learning, some Board Members suggested the Board ought to complete complexity assessments and project-specific risk assessments before starting projects like the Accessible Housing Project. A few Board Members talked about developing quality assurance processes around projects, having more touchpoints with the Board at critical points and receiving project-specific briefings between board meetings, especially at crucial times.

4.10   Regarding project-specific risk management, we were told there were a high number of detailed, lengthy, high-quality responses received in response to the CRIS (a figure of over 3,000 submissions was mentioned) with many challenging different aspects of the CRIS. We did not try to independently verify whether these assertions are accurate. However, as a learning, the Board

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[2] Please note our comments at paragraphs 6.2 and 6.3 of this Report regarding the meaning and context of OBPR's endorsement for projects such as the Accessible Housing Project

could use observations such as these to assist in developing risk appetites, tolerances and triggers to inform the development of project-specific risk management frameworks.

4.11   We feel the primary learnings for the ABCB Office from this project are to be more open to escalating material or strategic conflicts, risks, issues or impasses to the Board and being more flexible in how initiatives such as these are delivered.

4.12   Many Board Members talked about occasions where it was perceived ABCB Office staff were defensive or argumentative when asked questions around the project. We sense some Board Members wish the ABCB Office staff had a greater appreciation or understanding of the Board's role. The Board carries the risks of projects like the Accessible Housing Project and is accountable for ABCB's performance. Many Board Members said that when they ask questions it is not to call people out or to be difficult, but to ensure they are discharging their fiduciary duties to ABCB and meeting their responsibilities under the IGA.

4.13   For the ABCB Office, we suggest that it explore more ways to be flexible, creative and agile in terms of how projects like these are delivered. We accept different initiatives were included in the delivery of the Accessible Housing Project. Two of these are mentioned in paragraph 4.4 and were spoken about very positively by both the internal and external stakeholders in this review.

4.14   As outlined in paragraph 1.14, we are not suggesting flexibility or agility come at the expense of complying with other critical frameworks and requirements within which ABCB must operate, or certainty in process. We expand on this further at paragraphs 6.1 to 6.13 in this Report.

4.15   Since being engaged to conduct this review, we understand the Board has devoted time to enhancing its strategic capability and focus. As part of this review, we were provided with a draft *Strategic Plan 2022-2027* and *Risk Management Framework 2021-2022*. We encourage the Board to finalise and embed these important pieces of work to ensure the Board's focus and attention remains at a strategic level.

5.   Governance Challenges

Lack of a clear policy position

5.1   **High level governance and policy group:** Given the Accessible Housing Project cut across the building portfolio and the disability services portfolio, the Project would have benefited from portfolios being brought together to address key policy issues or competing challenges which may have arisen and agree on high level policy.

5.2   As mentioned in paragraph 1.10 of this Report, one of our primary observations from this review is clear social policy or ministerial views were not resolved or clarified before the livable housing standard was developed leading some stakeholders to question the ABCB Office's processes, the perceived lack of transparency and ultimately, to this review by Board Matters.

5.3   More work was required at the outset to frame-up underlying policy objectives and clarify the issues or problems governments were seeking to address through introducing a technical housing standard in the National Construction Code (**NCC**). A few stakeholders described the situation as writing a technical standard from a flawed foundation because there was no underlying policy agreement or conversation to inform what the standard should have delivered.

5.4   ABCB's IGA confirms policy development is not ABCB's role. However, the Accessible Housing Project has highlighted the risks and difficulties for ABCB when technical standards are developed

without clear policy statements underpinning it; stakeholder expectations are not met, lobbying activity escalates, trust is lost and reputational and other risks for ABCB intensify.

5.5   We were advised during this review that for the development of an energy efficiency standard (a separate project currently being undertaken by the ABCB), energy ministers agreed on some policy positions and then wrote to building ministers providing direction on how the energy standard ought to be drafted. We are not clear if a similar process was undertaken for the Accessible Housing Project but we consider it would have been helpful.

5.6   We have formed the impression the SOWG assumed the function of a quasi-policy management group for this project. We understand this is not their role, and the period around the release of the CRIS and the Decision Regulatory Impact Statement (**DRIS**) was a particularly challenging time for this group. We were advised during the group workshop sessions that an enormous amount of work was done by the SOWG to manage relationships with their reporting Ministers, to address their concerns and confidence in the project and ensure those who felt they did not have a voice in the process, were given one.

