

**SUBMISSION TO THE PRODUCTIVITY COMMISSION ON THE
REFORM OF BUILDING REGULATION ISSUES PAPER**

**Ministry of Economic Development
Wellington, New Zealand**

30 April 2004

Introduction

- 1 This submission is made on behalf of the Ministry of Economic Development and represents the views of the Ministry.
- 2 Many of the questions raised in the Productivity Commission's issues paper *Reform of Building Regulation* have also been raised in respect of the building regulatory regime in New Zealand.
- 3 This submission outlines the way in which those questions have been addressed in a New Zealand context and outlines proposals for the reform of the regulatory framework established by the Building Act 1991.

Building Act 1991

- 4 The Building Act 1991 establishes a performance-based framework for the regulation of building work in New Zealand. The Building Code, the first schedule to the regulations under the Act, sets out the performance requirements buildings must achieve in order to comply with the Code.
- 5 The Act empowers the Building Industry Authority (BIA), an independent statutory authority established under the Act, to prepare or approve documents for use in establishing compliance with the provisions of the Building Code (Approved Documents). These Approved Documents fall into two classes, acceptable solutions and verification methods. Acceptable Solutions are prescriptive ways of achieving compliance with the Building Code. Verification Methods are calculations or tests that can be used to establish compliance with the Building Code. The BIA also approves building certifiers (that perform similar functions to the Territorial Authority inspectors in respect of certification and inspection of building work); grants accreditation of building products and processes; determines matters of doubt in relation to building control; and, undertakes reviews of the operation of Territorial Authorities (TAs) and building certifiers in relation to their functions under the Act.
- 6 TAs enforce compliance with the Building Code. They do this by receiving, considering and approving or refusing applications for building consents; issuing project information memoranda, Code compliance certificates and compliance schedules; and, determining whether an application for waiver or modification of the Building Code or any document for use in establishing compliance with the provisions of the Code (Alternative Solutions) should be granted or refused.

Background to reform

- 7 On 18 February 2002, the BIA appointed a Weathertightness Overview Group to inquire into the weathertightness of buildings in New Zealand in response to concerns about housing that leaked causing decay and requiring expensive remedial work. The Overview Group provided the first part of its report to the BIA in August 2002 and the second part of its report in November 2002. Copies of these reports are attached for your information (see also www.bia.govt.nz).

- 8 On 19 September 2002, a Parliamentary Select Committee inquiry resolved to conduct an inquiry into the weathertightness of buildings in New Zealand and called for public submissions. The Select Committee presented its report to Parliament in March 2003. A copy of this report is attached (see also www.clerk.parliament.govt.nz/Publications/CommitteeReport/).
- 9 The investigations (the principal of which was carried out by the Overview Group) revealed a systemic failure of the building control system that had implications for all building work. No one single factor led to these failures, rather it was the result of a complex interplay between a number of factors. The principal factors included:
- a) changes in responsibilities and relationships of designers and builders;
 - b) town planning criteria relating to plot ratio and yard distances that inadvertently lead to particular building solutions or contribute to the choice of building style;
 - c) lack of professional and trade skills and good judgements;
 - d) changes in on-site structures and responsibilities (sub-trades);
 - e) imperatives of cost and speed (cutting corners);
 - f) emphasis among product manufacturers on product rather than building system;
 - g) lack of effective supervision/inspection practices;
 - h) lack of detail, prescription, performance criteria, and guidance in Approved Documents (both the Acceptable Solution and Verification Method) regarding weathertightness compared to other aspects such as structural integrity;
 - i) lack of designer and constructor attention to achieving weathertightness performance compared to other aspects such as structural integrity; and
 - j) a limited ability for consumers, particularly homeowners, to assess the quality of building work given the complexity of the issues involved.
- 10 In response, the government: established a Weathertight Homes Resolution Service to assist homeowners with access to procedures for assessment and resolution of claims relating to leaky buildings; strengthened monitoring of the BIA; and, in December 2002, extended a review of the Building Act 1991 (the Act) already being undertaken by the Department of Internal Affairs, to include matters raised by the Overview Group. The extended review of the Act examined: the purposes and objectives of the Act; administration and compliance; enforcement procedures; information and education; the regulation of building professionals; and institutional arrangements and monitoring.

- 11 On 1 January 2003, responsibility for the Building Act 1991 and the Architects Act 1963 was transferred from the Department of Internal Affairs to the Ministry of Economic Development.
- 12 A discussion paper outlining options for reform was released for public consultation by the Ministry of Economic Development in March 2003 (refer attachment). The Ministry found that greater emphasis on improving the quality of inputs into the building industry - better guidance on best-practice designs, methods and products, more capable people, clarifying responsibilities and more stringent monitoring and enforcement of the Building Code would achieve regulatory outcomes and reduce the risks of regulatory failure.
- 13 Government decisions on proposals for reform were made on 26 May 2003. A legislative vehicle to implement those decisions was introduced into Parliament in August 2003. The Building Bill is currently being considered by a Parliamentary Select Committee. A copy of the Bill and associated government decisions is available on the Ministry's website at www.med.govt.nz/buslt/bus_pol/building/review/index.html).

