

An Agreement

between

the Governments of

Commonwealth of Australia, the States and the Territories
to continue in existence and provide for the operation of the

AUSTRALIAN BUILDING CODES BOARD

2020

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An *Agreement* made this 12th day of February, 2020 to continue in existence and provide for the operation of the Australian Building Codes Board.

SIGNATORIES FOR EACH OF THE PARTIES

The Hon Karen Andrews MP	Minister for Industry, Science and Technology Australian Government
The Hon Kevin Anderson MP	Minister for Better Regulation and Innovation State of New South Wales
The Hon Richard Wynne MP	Minister for Planning Minister for Housing Minister for Multicultural Affairs State of Victoria
The Hon Mick de Brenni MP	Minister for Housing and Public Works Minister for Digital Technology Minister for Sport State of Queensland
The Hon John Quigley MLA	Attorney-General Minister for Commerce State of Western Australia
The Hon Stephan Knoll MP	Minister for Planning Minister for Transport, Infrastructure and Local Government State of South Australia
The Hon Elise Archer MP	Minister for Building and Construction Attorney-General Minister for Justice Minister for Corrections Minister for the Arts Minister for Racing State of Tasmania
Gordon Ramsay MLA	Minister for Building Quality Improvement Attorney-General Minister for the Arts, Creative Industries and Cultural Events Minister for Business and Regulatory Services Minister for Seniors and Veterans Australian Capital Territory
The Hon Eva Lawler MLA	Minister for Infrastructure, Planning and Logistics Minister for Environment and Natural Resources Minister for Climate Change Northern Territory

AN *AGREEMENT* made this 12th day of February, 2020 between —

THE COMMONWEALTH OF AUSTRALIA (in this *Agreement* called ‘the *Australian Government*’);

THE STATES OF NEW SOUTH WALES, VICTORIA, QUEENSLAND, SOUTH AUSTRALIA, WESTERN AUSTRALIA AND TASMANIA (in this *Agreement* called individually a ‘*State*’ and collectively ‘the *States*’); and

THE NORTHERN TERRITORY AND THE AUSTRALIAN CAPITAL TERRITORY (in this *Agreement* called individually a ‘*Territory*’ and collectively ‘the *Territories*’).

RECITALS

1. Australian Building Codes Board Intergovernmental Agreement Objectives

- 1.1. Through this *Agreement* the *Australian Government*, the *States* and the *Territories* are facilitating improved building outcomes, increased confidence in the *Building and Construction* industry, public trust in the safety of the industry, and a more efficient, internationally competitive industry through reforms to regulation nationally.
- 1.2. This *Agreement* recognises that the *States* and *Territories* have primary responsibility for regulating *Building and Construction*.
- 1.3. To strengthen reforms to *Building and Construction* regulation nationally, the *Parties* commit to:
- a. continuing in existence the *Board* established by the agreement of the respective governments on 1 March 1994, as amended;
 - b. the *National Construction Code (NCC)* setting the minimum necessary requirements for *Building and Construction* throughout Australia;
 - c. the adoption of the *NCC* by reference on a national basis through relevant legislation;
 - d. the consistent application of the *NCC* across and within each jurisdiction, noting clause 19 of this *Agreement*;
 - e. encouraging increased harmonisation in the administration of the *NCC* across Australia;
 - f. encouraging increased compliance and enforcement cooperation and information sharing between the *States* and *Territories* and where appropriate the *Australian Government*;
 - g. identifying options, as far as practicable, to further limit local government interventions;
 - h. seeking commitments similar to those in this *Recital*, from their local governments or authorities where they have any administrative responsibility for regulating *Building and Construction*; and as far as practicable, implementing a 'gateway' model which discourages the setting of prescriptive standards for *Building and Construction* that override the performance requirements in the *NCC*; and

- i. continuing to provide a free electronic version of the *NCC* to industry and continuing to improve its usability.
 - j. developing and publicly reporting on a national framework for the consistent implementation of recommendations of the *Building Confidence Report*, as well as the design, construction and certification of complex buildings.
- 1.4. The *Parties* will contribute towards the costs of the *Board's* operations in accordance with the provisions of this *Agreement*.
- 1.5. The respective Ministers of these *Parties* responsible for *Building and Construction* policy, known as the Building Ministers' Forum, are collectively responsible for the policies, decisions and actions to ensure the *Building and Construction* requirements meet the expectations of the community.

OPERATIVE PROVISIONS

2. Interpretation

Definitions and Acronyms

2.1. In this *Agreement*, unless the context indicates otherwise:

ABCB Account	means the Australian Building Codes Board Account, a special account created by a determination of the Finance Minister under section 78 of the <i>Public Governance, Performance and Accountability Act 2016</i> (PGPA)
ABCB Chair	means the Chair of the <i>Board</i> , appointed in accordance with clause 8
ABCB Office	means the Office, which resides in the <i>Department</i> , is funded by the <i>Parties</i> contributions in accordance with this <i>Agreement</i>
Addition	means any provision, within any <i>Australian Government, State</i> or <i>Territory</i> legislative and/or regulatory instrument(s), that imposes requirements relating to an aspect of <i>Building and Construction</i> , which is either not covered by the <i>NCC</i> or does not materially vary or expand on a matter covered by the <i>NCC</i>
Administration	means: <ul style="list-style-type: none">a. for the <i>Australian Government</i>: the <i>Department</i> or agency that has administrative responsibility for <i>Commonwealth Building and Construction</i> regulation policy;b. for a <i>State</i> or <i>Territory</i>: the relevant department, statutory body, division or agency that has administrative responsibility for <i>State</i> or <i>Territory Building and Construction</i> regulation policy

