Reform of Building Regulation

Response to the Productivity Commission Draft Report

Australian Conservation Foundation

8 October 2004

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The Australian Conservation Foundation (ACF) is an independent, not for profit organisation with around 60 000 members and supporters across Australia. In addition to our efforts to protect and restore the natural environment, ACF is concerned with how we can create sustainable cities that ensure long term liveability on social, economic and environmental grounds.

We recognise that Australians feel strongly about the environment and most of us (87%) live in cities and suburbs. As a community, we have a responsibility to play a role in shaping Government policy affecting both the urban environment, as well as the impacts of the urban environment on our natural assets.

While we support efforts to improve the safety, amenity and accessibility of buildings, the focus of this submission is the efficiency and effectiveness of the Australian Building Codes Board in addressing the environmental impact of Australian buildings.

Summary

1. ACF is concerned that the environmental impact of Australian buildings is escalating rapidly. This is contributing to unprecedented environmental problems, such as climate change, which is already beginning to affect every sector of the Australian economy and every citizen.

2. ACF strongly supports the inclusion of environmental performance as a core objective of the Australian Building Codes Board (ABCB) (or a future Australian Building Regulation Board).

3. There is a strong case for continuing Commonwealth involvement in the regulation of building standards because (1) cities and the environments on which they impact are public assets; (2) the structure of the property industry contributes to the failure of market approaches; and (3) inefficiency and carbon-readiness in the property sector will impact on other sectors of the economy both public and private. Market failure in delivering buildings with adequate environmental performance means that while voluntary approaches may complement regulation, they can not replace regulation.

4. The current arrangements for the development of the Australian Building Code are not efficient on three grounds:

    - The time taken for new standards to pass through departmental processes tends to be 12 months longer than similar regulatory processes;

    - The tendency for the ABCB to set lowest possible standards means that they will need to be revisited sooner than if they more adequately reflected community expectations;

    - The setting of low standards also reduces the efficiency and effectiveness of the building industry when the life-cycle of buildings is taken into account. It is more efficient (and more

cost effective), to improve the environmental performance of a building via standards set in the project planning phase than to encourage retro-fitting of existing buildings.

5. National consistency will come from National leadership in addressing community expectations – not from a lowest common denominator approach to standards. ACF does not support the argument put forward in the report that national consistency should be given priority over more stringent environmental standards introduced by local and state governments.

6. The ABCB should not only consult with industry representatives but should also formally consult with community representatives. There should be at least one community representative at the board level and one industry representative – rather than the current situation of three industry representatives and no community representatives.

7. The broader impacts to the Australian economy of not setting higher environmental standards should be explicitly taken into account in the assessment of the role of the ABCB and the RIS process. Such costs include the cost of public investment in electricity and water infrastructure, and the predicted costs of climate change impacts both to the public purse and to private sectors – including industry sectors other than the property sector.

8. The ABCB (or its replacement) should be institutionally strengthened and adequately funded to deliver the Government's commitment to an efficient and sustainable built environment.

1. Introduction

In 2004, the Year of the Built Environment, and the recent Federal Parliamentary Inquiry into Sustainable Cities, has focussed community attention on the role of Government in delivering a sustainable built environment.

The Australian Building Codes Board (ABCB) has the potential to assist industry transition in an increasingly carbon-constrained economy, and to respond to community expectations about the quality of homes, workplaces, and the built environment. As the institution responsible for the Building Code of Australia, the ABCB should demonstrate the Government's commitment to sustainable cities by effectively implementing sustainability in Australia's buildings.

The Australian Conservation Foundation is concerned that the ABCB has been out of step with community expectations for some time. This has lead to slow progress of building regulation at the national level and generally weak outcomes. While we support recent proposals to enshrine sustainability as core business for the ABCB, if the institution is not strengthened it will not be able to effectively address market failure. We welcome the Productivity Commission's research into the Reform of Building Regulation as an important opportunity to address the efficiency and effectiveness of the current building regulation framework.

2. The Status of Our Built Environment

ACF is concerned that the environmental impact of Australian buildings is escalating rapidly. This is contributing to unprecedented environmental problems, such as climate change, which is already beginning to affect every sector of the Australian economy and every citizen.

