

PRODUCTIVITY COMMISSION INQUIRY

REFORM OF BUILDING REGULATION

**SOUTH AUSTRALIAN
GOVERNMENT SUBMISSION**

April 2004

INTRODUCTION

The Inter Government Agreement for the establishment of the Australian Building Codes Board (ABCB) continues to be relevant to the development of building regulation reform and consideration should be given to broadening the scope of the Building Code of Australia (BCA) to embrace sustainability objectives.

Communications and transport systems have developed to the point where service and product providers now take a national, and even an international, view of market opportunities. By developing national technical requirements for buildings the manufacturing sector, designers, builders and developers can now confidently operate across state boundaries.

The South Australian Government has been, and remains, a strong supporter of the national reform agenda through its representation on the Board and the Building Codes Committee, as well as active participation on numerous technical committees and reference groups.

INQUIRY'S TERMS OF REFERENCE

A detailed response to questions raised in the Issues Paper is contained in Attachment A. General comments with respect to the Terms of Reference are as follows:

1. *Investigate progress in building regulatory reform in the building and construction sector since 1994 and the need and scope for further regulatory reform post-2005, including:*
 - a) *whether the Inter Government Agreement on building regulatory reform of 1994, as revised, is achieving its objectives;*

Since 1994 there has been considerable progress in reducing the number of State variations to the BCA. As a result the application of the BCA is now more consistent nationally and the Inter Government Agreement has been most successful in meeting its objectives. State variations now tend to reflect:

- Local differences in legislative responsibilities (e.g. plumbing).
- Local matters that are not dealt with adequately by the BCA (such as access for people with disabilities) and these are being progressively reduced.

The success of the BCA is now acting as catalyst for developing linkages with other national agendas (such as occupational health safety and welfare, and planning) to provide a more consistent regulatory environment across a broad spectrum of building related matters.

Recommendation:

The Inter Government Agreement continue to be the basis for pursuing the objectives of building regulatory reform.

- b) *whether the Inter Government Agreement is producing gains for the industry and maximising net benefits for the Australian economy;*

The clear message from industry groups is that the work of the Australian Building Codes Board to date has been enormous in firstly bringing the unified Building Code of

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Australia into existence and then producing it as a performance based document to allow for innovation in the industry. That work now needs to be consolidated and expanded to co-ordinate with other national reform programs in order to maximize the gains to industry and net benefits to the Australian economy.

It is noted that the regulation impact analysis utilized for changes in the BCA is extremely thorough and cost effective benefits have to be demonstrated before implementation.

- c) whether the Inter Government Agreement is providing efficiency and cost effectiveness in meeting community expectations for health, safety and amenity in the design, construction and use of buildings through nationally consistent building codes, standards and regulatory systems;*

It is exceedingly difficult to obtain a clear perception of what the community's expectations are. Discussion Papers and the opinion of the Building Advisory Committee (comprising people from a broad range of development related sectors) are the main means of trying to gauge community reaction in South Australia. Very often the most direct manifestation of changing community attitudes is through the planning system where local communities are wanting to change their development plans to cover new issues such as sustainability.

However, the implementation of the Inter Government Agreement is more aligned with delivering cost effectiveness rather than meeting community expectations and as such the Building Code appears to fall behind community expectations on occasions (such as energy efficiency and sound transmission). It is notable that the objectives do not contain a reference to community expectations.

It also needs to be recognized that the cost effectiveness analysis can be too narrowly focused and overlook impacts such as the affordability of housing and the cost of compliance for small business.

While the ABCB utilizes extensive public consultation processes for proposed changes to the BCA, these processes invariably target key industry stakeholders. It is suggested that some market research in the broader community on key issues would enhance outcomes.

It is also considered that the scope of the Agreement is too limiting and should include reference to sustainability so that a more complete view of impacts on the community, over time, is considered.

Recommendation:

The Inter Government Agreement contain an objective for monitoring and assessing community expectations.

The Inter Government Agreement contain specific reference in the mission of the Australian Building Codes Board to meeting community expectations regarding sustainability.

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d) the need for on-going national co-ordination of the Building Code and related reforms;

While much has been achieved, the very success of the Building Code in developing national consistency has meant that a number of current issues are now much more evident than was previously acknowledged. In addition to these there are a number of emerging issues where national consistency is required and where there are opportunities for significant outcomes.

CURRENT ISSUES

- Administrative Systems

The attainment of uniform administrative legislation is dependent on three things:

- A set of principles or key features need to be agreed by the States and Territories in the first instance. Any principles or features that would result in more resources being committed within the various jurisdictions may need to be discretionary.
- Major amendments to State legislation occurs infrequently so the ability to instigate changes will be dependent on the legislative program in each State and Territory.
- The delineation with the planning system also needs to be consistent on a national basis.

