# Productivity Commission Study into the Reform of Building Regulation in Australia

## ABCB Chairman's Submission

## April 2004

## How to contact the ABCB

Requests and inquiries concerning this submission should be directed to:

Margaret McKinnon
Manager, Marketing, International and Education Section
Australian Building Codes Board
PO Box 9839
Canberra City  ACT  2601

Ph: 02 6213 7115
Fax: 02 6213 7287
Email: Margaret.McKinnon@abcb.gov.au

# CONTENTS

## Introduction

This submission is made by the independent Chairman of the Australian Building Codes Board (ABCB) and represents his own views, rather than the collective views of the ABCB. The ABCB Board members include the senior building regulator from each State and Territory, an Australian Government representative and representatives from local government and industry. Although the Board have seen this submission, members will be making separate submissions on behalf of their own administrations/organisations and therefore this is not to be regarded as an agreed Board position.

The submission outlines some background to the reform agenda, the history of the ABCB and its processes, including its adoption of a leading practice regulatory approach, summarises the achievements to date under the Inter-Government Agreement (IGA), and indicates the current and likely future work program and issues to be addressed should the ABCB continue beyond 2005. Those terms of reference relating to whether gains have been produced for industry and the Australian economy, and whether the IGA is providing efficiency and cost-effectiveness in meeting community expectations of the Building Code of Australia (BCA), will be addressed only tangentially as these are primarily matters for others to judge.

Appendix A to the submission specifically addresses the questions raised in the Productivity Commission's Issues Paper "Reform of Building Regulations"[1].

## 1 Background to Reform

Over the past 40 years, steps have been taken by governments to streamline the regulatory system governing health and safety in the design, construction and use of buildings, with some significant recent successes, most notably:

- model building legislation developed and implemented in some States from the early 1990s;
- the advent of a nationally accepted performance-based building code; and
- contestable certification services in most States and Territories.

Nevertheless, while Australia has one building market valued at $46 billion pa[2], with an industry that accounts for over 6% of GDP and provides 7% of all jobs[3], Australia does not have a national approach to the administration and application of the BCA.

---

[1] Productivity Commission Issues Paper: *Reform of Building Regulation* 2004 http://www.pc.gov.au/study/building/issuespaper/building.pdf

[2] Australian Bureau of Statistics: *Publication 8752.0 Building Activity, Australia 2003*: http://www.abs.gov.au/Ausstats/abs@.nsf/lookupresponses/e18ea7767ad7b004ca256dbe0003d2a3?opendocument

[3] Department of Industry Tourism and Resources: *Building and Construction Industry Fact Sheet* (2002-2003 figures) http://www.industry.gov.au/content/itrinternet/cmscontent.cfm?objectid=D27A7C86-B3B7-4188-B88A87D799388957&indexPages=/content/itrinternet/cmsindexpage.cfm?objectid=48A5DFEA-20E0-68D8-EDB550B8BD2CB714,/content/itrinternet/cmsindexpage.cfm?objectid=1E6694DF-D20A-6563-3AA7F5F513BD4D34

The building and construction market is national in character. For example:

- building product suppliers compete across Australia;
- technical infrastructure for design and construction is primarily national in nature, eg Australian Standards and product testing;
- design and engineering professions deal with issues nationally;
- many issues the industry faces are government driven: eg macroeconomic, welfare housing and tax policies; and
- firms that operate across state borders, account for more than half of all building work.

Australia needs to have an on-going national source of technical and reform expertise to deliver a nationally consistent building code and regulatory system, to facilitate a more efficient building industry, and to meet the contemporary and changing community needs for protection of life in the built environment. A performance-based approach to building regulation and contestable certification are at the heart of hard-won reform gains and need to be reaffirmed and committed to by all stakeholders in industry and government.

The regulatory reform agenda being pursued by the ABCB has made good progress, but there is a need for whole-of-government support to build on the gains made.

## 2 History of Building Regulatory Reform

From the mid-sixties onwards, attempts have been made to establish a building regulatory code that would be accepted by all States and Territories. The Interstate Standing Committee on Uniform Building Regulations was established in 1965 and drafted a model technical code for building regulatory purposes. The Australian Model Uniform Building Code was a forerunner of the BCA and was first released in the early 1970s. While this code was used as a basis for regulation in the States and Territories, many variations still existed and the document was not referenced in State and Territory legislation.

By the early 1990s, it was understood that the building and construction industry was being constrained in its quest to become internationally competitive by both the range of differing regulatory requirements across Australia, and standards that discriminated against new products.

This realisation led relevant Ministers to accept that wherever possible, their States' legislation should draw upon technical data, and that the data needed to be performance-based, scientifically robust, and developed with strong industry and professional input.

The result was the creation of the ABCB through an Inter-Government Agreement signed in 1994 by the Australian Government, and the State and Territory Ministers responsible for building regulatory reform[4]. A more detailed outline of the last forty years of building control reform is at Attachment A.

[4] *Inter-Government Agreement*: March 1994 as amended 2001: http://www.abcb.gov.au/index.cfm?fuseaction=DocumentView&DocumentID=139

# 3 The ABCB's Contribution to Regulatory Reform

The ABCB's mission "is to provide for efficiency and cost-effectiveness in meeting community expectations for health, safety and amenity in the design, construction and use of buildings through the creation of nationally consistent building codes, standards, regulatory requirements and regulatory systems"[5]. This mission statement does not adequately reflect the strong regulatory reform agenda of the ABCB, and any evaluation of the ABCB which results in a significant change to the shape or functions of the ABCB would require this mission statement to be reviewed.

The ABCB's primary role is to maintain and develop the BCA. The ABCB is also a catalyst for regulatory reform. The BCA created a common technical basis for Australian building regulations in all States and Territories, and underpins relevant State and Territory legislation. As a performance-based regulatory framework, it encourages a cost-effective and efficient path to meeting minimum acceptable standards and hence, encourages innovation. Further, not all solutions to building regulatory objectives, community expectations or industry requirements are embodied in the BCA. The ABCB has been responsible for the preparation of a number of guidelines for the information of industry, including a guideline for Fire Safety Engineers. Rather than a prescriptive regulatory approach, this guideline was complemented by the production of the Code of Practice for Fire Safety Design, Certification, and Peer Review by the Society of Fire Safety Engineers Australia.

There is a range of broader activities that support the efforts of the ABCB in the key areas of development of the BCA and regulatory reform. These activities include international alliances, education and training and a research program. The role of these activities in contributing to the objectives of the IGA are discussed further within this submission.

In broad terms, building regulation achievements over the life of the ABCB have been:

- a national performance-based building code operating since 1996;
- introduction of contestable certification services for building approvals in most States;
- introduction of a national and rigorous economic evaluation approach to regulatory change;
- publication of a practitioners' Guide to the BCA and other non-regulatory guideline documents;
- introduction of a national product certification scheme;
- introduction of national accreditation framework and competency benchmarks for building certifiers;
- introduction of Australia's first national energy code for houses within the BCA;
- ABCB recognised as an evaluation body to facilitate exports of building products and systems to Japan; and

[5] The ABCB's Mission: http://www.abcb.gov.au/index.cfm?fuseaction=DocumentView&DocumentID=85

- provision of fire research data to fire engineers to assist with solutions to building design and construction.

These initiatives have significant benefits for industry and the community through cost savings in design and construction, more efficient services for the community, on-going life-safety for people in buildings and export opportunities for industry. In an assessment of the impact of five major initiatives introduced by the ABCB, KPMG found that cost savings related to efficiency of design and construction, where identified, ranged from one to five percent of the total construction cost[6]. In some instances, it concluded that this magnitude of saving was a "make or break" difference to the economic viability of projects.

## 4 ABCB Revenue and Costs

The ABCB's costs for 2003-04 are expected to total $6.5 million. Expenditure for 2003-04 as at the end of April is on target to achieve this. The primary focus of expenditure is on:

- the core business of code writing development;
- externally commissioned research and analysis linked, in part, to energy efficiency and disability access, but also to a broader research program to support more cost-effective regulation generally; and
- the delivery of a more user friendly BCA.

Revenue to fund these activities is received from three primary sources - the Australian Government, State and Territory Governments and cost recovery activities of the ABCB. The ABCB's cost recovery strategy was the subject of a public review and joint decision by all nine governments that supported a 50/50 approach to public and commercial funding for the ABCB's activities. More details are at Attachment B.

## 5 ABCB and State Administration Roles

The ABCB brings together regulators, practitioners and other interests to address proposals affecting the BCA or, if appropriate, consider non-regulatory solutions to issues affecting the design, construction and use of new buildings and new building work throughout Australia. As noted above, it also has a catalytic role in progressing building regulation reform, including efforts to better harmonise the regulatory framework. The ABCB has no role in administering building legislation.

Responsibility for administering regulations about the health, safety and amenity of occupants of buildings lies with individual States and Territories. Every State and Territory has legislation that establishes the system for obtaining approvals for building work, for dealing with disputes, for other administrative requirements and for referencing the BCA. The Australian Government also has an interest because of the importance of building regulation to microeconomic reform and because of the national impact of building regulations on industry and the community as a whole.

[6] KPMG Report: *Impact Assessment of Major Reform Initiatives* (2000)
http://www.abcb.gov.au/documents/abcb_office/impact_maj_reform.pdf

# 6 ABCB Consultation

The Board's work is supported by an office as well as a peak national technical body and project specific committees. Through these avenues, the ABCB obtains input from government and industry stakeholders as well as advice and assistance from building professionals, research communities, industry peak bodies, local government, special interest groups, and the community, on a wide range of strategic, policy, technical, administrative and societal issues. Input is also sought on strategies for implementing the code, including alternatives to regulation and/or deregulation, early in the work program.

The Board also calls for public input into change proposals in respect to technical parameters and the impacts that may result. This engagement with the community is within the framework of the COAG principles and guidelines for good regulatory practice[7]. As part of this approach all major proposals for change are the subject of Regulation Impact Statement (RIS) analysis and wide dissemination to ensure that the proposal and its impacts are clearly understood, and that options are considered. The ABCB's public consultation approach is regularly supported by public awareness sessions, seminars, participation in conferences and ABCB representation on a broad range of stakeholder forums. The ABCB also uses its web site[8] to inform the community about its activities.

# 7 Major Reviews of the ABCB

The Inter-Government Agreement and the ABCB have been subject to three major reviews since 1994. Ministers responsible for building regulation undertook a review in 1996, a Technical Review by internationally recognised peer professionals occurred in 1999 and a Mid-term Review for consideration by responsible Ministers reported in February 2000.

The 1996 Review found that the IGA had worked well to engender cooperation and the adoption of more nationally consistent approaches.

The Technical Review by international, peer, code writer professionals in 1999 also made a very positive evaluation of the ABCB's performance. It found that the ABCB had delivered a significant return on the investment governments had made under the IGA.

The work of the Technical Review and its detailed recommendations helped inform the subsequent 2000 Mid-term Review commissioned by building regulation Ministers. The 2000 Mid-term Review reported on the performance of the Board in meeting the objectives of the IGA and its contribution to the creation of a nationally consistent framework for building regulations, the benefits it had delivered, including whether it delivered value for money, and what future priorities should be addressed as well as funding and administrative matters.

---

[7] Council of Australian Governments: *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (1997). http://www.coag.gov.au/coagpg/coagpg.pdf

[8] ABCB website: http://www.abcb.gov.au

The Mid-term Review found that the ABCB was performing a valuable role in developing nationally consistent, performance-based codes and that this work should continue. Some change in focus for the ABCB was seen as necessary to enhance the returns already made by stakeholders, by expanding the use of the BCA and extending it to cover emerging issues, particularly energy efficiency. At the same time, a range of administrative changes were identified to improve its effectiveness.

The review recommended the following policy priorities:

- development of a model administrative framework;
- redesign of the product certification scheme;
- development of a plumbing code, but on terms that meet ABCB objectives;
- national consistency in electrical connection and metering of buildings;
- energy efficiency, subject to the resolution of Australian Government/State Government funding; and
- marketing and education.

The review also proposed recommendations on:

- continuation of government funding;
- improved management of research;
- a review of the ABCB's legal status; and
- the nature of, and arrangements for, industry representation on the Board.

The priorities identified by the review received strong industry support. The Ministers responsible for building regulation matters agreed to action being taken to:

- develop a model administrative framework to assist State and Territory administrations achieve best regulatory practice;
- redesign the existing product certification scheme, terminate direct ABCB participation in certifying products and accredit competent bodies to carry out national product certification;
- develop a national plumbing code, consistent with the BCA;
- advance national consistency in the handling of electrical connection and metering of buildings;
- develop minimum mandatory energy efficiency provisions within the BCA;
- develop a more robust marketing and education strategy to promote the value to industry and the community of the building code and the building regulation reform agenda;
- improve the management of research;
- maximise the organisational status of the ABCB;
- increase industry membership of the Board from three to four; and
- begin a further review of the ABCB in four years.

All of the matters that are the direct responsibility of the ABCB have been well progressed since the review.

The Board developed a Strategic Plan (Attachment C) to advance the reform agenda. The Board's current Work Plan accompanies the Strategic Plan. The Strategic Plan aims to achieve the following key outcomes for Australia's regulatory framework for the building and construction industry by 2005:

- one BCA widely adopted by industry;
- a consistent regulatory framework to underpin the BCA;
- more energy efficient and accessible buildings; and
- positive cost benefits for industry and the community.

The Board aims to take a leadership role in these areas and be recognised for this nationally and internationally. It has identified a number of strategic pathways to move forward. These are:

- consistency in applying regulatory principles;
- being proactive on key issues;
- taking a lead domestic and international role;
- enhancing and promoting the ABCB identity;
- drawing upon a web-based interactive Building Code;
- targeting research; and
- developing an education and training program.

