



**Queensland Government**

Department of Local Government, Planning,  
Sport and Recreation

**DRAFT RESPONSE TO THE**

**AUSTRALIAN GOVERNMENT**

**PRODUCTIVITY COMMISSION ISSUES**

**PAPER ON**

**THE REFORM OF BUILDING REGULATION**

## **1. INTRODUCTION**

The Building Code of Australia (BCA) provides all States and Territories with a high quality, performance based building code, which addresses public expectations about their health, safety and amenity in and around buildings. The Australian Building Codes Board (ABCB), which administers the BCA, provides an effective vehicle for all governments to collaborate and pool resources for the benefit of the community and industry as a whole.

To this end the ABCB has been effective in achieving its mission to develop and maintain appropriate standards of health, safety and amenity. Previous reviews of the industry and the ABCB have demonstrated the benefits to the economy of a national approach.

The key focus of the ABCB to date has been on addressing “bread and butter” issues based around structural sufficiency and fire safety. The key question however is whether the current goals and frameworks built around these issues are able to address emerging and more challenging “second generational” public policy matters such as environmental sustainability and access to buildings for people with disabilities.

The following issues are highlighted for consideration by the Commission. Answers to specific questions raised by the Commission are attached.

## **2. BCA SCOPE AND “SECOND GENERATIONAL” ISSUES**

The community increasingly expects the BCA to be responsive to a broader range of policy issues than health, safety and amenity. These include demands for:

- desirable rather than minimum design standards in buildings;
- buildings which reduce energy and water use (including embodied energy);
- building systems which protect property and the environment, as well as life, in the event of a fire;
- how standards of workmanship to be addressed as the community does not see any difference between these and health and safety standards;
- existing buildings, such as pre existing boarding houses, to comply with current safety standards;

- greater flexibility to allow standards, particularly those related to amenity, to be tailored to the specific needs and choices of different communities (eg urban, rural, and indigenous communities);
- other site-works associated with a building (eg accessways) to be assessed by a building certifier as part of the building works rather than as a separate approval by the local council (this issue was highlighted but not addressed in the previous Laver review of the ABCB in 2000); and
- consolidation of all building related issues (such as food safety standards) into one code.

In respect of plumbing standards, the Laver review also recommended that once the Plumbing Code of Australia was developed, a future review of the ABCB should examine how all on-site regulatory measures can be incorporated into a single code administered by an overarching construction industry organization should be considered.

While there is no particular advantage in combining the BCA and plumbing codes into one document, the industry and codes would benefit from a more integrated approach to administering these documents. A draft Plumbing Code has now been finalized and states and territories are currently establishing legal structures to administer it. Therefore, it may be appropriate that the Laver proposal be revisited.

### **3. NATIONAL CONSISTENCY VERSUS LOCAL WISHES**

National consistency is desirable for ensuring equitable standards across Australia and maintaining the competitiveness of the construction and manufacturing industries. Inevitably there are local issues such as noise attenuation, which necessitates the application of higher building standards than provided for currently in the BCA. The only mechanism available for local communities to address issues of local concern in relation to building standards, outside the BCA, is through town planning schemes.

From legal and practical perspectives, the planning scheme may not always be the most appropriate mechanism to address these concerns. While the current practice in Queensland has been not to allow planning schemes to address building issues, there is increasing pressure to do so. However allowing planning schemes to override the BCA may add unnecessary complexity and cost into the building approval process.

If the scope of the BCA is to expand to include second generational issues, then the potential for conflict with planning schemes and the growth of a more

complex regulatory environment will increase with demands for unique local solutions.

If conflict with planning instruments is to be avoided, consideration needs to be given to alternative mechanisms to allow, in defined circumstances, local variations to be made to the BCA, or cross-references to higher standards in planning instruments. This would allow communities to introduce higher building standards in response to local issues, yet addresses building industry concerns about complexity, by ensuring a consistent and uniform approach to standard setting.

Consideration also needs to be given to the divergence between urban, rural, indigenous and other communities as to what are acceptable building standards. For example, needs-based codes can be used to allow different standards in accordance with user expectations.

#### **4. TRANSPARENT AND ACCOUNTABLE STRUCTURES**

Research and code development are undertaken by the ABCB in consultation with government officials through various technical committees. Regulatory proposals and associated documents are circulated for public consultation, and are reviewed by the technical committees before being finalized for inclusion in the BCA.

At the State level, the Chief Executive of the Department as the Queensland Government representative is asked to approve proposals to amend the BCA. The Building Act adopts the changes made to the BCA without further amendments. As such, the Chief Executive seeks the Minister's endorsement before agreeing to the proposal, and if necessary, the Minister may also seek Cabinet endorsement.