For these reasons complete consistency of the administrative systems on a national basis needs to be seen as a desirable long-term goal and an overall framework would provide the basis for progressive improvements.

The Inter Government Agreement may need to include a provision for implementing legislative changes within a set time (say 5 years) of the principles (or key features) being agreed.

- Plumbing

The national Plumbing Code of Australia will provide for plumbing what the BCA has provided for the building fabric. It is closely aligned with the BCA and should eventually be seen as a companion document regulating plumbing on a nationally consistent basis.

- Property Protection

While it is asserted that the BCA deals only with life safety and not property protection, this fails to recognize the broader community interest in ensuring the ongoing functionality of buildings. Certainly some buildings (such as hospitals, fire stations and other facilities for essential services) perform a critical role in the provision of services to a community and should be considered accordingly. There is also a real impact on the community with large building losses, such as occurred with the Canberra bushfires. The immediate result is often severe social dislocation and trauma while long term impacts are escalating insurance premiums and consequently affordability. A more holistic view of impacts on the community from building losses needs to be recognized.

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- Fire Services

The fire authorities have a broader charter than just life safety. This is not so much a case of conflicting objectives as additional objectives. Both the Fire Authority and the BCA have life safety as a key objective but the Fire Authority also has property protection and environmental protection as objectives. Both of these matters are under consideration by the ABCB and there is scope for a greater degree of consistency between the two roles.

- Standards

Recent moves to develop detailed standards for reference in the BCA instead of maintaining the discipline of referring to particular Australian Standards in the BCA may not be helpful as it could lead to a multiplicity of standards and confusion in the building industry. However, it is noted that standards developed by Australian Standards are intended as industry standards that often represent a 'state of the art' and some times describe 'best practice'. They are not developed as regulatory documents which means that such standards are sometimes unsuitable for referencing either as a whole or in part in the BCA where they become law. It is noted that recent discussions between Australian Standards and ABCB have recognized the problem and both parties are attempting to resolve the issue. There may need to be changes in the Memorandum of Understanding between the Australian Government and Standards Australia to recognize the need for developing some standards in a manner that makes them suitable for use as regulatory documents.

There has also been concern by some local stakeholders that Standards committees (developing new standards) are often dominated by vested industry interests and by the eastern States. The level of public accountability is therefore questionable.

EMERGING ISSUES

- Sustainability

There is a very considerable desire in industry for national consistency with regards to sustainable development. The ABCB needs to define the role and scope of sustainability in the BCA because there is significant potential for sustainability to change the way in which new buildings are assessed for approval. By taking a full lifecycle perspective to determine the full impacts of a building on the community, issues of maintenance, adaptability, de-construction and recycling of materials all become valid considerations.

- Occupational Health, Safety and Welfare (OHS&W)

Increasingly there are issues regarding the building design as it impacts on the workplace and OHS&W issues. The BCA should provide building solutions that will provide for a safe workplace and do not contain inherent OHS&W problems. There is probably a need to delineate between BCA and OHS&W compliance. In particular there needs to be a link made to safe design compliance where the use of a defined risk management analysis (i.e. identifying and addressing potential hazards) is part of the building assessment and approval process. Residual risks and ongoing control measures can then be managed along with the other essential safety provisions in a building.

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South Australian legislation identifies a range of OHS matters that need to be addressed with regards to the construction and use of a building. People having a responsibility include the designers, builder and building owner as well as the occupier. The approval process for buildings could be used to link OHS responsibilities with other building safety issues at the design stage and also the need for regulation in a broader context. These goals can be pursued through NOHSC and the technical working groups of the ABCB.

- **Planning**

There is a need to have a consistent approach to delineation between planning and building matters as differences can lead to unnecessary State variations in the BCA. Although a national framework for the planning system does not exist the ABCB is now represented on the Development Assessment Forum and there is the opportunity to at least define a desirable delineation between planning and building matters on a national basis.

- **Development of the next version of the BCA**

The current version of the BCA has a long history and the reasons for some of the provisions are now questionable. The ongoing development of the next version of the BCA, where all provisions will be assessed from first principles, is a significant project that will help to maintain the document in a manner that meets the objectives of the Inter Government Agreement.

Recommendation:

The Inter Government Agreement continue to provide the mechanism for ongoing co-ordination of the BCA and related reforms.