## 8 The Building Code of Australia

The BCA is referred to as a 'performance-based' code, describing the Performance Requirements that buildings and other structures throughout Australia must attain. Cost savings to developers and the community are generated by:

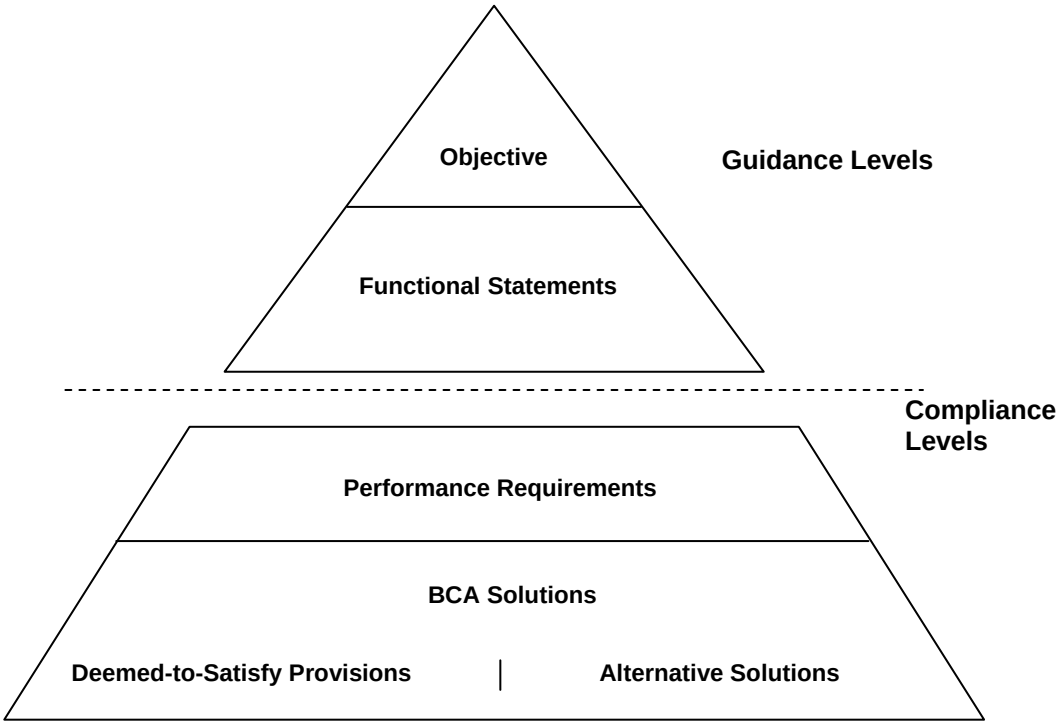
- the use of alternative or innovative materials and forms of construction or design;
- allowing designs to be tailored to particular buildings;
- providing guidance in a clear manner on what the BCA is trying to achieve; and
- allowing designers flexibility.

The performance-based BCA has a hierarchy that starts with an Objective, underpinned by Functional Statements, Performance Requirements and Building Solutions (see Figure 1 below). The Performance Requirements identified are recognised under building law as the level which must be satisfied. The Objective is the broad societal goal. Functional Statements describe what the building needs to do to meet the Objective. BCA Performance Requirements must be satisfied by the design and construction of the building. Two types of Building Solutions meet the Performance Requirements:

Using the **Deemed-to-Satisfy Provisions.** These are detailed technical descriptions of how the building is to be constructed and equipped to meet the Performance Requirements. Most building designers choose to develop a solution following the Deemed-to-Satisfy Provisions. These Provisions often include reference to technical details found in Australian Standards.

Using an **Alternative Solution**. An Alternative Solution is one that can be demonstrated to meet the Performance Requirements of the BCA by other means. The Alternative Solution path allows for new ways of achieving the required levels of performance. The onus is on the building applicant to show that the Alternative Solution complies with the Performance Requirements.

**FIGURE 1**




## 9 Intent of the BCA

The BCA codifies minimum acceptable building standards for the Australian community. It sets benchmark standards which the design, construction and use of buildings should not fall below. The BCA is, however, only one part of a regulatory framework that affects the built environment. Not all aspects are, or need be, explicitly dealt with by the BCA.

It is inevitable that, in a country with 20 million people, significant geographical and climatic variation and cultural diversity, there will be different and even conflicting expectations about aspects covered in the BCA. For example, a community that has recently experienced significant building damage caused by storm and flooding may have a higher expectation of the protection against storm and flooding afforded by the BCA than a community that has not experienced an event for some time, if at all.

On life safety and health issues, most in the community would expect that no building occupants should, for example, die as a result of a building fire. However, to achieve absolute safety from fire is prohibitively expensive. In developing the BCA, the ABCB seeks to reach a balance between what the community expects and what it is prepared to pay. To assist in identifying this balance, the ABCB uses a best practice framework for considering regulation. The framework assesses alternatives to regulation and ensures the preparation of a Regulation Impact Statement (RIS) where necessary, and provides wide consultation on change proposals.

On the delivery of amenity to the community, the achievement of acceptable levels is often linked to the achievement of other code objectives. For example, requirements for minimum numbers of sanitary facilities guards against conditions developing that could impact on building occupants' health, but also provides for positive amenity by minimising the inconvenience in public buildings of having to queue for an unreasonable time to use the facilities. The primary purpose of structural standards in the BCA is to prevent collapse (safety) but they also address serviceability (amenity); eg: a timber floor must not only resist collapse under load but must also be rigid enough to prevent excessive 'bounce' that can result in a feeling of discomfort.

The amenity issues dealt with by the BCA are concerned primarily with building users or occupants. Other amenity issues, particularly dealing with external factors and the broader community, have traditionally been dealt with by planning controls. For example, the reflectivity of, and glare generated by external building facades can have a major impact on the amenity of passers by and on the occupants of nearby buildings. This aspect is considered through planning controls rather than building controls.

The delineation between the control of amenity by building and planning can result in overlapping and conflicting requirements. For example, noise insulation between residential apartments is dealt with in the BCA, but also appears in some planning schemes, including some operating under integrated building and planning legislation. Definitive direction on the respective roles of building and planning in controlling amenity would remove uncertainty and assist in the consolidation of all technical requirements affecting the design and construction of buildings.

Similarly the BCA's goals in the area of fire safety is to protect the lives of building occupants, facilitate fire brigade intervention in the event of emergency, and protect adjacent property from the spread of fire and physical damage caused by structural failure.

Each State and Territory has fire service legislation. The goals of this legislation generally relate to the protection of life, property and the environment.[9]

The objectives of the legislation that calls up the BCA and the fire service legislation are different. It is up to the proponent constructing the building to meet the various requirements, such as building/planning legislation, environmental legislation etc. Meeting the requirements of BCA is only one of such requirements.

[9] In Victoria for example, the Objectives of the *Building Act 1993* include "protect the safety and health of people who use buildings" whereas the Purpose of the *Metropolitan Fire Brigades Act 1958* includes "to provide for fire safety, fire suppression and fire prevention services". The Victorian legislature, not the ABCB, made this distinction.

# 10 Ensuring Best Practice in Regulation

Setting regulatory stringency is assisted by industry, government and community involvement in the assessment and development of regulatory proposals, receiving regular feedback from code users and researching the performance of buildings subjected to extreme events. It is also assisted by monitoring complaints and appeals from the community to various State bodies, including the courts and coronial inquiries.

The BCA is now amended annually on 1 May to reflect changes in building practices, usage and technology. The BCA change process follows an agreed procedure that is both consultative and as transparent as possible, while respecting confidentiality.

The ABCB undertakes regulatory impact analysis for changes to the BCA. This is in accordance with the COAG principles and guidelines for good regulatory practice[10]. In 1997, the ABCB developed an Economic Evaluation Model to assess the impact of building code proposals. As noted in the Commission's Issues Paper, this model was designed to satisfy the COAG RIS requirements. A draft or consultation RIS is prepared for public comment and, at the conclusion of the consultation period, a final RIS is prepared to assist the Board in its deliberations. All RIS are submitted to the Office of Regulation Review (ORR) for review and sign-off prior to release. ORR assesses the adequacy of analysis contained in each RIS and whether the RIS complies with the Australian Government's requirements. The ABCB consults with ORR to ensure that the level of analysis contained in the RIS is assessed as sufficient and commensurate with the magnitude of the likely impacts. Relationships with the ORR are good, with ABCB staff appreciating the constructive approach taken and efficient manner in which draft RIS are handled.

The ABCB consults widely with government, industry and other stakeholders and invites public comment on any draft RIS for a period of 6-12 weeks. RIS are published on the ABCB website. ABCB mailing list subscribers receive notification of all new documents and website content; BCA subscribers receive the quarterly Australian Building Regulation Bulletin (ABRB) which contains project updates; while the Building Codes Committee, State and Territory administrations and relevant working groups receive direct RIS notification.

The commencement of RIS processes early in the development of regulatory change proposals enables the ABCB to identify key impacts and allows work towards more efficient and cost-effective solutions. Comments received during the RIS consultation periods assist the refinement of BCA proposals.

Examples of regulatory proposals for which RIS have been prepared include the Energy Efficiency Measures for Housing, Energy Efficiency Measures for Class 2, 3 and 4 Buildings, Sound Insulation Provisions, Fire Hazard Properties of Building Materials and Assemblies, and the Disability Standard for Access to Premises.

In *Regulation and its Review 2002-03*, the Productivity Commission cites the ABCB RIS process for the Energy Efficiency Measures for Housing as an example where regulatory best practice requirements have been met:

[10] Council of Australian Governments, op.cit.

*"… in mid-2002, the Australian Building Codes Board released for public comment a draft RIS dealing with the regulation of energy efficiency for houses. Feedback on the RIS from public consultation suggested that additional construction costs, transitional issues and likely energy savings associated with the preferred regulatory approach were overly optimistic. The preferred option was modified, resulting in reduced stringency for some elements of the proposal in order that implementation of the measures could be achieved within a minimum transition time. This is consistent with best practice requirements for regulation, which encourage thorough consultation with stakeholders and the examination of a range of alternatives"*[11].

## 11 Contemporary Operating Environment

The shape and direction of building regulatory reform agendas around the world are driven by changes in social structure, societal expectations, economics and trade. The factors most likely to influence change include population ageing, environmental concerns, and the drive for improving a country's international competitiveness by removing technical barriers to trade.

Globally, increasing attention is being given to the environment, including that related to building and construction.

Issues such as urban pollution and water quality are important considerations in nearly all developed countries. A much wider range of issues such as land and water degradation, air quality standards, greenhouse gas emissions, deforestation and waste minimisation are influencing political agendas as are social issues such as attitudes surrounding intra and inter-generational equity.

There are likely to be increasing demands for a built environment that protects not just people, but also the environment. Public consultation in other countries has revealed three main themes:

- a desire for an integrated policy framework for sustainable construction;
- strong support for government to take the lead as a major customer and sponsor; and
- a broad recognition that achieving more sustainable construction requires an inclusive and cooperative approach between government and industry.

Australia is no exception, and the importance of this is underlined by the significant impact that the built environment has for the economy as a whole.

Longer-term shifts in Australia's demographics, living standards and broad consumer demand patterns have become apparent. These trends are impacting on the way we use the built environment.

The population is ageing, more reliant on information technology and within our highly urbanised society, we are seeing significant demands for more inner-city living.

Concerns for energy efficiency and sustainable development, accessibility, the provision of community services and a substantial change in housing needs within our communities are examples of emerging issues already affecting Australian society.

[11] Productivity Commission: *Regulation and its Review 2002-03* (page 82)
http://www.pc.gov.au/research/annrpt/reglnrev0203/reglnrev0203.pdf

# 12 Current and Likely Future Work Program

The ABCB must play a leadership role in building regulatory matters, such as removal of potential barriers to commerce and trade; community and practitioner education; adoption of the BCA; and promoting its value to the community and industry. More emphasis should be given to engaging with training and education providers and industry to ensure all industry practitioners have a higher level of practical understanding of the BCA and its underpinning regulatory arrangements.

## 12.1 Maintenance, Refinement and Enhancement of the BCA and its Delivery

The original IGA aim of establishing a performance-based national building code for all of Australia, with minimum local variations, has been achieved. Since the BCA was first published, the number of variations required by State and Territory administrations have been progressively and significantly reduced.

However, technical regulations, including those contained in the BCA are an instrument to enact policy decisions taken by governments. In an environment where nine governments have jurisdictional responsibility for issues dealt with in the BCA, it is inevitable that different policies, priorities and administrative arrangements will emerge.

For example, some States control the provision of swimming pool safety fencing through building legislation and the BCA; in other States, this control is exercised via specific swimming pool safety legislation (e.g. the NSW *Swimming Pools Act 1992*). Many of the remaining differences are mostly required to accommodate particular local requirements (climate, etc) and are not a reflection of any attempt to perpetuate historical differences in approach to regulation.

Notwithstanding, there are still opportunities to further reduce variations and to consolidate other on-site regulatory requirements into the BCA, as has been the case with Tasmania. Efforts will continue to be directed to these matters.

The BCA is a dynamic document, requiring ongoing updating and refinement to remove ambiguity, improve clarity, and address problems that arise and to accommodate changes in requirements, practices, technology, materials and components. A significant part of the ongoing work of the ABCB relates to the need to continually maintain and update the existing BCA and its application, including the need to:

- undertake research into trends in the use of alternative solutions;
- establish a national register of alternative solutions and use it as a mechanism for initiating changes to Deemed-to-Satisfy Provisions;
- promote the wide dissemination of information on effective alternative solutions that will be seen to be of value to the industry and the community;
- regulate against alternative solutions that have been proven not to add value to the adoption of the principles of the BCA;
- develop an internationally applicable building code model that can accommodate variations between countries and serve to establish the BCA as an international model of best practice;

- review life safety versus property protection issues such as the issue of buildings of community importance;
- assess sustainability, including considering the feasibility of a requirement for a material recovery plan to be developed for each building to facilitate the reuse and recycling of building materials;
- ensure that all regulatory building-related requirements are embodied within the BCA; and
- ensure that the BCA serves the interests of disaster/emergency management prevention through its provisions, ongoing research and refinements, and through adaptation to aspects of our changing world including security and critical infrastructure protection.

## 12.2 Assisting Practitioners to use the BCA

While the BCA has been adopted throughout the country, it is believed that there are many designers, builders and other industry participants who do not use it actively and could derive benefits from doing so. Uptake by subscribers as a proportion of those who could be potential users is around 30%, and so the ABCB has been directing efforts towards **ensuring accessibility**, **increasing awareness** and **providing education programs** that support the use of performance-based building regulations.

In order to best **ensure accessibility** to the BCA, focus has been on the electronic and hard copy reformatting of the BCA, along with the development of an Online Database and Content Management System. These projects have already increased accessibility to the BCA by providing industry with an overall reduction in BCA pricing along with improved access to BCA information through the availability of a complete hard copy and online BCA service. Every subscriber now has access to the current BCA Online service (including previous BCA editions and all historical records) as part of their BCA hard copy subscription. Electronic ordering facilities and the BCA Online shop are also now available to the community through this system. For example, individuals wanting casual access can obtain the BCA Online for $33 for either thirty consecutive days in a month or for twelve days in a year.