Proposals for reform

- 14 The Building Bill repeals the Building Act 1991 and introduces a new regulatory regime for building work. The Bill: has a stronger focus on consumers - it introduces the concept of amenity into the purpose by providing that buildings should provide an appropriate level of amenity for the people who use them; recognises the concept of sustainable development by introducing it into the purpose; provides confirmation of the performance based regulatory system, but introduces more specificity in respect of standards in the Code; and, provides for a proactive and well-resourced central regulator in support of a co-regulatory system.

The 'Control' System

- 15 The Building Bill's aim is to ensure that:
 - a) people who use buildings can do so safely and without endangering their health;
 - b) buildings provide an appropriate level of amenity for people who use them;
 - c) people who use a building can escape from the building if it is on fire; and
 - d) buildings are constructed and used in ways that promote sustainable development.

- 16 The Building Bill seeks to achieve this by strengthening the regulatory framework to increase the quality of the inputs into the building process, reducing the risk of building failures, and by enhancing protections for consumers in the event a failure in the building process occurs. The Bill:
- a) strengthens the role of the building regulator and transfers the functions of the BIA to a government department to increase accountabilities to Ministers;
 - b) requires the Building Code to be reviewed, within 2 years of the enactment of the Bill, to ensure it is specific enough about the standards to be met;
 - c) provides for the development of compliance documents that set out how the Building Code standards may be met. The compliance documents may require certain building methods to be used and may also ban the use of particular building methods or products;
 - d) provides for “best practice” guidance documents to provide greater information to territorial authorities, building consent authorities, and building practitioners to help them meet their obligations under the Bill;
 - e) provides the regulator with the power to issue warnings on, ban, or require the use of, particular products, methods and practices;
 - f) requires the regulator to monitor and report annually to the responsible Minister on emerging trends that may affect the Building Code, Compliance Documents and guidance information and its other functions and duties;
 - g) provides the regulator with the power to review and determine matters of doubt or dispute in relation to building control using a streamlined process so that decisions are made quickly and efficiently;
 - h) provides the regulator with the power to take enforcement action;
 - i) requires the accreditation and auditing of building consent authorities, for issuing building consents and undertaking work inspections;
 - j) introduces an infringement fine system for simple breaches of the Building Act and Code, to be administered by building consent authorities;
 - k) introduces a new product certification regime for building products and systems;
 - l) provides for the introduction of a licensing regime for building practitioners that includes both initial and on-going competency testing;
 - m) requires that certain work must be undertaken or supervised by appropriately licensed building practitioners; and

- n) provides for standard terms, including mandatory warranties, to be implied into building contracts for residential buildings, written or otherwise.
- 17 Following the release of an additional discussion document for public consultation, a Supplementary Order Paper proposing additional consumer protection measures for inclusion in the Building Bill was introduced into Parliament in September 2003. These measures include:
- a) a requirement for property developers or speculative builders to obtain a code compliance certificate before completing the sale of a household unit or allowing a purchaser of a household unit to enter into possession of the household unit; and
 - b) extending the scope of the consumer protection provisions currently in the Bill to cover sales of household units by property developers or speculative builders who, in trade, build the household unit, arrange for the household unit to be built, or acquire the household unit from a person who built it or arranged for it to be built, for the purpose of selling the household unit.

Other initiatives

- 18 A Bill to repeal and replace the Architects Act 1963, a complementary measure to the licensing proposals in the Building Bill, has also been introduced into Parliament. The Architects Bill modernises the regulatory framework for architects and includes both initial and on-going competency testing.
- 19 Further work is also currently being undertaken on options for the development of a specialist disputes resolution mechanism for building disputes.
- 20 Co-ordination of regulatory regimes between New Zealand and Australia reduces costs and increases the effectiveness and efficiency of regulatory controls in the Trans-Tasman market for building. To this end, a Trans Tasman Building Reforms Council, comprising representatives of the Australian Building Codes Board and the BIA, has recently been formed to align the various regimes of Australia and New Zealand. The Ministry of Economic Development and the Australian Department of Industry, Tourism and Resources are also involved. An inaugural meeting was held in early March 2004 and future meetings of the Council will be held on a quarterly basis.
- 21 The principal objectives of the Council are to foster a common understanding of the Trans-Tasman regulatory environment and achieving a more open environment of commerce in building design and construction. Some of the areas that it is specifically seeking to work on are to:
- a) ensure the development and implementation of product certification schemes in Australia and NZ that are consistent, as far as practicable;

- b) promote consistency in the education, training and accreditation of industry professionals employed to support the Australian/New Zealand building regulatory regimes;
- c) promote the pooling of resources to aid research and development of commonly-needed components of performance-based building regulatory systems;
- d) provide a forum promoting a common understanding of, and a framework for, further development of performance-based building regulatory systems; and
- e) facilitate closer trade in goods and services within the building and construction industry.

Additional information

22 This is a brief outline of the context for and nature of the reforms. The Ministry would be very happy to forward any additional information to the Productivity Commission, and meet with the Commission if required.

23 For further information, please contact:

Peter Mumford
Director
Regulatory and Competition Policy Branch
Ministry of Economic Development
Wellington
New Zealand
Phone: 0064 04 474 2680
Fax: 0064 04 499 1791
Email: peter.mumford@med.govt.nz

Suzanne Townsend
Project Manager, Building
Regulatory and Competition Policy Branch
Ministry of Economic Development
Wellington
New Zealand
Phone: 0064 04 471 2344
Fax: 0064 04 499 1791
Email: suzanne.townsend@med.govt.nz