- e) the effectiveness of the Australian Government's current role in building regulatory reform.*

Two of the major issues currently being pursued are energy efficiency and access to buildings for people with disabilities. Both of these issues have demonstrated the need for the involvement of the Australian Government. The outcomes that have been achieved to date would have been much more difficult to develop had there not been direct contact and involvement with relevant Australian Government agencies.

Recommendation:

The Australian Government continue to be a key participant in the Inter Government Agreement for delivering building regulatory reform.

2. *If it is found that further work in this area is appropriate post-2005, report on:*

- a) the Australian Government's role in future building regulatory reform;*

In the first instance two major projects need to be completed:

- The energy efficiency program, in conjunction with the Australian Greenhouse Office, needs to increase the stringency

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of current provisions for housing and also needs to be expanded to cover all commercial buildings.

- The alignment of the BCA with the Disability Discrimination Act, in conjunction with HREOC and Attorney General, needs the Premises Standard to be adopted by the Australian Government.

Future issues will be:

- Developing linkages to national occupational health safety and welfare objectives.
- Developing national sustainability objectives.

The overseas linkages that have been established by the ABCB also need to be developed to foster trade opportunities by improving the competitiveness of Australian building products and their penetration into overseas markets. In particular, the ongoing development of an improved building regulatory environment with New Zealand will foster trans-Tasman trading opportunities.

Recommendation:

The Australian Government continue to provide linkages to relevant government agencies responsible for national reform programs.

The Australian Government continue to provide assistance in developing international programs that will assist trading opportunities for industry.

- b) whether the objectives of the Inter Government Agreement adequately address the need for future reform;*

The objectives are rather limiting referring only to health, safety and amenity. While 'amenity' provides some scope for environmental issues it does not adequately describe their importance accordingly it is suggested that sustainability be added to the objectives. This will also have the effect of considering cost effectiveness on a long-term (life cycle) basis rather immediate costs.

Recommendation:

The objectives of the Inter Government Agreement be expanded to include reference to sustainability.

- c) whether the ABCB or alternative models would be more efficient and effective in delivering the reforms.*

The ABCB has worked well to deliver the reforms to date and if all the parties to the Inter Government Agreement are to retain their commitment to national consistency then it is considered that the ABCB should continue in its present form. However, the formal inclusion of the Fire Authorities on the Building Codes Committee is considered to be desirable.

Recommendation:

The Australian Building Codes Board continue to be the means for delivering building regulatory reform.

The Australian Fire Authorities Council be formally represented on the Building Codes Committee established under the Inter Government Agreement.

3. *Make recommendations based on the findings*

RECOMMENDATIONS

1. **The Inter Government Agreement continue to be the basis for pursuing the objectives of building regulatory reform.**
2. **The Inter Government Agreement contain an objective for monitoring and assessing community expectations.**
3. **The Inter Government Agreement contain specific reference in the mission of the Australian Building Codes Board to meeting community expectations regarding sustainability.**
4. **The Inter Government Agreement continue to provide the mechanism for ongoing co-ordination of the BCA and related reforms.**
5. **The Australian Government continue to be a key participant in the Inter Government Agreement for delivering building regulatory reform.**
6. **The Australian Government continue to provide linkages to relevant government agencies responsible for national reform programs.**
7. **The Australian Government continue to provide assistance in developing international programs that will assist trading opportunities for industry.**
8. **The objectives of the Inter Government Agreement be expanded to include reference to sustainability.**
9. **The Australian Building Codes Board continue to be the means for delivering building regulatory reform.**
10. **The Australian Fire Authorities Council be formally represented on the Building Codes Committee established under the Inter Government Agreement.**

ATTACHMENT A

ISSUES PAPER RESPONSE

A number of questions in the Issues Paper seek information about State administrative systems. To simplify answers and give an accurate overview of the South Australian development control process a separate section (B) is provided describing building regulatory processes under the *Development Act 1993*.

A. RESPONSE TO QUESTIONS

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?

Generally, previous reviews have been substantially adopted and the program of the ABCB is now more strategically focused.

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

Is appropriate but should be expanded to include sustainability in addition to health, safety and amenity. Particularly in terms of impact analysis, this will encourage a much broader assessment based on life cycle costs and impacts on the community.

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?

It is exceedingly difficult to obtain a clear perception of what the community's expectations are. While ABCB utilize extensive public consultation processes for proposed changes to the BCA, these processes invariably target key industry stakeholders.

Discussion Papers and the opinion of the Building Advisory Committee (comprising people with a broad range of development related experience) are the main means of gauging community reaction in South Australia. It is critical that adequate time be allowed for this consultation to occur on any proposed changes to the BCA.