Before recommending the chief executive approve a specific proposal, Departmental officers repeat some of the steps undertaken by the ABCB by undertaking further focused consultation with key stakeholder organizations and relevant government agencies.

This is because the current administrative arrangements between the ABCB and State building administrations do not provide sufficient scope for individual States and Territories to participate in the policy development process from a whole of government perspective. As a result, the national consultation process is duplicated, as further consultation is required at the State level before a proposal is considered.

Responsibility for training and education is also unclear, with the ABCB publishing guidelines, however face-to-face training and advice to non-subscribers of key changes is left mainly to individual States and Territories.

Where second generational issues are involved, the process at the State level becomes more complex, with a wide range of broader policy issues and stakeholders having an interest. ABCB structures need to accommodate these interests if States and Territories are to adopt future changes to the BCA.

Recent experience has shown that individual States and Territories are increasingly not adopting changes to the BCA, and instead pursuing their own solutions to policy issues. If this is to be avoided, and a national approach adopted, a more rigorous approach is necessary to deal with policy agendas at State level.

In light of this, an examination of the machinery of the ABCB may be beneficial.

#### **4.1 Building Codes Committee**

The Building Code Committee, which is responsible for finalising regulatory proposals for the ABCB, appears to maintain a strong focus on detailed technical building issues over policy and process issues. The Committee could perhaps have a stronger role in policy development and co-ordination. This may also require a review of the Committee's membership and terms of reference.

However, the role of the BCC in reviewing technical change proposals prior to Board sign-off needs to be retained.

Recent steps by the ABCB to establish a separate technical validation panel are supported, as this will allow the Committee to focus more on policy issues.

#### **4.2 The Board**

The Board is accountable to the Commonwealth, and to state and territory government. However, there may be benefit in improving formal reporting mechanisms to respective Ministers and governments in keeping with principles of good corporate governance.

Proposals to increase the number of industry representatives on the Board raises concern. The Board is accountable to Australian governments to develop building regulations, which reflect public policy objectives. Additional industry representation may reduce the capacity of governments to determine these objectives, particularly given the scope of second generational issues expected to be addressed by the BCA in the future.

The current Board is operating effectively and industry members make a significant contribution through their knowledge and experience. Increasing their numbers on the Board may add little value to the Board's deliberations, and could potentially hamper what has proved to be an extremely successful model of national policy development.

Instead, consideration could be given to including a consumer representative on the Board.

#### **4.3 Ministerial Council**

It is noted that unlike other co-operative arrangements between Australian governments, there is no relevant Ministerial Council overseeing the operation of the ABCB. The level of participation by governments, timeliness of amendments, and transparency and accountability may be improved through such a mechanism.

#### **4.4 Administration of the Board**

The current administrative arrangements, which tie the ABCB to the Commonwealth public service, are satisfactory. However, the ABCB could be more clearly delineated from the Commonwealth to remove any confusion that the ABCB represents the views of the Commonwealth.

### **5. CONSULTATION PROCESSES**

Consultation undertaken by the ABCB involves participation by national stakeholders in code development, and publication of regulatory proposals for comment. Stakeholders have identified the following concerns in the current process:

- the major focus is on building and structural industry players, and not occupiers of buildings; and
- the consultation process not clear, as ABCB undertakes consultation in developing policy proposals at a national level, and State then undertakes further consultation before deciding whether to adopt proposals.

Therefore consideration should be given to more robust community consultation processes with greater consumer input, and more effective collaboration with the states and territories.

## **6. INVOLVEMENT OF THE AUSTRALIAN GOVERNMENT**

The Australian Government provides \$1 million funding per annum. Ongoing Commonwealth involvement ensures national policy issues continue to be addressed (energy efficiency, aged care, access for people with disabilities); that national uniformity is maintained, and that consistency with international standards to promote exports of materials and expertise occurs.

## **7. ACCESS TO THE BCA**

The cost of accessing the BCA serves as a disincentive for builders, and potentially reduces compliance levels and the application of innovative performance solutions.

In addition, because the BCA is increasingly dealing with a broader range of policy issues, the public also expect to be able to access it free of charge through government offices and on-line. Greater access could also improve public scrutiny of the BCA and therefore transparency.

While recent changes to the format, on-line accessibility and marketing have improved industry access, further work is necessary to identify alternative funding sources and strategies aimed at improving access to the BCA. For example, publishing the BCA in modules (e.g. glazing, termite control), may improve access by the industry and particular sub-contractors. In addition, the current review of the BCA should ensure the structure, presentation and language in the BCA is accessible to all potential users.

Similarly, the reach of current education programs on the BCA to the small builder and manufacturing sector appears limited.

## **8. REVIEW**

Consideration should be given to establishing mechanisms with the States to monitor and review the effectiveness of standards.