The ABCB recently released BCA 2004, comprising of an online and hard copy subscription service. The hard copy ring binder has been replaced with a newly formatted B5 sized annual publication. The new format was in response to strong industry preferences for the B5 format. The new online service offers subscribers improved functionality along with additional value-added services such as the BCA MiniCode Generator. BCA Online offers significant benefits to users by allowing straightforward electronic searches for specific clauses, sections and keywords. The new BCA 2004 service also increases options for accessing the BCA either on-site, in the office or at remote locations. The new format also removes the time-consuming need for subscribers to replace the large number of pages that are updated within each amendment cycle.

The opportunity to develop new products and better ways to access BCA information through the use of dynamic HTML (XML) technology has been demonstrated through the development of an educational based building project tool, known as the MiniCode Generator. Based on an early Canadian prototype, this product allows for BCA data to be searched, compiled and presented through an online user questionnaire. The MiniCode Generator is seen as the first of a new range of BCA products designed to assist industry and improve the way in which BCA content can be accessed.

The MiniCode Generator allows BCA users to input their own building project specifications based on a series of prompts. Once the MiniCode Generator has received all the required project information, a search function then collects, compiles and presents all clause, sub-clause, and sub-sub clause information relevant to the user's project, and in effect, compiles for the user a miniature version of the BCA. MiniCode is now available online to BCA subscribers for education and training purposes.

In addition, hard copies of the BCA are available in various locations throughout every State and Territory within Australia. These include in libraries, local councils and tertiary institutions. A complete list of these locations is included on the ABCB web site[12] .

**Increased awareness** of the BCA is being promoted through a number of channels.

The biennial ABCB conference is a major channel. This event is designed to enhance awareness on the practice of the performance-based building code and to increase understanding of the importance of building regulatory reform on an international scale. The 2003 conference was attended by more than 500 industry, government and industry association representatives.

The conference program addressed an extensive range of issues, but focussed on the ABCB's core work areas: energy efficiency, access for people with disabilities, fire safety design, international regulatory comparisons, standardisation and harmonisation. The ABCB commissioned an independent evaluation on the 2003 event. The evaluation confirmed initial feedback that the conference was highly regarded by the participants, and the majority of people surveyed (88%) rated the conference as *good to excellent*.

Another means where the ABCB assists practitioners is in the publication of the Guide to the BCA. It focuses on Volume One of the BCA and provides BCA users with ABCB agreed definitive information about the interpretation of technical matters.

The ABCB also publishes the Australian Building Regulation Bulletin (ABRB), which has a circulation of 18,000. The ABRB focuses on BCA related issues, addressing specific technical matters, providing broader general technical papers on the building code and building regulations, and expert opinions on significant technical and regulatory topics. The objective of the ABRB is to provide BCA subscribers with technical-based information on a regular basis, which is directly relevant to their work with the BCA and with building regulation in the various jurisdictions.

In order to provide **education programs**, a One Stop Education Shop website has been developed to assist the building and construction industry in raising education awareness. This website identifies accredited courses relating to the building and construction industry which can lead to a qualification The One Stop Education Shop website also provides other information including the Recognition of Prior Learning Framework, National Competency Standards and the ABCB Industry Based Learning Program. The number of enquiries received through the website is increasing as awareness of the site grows.

The delivery of training on energy efficiency provisions affecting the BCA was undertaken around the country during 2003. The high number of building practitioners attending and the positive feedback received from attendees, suggests training has been effective.

[12] BCA Outlets: http://www.abcb.gov.au/index.cfm?fuseaction=DocumentView&DocumentID=135

The ABCB has also delivered public awareness sessions on a current proposal to align the BCA with the *Disability Discrimination Act 1992* as part of Disability Standards for Access to Premises. Over 1,700 people attended the sessions in early 2004. The attendance and feedback from both public awareness sessions indicates that it is an effective and efficient mechanism for reaching key stakeholders, the community and industry.

Another ongoing challenge the ABCB is currently addressing, is how to increase the building industry's general awareness about the BCA. Because of the importance of the issue of life safety in buildings, the ABCB is looking to raise awareness beyond the primary users of the BCA.

The ABCB Board took the view that the competency of both public and private certifiers must be strengthened. This led to the development of an ongoing education program for certifiers and other industry professionals, particularly in regard to changes to the BCA. While the BCA had been adopted in every State and Territory by 1998, the profession predominantly responsible for implementing the reforms contained in the BCA (namely building surveyors), operated under substantively different employment and education systems. It became increasingly apparent that this situation was an impediment to the uptake of the opportunities embodied in the national performance-based building.

However, not only were the differences in work and education systems identified within one professional group, other key occupations with varying levels of involvement in the certification processes were also identified, including engineers and design professionals. It was recognised that little could be achieved to resolve the problem without attempting to harmonise jurisdictional benchmarks in respect of those performing the building certification function across a number of areas, including educational qualifications, work scope and levels of classification.

Following from a joint project with industry, the National Accreditation Framework for Building Surveyors/Certifiers was agreed to by the Board in March 2001. It was recognised that a key factor influencing the adoption of the framework was the constitution of national educational benchmarks and competency standards. As a consequence, education standards to support the accreditation framework were reviewed in light of many courses not incorporating sufficient learning about current building surveying practices and principles. The academic qualifications underpinning the National Accreditation Framework were reviewed, amended and nationally aligned.

This project was achieved by industry consultation through the national office of the Australian Institute of Building Surveyors (AIBS), and the office of the ABCB, in conjunction with representatives from State and Territory administrations and the Australian National Training Authority (ANTA). The higher education benchmarks for use by universities in developing course content for undergraduates were also agreed to, and supported by ANTA. The National Accreditation Framework has resulted in a national model in respect of the work scope, core building regulatory functions and education requirements of building surveyors. It is intended that these guidelines form the basis of the accreditation/registration of building certifiers/surveyors in each State and Territory.

The ABCB is also re-developing its 'Working with Performance' course so that the use of performance can be better understood and delivered not only through education programs, but also through information seminars. Negotiations will proceed with industry, education providers and government to ensure the level and quality of training is adequate for industry needs.

## 12.3 Future Development of the BCA

Work has commenced on a complete revision of the BCA. The focus is on the BCA's structure rather than technical content. The ABCB also wishes to strengthen the rigour by which possible new areas for codification are assessed. This is to ensure that the BCA continues to represent leading regulatory practice. The changes the ABCB has in mind aim to better satisfy user requirements and reflect changes in information and publishing technology. The BCA will be clearer, more concise and better able to be used by building practitioners.

## 12.4 Developing a Nationally Consistent Administrative Framework

While there is now an accepted uniform national building code there remain significant differences in the way it is administered in the States and Territories. The administration of building regulations is clearly a State and Territory responsibility but some of the advantages of having a national code are undermined by the different approaches taken.

This problem was recognised in the 2000 Mid-term Review of the ABCB and steps were taken to address it. Progress has been slow however, as reflected in the Building Products Innovation Council submission to the recent Productivity Commission inquiry into first home ownership[13].

It was not envisaged in the original IGA that this area would be a problem and administrative arrangements were not included in its scope. Consideration needs to be given in any revised IGA as to how the ABCB might be charged with addressing the harmonisation of administrative arrangements for the BCA without, in any way, trespassing into the area of State and Territory regulatory control.

The current approach on building control by the States and Territories offers room for improvement with the need to pursue a holistic building control model that addresses all regulatory framework issues, including licensing systems and education. There is a need for continued development through the ABCB's work programme to develop a best practice model that State and Territory governments can adopt when considering where building control should be positioned and what linkages should exist with other regulatory agencies.

The Board's policy to progress greater harmonisation involves:

- a review of the Model's legislative principles drawing on State reviews of their own legislation. There is a need to review the Model's legislative provisions developed more than a decade ago. Experience over time may suggest refinements. Also, despite performance and private certification having strong industry support, they are poorly understood in the wider community;
- focusing resources on the small number of issues identified by the Allen Consulting Group's report[14]: including building approval processes, occupancy approval processes, essential services, appeals and dispute resolution, etc; and

[13] Building Products Innovation Council's submission to the Productivity Commission Inquiry into First Home Ownership:
http://www.pc.gov.au/inquiry/housing/subs/sub031.pdf

[14] Allen Consulting Group's report:
*Harmonisation of Building Control Administration: Costs and Benefits of the National Administration Framework* (Dec 2002)

- recognising work in progress. Work being progressed for the Board needs to be better publicised and acknowledged as playing an important role in contributing to a more consistent national approach. These include issues that can all be identified as advances in administrative reform, namely the National Accreditation Framework for Building Certifiers; out-sourcing of National Product Certification; development of a National Plumbing Code; and the introduction of Maintenance of Essential Safety Measures into the BCA.

Some strategies that could underpin the development of a more harmonised regulatory system could be:

- a clear and unambiguous message arising from the research study, setting out what the goal is and articulating how it may be achieved and by when;
- encouragement of early runs on the board to lift momentum, that are deliverable;
- to characterise the full range of regulatory reform initiatives already in train as part of the bigger picture goal of greater harmonisation of building regulation;
- ABCB to have a close working relationship with the Development Assessment Forum (DAF) to ensure ABCB and DAF operations are properly integrated;
- properly integrated building and planning systems that do not overlap and planning laws that do not duplicate the BCA; and
- planning agencies to work with the ABCB as an important partnering stakeholder.

## 12.5 Responding to Broader Government Policies

Buildings are such a significant part of the economy that it is inevitable that when governments adopt broader social, economic and environmental agendas, questions arise about whether, and how, these agendas need to be supported by building regulation. Broader government policies driven by whole-of-government approaches will inevitably draw in building regulation issues.

At present, the two major initiatives in this category relate to the broad policy of reducing Australian greenhouse gas emissions, leading to energy efficiency measures being included in the BCA, and the need to ensure building regulations are consistent with the provisions of the *Disability Discrimination Act 1992* in regard to access for people with a disability.

## 12.6 Responding to Major Events

A feature of building regulation is that it is rarely a matter of public interest or concern until a catastrophic event occurs, leading to major life or property loss. Major events such as Cyclone Tracey, the Newcastle earthquake, the Thredbo landslip, the Sydney hailstorm, the Childers hostel fire or the Canberra bushfires, all invariably lead to media interest, public inquiries and speculation about the adequacy of the BCA. As has been shown recently in New Zealand, the discovery of a large number of houses damaged by external water penetration is an impetus to the overhaul of the building regulatory system in that country.

The ABCB cannot plan a future work program around future major events. However, it needs to remain vigilant to ensure that shortcomings in the BCA are not a significant cause of any losses experienced in such disasters.

## 12.7 Responding to Emerging Community Expectations and the BCA's Scope

A major driving force behind the establishment of a uniform national building code was that in its absence, local and State governments in responding to community pressures had taken it upon themselves to develop their own regulations. The chaotic regime that arose was neither efficient nor effective. However, the same community pressures are still present and unless the ABCB remains attuned there will be a risk of governments in different places again providing jurisdictional specific solutions.

In addressing community expectations affecting the scope of the BCA, the principles of good regulatory practice need to be paramount, to ensure that outcomes are acceptable to the community. In all cases, the ABCB needs to assess whether market failure exists and, if so, whether the benefits of regulation would exceed any costs imposed.

Industry and many governments would find it difficult to accept an ABCB that took the lead in identifying new areas in which to regulate. Those same constituencies would, however, expect the ABCB to sense any surge of interest in having new or expanded measures included in the BCA, and to act before a proliferation of different local regulations emerged.

At present, there appears to be increasing interest in having the sustainability agenda addressed. It is difficult to determine at this stage whether there is community consensus over what is a desirable level of sustainability for buildings. The debate to date has focused on the benefits of sustainability. Further debate is required on the cost of regulating for sustainability. The Board is to consider the matter further in late May 2004.

The Cooperative Research Centre (CRC) for Construction Innovation, as part of a research study into *Sustainability and the BCA*, conducted workshops throughout Australia and consulted with the ABCB and its technical committees to develop the following definition: *Sustainability* in building construction means 'a way of building that reduces the negative health and environmental impacts caused by the design and construction process, by buildings or by the built environment'[15]. In addition, and beyond the construction process, in respect to buildings generally, use would also be a key consideration in examining the sustainability concept.

Operational energy in buildings is seen as only the first chapter of addressing the sustainability agenda. Other aspects of building design, construction and use that could potentially be subject to sustainability consideration are:

- water efficiency;
- renewable energy;
- emissions;
- embodied energy; and
- reuse of materials.

[15] CRC Construction Innovation: *Sustainability and the Building Code of Australia* (2001) http://www.construction-innovation.info/Sustainability%20and%20the%20Building%20Code%20of%20Australia%20[Oct%2003]1.pdf
.

Other areas emerging are interests in enhanced amenity, particularly indoor air quality and noise attenuation from all sources, problems relating to an ageing population and whether a greater focus is needed on property protection rather than confining the BCA to items affecting human safety and health.

## 12.8 Building on an International Perspective

The ABCB is involved in international developments concerning code writing to assist in informing better regulatory practice in Australia. International collaboration also assists in the elimination of barriers to trade, create opportunities for increased exports of Australian building products, technology, know-how and professional services and gaining access to construction innovation research.

The ABCB plays an active role in keeping abreast of international developments through bilateral relationships with other countries, its involvement in international conferences and membership of several international committees. Three examples relate to New Zealand, Japan and multilateral collaboration.

ABCB has reached agreement with its New Zealand counterpart to explore the scope for closer collaboration on building regulation matters. A Trans-Tasman Building Regulation Reform Council has been established to promote:

- consistency in the development and implementation of product certification and appraisal schemes in Australia and New Zealand;
- consistency in the education, training and accreditation of industry professionals;
- the pooling of resources to aid research and development of commonly-needed components of performance-based building regulatory systems;
- a common understanding of, and a framework for, further development of performance-based building regulatory systems; and
- closer trade in goods and services within the building and construction industry.