Very often the most direct manifestation of significant changes in community attitudes is through the planning system and local community changes to development plans.

It is suggested that some market research on key issues would enhance outcomes.

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?

The difficulty with the term ‘amenity’ in the BCA process is that it is a qualitative measure and is more open to subjective opinions. It would be useful to provide an explanation of what the term means as applied to the BCA. Matters such as visual design, building bulk and overshadowing are probably not appropriate to be included in the term where as thermal comfort, noise and access for the disabled probably are.

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?

Communications and transport systems have developed to the point where service and product providers now take a national, and even an international, view of market opportunities. By developing national technical requirements for buildings the manufacturing sector, designers, builders and developers can now confidently operate across state boundaries. In particular it allows a person with an innovative product or service to develop that idea in one State confidently knowing that it can be taken interstate when the opportunity allows.

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

The attainment of uniform administrative legislation is dependent on two things:

- A set of principles or key features need to be agreed by the States and Territories in the first instance. Any principles or features that would result in more resources being committed within the various jurisdictions may need to be discretionary.
- Major to changes State legislation occurs infrequently so the ability to instigate changes will be dependent on the legislative program in each State and Territory.

The Inter Government Agreement may need to include a provision for implementing legislative changes within a set time (say 5 years) of the principles (or key features) being agreed.

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?

If the goal of national consistency is to be meaningful then local communities should not be able to impose building requirements that are of a higher standard to the national Building Code. The ability for local or regional circumstances to be catered for is possible through the State or Territory requirements. For instance, the township of Coober Pedy in South Australia has unique requirements as many of its buildings are constructed underground in rock. There are no provisions in the BCA for such construction, but by working with the Planning SA a satisfactory means of administering building applications was devised.

Why are some differences in regulation intractable?

There are significant political, historical and philosophical differences regarding development control (in its broadest sense) between the States and Territories. Some of this is a result of case law within the jurisdictions but it is also a function of the way in which planning and builder's licensing are also viewed as a part of a holistic system.

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

A suggested indicator is the number of State variations to specific BCA provisions.

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 weigh their relative performance?

No comment.

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 recognized nor addressed as yet?

At present the ABCB has a very full agenda for the next five years or so and it would be reasonable to provide stability to enable the changes that have been commenced to be consolidated and delivered.

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.

See previous comments.

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

The move to an annual amendment cycle is supported as it avoids frequent changes to the BCA that industry finds difficult to keep pace with due to the long lead times involved in project development.

Building regulations have a significant impact on a broad range of stakeholders and for them to have ownership of any changes there must be adequate consultation. There has been some criticism from stakeholders in South Australia that the timeframes for commenting on proposed changes are too short.

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There is a real dilemma for the ABCB in that industry has asked for updated versions of the BCA to be available 6 months prior to implementation (to aid the development of designs that are ‘on the drawing board’) but this needs to be balanced by having adequate public consultation. At present the program for the next updated version begins 15 months before implementation and it could be argued that it is not sufficiently responsive to new issues. This means that there can be very strong pressures for separate State or Territory legislative provisions on an issue (such as energy efficiency or sustainability) until appropriate national provisions are ready.

The balance between industry needs, adequate consultation and being responsive to new issues needs to be reassessed. It could be argued that the current approach too heavily favours industry.

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?

See Section B.

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?

The difficulty for many local councils is that they have a genuine desire to foster the achievement of ‘best practice’ development in their area. By its nature ‘best practice’ is at a higher level than minimum regulated standards as expressed through the BCA. If councils want to encourage ‘best practice’ then other mechanisms need to be used (such as rate rebates or additional allowable floor area) rather than altering the minimum regulated standard.

Are ABCB funding and charging arrangements appropriate?

Yes

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

While it is agreed that the current ABCB structure and membership is appropriate for achieving its objectives, a more formal role for the Fire Authorities is desirable on the Building Codes Committee.

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

Two of the current major issues, energy efficiency and access for people with disabilities, have demonstrated the need for the direct involvement of the Australian Government. The outcomes that have been achieved would have been much more difficult to attain had there not been the direct access to the appropriate Government agencies. Future issues

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will be developing linkages to national occupational health safety and welfare objectives and national sustainability objectives. The overseas linkages that are being developed by the ABCB are also important for trade opportunities by improving competitiveness and penetration into overseas markets.