## **9. ADMINISTRATION OF BUILDING LEGISLATION**

Concerns over the lack of progress in national administrative reform are noted. If greater harmony across the states and territories is to be achieved, consideration needs to be given to appropriate strategies to achieve this.

## **RESPONSES TO QUESTIONS ASKED IN ISSUES PAPER**

### **1 THE STUDY**

#### **1.1 Background to this study**

**Q1** *Have reviews of the regulation of the building and construction industry asked the right questions and identified the areas most in need of reform? Has adequate follow-up occurred to ensure accepted recommendations were adopted and assessed ex-post for their effectiveness?*

Previous reviews have examined the issues relevant at the time. The review recommendations have been considered by the Board and generally adopted.

#### **1.2 Scope of this study**

**Q2** *The Commission welcomes comments from interested parties on the intended scope of this study.*

The scope of the study is satisfactory.

### **2 THE COMMISSION'S APPROACH**

#### **2.1 Effectiveness**

**Q3** *Is the mission statement of the ABCB the appropriate one for the intergovernmental body responsible for reform of building regulation?*

The mission statement could benefit from a having a prime emphasis on community health, safety and amenity. Efficiency and cost-effectiveness while important, are considered to be secondary objectives.

In addition, the reference to health, safety and amenity may be too limiting as the community increasingly expects building codes and regulation to respond to a broader range of emerging issues such as sustainability and property protection.



**Q4 *What are community expectations for health, safety and amenity in the design, construction and use of buildings? Has the ABCB been able to adequately determine what the community's expectations are, including preferred cost-quality tradeoffs?***

The community expects no compromise when it comes to the basic health and safety aspects of buildings. However, the community generally is not aware of trade-offs made in relation to building code decisions. Nor is the ABCB able to measure community expectations, and data and statistics are generally non-existent. The drivers of community expectations are generally provided by the governments rather than directly from the community.

Community expectations in urban areas are increasing rapidly as evidenced through recent amendments to the BCA. Examples include higher standards of weatherproofing, and noise attenuation between dwellings. However there is a wide divergence between urban, rural, indigenous and other communities as to what is considered to be acceptable standards of amenity. For example, needs-based codes can be used to allow different standards in accordance with user expectations.

As discussed earlier, if conflicts with local planning instruments are to be avoided, consideration also needs to be given to increasing flexibility in the BCA to deal with local demands to have higher standards.

**Q5 *Is the definition of amenity in the BCA adequate? Should the term refer to the basic needs of a building or to anything that impacts on the comfort, pleasure and aesthetic qualities of a building? Does it give sufficient attention to factors that impact on those not occupying the building? Alternatively, should the term be interpreted more narrowly to provide greater focus?***

There is no definition of amenity in the BCA. If it is defined, it should be broad enough to cover the comfort of people in and around buildings.

However the aesthetics of buildings is an important consideration in urban planning that in most jurisdictions is largely a matter for local control and discretion. Therefore any definition of amenity in the BCA must not conflict with aesthetic considerations.

In Queensland, State building codes also provide for minimum standards of aesthetics through residential siting and design requirements to improve regulatory efficiency of the housing approval process. However, these can be over-ridden by a local planning instrument.

**Q6    *Why is national consistency considered to be the crucial means by which to meet community expectations for health, safety and amenity in a cost effective and efficient manner?***

National consistency promotes a level playing field for the industry and provides for economies in the design and construction of buildings, and manufacture of products, the benefits of which have been demonstrated through previous studies. However health, safety and amenity standards must respond to differing environmental, social and economic conditions as opposed to administrative boundaries.

**Q7    *How can more progress be made in adopting uniform administrative legislation?***

Activity to date has focused on the legislative proposals rather than on building support. Relevant Ministers and governments need to agree to the proposal and responsible government officials, who have considerable expertise in this area, need to be actively consulted on how this could be achieved.

**Q8    *Is it feasible for all communities and individuals to use the national standard as their baseline, with the option of altering the standards where this better meets community or individual preferred tradeoffs between price and quality? How difficult/desirable is it for individuals or communities to enforce a higher standard than that in the Code?***

In Queensland planning scheme provisions that introduce a higher building standard than the BCA have no effect, and schemes that include such requirements are generally not approved by the Minister. However, local governments often impose amenity type conditions on planning approvals aimed at ameliorating offsite impacts, which commonly include for example, noise insulation measures.

In respect of amenity, there are increasing calls from local governments and communities to be able to impose higher building standards under their planning schemes to deal with local issues. Examples include noise insulation, adaptable housing, and environmental sustainability.

The building industry opposes building standards in excess of the BCA being included in planning schemes as it creates a more complex and costly regulatory environment in which designers, manufacturers and builders need to operate.

