

ACT SUBMISSION TO THE PRODUCTIVITY COMMISSION REVIEW - NATIONAL BUILDING REGULATORY REFORM REVIEW AND THE AUSTRALIAN BUILDING CODES BOARD

Building and construction is an issue of national importance

As noted by the Productivity Commission, the Australian building and construction industry is an important component of the national economy in terms of its contribution to GDP and employment. The building and construction market is increasingly national in character. One example is the large number of firms that operate across jurisdictional borders, an issue particularly important for the ACT. This fact alone argues for a continuing Commonwealth involvement in the reform process.

Much has been achieved over the past decade

The ACT is supportive of the thrust of improvement to building standards over the period in which the Intergovernmental Agreement has been in place. That a performance based Building Code of Australia (BCA) exists is a significant achievement in itself. Current and past editions of the BCA represent a major advance over the regulatory instruments previously in place, such as the ACT Building Manual, in terms of the reduced number of requirements peculiar to local jurisdictions and also their technical comprehensiveness.

Continued national cooperation and coordination is vital if the achievement is not to be put at risk

Simply maintaining and updating the existing BCA is a major task. The ACT is of the view that, without effective and efficient coordination through the ABCB or an equivalent body, the quality of the product would be compromised over time. In particular, there is the risk that the unified BCA could be compromised through pressure for local variations, further state-based derogations and the like as well as through resourcing pressures.

Should there be agreement to increase the scope of the BCA, along the lines suggested in the Productivity Commission's issues paper or in other ways, effective and efficient national cooperation and coordination will be even more important.

The Commonwealth would appear to have a clear ongoing role in terms of the importance of the building and construction sector for the national economy and the desirability of maximising the value of any further development of the BCA and other regulatory instruments from an Australia-wide perspective. The Commonwealth is the party best placed to ensure this occurs.

The ACT has been particularly appreciative of the role of the office of the Australian Building Codes Board, located in the Commonwealth Department of Industry, Tourism and Technology, in providing a centre of excellence for the maintenance and

development of the BCA. It would appear difficult to replicate this role in, for example, a cooperative state and territory-based arrangement or through the cooperative working of individual jurisdictional policy units. Apart from other considerations, former jurisdictionally based building technical policy units are now considerably reduced in scope and would not be well placed to fill the role currently performed by the ABCB Office.

In summary, if the office of the ABCB were wound up, this would put at risk the survival of the national BCA or require considerable effort to rebuild, on an individual jurisdictional basis, an equivalent and less efficient structure.

The present Code objectives for the BCA remain valid

The ABCB's present reform objectives being pursued through the BCA remain valid for future development of the BCA or its successor. These are: greater consistency; a performance based code; modern and efficient building practices; least cost solutions; minimum requirements as opposed to encoding best practice solutions; plain language; and encouraging an internally competitive building industry.

There is value in the Productivity Commission examining the widening of the scope of matters handled through the ABCB or its successor

The achievements of the ABCB provide a model for the regulation of the related matters commented upon in the issues paper. Whether or not all the various matters need, over time, to come under the umbrella of a single regulatory document along the lines of the BCA is clearly a matter for long- term government decision. In the shorter term, avoidance of duplication and overlaps between various regulatory approaches is vital. The potential dangers of such overlap are already evident, for example, in the development of the Plumbing Code of Australia.

The ACT would appreciate the views of the Productivity Commission on the potential for the following range of issues to be brought, over time and in full consultation and involvement of the players involved, into a closer link with the present building and construction framework:

- **plumbing, gasfitting, and electricity technical standards** - prima facie, the existence of separate, jurisdictionally-based approaches to these matters as they relate to building and construction appears to raise the issue of real or perceived duplication and overlap.
- following from work within the BCA framework on disability access and energy efficiency, **incorporation of matters relating to societal values such as noise, environmental health and building protection** — again, the evidence of the work to date suggests the value of nationally-coordinated approaches that recognise the opportunity for locally based best practice.
- a better understanding, in any future inter-governmental agreement on the ABCB or the successor to the ABCB, of **the interface between building and planning legislation** - noting that amenity, in the planning sense, should remain the province of planning.
- **construction (as opposed to building) licensing laws** - the recent ACT *Constructions Occupations (Licensing) Act 2004* has demonstrated the value

of bringing diverse construction licensing laws into a single framework. While the ACT does not see this as the highest priority, there is support for further work over time to achieve a more consistent national framework, noting that such work would enhance the operation of the national mutual recognition framework for occupations while acknowledging the different approaches to consumer protection embodied in present regulatory approaches.

Arrangements between technical standards producers and the ABCB are not optimal

In relation to the Productivity Commission's discussion of the actual code-making process, it is evident that on occasions the terms of the existing memorandum of understanding between the ABCB and Standards Australia have not facilitated a mutually beneficial outcome for either building regulation or for technical standards producers. One recent example has been the proposed amendment of AS1926, which deals with swimming pool fencing. The ABCB was not able to support the changes on the basis that the amendments were not safety enhancements. Future arrangements for building and construction occupation regulation should seek to clarify this issue.

There is still work in relation to marketing the BCA and making it a document widely used by building practitioners

Despite the progress that has been made in making the BCA more user-friendly, in particular availability of the BCA online and the recent change in publishing format to B5 size to encourage portability to building sites, there is still anecdotal evidence that a fair proportion of ACT licensed builders do not own or have knowledge of the provisions of the BCA. This contrasts with building certifiers, where there would appear to be a strong level of knowledge.

The nationally consistent BCA needs to be translated into reality by local builders. The practical qualifications of such builders will be equally important in delivering the possible future initiatives in relation to societal values if these are agreed.

The main use of the BCA appears to be by building designers and architects in their professional work, building surveyors/certifiers in approving plans and building work, governments in regulatory compliance proceedings, and legal practitioners in related litigation.

There is therefore scope for further marketing and education to increase the potential value of the BCA, noting that:

- such approaches would need to be linked with wider examination of training and continuous professional development; and
- the recent ACT *Constructions Occupations (Licensing) Act 2004* is also expected to serve as an incentive for builders to increase their knowledge of the BCA

There is scope for improving ABCB governance

In terms of ABCB governance matters:

- the ABCB reports directly to Ministers and not to a Ministerial Council. There may be value in examining whether closer linkages could be established with an appropriate Ministerial Council, particularly with the Local Government and Planning Ministers Council.
- Any proposals for changes to industry representation on the ABCB or its successor should recognise the principle that representatives must speak for industry as a whole, not simply the group with which they are associated.