



**Productivity Commission  
Draft Research Report:  
Reform of Building Regulation**

**ABCB Chairman's Submission**

**October 2004**

## **How to contact the ABCB**

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## INTRODUCTION

The Productivity Commission's Draft Research Report is informative and comprehensive. The basic thrust of its findings and recommendations are supported although many of the major changes contemplated are matters for consideration by the Australian, State and Territory Governments rather than the Australian Building Codes Board (ABCB).

This submission confines itself to elaborating on or correcting areas of factual content, commenting on some of the recommendations directly relating to Board operations and in places, providing further information to assist others to evaluate the recommendations made. As with the original submission, the views expressed here are those of the Chairman of the ABCB and the ABCB Office and do not purport to represent those of Board members, who are likely to comment separately. Figures in brackets [] refer to Draft Report page numbers.

## OVERVIEW OF REPORT

The ABCB is constrained in setting its own priorities as in recent years these have been increasingly dictated by governments, either by Ministerial direction (energy efficiency, access) or indirectly by the need to maintain national consistency by heading off moves to regulate unilaterally [xx] [xxvii].

While 'market failure' may be a useful term to answer the question 'Why regulate?' it might not convey the complete picture. The motivation to regulate can often be driven by the goal of national consistency, to avoid a plethora of local regulations often derived more from political imperatives than market failure. Also, some regulation is grounded in the need to eliminate worst practice from a robust market where price signals may encourage behaviour that offends accepted community standards or creates risks for others [xxii].

The implication that national consistency has been undermined by new areas of regulation such as energy efficiency needs to be further explained.

The nature of the ABCB's reform process is that when a new area is first subject to regulation, rather than prolonging the process until differences are resolved, State and Territory administrations accept the introduction of measures into the Building Code of Australia (BCA) on the proviso that they can vary out those aspects they cannot accept or believe require changing. At the same time, they agree to work further towards adopting or developing acceptable amendments to allow the measures to be adopted at a later date.

The observed departure from national consistency in recent times is temporary and more a reflection of the maturity of regulation in a new area than any shift away from this overriding goal [xx]. For example, while five States adopted the BCA energy efficiency measures for houses to some extent in 2003, it is likely that all but one jurisdiction will largely adopt the BCA changes proposed by the ABCB over the next two years. These changes involve the agreed new measures for class 2, 3 and 4 buildings for BCA 2005, and subsequently on 5-star stringency for houses for BCA 2006.

A significant number of the Productivity Commission's findings in the draft report have already been recognised by the ABCB as areas for review or further work. Because of the need to reflect contemporary and emerging industry, community and regulatory expectations in the BCA, the ABCB commenced an on-going strategic review of the Code in 2000.

Work to date has involved an analysis of the broad framework of goals, objectives and structure of the BCA, including technical content. Outputs include:

- a published guideline document on Durability rather than adopting a regulatory solution;
- articulation of Key Propositions to underpin the future BCA and a new draft BCA strategic framework;
- a research report on Health and Safety Risks in Buildings;
- a research report on Sustainability and the BCA leading to an agreed approach to sustainability;
- development of a policy on Sustainability as a Goal/Objective of the BCA; and
- development of a protocol document that enables recommendations for BCA content to be developed logically and consistently.

More needs to be done. In recognition of this, in August 2004 the Board set up a new Board member-led Core Strategic Group. The Group will consider the work to date that has had input from industry and government stakeholders. This work will bring together all the research and analysis to develop a comprehensive set of recommendations about the future nature and scope of the BCA. This work will also have regard for the valuable work undertaken by the Commission in its research study.

It is accepted that the term 'community expectations' presents difficulties in respect to quantification and defining what can be economically justified. To abandon it as a criterion however would be fraught, as the signal it would send is that the ABCB no longer planned to heed what the community wants in relation to its safety, health and amenity [xxiii].