5.7   It is important for the ABCB to clarify policy positions where needed. In this regard, and although outside the scope of this review, the ABCB's IGA might benefit from including or clarifying the ABCB's role and responsibilities to match expectations and deliver outcomes to support Building Ministers.

5.8   **Non-industry, non-technical Board advisory committee:** We heard during this review the strategic conversations about the project could have been richer and different, had non-industry or non-technical voices been included at the governance leadership levels of this project. We are aware a non-industry advocate was invited to join the Steering Committee as a member but declined the invitation. It was not relevant to our brief to explore why.

5.9   We also heard that introducing design, construction or performance standards for buildings could be viewed as an efficient way for governments to demonstrate they are addressing very complex social, community and environmental policy issues. The ABCB may be called upon to deliver similar projects to the Accessible Housing Project in the future.

5.10   For these reasons, we recommend the Board establish a non-technical, non-industry advisory committee. If possible, we recommend this advisory committee be at the same governance level as the BCC and Plumbing Codes Committee (**PCC**). This advisory committee should capture the voices, perspectives and interests of non-technical, non-industry participants and advocates who share the ABCB's commitment and vision of communities living in buildings that meet minimum standards of safety, health, amenity, accessibility and sustainability (i.e. the end user perspective).

5.11   We appreciate the Board can establish its own committees[3] but establishing a committee at the same governance level as the BCC and PCC requires amending the IGA. We feel that a non-technical, non-industry advisory committee should be afforded the same recognition through the IGA as the BCC and PCC to signal this committee's importance and contribution to the ABCB's work.

5.12   Such an advisory committee could also support the ABCB in redesigning and refreshing its organisational processes and policies to ensure they are more inclusive and responsive to social and other issues impacting building users and occupiers where relevant.

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[3] Clause 14.2 of the IGA

Project-specific risks

5.13   During the review we heard about some risks, issues and expectations related to the development of the livable housing standard, some of which remain significant and current.

5.14   One set of risks pertains to the ABCB's role in educating and raising awareness about the livable housing standard, its benefits and application.   We know the IGA talks about the Board's objectives as *assisting* in educating and providing information to industry and relevant stakeholders on the NCC's development and implementation.

5.15   Based on comments made during this review, some stakeholders expect the ABCB to take an exclusive or leading role in educating the building industry and wider community about the standard.

5.16   Some of these stakeholders have significant levels of access and influence across many levels of Government. They have not seen any plans or strategies for the education or awareness program yet.   Perhaps the limits on the ABCB's role and responsibilities when it comes to delivering education and awareness campaigns have not been communicated to ensure there are no further expectation gaps around the ABCB's role.   There is a still a keen interest to see how the ABCB delivers this part of the project.

5.17   Other stakeholders talked about a difference between raising awareness of NCC changes versus educating and supporting industry on how to administer or handle changes, at the construction and business level, with the introduction of new standards. Some wonder whether it will fall on industry associations' shoulders to interpret the requirements of the livable housing standard for builders and contractors and to hold education programs for members. The comment was made during this review that it was not fair or reasonable for this responsibility to fall on industry associations.

5.18   It is clear from the feedback some external stakeholders hold residual expectations about the ABCB and its education and training role which we believe should be identified, acknowledged, discussed and addressed in some way.

5.19   Another set of risks relate to the adoption or take-up of the livable housing standard.   Media articles confirm some jurisdictions have declined to adopt the standard[4].   A few external stakeholders hold the view this supports the notion the Accessible Housing Project was a failure. These stakeholders feel criticisms levelled at the ABCB in terms of how the standard was developed, are justified.

5.20   Related to this, a few external stakeholders also talked about their view of the ABCB and how it should convince those jurisdictions who have not adopted the livable housing standard, to adopt it.   They point to clause 19.3 of the ABCB's IGA to support their view the ABCB has a role in encouraging those jurisdictions to adopt the standard.

5.21   As part of this review, we were given a draft of the ABCB's *Risk Management Framework 2021-2022*. We recommend the Board with the CEO consider how the project-specific risks identified in this Report ought to be included in this framework.