There is a strong case on economic, environmental and social grounds for addressing environmental impacts by reducing demand for energy and natural resources thorough efficiency gains in building practices.

The International consensus of climate scientists represented by the Intergovernmental Panel on Climate Change (IPCC) recommends that we need to reduce greenhouse pollution by at least 60% by 2050 to stabilise the worst effects of climate change. In 2003, the CSIRO and the Bureau of Meteorology confirmed that the severe weather events, droughts, and bushfires that we have begun to experience in greater frequency and severity, are the results of climate change.

CSIRO has also reported on the impacts that climate change will have on Australia in detail. Coastal and alpine biodiversity will be negatively impacted along with premier tourist destinations such as the Great Barrier Reef and Alpine ski fields. Climate change will impact some industry sectors, such as agriculture and tourism, more than others. However, the Insurance Australia Group confirms that Climate Change will impact every sector of the Australian economy through links to the domestic and international finance sector.

Australians have already become accustomed to water restrictions for lengthy periods in our major cities and regions, and pressure on energy infrastructure has led to brownouts in Qld, WA and Victoria in recent years. In 2003 the Electricity Supply Association of Australia reported that demand for electricity in New South Wales, Victoria and Queensland is set to outpace supply before the decade is out. The recent Federal Government Energy White Paper estimated that investment of over $37 billion in electricity infrastructure will be needed by 2020 to keep up with this energy demand.

Increased temperatures resulting from climate change will increase the severity of water shortages, as well as the number of hot days that people will rely on air conditioning to remain comfortable. This will create a difficult scenario to which Governments will need to respond. On the one hand, Commonwealth and State Governments are committed to reducing Australia's level of Greenhouse Pollution to meet international obligations (regardless of whether Kyoto is ratified), on the other, public pressure over reliable energy and water supply and the costs of waste management will be significant.

Central to any solution should be improved energy, water and materials efficiency, which will reduce the need for public investment in energy, water and waste infrastructure and improve environmental outcomes at the same time. A national study conducted by the Sustainable Energy Authority of Victoria and the Allen Consulting Group, has reported that implementing just 50% of the currently commercially available energy efficiency measures over the next 12 years would create an extra 9000 jobs and increase GDP by $1.8 billion[1]. Separate research conducted by the Allen Consulting Group for the Sustainable Energy Development Authority in NSW showed that sustainable energy policy could drive job creation. The recommendations of the House of Representatives Environment Committee, in its Green Jobs Inquiry also points to the positive economic and social outcomes of energy efficiency.

[1] Young, D. (2003) Towards a National Framework for Energy Efficiency Presentation to the 2003 conference of the Business Council for Sustainable Energy.

Because environmental efficiency has not been a priority for the building industry in the past, buildings continue to be designed and built to use more energy, water and materials than they need to. In 1990, the building sector was responsible for 27.6 % of Australia's energy-related greenhouse pollution[2], and 37% of all municipal waste[3]. Water consumption is also high given we live in the driest inhabitable continent although water tends to be addressed through plumbing codes rather than the building code.

Not only are environmental impacts from the building sector significant in proportion to productivity, they are rapidly increasing. The Australian Greenhouse Office reported in 1999[4] that based on estimated projections, between 1990 and 2010, residential buildings would increase their contribution to greenhouse pollution by 17% or 8.1 Mt per annum while commercial buildings would double their contribution to greenhouse gas pollution (an increase of 94% from 32Mt to 63Mt). This means that in terms of demand, commercial buildings are the fastest growing source of greenhouse gas pollution in Australia.

The good news is that there *are* some examples of commercially viable buildings with better environmental performance. The Australian Conservation Foundation assisted the design and development of the 60L Green Building, owned by the Green Building Partnership in Melbourne. The award winning building demonstrates that commercial buildings can be built to cut energy use by 65% and water use by 90% with today's technologies – yet still deliver profitable commercial returns. The building is at least 100% greenhouse neutral and in summer months, the building exports renewable energy from its roof to the electricity grid. Unfortunately there are not yet any other Australian examples of this level of environmental performance, although there are a handful of commercial buildings that have been designed to achieve 4 and 5 star on the Australian Building Greenhouse Rating Scheme and on the Greenstar rating scheme. The Melbourne City Council building, *CH2*, currently under construction will be the closest comparison to the achievements of 60L. For best practice high performance buildings we have to look to Europe and the United States for further examples.