The substitution of 'environment' for 'sustainability' because of the confusion about the latter term may in turn create further confusion. In government parlance, environment is often seen as protecting the natural environment or monitoring discharges or degradation. Sustainability seems to better cover minimising energy and water consumption, materials utilisation and indoor air quality, the elements the ABCB has agreed constitute the priorities in this area for the BCA [xxiv]. The important thing will be to define the scope and the application of sound regulatory principles to the issues to be addressed.

It is agreed that there is an element of tautology in the inclusion of both 'efficiency' and 'cost effectiveness' in the Mission Statement. Efficiency in the building industry has broader connotations including construction practices, industrial relations and the like. In terms of the ABCB focus, cost effectiveness may be preferable [xxiv].

In the listing of matters the Board should take into account to ensure regulation is justified [xxv] it is an unfortunate reality that ‘what others are likely to do in the absence of regulation by the ABCB’ needs to be a consideration.

Considerable progress has been made in developing a Plumbing Code of Australia (PCA) and work is continuing on aligning it with the BCA. These efforts, and the more widespread adoption of the PCA, would be assisted if the new Code could be afforded a more formal status than the current temporary trust arrangement allows [xxxii].

The push for greater weight to be given to asset protection from fire within the BCA is understood and the ABCB is aware that fire authorities in some areas impose higher standards than required under the Code.

The Draft Report elsewhere is firm in its view that alternative avenues to regulation need to be explored and superficially this would seem such an area. We agree that there is little likelihood that property protection for housing will ever be cost effective. For commercial buildings, the information asymmetry that can be used to justify regulation is less relevant, particularly as the insurance industry should be able to assess risk and set premiums accordingly, making building measures aimed at asset protection a market driven judgement. This does not overcome the unilateral variations required by different fire authorities which would need to be addressed by imposing on them the same discipline for producing a Regulation Impact Statement (RIS) to support any changes as is now required of the ABCB [xxxiii].

The Commission sought comment on the role the ABCB should play in insurance [198] and several pages of the Draft Report are devoted to this issue.

The Board has in the past discussed its role in builder warranty insurance and concluded that this was a matter for the Administrations. However, the Board has a role to play in assisting building practitioners generally on their BCA awareness and to promote national competency standards for certifiers. This contribution to practitioner competence feeds into their insurability.

The Commission does not make either a finding or recommendation on the ABCB’s international activities. However, it notes that while generating potential benefits, the international activities need to be considered in the context of pressing demands for resources in other areas.

The role of the ABCB in the international arena underpins code making and is critical to both its research capacity and in seeking to apply international best practice. Rather than describing these activities as international liaison, a more encompassing descriptor would be International Cooperation and Collaboration.

It is beyond the powers of the ABCB, but if a Productivity Commission recommendation could exert any influence on State, Territory and Local Governments (as well as fire authorities) to adopt a more disciplined risk and impact assessment approach to the justification of regulatory changes, many of the problems highlighted in attaining a national approach to building regulation would be resolved [xxxiv].

This submission takes no firm line on the question of a name change. The ‘brand name’ ABCB is well established, to the point that the acronym is used often with no thought of what it stands for. A minor, related problem is that it does not differentiate between the Board itself and the secretariat. (This is not unknown in the Australian Government – the ARC, NH&MRC even the PC suffer the same ambiguity.) We are aware that the change to include ‘Regulation’ in the title may cause some unease in terms of a possible perception of a shift in responsibility [xxxiv].

We agree that a major change in governance arrangements is not now required. Relations with the Australian Government Department of Industry, Tourism and Resources are cordial and supportive even though no formal MOU is in place. The concern is that the present arrangement works because of the shared understanding of the people involved and it may be desirable to have some more formal arrangement in place to act as a guide in the future, to assist matters when the inevitable changeover in staff within the Department and the ABCB Office takes place. We are neutral on what form this understanding should take and believe that it may not necessarily require a detailed MOU.

The use by the PC of the term “Principle-based Code” in the Draft Report [97] to describe the BCA rather than the more commonly understood Performance-based Code descriptor is problematic from a code writer and building practitioner point of view.

