

11 October 2004

Commissioner Tony Hinton
Productivity Commission
Level 3, Nature Conservation House
Cnr Emu Bank and Benjamin Way
BELCONNEN ACT 2617

Email: thinton@pc.gov.au

Dear Commissioner

Reform of Building Regulation (Comments on Draft Report)

Master Builders Australia welcomes the opportunity to provide comment on the Draft Report of the Productivity Commission into Building Regulation Reform and the Australian Building Codes Board.

Master Builders' supports most of the recommendations in the Draft Report, but offers further recommendations to improve the current systems and processes of the ABCB Board.

Master Builders strongly believes that it is in the best interests of the Australian building and construction industry that the Commission's findings be adopted. We support the adoption of these changes because they will add improved efficiencies to the ABCB Board, the BCA, the community and industry.

If you would like further information or detail on the issues raised in our submission, please contact Neil Evans, National Director, Technical and Regulatory Policy on 02 6249 1433.

Yours sincerely

Wilhelm Harnisch
Chief Executive Officer



**Supplementary Submission
to the
Productivity Commission Inquiry
Draft Report on
Reform of Building Regulation**

October 2004

Master Builders Australia Inc ABN 701 134 221 001

INTRODUCTION

This supplementary submission is made by Master Builders Australia Inc (Master Builders).

Master Builders represents the interest of all sectors of the building and construction industry. The association consists of nine State and Territory builders' associations with over 25,000 members. The building and construction industry contributes around \$75 billion of economic activity annually to the Australian economy.

Master Builders believes that the Building Code is an important document. It sets minimum benchmarks for industry and provides a consistent and level playing field and, at the same time, delivering a minimum acceptable building standard for the community. The BCA delivers a national set of building requirements consistent across Australia, making construction cost-effective and producing efficiencies for industry.

Master Builders would like to reiterate its strong view that Australia's building and construction industry requires a national and uniform building code and regulatory system to ensure the development and continuation of an efficient and internationally competitive building industry. The imperative is to ensure the contemporary and evolving expectations of business and the community of the built environment are satisfied in a consistent and cost effective way. The broad objectives behind the Inter-Governmental Agreement (as amended in 2001) to establish the Australian Building Codes Board has delivered certainty and efficiency to the building industry and must continue to drive national uniformity with commitment.

Master Builders further reiterates the critical importance of continuing Australian Government involvement in the future of the ABCB is critical, particularly given that recent major ABCB projects have provided a means for delivering nationally consistent government policy initiatives including energy efficiency, access, aged care and a more sustainable built environment.

The current approach on building control by the States and Territories offers room for improvement with the need to pursue a holistic building control model that creates a regulatory framework and one that provides the opportunity to deliver a nationally consistent administrative process, including licensing systems for practitioners, education and training.

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

Master Builders agrees that the BCA has played a significant role in delivering a nationally consistent approach to building regulations across States and Territories. This has delivered benefits in terms of efficiency and thereby reducing costs. It has allowed transferability of design and construction and skills across jurisdictions. As we noted in our original submission, the BCA has also allowed building products to be modularised thereby facilitating increased prefabrication and interstate transportation further reducing costs and increasing efficiency.

Nevertheless, it is appropriate that the objectives of the BCA be revisited periodically and those suggested by the Productivity Commission could form the basis of any new review. Any such review should involve full consultation with all stakeholders.

DRAFT RECOMMENDATION 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.

Strongly support

Master Builders acknowledges that there are difficulties by some within the industry with the adoption of performance-based regulations. Nevertheless, such regulations have significant advantages over either prescriptive or principle-based regulations by facilitating innovation. The ABCB should work towards improving the clarity of performance requirements and work to create verification methods to measure compliance with performance requirements.

DRAFT RECOMMENDATION 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.

Support in part

This should be restricted to only newly-created deemed-to-satisfy provision and allow the existing proven deemed-to-satisfy measures to be retained.

DRAFT RECOMMENDATION 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.

