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8 October 2004

Building
Productivity Commission
P O Box 80
Belconnen
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Attention: Sue Holmes

Dear Sirs,

Reform of Building Regulation - Further comment

I am writing to comment upon key features of your Draft Research Report dated August 2004.

I have reviewed, and repeat, the substance of my comments to you dated 10 May 2004 (see Appendix A).

I commend you on the high quality of the draft report. I agree with the vast majority of the report, and the bulk of my comments are set out in the appendices.

I note that the draft report does not address the fact that the ABCB does not appear to have addressed the fraught topic of what standards should be applied, and in what circumstances, to existing buildings.

Please contact me if you would like any further clarification etc.

Yours faithfully,

L N Reddaway

Appendix A**Substance of my submission of 10 May 2004****My Credentials**

I have been a participant in the process of building regulatory reform for some two decades. In Victoria, I was a member of most of the regulatory advisory and administrative bodies that led to the Building Act 1993, and the formation of the Building Control Commission. And through AUBRCC committees and research projects I was also active in the early development of the BCA. In 1999-2000 I was a member of the Deloitte team conducting the performance audit of the BCC and its allied bodies.

My Observations

I do not have enough experience of interfacing with the ABCB to feel qualified to comment in detail on the constitution or the work of the ABCB. However, my general impression is that it is generally doing a good job.

The object of this submission to your study is to emphasise the "big picture" importance of the ABCB and the BCA. I believe that the following points are important for the future of the building industry and professions in Australia:

- Australia should continue to develop the BCA as a truly Australian (rather than state-by-state) set of building standards.
- Australia should continue to provide input into, and draw output from, the work of international bodies such as the International Standardisation Organisation (ISO) and International Forum of Fire Safety Engineering Institutions (IFSEI). ABCB could play a coordinating and facilitating role in such Australian international involvement.
- I am convinced that appropriate cooperation between the states in this area is only possible if leadership (which inevitably means money!) is forthcoming from the federal government.
- The moves to performance-based standards, and to privatising the approval process, are bringing real economic benefits to Australia (as shown, in Victoria for example, by the September 1999 CSIRO report to the BCC).
- The potential to export Australian building and design expertise will be further enhanced if the control of building were, as far as possible, done at a Federal level.
- Any set of building standards, such as the BCA, should always be seen as forever changing and developing. Thus there will always be a need for a body such as ABCB to oversee that change and development.
- The building industry in Australia would benefit if the relevant legislation (the Act and the Regulations) were the same in all States. Thus I urge that ABCB should work with the States and Territories towards a uniform Building Control Act. I realise that this concept has already been tried in the form of the Model Building Act, and that the end result has not been particularly successful. Yet there is a precedent for achieving uniformity: the Uniform Arbitration Act is one example of each State passing essentially uniform legislation. Full uniformity of building legislation would greatly enhance the efficiency of the marketplace for both products and labour in the building industry.
- A possible early step towards uniformity of process between the states would be an Australia-wide system of registration for various categories of building practitioner. ABCB could be a champion and facilitator of this concept.

Appendix B Comments on Key Points

Under dot point 3, I suggest the following changes:

- Make reference to the task of bringing the legislative and regulatory systems of the jurisdictions into closer harmony
- Change sub-dot point 4, so that it raises the issue of greater BCA provision for asset protection, without presupposing how it should be resolved. For example, its wording could be changed to read as follows:

“Address the desire of some parties (such as many fire authorities) for the BCA to provide for greater levels of asset protection for certain buildings that may be deemed, by the application of objective criteria, to be essential to a defined community.”