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

There is strong support for the Australian standards system and referencing such standards in the BCA. Recent moves to put detailed standards in the BCA instead of maintaining the discipline of referring to particular Australian Standards in the BCA may not be helpful as it could lead to a multiplicity of standards and confusion in the building industry. However, it is noted that standards developed by Australian Standards are intended as industry standards that often represent a 'state of the art' and some times describe 'best practice'. They are not developed as regulatory documents and sometimes contain matters that are outside the scope of the BCA. This means that such standards are unsuitable for referencing either as a whole or in part in the BCA where they become law. It is noted that recent discussions between Australian Standards and ABCB have recognized the problem and both parties are attempting to resolve to issue. There may need to be some changes in the Memorandum of Understanding between the Australian Government and Standards Australia to recognize the need for developing some standards in a manner that makes them suitable for use as regulatory documents.

There has also been concern by some local stakeholders that Standards committees (developing new standards) are often dominated by vested industry interests and by the eastern States. The level of public accountability is therefore questionable.

Would greater alignment with standards from other countries be desirable?

The ABCB has been actively seeking greater alignment of standards called up by the BCA with international standards to facilitate increase trade opportunities for Australian goods and services. This trend should be encouraged.

Are the level and type of consultations by the Board and its advisory committees appropriate and transparent (in order to fulfil 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?

There is adequate representation by industry on the Board, on the Building Codes Committee, on various technical working committees and during public consultation processes on proposed changes. In fact it could be argued that industry is too heavily represented and the expectations of the broader community are not sufficiently sought or understood.

A mechanism for making proposed changes to the BCA more accessible and the process more transparent, should be considered. This could be done by placing the proposed

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changes on the web and providing a facility whereby any interested person can electronically make comments.

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?

It has been the experience of South Australia that most issues are resolved through consensus, both at Board level and in the Committees. The need for voting is rarely used but remains a useful mechanism to resolve irreconcilable positions. Without this facility there is always the prospect that some issues would never get resolved in the national interest.

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

Because of the differences legislative responsibilities some variability is inevitable but these are usually minimal. However, the responsiveness of the BCA to change is also seen as being slow and this can influence local pressures for more immediate action. Although industry may object, a faster and more responsive approach would help to counteract pressures for jurisdictions to develop separate provisions.

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?

The regulation impact analysis for changes in the BCA is extremely thorough, particularly when compared to the extent of similar analysis for changes to planning requirements.

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?

Changes to building regulations can not be made by local government in SA.

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

It is considered that the BCA has been very effective in achieving the broad scope of the objectives.

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)?

The objectives do not necessarily conflict but a broad view of de-regulation must be taken. In order to achieve consistency and co-ordination with other agencies it may be necessary to place additional requirements in the BCA but this will be offset by a need for regulation elsewhere.

Are 'minimum acceptable' standards and the pursuit of least cost solutions compatible with maximizing net benefits to the community?

While 'minimum acceptable' standards are appropriate for the BCA to minimise regulatory intervention and optimize market forces, the adoption of sustainability will cause some re-evaluation of the impacts as a longer term perspective will need to be taken (life cycle costing, long term financial, social and environment impacts on the community).

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?

Yes – The industry seeks approval to construct a new building through compliance with the BCA. It provides an immediate and recognised assessment of the compliance of a proposed building design. Accordingly, it is appropriate for compliance with the DDA to be determined as part of the building approval process and provide certainty in the outcome. Having another process would introduce an element of considerable uncertainty regarding the suitability of a proposed development.

Is the Administrative Protocol likely to be effective in ensuring that decisions are consistent with the DDA and in minimizing 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?

It could be argued that the panels in each State and Territory (to be established under the Protocol) will lack consistency. This can be overcome by sharing Panel decisions and by issuing guidelines. The main advantage of the Panels is that they will facilitate a quick means of obtaining an independent opinion on an issue from appropriately qualified and experienced people. Such opinions are likely to demonstrate (in Court) that all reasonable means have been used to not discriminate against a person with disabilities.

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?

Energy efficiency concerns a broad range of matters including appliance efficiency and personal behaviours. To the extent that energy efficiency is also facilitated by the building envelope, it is appropriate to have provisions in the BCA. Climate zones are used as the basis for defining variability and in South Australia some councils have refined the zoning in the BCA to more accurately represent the climatic/topographical differences within their areas. While the performance approach allows for considerable design flexibility it has been found in South Australia that most practitioners prefer to use the prescriptive standards for determining compliance with the energy efficiency provisions. South Australia adopted the BCA housing provisions immediately on 1 January 2003.

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

There is not so much conflicting objectives as additional objectives. Both have life safety as a key objective but the Fire authority also has:

- Property protection
- Environmental protection

The ABCB is currently considering property protection in relation to the next version of the BCA and this should bring it into closer objectives as the fire services.