SEE P 102 MBA SUBMISSION

Opposed

Master Builders in its original submission concluded that the issue of general maintenance should be undertaken at the discretion of the building owner once the structure had been commissioned and any maintenance period had been completed. However, it is important that building owners continue preventative maintenance to the health and safety features of the building for its occupants such as sprinklers, hydrants, emergency lighting, exits, etc.

DRAFT RECOMMENDATION 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.

Supported

With General Maintenance, it is during the commissioning phase of building that the building owner is provided with the necessary maintenance information to ensure the ongoing operation of the building is in accordance with manufacturers specifications and constructors requirements.

DRAFT RECOMMENDATION 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

The difficulty with the current BCA is that it is written principally for technical members of the building and construction industry namely architects, building surveyors and engineers. However, the level of understanding and requirement for each party is quite different which makes the creation of a plain English BCA more difficult as there are different target markets for the product. Master Builders believes that there should be more work on companion documents that act as a reference guide for builders to ensure their compliance with the BCA.

Access to the BCA by building practitioners continues to be a significant area of concern. As noted by Master Builders in its original submission, access by builders to the BCA remains somewhat limited and is in part due to the bulk of the document and its relative complexity. Master Builders has suggested that an electronic searchable medium may be an alternative way of encouraging builders to make use of the information contained within the Code without costs.

An additional issue with regard to the use of the BCA, is the importance of providing educative programs for members which highlight the basic information needed to those new to the BCA, and alerts as to when amendments are made to the Code.

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).

Supported

Master Builders believes that all mandatory requirements should be incorporated into the BCA. However, there are numerous requirements deemed necessary by various State and Territory governments which are not consistent or, in some cases, not applicable to a specific structure. Whilst Master Builders believes that there should be uniformity, this would require a significant shift by these governments to allow full national consistency. It is important, however, that the BCA, which is a technical document, contains policies and practices only related to construction activity. All elements pertaining to buildings should be contained in the BCA, ie plumbing, electrical, etc.

DRAFT RECOMMENDATION 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.

Strongly support

However, Master Builders has provided its serious concerns on this issue directly to the ABCB with the overall costs of the proposed measures.

A copy of MBA's submissions is provided at Attachment A.

DRAFT 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

Master Builders, in its submission, supported the incorporation of plumbing regulations into the BCA. Plumbing is an integrated part of the construction of a structure and, as such, should complement all other building and construction requirements. The key issue is whether the plumbing regulators can resolve their differences with regard to what is required on a national basis in a national plumbing code. The incorporation of every building-related trade should be a goal for the BCA so that it becomes a fully national code covering all construction provisions and reduces the production of building-related regulations being developed in isolation.

DRAFT RECOMMENDATION 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

Master Builders in its submission supported the inclusion of electrical regulations into the BCA. This is particularly relevant to today's construction environment where electrical installation, data cabling, internal and external telecommunications systems, security and in some cases, building maintenance systems are normal design requirements demanded by clients. As with the plumbing regulations, electrical requirements should form part of a nationally consistent practical code developed in a collective way.

DRAFT RECOMMENDATION 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 in part

Occupational health and safety needs to be considered separately. Where there is a requirement to construct an element of the structure to ensure the health and safety of the final occupant, then that should be included as a technical specification in the BCA. However, where the occupational health and safety issue concerns the protection of the constructors and tradespeople etc then that should be considered in the normal operation of a safe worksite by the constructor and as such should not be covered by the BCA. There is

scope for dealing with OH&S in relation to the safe conduct of maintenance of a building which may be considered in the BCA.

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.

Supported

The inclusion of sustainability issues in the BCA should only be adopted following detailed discussions with governments at all levels to ensure sustainability provisions are nationally consistent, practical and actually serve the needs of the community. At present, there have been a rush of sustainable requirements by local governments and some state jurisdictions which are inconsistent with the current energy provisions in the BCA.

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 soundly based (with benefits greater than costs) and that they are applied consistently across jurisdictions.

Supported

Energy efficiency standards should be nationally consistent and only be altered with regard to climatic zones. However, as mentioned in 6.6, the current energy provisions are treated differently by both local and State governments which hinders the ability of the industry to establish a national position. This works against the community in making informed decisions as to their energy efficiency solutions.