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[4] For example, Convery, Stephanie. 'Accessible housing: disabled people left behind by "shameful" building code stance in NSW, WA and SA'. *The Guardian*, 26 November 2021 and Campanella, Nas and Celina Edwards. 'Australian housing needs mandatory accessibility standards to create 'homes, not just accommodation', advocates say'. *ABC News*, 11 February 2021

Steering Committee

5.22   As mentioned in paragraph 3.7, this project required a robust governance and reporting framework to support the Board and balance numerous competing interests at a technical level.

5.23   We were advised during this review that the Steering Committee was established in response to rapidly emerging risks and issues and to respond to stakeholders and ministers. It was not established as a considered or necessary component of the project's governance framework or to support the Board in its decision-making and managing risks.

5.24   Below are some reflections and ideas about how a steering committee could be utilised as a valuable component of the ABCB's governance framework for similar initiatives in the future.

5.25   **Structure and composition:** Thought should be given to the committee's structure and composition. Ideally steering committees in this context should be a mix of Board Members and non-board members.

5.26   For the Accessible Housing Project, the Steering Committee was established by the ABCB Office around the time the draft CRIS was released. It was originally chaired by the ABCB's former CEO. A Director was not appointed as Committee Chair until the project was well advanced.

5.27   On reflection, some stakeholders feel non-industry members and non-Board members should have been included on the Steering Committee. Consultants were engaged by the ABCB, but some stakeholders reflected during the review the strategic conversations could have been very different had non-industry and non-technical voices been heard at the governance leadership levels from the beginning.

5.28   Internal stakeholders agree steering committee members needed to be across finite technical details given the nature and complexity of the Accessible Housing Project. It was conceded that any perceived gaps in technical expertise could have been bridged by non-technical members receiving briefings from experts either during committee meetings, or outside the committee meeting schedule.

5.29   **Terms of reference:** Committees should have formal terms of reference that clearly establishes the committee's role and authority. Under the Terms of Reference, the Steering Committee's role included overseeing, assisting and providing guidance to the ABCB Office in the delivery of the Accessible Housing Project. We understand the Steering Committee's Terms of Reference were not developed or endorsed by the Board. Good governance practice would see the Board setting, driving and reviewing the roles and functions of its committees.

5.30   When it comes to the Steering Committee's role and authority, a balance needs to be struck between governance oversight and allowing the ABCB Office freedom to deliver the project. One phase of the project which attracted much criticism or concern was the release of the draft CRIS and amended CRIS. The ABCB engaged experts to develop the CRIS and undertake the cost benefits analysis. We accept neither the Board or the Steering Committee should get into the detail or activity of engaging consultants. However, the Board or Steering Committee (with clear authority from the Board) should consider any risks around the use of consultants and has a role in contract management from a compliance and risk perspective.

5.31   Some stakeholders observed the Steering Committee's role changed during the project. When it was first established, the Steering Committee provided guidance and oversight. At some point the Steering Committee became more involved in the regulatory impact process.

5.32   This led to confusion about the Steering Committee's role and authority.   Some internal stakeholders spoke about the development of the CRIS and DRIS as a highly stressful and tense time for them. Some questioned whether the Steering Committee should have approved the CRIS and DRIS and referred these to the Board for endorsement. The regulatory impact process and the release of the CRIS and DRIS carried significant reputational and other risks for the ABCB. Some stakeholders perceived these risks as being carried by the Board, but these significant risks were delegated to the Steering Committee.

5.33   Given the project's complexities and risks, more clarity and rigour around the Steering Committee's role was required and good governance would have the Board involved in the establishment of the Steering Committee (at the very least). A risk sensitivity analysis may have resulted in the Steering Committee being stood up at the start of the project. The delivery period for the Accessible Housing Project spanned years. The Board ought to have taken the opportunity to regularly review the Steering Committee's Terms of Reference and performance to ensure it was adding value to the project and supporting the Board in its decision-making. The Board needed to receive regular reports from the Committee Chair.