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 the desirable level of sustainability for buildings?

Indoor air quality, water efficiency, use of stormwater and material selection (plantation timbers) are matters that could conceivably be included in the BCA under a sustainability agenda. Unfortunately there is not a common community understanding of what constitutes sustainability or how it should be measured. There are numerous rating tools available and all have their strengths and weaknesses. It is probably better for the ABCB to clearly define what is measurable and appropriate for inclusion in the BCA as minimum requirements, then leave other matters for the planning system, guidelines and "best practice" developments.

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?

Performance-based requirements tend to lead to alternative solutions that have a greater degree of reliance on mechanical (active) building systems requiring ongoing maintenance to have the necessary level of reliability for building safety. There is certainly the potential for significant ongoing costs for the building owner that should be explored by the design team. These solutions are also often tied to particular uses that in the longer term reduce flexibility for the building owner.

See Section B for maintenance provisions in South Australia.

National consistency regarding the administration of these maintenance provisions is desirable.

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

Occupational Health, Safety and Welfare issues are an emerging area where the design of a building and the impact of a completed building on the workplace needs to be co-ordinated through the BCA. At present there are some areas of conflict (such as access to lifts, access points for cleaning/maintenance etc.) that need to be resolved so that compliance with the BCA will satisfy OHS&W requirements. A life-cycle risk

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management approach needs to be adopted so that intractable long term OHS&W problems are not built into the fabric of a building.

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

It is appropriate for industry to pay for access to the BCA as it is part of their compliance costs, however, free access should be available in some form to the public so that specific queries can be readily answered.

***What activities or strategies could improve accessibility to the Code?
What is the nature and extent of difference in the administration of building regulation across the states and Territories? What are the costs of non-uniformity in administration of the Building Code?***

The move for increased electronic versions of the BCA is supported.
See Section B for more information regarding South Australian processes.

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?

The model building legislation does not fit well with a unified development control system such as exists in South Australia. While it is desirable to have a nationally consistent administrative framework, and a lot can be done to substantially achieve this, complete uniformity is unlikely until the planning system is also nationally consistent.

***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?***

The unified South Australian system combines all necessary compliance checks for development approval into the one process. See Section B.

However, there appears to be insufficient effort to place some responsibility for compliance with designers and contractors. This often has the result that designers prepare inadequate project documentation and fail to address Code requirements during design. There is often an over reliance on the certifier to detect compliance issues and to suggest ways of addressing them. This is a very inefficient process and the system needs to place greater onus on designers for the quality and level of compliance designed into projects.

The Australian Procurement and Construction Council Inc has addressed the need to improve project documentation and current practice – refer <http://www.apcc.gov.au> It may be advantageous if the ABCB took up this matter with the APCC, so that reform within the building industry is aligned with regulatory reform.

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

- See Section B for dispute resolution in South Australia.

The main reasons why people are reluctant to use the current processes appear to be cost and accessibility.

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

This appears to be the case and is especially evident in South Australia where independent inspections are undertaken by councils. The clarity of the documentation that has been granted approval is often insufficient to be able to complete an inspection of the work. This means that there is some doubt over what has actually been approved.

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

This is an administrative issue but would not necessarily provide better outcomes.

It would be useful for the ABCB to issue more guideline documents on how to use, interpret and apply the BCA particularly with regards to using alternative solutions for compliance with performance measures. Such guidelines would provide greater national consistency and would aid appeals boards, referees and the like in making determinations.

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

See Section B.

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 liability changes have worked well but they have obviously been insufficient to comfort a nervous insurance market – see comments later.

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

A requirement on building designers to have quality assurance checks prior to submitting documents to a certifier would ensure greater risk management analysis at the design stage that could also include OHS&W issues. If such quality checks were mandatory the risk associated with compliance would be spread more equitably between designers and certifiers.

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

The ABCB was initially reluctant to be involved with the introduction of private certification as it was viewed as an issue for State administrative systems. However, that view has changed and with the development of national competency standards and a framework for building surveyors/certifiers the ABCB is playing a more active role in developing a nationally consistent private certification framework. This is also part of the project to harmonise the regulatory systems in the various States and Territories.

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

See Section B.

What have been the benefits and costs of private certification? What is the risk of conflict 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?

The introduction of private certification in South Australia has provided some flexibility in having building consents processed in a timely manner. The cost of the system (distinct disadvantages) includes a notable fragmentation of the building assessment system and inherent difficulties in ensuring adequate accountability and transparency of such decision-making.