Master Builders does not support an assessment system that is complex or impractical to apply.

DRAFT RECOMMENDATION 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 .

Disagree

The issue of fire protection is a key element of the BCA and requires careful consideration to ensure that lives are protected. However, it would appear that various governments and fire authorities have a different opinion as to what should be required to maintain safety. Again, Master Builders calls for

national consistency in any requirement in the Code so that builders and the community can have confidence that the Code is practical, cost efficient and that performance-based measures will deliver minimum acceptable standards for health, life, safety and full asset protection should not form part of the BCA.

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 support

The aim of achieving national consistency across jurisdictions must be a high priority. Master Builders original submission to the inquiry identified the cost of additional local government building and planning requirements can add \$2,700 to the cost of a \$150,000 house. Master Builders strongly rejects the notion of local government sovereignty and notes that statutory power rests with State and Federal jurisdictions. Nevertheless, we accept that councils may have some advantages in terms of picking up variations in community expectations where unique circumstances exist. We would note that there is usually a major gap between what a community expects and what they are willing to pay for and suggest that local councils should put more weight on efficiency criteria than equity criteria. One way of achieving this would be to require all new local government building and planning regulations to undergo a rigorous regulatory impact statement prior to application to the relevant state government. It is also important that State Governments be required to consult with the ABCB during their assessment prior to approval. Legislation should be introduced, similar to that in Victoria, to restrict local governments from eroding a nationally consistent BCA.

DRAFT RECOMMENDATION 7.1

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

Comment

Master Builders notes that this recommendation flows from the notion that a national template for home building contracts would 'go some way to addressing the information asymmetry between consumers and builders in this section of the market' (p180). However, the fact is that information and power relationships are by no means uniform, with many builders being small, family-run business with skills concentrated on technical issues and with little or no expertise in legal and commercial matters. On the other hand, many of their clients are highly educated and experienced individuals who are able to use consumer protection legislation as a way to provide themselves with market advantage.

The current review of the *Domestic Building Contracts Act 1995* (Vic) occurring now in Victoria was called partly in response to the use by developers of the legislation. Until the recent reversal by the Victorian Court of Appeal in *Winslow Constructors Pty Ltd v Mount Holden Estates Pty Ltd* [2004] VSCA159 (8 September 2004), courts had construed the legislation so that it applied in circumstances well beyond the conception of consumer protection legislation. The practical operation of the Victorian legislation compared with legislation in other States also shows the difficulty of having a single template contract for all domestic building works Australia-wide.

Master Builders firmly supports the idea that domestic building contracts legislation throughout Australia should be uniform. However, in the absence of such uniformity, we do not believe that the recommendation is achievable. For that reason, we believe that resources would be better spent on higher order priorities.

DRAFT RECOMMENDATION 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.

Disagree in part

Master Builders recognises the importance of general maintenance matters, but it is essentially up to the building owner to put in place the most appropriate preventative maintenance to ensure the building performs as designed. As previously stated, Master Builders believes only essential services in the building should have mandatory controls in the BCA.

DRAFT RECOMMENDATION 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.

Supported in part

Master Builders believes that the Code should be complied with by all parties in the procurement chain, but this becomes increasingly problematic with the variations that are applied by various levels of government. Master Builders believes that there should be full national consistency in the Code and regional variances that make it increasingly difficult to achieve the development of a best practice model. Master Builders also believes that the management and enforcement of the Code should be in partnership with the industry so that best practice from both a construction and a policy setting can be achieved.

The ABCB should set minimum practices and standards and let industry set best practice standards.

DRAFT RECOMMENDATION 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.

Strongly supported

Master Builders has recently provided comments to the ABCB on a range of RISs. In general there were a number of flaws and omissions identified in these RISs which invalidated many of the conclusions drawn. Master Builders was also critical of the initial consultation process and the tight timeframes imposed.

DRAFT RECOMMENDATION 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.