Agreement	includes a reference to the clauses and attachments
ALGA Representative	means the representative of the Australian Local Government Association, who is appointed in accordance with clause 10
Annual Business Plan	means the document that details how the <i>Board</i> is going to achieve its goals and objectives for the Financial Year
Annual Meeting	Means a meeting of the <i>BMF</i> to be held by no later than June of each Financial Year required by clause 4.3
Annual Report	means the report required by clause 6.4.e
APS	means the Australian Public Service
BMF	means the Building Ministers' Forum
BMF Chair	means the Chair of the <i>BMF</i> , and the Minister of the <i>Australian Government</i> with responsibility for <i>Building and Construction</i> industry policy
BMF Minister	means the <i>State</i> or <i>Territory</i> Minister(s) with responsibility for <i>Building and Construction</i> industry policy
Board	means the Australian Building Codes Board
Board's Objectives	means the objectives of the <i>Board</i> as set out in in clause 6
Building and Construction	means the design, construction, renovation, alteration or extension of buildings, including plumbing and other service installations
Building Confidence Report	Means the report by Professor Peter Shergold AC and Ms Bronwyn Weir, <i>Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia (February 2018)</i>
Chief Executive Officer (CEO)	means the person occupying the position of CEO of the <i>ABCB Office</i> established by clause 16 or a person acting in that role
COAG	means the Council of Australian Governments

COAG Principles	means the <i>Best Practice Regulation – A Guide for Ministerial Councils and National Standard Setting Bodies (October 2007)</i> , as amended or replaced
Commencement Date	means the date on which this <i>Agreement</i> has been executed by all of the <i>Parties</i>
Committees	means committees established under clause 14 and includes the <i>Building Codes Committee</i> and the <i>Plumbing Code Committee</i>
Conflict-of-Interest Declaration	means a declaration by the <i>ABCB Chair</i> , <i>Industry Representative</i> or <i>ALGA Representative</i> in a form determined by the <i>BMF Chair</i> declaring that they will: <ol style="list-style-type: none">a. take reasonable steps to avoid any conflict of interest (real or apparent) in connection with their membership of the <i>Board</i>; andb. disclose details of any material personal interest in connection with their membership of the <i>Board</i>
Conflict-of-Interest Guidelines	means the <i>Australian Public Service Code of Conduct Guidelines</i> for managing Conflict of Interest.
Department	means the <i>Australian Government</i> department or agency responsible for administering this <i>Agreement</i>
Indemnity Deed	means the indemnity deeds entered into by the <i>Parties</i> on 7 November 2000, as amended or replaced from time to time
Industry Representatives	means the representatives of the <i>Building and Construction</i> industries who are appointed in accordance with clause 9
Intellectual Property Deed	means the intellectual property deeds entered into by the <i>Parties</i> on 11 October 1996, amended on 28 August 2008 and as amended further or replaced from time to time
Intervention	means the process by which local government or other authorities who have any administrative responsibility for regulating <i>Building and Construction</i> , set prescriptive standards that override the performance requirements in the <i>NCC</i>

Minister	means: a. for the <i>Australian Government</i> : a <i>Minister of State</i> or other member of the Federal Executive Council; b. for a <i>State</i> or <i>Territory</i> : a <i>Minister of the relevant State or Territory</i> ; or c. for the <i>Australian Government</i> , a <i>State</i> or a <i>Territory</i> : a person nominated by a <i>Minister</i> , as defined in subclause a or b, as his or her representative from time to time
Natural Phenomena	means geological, geographical or climatic factors
NCC	means the National Construction Code Series, comprising the Building Code of Australia, Volumes One and Two; and the Plumbing Code of Australia, Volume Three, and other on-site construction requirements, as directed by the <i>BMF</i>
Parties	means the <i>Australian Government</i> , <i>States</i> and <i>Territories</i> collectively
Prior Agreements	means the Agreements of the <i>Parties</i> signed on 1 March 1994, as amended on 27 July 2001 by the <i>Parties</i> , the Agreement of the <i>Parties</i> on 26 April 2006, the Agreement of the <i>Parties</i> on 30 April 2012, and the Agreement of the <i>Parties</i> on 31 January 2018
Product Certification Schemes	means certification schemes established for the <i>NCC</i> and includes <i>WaterMark</i> and <i>CodeMark</i>
Proposal for Change	means a process, as defined by the <i>Board</i> , to consider technical proposals to change the <i>NCC</i> and which is consistent with the <i>COAG Principles</i>
PGPA Act	means the <i>Public Governance Performance and Accountability Act 2013</i>
Regulatory Impact Assessment	means a Regulatory Impact Assessment process as defined by the <i>COAG Principles</i>
Regulatory Impact Statement	means a Regulatory Impact Statement as defined by the <i>COAG Principles</i>
Risk Management Plan	means the document prepared to identify risks, estimated impact and define response to issues

Secretary	means the Secretary of the <i>Department</i>
SOG	means the Senior Officers' Group established by the BMF to perform functions other than those of the ABCB
Sectional Interest	having a current material concern, involvement and or investment in one or more sections of the <i>Building and Construction</i> industry
Services	means systems which include, but are not limited to, the supply or removal of energy, information, water, waste and ventilation
Variation	means any provision, within any <i>Australian Government, State or Territory</i> legislative and/or regulatory instrument(s), that materially varies or expands on a matter covered by the <i>NCC</i> .

Interpretation

- 2.2. In this *Agreement*, except where the contrary intention appears:
- a. words in the singular include the plural and words in the plural include the singular;
 - b. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - c. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - d. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - e. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.
- 2.3. The *Parties* do not intend that this *Agreement* should be legally binding.

3. Commencement

- 3.1. This *Agreement* shall commence on the *Commencement Date*.
- 3.2. On the *Commencement Date* this *Agreement* replaces all Prior Agreements.
- 3.3. The proceedings, decisions or actions taken by the *Board* under the *Prior Agreements* are adopted and confirmed as proceedings, decisions or actions of the *Board* continued in existence by this *Agreement*.
- 3.4. Nothing in this *Agreement* affects the continued operation of an *Intellectual Property Deed* or an *Indemnity Deed*.
- 3.5. This *Agreement* may be varied with the written consent of all *Parties*.