Consideration of solutions which allow communities to introduce higher building standards in response to local issues, yet addresses building industry concerns about complexity, may be desirable.

**Q9 *Why are some differences in regulation intractable?***

The Constitution determines that building control is the responsibility of the States and Territories. Individual States and Territories have their own policy objectives and therefore regulations will vary.

**Q10 *What quantitative and qualitative indicators would facilitate assessing performance against some or all of the ten objectives of the ABCB?***

Possible indicators include consistency between States and Territories; community, industry and State/Territory satisfaction with the BCA; timeliness of amendment proposals; and the quantity of codes produced.

**2.2 *Productivity***

**Q11 *In what ways has reform of building regulation affected the various measures of productivity of the building industry? Which is the best measure of productivity or should more than one be used? What factors, other than regulation reform, have impacted on productivity? Is it possible to weight their relative importance?***

Reform of building regulation has reduced industry compliance costs thereby reducing capital construction costs and improving productivity. An appropriate measure would be \$/m<sup>2</sup>, as well as others dealing with timeliness and quality.

Other factors that may impact on productivity include labour market conditions, the cost of finance, demand, technology and procurement methods.

**2.3 *Efficiency***

**Q12 *Should the IGA objectives of the ABCB be changed, or would it be more appropriate for the ABCB to focus on consolidating the changes that have already been put in train? Or are there problems which have neither been fully recognised nor addressed as yet?***

Any future review of the scope of the IGA needs to consider the Board's flexibility to address the broader range of second generation public policy issues likely to impact on building design and construction.

**Q13 *The Commission welcomes input from interested parties on the meaning and application of effectiveness (section 2.1), productivity (section 2.2) and efficiency (section 2.3) in evaluating the performance of the ABCB and the reform that has taken place in the building sector since 1994.***

These appear to be appropriate measures for evaluation.

### **3 INSTITUTIONAL ARRANGEMENTS**

**Q14 *What processes involved in developing and implementing building regulation are most likely to deliver outcomes that are effective and efficient, and meet community objectives at least cost?***

Thorough research of the issues, adequate consultation and analysis of the options are necessary to deliver the best outcomes. Communication and training are necessary to ensure these outcomes are adequately implemented.

Respective roles of the ABCB and State and Territory jurisdictions are not clear, with many of these activities being duplicated at both the national and State levels. For example, consultation with stakeholders occurs at both levels, as does communication, training and education.

**Q15 *How well do planning and building approvals processes operate together in each jurisdiction? How do councils interact with the Code? How difficult would it be to delineate between areas of responsibility for planning approval and building approval?***

In Queensland, both planning and building approvals processes come under the *Integrated Planning Act 1997* and operate harmoniously.

It is not difficult to delineate between building and planning. Much of the confusion has arisen because there is a void in respect of requirements for construction requirements on a site associated with a building. Examples include retaining walls, driveways, carparks, site drainage and building over sewers.

Because building regulations have not sought to address these matters, local governments are seeking to regulate these standards under their planning schemes. However it would be more appropriate and efficient for these to be addressed as part of a building rather than planning application. To address this issue, the Queensland Government has included model standards for on-site issues in the Queensland Development Code (refer <http://www.dlqp.qld.gov.au/Default.aspx?ID=247>). However consideration could be given to including these in the BCA.

**Q16 *Is there a sound rationale for local councils to impose additional building requirements above those contained in the BCA? Do they have the resources to do this?***

Minimum building standards should apply nationally. However, consideration could be given to allowing variations for environmental, social and economic reasons.

Consideration could also be given to appropriate mechanisms to allow local governments to impose additional building requirements in respect of broader policy matters in which they may have an interest without creating additional complexity (i.e local variations to the BCA).

**3.1 *The ABCB***

**Q17 *Are ABCB funding and charging arrangements appropriate?***

Commonwealth involvement and funding is critical in it being able to deliver on nationally significant policy issues and drive industry reform.

There are reservations about charges to access the BCA, given it is increasingly dealing with a broader range of public policy issues which the public will expect to access free of charge. Therefore, there may be benefit in reviewing current charging policies.

**Q18 *Is the ABCB structure and membership appropriate for achieving its objectives? Are there other institutional models that would improve the effectiveness of national reform?***

The current ABCB structure is adequate to address “bread and butter” building issues such as structural sufficiency and fire safety issues. However if a broader range of public policy issues are to be adequately addressed through a national code, then a more effective and accountable

institutional model may be necessary to build greater State involvement and ownership in the reform process.