A study is about to be undertaken to assess the benefits and costs of a more formal relationship between Australia and New Zealand in these areas. Although much work needs to be done before any decision is made, it is conceivable that in the lifetime of any new IGA, a situation could arise that New Zealand might be considered for representation on the Board. It is far too early to make overt provision for this at present, but the possibility needs to be recognised so that there are no legal impediments to progressing Trans-Tasman discussions, or Australia's existing obligations under the Australian and New Zealand Closer Economic Relations Trade Agreement (CER).

The ABCB, with the support of the Australian Government, has been recognised by the Japanese Ministry of Land Infrastructure and Transport as the first evaluation body outside Japan to assess building products and systems under the Building Standard Law of Japan. This recognition is expected to provide valuable export opportunities for the Australian building industry.

The ABCB is also a member of the multi-country Inter-Jurisdictional Regulatory Collaboration Committee (IRCC). IRCC facilitates international discussion on the global transition to performance-based building regulatory systems, and focuses on better understanding the impacts such a transition will have on the construction industry, on society and on the regulatory environment. It aims to foster a common understanding of the international regulatory environment and promote the global exchange of information in building design and construction. It provides a valuable insight into leading practice regulation reform for Australia.

## 12.9 Research Program

The areas of research undertaken by the ABCB are prioritised by the Board in response to needs identified by our stakeholders. The ABCB identifies stakeholder's needs through an annual public call for proposals and facilitation of an annual Industry Forum on Research.

The complexities of performance-based building regulations make it essential that their development is underpinned by targeted research. All projects undertaken by the ABCB require a certain level of research, ranging from a simple literature review to complex engineering analysis. The level of research is dependent on the complexity of any problem. Some of the benefits from the Board's research program to date include the:

- development of safe and cost-effective provisions for aged care facilities;
- development of energy efficient and cost-effective provisions;
- acceptance of the use of timber framed construction in low rise Class 2 buildings;
- cost-effective provisions for structural steelwork in car parks;
- adoption of a more representative international fire test for interior linings; and
- development of a guideline for building professionals in the use of fire safety engineering solutions.

The structure and processes developed as part of the ABCB Research and Development Program ensure that research is undertaken in a cost-effective manner. In undertaking research, the ABCB considers the most effective research strategy. Strategies include in-house research, outsourcing to external consultants, and research through the CRCs for Construction Innovation and Bushfires. The main consideration in research strategy selection is the 'value for money' criteria. Where possible, the ABCB also seeks to collaborate on research, both nationally and internationally, and share costs with other interested parties, both government and industry.

Attachment D contains a brief outline of the ABCB's current research projects, their purpose and extent of collaboration.

The ABCB Research and Development Program meets all the requirements of the Australian Government Department of Industry, Tourism and Resources (ITR) procedures for contract management. These procedures include requirements for use of public monies, need to test the market, contractual arrangement, and effective project management.

# 13 Issues for Possible Consideration in any New IGA

## 13.1 Australian Government Involvement

The ABCB has frequently been cited as an outstanding example of a successful Federal/State relationship. All parties have benefited by the presence of the others and relationships have generally been very amicable. While the Australian Government does not, by and large, directly regulate the building industry in respect to health and safety in buildings, its presence to date has greatly contributed to the very real progress that has been made. In its absence, the pressure for States or Territories to respond to local political exigencies and again be tempted to go their own way would become considerably greater.

It has been argued that with the original joint government (including the Australian Government) objective of establishing a national building code having been met, the responsibility can pass to the States and Territories and industry. Such a view would overlook the benefits of the on-going involvement and contribution of the Australian Government.

In all, there are compelling reasons for the Australian Government to remain as a major participant in the ABCB and to continue to match the States' and Territories' financial contributions. But most importantly, through its Board membership, the Australian Government has continued to support national consistency in regulation reform. This position should be reflected in any new IGA.

An enlightened regulatory regime is seen as a critical component of an outward looking, internationally competitive building industry - a key part of the Australian Government's industry policy. The standing in which the ABCB is held around the world, with collaborative activities in several countries, including Japan, China and New Zealand, assists in underpinning bilateral relations, again part of the Australian Government's policy. In recent years, the Australian Government has increasingly influenced the ABCB agenda. For example:

- energy efficiency is being incorporated in the BCA at the request of the Minister for Industry, Tourism and Resources and the Minister for Environment and Heritage;
- the need to review the BCA's provisions for access for people with disabilities arose from a request by Australian Government Ministers to the ABCB to align the BCA with the requirements of the *Disability Discrimination Act 1992*; and
- the BCA and its future development are directly relevant to COAG action to address disaster mitigation as well as the Australian Government's focus on ways and means of securing critical infrastructure.

The necessity for on-going Australian Government involvement in the ABCB is likely to continue as further sustainability issues are raised and need to be reviewed by the ABCB.

Moreover, as well as being the source of half the government funding for the ABCB, the Australian Government has supported the ABCB Office in many other ways. ITR provides the Board with a robust, cost-effective, financial accountability framework for the work of the ABCB office and other corporate services. ITR is also the employer of staff.

## 13.2 ABCB Independence

A related issue for the ABCB, is the public perception that at times it is seen as too close to ITR and the Australian Government and lacking the necessary separation of identity and agenda. The difficulties arising from any perception must be assessed against some of the more tangible benefits of co-location such as service provision.

The 2000 Mid-term Review recommended that a more independent structure be investigated, such as a Statutory Authority. This and other options have been examined in recent times and no case has been developed as a viable alternative.

Should a new IGA be negotiated there might be merit in emphasising that the ABCB should be seen as a body separate from ITR but without necessarily stipulating any change in current arrangements, except perhaps aiming for office accommodation to be provided away from ITR when this makes economic sense, with any additional cost being met by the ABCB. One way to address the accommodation and accountability issues would be to treat the ABCB office in the same way as a regional or capital city based office of ITR.

In any move to change the existing relationship with ITR, it would be important to all parties for existing financial, administration and corporate accountability arrangements to be retained.

As well, if the ABCB is to continue, staff attraction and retention in a competitive market for professional skills would be assisted if senior specialist staff were employed on the same footing as other Australian Public Servants, rather than on less attractive period contracts.

## 13.3 Interface with Planning and Other Areas of Administration

As the coverage of the BCA moves from the traditional safety and health issues associated with construction to sustainability issues such as energy and water, the distinction between building and planning control systems and other areas of administrative responsibility such as environment and/or energy policy, becomes increasingly blurred. Planning and building regulation are likely to remain State and Territory responsibilities. Environmental and energy matters are the responsibility of the Australian Government as well as other State and Territory agencies in portfolios often not involved in planning or building. In these circumstances, danger exists of conflict between regimes. Already, in the energy area there have been indications that some State Ministers would have been prepared to invoke their planning powers to mandate building efficiency measures more appropriately residing in the BCA had the ABCB not moved expeditiously. These types of situations will invariably arise again.

In any new IGA, there needs to be an acknowledgement of this issue, perhaps stipulating some formal consultation process to minimise the likelihood of inconsistent overlaps between planning and building regulations. These circumstances point to the importance of whole-of-government approaches to policy formulation that bears on the built environment, and, in the case of the ABCB, buildings in particular.

## 13.4 Board Membership

Currently, the senior officers responsible for building regulation in each State and Territory are members of the Board, together with an Australian Government representative, a nominee of the Australian Local Government Association and industry representatives selected by all Ministers from a list provided by the Australian Construction Industry Forum (ACIF). Other participants are the ABCB Executive Director and an independent Chairman appointed by the Australian Government Minister following consultation with his/her State and Territory colleagues.

Generally, this arrangement has worked well, providing a Board of manageable size with the required breadth of skills. Some problems are evident periodically however and might well be matters to be considered in the formulation of any new IGA:

- The ABCB Strategic Plan calls for a 'Board of Decision Makers'. This implies members should have the authority to commit their administrations to any decision reached by the Board (other than those matters requiring Ministerial approval) rather than needing to seek endorsement at higher levels in their own organisations. The effectiveness of the ABCB is founded on this principle and generally it has worked well but periodically the situation needs to be reinforced.
- The Housing Industry Association (HIA), one of the peak industry bodies, is no longer a member of ACIF so that under existing IGA industry membership appointment arrangements[16], it is unlikely to be able to put forward candidates. This has led to a request for designated industry organisation representation. This is an undesirable situation in view of the large number of bodies likely to seek nomination. There are no compelling reasons to increase Board numbers but some consideration needs to be given to a future arrangement that ensures all substantial industry organisations are able to nominate candidates for consideration for membership.

[16] *Inter-Government Agreement*: March 1994 as amended 2001 (part 3: Establishment of Board); op cit.

# 14 Conclusion

The regulatory reform agenda being pursued by the ABCB has made good progress, but there is a need for whole-of-government support to build on the gains made. If the regulatory reform agenda is to continue to be a priority, the following points are made about future directions:

- any centralised body with a leadership role in building regulatory reform matters needs to be supported by genuine strength of will on the part of stakeholders;
- there are compelling reasons for the Australian Government to remain as a major participant in the regulatory reform process and continue to match the States' and Territories' financial contributions with the ABCB seen as a body separate from ITR;
- the BCA is a dynamic document and will continue to require updating and refinement to remove ambiguity, improve clarity, address problems that emerge and to accommodate change;
- work should proceed on a complete revision of the BCA to strengthen the rigour by which possible new areas for codification are assessed to ensure that the BCA continues to represent leading regulatory practice;
- these goals need to be underpinned by a coordinated research program;
- vigilance is required to ensure that any shortcomings in the BCA are not significant in cases of loss experienced in natural disasters;
- if issues concerning the regulation of life safety/property protection are to be reconciled, it would be necessary for the States and Territories to require the centralised development of technical provisions to meet fire service legislation objectives. Alternatively, better coordination of the roles of the fire service and building/planning legislation would assist;
- there remain opportunities to further reduce variations and to consolidate other on-site regulatory requirements into the BCA;
- the current approach to building control offers room for improvement with the need to pursue a holistic building control model to address all regulatory framework issues;
- direction is needed on the respective roles of building and planning to avoid duplication and uncertainty in building regulation matters;
- in addressing community expectations affecting the BCA's scope, such as sustainability, the principles of good regulatory practice need to be paramount;
- more emphasis should be given to engaging with industry to ensure that training and education providers deliver timely and relevant products;
- that ensuring international competitiveness and a leading edge building regulatory system requires continued active engagement in international developments;
- the changing and increasing scope of the building regulatory reform agenda may provide an opportunity to revisit industry participation; and
- the current mission statement of the ABCB, or any alternative body, would need to be reviewed to put more emphasis on the reform role and on non-regulatory solutions rather than regulatory solutions alone.

In addition, the submission provides comment on the questions raised in the Commission's Issues Paper, including a number of further suggestions for change.

## Attachment A: Major Building Control Reform Initiatives of the Last Forty Years

The Australian Model Uniform Building Code

In 1965, the Interstate Standing Committee on Uniform Building Regulations was established following agreement among the State administrations responsible for building regulatory matters to pool their resources for the benefit of all States. Its first work was to draft a model code for building regulatory purposes. The document was referred to as the "Australian Model Uniform Building Code" (AMUBC) and was initially released in the early 1970s.

The AMUBC contained proposals about technical and administrative matters, which were based on the then Local Government Act of New South Wales. The intention was that States could use the AMUBC as a model for their own building regulations. However, variation from the model was considerable and many States followed their own administrative requirements, with some States still leaving the matter to their municipal councils, and all States changing the provisions in accordance with their perceptions of local needs.

Following release of the AMUBC it was clear that further concerted work was needed to move towards a more nationally acceptable and consistent set of technical building requirements. It was clear that the difficulty in obtaining agreement on administrative provisions was distracting the States from agreeing on the technical provisions. Consequently, it was agreed to concentrate solely on the technical building requirements and that work eventually led to the production of the BCA.

Model Building Legislation 1991

In 1990, the Australian Uniform Building Regulations Coordinating Council (the predecessor of the ABCB) commissioned a project to develop model building legislation for consideration by the States and Territories. Model Building Legislation was released in 1991.

The Model Building Legislation project sought to promote both national consistency in building regulatory matters, and microeconomic reform in the building and construction industry. Some of the options presented were based on the then current practices in States and Territories, whilst others were considered innovations, particularly in the areas of private certification and liability limitation.

The key elements of the reforms of building regulation were:

- limitations on liability for building practitioners - the liability period for property damage resulting from defects in the design, construction, approval or inspection of buildings was capped at 10 years. In addition to the ten year cap, `joint and several' liability was replaced with proportionate liability according to the responsibility of defendants for the defect;
- competition for building approvals and inspections - building approvals and inspections could be obtained from private sector building certifiers. This replaced the traditional monopoly of local government building officials in this area, and has led to competition among private building certifiers and municipal building certifiers;

- compulsory registration of building practitioners - persons who undertake the design, construction or demolition of buildings (including building certifiers and inspectors) were required to register annually with a Building Practitioners Board and receive a license which allowed them to undertake work anywhere in the respective jurisdiction. There were a number of categories of building practitioners: building certifiers, inspectors, engineers, designers, commercial builders and residential builders (among others) - with varying qualifications and experience required for registration in each category; and
- compulsory insurance for building practitioners - building practitioners were required to carry insurance to cover defects and non-completion for all building work (new or renovations). The type of insurance required depended on the specific profession of the practitioner. Home builders were generally required to have job-specific insurance cover.

The reforms were intended to improve the efficiency of the building industry and yield benefits to the industry, the consumers of construction, and the overall economy.

While many of the principles of the Model Building Legislation were adopted by a number of the States and Territories, nationally consistent building control legislation had not been achieved. Significant differences still remain even between those States and Territories that have chosen to most closely follow the Model Building Legislation.

The Building Acts of the NT, Victoria, and more recently Tasmania were subsequently revised to follow the principles of the Model Legislation. WA has recently commenced redrafting its building legislation also based on the Model Legislation. NSW, SA and Qld, who all have consolidated planning/building legislation, incorporate some features of the Model Legislation.

1994 Establishment of the ABCB

Since its establishment in 1994, the ABCB has undertaken significant work in achieving nationally consistent technical requirements through further development of the BCA. The ABCB has now focused more attention on the differences between administrative provisions of State and Territory building control systems.

2000 Review of the ABCB

In February 2000, a report on the review of the ABCB was released. The review methodology used was to seek submissions and undertake interviews with key ABCB stakeholders to address future directions for building regulation reform and provide advice on the operations of the ABCB and the administration of the 1994 IGA.

