



**BUILDING PRODUCTS INNOVATION
COUNCIL**

**Submission to the Productivity
Commission study into
Reform of Building Regulation**

1 May 2004

ABSTRACT

The Productivity Commission has implemented a study on the reform of building regulation in particular the performance of the Australian Building Codes Board and the Inter Government Agreement associated with the operation of the Board.

The Building Products Innovation Council believe this study provides an important opportunity to address and extend reform initiatives associated with the national building regulatory system including the implementation of previous recommendations and studies that refine the performance of the process.

The Building Products Innovation Council is an ardent supporter of a national building regulatory system.

However, we have serious concerns regarding the current erosion of national consistency and believe that a revised Inter Government Agreement and restructured Australian Building Codes Board is essential to the long-term national and international success of the Australian building industry and the associated benefits to the broader community.

EXECUTIVE SUMMARY

Australia enjoys the benefits of a safe and healthy built environment with an impressive level of quality and functionality all of which can be directly attributed to the success of the national building regulatory system. This provides the community with a high degree of confidence in the built environment.

When compared with building standards in other countries and the history of building quality concerns the Australian system is extremely efficient. The reputation of the system especially the introduction of the national performance building code has seen many countries including Japan, USA, Canada, China and Korea explore the benefits of the system.

As part of the continuing evolution of this process the Building Products Innovation Council welcomes the study by the Productivity Commission into the reform of building regulation and believes that it presents an important opportunity to refine current processes for the benefit of governments, industry and the broader community.

While welcoming the study, the Building Products Innovation Council has some reservations regarding a number of issues under consideration in that they appear to be revisiting matters addressed in recent studies into the national building regulatory system.

It is important that the recommendations from these reports furthering and enhancing the capacity of the national body are accepted and implemented to ensure the reform process continues in a structured and focused manner.

An obvious and consistent aspect of these reports is the overwhelming support for a national building regulatory body. Such an organization is critical to the successful evolution of the construction industry and ultimately increased societal standards. However, it would appear that this very issue is an underlying question within the Productivity Commission's study.

It is time to move on.

The Building Products Innovation Council believe the focus of this study should shift to how to make the Inter Government Agreement and the ABCB more effective and our submission includes numerous suggestions to achieve this objective.

The current system is showing signs of stress and the slow unravelling of national uniformity in particular the fragmentation occurring most notably in New South Wales and Queensland at municipal level is disturbing and must be addressed for the ultimate benefit of Australia.

National uniformity is a major objective for our organization. Our members are committed to achieving this ideal and will persist to see it successfully implemented. We believe this can be achieved by:

1. The Commonwealth, State and Territory Governments re-committing to the objectives and spirit of the ABCB as the pre-eminent national building regulatory body.
2. Central to achieving national technical and administrative consistency the ABCB become a statutory commission, the Australian Building Commission, underpinned by mirror national and state legislation and with a revamped independent Board and a Ministerial Council.
3. [REDACTED]
[REDACTED]
[REDACTED]
4. Significantly revising the Australian Building Codes Board resources and structural arrangements to ensure it can meet the objectives of the Inter Government Agreement.
5. Introduce nationally consistent building administrative provisions as a matter of urgency.
6. Shift responsibility for international building code representation from Standards Australia International to the Australian Building Codes Board.
7. Introduce legislative changes to the federal legislation such as the Trade Practices Act and State and Territory legislation to ensure the Building Code of Australia is the pre-eminent standard for building construction.

The Building Products Innovation Council envisages an influential and balanced role for all levels of government in the national regulatory system. This includes national and regional leadership, management and support.

State and Territory governments will benefit from a progressive and efficient national regulatory body, allowing their resources to be redirected to administrative and enforcement roles.

We believe that it is critical that the recommendations in our submission are implemented. Further, the outcomes from the Productivity Commission's study must be transparent with clear recommendations, action plans and associated time frames declared publicly to ensure accountability. In particular we strongly urge government to accept the importance of the national building regulatory system and implement the necessary reform to ensure the Inter Government Agreement objectives are achieved in a timely and satisfactory manner.

The Building Products Innovation Council looks forward to furthering this essential reform agenda.

About BPIC

The Building Products Innovation Council (BPIC) is an authoritative group for the suppliers of building products on strategic codes and standards issues.

The Council's mission is to promote the most efficient and innovative use of building products within a nationally consistent regulatory environment for building.