Appendix C

Comments on draft findings and recommendations

Appendix D contains my comments on the body of the draft report. Here, I have extracted out and repeated the comments that relate specifically to draft findings and recommendations:

Reference	Comment
pp140-146 s6.9 Asset protection	<p>My comments above (under p8) and in Appendix E are totally relevant to the discussion in this section.</p> <p>I agree with those comments reported in the report to the effect that if property protection was added as an objective to all buildings, then the cost would be enormous (and unseen). In contrast, when a building burns, the (much, much, much smaller cost) is visible.</p> <p>So, I suggest that property protection should only be included as a BCA objective in respect of those (relatively few) buildings whose sudden absence would very significantly affect a definable community.</p> <p>Draft Recommendation 6.8 seems to assume that</p> <ul style="list-style-type: none"> ▪ the various fire brigade Acts have ‘got it right’, and the BCA has ‘got it wrong’ in relation to property protection; <p>and/or that</p> <ul style="list-style-type: none"> ▪ the fire brigades’ interpretations of their Acts is correct. <p>I believe that such assumptions should not be made.</p> <p>Thus I suggest that Draft Recommendation 6.8 should be amended to encourage ABCB to work with the various jurisdictions to get the various fire brigade Acts amended to clarify what is intended by the various ‘requirements’ (in relation to property protection) that some fire authorities believe they are obliged to observe.</p>
pp155-204 Chapter 7 Regulatory systems: compliance and delivering outcomes	<p>The BCA is a great step forward. However, it is still not possible for (say) an architect to work easily in several jurisdictions because, in practice, the procedures for getting a building permit etc differ between the jurisdictions. If the laws, regulations and procedures were the same throughout Australia, I believe there would be a very considerable saving to the economy in that less time would be spent finding out about the local procedures etc.</p> <p>Thus I do not agree with your Draft Finding 7.3</p> <p>A system of Building Act and Regulations and administrative guidelines etc, uniform between the jurisdictions, should be an ever present goal. It should be role of the ABCB to keep driving the jurisdictions towards this goal. I suggest that your report should include a Recommendation to this effect.</p> <p>That goal will be very difficult to achieve. But there are smaller steps along the way that should be more readily achieved. To give a few examples:</p> <ul style="list-style-type: none"> ▪ Insurers (who are mostly controlled by multi-national companies) are currently faced, for example, with having to understand several different sets of governmental requirements for the professional indemnity

	<p>insurance for building professionals – just in the very small country of Australia. There should be a single document (maybe promulgated under the auspices of ABCB) setting out such insurance requirements. Then each jurisdiction can call it up into its legislative requirements.</p> <ul style="list-style-type: none"> Professional standards for building surveyors should be set out in a document (maybe promulgated under the auspices of ABCB). The regulations of each jurisdiction can then refer to that document. <p>I suggest that your report should contain a Recommendation in line with the above.</p> <p>If activities such as these are not within the ABCB's current brief, then the brief should be expanded accordingly. I suggest that your report should contain a Recommendation accordingly.</p> <p>I suggest that your Draft Recommendation 7.3 should be strengthened.</p>
p257 Draft Finding 9.2	I suggest that this Draft Finding should be expanded to include students
p257 Draft Recommendation 9.1	I suggest that this Draft Recommendation should be expanded to include universities and colleges
p287 Draft Recommendation 10.2	An independent chairman for the ABCB might well be desirable. However, the process by which that appointment is made would need to be very carefully considered.
p305 s11.2 Draft Recommendation 11.1	<p>The proposed mission statement does not give recognition to the important reality that perfection can never be achieved. For example, some fire brigades seem to believe that resources have to be expended on fire safety until very building is 'safe' – which they seem to set at a very high level.</p> <p>So, I suggest that the wording should be changed to “. . .to provide for appropriate efficiency . . .”</p>
p305 s11.3 Draft Recommendation 11.2	Following my previous suggestion, I suggest that the wording should be changed to “. . .to address appropriately and efficiently . . .”