Industry membership on the Board was increased to four members as a result of the last review in 2000. Further proposals to increase the number of industry representatives on the Board have not gained the support of states and territories. This is because the Board is accountable to Australian governments to develop building regulations which reflect policy objectives of protecting public health and safety in and around buildings. Additional industry representation could be seen by the states and territories as a means of reducing the legitimate right of these governments to determine appropriate policy objectives through the building code.

The current Board is operating effectively and industry members make a significant contribution through their knowledge and experience. However, increasing their numbers on the Board would add little value to the Board's deliberations, and could hamper what has proved to be an extremely successful model of national policy development.

Furthermore, whilst the Building Codes Committee (BCC), the Board's key technical group, places a strong emphasis on technical detail, greater consideration of policy development and coordination matters may be beneficial.

**Q19 *How important is the direct involvement of the Australian Government in achieving national reform to building regulation? Should the ABCB be more independent?***

Ongoing Commonwealth involvement is necessary to ensure national policy issues continue to be addressed (e.g. energy efficiency, aged care, access for people with disabilities); that national uniformity is maintained, and that consistency with international standards to promote exports of materials and expertise occurs.

However, administration of the ABCB could be more clearly delineated from the Commonwealth to remove any confusion that the ABCB represents the Commonwealth.

**3.2 *Code-making processes***

**Q20 *Do the processes by which standards are made, ensure that standards contained in the Code are well based?***

Yes, there are rigorous processes in place for amending the BCA.

**Q21 *Would greater alignment with standards from other countries be desirable?***

Yes, as this improves the quality of the standards and our ability to trade.

**Q22 *Are the level and type of consultations by the Board and its advisory committees appropriate and transparent (in order to fulfill the ABCB's objective 5)? Are there adequate mechanisms for interested parties not directly represented on the ABCB or its advisory committees to provide input into the development and reform of building regulations? Are there other consultation strategies that would facilitate greater transparency for stakeholders? Does the ABCB have the necessary representation to determine what meets community expectations for health, safety and amenity?***

Comments about accountability, transparency and consultation are addressed in the key issues section.

**Q23 *What are the advantages and disadvantages of the majority voting rule used by the Board and its Committees versus the consensus based approach used by the Standards Australia technical committees?***

This is not an issue for the Board. It is rare for the Board and BCC to vote. The incentive for the Board and BCC is to reach unanimous agreement, otherwise, State and Territory variations could result. The Standards Australia committees usually operate on a 2/3 majority rule.

**Q24 *Do the different approaches across the jurisdictions in implementing changes to the BCA inappropriately erode achieving national consistency? Is there a better approach?***

Each Government is accountable to its community and therefore will have their own mechanisms to ensure there is adequate accountability. This means that State and Territory jurisdiction will wish to formally review BCA changes before they become law.

### **3.3 Evaluation of the costs and benefits of reform proposals**

**Q25** *Is the regulation impact analysis system for changes to the BCA working effectively? In particular, has there been adequate cost benefit analysis of proposals and evaluation of alternatives when considering changes to the Code?*

Yes.

**Q26** *Should there be greater accountability for changes to building regulation through the actions of Local Governments? Should more be done to ensure that these changes are justified and subjected to adequate analysis of costs and benefits?*

There are rigorous accountability requirements imposed on local governments in preparing planning schemes including extensive public consultation and State interest checks. In addition, Queensland new planning schemes do not contain building provisions (see also Q8 ).

## **4 ASSESSING THE CODE**

### **4.1 Code objectives**

**Q27** *Is the BCA effectively achieving the various components of the ABCB's objectives, such as those listed above?*

Yes, except the BCA could be written in "plain English" to make it easier for designers and builders to use.

**Q28** *Do some of the components of the ABCB's objectives conflict? To what extent do the various components contribute to the objective of promoting deregulation (objective 3)?*

It will be important to avoid conflict between key objectives for incorporation in future building amendments in areas such as security and safety; energy efficiency and ventilation; increased safety and cost; access for people with disabilities and safety.

Deregulation has been promoted through the completeness of the BCA, which has facilitated the introduction of private certification, and performance provisions which allow alternative solutions.



**Q29 *Are ‘minimum acceptable’ standards and the pursuit of least cost solutions compatible with maximising net benefits to the community?***

As previously outlined, community health, safety and amenity are generally regarded as key priorities whilst least cost objectives may be regarded as secondary.

**4.2 *Coverage of the Code***

***Building access for people with disabilities***

**Q30 *Is the proposed Premises Standard (and associated revisions to the BCA) the most efficient and effective means of meeting building access requirements under the DDA?***

Consideration could be given to a framework whereby access requirements are dealt with in the BCA and whereby the DDA includes a reference to the BCA as the acceptable standard.

