



## **Reform of Building Regulation**

### **PRODUCTIVITY COMMISSION ISSUES PAPER MARCH 2004**

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#### **Submitted by**

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## FOREWARD

The Alliance for Fire & Smoke Containment (**The Alliance**) was pleased to meet with Commissioner Hinton and his Associates in early May 2004 and is also happy to provide its subsequent written submission in relation to the Productivity Commissions research study into the Reform of Building Regulations in Australia.

**The Alliance** was formed in early 2002, amongst other things to create a vehicle for interested parties (members) to interact in the process of on going Building Regulatory Reform and how it was / is impacting on best practice in relation to fire and smoke containment.

The advent of the Performance Based Building Code, the introduction of Private Certification and the fact that the insurance environment up to about early to mid 2003 was very much a “soft” market, saw the level of fire protection in our buildings stocks being “relaxed” to what we collectively feel, in many cases is an unacceptable level of protection. *We question if these reforms would have been possible with the active involvement of the insurance industry during a “hard” market cycle.*

The Performance Based Building Code of Australia, PBCA96, (now PBCA2004) clearly deals with life safety and protection of adjoining property only, and under a Performance Based Alternative Solution, unless there are additional voluntary measures employed by the developer or building owner, the protection of the property and/or protection against business interruption are being set to one side, and buildings are clearly being designed, built and approved where the overall fire protection systems are clearly well below those which might otherwise have been installed if prescriptive or deemed to satisfy provisions of the Building Code of Australia were employed.

**The Alliance** questions whether or not the overall community expectations are in fact accurately portrayed by the existing PBCA2004 performance requirements where the minimum acceptable requirements do in fact allow a building to burn down and a business, hospital or school to perhaps be forced to close its doors and/or shut down after a fire. Is it really acceptable for a building to burn to the ground as long as all the occupants safely escape?

We think not.

We also think the wider community would agree with us, so something is amiss!

The Alliance members’ shared goals in part, clearly reflect our collective intention to create some serious awareness about this issue, and to try and rally insurance, the fire services, building operators and other key stakeholders to come together to create an environment that precipitates some necessary change.

Alliance shared goals:

- Promote passive fire protection as part of a total fire safety design approach
- Promote property protection and public welfare as well as life safety
- Promote fire fighter safety and facilitate fire fighting activities
- Disseminate technical information to the Fire Safety Community
- Promote competency based training, accreditation and licensing

We see some reform as very necessary, and it may manifest itself outside of Building Regulations by the promulgation of separate Industry Based Codes and/or a series of Guidelines dealing specifically with the Protection of Property, Protection of Fire Fighters and Protection against Business Interruption, all in the advent of fires.

We will be happy to get involved in any committees, working groups or similar forums to assist in any positive reforms, and as Executive Officer, I would be happy to provide additional information as appropriate to compliment this submission.

John Rakic  
Executive Officer  
Alliance for Fire & Smoke Containment

## **ABCB - General**

We appreciate the ABCB has a very difficult role in delivering in all the areas of technical reform we are faced with in the current environment; namely Energy, Access for the Disabled, Acoustics just to name a few of the bigger ones the ABCB has been working on.

Notwithstanding the above, fire is a very important issue and although we respect that the ABCB has other areas to contend with, fire related issues have been somewhat neglected over the last 8-10 years in our opinion.

It has been an “easy out” for the ABCB to temporarily leave the fire related provisions at status quo and suggest that any anomalies can be addressed through the Performance Requirements. To those who are not too close to the issues, this ABCB stance may seem perfectly acceptable, but the major problem is that the objectives, functional statements and performance requirements were in our opinion promulgated in haste to meet the publishing deadlines for the new 1996 version of the PBCA and are open to serious interpretation issues by nature of their current format.

The work of the Fire Code Reform Centre, was in part going to result in some very necessary changes to the now prescriptive deemed to satisfy BCA provisions, which to date has not been effectively orchestrated.

It is our view that the BCA deemed to satisfy provisions require some maintenance to reflect some of the knowledge gained from the activities of the Fire Code Reform Centre and from some of the accepted generic Alternative Solutions evolving from the Fire Safety Engineering fraternity. In short, FRL's will inevitably reduce in some areas, but smoke control and containment requirements will probably increase in some areas. This should in effect result in improved safety and possibly at no appreciable (if any) cost impost, particularly now that the acoustic provisions have been increased.