A combination of market and regulatory approaches is needed to address the growing environmental impact of Australian buildings. While there is interest from various sectors of the industry in environmental design and performance, this has not delivered the environmental improvements needed to contribute to the sustainability of our cities. Nor have voluntary market approaches delivered the efficiency gains available through improved building and design practices. Australia is lagging far behind international best practice when it comes to the environmental performance of our buildings.

3. The Case for Commonwealth Involvement in Building Regulation

There is a strong case for continuing Commonwealth involvement in the regulation of building standards. Market failure in delivering buildings with

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[2] CSIRO (1999); *Scoping Study of Minimum Energy Performance Requirements for Incorporation into the Building Code of Australia*, published by the Australian Greenhouse Office.

[3] CRC for Construction Innovation (March 2003); *Sustainability and the Building Code of Australia*.

[4] Australian Greenhouse Office (1999), *Australian Commercial Building Sector Greenhouse Gas Emissions 1990-2010*.

adequate environmental performance means that while voluntary approaches may complement regulation, they can not replace regulation. Continuing Commonwealth Government involvement in national building regulation is needed because (1) cities and the environments on which they impact are public assets, (2) the structure of the property industry contributes to the failure of market approaches, and (3) inefficiency and carbon-readiness in the property sector will impact on other sectors of the economy both public and private.

(1) Through the *Year of the Built Environment* initiative, the Government has recognised that while the great majority of buildings are private assets, the built environment and the livability of our cities are public assets. Debate about environmental problems in cities has traditionally been restricted to air and water quality that affects health and amenity. However, over recent years, community concern over the waste of natural resources and the impacts of cities on the natural environment has grown. This is best demonstrated by the success of curb-side recycling programs over the past ten years. Now that water restrictions are in place in most capital cities, this community awareness has extended to water in the context of the drought, and energy as the effects of climate change become apparent. Governments have a crucial role in ensuring that our natural environment is protected by addressing the sustainability of our cities. Improving energy efficiency is also a cost effective way of reducing Australia's greenhouse pollution in order to meet the Kyoto protocol target. Needless to say, improving the energy, water and materials efficiency of buildings is central to this goal.

(2) The structure of the property sector contributes to the failure of market solutions in delivering improved environmental performance in Australian buildings. Typically, building projects are controlled by different companies in the various stages of design, planning, construction, asset management and tenancy. At each stage, the business drivers and constraints differ – and often compete. The example of double glazing can be used to illustrate the situation. In the current market, there is a disincentive for builders to include double glazing for improved energy efficiency, because it adds to the construction costs of a home. However, the pay back period for the additional cost of double glazing tends to be favourable in terms of the energy savings to the home owner or tenant. The disjuncture between the construction budget and the operation budget, and the lack of demand side information to counter this, means that energy efficient features are not taken up even if they are economically beneficial overall.

The case is similar, although more complex with commercial buildings. The companies involved in design, development and construction of commercial buildings tend to be separate to those involved in asset management, operation, and tenancy. This means that the incentive to improve environmental performance of the existing building rests with the demand side (asset managers) rather than the supply side (developers) in the industry. This leads to a disjuncture – even if developers want to produce a high environmental performance building, unless it is in the commissioning brief, their responsibility rests with maximising profit. When environmental performance does appear in the commissioning brief, it is a lower priority or in many cases an after thought, for the building requirements. This leads to another problem – environmental design is most cost effective when it is a core project objective rather than an add-on. When it is an add-on (as is usually the case), current practice in development project management means that environmental design features are implemented in the building project at the same point in time as the project begins to run over budget. Because the key driver of the developer remains the delivery of the project within budget to maximise profitability to investors, shareholders etc. Cutting environmental features is the most logical to reduce project costs. This leads time and time again to commercial building

developments failing to deliver improved environmental outcomes. The rationale provided for this underperformance is usually budget constraints despite strong business cases arguing in favour of improved environmental performance and demonstrated internationally.