Many submissions to the review panel considered that a more uniform regulatory system would deliver significant benefits and improve building industry efficiency. The current differences between State and Territory regulatory systems were described as causing confusion, with resultant time delays and cost penalties when obtaining approvals. With many sectors of the industry, including regulatory authorities, working across jurisdictional borders, the differences in building regulatory systems have become more noticeable and less tolerable.

The review panel recommended that the ABCB further develop a framework and guidelines specifically addressing nationwide consistent administration of building regulations. This recommendation was accepted by Ministers responsible for the ABCB, providing the imprimatur for initiating further work on the harmonisation of administration of the BCA in Australia.

## Attachment B: ABCB Revenue and Cost Arrangements

ABCB's costs for 2003-04 are expected to total $6.5 million. Expenditure for the year to end March 2004 is on target to achieve this. The primary focus of expenditure is on the core business of code writing development, externally commissioned research and analysis, linked in part, to energy efficiency and disability access, and also to a broader research program to support more cost-effective regulation generally and to deliver a more user friendly BCA. The BCA is provided as both a regulatory based product and a community information service. BCA charging arrangements can be deemed appropriate based on a previous DOFA audit and a review of the Australian Government's Cost Recovery Guidelines.

The ABCB has a mix of cost recovery and tax funded activities. The ABCB cost recovery approach has a legal base. An Intellectual Property Deed and IGA are in place. The Deed merged intellectual property and vested it in joint Australian Government, State and Territory ownership in equal shares of all ABCB materials. This ensures that the code, which the ABCB's major product, is subject at all times to an appropriate level of rigour and control and vests in the ABCB Executive Director responsibility to use, enhance or exploit this intellectual property. Moreover, the ABCB was the subject of an independent public review in 2000 that recommended an approach to the partial recovery of the costs involved in creating the governments' intellectual property in ABCB outputs, including the BCA and related material. This approach, supported by all parties, was part of a broader commercial strategy. Since the Review, the ABCB has been funded at around 50/50 by government and commercial income with an increasing contribution coming from commercial income, currently 56%. Unit costs for BCA users have been reduced significantly as part of the strategy.

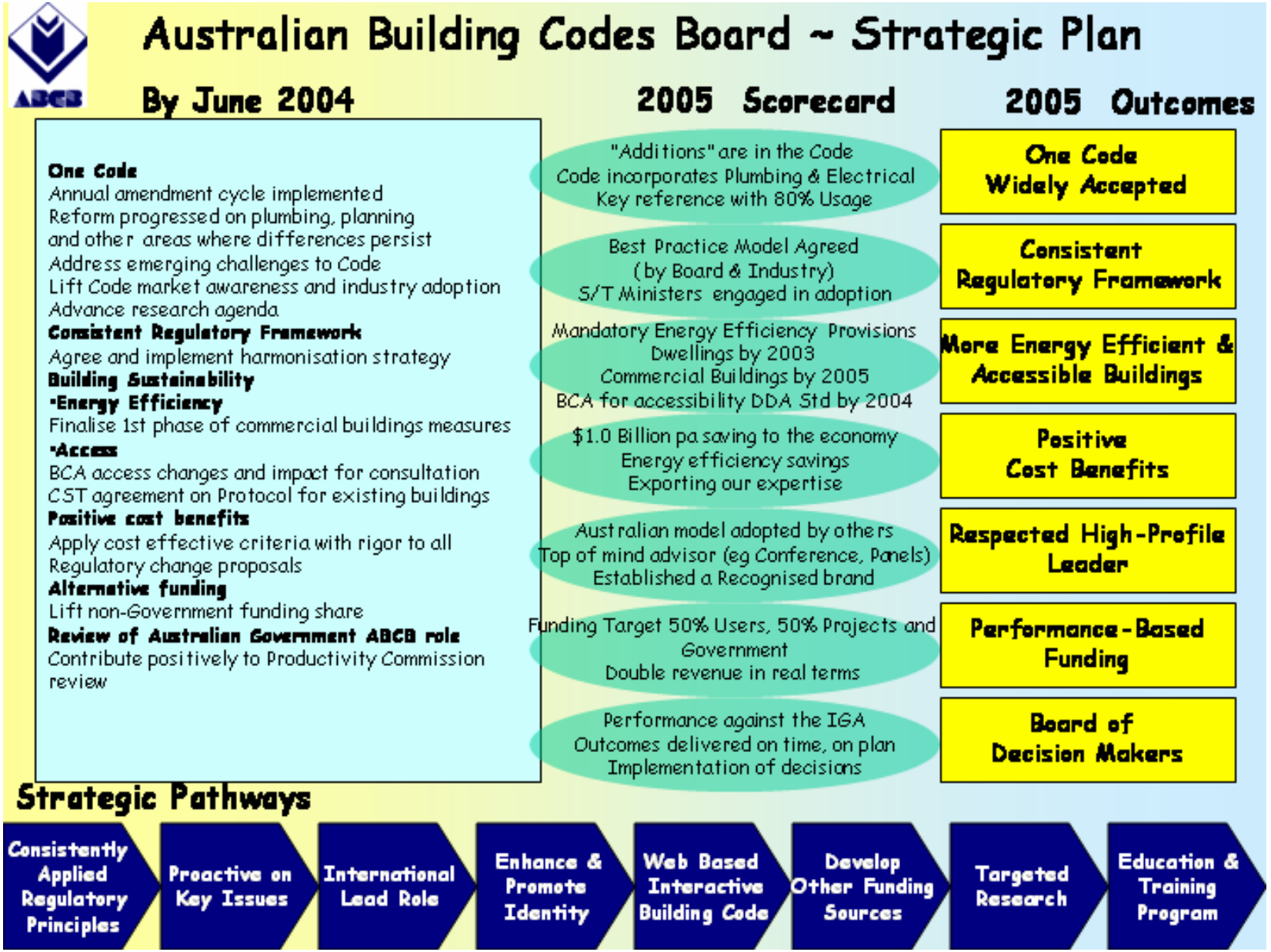
Under the IGA, the Australian Government provides half of the government contributions, currently $1 million pa over the five years to June 2005. The States and Territories match the Australian Government contribution based on a formula related to their relative share of total Australian building approvals. In 2003-04, the Australian Greenhouse Office also provided $0.5 million to the ABCB to progress the Energy Efficiency project.

Gross funds from the sale of the BCA and related material are estimated to be $3.2 million during the year.

These sources of revenue are expected to total $5.7 million in the full year - a shortfall of $0.8 million against anticipated expenditure of $6.5 million. The shortfall is being made up from a draw-down of the ABCB's accumulated cash reserves.

The ABCB's cash reserves as at 1 July 2003 were $3.7 million. The Board's ongoing strategy has been to use these reserves, over time, by spending them on priority regulatory reform. Agreement to this strategy was sought and obtained from the Minister for Finance.

**Attachment C: Strategic Plan and ABCB Work Plan**



**2003-2004 ABCB WORK PLAN**

| 2005 OUTCOMES | KPIs | OUTPUTS TO JUNE 2004 | STRATEGIC PATHWAYS | KEY TASKS |
|---|---|---|---|---|
| **One Code widely adopted** | Industry and government stakeholder satisfaction with regulatory reform and ABCB services<br><br>Performance Code and contestable certification valued and supported by the community, industry and governments<br><br>Industry recognition that ABCB initiatives assist international market access.<br><br>Code amendments on time and budget. | Annual amendment cycle implemented<br><br>Reform progressed on plumbing, planning and other areas where differences persist<br><br>Address emerging challenges to Code<br><br>Lift Code market awareness and industry adoption<br><br>Advance research agenda | **Consistent application of regulatory principles**<br><br>**Marketing and communications strategy**<br><br>**Education and training strategy**<br><br>**Research targeting strategy** | • BCA and Guide development<br>• Australian Standards Committee work and Standards/BCA realignment<br>• Technical Validation Panel trial<br>• Disaster response, bushfire, flood prone areas, high winds, earthquakes<br>• Sound insulation<br>• Firefighting<br>• Water<br>• Private certification<br>• ABCB National Conference, ABCB and other seminars, workshops for industry<br>• National Technical Summit<br>• International Fire Engineering Guidelines<br>• Non-regulatory Guidelines – hillside construction, sound, personal safety and waste management, digital communications<br>• Support for S/T administrations<br>• Plumbing Code consistency with BCA<br>• BCA identity promotion and JAS-ANZ Accreditation for ABCB Office<br>• 1 Stop Shop<br>• 1300 BCA Advisory Service<br>• Student Industry based Learning program<br>• Education Summit<br>• CRC on Construction Innovation<br>• CRC on Bushfire Research<br>• Post-graduate program<br>• Contracted research |
| **Positive cost benefit** | | Apply cost effective criteria with rigor to all regulatory change proposals | **Regulatory Impact Strategy** | • RIS protocol with ORR<br>• RIS processes on all regulatory change proposals<br>• Major RIS on access and energy matters |

| 2005 OUTCOMES | KPIs | OUTPUTS TO JUNE 2004 | STRATEGIC PATHWAYS | KEY TASKS |
|---|---|---|---|---|
| **Consistent regulatory framework** | | Agree and implement harmonisation strategy | **Harmonisation Strategy** | • Review Model Act<br>• Advance key principles<br>• Recognise contribution of work in progress<br>• Product certification and program redesign<br>• Essential safety measures<br>• Contribution to Development Assessment Forum reform agenda.<br>• Accreditation data base and professional development support<br>• Performance and BCA impact on Quality of Buildings |
| **Sustainable and accessible buildings** | | Finalise 1st phase of commercial buildings measures<br><br>BCA access changes and impact for consultation<br><br>CST agreement on Protocol for existing buildings | **Building Sustainability Strategy** | • Sustainability and the Code<br>• Energy efficiency in commercial buildings<br>• Energy efficiency in houses<br>• Accessibility – DDA Standard and accessible housing<br>• Salinity<br>• Weathertightness |
| **Respected high-profile domestic and international leader** | | ABCB becomes Japanese Evaluation body<br><br>ABCB global Code contribution | **Lead International Strategy** | • Japan/Australia Regulatory Cooperation<br>• Implementation of Japanese Evaluation Body<br>• International market access<br>• International code and research collaboration, including with NZ and CIB<br>• Hong Kong Fire Code |
| **Performance based funding** | | Lift non-Government funding share | **Alternative Funding Strategy** | • BCA publishing program<br>• Web-based interactive Code |
| **Board of decision makers** | | Positive contribution to review Framework and methodology for new Code | **Directions Setting Strategy** | • Post-2005 Review<br>• BCA21<br>• Evaluation – performance assessment |

# Attachment D: 2003/04 ABCB Research Program

| CURRENT RESEARCH PROJECT | EXPECTED OUTCOME | RESEARCH COLLABORATION | AMOUNT GST INC ($) |
|---|---|---|---|
| Sanitary provisions | Recommended changes to the BCA sanitary provisions to ensure that the provisions meet community expectations both now and in the future. | No. | 7,000 |
| Health and safety risks in buildings | Provide a basis for targeting the development of the future building code in terms of health and safety. | No. | 30,000 |
| CRC for Construction Innovation | Enhance the contribution of long-term scientific and technological research and innovation to Australia's sustainable economic and social development. | CRC for Construction Innovation participants | 50,000 |
| International Fire Safety Engineering Guidelines | International guideline that meets the requirements for use in the USA, Canada, NZ and Australia. | International Codes Council, USA, National Research Council, Canada and Building Industry Authority, NZ ($20,000 per country) | 100,000 |
| Accelerated weathering protocol | Recommendation of an accelerated weathering protocol for fire retardant treated timber, that is suitable for Australian interior and exterior conditions. | Timber Development Association | 42,000 |
| Hillside construction | A guideline covering the issues to consider when undertaking construction on hillsides. | No. | 50,000 |
| Bushfire CRC | Better management of the bushfire risk to the Australian community. | Bushfire CRC participants | 120,000 |
| Review of performance based fire regulations | Recommendations on how to achieve transparency, accountability and consistency in the approval of performance-based building designs. | Collaborative funding through the Australian Research Council 'Linkage Project' | 11,000 |
| Fire-risk modeling | Alternative designs for Class 2 buildings that provide an equivalent level of fire safety as currently provided in the BCA. | No. | 98,000 |
| Heat flow analysis-roofs | Changes to the earlier report addressing the foil industries concerns. | No. | 2,000 |
| Energy consumption target ranges for Class 5 Buildings | Energy consumption targets against which DTS Provisions will be tested. | No. | 30,000 |
| Acoustic Guideline | An Acoustic Guideline which will assist with the introduction of the BCA 2004 changes to the sound insulation provisions. | No. | 37,000 |
| Façade areas Class 2/3 buildings survey | Information on the opening areas and glazing areas of a sample of current Class 2 and Class 3 building designs. | No. | 8,000 |
| Fire simulation models | Suitability of using the UK Best Practice Guideline for fire simulation tools in Australia. | Australasian Fire Authorities Council and Fire Protection Association of Australia. | 3,000 |
| Insulation hot water supply | Satisfactory testing of hot water supply proposals in RD2003/1 | No. | 4,000 |
| BCA diagrams | Clearer, more technically correct and consistent diagrams in the BCA. | No. | 10,000 |
| Emergency evacuation of all occupants | Information to allow the ABCB to consider the optimum approach for BCA requirements dealing with emergency egress that is suitable for all occupants of a building. | No. | 65,000 |
| Accessible housing | Research into supply and demand for accessible housing and options for change. | Yes. Building Commission of Victoria. | 25,000 |
| | | **TOTAL** | **692,000** |

## Attachment E: Possible Approach to the Measurement of Board Performance against the 10 IGA Objectives: Question 10

The IGA, as revised in 2001, lists 10 objectives:

- to establish codes, standards and regulatory systems that are, as far as practicable:
    - consistent between States and Territories;
    - cost-effective;
    - performance-based; and
    - incorporate modern and efficient building practices;
- to ensure that building requirements are based on minimum, least cost solutions commensurate with regulatory objectives of health, safety and amenity;
- to examine and promote opportunities for deregulation wherever possible;
- to undertake research to ensure that solutions are soundly based with particular emphasis on innovation and lowering costs;
- to undertake effective consultation and liaison with industry to achieve transparency in the reform process;
- to simplify the wording of building requirements to achieve user friendliness and plain language style;
- to coordinate and integrate reform activities with those of other agencies to ensure consistency of approach and to encourage consolidation into the BCA of all mandatory requirements affecting buildings;
- to create an efficient regulatory environment to encourage an internationally competitive building and construction industry;
- to perform such other matters ancillary or incidental to such objects as the Board shall from time to time deem fit; and
- to undertake education and marketing activities to promote the work of the Board, to increase awareness of building regulatory reform and to increase the use of Board publications and products.