**Q31 *Is the Administrative Protocol likely to be effective in ensuring that decisions are consistent with the DDA and in minimising the need to resort to DDA disputes processes? Will it provide greater certainty and consistency in determining unjustifiable hardship? Are there better ways of achieving these objectives?***

The Protocol is currently being considered as part of the proposed access proposals, but if it remains an advisory panel with no enforcement powers, it may not be of much benefit to industry.

**4.3 *Energy efficiency***

**Q32 *To what extent should energy-efficiency objectives be addressed in the Code? Is variability by climatic zone, rather than by jurisdiction, the appropriate way to cater for differences across Australia? Is it more effective and efficient to use performance or prescriptive based standards to achieve energy-efficiency objectives?***

Consideration could be given to the inclusion of energy efficiency objectives in the BCA. Variability could be by climate zone, but must take into account State and local government boundaries to enable efficient and effective administration of the requirements. Both performance and prescriptive standards could be included to provide flexibility and cost savings.

#### **4.4 Fire safety**

**Q33 *Is there a conflict of objectives between the BCA and the fire authorities' regulation in the States and Territories? If so, how could this be resolved?***

There may be benefit in consolidating the objectives of fire authorities into the BCA. After all, the fire authority objectives are State laws and need to be complied with in spite of the BCA being a lesser standard in regard to property protection.

#### **4.5 Other areas**

**Q34 *As well as energy efficiency, what other aspects of building design, construction and use could potentially be subject to sustainability considerations? What is the most useful definition of sustainability? Is there community consensus over what is a desirable level of sustainability for buildings?***

The Queensland Department of Housing defines sustainability of housing in a broader social, environmental and economic context. From this perspective, a sustainable house is seen as one that has been designed with people in mind i.e. is safe, secure and universally designed; is resource efficient in water, waste and energy; and is cost efficient (refer [http://www.housing.qld.gov.au/builders/smart\\_housing/elements\\_of\\_smart\\_housing.htm](http://www.housing.qld.gov.au/builders/smart_housing/elements_of_smart_housing.htm) ).

The concept of sustainability has therefore broadened to encompass a wider range of public policy issues relating to buildings.

**Q35 *Does the existence of performance-based regulation tend to transfer the costs from the construction to the maintenance of buildings? Does it increase the need for maintenance provisions to be included in the Code?***

Not necessarily. However, if passive systems are to be replaced by active systems, these active systems must be maintained so they continue to operate effectively. Consideration of the inclusion of maintenance, as well as whole-of-building life considerations in the BCA may be beneficial.

The need for cost effective regulation transfers some responsibility from construction, to operation and maintenance of a building. Maintainability may be an issue for the BCA, but ongoing maintenance requirements will be matters for other jurisdictions, both State and in some cases the Australian Government (e.g. aged care).

**Q36 *Are there any other possible areas (that may not be listed above) that could be incorporated appropriately into the BCA?***

Consideration regarding the incorporation of numerous building related issues currently included in State and Territory laws that could be incorporated into the BCA may be beneficial. These include:

- health standards (hospitals, food premises, acupuncture clinics etc);
- workplace health and safety standards;
- external noise (airport flightpaths, rail corridors etc);
- on-site standards for building related aspects such as access ways and parking areas, retaining walls, site drainage etc;

Queensland is currently consolidating many of these standards into the Queensland Development Code (refer <http://www.dlqp.qld.gov.au/Default.aspx?ID=247>).

The benefit of consolidating plumbing and electrical codes into BCA is unclear as different trades use these. However, greater coordination of policy directions may be beneficial, particularly in respect of addressing energy efficiency and sustainability issues.

## **5 DELIVERING THE OUTCOMES**

### **5.1 Implementing the Code**

#### ***Accessibility of the Code***

**Q37 *Is it appropriate to charge for access to the Code? How does this impact on the transparency and accessibility of the Code? Are any changes warranted in the way in which charges are calculated?***

The cost of accessing the BCA acts as a disincentive for builders, and therefore impacts on compliance levels and the application of innovative performance solutions.

In addition, because the BCA is dealing with a broader range of policy issues, the public also expect to be able to access it free of charge through government offices and on line.

Greater access would also improve public scrutiny of the BCA and therefore transparency.

While recent changes to the format, on-line accessibility and marketing have improved industry access, further work is necessary to identify alternative funding sources and strategies aimed at improving access to the BCA.

**Q38 *What activities or strategies could improve accessibility to the Code?***

The latest BCA bound version is better than the previous loose leaf version. However, the structure and presentation could improve to be more user friendly to designers and builders, particularly those not familiar with the Code.

**5.2 *Administration and enforcement***

**Q39 *What is the nature and extent of differences in the administration of building regulation across the States and Territories? What are the costs of non-uniformity in administration of the Building Code?***

ABCB has carried out a study of State and Territory differences in regulation.