4. Building Ministers' Forum

- 4.1. The *BMF* comprises the group of *Australian Government, State and Territory Ministers* with responsibility for *Building and Construction*.
- 4.2. In implementing this agreement the *BMF* will:
- a. take account of societal needs and expectations;
 - b. set the strategic policy direction for the *Board*, taking account of any *COAG* agreements;
 - c. set the strategic policy direction for the *SOG*, taking account of any *COAG* agreements;
 - d. at its discretion, direct the *Board* and the *SOG* to work collaboratively on specific national strategic *Building and Construction* issues;
 - e. ensure as far as practicable that the *NCC* requirements are consistently applied across the *States* and the *Territories*, taking into consideration clause 19; and
 - f. encourage reduced reliance on regulation by providing a forum for the exploration of alternative mechanisms for delivering outcomes.
- 4.3. The *BMF* will hold an Annual Meeting to:
- a. agree or amend, where relevant, the Strategic Plan of the *Board*;
 - b. agree or amend, where relevant, the *Risk Management Plan* of the *Board*;
 - c. agree or amend the *Annual Business Plan*, including the work program, of the *Board*, for the next financial year;
 - d. review outcomes and progress against the *Board's Objectives* and the *Annual Business Plan(s)* of the *Board*;
 - e. review the annual reports of *Variations* to the *NCC*; and
 - f. make decisions on recommendations provided by the *Board*.
- 4.4. The *BMF* may hold additional meetings in a financial year; the time and date of the additional meeting(s) shall be determined by the *BMF Chair* in consultation with *State and Territory BMF Ministers*.
- 4.5. The *BMF* may hold its meetings at two or more venues using any technology that gives the *BMF Ministers*, as a whole, a reasonable opportunity to participate.
- 4.6. The *BMF* will operate by consensus of those present at the meeting.
- 4.7. Where the *BMF* does not agree by consensus a majority decision will be sought, through a vote. If a tied vote is achieved, the *BMF Chair* shall cast the deciding vote.
- 4.8. Each jurisdiction with more than one *Minister* represented on the *BMF* must have an agreed jurisdictional position represented as a single vote.

- 4.9. In setting the priorities or projects of the *Board* under clause 4.2, the *Parties* acknowledge the limits on the exercise of power by the *Board* set out in clauses 5.1 through 6.7.

Decisions without meetings

- 4.10. The *BMF Chair* may write to the *BMF Ministers* seeking their agreement on a *BMF Minister, COAG, SOG or ABCB Chair* proposal for a decision outside of a scheduled meeting.
- 4.11. In seeking the *BMF's* agreement outside of a scheduled meeting, the *BMF Minister, COAG, SOG or ABCB Chair* must provide detailed advice, with supporting documentation, to allow the *BMF* to consider the proposal.
- 4.12. *BMF Ministers* will have no longer than two months from the date of the *BMF Chair's* written notification, unless otherwise specified, within which they are required to consider the proposal and respond to the proposal in writing. If a response is not received within the specified timeframe, it will be taken as abstaining.
- 4.13. Decisions will be made by consensus.
- 4.14. The *BMF Chair* will write to all *BMF Ministers* within one month to advise them of the outcome of the consideration of that proposal.
- 4.15. Where there is no consensus, the matter may be referred to the next meeting of the *BMF*.

BMF changing priorities and projects of the Board

- 4.16. Where a *BMF Minister* or *ABCB Chair* proposes a change to the *Board's* strategies, priorities and work plan after the *Annual Business Plan* has been agreed, the proponent must provide detailed advice, with supporting documentation, within a reasonable timeframe which allows the *BMF* to consider the proposal.
- 4.17. The *BMF Chair* must seek advice from the *Board* on the resourcing implications together with the impact of the proposal on existing priorities, projects or work plan.
- 4.18. A proposal must be supported by a consensus decision of the *BMF* before the changes contained in the proposal can be made or implemented.

ABCB Review

- 4.19. The *BMF* may agree to a review of the operations of the *Board* and the *ABCB Office*, including the administration of this *Agreement*.

5. Australian Building Codes Board

- 5.1. The *Board* established by the *Prior Agreements* is continued in existence by this clause.
- 5.2. The *Board* shall consist of between ten and eighteen members including:
- a. an independent *ABCB Chair*;

- b. the head of each *Australian Government, State and Territory Administration* or a person, with the authority and seniority to make decisions on behalf of their administration, nominated by the head to be a member;
 - c. a representative of the *ALGA*; and
 - d. up to seven *Industry Representatives*, at least one of whom shall have plumbing expertise.
- 5.3. The *ABCB Chair*, the *Industry Representatives*, and the *ALGA Representative* shall be appointed in accordance with clauses 8, 9, and 10. All other appointments to the *Board* are ex officio.

6. Board's Objectives

- 6.1. The Board's Objectives are to:
- a. through the *NCC*, develop and maintain codes and standards;
 - A. that accord with strategic priorities established by the BMF;
 - B. that address issues relating to the design, construction, performance and liveability of *Building and Construction*; and
 - C. that are the minimum necessary to efficiently achieve:
 - i. safety and health;
 - ii. amenity and accessibility, and
 - iii. sustainability.
 - b. ensure that, in determining any change to the code and the level of the requirements:
 - A. there is a rigorously tested rationale;
 - B. the proposals are effective and proportional to the issues being addressed such that the code will generate benefits to society greater than the costs (that is, net benefits);
 - C. there is no regulatory or non-regulatory alternative that would generate higher net benefits; and
 - D. the competitive effects of the code have been considered; and the code is no more restrictive than necessary in the public interest.
 - c. ensure that *NCC* requirements are:
 - A. performance-based;
 - B. verifiable;
 - C. based on appropriate international standards; and
 - D. expressed in plain English.
 - d. provide a forum to explore alternative mechanisms for delivering *Building and Construction* outcomes;

- e. assist in the education, raising awareness of, and providing information to industry and relevant stakeholders on, the development and implementation of the *NCC*;
 - f. manage or oversee the management of product certification schemes relating to *Building and Construction* that are consistent with the strategic priorities set by the *BMF* and assist the *Board* with achieving its *Objectives* listed above.
 - g. develop and publicly report on a national framework for the consistent implementation of recommendations of the *Building Confidence Report*, as well as the design, construction and certification of complex buildings.
- 6.2. The proceedings and operations of the *Board* must be directed to the achievement of the *Board's Objectives*.