5.34   With the benefit of hindsight, we feel the Steering Committee could have added more value to the project's governance had the committee's authority or functions been clarified and extended to, for example:

(a)   assessing and approving the project plan (including the consultation and engagement strategies) and any changes to the project plan;

(b)   establishing and monitoring performance goals or other success measures for the project;

(c)   overseeing the engagement and performance management of the consultants, experts and other external resources commissioned by the ABCB for the project;

(d)   resolving conflicts, impasses or deadlocks at a technical level or escalating material or strategic conflicts, risks, issues or impasses to the Board;

(e)   identifying, monitoring and mitigating project-specific risks; and

(f)   approving the CRIS, DRIS and the draft standard, and referring these to the Board for final endorsement.

5.35   A few Board Members expressed the view that it was not the Board or the Steering Committee's role to approve the CRIS, DRIS or draft standard.   These Board Members commented that developing the livable housing standard was a government-driven process. Building Ministers were not bound to follow the DRIS and were always going to make the final decision. For these reasons, these Board Members felt the Board and Steering Committee had no decision-making role in this context.   We accept this is the nature of this kind of work.   However, we also note the IGA provides the Board's functions include making decisions on matters relevant to the NCC in accordance with directions given through the Building Ministers Forum and consistent with the Board's objectives.

5.36   **Meetings:** The committee should meet often enough to undertake its role effectively.   Committee members must be clear about the time and capacity investment and understand that more of their time will be needed at critical points of a project's lifecycle.

5.37   In this case, the Steering Committee's meeting schedule could have been mapped to the project plan and board meeting cycle. Additional meetings and briefings could have been scheduled at critical points, for example leading to the approval of the CRIS and DRIS. The Steering Committee Chair should provide structured and regular reports to the Board.

5.38   **Minutes:** To be effective, the Steering Committee needed to be resourced and supported by skilled administrative or secretarial staff. In our view, good governance will dictate that meeting minutes would be kept and circulated to the full Board. We were told the frequency of Steering Committee meetings increased to fortnightly and even weekly at critical points. The ABCB Office was required to produce agendas, papers, and minutes between these very tight meeting cycles. We infer there was no forward planning of committee meeting schedules or an appreciation of the enormous administrative burden on the ABCB Office of holding such tight meeting cycles.

5.39   We have been advised that committee meeting minutes were not always kept or kept in a consistent format and more rigour was imposed around these procedural matters after the Committee Chair changed and a director was appointed to this position. A perceived lack of proper record keeping and administration around the Steering Committee may have contributed to a view held by some stakeholders that overall, the delivery of the Accessible Housing Project lacked integrity, robustness and transparency.

5.40   We are not recommending or suggesting committee meeting minutes be publicly published. However, we are confident keeping meeting minutes and capturing key deliberations, areas of disagreement or contention and providing the Board with access the committee meeting minutes would have assisted in identifying and comprehending emerging issues and risks much earlier.

5.41   Establishing a steering committee as a considered component of a governance framework supporting the Board in delivering larger and more complex projects such as the Accessible Housing Project is a positive step when coupled with rigour and clarity around the work of the committee.

Other Governance Structures

5.42   In paragraph 5.10, we suggested the Board consider establishing a non-technical, non-industry advisory committee with the same governance standing as the BCC and PCC to capture the voices, perspectives and interests of non-industry participants and advocates. In paragraphs 5.22 to 5.41 of this Report, we discuss the benefits and features of project-specific steering committees supporting the Board's decision-making for initiatives like the Accessible Housing Project.

5.43   An external stakeholder suggested the Board establish an Independent Expert Panel to help in choosing the consultants to be involved in regulatory impact processes and to oversee the consultant's analysis and methodologies. Underpinning this suggestion is the focus on ensuring there is transparency, robustness and integrity in the ABCB's processes.

5.44   Supporting governance structures (steering committees, independent panels, working groups, etc) are useful in supporting boards in overseeing complex or specialised issues. The Board must decide which committees and in what form, will add the most value to the ABCB. The terms of reference should be reviewed at least annually by the Board to ensure committees remain focused, continues to add value, and effectively supports the Board's decision-making. An assessment of the performance and effectiveness of the Board's committees should be included as part of the Board's regular performance reviews.

Recommendations

Recommendation 1

The Board develop a strategy for ensuring, where possible, there is clarity around policy objectives and parameters before technical standards are drafted (paragraphs 5.2 to 5.7).

Recommendation 2

The Board establish a non-technical, non-industry advisory committee, if possible, at the same governance standing as the BCC and PCC, to capture the non-industry voices and opinions of those who share the ABCB's commitment and vision of communities living in buildings that meet minimum standards of safety, health, amenity, accessibility and sustainability (paragraph 5.10).