Appendix D Comments on body of report

Reference	Comment
pp xii – xv Abbreviations	I suggest that further clarity could be added to the list of abbreviations. For example ‘BRAC’ is explained merely as ‘Building Regulatory Advisory Committee’. Advising whom? Is it, perhaps, an Australian government body? Or some state body? Or some industry body? Or something else?
p8 s1.4 Consistency – property protection	<ul style="list-style-type: none"> ▪ Some fire authorities assert that they are required by their legislation to ‘protect property’, and that therefore they are obliged to exercise every discretion they have in order to force owners to extend building designs beyond the ‘protect life’ provisions of the BCA. ▪ In contrast, I do not believe that the various parliaments intended the fire brigade Acts to supplant, trump or override the building regulation process. ▪ For example, it is quite possible to interpret those Acts in a far more restrictive manner, to mean “the fire brigade is required conduct training to provide fire crews with skills to protect property”, and “when a fire occurs, then the fire brigade is obliged to protect property as far as is prudent and practical”. ▪ I suggest that the scrutiny that has been applied in the preparation of the BCA has been much greater than the scrutiny that was applied in the preparation of the various Acts. ▪ I present, in Appendix E, a commentary relevant to this topic. ▪ I provide further comment on this topic below, under pp140-146
p8 s1.4 Coverage of the Code	I suggest that ABCB should do more than just incorporate requirements into the BCA to assist relatively remote objectives such as sustainability: it should actively encourage other relevant bodies to play their part, such as by increasing the real cost of energy.
p9 s1.4 Regulatory system more broadly	The impact of each jurisdiction having its own legislative and administrative framework for building controls is more widespread than the examples listed here: The multiplicity of regulatory systems makes it difficult for building professionals, suppliers and builders to operate in several states. It is a hidden restraint on free trade between states. ABCB should act as a lobbyist and a facilitator to get the jurisdictions to work towards a uniform system of controlling building.
Chapter 2 Legal framework, the ABCB and BCA	<p>This chapter should, I suggest, point out that much of the legal framework</p> <ul style="list-style-type: none"> ▪ is aimed at protecting consumers; ▪ has not sufficiently differentiated between classes of consumers. An owner of an individual house might well be afforded considerable consumer protection (such as compulsory insurance protection for building practitioners); but a commercial developer might be ‘big enough and ugly enough’ to prefer to have less consumer protection in return for fewer restrictions. <p>It is also noteworthy that most ‘consumer protection’ measures are aimed at providing recompense after a problem has arisen, rather than preventing problems arising. See, for example, my paper “Officially Compulsory Advice – a new policy option?” (Australian Journal of Public Administration June 2001)</p>

	Again I suggest that ABCB should be more active in assisting the jurisdictions to work towards a common, more effective, legislative and bureaucratic system.
Chapter 3 Assessment criteria	The analysis in this chapter is useful. However, it does not cover the reality that, if the BCA did not exist, then each jurisdiction would have its own comparable document. I suggest that any proposal from a particular jurisdiction gets a more critical appraisal from the other jurisdictions (at ABCB) than would be forthcoming from a process of public comment in the originating jurisdiction.
p42 s4.1 International Trade in Building	Assume a multi-national company wants to establish a new factory, and is considering several countries for it. The cost of building is one element in the company's decision process. To this extent, Australia's building industry is directly competing with that of other countries – in terms of design quality, design standards (largely imposed by the BCA), building costs etc. Thus Australia should not impose upon its building industry any regulatory imposts that are not truly necessary.
p60 Box 4.2 Private certification	The day-to-day involvement of the certifier in the design process has been criticised as tending to remove that desirable independent check on the final design.
pp 70-75 s5.2 Nationally consistent	I suggest that the current draft has overemphasised the <i>possibility</i> of national consistency leading to unsatisfactory outcomes; and I note that none of the submissions referred to appears to have identified any <i>actual</i> cases of such adverse outcomes!
p84 Box 5.2 etc Social norms, community expectations and building performance	I suggest that, wherever there is a deviation from the BCA dts standards, there should be an obligation on the design and/or building teams to provide a statement on the topic to the building owner. Then it should be compulsory for this statement to be revealed to any future potential purchaser of the building. (This concept resonates closely with draft recommendation 5.3)
p95 s5.3 National consistency	I believe that several of the 'state variations' to the BCA emanate from the differing mixes of legislation that the various jurisdictions currently have. This reinforces the need for the legislative frameworks of all jurisdictions to be harmonised and unified.
p99 s5.3 Assessing compliance with the performance based requirements – last para	It is, indeed, often difficult to assess whether an alternative solution meets the performance requirements. But it would be better to describe these difficulties as making it less likely that the potential lower costs are achieved (rather than "likely to lead to increased costs")
p103 s5.3 Community expectations of health, safety and amenity	<p>Generally, owners should not be forced to install property protection measures. However, buildings that are essential to the well being of a community should be subject to further consideration for possibly having property protection measures incorporated.</p> <p>'Essential' should be strictly interpreted:</p> <ul style="list-style-type: none"> ▪ A building should not be drawn into this net just by virtue of size ▪ A loss-of-employment criterion should draw into this net only for building that provides at least (say) 25% of the population within (say) a 20km radius