Functions of the Board

- 6.3. To achieve the *Board's Objectives* the *Board* will:
- a. give effect to the Strategic Plan, the *Risk Management Plan* and the *Annual Business Plan* agreed to by the *BMF*;
 - b. develop, advise and make recommendations to the *BMF* on matters consistent with the *Board's Objectives*;
 - c. make decisions on matters relevant to the *NCC*:
 - A. in accordance with directions given through the *BMF*; and
 - B. that are consistent with the *Board's Objectives*;
 - d. develop, publish and maintain the *NCC*;
 - e. implement the *BMF's* strategic direction and approved work programs, monitor the annual budgets, and priorities for the *ABCB Office*;
 - f. implement and monitor the three yearly amendment timetable for the development and publication of the *NCC*;
 - g. amend the *NCC* during the three yearly amendment timetable in circumstances where:
 - A. failure to publish and make the relevant amendment would expose the community to significant safety or health risks;
 - B. the text of the *NCC* contains significant factual or technical errors; or
 - C. by direction of the *BMF*
 - h. support consultation with governments, industry, consumer groups and other organisations in the implementation of the work program;
 - i. provide strategic guidance to the *CEO* in the fulfilment of his or her duties; and
 - j. develop model provisions and non-regulatory solutions in response to the recommendations of the *Building Confidence Report*, for jurisdictions to consider.

Reporting Requirements for the Board

- 6.4. At each year's Annual Meeting of the *BMF* the *Board* will provide:
- a. a report on the progress of projects and status of agreed priorities against the agreed *Annual Business Plan* for the financial year;
 - b. a report on the overall performance of the *Board* against the agreed *Risk Management Plan*, including reporting on the risk mitigation strategies for *Product Certification Schemes* administered by the *Board*;
 - c. a report on the overall performance of the *Board* in achieving outcomes in accordance with the *Board's Objective*;
 - d. an *Annual Business Plan*, including estimated budget, for the following financial year (including a forward work program for the following two financial years);
 - e. an *Annual Report* regarding the *Variations* from the *NCC* reported by the *States* and *Territories* under clause 19, which will:
 - A. highlight any *Variations* from the *NCC* and the non-adoption of *NCC* amendments, by the *States* and *Territories*;
 - B. identify areas of duplication and inconsistency in *State* and *Territory* legislation; and
 - C. identify opportunities for greater consistency in *Building and Construction* regulation between the *States* and *Territories*.
- 6.5. As soon as practicable, but no later than 31 August of the following financial year, the *ABCB Chair* will also provide the *BMF Chair*, for distribution to *BMF Ministers* (out of session), the financial statements, including variances between budgeted and actual, against the *Annual Business Plan* for the previous financial year.
- 6.6. The *ABCB Chair*, on behalf of the *Board*, will report to the *BMF Chair* any amendment the *Board* makes to the *NCC* outside of the three year amendment cycle, set out in clause 6.3.g.

Limits on the exercise of powers

- 6.7. The *Board* will comply with the *COAG Principles* in addressing regulatory reform. In particular, the *ABCB Office* under the direction of the *Board* will:
- a. conduct Regulatory Impact Assessments, which will:
 - A. assess whether government action is necessary or desirable; and
 - B. quantify the impact of government action,
 - b. where required, prepare *Regulatory Impact Statements*, which will follow the *COAG Principles*; and
 - c. consult with the Office of Best Practice Regulation or its equivalent body.

7. Assistance to be provided to the Board by the Administrations

- 7.1. Each of the *Administrations* is responsible for providing support appropriate to facilitate the work of the *Board*, including:
- a. liaising and co-operating with the *CEO* of the *ABCB Office*; and
 - b. providing timely advice on:
 - A. the implications of proposals of the *Board* that affect or are affected by legislation of the *State* or *Territory*; and
 - B. other matters as requested by the *Board*.
- 7.2. Each of the *Administrations* will meet a mutually agreed timetable for development and delivery of amendments to the *NCC*.

8. Appointment of the ABCB Chair

- 8.1. The *ABCB Chair* must:
- a. be independent from *Sectional Interests*; and
 - b. have a capacity to advance the work of the *Board*.
- 8.2. If the position of the *ABCB Chair* is vacant or is likely to become vacant, the *BMF Chair* is responsible for nominating a person as his or her preferred candidate for the position.
- 8.3. The *BMF Chair* must advise all of the *BMF Ministers* of his or her preferred candidate.
- 8.4. In the event a *BMF Minister* disagrees with the *BMF Chair's* preferred candidate, the *BMF Minister* may nominate an alternative person and advise the *BMF Chair* and the other *BMF Ministers* of his or her preferred candidate.
- 8.5. Where a majority of *BMF Ministers* agree on a candidate to be appointed as the *ABCB Chair*, the *BMF* will appoint that person as *ABCB Chair* for a period of up to five years.
- 8.6. The *ABCB Chair* may be reappointed for a period of up to 12 months with the agreement of the *BMF Ministers*.
- 8.7. Each jurisdiction represented on the *BMF* can only exercise a single vote on the appointment of the *ABCB Chair*.
- 8.8. In the event a majority of *BMF Ministers* are unable to agree on a candidate to be appointed as *ABCB Chair*, the process described in clauses 8.1 to 8.4 shall be repeated until a candidate is agreed upon.
- 8.9. The agreed candidate, prior to being appointed as the *ABCB Chair*, will be required to provide the *BMF*, through the *BMF Chair*, with the following declarations:
- a. Conflict-of-Interest; and
 - b. to perform his or her duties in accordance with the Functions of the *Board*.

- 8.10. The *BMF Chair* will decide the remuneration for the *ABCB Chair*, which will be paid from the *ABCB Account*. In setting the remuneration, the *BMF Chair* will have regard to relevant rates published by the Remuneration Tribunal.
- 8.11. A person ceases to be the *ABCB Chair* and a member of the *Board* if he or she:
- a. resigns the office by instrument in writing to the *BMF Chair*, or
 - b. is otherwise removed from office by the *BMF Chair*, as set out in clause 8.12.
- 8.12. After consultation with the *State* and the *Territory BMF Ministers*, the *BMF Chair* may remove the *ABCB Chair* from the *Board* if he or she:
- a. has breached clause 12 of this Agreement; or
 - b. has missed two consecutive official meetings in a year; or
 - c. has failed to perform his or her duties in accordance with the Functions of the *Board*; or
 - d. is unable to perform the required duties due to illness or incapacity; and/or
 - e. does not satisfy the *BMF Chair* that he or she should not be removed from the *Board* after being provided 30 days' notice to advise in writing why he or she should not be removed from the *Board*.