There is a set of over arching Goals that are inherent to the BCA. These Goals, stated in the BCA itself, are to enable the achievement and maintenance of acceptable standards of structural sufficiency, safety including safety from fire, health and amenity for the benefit of the community now and in the future. The Goals are applied so that the BCA extends no further than is necessary in the public interest, is cost effective, easily understood, and is not needlessly onerous in its application. Therefore from a code writing point of view in Australia, the Principles concept equates to the BCA’s Goals, not its Performance Requirements. COAG regulatory principles are used to determine the scope and stringency of the Performance Requirements and hence building regulations.

## COMMENTS ON DRAFT RECOMMENDATIONS

### ***5.1 The objectives of the ABCB (or its replacement) should be clarified in order to remove unnecessary conflict, overlap and imprecision.***

Supported, but with the caveat that some further consideration may need to be given to the wording of the Objectives, as follows.

The development of a Premises Standard to satisfy the *Disability Discrimination Act 1992* (DDA) necessitates that it is unlikely that quantifiable community benefits would ever exceed costs. Therefore a revised **Objective 1** should include the provision that ‘regulation needs to ensure statutory requirements defined by other government legislation are met in the most cost effective manner’ [xxvi].

**Objective 3** on building regulation systems needs to include reference to harmonisation as well as compliance and enforcement [xxvi].

The inclusion of training in **Objective 4** needs further consideration and appears at odds with the desire to exclude activities (eg research and consulting) from the objectives [xxvii].

### ***5.2 The ABCB (or its replacement) should enhance efforts to make the performance-based requirements in the BCA more effective. This should include providing measurable criteria to aid in judging compliance and clarifying the assessment process to be used. This should be given a high priority.***

Supported, although there may be areas where specifying measurable criteria to cover all circumstances possibly encountered in Australia may make the Performance Requirements unnecessarily complex.

Also, direct comparison between the stringency of Performance Requirements and Deemed-to-Satisfy (DTS) Provisions is inherently difficult because of the qualitative nature of the Performance Requirements. However, a comparison may be able to be undertaken to identify areas where a subject matter is explicitly dealt with in a Performance Requirement but not covered in a corresponding DTS Provision, or vice versa. For example, screening of sanitary facilities for privacy is required in certain circumstances, but privacy is not explicitly mentioned in the relevant Performance Requirements.

### ***5.3 The ABCB (or its replacement) should enhance efforts to ensure that all deemed-to-satisfy provisions in the BCA offer an equivalent level of building performance to that required by the performance requirements.***

Supported, but priority will need to be given to where the DTS provision results in a lower level of performance than specified by the Performance Requirement. Generally, DTS provisions exceed Performance Requirements, a situation that encourages innovation and alternative solutions.

***5.4 The BCA and related regulations should require that buildings continue to meet the health and safety requirements of the BCA throughout their life, irrespective of whether they were constructed using alternative solutions or deemed-to-satisfy provisions.***

Supported. This is, however, a matter for the Administrations as the BCA can only spell out the requirements and cannot cover items such as enforcement, inspections, changes of ownership or use, imposition of sanctions, responsible certification, penalties etc.

***5.5 Where a building solution imposes maintenance requirements throughout the life of a building, these should be required by regulation to be documented and prospective owners and occupiers should be informed of these requirements.***

Again this is a matter for those administering the regulations. With the BCA likely to move more into active rather than inbuilt passive measures, this requirement is likely to become more important particularly as it addresses the sustainability issues of energy, water and air quality.

***5.6 The ABCB (or its replacement) should continue to examine ways for the BCA to be expressed more clearly and simply, to articulate building requirements better and to enable access by all levels of building practitioners.***

Supported, although the question arises as to whether this should be more through enhancing the Guide to Volume 1 of the BCA rather than risking the danger of introducing ambiguities into the Code itself. This issue is an ongoing part of the Strategic Review of the BCA project.