As discussed below, we also feel that the issue of Property Protection and Protection against Business Interruption needs to be addressed by the ABCB.

In this regard, the Alliance has been the primary force in the creation of a Steering Committee to develop a Code of Practice or Series of Guidelines to deal with this issue.

## **Performance Based Building Codes**

The Alliance and its members fully support Performance Based Building Codes and the use of Alternative Solutions, but the overall system needs to work in harmony and issues other than just initial cost savings (\$) need equal consideration.

Ironically, the introduction of the PBCA96, the advent of Private Certification, both effectively at the same time, was in our opinion and in hindsight,

probably not ideal. The “whole system” has serious holes in it and the lowest common denominator in most cases prevails; that is the \$. In some specific cases, as discussed earlier, this may in fact be a concern to life safety.

Many if not most developments, involve developers, who build and sell off the development to an unsuspecting building owner and/or operator. The result in many cases is uninsurable or in some cases impractical operational constraints placed on premises as a result of assumptions relating to the Alternative Solution and the associated Fire Safety Engineering Design assumptions.

We question whether the perceived cost savings are in fact real and justified.

Many Alternative Solutions result in an ongoing increase in maintaining these assumptions and complying with the intent of the Fire Safety Engineered Design.

There are also many examples that show that additional costs, often far in excess of the original perceived cost savings, are required to upgrade the fire protection requirements to meet the requirements of the insurance company and/or make the building habitable for the usage which differs and/or conflicts with the restriction imposed by the Fire Safety Engineered Design.

In many instances, there have been very effective and in our opinion successful use of Alternative Solutions and Fire Safety Engineering Designs, but we would say that these are clearly the minority, rather than the majority.

### **Private Certification**

As discussed above, it is in our opinion ironic that Private Certification and Performance Based Building Codes were effectively introduced concurrently in many States and Territories. It was probably too much to cope with at once.

The Alliance is not sure the Legislators got it right by allowing a system where the Developer appoints his own Private Certifier. This has to lend itself to a potential conflict of interest. It is analogous to the police being on your payroll.

In many cases, it is “hard to bite the hands that feeds”

### **Conflict between Fire Service and Building Control related Acts**

We also feel that something needs to be amended to remove the conflicts between the Fire Services Acts and the Building Control Acts. The Fire Services are required to protect life, the property on fire and those properties adjoining the fire, yet a building can be designed where they can and in some cases will fall down after all occupants escape, which puts doubts in the minds of the Fire Service to enter these buildings to adequately protect the building on fire.

This could result in the Fire Service being party to claims in relation to negligence in terms of not adequately fighting a fire to protect the property on fire.

## **Bushfires**

Bushfires are a serious concern and in recent times we have experienced some serious losses of both homes and lives as result.

The Alliance feels that the ABCB needs to take a more active role in this area as the system has stalled somewhat. The existing AS3959, which is referenced as a primary reference Standard in the BCA, is totally prescriptive in nature in terms of acceptable construction materials.

This fact is precluding the use of innovative products, which may in fact provide both increased performance and cost savings against the existing prescriptive options, which in many cases are limited and may not in fact afford adequate protection.

ABCB through the BCA or companion document need to set some exposure (performance) levels for the different categories of bushfire attack, and provide accompanying fire testing methodologies and acceptance criteria.

The system as it is, is definitely hindering innovation.

## **Training, Accreditation and Licensing**

Although not currently an ABCB function, the Alliance is fully supportive of the need for training, accreditation and mandatory licensing in the Fire Protection area. We applaud the Queensland Government for their initiatives in modifying the Building Services Authority Act and Regulations to encompass Fire Protection related licensing for some areas of the Fire Protection industry. Although not complete, and not without some serious “teething problems” it is a good start and has improved the quality of buildings and the industry generally in our opinion.

We strongly believe other States and Territories need to consider similar initiatives and we are focussed on assisting Government in this area.

We are looking to strengthen our ties with other allied Associations and other key stakeholders to develop the infrastructure to cater for Government licensing.

The Alliance has created Accredifire, a business unit that might assist in this specific regard.