9. Appointment of Industry Representatives

- 9.1. If the position of one or more of the *Industry Representatives* is vacant or is likely to become vacant, the *BMF Chair* will write to *BMF Ministers* and one or more recognised industry representative bodies, agreed by the *BMF*, requesting nominations for an *Industry Representative* and a justification of each nominee's credentials against the considerations set out in clause 9.5.
- 9.2. The *BMF Chair* shall provide the *BMF Ministers* with the list of persons nominated by the jurisdictions and recognised industry representative bodies and request that the *BMF Ministers*, subject to clause 9.3, reach a majority decision on the appointment of new *Industry Representatives* from the list of recommended persons.
- 9.3. Each *State* and *Territory* represented on the *BMF* can only exercise a single vote on the appointment of an *Industry Representative* to the *Board*.
- 9.4. The *BMF Chair* shall not vote on the appointment of new *Industry Representatives* unless there is a tied vote or agreement cannot be reached, in which case the *BMF Chair* will have a deciding vote, and in doing so must provide the reasons for his/her decision.
- 9.5. In appointing persons as *Industry Representatives*, *BMF Ministers* should take the following considerations into account:
- a. only persons who have the appropriate expertise to complement the capacity and skill set of the *Board* should be considered;
 - b. the *Industry Representatives* should, collectively, bring a wide range of sectoral expertise to assist the *Board* in its deliberations;

- c. each *Industry Representative* should have the capacity to actively contribute to the *Board's* decision-making processes by participating in official *Board* meetings, sub-committees, and representing the *Board* in other relevant forums; and
 - d. each *Industry Representative* should be able to comply with the relevant requirements of this *Agreement*.
- 9.6. Where a majority of *BMF Ministers* agree on a candidate in accordance with clause 9.2 and 9.3, the *BMF* will appoint that person as an *Industry Representative* for a period of up to five years.
- 9.7. The agreed candidate, prior to being appointed to the *Board*, will be required to provide the *BMF*, through the *BMF Chair*, with the following declarations:
 - a. Conflict-of-Interest; and
 - b. to perform his or her duties in accordance with the Functions of the *Board*.
- 9.8. The *BMF Chair* will decide the remuneration for the *Industry Representative*, which will be paid from the *ABCB Account*. In setting the remuneration, the *BMF Chair* will have regard to relevant rates published by the Remuneration Tribunal.
- 9.9. An *Industry Representative* may only serve a maximum of two consecutive terms on the *Board*.
- 9.10. An *Industry Representative* ceases to be a member of the *Board* if that person:
 - a. resigns the office by instrument in writing to the *BMF Chair*; or
 - b. is removed from office by the *BMF Chair*, after consultation with the *State* and *Territory BMF Ministers* either following a recommendation by the *ABCB Chair* under clause 9.11 or otherwise.
- 9.11. The *ABCB Chair* may recommend that the *BMF Chair* remove an *Industry Representative* from the *Board* if that *Industry Representative*:
 - a. has breached clause 12 of this *Agreement*; or
 - b. has missed two consecutive official meetings in a year; or
 - c. has failed to perform his or her duties in accordance with the *Functions* of the *Board*; or
 - d. is unable to perform the required duties due to illness or incapacity; and/or
 - e. does not satisfy the *ABCB Chair* that he or she should not be removed from the *Board* after being provided 30 days' notice to advise in writing why he or she should not be removed from the *Board*.

10. Appointment of ALGA Representative

- 10.1. If the position of the *ALGA Representatives* is vacant or is likely to become vacant, the *BMF Chair* will write to the *ALGA* requesting nominations for the vacancy and a justification of each nominee's credentials against the considerations set out in clause 10.5.

- 10.2. The *BMF Chair* shall provide the *BMF Ministers* with the list of persons nominated by the *ALGA* and request that the *BMF Ministers*, subject to clause 10.3, reach a majority decision on the appointment of a new *ALGA Representative* from the list of recommended persons.
- 10.3. Each *State* and *Territory* represented on the *BMF* can only exercise a single vote on the appointment of an *ALGA Representative* to the *Board*.
- 10.4. The *BMF Chair* shall not vote on the appointment of new *ALGA Representative* unless there is a tied vote, in which case the *BMF Chair* will have a deciding vote, and in doing so must provide the reasons for his/her decision.
- 10.5. In appointing a person as *ALGA Representative*, *BMF Ministers* should take the following considerations into account:
- a. only persons who have the appropriate local government expertise to complement the capacity and skill set of the *Board* should be considered;
 - b. the representative should have the capacity to actively contribute to the *Board's* decision-making processes by participating in official *Board* meetings, sub-committees, and representing the *Board* in other relevant forums; and
 - c. the representative should be able to comply with the relevant requirements of this *Agreement*.
- 10.6. Where a majority of *BMF Ministers* agree on a candidate in accordance with clause 10.2 and 10.3, the *BMF* will appoint that person as the *ALGA Representative* for a period of up to five years.
- 10.7. The agreed candidate, prior to being appointed to the *Board*, will be required to provide the *BMF*, through the *BMF Chair* with the following declarations:
- a. Conflict-of-Interest; and
 - b. to perform his or her duties in accordance with the Functions of the *Board*.
- 10.8. The *ALGA Representative* may only serve a maximum of two consecutive terms on the *Board*.
- 10.9. The *ALGA Representative* ceases to be a representative of the *Board* if that person:
- a. resigns the office by instrument in writing to the *BMF Chair*; or
 - b. is removed from office by the *BMF Chair*, after consultation with the *BMF Ministers* either following a recommendation by the *ABCB Chair* under clause 10.10 or otherwise.
- 10.10. The *ABCB Chair* may recommend that the *BMF Chair* remove the *ALGA Representative* from the *Board* if he or she:
- a. has breached clause 12 of this *Agreement*; or
 - b. has missed two consecutive official meetings in a year; or
 - c. has failed to perform his or her duties in accordance with the *Functions* of the *Board*; or

- d. is unable to perform the required duties due to illness or incapacity; and/or
- e. does not satisfy the *ABCB Chair* that he or she should not be removed from the *Board* after being provided 30 days' notice to advise in writing why he or she should not be removed from the *Board*.

11. Meetings of the Board

Timing and number of meetings

- 11.1. The *Board* shall meet at least twice each financial year, and hold additional meeting(s) for the financial year as required or when the *BMF* calls the *Board* to hold an urgent meeting.
- 11.2. The times and dates of meetings shall be determined by the *Board*.
- 11.3. A *Board* meeting may be held at two or more venues using any technology that gives the members, as a whole, a reasonable opportunity to participate.