Recommendation 3

The Board with the CEO are to identify and agree on:

(a)   any ongoing risks associated with the Accessible Housing Project and a plan for managing and mitigating those; and

(b)   how sensitivity testing project-specific risks and reporting should be included in the ABCB's risk management framework (paragraphs 5.13 to 5.20).

Recommendation 4

The Board agree on a framework for deciding when time limited steering committees and other governance supporting structures will be established to support the Board's work (paragraphs 5.21 and 5.43).

Recommendation 5

The Board to decide whether complexity assessments and quality assurance processes are to be included in the ABCB's project plans to enhance the Board's capability in overseeing and monitoring, and managing risks for, the delivery of projects (paragraphs 4.8 to 4.10).

6.   Operational Challenges

Inflexible approach

6.1   It was widely acknowledged or accepted by internal stakeholders the ABCB Office is skilled and competent in developing technical standards through a regulatory impact process supported by OBPR endorsement. We understand this has been the approach for a very long time.

6.2   We were advised during this review that OBPR endorsed both the CRIS and DRIS as satisfying best practice regulatory guidelines. While the OBPR endorsement confirms regulatory guidelines have been met, we caution the Board in placing too much weight on this endorsement as the only success measure or leaning on it as evidence the Board has effectively managed project-specific risks.

6.3   The OBPR was of the view the analysis undertaken by the ABCB was of high quality and the regulatory impact process was very comprehensive. Having said this, the OBPR endorsement is not certification the ABCB has delivered outcomes expected by Government or the wider community. It is a sign-off the ABCB Office has followed a set of government-mandated guidelines. The OBPR endorses *what* the ABCB has delivered. The OBPR does not endorse *how* the ABCB has arrived at outcomes.

6.4   Looking at the development of the livable housing standard as a case study, many are now questioning whether the ABCB could have delivered the outcomes sought by Government differently. Many internal stakeholders agree the outcomes delivered through the Accessible Housing Project did not set up or support Building Ministers well.

6.5   **Stakeholder identification:** Some stakeholders acknowledged it may not have been obvious to the ABCB in the beginning which stakeholder groups outside the building and construction industry should have been consulted as part of this project. A few external stakeholders commented that some representative organisations from other sectors may have been focused on other things, for example, the aged care and disability royal commissions which were active at the same time the ABCB was developing the livable housing standard. Some external stakeholders wondered whether the timing of the Accessible Housing Project relative to these other inquiries may have impacted on some stakeholders' ability to participate in the ABCB's regulatory impact process fully.

6.6   Nonetheless, many external stakeholders felt more needed to be done by the ABCB to understand who the relevant stakeholders were for the Accessible Housing Project. One external stakeholder suggested the Board build its capability in understanding the diverse nature of citizen voices and undertaking an external or environmental scan at the start of projects to identify critical stakeholders, to reach out to them early and proactively engage with them openly through a transparent process.

6.7   **Alternative stakeholder engagement methods:** During this review, criticisms were raised about how the ABCB engaged with stakeholders.

6.8   One consistent concern was a lack of acknowledgement of submissions and input. Many external stakeholders talked about devoting an enormous amount of time, resources and effort in researching and writing submissions as part of the regulatory impact process, but their submissions were not acknowledged in anyway. There was no feedback or contact from the ABCB after their responses were submitted.

6.9   These stakeholders did not know whether their feedback was even considered as part of the process. They could not see where their work, ideas or suggestions had been integrated. This led to many feeling disheartened, unheard, and anxious about the integrity and transparency of the ABCB's processes and approach.

6.10   Some also felt aspects of the stakeholder engagement process were rushed or an attempt by the ABCB to force stakeholders to reach a consensus on key or contentious issues.

6.11   A few external stakeholders wondered whether a collaborative approach to stakeholder consultation may have delivered different outcomes. A collaborative approach refers to a stakeholder engagement methodology that supports reaching agreements on outcomes through giving stakeholders time to understand the intricacies of different options, to ask questions and receive answers, providing an opportunity to understand different perspectives and identifying areas of common ground.