This industry dynamic means that almost universally, the buildings under construction at present are contributing to the problem rather than the solution. Despite the increased information available describing the business case for green buildings, the number of parties involved in the life cycle of a building, and the disjuncture of incentives at the different stages of building development are barriers to improved efficiency overall. The handful of commercial developments which have achieved 4 and 5 star outcomes on the Australian Building Greenhouse Rating Scheme (ABGR) or the Greenstar Rating have done so through strong commitment from supply and demand side companies, and in particular the use of the formal *ABGR Commitment Agreement* process which is designed to link the supply and demand side parties.

By and large, the market penetration of these voluntary rating tools will remain limited without a complementary mandatory environmental performance standard. The voluntary scheme with the most market penetration to date in the commercial building sector is the Australian Building Greenhouse Rating Scheme. The scheme can be used as a target in the design phase, or as a benchmark to improve the performance of existing buildings. While its success has been notable as an aid to early adopters in the industry, its total market penetration has been fairly limited with around 100 buildings rated since the scheme began. The Greenstar rating scheme developed by the Green Building Council of Australia is aimed at the top 25 per cent of new commercial developments. It is too early to assess the future market penetration of this rating scheme as it is in fairly early stages. Experience from the U.S Green Building Council, which has been using voluntary rating schemes for more than ten years suggests that market penetration will be limited. The voluntary rating scheme associated with the US Green Building Council (LEED) has only captured 4% of new commercial developments in the U.S[5]. To be fair, both ABGR and Greenstar have been designed to recognise and reward industry *leadership* rather than to capture the whole market. Nor is either program backed up by a research program to monitor the impact of the voluntary tools on the environmental performance of Australian building stock as a whole. It is therefore not appropriate to suggest that voluntary initiatives have the potential to replace the need for regulation of minimum environmental performance standards.

On the contrary, minimum standards would provide a strong complement to these voluntary rating schemes. The absence of adequate environmental performance standards in the building code means that the entire industry, including industry leaders, are held back by the industry laggards. Minimum standards would create a level playing field, economies of scale, and the skills that would benefit industry leadership in addressing environmental performance. Returning to the example of double glazing, the mandatory environmental performance standards introduced in California has meant that double glazing is now cheaper than standard window glass. Similarly, the cost of double glazing and rainwater tanks is going down in Victoria and New South Wales due to State building regulations.

There is a need for continuing Commonwealth involvement in building regulation because the structure of the property sector undermines environmental outcomes

[5] Presentation by Dr. Kath Williams, Vice President of the U.S Green Building Council, 2003.

and overall efficiency, because voluntary schemes alone will not deliver the market transformation necessary to address building environmental performance, and because mandatory standards will provide a level playing field for the industry and deliver the skills and the economies of scale required for the market to do its job.

(3) The continuing involvement of the Commonwealth Government is also needed to ensure that Australian industry remains competitive in a carbon constrained economy. Climate change will affect every sector of the Australian economy both directly and indirectly and industry is beginning to recognise that it is a significant business risk. In an increasingly globalised economy it is most likely that international developments, such as the likely ratification of the Kyoto Protocol by Russia, and the development of the European carbon trading market will have an impact on Australian industries and markets. Not only this, but the impacts of climate change that are already manifesting, such as water restrictions and ongoing drought conditions across much of Australia, will impact on the productivity of Agriculture. In 2003 AMP Henderson analysed the risk exposure of Australian industry sectors to climate change. They found that the property sector was one of the most vulnerable and least ready.[6] It is crucial that Governments implement a mixture of market and regulatory approaches to assist industry transition.

4. Efficiency of Current Arrangements

The current arrangements for the development of the Australian Building Code are not efficient on three grounds:

(1) The time taken for new standards to pass through departmental processes tends to be 12 months longer than similar regulatory processes;

While consultation and impact assessments should be thoroughly completed, the time taken on internal departmental processes to finalise changes to the BCA *post-RIS*, and *post-consultation* tends to be significantly longer than comparative policy making. The development of energy efficiency standards for class 1 buildings, and class 2,3,4 buildings are examples of this. The time taken for these extra departmental processes can be up to twelve months with no explanation for the delay. Similar processes at the State level, including Cabinet processes take no more than 2 months. It should also be noted that once the changes to the Building Code are introduced at the Federal level, similar consultation and RIS processes take place in most States for the Code to be introduced into State Building Regulations. It appears from an external vantage point that the Department of Industry does not facilitate the finalisation of changes to the building code with the same efficacy as the ABCB itself. If the additional time on internal processes is justified, by some need for additional research or consultation the additional process should be made transparent.