Quorum

- 11.4. The quorum for a meeting is ten *Board* members, so long as more than half the members present are ex officio. The quorum must be present at all times during the meeting.
- 11.5. A *Board* meeting cannot proceed if an *ABCB Chair* has not been appointed as per clause 8.
- 11.6. The *ABCB Chair* is expected to chair all *Board* meetings. If he/she is not available, the *Board* members present at the meeting will elect a member to chair the meeting.

Conduct of meetings and voting

- 11.7. Each *Board* member or his or her delegate (refer clause 11.25) is entitled to exercise one deliberative vote on any matter for decision, unless:
 - a. the member is also acting as a proxy for another *Board* member (clause 11.18).
- 11.8. Participation in the deliberation of an agenda item is limited to *Board* members.
- 11.9. Decisions of the *Board* will be by absolute majority of all *Board* members entitled to attend and vote, but must include an absolute majority of Government representative *Board* members entitled to attend and vote.
- 11.10. Ex officio *Board* members may, through the *ABCB Chair* or *CEO*, invite observers to *Board* meetings from time to time.
- 11.11. The deliberations and decisions of the *Board* will be recorded in writing and circulated to the *BMF*.
- 11.12. All dissenting positions by *Board* members will be recorded.
- 11.13. Before the *Board* can decide on a proposal to incorporate a new initiative into the agreed work plan for a financial year, the *ABCB Chair* must refer the proposal to the *BMF* for agreement and/or amendment.

- 11.14. Where a significant non-technical proposal is made that, if agreed, would determine a policy position of the *Board* and does not have the unanimous support of the *Board*, the proposal will be referred to the *BMF* for consideration and direction if not previously agreed by the *BMF*.
- 11.15. If the *ABCB Chair* is of the view that a decision on the proposal is urgent, he or she may ask the *BMF Chair* to write to the *BMF Ministers* and seek a decision on the proposal outside of a scheduled meeting in accordance with clause 4.10.
- 11.16. *Board* members must not participate in any deliberations or vote in any matters in which they may have or may be perceived to have a *Conflict-of-Interest* (clause 12).
- 11.17. The *CEO* of the *ABCB Office* will:
- a. attend all *Board* meetings;
 - b. report on the actions of the *ABCB Office* and its progress against the agreed work plan and budgets;
 - c. provide information and advice to the *Board* as requested; and
 - d. via the *ABCB Office*, provide the secretariat services for the *Board* meeting.

Proxy voting for the ABCB Chair, Industry Representatives, and ALGA Representative

- 11.18. The *ABCB Chair*, *Industry Representatives* and *ALGA Representative* may nominate a *Board* member who is an *Industry Representative* or *ALGA Representative* as their proxy at a meeting of the *Board*.
- 11.19. In order for a nomination of a proxy to be effective, a valid nomination must be received by the *ABCB Office* at least two working days before the *Board* meeting.
- 11.20. A nomination of a proxy is valid if it is signed by the relevant *Board* member and contains the following information:
- a. the member's name and address;
 - b. the proxy's name; and
 - c. the meeting at which the nomination may be used.
- 11.21. A nomination does not have to be witnessed.
- 11.22. A nomination may specify the way the proxy is to vote on a particular resolution.
- 11.23. A proxy nominated in accordance with this clause 11 has the same rights as the *Board* member they are representing at the meeting, including:
- a. to speak at the meeting; and
 - b. to vote.
- 11.24. The *ABCB Office* must send the *ABCB Chair*, *Industry Representative* or *ALGA Representative* a proxy appointment form for a meeting where the member has requested the form.

Delegates

- 11.25. Each *ex officio Board* member may appoint a delegate, for one meeting per financial year.
- 11.26. Any delegate appointed under 11.25 must be delegated the power to make decisions on behalf of their *Administration*.

Decisions without meetings

- 11.27. Decisions of the *Board* may be made by communication between its members without calling a formal meeting, provided that:
- a. all members are consulted on each matter for decision;
 - b. decisions are made in accordance with clause 11.9; and
 - c. all members are informed of the decision made.

Changing priorities and projects of the Board

- 11.28. The *Board* must act in accordance with any direction from the *BMF*, and in accordance with the processes set out in clauses 3.1 to 11.29, except in the following circumstances:
- a. where, for reasons of extreme urgency brought about by unforeseen events (such as natural disasters), the *Board* may approach the *BMF* out of session for approval to commission research.
- 11.29. Any changes to the *NCC* that are requested by a non-*BMF* proponent, shall be made through the *Board's Proposal for Change* processes.

12. Conduct of the Board

Code of Conduct

- 12.1. The *ABCB Chair*, the *Industry Representatives* and the *ALGA Representative* will conduct themselves in accordance with the *APS Code of Conduct* and *APS Values* (see sections 10 and 13 of the *Public Service Act 1999* (Cth) respectively).
- 12.2. *Ex officio Board* members will conduct themselves in accordance with the Code of Conduct requirements for their respective jurisdictions.

Conflict-of-Interest

- 12.3. The *ABCB Chair*, *Industry Representatives* and *ALGA Representative* are responsible for keeping their respective *Conflict-of-Interest Declarations* to the *BMF Chair* up-to-date.
- 12.4. The *ABCB Chair*, *Industry Representatives* and *ALGA Representative* must make a further *Conflict-of-Interest Declaration* should an actual or perceived conflict-of-interest of an ongoing nature arise during the term of their appointment.
- 12.5. The *Board* must apply the *APS Code of Conduct Guidelines* for managing *Conflicts-of-Interest* to deal with conflicts as they arise in proceedings and operations of the *Board*.

13. Representation on other Bodies

- 13.1. The *Board* may be represented on another body or bodies in accordance with resolutions of the *Board*.

14. Committees

- 14.1. There shall be a *Building Codes Committee* and a *Plumbing Codes Committee* to provide advice to the *Board*.
- 14.2. The *Board* may establish other *Committees*, from time to time, as required.
- 14.3. *The Board* will determine the *Committees* Chairs, composition and operation.
- 14.4. The *Committees* can make recommendations to the *Board*.
- 14.5. *Board* members may attend any meeting of a *Committee* established by the *Board*.