6.12   This approach is loosely based on methodologies available through the International Association of Public Participation (**IAP2**) Australasia which is a not-for-profit, member organisation that provides training and tools for achieving effective community and stakeholder engagement. We were told during this review that government agencies are increasingly using IAP2 methods in developing government policy because they have been well-tested with stakeholders and have flexibility to accommodate different engagement methods.

6.13   Using alternative approaches to stakeholder engagement and consultation for the Accessible Housing Project may have assisted external stakeholders, particularly those with no other connection to, or experience with, the building and construction industry, to feel they were heard and understood, and their input contributed to the development of the Livable Housing Standard and if not adopted, at least acknowledged.

Technology as an enabler, not an inhibitor

6.14   Most external stakeholders feel the ABCB should have ensured documents were more widely accessible and published in alternative formats and modes. A consistent concern about the regulatory impact process, was it did not support people with disabilities accessing information or contributing to the process. Online forms should have been tested for accessibility by screen readers and for smartphone access. A few referenced the Web Content Accessibility Guidelines (**WCAG**) and asserted ABCB's web content did not comply with these guidelines.

6.15   Another consistent criticism was the platform used for submitting responses to the CRIS (Citizen Space) was not user friendly. Many complained the platform operated like an online survey and did not make the process of submitting CRIS responses easy. We did not verify, as part of this review, whether the ABCB is constrained in the type of online platforms it can use to collect submissions and feedback. A stakeholder engagement plan would help identify access and useability issues for key groups.

6.16   Many external stakeholders were surprised the CRIS submissions were not publicly available online as a matter of course. As mentioned in paragraph 3.4 of this Report, external stakeholders expected submissions (as made) received by the ABCB as part of the regulatory impact process to be published online in a list view and to be easily accessible for others to read and download.

Recommendations

Recommendation 6

A stakeholder engagement framework be developed to further enhance the delivery of projects like the Accessible Housing Project. Such a framework should be linked to the ABCB's strategic plan and risk management framework. It should also outline how the ABCB will ensure stakeholders' submissions or ideas are acknowledged. To assist with this, a draft stakeholder engagement framework loosely based on certain IPA2 principles and linked to the ABCB's draft *Strategic Plan 2022-2027,* appears as **Annexure B** to this Report (paragraphs 5.21 and 6.8).

Recommendation 7

In the interests of transparency, submissions received during a regulatory impact process should be made publicly available unless it is requested that a submission remain anonymous or confidential. Submissions will be made available in a way that enables others to see who has made a submission. Submissions should have the ability to be accessed, downloaded or read by others (paragraph 3.5).

Recommendation 8

Consider how any technology, platforms or systems used by the ABCB to support a regulatory impact process can be adjusted to accommodate the WCAG (paragraph 6.14).

7.   Other Suggestions

7.1   In this section we detail the suggestions made during this review which are not directly related to our brief of identifying opportunities to improve processes and governance supporting the development of design, construction and performance standards. We appreciate that some of these may be outside the ABCB's control but nonetheless, we believe it was important to include these suggestions in this Report to acknowledge stakeholder input.

7.2 Some external stakeholders expressed the view that the Board's composition should be reviewed and industry representatives removed from the Board entirely as there was a perception that there are too many conflicts of interest and perceptions of bias. These external stakeholders feel industry representatives can still provide meaningful input and have their say through being appointed to working groups.

7.3 Another external stakeholder suggested that at least one director on the Board should have costs and benefit analysis expertise or experience.

7.4 A minority of external stakeholders requested an independent and suitably qualified expert be appointed to review the work undertaken by the Centre for International Economics (**CIE**) and the Melbourne Disability Institute (**MDI**) including MDI's qualitative findings. These external stakeholders feel the outcomes from such a review would assist the ABCB in their further discussions with those jurisdictions who have not adopted the standard yet. This suggestion links back to the expectations of some external stakeholders about the ABCB's role going forward, as mentioned in paragraphs 5.19 and 5.20 of this Report.

7.5 A few internal stakeholders expressed the view that proxies or alternative delegates should not be permitted at Board or committee meetings on behalf of appointed representatives. It is not within the scope of this review to advise about the use of proxies at meetings. Given it has been raised in the context of this review, we suggest the Board explore this further during its next board performance review.
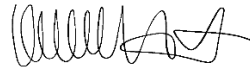
8. Final Thoughts

8.1 Throughout this review, we heard many positive things about the Accessible Housing Project and how it was delivered.

8.2 It is clear the Board Members and the ABCB Office staff are committed to performing their roles to a high standard and are competent in what they do. However, we also heard about some situations or experiences that were difficult or stressful for some stakeholders. We have developed these as lessons which can be applied to similar initiatives in the future.