***6.1 The ABCB (or its replacement) should continue to work on incorporating into the BCA, as far as practicable, all mandatory requirements affecting building (i.e. current objective 7).***

Supported.

***6.2 The ABCB (or its replacement) should continue its work on amending the BCA whereby the disabled access provisions would be linked to the Disability Discrimination Act 1992 so that compliance with the BCA would also ensure compliance with obligations under the Act.***

This is the present intention but will continue to be problematic while there is a need to demonstrate a net benefit from all regulatory change. The incorporation into the IGA of a requirement that the ABCB demonstrate it is meeting the requirements of other government legislation in the most cost effective way, would assist in implementing this recommendation.



***6.3 The ABCB (or its replacement) should continue to work with the eight plumbing associations to identify and resolve differences between the BCA and the PCA and on-site gas requirements.***

Supported. Good progress has been made but would be assisted if the status of the PCA could be lifted to something akin to the BCA. Note also that it is the National Plumbing Regulator's Forum (NPRF) with whom ABCB works on these issues, not plumbing associations.

***6.4 The ABCB (or its replacement) should continue its work to identify and resolve differences between the BCA and on-site electrical installation and telecommunications requirements.***

Supported in principle, but in view of the electrical contractor opposition likely to be encountered and the relatively small benefit likely to be forthcoming, this would be seen to be of lesser priority than other recommendations.

***6.5 The ABCB (or its replacement) should continue its work on removing inconsistencies between occupational health and safety (OH&S) legislation and the BCA and incorporating relevant OH&S requirements that impact on building into the BCA.***

Supported. This issue is an ongoing part of the Strategic Review of the BCA project.

***6.6 The ABCB (or its replacement) should set up a rigorous framework to assess whether it is appropriate to include any additional mandatory requirements in relation to environmental objectives in the BCA.***

The Board has already adopted an approach for Ministers that, if agreed, would involve proceeding with additional environmental/sustainability objectives. Any regulatory change that emerged in this area would be subject to all the usual consultation and risk and impact assessment requirements.

***6.7 The ABCB (or its replacement) should put in place a system for assessing mandatory standards for buildings for energy efficiency to ensure they are soundly based (with benefits greater than costs) and that they are applied consistently across jurisdictions.***

Supported. This is work in progress.

There are several star rating schemes and some of them are commercial. The ABCB needs to treat all equally by using a Rating Scheme Protocol to define the basic requirements that all schemes need to fulfil. The Draft Report [136] mistakenly implies that the BCA contains a '1 to 10' star system (NatHERS the currently accepted predominant system goes only to 5 stars). In reality, regulations are based on a defined energy requirement and these can be verified by using a rating system. Star ratings for energy are a matter of ongoing discussion with a new system, ACCURate close to becoming available. Compared with NatHERS it will better reflect ventilated houses, prevalent in northern Australia.

***6.8 The ABCB (or its replacement) should pursue, in consultation with interested parties (especially fire authorities), increasing the asset protection objective of the BCA in relation to building categories other than stand alone residential housing, to align with the requirements generally imposed by fire authorities and favoured by insurance companies.***

Research on the regulation of asset protection in Australian buildings is limited. The research available supports the status quo. For example, studies undertaken by researchers at Victoria University, Melbourne concluded that mandating sprinklers in schools would cost more than three times the property that would be saved from fire damage if sprinklers were installed<sup>1</sup>.

The issue requires further examination as non-regulatory solutions may be possible if more discipline was imposed on the fire authorities who develop their own regulations. It is recognised that this is a sensitive political and community issue. If the concept was to be introduced applying different standards to different types of buildings within the same building Class (depending on use, location or lack of alternative accommodation in the event of loss), it would introduce considerable ambiguity into the BCA.

Buildings provide many functions for the community, ranging from shelter, employment, recreation, care and basic services. Each building has a varying level of importance to the community, and loss of function from such a building would have varying impacts on the community. For example, loss of a storage facility may have limited impact on the community, while loss of the only hospital in the area would have a large impact on the community.