	If ABCB can devise a practical method of codifying procedures for determining such measures, then they should be included into the BCA.
p112 Chapter 6 BCA21 program	ABCB is in the process of creating a 'Core Strategic Group' (of which I am to be a member) to assist – as I understand it - ABCB in keeping focussed on long term matters as well as shorter term matters.
pp135-140 s6.8 Energy Efficiency – BCA objective	<p>I suggest that the BCA Objective in relation to Energy Efficiency (“02.6 The Objective is to reduce greenhouse gas emissions by efficiently using energy”) is badly drafted and should be revised. I suggest that the objective should be widened to allow it to embrace other desirable objectives, apart from reducing greenhouse emissions, such as:</p> <ul style="list-style-type: none"> ▪ Saving of energy (desirable in its own right, since sources are ultimately limited) ▪ Reduce the adverse environmental impact caused (for example) by coal mines ▪ Reduce the undesirable visual intrusion of power stations
pp140-146 s6.9 Asset protection	<p>My comments above (under p8) and in Appendix E are totally relevant to the discussion in this section.</p> <p>I agree with those comments reported in the report to the effect that if property protection was added as an objective to all buildings, then the cost would be enormous (and unseen). In contrast, when a building burns, the (much, much, much smaller cost) is visible.</p> <p>So, I suggest that property protection should only be included as a BCA objective in respect of those (relatively few) buildings whose sudden absence would very significantly affect a definable community.</p> <p>Draft Recommendation 6.8 seems to assume that</p> <ul style="list-style-type: none"> ▪ the various fire brigade Acts have ‘got it right’, and the BCA has ‘got it wrong’ in relation to property protection; <p>and/or that</p> <ul style="list-style-type: none"> ▪ the fire brigades’ interpretations of their Acts is correct. <p>I believe that such assumptions should not be made.</p> <p>Thus I suggest that Draft Recommendation 6.8 should be amended to encourage ABCB to work with the various jurisdictions to get the various fire brigade Acts amended to clarify what is intended by the various ‘requirements’ (in relation to property protection) that some fire authorities believe they are obliged to observe.</p>
pp155-204 Chapter 7 Regulatory systems: compliance and delivering outcomes	<p>The BCA is a great step forward. However, it is still not possible for (say) an architect to work easily in several jurisdictions because, in practice, the procedures for getting a building permit etc differ between the jurisdictions. If the laws, regulations and procedures were the same throughout Australia, I believe there would be a very considerable saving to the economy in that less time would be spent finding out about the local procedures etc.</p> <p>Thus I do not agree with your Draft Finding 7.3</p> <p>A system of Building Act and Regulations and administrative guidelines etc, uniform between the jurisdictions, should be an ever present goal. It should be role of the ABCB to keep driving the jurisdictions towards this goal. I</p>