15. Funding

Contributions

- 15.1. Each *Party's* funding contribution to support the operation of the *Board* is set out in **ATTACHMENT A** to this *Agreement*, unless otherwise varied by the *BMF*.
- 15.2. The *Board's* funding shall be provided by:
- a. annual appropriation by the *Australian Government* to the *ABCB Account*, and
 - b. crediting of payments made by the *States* and *Territories* to the *Australian Government* for the purposes of the *ABCB Account* to the *ABCB Account*.
- 15.3. Annual contributions of funds are payable by the *Parties* once an appropriation is available, or as soon as practicable after the commencement of each financial year, whichever is the later.
- 15.4. The *Australian Government* may receive payments from other sources for the purposes of the *Board* or arising from the activities of the *Board*, and these amounts are to be credited to the *ABCB Account*.

ABCB Account

- 15.5. The annual contributions of each *Party* determined under clause 15.1 and any other payments paid to the *Australian Government* for the purposes of the *Board* will be credited to the *ABCB Account*.
- 15.6. Amounts standing to the credit of the *ABCB Account* may only be debited for the purposes of achieving the *Board's Objectives*.
- 15.7. Amounts that may be paid to the *Australian Government* and credited to the *ABCB Account* are any amounts:
- a. that are held in trust for, or otherwise for the benefit of, a person other than the *Australian Government*;
 - b. appropriated by law for the purpose of crediting the *ABCB Account*;

- c. received in consideration for any service, benefit, activity, transaction or other matter which is congruent with the expenditure purpose of the *ABCB Account*, and
 - d. paid to the *Australian Government* by any person for the expenditure purposes of the relevant account.
- 15.8. The *Australian Government* is authorised to enter into contracts, agreements or arrangements on behalf of the *Parties*, under the overall policy direction of the *BMF* and implemented by the *ABCB*, and in accordance with this *Agreement*.

16. Chief Executive Officer

Appointment

- 16.1. A *CEO* shall be appointed by the *Secretary* of the *Department*.
- 16.2. The *Secretary* will consult with the *ABCB Chair* on the appointment of the *CEO*.
- 16.3. The *CEO* will be an *APS* employee and must comply with all Commonwealth laws in the performance of his or her role under this *Agreement*.

Functions and powers

- 16.4. The *CEO* will manage the day to day activities of the *ABCB Office*, including coordinating the activities of the *Board*, and carrying out and managing the implementation of *Board* directives and decisions in accordance with this *Agreement*.
- 16.5. The *CEO* shall, with the strategic guidance of the *Board* and consistent with the *PGPA Act* and associated instruments and policies, co-ordinate, manage and facilitate the implementation of the *Board's* decisions regarding the *Board's Objectives*. In particular, the *CEO* will have responsibility for:
- a. Financial management of the *ABCB Office*;
 - b. Technical support services;
 - c. Administrative and operational support, including technical and secretariat support for the *Board* and *Committees*;
 - d. Management of research projects;
 - e. Consultation and liaison;
 - f. Information dissemination;
 - g. Technical advice on policy development; and
 - h. Other matters as determined by the *Board*.
- 16.6. The *CEO* must at least once a year, and prior to the June meeting of the *BMF*, report to the *Board* on the achievement of the *Board's Objectives* of the *Agreement* for the financial year.
- 16.7. The *CEO*, as soon as practicable but no later than 31 July of the following financial year, will provide the *ABCB Chair* (out of session), the financial

statements, including variances between budgeted and actual, against the *Annual Business Plan* for the previous financial year.

17. Administration

Delegations and authorisations

- 17.1. The *CEO* shall discharge duties and functions in the administration of the *ABCB Office* and the *Board's Annual Business Plan* in an efficient, effective and ethical manner.
- 17.2. The *Secretary* will make arrangements to enable the *CEO* to discharge his or her duties and functions under this *Agreement*.
- 17.3. The *Secretary* will issue the *CEO* a delegation to approve commitments, enter into, vary or administer arrangements under the *PGPA Act*.

Engagement of Contractors

- 17.4. Contractors may be engaged by the *CEO* on behalf of the *Board* to carry out tasks associated with the functions of the *Board*.
- 17.5. The terms and conditions on which contractors are engaged under clause 17.4 must:
- a. be an efficient, effective, ethical and economical use of relevant money and not inconsistent with the *PGPA Act*;
 - b. be in accordance with the Department's Accountable Authority Instructions;
 - c. be in accordance with the Commonwealth Procurement Guidelines; and
 - d. if the engagement is not by the *Secretary*, be in accordance with any delegation by the *Secretary* of his or her powers under the *PGPA Act*.

Travel and Meeting Costs

- 17.6. The *CEO* may agree to approve travel and other costs incurred by the *ABCB Chair*, *Industry Representatives*, and the *ALGA Representative*, *Committee* members or contractors where those costs are related to the pursuit of the business of the *Board* on a case by case basis.
- 17.7. Approved travel and other costs will be paid in accordance with the *Department's* normal travel arrangements and policies.
- 17.8. Subject to any restrictions in any delegation from the *Secretary* or the *Department's* Accountable Authority Instructions, the *CEO* may, where he or she is requested by the *Board* to engage a particular person to conduct research or provide advice to the *Board*, agree to pay the travel and other costs associated with the services of that person as part of the terms of their engagement.

18. Transitional arrangements

- 18.1. The members of the *Board* appointed under the *Prior Agreements* will continue as members of the *Board* under this *Agreement* as if they were appointed under this *Agreement*.

19. Consolidation of, Variations from, and Additions to the NCC

- 19.1. Each of the *Administrations* will take reasonable steps to consolidate all of their mandatory provisions affecting the design, construction and performance of *Building and Construction* into the *NCC*.
- 19.2. The *Parties* agree that, as far as practicable:
- a. requirements relating to the design, construction and performance of *Building and Construction* in areas affected by, or likely to be affected by, *Natural Phenomena* (“Natural Phenomena Requirements”) should be included in the *NCC*; and
 - b. it should be specified in the *NCC* that *Natural Phenomena* requirements only apply in areas affected by, or those likely to be affected by, *Natural Phenomena*; and
 - c. all reasonable steps should be taken to include *Additions* in the appendix of the *NCC* so that any requirements that apply in addition to the *NCC* are clearly identified.
- 19.3. Each Party commits, as far as practicable, to:
- a. reducing or validating *Variations* to the *NCC* in its legislation;
 - b. restrict making a *Variation* from the *NCC*, unless:
 - A. there is a net benefit as evidenced by a *Regulatory Impact Assessment* conducted in accordance with assessment processes in each jurisdiction; and
 - B. the *Variation* is approved by the relevant *Minister*.
 - c. identifying *Variations* from the *NCC* and the non-adoption of *NCC* amendments in their respective jurisdictions and reporting this information to the *Board* on an annual basis.
 - d. reducing, restricting or validating local government or authorities where they have any administrative responsibility for regulating *Building and Construction* interventions to the *NCC*.