### Outcome Related Measurement

As noted in Appendix A in response to Question 10, quantitative indicators can probably only be calculated by post-completion surveys of cost savings. Qualitative indicators can be judged by a survey of customers and suppliers. One way that a more comprehensive evaluation could be developed would be to draw on the framework provided by the Board's 2001-2005 Strategic Plan. The Board's 2001-2005 Strategic Plan, identifies a small set of outcomes:

- one code widely adopted by industry;
- a consistent regulatory framework to underpin the BCA;
- more energy efficient and accessible buildings; and
- positive cost benefits for industry and the community.

The Board also aims to take a leadership role in these areas and be recognised for this nationally and internationally. It has identified a number of strategic pathways to move forward:

- consistency in applying regulatory principles;
- being proactive on key issues;
- taking a lead domestic and international role;
- enhancing and promoting the ABCB identity;
- drawing on a web-based interactive BCA;
- targeting research; and
- developing an education and training program.

It is against these outcomes and the strategic pathways that the Board has identified a scorecard for measurement based on performance through to 2005. The elements of the scorecard are intended to be tangible and verifiable measurements. Details are in the Board's strategic plan at Attachment C.

The Board also saw merit in measuring ABCB activity against BCA market penetration, productivity, decision-making and program delivery.

An evaluation based on progress down the strategic pathways and against scorecard elements will give a clear picture of what the Board has achieved against the IGA objectives. The links are set out in the attached table "Relationship Between Board Strategic Plan and IGA Objectives".

**Output Measurement**

***Measuring BCA Market Penetration***

The BCA is the Board's major product. The level of BCA sales is therefore the major indicator of market success. BCA users - designers, architects, engineers, builders and certifiers - form the main portion of the sales market for Board products. It also includes college and university libraries and students working in these and related disciplines.

The ABCB's overall target audience is larger than its sales market. Beyond the BCA, the Board also markets itself to opinion leaders - governments at all levels, government agencies, industry and professional associations, the scientific community and similar organisations offshore -- as a highly skilled, leading edge organisation that follows best regulatory practice. Action in this wider target market can lead to greater awareness of, and support for, regulatory reform among these opinion leaders.

Measurement of market penetration could also involve assessing/determining the size of both the user market and the wider industry audience.

For the user market, the number of sales of the BCA and related products can provide a clear indication of how successful the Board's base level marketing has been. Growth in sales over time can indicate marketing success. It could also include benchmarking against overseas code writers in North America.

For the wider industry audience, the ABCB needs to assess as accurately as possible the level to which this audience understands and supports the ABCB's objectives. This assessment could be by way of a sample survey. At the international level, the interest shown by offshore agencies in ABCB skills and expertise is obvious evidence.

**Productivity Measures**

While the primary role of the ABCB is to write the BCA, its workload is much broader. Australian Government-led initiatives, such as the development of energy efficiency measures, occur in addition to the Board's maintenance of the BCA. There is little point in measuring the cost of ABCB outputs when product quality and relevance, and public acceptance of measures, are more important factors in the Board achieving its objectives than straight input/output ratios. This issue also relates closely to the effectiveness of the Board's program delivery. In the evaluation process it is likely that these measures will be combined. Nevertheless, the following three key areas could measure Board effectiveness in regard to productivity.

***Stakeholder interest***

What level of success has the Board achieved in ensuring that key stakeholders "own" the Board's activities?

Has the Board involved Ministers in promotional activities and engaged Ministers' attention in its work?

Has the Board kept Ministers and key industry groups informed of its activities and the development of its work?

***Client interest***

Do ABCB's clients hold positive attitudes to, and perceptions of, the organisation?

How well does the ABCB respond to, and act upon, feedback from clients, such as appropriateness/timeliness?

Does the ABCB identify early new demands in the market for services?

***Recognition/awareness***

How successful has the Board been in finding potential clients and marketing its products to them?

Has the Board been successful in promoting its work and products among the community at large?

The level of success could be gauged by an annual review of achievements, conducting a sample survey of the views of stakeholders and clients and assessing how well the Board has performed against the principles set down in the IGA.

**Monitoring Decision Making**

The Board's major decisions are its strategic direction policy-making, the approval of new projects consistent with that direction and the management of budgets to deliver the resources to deliver key outputs. The effectiveness of the Board's decisions will depend largely on the extent to which the States and Territories reference new measures in their legislation as well as the extent of industry and community support for the Board's major work program outputs.

To assist the Board to keep track of the outcome/effect of its actions, all key decisions of the Board are recorded in tabular form together with the response/outcomes among key stakeholders and clients. This statement is be presented to the Board for its consideration on an annual basis and provides an indicator of the extent to which the ABCB is a "Board of Decision Makers."

**Effectiveness Of Program Delivery**

This could be measured by the level of stakeholder and community support for Board activities, as indicated by the level of their participation in committees and working groups, and their overall support for the Board's measures.

The support of participating governments for the nationally consistent adoption of Board proposals for change is also a key determinant of Board performance.

**RELATIONSHIP BETWEEN BOARD STRATEGIC PLAN AND IGA OBJECTIVES**

| 2005 OUTCOMES | STRATEGIC PATHWAYS | LINK TO THE 10 IGA OBJECTIVES |
|---|---|---|
| One Code widely adopted by industry.<br><br>A consistent regulatory framework to underpin the Code.<br><br>Positive cost benefits for industry and the community. | consistency in applying regulatory principles | Establish codes, standards and regulatory systems that are, as far as practicable, consistent between States and Territories, cost-effective, performance based and incorporate modem and efficient building practices.<br><br>Base building requirements on minimum, least-cost solutions which address the regulatory objectives of safety, health and amenity.<br><br>Consult and liaise with industry to achieve transparency in reform process.<br><br>Create an efficient regulatory environment to encourage an internationally competitive building industry. |
| Adopt a leadership role and be recognised nationally and internationally for this. | be proactive on key issues<br><br>take a lead international and domestic role<br><br>enhance and promote the ABCB identity<br><br>develop an education and training program<br><br>draw on web-based interactive Code | Investigate and promote opportunities for deregulation.<br><br>Coordinate/integrate reform activities with those of other agencies to ensure consistency of approach and to encourage consolidation into BCA of all mandatory requirements affecting buildings.<br><br>Perform other matters as the Board deems fit.<br><br>Undertake education and marketing activities to promote the work of the Board, to increase awareness of building regulatory reform and to increase use of Board publications and products.<br><br>Simplify the wording of building requirements to achieve user friendliness and plain language style. |
| More energy efficient and accessible buildings. | target research | Undertake and promote research which offers innovative and cost efficient solutions. |

## Attachment F: Private Certification Status of Building in the States and Territories

| JURISDICTION | INTRODUCED | CURRENT LEGISLATION AND ADMINISTRATION |
|---|---|---|
| Northern Territory | 1993 | NT Building Act 1993<br>Overseen by Building Advisory Services Branch of Department of Infrastructure Planning and the Environment |
| Victoria | 1993 | Building Act 1993<br>Building Regulations 1994<br>Overseen by Building Commission |
| South Australia | 1993 | Development Act 1993<br>Overseen by Building Policy Branch of Planning SA |
| Queensland | 1998 | Integrated Planning Act 1997<br>Building Act 1975<br>Standard Building Regulation 1993<br>Overseen by Department of Local Government and Planning |
| New South Wales | 1998 | The Environment Planning and Assessment Act 1979, as amended by the EP&A (Amendment) Act 1997<br>Overseen by the Department of Urban Affairs and Planning |
| ACT | 1999 | Building Act 1972 (Amended)<br>Building Regulations 1972 (Amended)<br>Construction Practitioners Registration Act 1998<br>Overseen by Building Electrical and Plumbing Control, Department of Urban Services |
| Tasmania | Jan 2004 | Building Act 2000 (came into effect Jan 2004)<br>Overseen by Building Standards and Regulation Branch of Department of Infrastructure, Energy and Resources |
| Western Australia | Not yet | WA Building legislation is being reviewed |

## Appendix A: Specific Comment on Questions Raised by Productivity Commission Issues Paper

**1. Have reviews of the regulation of the building and construction industry asked the right questions and identified the areas most in need of reform? Has adequate follow-up occurred to ensure accepted recommendations were adopted and assessed ex-post for their effectiveness?**

Reviews of the IGA and the ABCB have generally asked the right questions and identified areas most in need of reform. The ABCB has been diligent, if sometimes tardy, in following up recommendations from previous reviews. ABCB processes take time and this should not be surprising given the potential impacts involved in changing regulations that apply nationwide. Proposals for change need to be thoroughly researched, widely consulted and meet the stringent requirements of COAG principles and guidelines for good regulatory practice [17].

A further consideration goes to the heart of the ABCB's role vis a vis State and Territory Governments. The Board does not have administrative responsibility or executive power. Implementation of ABCB proposals is entirely a matter for the governments concerned. The Board can propose changes but individual governments first need to agree to these and then implement their proposals.

The submission provides further comment on action taken following past reviews *(refer Section 7: Major Reviews of the ABCB).*

**2. The Commission welcomes comments from interested parties on the intended scope of this study.**

As mentioned in the submission, the interface between building and planning regulation, and the ABCB's international collaboration activities, needs to be more broadly addressed. Also, consideration could be given to expanding the ABCB's role to one of assisting the development of the building and construction industry rather than solely focus on regulatory reform. This has been the case in Victoria where the Building Control Commission has become the Building Commission, with a wider policy role.

**3. Is the mission statement of the ABCB the appropriate one for the intergovernmental body responsible for reform of building regulation?**

Although generally appropriate for current responsibilities, as noted in the submission, the focus on reform could be more explicit, and recognise that regulatory solutions are not the sole means to address building outcomes *(refer Section 3: The ABCB's contribution to regulatory reform).*

[17] Council of Australian Governments; op.cit.

**4. What are community expectations for health, safety and amenity in the design, construction and use of buildings? Has the ABCB been able to adequately determine what the community's expectations are, including preferred cost-quality tradeoffs?**

This is a constantly changing scene but given its responsibilities for the BCA, it is necessary for the ABCB to remain attuned to changing expectations, not lead them. Consultation is extensive, to the extent that at times the ABCB is criticised for over-consulting and taking too long to make changes. The submission provides more detail on how the ABCB addresses community expectations *(refer Section 12.7: Responding to Emerging Community Expectations and the BCA's Scope).*

**5. Is the definition of amenity in the BCA adequate? Should the term refer to the basic needs of a building or to anything that impacts on the comfort, pleasure and aesthetic qualities of a building? Does it give sufficient attention to factors that impact on those not occupying the building? Alternatively, should the term be interpreted more narrowly to provide greater focus?**

Amenity needs to include comfort and freedom from nuisance but not aesthetics. For non-occupiers, the ABCB would need to be charged to more specifically embrace planning issues, particularly with the trend towards higher numbers of apartment dwellers, the expectations on amenity will be broadened not narrowed *(refer Section 9: Intent of the BCA).*

**6. Why is national consistency considered to be the crucial means by which to meet community expectations for health, safety and amenity in a cost effective and efficient manner?**

National consistency is not an end in itself, but it can provide the means to more cost effective outcomes for the community. A nationally consistent approach to building regulations can meet community expectations in a more cost effective manner through the efficiencies it brings for manufacturers, suppliers, designers, service providers and other sources of input to the industry. Regulations based on climatic, geographic and/or natural phenomena rather than jurisdictional borders create opportunities for industry to focus its efforts on a single national market, take advantage of any scale economies, lower compliance costs, lessen confusion as well as cost penalties associated with time delays and duplication in approvals processes. These efficiencies contribute to the affordability of building construction.

**7. How can more progress be made in adopting uniform administrative legislation?**

To have a more specific requirement in a new IGA with an agreed statement of intent by <u>all</u> relevant Ministers drawing on a whole-of-government approach, not just those with direct responsibility for building regulation, would provide a good basis to progress further.

In the Report of the Small Business Deregulation Task Force[18] to the Australian Government, it was recommended that no State or Territory should agree to any variation to the technical requirements for building requested by local governments unless this had been agreed to by the ABCB.

However, the IGA remained unchanged on this point and contains only a "best endeavors" clause whereby jurisdictional variations are "as limited as possible". It would be possible to adopt the Report's intent with the agreement of all Governments and to extend this undertaking to a commitment to adopt a uniform administrative framework.

In the meantime, the ABCB has developed a strategy to progress greater harmonisation of the administration of building regulations *(refer Section 12.4: Developing a Nationally Consistent Administrative Framework).*

**8. Is it feasible for all communities and individuals to use the national standard as their baseline, with the option of altering the standards where this better meets community or individual preferred tradeoffs between price and quality? How difficult/desirable is it for individuals or communities to enforce a higher standard than that in the Code?**

The BCA is a minimum acceptable standard and some State and Territory or local governments may specify higher standards if they believe that is what their constituencies are demanding. Authorities having jurisdiction can do this through planning and/or local government laws. The concern with this is that unilateral action by councils, for example through planning laws, is not subject to COAG guideline scrutiny as is the case for the ABCB. It opens the way for less than desirable regulatory outcomes for the community and can compromise the cost effectiveness test as set out in the IGA.

**9. Why are some differences in regulation intractable?**

There are likely to be some unique conditions that apply to a small enough number of sites that are better handled by variations, rather than complicating or compromising the whole BCA to accommodate them.

Also, State-based Administrative Orders dictate that particular building regulatory matters be dealt with in Acts other than the legislation giving effect to the BCA.

This matter is discussed further in the submission (*refer Section 12.1: Maintenance, Refinement and Enhancement of the BCA and its Delivery).*

**10. What quantitative and qualitative indicators would facilitate assessing performance against some or all of the ten objectives of the ABCB?**

Attachment E to the submission provides an outline of one approach to this topic.

[18] *Time For Business: Report of the Small Business Deregulation Task Force (1996*)

Quantitative indicators can probably be only calculated by post completion surveys of cost savings. Work commissioned from KPMG in 1999 for the Mid-term Review attempted to assess the impact of five major initiatives introduced by the ABCB, being:

- performance-based building code (BCA96);
- economic evaluation system of building regulatory proposals;
- private certification;
- liability reform; and
- national product certification.