Strongly supported

ABCB currently plays an important role in the development of new standards and should be part of the development of international standards with SAI. There is great merit in expanding Australia's interest in developing international standards. The proposal to add ABCB to complement the work of standards is, therefore, strongly supported.

DRAFT RECOMMENDATION 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.

Strongly supported

Master Builders is of the view that a new MOU between SAI and ABCB be struck so that there is a clear identification of the Standards that are to be developed for the industry and that these Standards are practical in the construction process. Similarly, it is important to ensure that Standards to be referenced in the BCA go through a rigorous process and clearly have a demonstrated need. Master Builders does not support the creation of Standards that add little to the quality of construction.

DRAFT RECOMMENDATION 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.

Strongly supported

Master Builders agrees that there needs to be a continuation of the current BCA reforms and that these should be based on full consultation and decision making across all levels of government and the industry. Master Builders in its submission also commented that this consultation must have a timeframe that allows organisations to fully prepare their comments. Presently, this timeframe is very inadequate and allows limited opportunity to talk to the broader building and construction industry to seek their views on not only the issue at hand but also the actions that would be required to be taken to adopt any proposal in the future.

DRAFT RECOMMENDATION 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

As a principal, Master Builders believes that this is a primary function of the ABCB. The BCA must be treated as a 'living document' that keeps up with Community expectations. However, consideration should be given to extend amendment cycles to reduce the amount of change which will improve compliance with the BCA. With a performance-based Code and accreditation

of products and systems, industry will not be unduly restricted with longer amendment cycles.

DRAFT RECOMMENDATION 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.

Supported

Master Builders believes there is significant scope to further reduce the distribution costs of the BCA to those that should have a BCA for use in their library. Master Builders recognised that the most recent version has achieved such a reduction. With an appropriate marketing strategy further sales of the BCA could be achieved which would assist the ABCB to lower production costs. Also supplying the BCA on the internet free of charge will assist practitioners.

DRAFT RECOMMENDATION 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.

Strongly supported

Master Builders has worked with the ABCB on a number of occasions to identify training opportunities to enable builder members to understand their requirements under the BCA. However, further opportunities should be embraced particularly in regard to small and medium sized builders to appreciate and utilise the content of the BCA.

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.

Strongly supported

Master Builders strongly believes that National consistency must be embraced by all States and Territories. A new IGA Sign by each State and Territory Premiers will assist in delivering greater national consistency and the IGA

should be robust and clearly reinforce the commitment for nationally consistent outcomes.

DRAFT RECOMMENDATION 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.

Master Builders is of the view that the key criteria for the ABCB Chair should be a person who is best suited for the position and one that can bring together sectoral interests in developing nationally consistent BCA provisions and support services. We do not believe that an independent chairman per se will necessarily achieve this important task of the ABCB Board.

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.

Whilst the mission statement proposed has merit it should also contain a stated commitment from all parties to adopt the principle processes and practices in the design maintenance and delivery of the BCA. Without this commitment, jurisdictional agendas will continue to prevail.

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 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 (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.***

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.***

Comment

Master Builders supports the objectives, but would note in regard to objective 2 stating 'to the extent practicable' automatically gives license to not pursue national consistency.

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.

Disagree

Master Builders does not support the change of name as the name is well known in the industry and whilst it has a future broader responsibility a change of name will cause confusion. We believe that it would be better that marketing of the ABCB's name should take precedence to make it an industry 'brand'.

DRAFT RECOMMENDATION 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.***

Strongly Agree with all the recommendations of 11.4 excluding the first dot point, 'the establishment of the Australian Building Regulations Board (ABRB) to replace the ABCB' as commented on in 11.3.

OTHER COMMENTS

Master Builders would express real concern with altering the current process for the selection of industry representatives to the Board. The current process by (ACIF) putting nominees forward works well and represents the interests of the whole industry not sectors of the industry. There is no demonstrated need to change the selection criteria.

Master Builders believes that the State and Territory representatives should have direct qualifications and experience in the building industry to improve the Board's efficiency.

Finally, Master Builders congratulates the PCs on its draft findings and we are confident that, if implemented, the industry would gain further efficiencies.