The structural sufficiency provisions (Section B Structure) of the BCA adopt the concept of building importance. Buildings with a high level of importance e.g. post disaster recovery centres, are designed to a higher level of performance than a low importance level building such as a farm building. The Northern Territory variation to E1.5 of the BCA adopts this approach for fire safety, by requiring fire sprinkler systems to be installed in all hospitals over one storey (over 25m for rest of Australia). This requirement is in recognition of the fact that hospitals in the Northern Territory are sparsely located, and loss of a hospital would have a major impact on the health and safety of the community.

Asset protection for commercial purposes (for the individual or organisation) is considered to be controlled by the market, and therefore is not considered to be a BCA objective. It is considered that this falls into the realm of the commercial insurance sector, and the decision to provide asset protection in these circumstances is purely a commercial decision for the individual or organisation based on the probable losses and the cost of asset protection.

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<sup>1</sup> Clancy, P., Satyen, L., Thomas, I. (2004) *Property Protection: School Buildings*. 5<sup>th</sup> International Conference on Performance-Based Codes and Fire Safety Design Methods, Society of Fire Protection Engineers, 6-8 October 2004, European Commission Facilities, Luxembourg.

Overall, asset protection is a valid BCA objective and would provide a net benefit to the community, but only if it can be shown that loss of an asset due to fire would have a significant impact on the health and safety of the community. This approach follows the principles of risk management and minimum regulation and would likely lead to multi-residential and other classes of building not being the focus of asset protection in the BCA.

***6.9 The future work agenda for the ABCB (or its replacement) should include an examination of ways to reduce the scope for the national consistency objective of building regulation to be eroded inappropriately by Local Governments through their planning approval processes. Avenues for this include:***

- *the possibility of Local Governments being required to seek prior approval from the relevant State Government to apply building requirements that are inconsistent with the BCA;*
- *these requirements should be assessed as to whether net benefits would accrue.*

*To assist the design of such a system, the ABCB (or its replacement), in consultation with key stakeholders, should examine the possibility of defining a clear delineation between those issues to be addressed by planning regulation and those issues to be addressed by building regulation.*

The ABCB strongly supports this but observes that it is a matter for State and Territory Ministers.

***7.1 The ABCB (or its replacement) should work to facilitate a national template for home building contracts.***

This is not really an area where that ABCB has expertise or experience so adoption would represent a departure from current activities.

***7.2 The ABCB (or its replacement) should work towards reaching agreement across jurisdictions as to the most appropriate and efficient administrative provisions for maintenance requirements.***

As for 5.4 and 5.5 above.

***7.3 The ABCB (or its replacement) should work at identifying and communicating best practices that improve compliance and enforcement of the BCA. The development of a best practice model, for use by States and Territories, is one option for achieving this.***

This approach was intended in the work already done on harmonisation of regulatory practices but will need to be given more priority and resources by States and Territories if progress is to be made.

***8.1 The ABCB (or its replacement) should continue to pursue improvement in its use of Regulation Impact Analysis, drawing on the advice of the Office of Regulation Review.***

Some emphasis is placed in the Draft Report on the necessity to rigorously ensure all possible alternatives to regulation are pursued [210] and improving RIS preparation [215]. This recommendation is supported, although it is understood the Office of Regulation Review (ORR) is generally satisfied with performance to date and has used the ABCB as an example for others to follow. The ABCB would appreciate if either in the Final Report or a separate communication, examples of where there have been past deficiencies could be noted. RIS work is resource intensive and it is a matter of judgement as to whether more time and money invested in these activities will yield commensurate benefits in the longer term.

***8.2 The Australian Government should examine the appropriateness of a private company (Standards Australia International) being the sole Australian representative in international standards forums and consider the merits of having the ABCB (or its replacement) also perform this role for building and construction matters, perhaps in conjunction with SAI.***

Supported. However the Australian Government relationship with SAI is broader than the building sector, so action in one sector may have wider implications.