The general approach to the KPMG study was to select a number of case studies which were examined and inferences were drawn. Cost savings were sought from case study participants even though it was recognised that difficulties were involved in quantifying impacts.

Case study interviews were undertaken with building sector professionals in relation to 15 significant construction projects around Australia undertaken during the 1990s. Interviews and discussions with 38 leading industry experts included building surveyors, architects, legal specialists and construction contractors. On the introduction of the performance based BCA it found cost savings related to efficiency of design and construction. Where identified, these savings ranged from one to five percent of the total construction costs. In some instances, this magnitude of saving was a "make or break" difference to the economic viability of the project.

While this work was undertaken four years ago, should the Productivity Commission wish to have a more current assessment, the ABCB could work with the Productivity Commission to review the study's methodology and update the research.

Qualitative indicators can be judged by survey of suppliers and customers. The Board set itself a series of qualitative outcomes for 2005 against which it identified a number of indicators of performance. These are outlined in the ABCB Strategic Plan (refer Attachment C).

**11. In what ways has reform of building regulation affected the various measures of productivity of the building industry? Which is the best measure of productivity or should more than one be used? What factors, other than regulation reform, have impacted on productivity? Is it possible to weight their relative importance?**

Separating regulatory issues from supply chain issues, industrial relations issues, administrative approvals and other issues is difficult. Some of these other items, particularly for commercial buildings, would have had much greater impacts than changes in the BCA. This is evident in work commissioned from Econtech by the Department of Employment and Workplace Relations in 2003. It identified scope for labour productivity gains in the commercial building sector in Australia of around 13% leading to reduced construction costs of about 6%. This compares with a more modest gain from the introduction of the performance-based BCA of 1-5% noted in answer to Question 10.

**12. Should the IGA objectives of the ABCB be changed, or would it be more appropriate for the ABCB to focus on consolidating the changes that have already been put in train? Or are there problems which have neither been fully recognised nor addressed as yet?**

As covered in the submission, changes could more overtly address sustainability, administrative and planning interface issues *(refer Sections 12: Current and Likely Future Work Programs, and 13: Issues for possible consideration in any new IGA).*

**13. The Commission welcomes input from interested parties on the meaning and application of effectiveness (section 2.1), productivity (section 2.2) and efficiency (section 2.3) in evaluating the performance of the ABCB and the reform that has taken place in the building sector since 1994.**

These are issues best addressed by users of the BCA, but an audit of factors used in Regulation Impact Statement projections would give some indication of the types of measures that can be used. They tend to be topic dependent. The Commission may wish to consider the approach to measuring ABCB outcomes and outputs at Attachment E**.**

**14. What processes involved in developing and implementing building regulation are most likely to deliver outcomes that are effective and efficient, and meet community objectives at least cost?**

Consultation, communication and education seem to be the critical factors. These factors are an integral part of the ABCB's approach to its work within the COAG principals and guidelines for good regulatory practice [19]. *(Refer Sections 6: ABCB Consultation, and 12:Current and Likely Future Work Program.*

**15. How well do planning and building approvals processes operate together in each jurisdiction? How do councils interact with the Code? How difficult would it be to delineate between areas of responsibility for planning approval and building approval?**

There is no question the interfaces could be better defined, perhaps by starting with the premise that anything that can be contained in a national building code should be there, rather than in local planning regulations.

**16. Is there a sound rationale for local councils to impose additional building requirements above those contained in the BCA? Do they have the resources to do this?**

Refer answer to Question 8.

[19] Council of Australian Governments; op, cit.

**17. Are ABCB funding and charging arrangements appropriate?**

At the national level the government funding approach is appropriate, with some scope to increase the proportion to be derived from sales of products and services. In an area as politically sensitive as this, it would be undesirable to seek direct industry funding or sponsorship, but some greater consistency between State and Territory administrations as to how they raise their contributions would be appreciated by builders. A case exists to reconsider the contributions of the smaller administrations who have benefited considerably from the ABCB but whose current contribution scarcely covers the cost of servicing them. *Detail on the cost recovery strategy of the ABCB is outlined in Attachment B to the submission.*

**18. Is the ABCB structure and membership appropriate for achieving its objectives? Are there other institutional models that would improve the effectiveness of national reform?**

Other than items raised in the submission, there seems to be no pressing need for change. Internationally, there is no other model known that would provide a superior solution. However, given the split responsibility for development and implementation of building regulation, a model that relies on the engagement by Ministers jointly in strategic policy issues may assist the effectiveness of national building regulation reform.

Should sustainability become a major and ongoing part of the ABCB agenda, some consideration could also be given to establishing a second standing committee, alongside the BCC, which would have experts in this area from the administrations as well as relevant industry and NGO representation. The Board would then still remain the final arbiter of what was to be included in the BCA.

Building on initiatives introduced recently by the ABCB could involve a clear delineation being made between the role of the ABCB, its Technical Validation Panel and that of State and Territory administrations. The Panel has been introduced to assist with the work-load of State administrations by providing more robust technical solutions to proposed BCA changes. If State administrations confine their contribution to the BCA to implementation, legislative and administrative areas, duplication on technical issues would be minimized and consideration of issues could be hastened.

**19. How important is the direct involvement of the Australian Government in achieving national reform to building regulation? Should the ABCB be more independent?**

This is very important to the reform agenda going forward *(refer Section 13.1: Australian Government Involvement).*

**20. Do the processes by which standards are made, ensure that standards contained in the Code are well based?**

In response to criticisms from industry about standards proliferation and processes, the ABCB has recently been able to bring standards making processes into a generic BCA referenced document protocol. This will strengthen the rigour and timelines for standards being mandated in the BCA (refer Protocol for the Development of BCA Referenced Documents[20] and MoU between ABCB and Standards Australia)[21].

**21. Would greater alignment with standards from other countries be desirable?**

Yes, particularly if they are global in nature and not country-specific. To facilitate adoption of such standards it would be important for the ABCB to be involved, most notably in the region, to influence their development overseas.

At present, a limited number of international standards are referenced in the BCA, and such standards are not widely available for the building and construction sector. The ABCB has had success with aligning BCA referenced standards with New Zealand with the support and cooperation of Standards Australia and New Zealand authorities. About 20-25% of all referenced documents are joint with New Zealand. Also, the introduction of the new Protocol referred to in answer to Question 20 will facilitate further adoption of international standards.

**22. Are the level and type of consultations by the Board and its advisory committees appropriate and transparent (in order to fulfill the ABCB's objective 5)? Are there adequate mechanisms for interested parties not directly represented on the ABCB or its advisory committees to provide input into the development and reform of building regulations? Are there other consultation strategies that would facilitate greater transparency for stakeholders? Does the ABCB have the necessary representation to determine what meets community expectations for health, safety and amenity?**

This is covered in the submission, but generally the answer would be that the ABCB's mechanisms which now exist appear to be adequate, although not perfect, and there will always be those who feel aggrieved. The ABCB Board is correctly primarily drawn from State and Territory regulatory agencies together with representatives of the Australian Government, industry and local government, with the consultations and technical inputs delegated to its comprehensive committee system *(refer Sections 6: ABCB Consultation and 10: Ensuring Best Practice in Regulation).*

[20] *Protocol for the Development of BCA Referenced Documents*: http://www.abcb.gov.au/documents/abcb_office/Protocol_for_Reference_Docs_03_12_16_final.pdf
[21] *Memorandum of Understanding between ABCB and Standards Australia*: http://www.abcb.gov.au/documents/abcb_office/abcb-sa_mou_nov2003.pdf

**23. What are the advantages and disadvantages of the majority voting rule used by the Board and its Committees versus the consensus based approach used by the Standards Australia technical committees?**

In practice, there has never been voting at the Board level but the provision needs to be retained to avoid one or two members frustrating the will of a large majority. The ability of administrations to vary the BCA for their own requirements makes this issue not one of major concern. The key difference that distinguishes the ABCB's approach to code writing from the consensus standards writing approach used by Standards Australia is that the development of regulatory proposals by the ABCB is an integral part of, and leads directly to, public policy formulation with accountability to Ministers and the Australian Parliaments.

**24. Do the different approaches across the jurisdictions in implementing changes to the BCA inappropriately erode achieving national consistency? Is there a better approach?**

In respect to the BCA this is covered in answers to 8 and 9 above, but there is no doubt that differences in the allocation of responsibilities within different States and Territories makes a consistent administration approach a challenge. Clearly, large States will have more departments and interfaces than small States where it is easier to bring all elements into the one organisation.

**25. Is the regulation impact analysis system for changes to the BCA working effectively? In particular, has there been adequate cost benefit analysis of proposals and evaluation of alternatives when considering changes to the Code?**

By and large, it seems to work well, but it is accepted that there is always room for improvement. The COAG principles and guidelines for good regulatory practice[22] represent best practice and (in close and on-going interaction with the ORR) are being met. The submission goes into more detail on ABCB processes and their consistency with COAG guidelines (*Refer Section 10: Ensuring Best Practice in Regulation*).

**26. Should there be greater accountability for changes to building regulation through the actions of Local Governments? Should more be done to ensure that these changes are justified and subjected to adequate analysis of costs and benefits?**

This is a matter for industry and local government to answer.

**27. Is the BCA effectively achieving the various components of the ABCB's objectives, such as those listed above?**

The ABCB believes that the objectives are being met.

[22] Council of Australian Governments, op.cit

**28. Do some of the components of the ABCB's objectives conflict? To what extent do the various components contribute to the objective of promoting deregulation (objective 3)?**

The IGA objectives that direct the operations of the ABCB are all components of a single overarching policy direction, jointly agreed by Ministers responsible for building regulation, which requires a nationally consistent regulatory framework be developed. The ABCB believes there are no internal inconsistencies between the ten objectives. The important thing is that priorities be set by the Board to meet all of the objectives. This is being done. It is reflected in Attachment E on the measurement of the Board's performance.

The move to performance and the acceptance of alternative solutions is a key component of deregulation. In addition, deregulation is being promoted in the areas of practitioner accreditation and product certification. The ABCB developed a National Accreditation Framework and ANTA approved competency standards for building certifiers to remove barriers to cross-border practice. Moves are also under way to introduce a privatised system of national product certification in collaboration with NZ to remove the duplication involved in the existing system that involves approval processes in eight jurisdictions.

**29. Are 'minimum acceptable' standards and the pursuit of least cost solutions compatible with maximising net benefits to the community?**

Minimum acceptable standards can be compatible with maximising net benefits to the community because the judgments made about regulatory stringency and intervention are arrived at by assessing costs and benefits, and the relative merits of policy, technical, economic and societal considerations. Least-cost solutions do not, however, maximise net benefits because cost alone is a necessary but insufficient measure of community benefit.

In a competitive marketplace industry must be able to exceed minimum standards unhindered by regulators. Market forces will determine where maximum net benefit lies. The answer will not be the same throughout Australia, whereas minimum health and safety standards should be.

**30. Is the proposed Premises Standard (and associated revisions to the BCA) the most efficient and effective means of meeting building access requirements under the DDA?**

A Premises Standard and aligned BCA appear to the ABCB to be far preferable to setting standards based on complaints made through DDA processes. A draft RIS, endorsed by ORR, was prepared as part of the development of the draft Disability Standards for Access to Premises. The RIS considered four alternatives:

- a market-based approach;
- a premises Standard independent of the BCA;
- a premises Standard and BCA aligned, but with less stringent requirements; and
- a premises Standard and BCA aligned to the DDA.

The RIS recognised that because of the existence of the DDA, the broad legislative direction for addressing access for people with disabilities had already been set, particularly as the legislation was amended specifically to allow Premises Standards to be developed. Alignment of the BCA with the DDA was also considered by stakeholders to be the most efficient and effective option given the direction set by Australian Government Ministers.

**31. Is the Administrative Protocol likely to be effective in ensuring that decisions are consistent with the DDA and in minimising the need to resort to DDA disputes processes? Will it provide greater certainty and consistency in determining unjustifiable hardship? Are there better ways of achieving these objectives?**

The Administrative Protocol has been developed by the ABCB with significant input from a wide range of industry and community representatives with the intention of creating greater certainty and consistency of approach when cases arise about "unjustifiable hardship" under the DDA. While it is too early to judge whether the Protocol processes will deliver on this expectation, the ABCB certainly will be aiming to make it effective. The ABCB is not aware of any better way of achieving this. However, adoption of the Protocol will be at the discretion of each State and Territory.

**32. To what extent should energy-efficiency objectives be addressed in the Code? Is variability by climatic zone, rather than by jurisdiction, the appropriate way to cater for differences across Australia? Is it more effective and efficient to use performance or prescriptive based standards to achieve energy-efficiency objectives?**

Many of the elements of a building that can make it energy efficient or energy inefficient are already covered in the BCA for structural, health or amenity reasons. These include walls, roofs, glazing, ventilation systems, lighting and lifts.

For understanding and ease of regulation, as much as possible should be consolidated in the same regulatory document and its explanatory commentaries, for example a minimum of outside air is needed for health, a maximum of outside air is needed when it provides "free cooling" such as in a spring/autumn condition but too much outside air can cause a major air-conditioning/heating load in either a summer or winter condition.

The same "natural" conditions can exist in different jurisdictions so rather than having possibly hundreds of local conditions, many can be combined into larger climatic zones. These zones can also be simplified because the marginal differences may have minimal impact on a building.

The main argument for a "judicial" basis would be if there is a judicial industry practice, or a judicial energy or construction cost. The few local industry practices encountered are more likely to be regional based, eg north Queensland verses South Queensland. Many energy utilities are now privately owned, and a number with different pricing structures may operate within the same jurisdictions. Construction costs also vary across jurisdictions and differences tend to be regional/urban based, more so than inter-state based. Even a jurisdiction such as Victoria, that prefers a different stringency to that of the BCA (5 stars against the BCA current 4 stars), still bases it measures on the climatic regions within that State.

Either a performance or a prescriptive approach may be the more cost effective depending on the circumstances - this is why the BCA provides both options. Some builders simply want to know what to do while others want to optimise designs. There is also a balance between the slightly higher cost of a conservative prescriptive solution compared with the added costs of fine-tuning a design. A small house or building is more likely to be built to the Deemed-to-Satisfy Provisions, while a large building involving a team of design professionals is more likely to be performance-based. The cost of design, and regulation, are part of any regulatory impact analysis.