**Q40 *Why have not all the States and Territories adopted the model building legislation? Is it appropriate to have a nationally consistent administrative framework? What would it take for regulatory systems to be consistent?***

There is no total agreement of all provisions in the model legislation. Each State and Territory has different policy objectives in regard to development control. While many have introduced private certification, the powers provided to private certifiers vary according to the different policy objectives sought in each jurisdiction. Similarly, in relation to development control, many jurisdictions have introduced an integrated development assessment system, and therefore it may be difficult for these States to revert to the model building legislation.

**Q41 *How effective are these compliance checks? Do they impose necessary or unnecessary costs and delays? Have delays improved or worsened recently? What improvements could be made?***

Compliance checks are essential to ensure buildings meet the minimum standards in the BCA and other State regulations. According to the building industry, the timeliness of inspections has improved since private certification was introduced. Builders can avoid delays and costs through adequate planning and programming of works. The use of technology, such as on-line booking of inspections by builders, has the potential to improve the timeliness of inspections.

***Q42 Are there problems with dispute resolution processes and, if so, what are the main causes?***

No. In Queensland, the Building and Development Tribunal is a low cost, efficient and effective system for resolving disputes.

***Q43 Has private certification reduced clarity over allocating responsibility when addressing complaints?***

Not significantly. Some record searching is required to determine the building certifier responsible for issuing a particular approval. However, once this is established, the responsibility of the certifier is reasonably clear.

***Q44 Would the establishment of a Building Appeals Board address existing weaknesses or would other mechanisms be more effective?***

Queensland already has an effective system. A peer review of proposals could be a further improvement.

### ***5.3 Reforming the risk and liability landscape***

#### ***Liability reforms***

***Q45 What are the main differences across States and Territories with respect to the allocation of risk and BCA compliance responsibility for building practitioners (designers, certifiers, builders, etc)? How significant are they? What are the insurance requirements?***

The Queensland Government has implemented the *Civil Liability Act 2003*, however provisions relating to proportionate liability are yet to commence. The Queensland Government has given a public commitment to introducing professional standards legislation.

In Queensland private certifiers must have professional indemnity insurance cover.

Along with private certifiers, building designers, hydraulic service designers, site classifiers, completed building inspectors and pest controllers are required to hold professional indemnity insurance. If these practitioners are able to demonstrate that it is not financially viable to obtain Professional Indemnity Insurance and are unable to obtain such insurance, they can apply for an exemption to hold the mandatory Professional Indemnity Insurance. If granted the exemption, they are required to inform the parties engaging them that they do not hold Professional Indemnity Insurance.

Contractors performing residential construction building work in Queensland greater than \$3,300 are required to provide home owner warranty insurance. This is provided by BSA's statutory home warranty insurance scheme.

***Q46 What has been the impact of changes to liability arrangements and what remains to be addressed? What has been the role of the ABCB in the reforms?***

The requirement for private certifiers to purchase professional indemnity insurance that contained a 10-year run-off provision and an excess cap of \$5,000 for any one claim was removed from the legislation as a result of the insurance industry advising they were no longer able to provide this product. This insurance was in place to continue the period of indemnity 10 years after the private certifier had ceased to be accredited, and to limit the excess payable on a claim. The ten-year run off was intended to provide parity with the ability to claim against a local government.

Along with private certifiers, building designers, hydraulic service designers, site classifiers, completed building inspectors and pest controllers are required to hold Professional Indemnity Insurance. In 2003 these building practitioners, excluding private certifiers, experienced problems in obtaining Professional Indemnity Insurance. As a consequence, the legislative requirement of obtaining mandatory Professional Indemnity Insurance was amended effective 5 January 2004 to allow an exemption of the requirement to hold Professional Indemnity Insurance, if the practitioner can demonstrate that it would be financially unviable to obtain and has been unable to obtain cover.

The future of professional liability insurance remains in doubt.

The ABCB has not played a significant role in these reforms.

**Q47 *Are there other mechanisms available to implement an efficient allocation of risk and liability across the building industry?***

The Queensland Government has been involved through the Australian Procurement and Construction Council in the development of a set of guidelines for the assessment of professional indemnity insurance requirements in building contracts.

Queensland has a statutory warranty scheme for residential construction work which protects consumers against building defects, non completion and subsidence for a period of 6 months for minor defects and 6.5 years for major defects.

**5.4 *Certification of buildings***

**Q48 *What has been the role of the ABCB in introducing private certification?***

The ABCB has not played a key role in the introduction of private certification in Queensland.

The Queensland Government introduced private certification in 1998 following calls by industry to improve the approval process. The Victorian legislation and overseas experience were examined as part of the review.