***8.3 The Memorandum of Understanding between Standards Australia International (SAI) and the ABCB and the Referenced Documents Protocol should be re-negotiated to provide for a clear requirement for RIS-type analysis to be undertaken by SAI (perhaps in conjunction with ABCB, or its replacement) at an early stage in the development of standards that are expected to be referenced in the BCA, and are likely to have non-minor effects.***

Agreed. The SAI/ABCB working relationship may need to be revisited in the light of Commission comments. However, the ABCB Referenced Documents Protocol is a generic ABCB policy framework with wide applicability across all existing and projective referenced documents. It therefore does not need to be re-negotiated but may need to be revised in the light of the outcome of joint government consideration of the Commission's final report.

***8.4 The ABCB (or its replacement) should continue its efforts to expedite BCA reforms. Governments could consider incorporating into a revised IGA explicit target timeframes for different stages of the consultation and decision-making process. However, any such timeframes must appropriately reflect the need for comprehensive consultation and rigorous impact analysis.***

Support is given by the Commission to earlier, more extensive consultation before draft regulations are circulated [231][233]. At the same time it urges that the process be expedited [235]. Every effort is made to consult the most relevant parties before issuing drafts, but to open this stage up to more general consultation would insert another lengthy stage in the process and it is uncertain what benefit would be derived.

The Commission endorses a view which proposed greater transparency in the BCA amendment process by making all submissions and comments on proposals publicly available [231]. The ABCB concurs with the principle but would be concerned that if this was mandated it might reduce the quality and level of information provided in submissions, or risk breaching commercial confidence.

In addition, while understanding the recommendations for timelines, these should not be at the expense of high quality regulatory reform so that an arbitrary time frame can be met.

Overall, it is hard to generalise on this topic as some issues are more complex than others and in some cases, unforeseen complications arise which impact on schedules.

***8.5 The ABCB (or its replacement), as a high priority, should continue to work towards maintaining and updating the core technical requirements in the BCA.***

Supported. This is the core business of the BCA but is periodically adversely impacted on by other demands on the limited resources available.

***8.6 The ABCB's cost recovery arrangements should be amended to be made consistent with the Australian Government's cost recovery guidelines. The revised IGA, when presenting future funding for building regulation reform, should be structured so as to provide sufficient funding for the reform agenda and to enable a minimum level of access to the BCA, free of charge.***

While we have no firm views on whether the BCA should be made available at no charge to anyone wanting it, the Commission's supporting arguments contain some matters requiring clarification.

The Productivity Commission has confirmed that the *Australian Government's Cost Recovery Policy* is not applicable to the ABCB's operations. Nonetheless, the guidelines could assist in ensuring that the ABCB's cost recovery activities are not counter productive to the broader policy aims of the ABCB.

The first point of clarification is the nature of the "basic product set". The only mandatory or legislative requirements in the BCA are the 95 Performance Requirements. The Board, through its recently established high level Core Strategic Group, will examine the feasibility of separating and making freely available the legislated requirements in future iterations of the BCA.

The second point of clarification relates to the price of the BCA being a disincentive for ownership and use. The BCA package of services is available in a range of prices and functionality. The maximum price charged by the ABCB for the BCA is \$350 (includes hard copy, on-line access, CD ROM and E-guide) with the minimum price charged being \$33 for casual users of the BCA (for either 30 continuous days or 12 days occasional access within a year).

Neither price includes access to the approximately 100 primary standards referenced in the BCA. Submissions to the Productivity Commission indicate that some stakeholders see the price of the BCA as prohibitive. Our observation is that it is more likely that the concern relates to the combined price of the BCA and standards (\$1,309 for a 12 months subscription), rather than the price of the BCA itself. The ABCB has no control over the operations of Standards Australia or its pricing of the standards referenced in the BCA. That said, one goal of the ABCB Core Strategic Group is to minimise the number of referenced standards in future editions of the BCA.