	<p>suggest that your report should include a Recommendation to this effect.</p> <p>That goal will be very difficult to achieve. But there are smaller steps along the way that should be more readily achieved. To give a few examples:</p> <ul style="list-style-type: none"> ▪ Insurers (who are mostly controlled by multi-national companies) are currently faced, for example, with having to understand several different sets of governmental requirements for the professional indemnity insurance for building professionals – just in the very small country of Australia. There should be a single document (maybe promulgated under the auspices of ABCB) setting out such insurance requirements. Then each jurisdiction can call it up into its legislative requirements. ▪ Professional standards for building surveyors should be set out in a document (maybe promulgated under the auspices of ABCB). The regulations of each jurisdiction can then refer to that document. <p>I suggest that your report should contain a Recommendation in line with the above.</p> <p>If activities such as these are not within the ABCB's current brief, then the brief should be expanded accordingly. I suggest that your report should contain a Recommendation accordingly.</p> <p>I suggest that your Draft Recommendation 7.3 should be strengthened.</p>
<p>pp237-247 s8.2 Accessing the Code</p>	<p>The draft report does not consider the case of desirable access to the BCA by students. When an assignment requires that the BCA be accessed, the University's single (or even triple) BCA on-line subscription is frequently overwhelmed as many students try to access it at the same time.</p> <p>Obviously, if the BCA were available on line free, this problem would disappear, and I support this approach.</p> <p>However, there is an alternative solution that relies on the fact that a student will very very rarely be required to access the most up-to-date version of the BCA, because students typically are learning about principles rather than the latest details.</p> <p>Each year, a new version of the BCA is published. I suggest that ABCB should give the surplus copies of the superseded edition to relevant universities and TAFE colleges. It would be important that all the students in one course should receive the same edition. So I envisage that ABCB should ask all universities and colleges to declare how many copies they could reasonably use. Then, ABCB would respond in full to as many universities as possible. Those institutions that miss out in one year would be top in the priority list in the following year.</p> <p>Increasing the visibility of the BCA in universities and colleges would surely be beneficial.</p> <p>The cost of this proposal would surely be low. Moreover, the presence of a larger number of out-of-date copies is not likely to result in significantly lower sales of the BCA because practitioners should be very frightened of using an out-of-date edition on a real project.</p>

p252 s9.2 Raising awareness	I suggest that students should be included in the list of potential users: see s8.2 above
p257 Draft Finding 9.2	I suggest that this Draft Finding should be expanded to include students
p257 Draft Recommendation 9.1	I suggest that this Draft Recommendation should be expanded to include universities and colleges
pp273-279 s10.3 Composition of the ABCB and committees	<p>I understand that industry representatives etc are not paid anything for working on ABCB matters. I suggest that this must, to some extent, reduce the effectiveness of their input which should be very highly valued. I suggest that such people should be paid an honorarium.</p> <p>(As an exception, I understand that members of the Technical Validation Panel are remunerated for their work.)</p>
p287 Draft Recommendation 10.2	An independent chairman for the ABCB might well be desirable. However, the process by which that appointment is made would need to be very carefully considered.
p305 s11.2 Draft Recommendation 11.1	<p>The proposed mission statement does not give recognition to the important reality that perfection can never be achieved. For example, some fire brigades seem to believe that resources have to be expended on fire safety until very building is 'safe' – which they seem to set at a very high level.</p> <p>So, I suggest that the wording should be changed to “. . .to provide for appropriate efficiency . . .”</p>
p305 s11.3 Draft Recommendation 11.2	Following my previous suggestion, I suggest that the wording should be changed to “. . .to address appropriately and efficiently . . .”
p308 s11.4 address the question of property protection against fire	<p>I have commented elsewhere in this table and in an Appendix, about this topic.</p> <p>The second point, as currently drafted, tends to (inadvertently) assume the format of the answer to “address the disconnect between the objectives . . .”</p> <p>I suggest the following as a basis for a rewording:</p> <p>“- consult with interested parties (including fire authorities) to review whether (and if so how) the desire of certain parties for additional asset protection measures for some buildings (that are found by the application of objective criteria to be critical to a defined community) should be included in the BCA, without imposing unwarranted additional impositions on wide categories of building.”</p>

Appendix E

Comment on draft CFA Policy Paper

The draft Country Fire Authority (Victoria) policy **“Performance based design within the built environment”** (as modified 05/02/2004) contains 9 sections, which are set out in bold below, together with comments by this author.

1 The CFA is required under its Act (s20) to “prevent and suppress fire, and to protect life and property”

It is helpful to read s20 of the Country Fire Authority Act 1958 (as at 23 November 2003) in its entirety:

20. General duty of Authority

The duty of taking superintending and enforcing all necessary steps for the prevention and suppression of fires and for the protection of life and property in case of fire and the general control of all stations and of all brigades and of all groups of brigades shall, subject to the provisions of this Act, so far as relates to the country area of Victoria be vested in the Authority.