The draft report recognises that the BCA is a 'living document' that requires regular updating (PC Report XXVII). Given this is the nature of the code, there is a case for streamlining internal departmental processes to improve the efficiency of amendments to the code. In the same section, the report notes that

> *"it appears that the Board has given insufficient attention to: maintenance and updating of the Code, especially to revising deemed-to-satisfy solutions to ensure they embody up-to-date building practices;*

[6] Woods, Ian; (2003)Climate Change: Where are Australian Companies Positioned? AMP Henderson Global Investors, January 2003.

improving the clarity of certain performance standards; and the relationship between some deemed-to-satisfy solutions and performance requirements. Work on these areas has been given lower priority to date in order to focus on the development of provisions for disabled access and energy efficiency." (PC Report XXVII)

While we support the conclusion of the report that "the ABCB (or its replacement) as a high priority, should continue to work towards maintaining and updating the core technical requirements in the Code" we note with concern that there has been no acknowledgement of the funding constraints that have lead to this unnecessary prioritisation. Such a prioritisation has meant that while energy efficiency standards have been made a priority (along with disability access), the necessary development of technical requirements that will help building practitioners implement such measures have been lagging. This undermines the effectiveness of the code in delivering energy efficiency provisions.

The current arrangements for the development of the Australian Building Code are not efficient due to lengthy unnecessary departmental processes, and inadequate funding of the ABCB which has lead to a trade off between the Code development and the development of technical requirements. Additional funding and greater independence of the ABCB through MOU arrangements with the Department of Industry, and the Department of Environment and Heritage should be implemented. If the delays and departmental inefficiencies continue, statutory independence should be canvassed.

(2) The tendency for the ABCB to set lowest possible standards means that they will need to be revisited sooner than if they more adequately reflected community expectations;

It is generally acknowledged that regulation should set minimum standards to create a level playing field from which best practice can develop. However there is ambivalency regarding the development of minimum standards both within industry as well as the ABCB. The question is: minimum for whom and minimum for what overall outcome? Despite the aim of "meeting community expectations" in the current mission statement, with no community representation on the Board nor formal consultation effort (except a call for submissions) the standards developed tend to be the minimum acceptable *to industry* rather *than to meet community expectations*. Furthermore, the overall goal, tends to be specific to one section of the industry rather than in reference to the industry across the lifecycle of the building or the broader economy.

The revised mission statement removes the need to meet 'community expectations' in part because,

> "*Community expectations at the local level may be in tension with the goal of national consistency. In addition, what the community expects may not be closely related to what it is prepared to pay for, or, from an economic perspective, the solution that generates net benefits to the community."* (PC Draft Report XXIII)

However, if an analysis of the property sector reveals the disjuncture between demand side and supply side drivers, it must be acknowledged that the market, and the market failure, is more complex than community expectations being out of step with what the community is prepared to pay for. Secondly, the solution which generates the net benefits to the community, tends to be taken from a *narrow* economic perspective, specifically, one sector of one industry, rather than

the industry as a whole, the economy as a whole, (including public sector investment that could be avoided, new jobs created from renewable technology, and the broader economic impacts from climate change that may be averted).

If the "goal of national consistency" is given priority over meeting community expectations, what really occurs is policy that favours a narrow industry agenda rather than the benefits of the Australian community. It is this, rather than the whims of local and state governments that has lead to any "erosion" of the national building code. This is demonstrated by the recent introduction of energy efficiency requirements in housing. State Governments in Victoria, New South Wales and South Australia introduced 4.5 and 5 star standards within months of the development of the national Building Code which had set levels at a low 3.5 stars (with some climatic variations). In addition, hot water systems (the single largest contributor to household greenhouse pollution) were addressed by the Victorian and New South Wales Governments where appliances and even lighting had been excluded by the national building code. It was clear in these jurisdictions that the levels set by the national building code were too low to meet community expectations. If the code had been more stringent and comprehensive national consistency would have been preserved.