**Q49 *What is the role of private certifiers across States and Territories? What requirements must they meet in each State and Territory in order to practise? Do these roles and requirements differ from local government certifiers?***

Private certifiers in Queensland can issue a building approval after they have satisfied themselves that no other approvals (e.g. under a planning scheme) are necessary (except approvals for plumbing and drainage in a sewered area). The building approval must be consistent with all previous development approvals.

The Government licenses private certifiers to practice. Private certifiers must hold appropriate accreditation (i.e. from the Australian Institute of Building Surveyors) to practise; have liability insurance, performance bond or similar type of security to a minimum value of \$1 million; be assessed as having minimum regulatory competencies to issue permits under Queensland legislation (e.g. be able to interpret planning schemes); and other suitability tests (e.g. whether they have been previously disqualified or have a conviction).

Local government certifiers must also be licenced but do not need to have insurance or minimum regulatory competencies to issue permits as these are provided by their employer.

**Q50 *What have been the benefits and costs of private certification? What is the risk of conflicts of interest (such as when the builder or developer pays the certifier) or improper conduct of certifiers under current arrangements? What alternative arrangements might reduce this risk?***

Private certification has reduced the costs and timeliness of building approvals, and improved the level of customer service provided to applicants and builders.

However key issues have included:

- Concerns by local governments that private certifiers are issuing building approvals that did not comply with planning schemes;
- The cost to the State Government of administering the licensing, auditing, complaint investigation and disciplinary system;
- Ensuring consumers are adequately protected from faulty work;
- Claims by private certifiers of unfair competition from local governments;
- Potential for conflicts of interest to arise if a builder engages a private certifier.

Recent changes to the legislation have sought to address the above issues.

To address the potential for a conflict of interest, the legislation now requires private certifiers to advise owners when a builder has engaged them. This includes an explanation of their role and responsibilities. Owners of domestic buildings are also provided with a copy of development approval documents and inspection documents.

Alternative arrangements to further reduce the risk of a conflict of interest are to increase the level of auditing and require owners to directly engage the certifier (though this may not be effective in respect of domestic building owners who are unlikely to have the necessary knowledge to perform this role adequately).



**Q51 *Are certifiers adequately trained to perform their jobs? What has been the impact of the ABCB's competency standards and framework for building surveyors/certifiers?***

No. The competency standards do not include necessary regulatory skills in understanding the broader development control environment. This includes understanding the other approvals, such as those required under a planning scheme or State laws, which may be required before a building permit is issued.

**Q52 *What other issues need to be addressed by the Board with regard to certification?***

An evaluation of the impact of the new competency standards and framework may be beneficial to determine whether there is any improvement.

**5.5 *Awareness and research***

**Q53 *Have these strategies been effective in raising awareness and usage of the Building Code? Do they contribute to transparency in the reform process? Are there other strategies and initiatives that might be more effective?***

Yes, these strategies have been effective in increasing awareness. Further strategies should be pursued (refer Q37).

**Q54 *Are current education and training strategies adequately equipping building practitioners to operate efficiently and effectively in the performance-based environment? Is training on changes to the Code effective? Is there adequate input from industry, academics and regulators on the competencies to be attained? Is the level and quality of training adequate to maintain expertise in the industry? Do these strategies compare well with international best practice?***

Generally, education and training in regard to assessing performance provisions of the Code is not sufficient or effective. One of the main reasons is that the BCA performance provisions are qualitative in nature. Therefore, it is difficult to determine whether an alternative solution meets the performance and is usually only assessed on a case by case basis. This is not conducive to education and training. Training for current practitioners (as opposed to new entrants) is generally poor and ad hoc.

Where changes to the BCA are proposed, written and web based materials are adequate, training is generally not provided to practitioners by the ABCB or the State. This is generally seen as an industry responsibility.

However for major reforms such as the new energy standards education and training was provided by the ABCB at major regional centres.

The problem of the small builder sector remains, where reliance needs to be placed on the industry associations to help the re-education process. Clearly more needs to be done with undergraduate and trades training, but the curriculum is already full and priorities need to be established.

***Q55 Are the ABCB research areas appropriate? Are resources allocated appropriately? Is the research being used to develop the most appropriate and cost effective Code solutions? What benefits have the Board's research delivered?***

The research program could be more strategically determined i.e. where can research most effectively address the highest priorities i.e. the biggest "bang for the buck". Timeliness is an issue with research projects taking some time. Considerable benefits have been derived from the longer term investment in fire research and similar advantages are anticipated from other current research efforts.

***Q56 Is the research being well managed and conducted cost effectively? Is the ABCB the appropriate body to conduct and coordinate such research?***

As the ABCB/BCA directly benefits from the research, it is appropriate for the ABCB to manage it.