It can be seen that the quote is incorrect. Section 20 places several wide-ranging duties upon the CFA, one of which is “taking . . . necessary steps for the prevention and suppression of fires and for the suppression of fires and for the protection of life and property in case of fire . . .”. The duty imposed by the Act is to **take steps**, which is far less onerous than an absolute obligation to achieve the unachievable that is implied by the absolutist language in the incorrect quote “. . . prevent and suppress fire, and to protect life and property”

This incorrect, absolutist view of the Act has, I suggest, inappropriately coloured the tenor of the entire Policy.

2 CFA is committed to the protection of life, property and the environment through the delivery of cost-effective fire and emergency services for the people of Victoria

These are fine and laudable aims. However, in the context of this document I suggest that they should be balanced against an acknowledgment of the constraints that inevitably apply, such as those of funds and manpower, the need for fire safety to be balanced against the desirable freedoms that accrue in the absence of undue attention to fire safety.

3 CFA’s Community Safety objectives are measured in terms of reduction in life, injury and property loss as a result of fire

Again, I suggest that these laudable objectives should be expressed in a balanced context.

4 Structure fires are the workplace of firefighters, and the design of fire safety systems must address firefighter safety

I agree with this comment. However, I suggest that the document would be improved if it included an acknowledgment that firefighting is inherently a relatively risky profession, and that firefighters are trained to assess the risks in any particular situation and to avoid as far as possible placing themselves and their colleagues in situations of undue danger.

5 Due to its legislative requirement to protect property, the CFA does not support any proposal where a building is “designed to burn”

I have several problems with this statement:

- A. The statement’s view of the legislative requirement is wrong (as discussed in 1).
- B. It is not appropriate for a CFA policy to make a blanket statement that purports to apply to an entire class of proposals that may come before the CFA for comment. I suggest that the CFA has an obligation to consider each case on its merits, and not rely on a policy that prejudices a whole category of cases.
- C. I don’t know of any building that is “designed to burn”, apart perhaps from some structure in a pyrotechnics display. I suggest that this term is unfortunate and unhelpful.
- D. It is not clear what is actually intended by the unfortunate term “designed to burn”. Is this intended to refer, for example, to buildings which are: far removed from adjoining buildings and properties; and where the owner is prepared (in the extreme case) to install no property protection measures whatsoever; and where the owner is prepared to accept the commercial risk of his building being totally destroyed in a fire? If this is the intent, then I consider it is inappropriate for the CFA to oppose such a building without having sound reasons to do so that are not based on the (incorrect) ‘legislative requirement’.
- E. The statement seems to assume that this (incorrect) ‘legislative requirement’ is the only requirement of the CFA. However, obviously, the CFA has obligations to respect many other legal requirements and obligations including, for example, an obligation to accept the principles of the Building Act, the Building Regulations and the Building Code of Australia.
- F. Similarly, I imagine that the CFA would have other, possibly less clear, obligations - such as that of respecting a property owner’s right to make commercial decisions for himself, rather than have them dictated to by the CFA.

6 Building designs should address the Victorian Government’s triple bottom line, which is aimed at considering the elements of social, economic and environmental impacts in construction

I do not believe that it is appropriate for the CFA to take heed of the views of the government, except as provided for by Parliament. As far I am aware these ‘triple bottom line’ issues have not been given effect by Parliament.

7 Alternative solutions to BCA “Deemed-to-Satisfy” requirements must provide an equal or greater level of performance

I do not consider that it is the prerogative of the CFA to impose this obligation, which is in excess of the obligations imposed by the Building Code of Australia.

8 Arson must be considered when assessing a performance based design if it is identified as a credible scenario

Broadly, I agree with this concept.

9 The impact of dangerous goods storage within a building must be considered in a building design

This appears to say that the design of every single building has to incorporate a dangerous goods type of assessment. I presume that it is not the intention for the policy to be so needlessly wide ranging, and I recommend that it be re-worded.