20. Intellectual Property

- 20.1. This *Agreement* does not affect the ownership of Intellectual Property in any materials created by, under, or for the purposes of the *Board*.
- 20.2. Intellectual Property shall continue to be dealt with in accordance with an *Intellectual Property Deed* between the *Parties*.

21. Indemnity Issues

- 21.1. The *Parties* agree that ex officio members of the *Board* are indemnified by their own *Administration*.
- 21.2. Any indemnities or apportionment of costs relating to the *ABCB Chair, Industry Representatives*, and the *ALGA Representative*, will be dealt with in separate deeds between the *Parties*.
- 21.3. In principle, the *Parties* agree:
- a. to indemnify the *Australian Government* (in proportion to the *Parties*' respective funding contributions made under this Agreement) for any liability incurred as a result of activities performed by the *CEO* and the *ABCB Office*, in carrying out and managing the implementation of the *Board* directives and decisions in accordance with this *Agreement*;
 - b. that, notwithstanding clause 21.3.a, any indemnities the *Parties* provide in favour of the *CEO* and the *ABCB Office* will be reduced proportionately to the extent that any fraudulent, malicious, illegal or negligent act or omission on the part of the *CEO* and the *ABCB Office* contributed to the liability, and
 - c. that the *Australian Government, States and Territories*, collectively, through the *Board* have the capacity to identify and manage risk through the direction that is given by the *Board* to the *CEO* and *ABCB Office* about the manner in which they should implement the *Board's* decisions, noting the need to continue managing risks at each level, refer clauses 6.4.b and 16.4-16.6.

22. Variation

- 22.1. This *Agreement* may be varied with the written consent of all *Parties*.

SIGNATURES

SIGNED for and on behalf of the Government of Australia by

The Hon Karen Andrews MP
Minister for Industry, Science and Technology

Signed on 20 December 2019

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

The Hon Kevin Anderson MP
Minister for Better Regulation and Innovation

Signed on 20 December 2019

SIGNED for and on behalf of the State of Victoria by

The Hon Richard Wynne MP
Minister for Planning
Minister for Housing
Minister for Multicultural Affairs

Signed on 12 February 2020

SIGNED for and on behalf of the State of Queensland by

The Hon Mick de Brenni MP
Minister for Housing and Public Works
Minister for Digital Technology
Minister for Sport

Signed on 20 December 2019

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

The Hon John Quigley MLA
Attorney-General
Minister for Commerce

Signed on 13 January 2020

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

The Hon Stephan Knoll MP
Minister for Planning
Minister for Transport, Infrastructure and Local Government

Signed on 9 January 2020

SIGNED for and on behalf of the State of Tasmania by

The Hon Elise Archer MP
Minister for Building and Construction
Attorney-General
Minister for Justice
Minister for Corrections

Minister for the Arts
Minister for Racing

Signed on 21 November 2019

SIGNED for and on behalf of the Australian Capital Territory by

Gordon Ramsay MLA
Minister for Building Quality Improvement
Attorney-General
Minister for Government Services and Procurement
Minister for Business and Regulatory Services
Minister for Arts and Cultural Events
Minister for Seniors and Veterans

Signed on 20 December 2020

SIGNED for and on behalf of the Northern Territory by

The Hon Eva Lawler MLA
Minister for Infrastructure, Planning and Logistics
Minister for Environment and Natural Resources
Minister for Climate Change

Signed on 13 December 2020

ATTACHMENT A

GOVERNMENT CONTRIBUTIONS 2017-18 TO 2022-23

JURISDICTION	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	TOTAL 2017-18 - 2022-23
Commonwealth	\$4,000,000	\$4,000,000	\$5,000,000	\$5,000,000	\$4,000,000	\$4,000,000	\$26,000,000
ACT	\$153,132	\$153,132	\$182,323	\$182,323	\$145,858	\$145,858	\$962,626
NSW	\$936,141	\$936,141	\$1,369,851	\$1,369,851	\$1,095,882	\$1,095,882	\$6,803,748
NT	\$140,925	\$140,925	\$152,674	\$152,674	\$122,139	\$122,139	\$831,476
QLD	\$775,962	\$775,962	\$906,850	\$906,850	\$725,480	\$725,480	\$4,816,584
SA	\$245,954	\$245,954	\$288,164	\$288,164	\$230,531	\$230,531	\$1,529,298
TAS	\$115,084	\$115,084	\$147,254	\$147,254	\$117,803	\$117,803	\$760,282
VIC	\$1,053,290	\$1,053,290	\$1,304,368	\$1,304,368	\$1,043,494	\$1,043,494	\$6,802,304
WA	\$579,512	\$579,512	\$648,516	\$648,516	\$518,813	\$518,813	\$3,493,682
State / Territory Total	\$4,000,000	\$4,000,000	\$5,000,000	\$5,000,000	\$4,000,000	\$4,000,000	\$26,000,000
Total	\$8,000,000	\$8,000,000	\$10,000,000	\$10,000,000	\$8,000,000	\$8,000,000	\$52,000,000

NOTES:

1. A jurisdiction's contribution consists of a base component of \$75,000 per annum and a pro rata amount based on the total value of building approvals in their respective jurisdiction.
2. For 2017-18 to 2018-19, contributions have been calculated using the Australian Bureau of Statistics (ABS) data for building approvals for 2012-13.
3. For 2019-20 to 2022-23, contributions have been calculated using the three year average of ABS data for building approvals for 2013-14 to 2015-16 inclusive.
4. Each jurisdictions contribution has been revised for 2019-20 and 2020-21 to fund work associated with the national framework for the consistent implementation of recommendations of the *Building Confidence Report*.