Placing a statutory function (issuing building permits/consents/approvals) into a competitive environment where the certifier is engaged and paid directly by the person seeking approval has an inherent conflict of interest. This is especially the case where the client is engaged in multiple projects (such as a large project home builder) and there is a very strong desire by the certifier to retain the client for ongoing business. Under these circumstances it is pertinent to query the extent to which the public or community interest is safeguarded.

Questionable and emerging practices include:

- “Certifier shopping” by applicants seeking a “favourable” interpretation of the building rules or the convenient oversight of certain provisions prior to the placement of work with the “right” certifier.
- Issuing building consents that are inconsistent with the relevant planning consents.
- Conditions being placed on approvals (with a view to timeliness) that obviates the proper assessment against the building rules.

A range of alternative arrangements worthy of consideration include:

- Returning this function solely to councils with stringent statutory performance criteria in terms of timeliness. Failure to perform to such criteria could result in the building assessment fees being refunded to the applicant; or

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- An alternative system whereby only structural certification (or other allowable matters) may be undertaken by a private certifier and relied upon by the Council in the issuing of a building consent. This hybrid system would assist in terms of timeliness. Competition would be based on the less subjective assessment of structural adequacy. Issues such as “certifier shopping” would become more difficult (if not impossible), consistency between planning and building consents would be improved as Council’s would be responsible for ensuring consistency and the final issuing of building consent including conditions could be better monitored; or
- The development of a strong system of auditing of work undertaken by private certifiers and a complaints system with onerous penalties (including de-registration) for improper behaviour.

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?

In terms of the South Australian requirements and the standard of certifiers, they are generally very experienced professionals (often architects or engineers) with many years practicing as building surveyors. The ABCB standards will eventually provide much more consistency which will greatly assist in applying the Mutual Recognition legislation. South Australia is committed to introducing this framework.

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

The major risk to the continuance of private certification is the current insurance market and the difficulty in obtaining affordable professional indemnity insurance. The availability of private certifiers is characterised by a large number of sole proprietor practices. These practices cannot afford large premiums and there is a distinct likelihood that the insurance issue will cause the number of practices to substantially decline to just a few large practices who are able to carry the insurance premiums. This will result in reduced competition and a greater demand on councils.

There is scope for the ABCB to broker a common insurance portfolio for private certifiers on a national basis. To achieve this the State administrations may need to commit to a common set of risk management strategies such as auditing arrangements.

Have these strategies (education and training) been effective in raising awareness and usage of the building Code? Do they contribute to the transparency of the reform process? Are there other strategies and initiatives that might be more effective?

While training has been well organised and delivered, more education and training could be delivered in conjunction with industry organizations. There has been an emphasis on changes to the Code and it would be useful to have some “back to basics” refresher training for practitioners on interpreting and applying the BCA. These could be tailored to suit particular industry needs such as building surveyors or project home builders.

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?

While there is a guide to the provisions in the Code it is suggested that far more guidance could be given on how to apply the BCA. Guidelines would be useful on such matters as:

- How to develop alternative solutions for compliance with the performance requirements.
- How to apply the performance requirements when considering the upgrading of existing buildings. A number of stakeholders in South Australia believe more guidance should be given by the ABCB on applying the BCA to the upgrading of existing buildings.

Are the ABCB research areas appropriate? Are the 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?

Research has been focused and well placed to inform the development of provisions in the BCA. (e.g. sound, energy efficiency).

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

The ABCB has been very effective in organizing research programs to meet the priorities for the Board's development of the Code. This arrangement should remain to provide good linkages between research and the development of the Code.

B. BUILDING REGULATORY PROCESSES IN SOUTH AUSTRALIA UNDER THE DEVELOPMENT ACT 1993

OVERVIEW

Significant South Australian reform of the building regulations occurred in 1994 with the implementation of the *Development Act and Regulations 1993*. The most significant philosophical change was the implementation of a single development approval process that consolidated all the matters that need to be considered in assessing development proposals.

In South Australia planning and building assessments operate within this unified development control process under the *Development Act 1993*. Both planning and building consents are required before a development approval can be granted. This means that the two forms of assessment are viewed as part of one process. Case law has been established in decisions by the Environment, Resource and Development Court that will not allow matters to be assessed for the planning consent if the Building Code and the Building Rules clearly indicate that the assessment is part of the building assessment. Having such a unified system makes the delineation of responsibility between planning and building easier to achieve.

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When the Development Act was introduced, elements of the model Building Act were also adopted including private certification and the limitation on liability.