The publication recently of the Australian National Training Authority (ANTA) approved and endorsed competency based training package for Fire Equipment is a good first step towards delivery of this particular initiative.

### **Standardisation**

The Alliance feels that the ABCB has become bogged down and too focussed on the finer interpretation of their own protocols, especially in terms of the development and redevelopment of Australian Standards.

In many cases the ABCB is not actively involved in the development of Australian Standards, probably due to time and resource constraints, yet after serious committee work is undertaken the ABCB has been known historically to seriously delay the publishing of Australian Standards many of which have been written for referencing in the Building Code of Australia.

Some improvement, refinement and consistency in this process would be well received.

### **Maintenance of Essential Services**

After the ACCC enquiry into the Fire Protection industry, the ABCB as we understand it were to look to call up maintenance provisions in Section I of the Building Code of Australia.

It has been quite a few years since this ACCC enquiry, yet to date there has been no significant change to Section I of the BCA in this area.

Several Alliance members are involved on SAA-FP001 and it is not abundantly clear whether ABCB will in fact reference the new proposed AS1851 suite.

It is important to note that the new and proposed AS1851 suite will not cater for maintenance of the “intangible” essential fire safety features; that is those that form part of Fire Safety Engineering related Alternative Solutions, such as fire loads, management in use issues and the like.

### **Fire Safety Engineering Guidelines**

The Alliance feels that the ABCB should have adopted the Fire Engineering Guidelines or a similar document as a primary reference document in the PBCA96 / PBCA2004.

As Alternative Solutions employing Fire Safety Engineering principles are a large part of the PBCA, it makes sense that some mandatory methodology or design code be included as a reference document to maintain a minimum acceptable benchmark to the process. This might result in a scenario where all key stakeholders are involved in the setting of the objectives and performance requirements for a specific project by way of Fire Safety

Engineering Design Briefs which we feel would add some credibility and balances and checks to the design and approval process.

### **Transparency in participation in reform activity**

It is the opinion of the Alliance that overall and equitable involvement in the activities of the ABCB is not occurring. The transparency of this process could be improved.

Neither the Fire Protection Association Australia, nor the Alliance for Fire & Smoke Containment has been invited to actively join and participate openly the Industry Liaison Committee. As the Alliance, we approached the committee and were subsequently informed of our acceptance to join, but were subsequently sent an apology and informed that we were only able to participate as corresponding members, which has proven to be a waste of time as the agendas and minutes for the meetings have not been forthcoming.

In order to gain more credibility, the Industry Liaison committee needs to be transparent in its appointment of membership and should have a balanced membership consisting of some formal involvement from the Fire Protection Industry sub sectors.

### **Conclusion**

We as the Alliance think that the so-called minimum acceptable societal / community levels of fire protection are not in keeping with real community expectations. We also feel that the Performance Based Building Control system does not have enough “checks and balances” and has failed the building owner. Too many building owners are faced with expensive fire protection upgrades when trying to insure their buildings and somehow an heightened awareness is required to ensure that buildings cater for property protection in the original design, which is easier and cheaper to accomplish once up front.

The ABCB needs to focus some resources in fire, both to tighten up the performance requirements and to upgrade the prescriptive requirements. More resources and a flexible common sense approach are required for ABCB participation in fire and smoke related Australian Standards.

The BCA needs to address Protection of Property and Protection against Business Interruption, and perhaps a companion Code or series of Guidelines as proposed by the Steering Committee initiated by the Alliance is appropriate.

The area of bushfires needs some immediate attention as it affects the everyday homeowner and current lack of fire test methods and associated acceptance criteria are stopping the introduction of cost effective and innovative products.



Although design and selection of products are important, of equal importance are installation, inspection and testing and maintenance, Licensing, underpinned by competency based training and accreditation, as well as the development of agreed maintenance requirements for both the tangible (standard) and intangible (special items identified in Alternative Solutions) need to be further developed and implemented.

There are many organizations who can and will assist with the development and implementation of the issues addressed in this submission, such as our relatively new but energetic Group, the Alliance for Fire & Smoke Containment), and the Governments and the ABCB need to harness these resources and manage them to improve the system to allow for the design, construction, approval and subsequent operation and maintenance of our building stock.

We are ready to help out.