(3) The setting of low standards also reduces the efficiency and effectiveness of the building industry when the life-cycle of buildings is taken into account. It is more efficient (and more cost effective), to improve the environmental performance of a building via standards set in the project planning phase than to encourage retro-fitting of existing buildings.

While regulations should be the minimum needed to assist industry transition in order to meet community expectations, this does not necessarily mean that the standards themselves should be low. Setting higher environmental standards would achieve more efficient industry transition toward a carbon-constrained economy by establishing a level playing field from which best practice can develop. The result of low standards in the construction phase is cost shifting from the supply side of the industry (developers, construction) to the demand side (asset and facilities managers, householders).

The real challenge in turning around the environmental impact of buildings will be in addressing existing buildings, where there is both a lack of market incentives and a lack of regulation for environmental performance. Needless to say, that each new building which is constructed today, will contribute its environmental impact over the 50-100 years that it is in operation. . For each year that mandatory standards are not introduced, thousands of new buildings are being developed which contribute unnecessarily to Australia's environmental problems including greenhouse pollution. That is, each additional year without mandatory environmental performance standards, the Government is not adequately addressing sustainable cities.

In his 1997 statement, *Safeguarding the Future*[7], Prime Minister Howard foreshadowed minimum energy efficiency requirements for commercial as well as residential buildings if voluntary measures did not take effect. It is clear from the discussion elsewhere in this paper that voluntary measures will not address the environmental impact of the property sector to any significant degree. Yet it will be nearly a decade later that the ABCB introduces minimum energy efficiency standards for commercial buildings at its current timetable (2006). On these grounds we reject finding 10.4 of the draft report that

[7] Prime Minister's Statement (1997) Safeguarding the Future.

> "*Overall, current institutional arrangements for pursuing building regulation reform have been reasonable effective.*"

Not only is there the need to strengthen the Australian Building Codes Board, (or its replacement) through institutional strengthening and additional funding, there is a strong case for extending the scope of the code to address existing buildings, and to coordinate research into the progress of the environmental performance of the Australian built environment.

5. National Consistency

National consistency will come from National leadership in addressing community expectations – not from a lowest common denominator approach to standards. ACF does not support the argument put forward in the report that national consistency should be given priority over more stringent environmental standards introduced by local and state governments.

Part of this point has already been addressed under 4 (2). It should be affirmed however that given the federated nature of our democracy, and the role of local government in representing local community interests, and the lack of formal community (or local government) engagement through the National Building Codes Board, it is not appropriate for the Board to pursue national consistency by seeking to restrict community participation. National consistency tends to represent narrow industry interests in the present model, and should instead be pursued by stronger leadership in meeting community expectations at the National level.

6. Consultation

The ABCB should not only consult with industry representatives but should also formally consult with community representatives. There should be at least one community representative at the board level and one industry representative – rather than the current situation of three industry representatives and no community representatives.

7. Economic Modelling

The broader impacts to the Australian economy of not setting higher environmental standards should be explicitly taken into account in the assessment of the role of the ABCB and the RIS process. Such costs include the cost of public investment in electricity and water infrastructure, and the predicted costs of climate change impacts both to the public purse and to private sectors – including industry sectors other than the property sector. The cost benefit analysis conducted for the Regulatory Impact Statement is too narrow given the substantial implications of climate change for the Australian economy, community and environment. It is crucial that concerns over costs to industry – which usually focus narrowly on the construction and capital costs of new buildings – are put in the context of costs to the whole economy if we continue business as usual.

Comments on the Draft Findings and Recommendations of the Draft Report

The comments in this section are restricted to the concerns raised in this submission.

Draft Recommendation 5.3
support

Draft Recommendation 5.5
support

Draft Recommendation 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 (ie current objective 7)."

The objective here should be to ensure that the Building Code and other mandatory requirements affecting building (such as planning and plumbing codes) complements each other.

Draft Recommendation 6.3
Support – particularly in regards to future water targets being introduced to the building code, these should complement the plumbing code in relations to the installation of solar/gas boosted hot water systems, rainwater tanks and AAAA efficient appliances.