Third, the Board periodically reviews the pricing of the BCA with a view to ensuring that the over-arching Board objectives are not being impacted. There is no compelling evidence that the price of the BCA (not including referenced standards) impacts on uptake among users of the BCA. Indeed, when the ABCB offered two pricing packages in early 2004, 92% of existing subscribers opted for a more expensive package offer - \$220 inclusive of GST instead of \$160 inclusive of GST (the upgrade included additional on-line access).

Fourth, the Draft Report also questions whether there is a link between pricing for the BCA and compliance. There has been no evidence to that effect to date. There is a far stronger link between compliance and issues such as simplification of the BCA, information and awareness activities and shortages of skilled certifiers. The ABCB is addressing these issues where it can make a difference. Compliance, to some extent, will also reflect resourcing at State, Territory and Local Government levels. The ABCB offers a variety of options for those wishing to access both the mandatory and non mandatory parts of the BCA.

As outlined in the original submission, there are a number of methods for accessing the BCA at no charge, including via Councils and libraries as well free internet access for limited time periods. For example, if a caller is from a remote area we can offer a free 7-day BCA online trial. In addition, the Office, through its 1300 number and website, faxes or emails relevant parts of the BCA to low volume users. These are generally members of the public or those in the industry who seek to ensure compliance with a limited part of the BCA – for example; waterproofers, pest controllers, or glazing contractors. This service cannot be extended to the supply of relevant referenced standards for copyright reasons.

The recognition that some effort should be directed toward BCA access for small businesses, sole practitioners and students, this is addressed both in the pricing structure and through a broader range of free services. The Housing Provisions are available separately and are priced at \$130 inclusive of GST. Further, the ABCB has supported an HIA initiative to produce a *“Guide to the Building Code of Australia – Housing Provisions”*. The ABCB invited those purchasing the HIA Guide to trial electronic access to the BCA free of charge. The ABCB also works with some smaller industry associations to allow them to have a single membership for the BCA where the relevant information is then made freely available to their members. These initiatives aim to meet the ABCB’s community service obligations and encourage access to the BCA.

When measured against the *Australian Government's Cost Recovery Policy*, some weight needs to be given to recouping costs from the principal beneficiaries of the BCA – those who benefit from a significant private good. These are largely already subscribers to the BCA who purchase a membership package of services not limited to the Code itself. These members are generally frequent users of both the mandatory and non mandatory parts of the BCA. As subscribers to the BCA service, they benefit from a high level of functionality and detail from the BCA volumes and Guide, including, for example, improved images, archive material, content searches and assistance with technical interpretations. As subscribers, they can also opt to be part of an alert system for changes to the BCA, early notification of proposed amendments and the opportunity to comment on them.

Subscribers are also likely to be practitioners who will directly benefit from the ready made design and construction solutions of the DTS provisions. These non mandatory parts of the BCA result from significant investment in research and intellectual endeavour by the ABCB and partnering organisations. Without access to this information, practitioners would incur significant additional costs. The Intellectual Property Deed on ABCB Materials, signed by the Australian Government and all State and Territory Governments, recognises this. In any consideration of the transparency and consistency of existing or future pricing arrangements, there needs to be due weight given to appropriate arrangements for those subscribers who directly benefit commercially from the ABCB package of services.

***9.1 The ABCB (or its replacement) should enhance its BCA awareness campaign, including investigating opportunities for further partnerships with industry in the provision of training.***

Increased awareness of the BCA is supported. The ABCB has had extensive discussions with some of the key stakeholders in the industry regarding education and training initiatives. Involvement in training however should be confined to efforts to lift uptake and use of the BCA, the provision of materials about the BCA and information sessions when major changes are being introduced.

