

8 October 2004

Mr Tony Hinton  
Commissioner  
Study into Reform of Building Regulation  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Mr Hinton

Thank you for the opportunity to provide a response to the Productivity Commission's Draft Research Report into Reform of Building Regulation. ALGA has a strong interest in the findings and recommendations of this report particularly as they relate to the role of local government in building and planning reform.

ALGA is concerned that the Commission does not recognise the legitimate role of local government in the determination of planning and building outcomes that reflect community expectation. In particular, ALGA strongly disagrees with the Commission's finding that local government is *inappropriately* eroding the national consistency of building regulation through their planning approval processes. If implemented, recommendations related to this finding would inappropriately undermine the capacity of local government to respond to the expectations of their communities.

Further to this submission I encourage you to note complementary submissions from the State Local Government Associations, particularly as they relate to regulatory systems and the use of private building surveyors. For more information on the detail of this submission I encourage you to contact Jonathan Cartledge, Assistant Director Regional Development Policy, ph: 02 6122 9443 or email: [jonathan.cartledge@alga.asn.au](mailto:jonathan.cartledge@alga.asn.au).

Once again, thank you for the opportunity to offer these remarks. I look forward to the release of the final report.

Yours sincerely

Ian Chalmers  
**Chief Executive**



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

### **Response by the Australian Local Government Association**

**October 2004**

#### **Introduction**

The Australian Local Government Association (ALGA) welcomes the opportunity to provide this response to the Productivity Commission's Draft Research Report into the contribution of national building regulatory reform under the auspices of the Australian Building Codes Board (ABCB).

The Draft Report raises a number of issues relevant to local government. This response focuses particularly on issues relating to the capacity of the Building Code of Australia (BCA) to meet community expectations and the ability of local councils to add to existing building requirements above those contained in the BCA. ALGA considers it vital to consider the contribution of the ABCB not just in terms of economic efficiency and productivity gains, but also in terms of the capacity to adapt the built environment to meet new challenges and community expectations.

Through ALGA's representation on the ABCB, local government continues to support the implementation of minimum requirements for health, safety and amenity in the design, construction and use of buildings. However, in accordance with the principle of subsidiarity, ALGA also believes it is imperative that local government is able to meet community expectation for their built environment at a local level through control over their planning approval processes.

Should local variations to building requirements exceed the minimum requirements as established by the building code then, as the sphere of government closest to the community, it is appropriate that individual councils determine how best to balance community expectation, efficiency and cost effectiveness in that instance. Appropriate mechanisms to build the capacity of local government to make an informed decision in such a situation are supported by ALGA. Such mechanisms should aim to foster the development of innovative practices at a local level insofar as they are able to meet new challenges and effectively respond to the needs and expectations of the community.

#### **Key Concerns**

##### **Meeting Community Expectations**

ALGA does not support the revised mission statement for the ABCB which sees the exclusion of community expectations as a valid objective for the ABCB or its replacement. ALGA considers that communities can rightfully expect to have some influence over the standards and regulation that governs their built environment.

The Commission argues that “‘minimum requirements acceptable to the community’ will not provide the most efficient policy outcomes, when the community does not have a full range of relevant information, has unreasonable expectations and/or has an unrealistic evaluation of the relevant risks, costs and benefits.”

Further to this, the Commission suggests that ‘community expectation’ is ‘hard to measure’, ‘ambiguous’, and potentially ‘in tension with the goal of national consistency.’ The Commission notes the difficulties involved in using ‘community expectations’ as a measure of building performance. “Community expectations are likely to differ from community to community, reflecting differences in geographical and social conditions [...] Community expectations are likely to change over time, perhaps reflecting changes in social and economic conditions.”

In this context, the role of local government, as the level of government closest to the community, is critically important. Local government is potentially better placed than the other two spheres of government to understand and meet local needs and to respond to those needs in a manner that is both timely and appropriate to local conditions.