Draft Recommendation 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"

Strongly reject - on the grounds that the Proposed Objective 1 of the ABCB (or its replacement) clearly states that "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 same standard should hold for all aspects of the building code, rather than applying additional scrutiny to environmental objectives. Such a recommendation would undermine the intent of the proposed mission statement of the ABCB (or its replacement).

Draft Finding 6.3

" A number of jurisdictions are implementing minimum energy performance requirements for buildings. These are leading to substantial divergences across jurisdictions, thereby eroding a national approach for building regulation."

Strongly reject – on the grounds that the national approach to building regulation is instead being eroded by the under-representation of the community at the national building code level. This has lead to an imbalance in national standard setting that favours 'supply-side' industry outcomes (construction) rather than demand-side community expectations and ignores the benefits of higher standards to other industry sectors, and the economy as a whole.

Draft Recommendation 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 should based (with benefits greater than costs) and that they are applied consistently across jurisdictions."

Strongly reject on the same grounds as draft recommendation 6.6.

Draft Recommendation 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."

Strongly reject – the ABCB should seek consultation with State planning authorities but should not have jurisdiction to override state or local government decisions.

Instead, consistency with planning codes and jurisdictions should be sought through complementarity of methodology in assessing building performance requirements, including environmental requirements.

Draft Recommendation 8.4
Support

Draft Recommendation 8.5
Support

Draft Recommendation 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."

Conditional support – there should be a similar commitment to delivering substantial environmental outcomes through building regulation reform and monitoring the progress of the outcomes.

Draft Recommendation 10.2
support

Draft Finding 10.4

"Overall, current institutional arrangements for pursuing building regulation reform have been reasonable effective. However, there is scope for some refinements to structures and processes to further improve effectiveness and efficiency."

Reject - In relation to energy efficiency we reject this finding.

Draft Recommendation 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."

support

Draft Recommendation 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 minium 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 (ie net benefits);*
- *there is no regulatory or non-regulatory alternative (whether available to the board or not) that would generate higher net benefits."*

Support with the following changes:

Establish building codes and standards that *most efficiently* address relevant health, safety, amenity and environmental concerns.

- there is a rigorously tested rationale for the regulation;
- the regulation would generate benefits to the community greater than the costs (ie 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."*

Support.

Proposed Objective 3

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

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."*

Support with the following changes – this objective should be changed to:

Identify and seek to *encourage best practice* by exploring *complementary* mechanisms for delivering outcomes, including:

- *best practice* guidelines
- training to increase skill levels of building practitioners and certifiers."

Draft Finding 11.2

"Achieving the objectives by the ABCB would be assisted by the Board (or its replacement): …

- *consulting and liaising with all interested parties to achieve transparency in the reform process;*
- *conducting economic analysis of impacts, which thoroughly identifies all significant effects of proposed changes, to determine the best regulatory solution;*
- *co-ordinating and promoting research…"*

strongly support – this should be a recommendation

Draft Recommendation 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."

support

Draft Recommendation 11.4

A commitment to sustainable cities should be included as part of the rationale for delivering the environmental performance outcomes of the ABCB (or its replacement).

Further Recommendations

1. The institutional arrangements and independence of the ABCB should be strengthened through MOU arrangements with the Department of Industry, and the Department of Environment and Heritage. If the delays and departmental inefficiencies continue, statutory independence should be canvassed.

2. Additional funding should be provided for the ABCB to deliver the Government's commitment to a sustainable built environment.

3. Research and monitoring of the progress of the ABCB in affecting improvements in the environmental performance of the built environment should be undertaken.

4. Economic analysis of impacts should include impacts on industries other than the property industry as well as the impacts to the broader economy and environment of climate change.

5. A focussed effort to improve community consultation should be undertaken and community representation should be at the board and advisory level.

6. The scope of the ABCB should be expanded to address existing buildings through performance monitoring of existing buildings, refurbishments, and renovations. The Federal Government committed to mandatory disclosure of the energy efficiency of homes and commercial buildings at the point of lease and point of sale in the latest Energy White Paper. The ABCB (or its replacement) could play a role in implementing this with the states.

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