PRIVATE CERTIFICATION

In South Australia the assessment of development applications for compliance with the Building Rules and the BCA can be undertaken by private certifiers. The consent that they issue can be relied on by councils for issuing the development approval. Any inspections for compliance with the development approval (i.e. compliance with both planning and building consents) are undertaken by the council.

In order to practice as a private certifier a person must:

- Be accredited as a building surveyor.
- Have 8 years experience in the industry
- Have the necessary professional indemnity insurance

Local government certifiers are in a slightly different position in that any power to grant building consents is under delegated authority from the council. The officer will work within the risk management policies of the council and be answerable to council.

When private certification was first introduced into South Australia there were no mechanisms for verifying that private certifiers were operating in accordance with the Act. Since then a means of lodging complaints against both private certifiers and councils has been established that allows for investigations to be undertaken and for remedies/penalties to be imposed.

Changes to the Development Act now out for public consultation include a provision for mandatory independent auditing of the building assessment function.

ASSESSING APPLICATIONS

Separate from the actual granting of consents, all building applications must be assessed by people accredited as Building Surveyors, Assistant Building Surveyors or Building Surveying Technicians, as appropriate. Accordingly a private certifier can have several accredited people working for them but the issuing of the consent must be done by the registered certifier. Similarly, councils must have applications for building consent assessed by an appropriately accredited person and the actual granting of the consent must either be by the council itself or by someone exercising delegated authority from council.

DISPUTE RESOLUTION

Dispute resolution is possible through a number of mechanisms.

- Reference can be made to the Building Rules Assessment Commission for an opinion. While this is not binding it provides an independent review and an opinion on a matter by a panel of appropriately experienced technical experts
- An appeal can also be made to the Environment, Resource and Development Court against any decision by a council or private certifier. The Court allows for a hearing by building referees.

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BUILDING PRACTITIONERS

In South Australia there is no unified system for recognizing all building practitioners. Private certifiers are required to be registered and all building surveyors must be accredited by an authorized accreditation body under the Development Act. Architects have separate Act and builders are licensed through the Building Work Contractors Act administered by the Office of Consumer and Business Affairs.

STATE TECHNICAL PROVISIONS

While there are some State variations in the BCA to cater for local matters there are also a number of technical building matters that are not covered by the BCA for which technical requirements are needed. These are generally contained in Minister's Specifications and cover such things as:

- Aboriginal Housing
- Maintenance of Essential Safety Provisions
- Bulk Grain Storage Facilities

MAINTENANCE OF ESSENTIAL SAFETY PROVISIONS

When a development is given building consent the certifier is required to identify the essential safety provisions in the building that will require ongoing maintenance to ensure the building remains safe for occupation and use. Guidance on these provisions is given in Minister's Specification SA 76. On completion of the building, certificates are required from the installers of these items (that they have been properly installed) before a Certificate of Occupation is issued. The building owner is then required to certify annually that the items are being properly maintained. Failure to issue these annual certificates can be the basis for a council rescinding a Certificate of Occupancy thereby closing the building for use.

SOUTH AUSTRALIAN HOUSING CODE

When the Building Code of Australia was first introduced for use in South Australia there was considerable concern that the document was not user friendly for the housing industry. In response to this concern the South Australian Housing Code (SAHC) was produced to make the BCA provisions more relevant to the local context. Over the years this has resulted in a number of features being developed for the SAHC to assist designers, certifiers and builders. These include wind speed maps and refined energy efficiency climatic zone maps that better follow the topography. The SAHC also includes useful information about regulatory administrative procedures and provides examples of what to lodge for an application. With the SAHC, the need for a person to refer to multiple documents for a simple house is considerably reduced. The document has been very successful and is well accepted by the industry.

RELATIONSHIP TO PLANNING

The consolidated nature of the development control process in South Australia enables the delineation of planning and building matters to be readily identified.

Changes are currently being implemented to the creation of council development plans that will enhance this. The Better Development Plan Program is establishing a new framework for development plans that will provide more uniformity and consistency between plans. In future, development plans will consist of a number of specific modules. These modules will have a State component that will establish the State policy position

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on an issue and a local component (dealing with local circumstances) will allow more specific details provided those details remain compatible with the State component. The system will be fully electronic allowing rapid changes to be implemented in all development plans if necessary. It will also enable a high degree of co-ordination/compatibility with building requirements.

CONSTRUCTION INDUSTRY TRAINING FUND

There is levy on building work in South Australia to fund ongoing training initiatives for the industry. Evidence of payment of the levy is required before an approval can be granted. This particular means of education and training could potentially be utilized by the ABCB to target specific programs on the use of the BCA to segments of the industry.