## **Subsidiarity**

The principle of subsidiarity provides an effective mechanism through which community expectations for the built environment can effectively be met. Although the Commission does not directly address the principle of subsidiarity, it is acknowledged that “In some cases, decisions made at the local level are the most appropriate, particularly when the greatest knowledge and the greatest impact of the changes is at a local level.” Unfortunately, this position is not reflected in the Commission’s findings and recommendations, which as they relate to local government, indicate a more limited role for local government would be desirable.

In this context, the Commission poses the following questions:

- Should individual communities be free to establish a higher standard for their particular community?
- Should councils control some aspects of building regulation where they impact on social objectives such as disabled access and environment?

The principle of subsidiarity provides a strong foundation on which to argue that it is appropriate and desirable that local government, as the sphere of government closest to the community, is able to respond to the needs and aspirations of local communities.

The principle of subsidiarity argues that problems are best solved at the level of government where they arise. It is logical then that individual communities, through their local elected representatives should have the freedom to develop desirable standards for their built environment in response to local challenges and problems that cannot be dealt with at a state or national level.

## Local Government

The rejection of community expectation as a valid area of concern for the ABCB and the lack of recognition given to the principle of subsidiarity by the Commission, appears to underpin the logic in the draft Report leading to recommendation 6.9 for:

“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.”

ALGA does not consider the capacity for local government to respond to community expectation to *inappropriately* erode national consistency. As the Commission notes, councils can sometimes be frustrated by a lack of response from other spheres of government in introducing controls that better respond to local need or which address issues like environmental sustainability or disability access. The tension between the BCA and the Disability Discrimination Act (DDA) reinforces the importance of local government being able to respond to community expectation in achieving equitable and safe access for people with disabilities in accordance with the DDA.

The introduction of these types of provisions by local government through planning schemes and in response to community expectation, is an indicator that the IGA is not meeting community expectation through the ABCB. This should not lead to the removal from the ABCB's mission statement of any reference to community expectation, rather it is appropriate to review the capacity of the ABCB to respond to community expectation as highlighted by the activities of local government. Further work is required to develop an appropriate mechanism for local initiatives to be introduced pending a further review of the need for state-wide or nation-wide application.

In suggesting the need for a cost-benefit analysis of new regulations introduced by local government, the Commission should seek to address concerns that local government is inadequately resourced. A lack of resources in local councils should not be used to limit community involvement through the exclusion of local government from administering additional regulatory requirements. Nor should it be used to justify the State Governments' proscribing local governments establishing building requirements. Rather, to strike the balance between community expectation, national consistency and efficiency, these arguments indicate an immediate need to address the resourcing pressures currently facing local government, particularly in relation to planning and development.

The ability for local government to respond to community expectation through innovative best-practice solutions should be supported. The objective of national consistency should not be used to stifle the development of bottom up initiatives that cater to the diverse needs of communities around Australia.

## **A New Intergovernmental Agreement**

ALGA is concerned that the legitimate role of local government as the third sphere of government is not adequately recognised by the Commission, particularly in its recommendation for a new Intergovernmental Agreement.

Local Government, as represented by ALGA, is a full member of the Council of Australian Governments (COAG) and as such represents local government on relevant Ministerial Councils including the Local Government and Planning Ministers' Council. In this context, the Commission's recommendation for a new IGA should include local government. The recommendation for an IGA to be negotiated by all *nine* governments should be amended to include local government as represented by the Australian Local Government Association.

## **Concluding Comments**

In summary, ALGA rejects the finding by the Commission that local government is inappropriately eroding the national consistency of building regulation. ALGA is of the view that it is a fundamental responsibility of local government to respond to the needs and aspirations of local communities. Individual communities, through their local elected representatives should have the freedom to develop desirable standards for their built environment.

Community expectations should not be eliminated from the mission of the ABCB, rather, local government should be more effectively utilized to enable the ABCB to better respond to the diverse needs of communities across Australia. Improved mechanisms to enable the ABCB to respond to community expectations should be developed in consultation with local government.

The role of local government, as the level of government closest to the community, is critically important. Local government is potentially better placed than the other two spheres of government to understand and meet local needs and to respond to those needs in ways that are appropriate to local conditions. In this context, local government should be included in any new Intergovernmental Agreement to replace the Australian Building Codes Board.

## **Contact Officer:**

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