One assessment method for verifying a performance-based solution is by comparing it to the prescriptive solution. Providing it performs as well or better, it complies. To not have the prescriptive solution would eliminate that basis of assessing the performance-based solution.

**33. Is there a conflict of objectives between the BCA and the fire authorities' regulation in the States and Territories? If so, how could this be resolved?**

Generally, the objectives are aligned in regards to life safety in fires. They differ in regard to property and environmental protection. The BCA focuses on life protection and not, primarily on property protection. As it stands, building proponents need to comply with all legal requirements. What is at issue is whether both elements ought to be regulated through the BCA. Ministers would need to agree that this matter be covered in future BCA amendments (*refer Section 9: Intent of the BCA).*

**34. As well as energy efficiency, what other aspects of building design, construction and use could potentially be subject to sustainability considerations? What is the most useful definition of sustainability? Is there community consensus over what is a desirable level of sustainability for buildings?**

This matter is addressed in the submission *(refer Section 12.7: Responding to Emerging Community Expectations and the BCA's Scope).*

**35. Does the existence of performance-based regulation tend to transfer the costs from the construction to the maintenance of buildings? Does it increase the need for maintenance provisions to be included in the Code?**

As a performance-based code, the BCA provides the flexibility to design a building that requires more or less maintenance over its life than would be the case if the Deemed-to-Satisfy Provisions were followed. Even within the Deemed-to-Satisfy Provisions, choices are available between prescriptive solutions that provide different balances between up front and building life cycle costs.

The need for cost effective regulation transfers some responsibility from construction to operation and maintenance of a building. Maintainability may be an issue for the BCA but ongoing maintenance requirements will also be matters for other jurisdictions, both State and in some cases the Australian Government (e.g. aged care).

The Deemed-to-Satisfy Provisions of the BCA, particularly in the area of fire safety, contain a mix of passive systems (generally not requiring maintenance, such as fire-resisting walls) and active systems (generally requiring maintenance, such as fire sprinklers).

Building owners and developers make decisions on up-front construction costs verses building life cycle costs regardless of whether the building design follows the prescriptive Deemed-to-Satisfy Provisions, or relies on a performance-based solution. The BCA is therefore ambivalent to whether performance-based solutions require more or less maintenance. Consequently, it is not possible to make a general assessment about whether the performance-based code tends to transfer costs from the construction to the maintenance of buildings.

In designing a building using a performance-based approach, the designer must consider all relevant Performance Requirements, including those pertaining to maintenance. This requirement is detailed in Subclause A0.10(c) of Volume One of BCA 2004. The Fire Safety Engineering Guidelines (2001), a primary reference of fire safety practitioners, also highlights the need for maintenance to be considered when designing a building's fire safety systems. In taking into account the level of maintenance required, the designer is able to make a fully informed decision about any Alternative Solutions to be employed.

It should be noted that maintenance provisions have been part of the BCA since 1990. However, these provisions were reasonably brief and the States and Territories have tended to rely to a greater extent on their own maintenance regulations, which were generally more substantial.

With the introduction of BCA 2004, more substantial maintenance provisions were inserted into the BCA for Class 2 to 9 buildings. Essentially these new provisions reinforce and clarify the intent of the pre-existing maintenance provisions. Further work is necessary to resolve concerns industry has about the lack of consistency on how maintenance is administered under the current state-based approach.

**36. Are there any other possible areas (that may not be listed above) that could be incorporated appropriately into the BCA?**

These are covered in the Submission *(refer Sections 12: Current and Likely Future Work Program, and 13: Issues for possible consideration in any new IGA).*

**37. Is it appropriate to charge for access to the Code? How does this impact on the transparency and accessibility of the Code? Are any changes warranted in the way in which charges are calculated?**

The ABCB believes it is appropriate to charge and it will continue to examine ways of marketing the BCA to maximise its uptake and utilisation.

Subscription services for access to the BCA are based on commercial contracts with publishing houses. The selling price of the BCA reflect part of the cost to develop, produce and sell it in a variety of formats, offerings and through various commercial publishing houses. The BCA is now available at a significantly reduced cost than in the past. Casual users can also purchase access to the online version of the BCA for a small fee *(refer Section 12.2: Assisting Practitioners to use the BCA).*

**38. What activities or strategies could improve accessibility to the Code?**

With the existing BCA, greater electronic access and a more user friendly hard copy format are improving access. In addition, in order to improve accessibility of the BCA, the office has implemented a strategy which now has the BCA freely accessible in 47 locations throughout States and Territories within Australia. These include public libraries, Standards Australia outlets and tertiary institutions. A complete list of these locations is provided on the ABCB web site[23]. A target of providing access at 100 locations within the next 12 months has been set by the ABCB.

The ABCB has recently entered into discussions with industry associations with the aim of providing a bulk purchase and distribution arrangement for all industry members. Discussions are also underway with Student Associations on how better to meet the accessibility requirements for construction and building industry students *(refer Section 12.2: Assisting Practitioners to use the BCA).*

**39. What is the nature and extent of differences in the administration of building regulation across the States and Territories? What are the costs of non-uniformity in administration of the Building Code?**

Allen Consulting Group have examined this matter and prepared a report which is available[24].

---

[23] BCA Outlets:
http://www.abcb.gov.au/index.cfm?fuseaction=DocumentView&DocumentID=135

[24] Allen Consulting Group's report:
*Harmonisation of Building Control Administration: Costs and Benefits of the National Administration Framework* (Dec 2002)

**40. Why have not all the States and Territories adopted the model building legislation? Is it appropriate to have a nationally consistent administrative framework? What would it take for regulatory systems to be consistent?**

This is universally agreed as a desired objective but change is slow, for reasons which would be appropriately explained by the States and Territories.

**41. How effective are these compliance checks? Do they impose necessary or unnecessary costs and delays? Have delays improved or worsened recently? What improvements could be made?**

This is a matter for comment by the States and Territories and industry.

**42. Are there problems with dispute resolution processes and, if so, what are the main causes?**

This is a matter for comment by the States and Territories and industry.

**43. Has private certification reduced clarity over allocating responsibility when addressing complaints?**

This is a matter for comment by the States and Territories and industry.

**44. Would the establishment of a Building Appeals Board address existing weaknesses or would other mechanisms be more effective?**

This is a matter for comment by the States and Territories and industry.

**45. What are the main differences across States and Territories with respect to the allocation of risk and BCA compliance responsibility for building practitioners (designers, certifiers, builders, etc)? How significant are they? What are the insurance requirements?**

This is a matter for comment by the States and Territories and industry.

**46. What has been the impact of changes to liability arrangements and what remains to be addressed? What has been the role of the ABCB in the reforms?**

The role of the ABCB is to pursue national consistency in this area as part of its broader strategy to develop a model regulatory framework that underpins the future delivery of the BCA.

**47. Are there other mechanisms available to implement an efficient allocation of risk and liability across the building industry?**

This is a matter for comment by the States and Territories and industry.

**48. What has been the role of the ABCB in introducing private certification?**

This issue is largely dealt with by the States and Territories as it is now largely a matter for administration and implementation and not national policy. The policy debate, to some extent, pre-dated the advent of the ABCB in 1994. Nevertheless, the performance of this element of the administrative framework, that underpins delivery of the BCA to varying degrees in most jurisdictions, is under regular review by the Board. For comment on the latest situation see answer to Question 50.

**49. What is the role of private certifiers across States and Territories? What requirements must they meet in each State and Territory in order to practice? Do these roles and requirements differ from local government certifiers?**

This is a matter for comment by the States and Territories and industry.

**50. What have been the benefits and costs of private certification? What is the risk of conflicts of interest (such as when the builder or developer pays the certifier) or improper conduct of certifiers under current arrangements? What alternative arrangements might reduce this risk?**

The Board's regulatory reform work fits into a broader context of government economic and regulatory reform. Building control in Australia has undergone major regulatory reform as part of a wide-ranging review of micro-economic reform, including competition policy and the role of government in the market-place.

The Board's reform initiatives have been directed at delivering a more cost effective and efficient regulatory environment. The contestability of certification services, including the introduction of private certification of building approvals and the performance-based BCA, are two key elements of this reform.

Over the last decade, most States and Territories have introduced competition in the building certification process - by way of private certification.

Currently, aside from Western Australia, all States and Territories have provision for private certification of buildings (both private certifiers and Government employed certifiers). The Northern Territory and Australian Capital Territory have deregulated to the extent that now only private certifiers provide building approvals. The timing of the introduction and relevant legislation for private certification are shown in Attachment F.

Competition for building approvals and inspections has replaced the traditional monopoly of local government building officials and has led to competition among private building certifiers and municipal building certifiers.

There remains broad support for the principles enshrined in private certification, and to date, there have been clear benefits for the building industry and consumers. Generally, private certification has resulted in streamlining the process of obtaining building approvals and inspections. This has been driven by a demand for greater contestability and a more transparent and accessible opportunity for broader participation in the marketplace.

However, jurisdictions have experienced some problems in recent years while new approaches are being bedded down. Consequently a number of States and Territories have reviewed, or are in the process of reviewing means of improving the effectiveness of private certification. Other jurisdictions are doing so as part of a general review of building legislation, such as the reviews being undertaken by the Northern Territory. Reviews have been completed in New South Wales, Queensland and Victoria and are also well advanced in the Northern Territory and South Australia. Details of those reviews are available from the ABCB Office if required.

**51. Are certifiers adequately trained to perform their jobs? What has been the impact of the ABCB's competency standards and framework for building surveyors/certifiers?**

The ABCB is not in a position to answer whether certifiers are adequately trained to perform their jobs, as it is not a function that the Office undertakes.

The competency standards and framework were developed in conjunction with industry. By June 2004, the Australian Institute of Building Surveyors, one of the partners in the project, will require their practitioners to be accredited against this framework. The implementation of the framework will assist in ensuring that there is a national benchmark for the competencies, education and training of practitioners in this field.

**52. What other issues need to be addressed by the Board with regard to certification?**

An evaluation of the impact of the competency standards and framework is needed.

**53. Have these strategies been effective in raising awareness and usage of the Building Code? Do they contribute to transparency in the reform process? Are there other strategies and initiatives that might be more effective?**

The ABCB believes the strategies are effective and have raised awareness. Uptake of the BCA has been improving for the last five years. This topic is canvassed in Section 12: Current and Likely Future Work Program.

**54. Are current education and training strategies adequately equipping building practitioners to operate efficiently and effectively in the performance-based environment? Is training on changes to the Code effective? Is there adequate input from industry, academics and regulators on the competencies to be attained? Is the level and quality of training adequate to maintain expertise in the industry? Do these strategies compare well with international best practice?**

For new areas, such as access and energy, the education and training approaches seem to have been very successful. There still remains the problem of the small builder sector where reliance needs to be placed on the industry associations to help the re-education process. Clearly, more needs to be done with undergraduate and trades training, but the curriculum is already crowded and priorities need to be established.

**55. Are the ABCB research areas appropriate? Are resources allocated appropriately? Is the research being used to develop the most appropriate and cost effective Code solutions? What benefits have the Board's research delivered?**

Considerable benefits have been derived from the longer term investment in fire research and similar advantages are anticipated from other current research efforts. Research is discussed in more detail in the submission *(refer Section 12.9: Research Program).*

**56. Is the research being well managed and conducted cost effectively? Is the ABCB the appropriate body to conduct and coordinate such research?**

Dedicated resources have been committed to the research program and a senior officer is in place to oversee the program. As much of the investment is funded jointly with others the benefits are shared and some compromise in the objectives will occasionally be necessary. More detail is provided in the submission and at Attachment D.

# References


ABCB (Australian Building Codes Board) ABCB Mission:
http://www.abcb.gov.au/index.cfm?fuseaction=DocumentView&DocumentID=85

1994 as amended 2001: *Inter-Government Agreement*:
http://www.abcb.gov.au/index.cfm?fuseaction=DocumentView&DocumentID=139

Nov 2003: *Memorandum of Understanding between ABCB and Standards Australia*:
http://www.abcb.gov.au/documents/abcb_office/abcb-sa_mou_nov2003.pdf

Dec 2003: *Protocol for the Development of BCA Referenced Documents*:
http://www.abcb.gov.au/documents/abcb_office/Protocol_for_Reference_Docs_03_12_16_final.pdf

Allen Consulting Group: Dec 2002: *Harmonisation of Building Control Administration: Costs and Benefits of the National Administration Framework.*

Australian Bureau of Statistics: 2003: *Publication 8752.0 Building Activity, Australia 2003*:
http://www.abs.gov.au/Ausstats/abs@.nsf/lookupresponses/e18ea7767ad7b004ca256dbe0003d2a3?opendocument

Building Products Innovation Council: 2003: Submission to the Productivity Commission Inquiry into First Home Ownership: http://www.pc.gov.au/inquiry/housing/subs/sub031.pdf

Commonwealth of Australia: 1996; *Time For Business: Report of the Small Business Deregulation Task Force.*

Council of Australian Governments: 1997: *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (1997).
http://www.coag.gov.au/coagpg/coagpg.pdf

CRC Construction Innovation: 2001: *Sustainability and the Building Code of Australia*
http://www.constructioninnovation.info/Sustainability%20and%20the%20Building%20Code%20of%20Australia%20[Oct%2003]1.pdf

Department of Industry Tourism and Resources: 2003: *Building and Construction Industry Fact Sheet* (2002-2003 figures)
http://www.industry.gov.au/content/itrinternet/cmscontent.cfm?objectid=D27A7C86-B3B7-4188B88A87D799388957&indexPages=/content/itrinternet/cmsindexpage.cfm?objectid=48A5DFEA-20E0-68D8-EDB550B8BD2CB714,/content/itrinternet/cmsindexpage.cfm?objectid=1E6694DF-D20A-6563-3AA7F5F513BD4D34

KPMG Report: 2000: *Impact Assessment of Major Reform Initiatives*
http://www.abcb.gov.au/documents/abcb_office/impact_maj_reform.pdf

Productivity Commission Issues Paper: 2004: *Reform of Building Regulation* 2004
http://www.pc.gov.au/study/building/issuespaper/building.pdf

Nov 2003: *Regulation and its Review 2002-03* (page 82)
http://www.pc.gov.au/research/annrpt/reglnrev0203/reglnrev0203.pdf