8.3 Our recommendations have been shaped, in part, around the values or guiding principles identified by stakeholders as being important for the delivery of initiatives such as the Accessible Housing Project, these guiding principles being *transparency*, *robustness*, *integrity* and *fairness*.

8.4 We know the Board is developing, or has developed, a set of guiding principles to guide how the ABCB intends to achieve its overall purpose and vision. We were provided with a draft *Strategic Plan 2022-2027* as part of this review. There are some synergies between the values unearthed during this review, and the guiding principles developed by the Board as part of the ABCB's strategic plan especially around transparency, trust and respect.

8.5 Board Matters acknowledges and appreciates the candour, intention and sprit in which feedback was provided by both internal and external stakeholders during this review.

8.6 We thank the ABCB for the opportunity to be part of this very important work.

Report delivered on 23 May 2022.

Ms Jennifer Robertson
Managing Director
Board Matters Pty Ltd

Ms Kellie Hunt
Consultant
Board Matters Pty Ltd

Annexure A: Recommendations Table

	Recommendations for Governance Improvement
1.	The Board develop a strategy for ensuring, where possible, there is clarity around policy objectives and parameters before technical standards are drafted.
2.	The Board establish a non-technical, non-industry advisory committee, if possible, at the same governance standing as the BCC and PCC, to capture the non-industry voices and opinions of those who share the ABCB's commitment and vision of communities living in buildings that meet minimum standards of safety, health, amenity, accessibility and sustainability.
3.	The Board with the CEO are to identify and agree on: (a) any ongoing risks associated with the Accessible Housing Project and a plan for managing and mitigating those; and (b) how sensitivity testing project-specific risks and reporting should be included in the ABCB's risk management framework
4.	The Board agree on a framework for deciding when time limited steering committees and other governance supporting structures will be established to support the Board's work.
5.	The Board to decide whether complexity assessments and quality assurance processes are to be included in ABCB's project plans to enhance the Board's capability in overseeing and monitoring, and managing risks for, the delivery of projects.
	Recommendations for Operational Improvement
6.	A stakeholder engagement framework be developed to further enhance the delivery of projects like the Accessible Housing Project. Such a framework should be linked to the ABCB's strategic plan and risk management framework. It should also outline how ABCB will ensure stakeholders' submissions or ideas are acknowledged.
7.	In the interests of transparency, submissions received during a regulatory impact process should be made publicly available unless it is requested that a submission remain anonymous or confidential. Submissions will be made available in a way that enables others to see who has made a submission. Submissions should have the ability to be accessed, downloaded or read by others.
8.	Consider how any technology, platforms or systems used by the ABCB to support a regulatory impact process can be adjusted to accommodate the WCAG.

Annexure B: Draft Stakeholder Engagement Framework

Aim

This stakeholder engagement framework was developed to support the Australian Building Codes Board (**ABCB**) in achieving its vision of communities living in and experiencing buildings that meet minimum necessary standards for safety, health, amenity, accessibility and sustainability.

Effective stakeholder engagement provides the ABCB with a greater understanding of key issues related to the development of design, construction or performance standards.

Background

The ABCB is a joint initiative of the Commonwealth and State and Territory Governments in Australia, together with the building and plumbing industry to improve productivity through the consolidation of all on-site construction requirements into a single national code.

The National Construction Code (**NCC**) is Australia's primary set of technical design and construction provisions for all building and plumbing installations in Australia. As a performance-based code, it sets the minimum required level for the safety, health, amenity, accessibility and sustainability of buildings.

The ABCB, on behalf of the Australian Government and in conjunction with each State and Territory government and industry, produces and maintains the NCC. The ABCB reports to the Australian Government Minister and State and Territory Ministers responsible for building and plumbing regulatory matters.

Purpose

This stakeholder engagement framework sets out:

- who we will engage;
- how we will engage;
- principles to guide our engagement;
- challenges to consider;
- strategies for success; and
- ways for stakeholders to provide feedback.