The responsibility for vocational training policy at the national level is the purview of the Australian National Training Authority (ANTA). Construction Training Australia, the previous somewhat dysfunctional national Industry Training Advisory Board (ITAB) is in the process of being restructured and amalgamated with the Property Services ITAB. If this succeeds, it should be this body that accepts responsibility for all aspects of industry training, supported by the industry associations. The ABCB has neither the skills nor resources to be any more than a vehicle to raise BCA awareness, a facilitator, and a provider of materials for those accredited training and education providers where a (relatively minor) part of course content relates to BCA requirements. The unions traditionally have a major involvement in building industry training but have no significant interface with the ABCB.

***10.1 There should be a recommitment by governments, in a revised IGA, to the objective of consistency across jurisdictions for building regulation. State and Territory Governments should ensure that BCA amendments determined by the ABCB (or its replacement) are automatically referenced in State and Territory legislation and that jurisdictional variations and additions are minimised.***

Supported, although implementation is a matter for others.

***10.2 The ABCB Chairman should be an additional Board member, rather than being chosen from amongst the Government and industry members. The appointment should be independent from sectional interests and based on a demonstrated capacity to advance the work of the Board.***

The current Chairman was appointed as an independent, from outside the Board and the building industry, by the Australian Minister for Industry, Tourism and Resources, after consultation with State and Territory colleagues. This should be future practice and the implication that the Board be expanded by one person, who would be an additional industry representative, spelled out.

***11.1 The mission statement for the ABCB (or its replacement) should be amended to:***

***In addressing issues relating to health, safety, amenity and the environment, to provide for efficiency in the design, construction and use of buildings through the creation of nationally consistent building codes and standards and effective regulatory systems.***

Concerns about the use of ‘environment’ and ‘efficiency’ have been noted above, with a preference to retain ‘sustainability’ or ‘economic and environmental sustainability’ and ‘cost effective’.

***11.2 The objectives of the ABCB (or its replacement) should be amended to:***

***Proposed Objective 1***

***Establish building codes and standards that are the minimum necessary to address efficiently relevant health, safety, amenity and environmental concerns.***

***In determining the area of regulation and the level of the requirements, the Board should ensure that:***

- ***there is a rigorously tested rationale for the regulation;***
- ***the regulation would generate benefits to the community greater than the costs (i.e. net benefits);***
- ***there is no regulatory or non-regulatory alternative (whether available to the Board or not) that would generate higher net benefits.***



***Proposed Objective 2***

***Ensure that, to the extent practicable, mandatory requirements are:***

- *consistent across the States and Territories*
- *performance based*
- *based on international standards*
- *expressed in plain language.*

***Proposed Objective 3***

***Identify and seek implementation of improvements to compliance and enforcement systems for building regulation.***

***Proposed Objective 4***

***Identify and seek to implement ways to reduce reliance on regulation by exploring alternative mechanisms for delivering outcomes, including:***

- *non-mandatory guidelines*
- *training to increase skill levels of building practitioners and certifiers.*

As outlined in response to Draft Recommendation 5.1, revised objectives are supported with the inclusion of:

- the possibility of putting less weight on cost benefits where the regulation change is necessary to meet statutory requirements imposed from elsewhere;
- defining the need for harmonisation of systems as well as their compliance and enforcement; and
- confining the involvement in training to a supportive/facilitative role rather than implying significant broadly based initiatives and active participation.

***11.3 The ABCB's name should be changed to the Australian Building Regulation Board (ABRB), to better reflect its proposed wider responsibilities and future work agenda.***

There is concern that States and Territories may find the inclusion of 'Regulation' threatening. There is no compelling reason to change but removal of 'Codes' to leave it as the ABB would probably be the least painful option.

***11.4 A new Intergovernmental Agreement should be negotiated by all nine governments, so as to implement many of this study's recommendations:***

- *establish the Australian Building Regulation Board (ABRB) in place of the ABCB*
- *clarify the ABRB's mission statement and objectives*
- *agree to shared funding and removal of charges for the BCA*
- *re-confirm the commitment to national consistency*
- *strengthen the use of regulatory impact statements to enhance rigour for mandatory regulations*
- *outline the future work program, as proposed.*

A new IGA is essential.