Principles guiding how we work

The ABCB's work is guided by the following core set of principles:

1	**Trust and respect.** We appreciate and respect the contributions from our diverse range of stakeholders.
2	**Genuine engagement.** We are committed to authentically engaging and listening to others knowledge, expertise and experience.
3	**Collaborative and supportive.** We take a facilitative approach in the work we do and ensure we support stakeholders understanding and adherence to the NCC.

4	**Embrace diversity.** We seek a diverse range of views and representation from our stakeholders to ensure our advice is comprehensive and balanced and ministerial decision makers have all the information they need to make considered decisions.
5	**Shared outcomes.** We work toward the goal of shared outcomes recognising this is a process of balancing all points of view alongside the objectives of the ABCB's IGA. We are driven to achieve shared valued for our stakeholders.
6	**Open and transparent.** We work to build a shared understanding of the issues, and changes required to develop world class standards and we believe that more open we are the better the decisions.

Our stakeholders

The ABCB's key stakeholders are:

- Building Ministers
- building and plumbing practitioners
- industry and professional associations
- other government agencies
- special interest groups
- certification bodies
- product manufacturers and suppliers
- education and training providers
- the public

How we will engage and types of activities

The ABCB uses a spectrum of stakeholder engagement based on a model developed by the International Association for Public Participation (IPA2). Different types of engagement are appropriate for different stakeholders. It will be appropriate to use one or more of these methods, depending on the nature of the goal to be achieved.

Inform	Consult	Involve	Collaborate	Empower
We will provide balanced, objective, accurate and consistent information to assist stakeholders to understand issues, opportunities and solutions.	We will seek feedback from stakeholders, listen to and acknowledge concerns and inform them of the outcome of their feedback.	We will work directly with stakeholders to ensure their needs are directly and consistently understood and considered an provide feedback on the outcome of their contribution.	We will partner with the stakeholder, including the development of alternatives, making decisions and the identification of preferred or different solutions.	We will engage with stakeholders to build networks, create opportunities and empower groups to lead the development of initiatives.
What this looks like				
• guidance statements • social media campaigns • website	• focus groups • public and industry meetings • surveys	• workshops • working groups • reference groups • exposure draft reviews	• roundtables • contracts, legal agreements • reference groups • working groups	• joint planning • shared projects • capacity building • providing data • reviews

• email communications • annual reports • presentations • roadshows and forums • letters	• requests for comments and feedback • Options Papers • public notices • exposure drafts • briefings	• partnership agreements	• expert panels • online collaboration tools	

Stakeholder engagement principles

The ABCB has adopted four principles to guide stakeholder engagement activities and the way in which we build working relationships.

1	**Purposeful.** Every engagement will start with a clear understanding of what the ABCB wants to achieve. We aim to: • engage stakeholders early in the process, to enable a meaningful contribution and relationship • be aware of our stakeholders' objectives and their environment • plan our communication to enhance the understanding of stakeholders participating in the process
2	**Informative and engaged.** We provide our stakeholders with the information they need to participate by advising them of any guidelines, policies or requirements we must comply with when developing design, construction or performance standards, for example, Office of Best Practice Regulation guidelines. We will use channels such as our website, roadshows and forums, workshops, social media campaigns and guidance statements to ensure stakeholders are informed and engaged in the process.
3	**Transparent.** We are open and honest in our engagement by: • providing information so stakeholders can participate in a meaningful way to foster understanding and enhanced decision-making • reporting back on the outcomes of engagement processes and reasons for our decisions.
4	**Respectful.** We acknowledge, appreciate and respect the expertise, perspective and needs of stakeholders.

Strategic priorities

The ABCB's *Strategic Plan 2022 – 2027* identifies the ABCB's strategic priorities. These strategic priorities inform our stakeholder engagement plans.

Challenges and strategies for success

We understand there may be barriers to effective engagement and acknowledge we have an obligation to identify those and respond to them.

Feedback

The ABCB welcomes your feedback whether it is a compliment, suggestion or complaint. What you tell us can help us improve our services or correct a problem we may not have been aware of.

You can provide feedback to:

Australian Building Codes Board

GPO Box 2013
Canberra ACT 2601

Email: NCC@abcb.gov.au

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Board Matters