The Council enjoys senior representation* across the spectrum of the product side of the building industry including timber, steel, glass, windows, bricks, cement and concrete, plasterboard and internal linings and insulation and members account for over \$30 billion in activity, \$220million in research and development investment and \$2.7billion in exports annually.

The Council views the maintenance of a more harmonised building regulatory environment as the priority policy issue for the building products sector.

[* BPIC members include the Australian Glass and Glazing Association, Australian Steel Institute, Australian Window Association, Bureau of Steel Manufacturers of Australia, Cement and Concrete Association of Australia, Clay Brick and Paver Institute, Concrete Masonry Association of Australia, Gypsum Board Manufacturers Australasia, Insulation Manufacturers Association of Australia, National Association of Steel-Framed Housing, Steel Reinforcement Institute of Australia, The National Manufacturers Council of HIA, Timber Development Association, National Precast Concrete Association Australia, (associate), Building Designers Association of Australia (affiliate)]

PART TWO – THE TERMS OF REFERENCE

Summary of BPIC's views

The following is a summary of BPIC's view regarding the terms of reference regarding the Productivity Commission's study into the contribution of national building regulatory reform. A full analysis of these issues is provided in the body of this submission.

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 regulation reform of 1994, as revised, is achieving its objectives;

The Inter Government Agreement has the potential to achieve its objectives. However, the current structure, commitment from signatories and resource arrangements prevent the full potential of the agreement being achieved.

b. Whether the Inter Government Agreement is producing gains for the industry and maximising net benefits for the Australian economy;

The Inter Government Agreement is producing gains for the industry. Although these are under threat due to the failure of some elements of government to work within the intent of the agreement.

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;

[REDACTED]

[REDACTED]

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

There is an overwhelming need for effective co-ordination of both technical and administrative building requirements at the national level.

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

The Australian Government's role is essential to ensure minimum effective national building regulation. However, there is a distinct need for a strategic review of the Inter Government Agreement and the ABCB to ensure the efforts of the Australian Government are optimised.

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;*

The Australian Government must increase their role and take responsibility for the strengthening of the Inter Government Agreement and the ABCB to ensure that it is recognised as the pre-eminent national building regulatory body.

- b. *Whether the objectives of the Inter Government Agreement adequately address the need for future reform; and*

The objectives of the Inter Government Agreement, with the inclusion of an explicit statement regarding sustainability will adequately address the needs of future reform.

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

The current ABCB model can be enhanced to effectively deliver the required national reforms. A revised model formulated under commonwealth legislation and operating independent of any government department is essential. Two models worthy of serious consideration are the National Transport Commission and the Food Standards Australia and New Zealand.

PART TWO – DISCUSSION

Introduction

This BPIC submission is based on the content of the Productivity Commission's Issue Paper ¹ in particular the questions expressed throughout the document.

The current review is timely. The Inter Government Agreement continues a tradition of government and industry cooperation designed to enhance the efficiencies of the Australian construction industry and further societal standards. However, a number of developments threaten the effectiveness of the current national arrangements and highlight the need for reform.

These issues are explored in detail in the following sections of this report that provide a response to each question raised in the Productivity Commission's Paper.

¹ Productivity Commission, *Reform of building regulation Productivity Commission's Issue Paper*, March 2004.
<http://www.pc.gov.au/study/building/index.html>

1. The study

1.1 Background to the study

1.1.1 *Have reviews of the regulation of the building and construction industry asked the right questions and identified the areas most in need of reform?*

A question of resources

It is BPIC's contention that effective national building regulatory reform cannot be achieved successfully under the existing Inter Government Agreement and this issue has not been critically analysed in previous reviews.

The Laver review², p. 35, appears to concede that further funding from Government will not be forthcoming and concludes that there is no case for increased funding. It further suggests that funding for specific projects can be obtained on an ad –hoc basis.

BPIC, while appreciating the comment may be based on current political imperatives, does not support this position especially dependency on case-by-case funding arrangements.

The inability of the ABCB to meet its obligations under the Inter Government Agreement and introduce a broader reform agenda is directly related to resources and accordingly it is valid that their adequacy including the issue of a known annual funding commitment be considered.

Accordingly, BPIC are concerned that perhaps one of the most important questions in that "does the Inter Government Agreement provide suitable resources to enable the ABCB to fulfil the Inter Government Agreement objectives" has not being explored.

² Peter Laver, Leslie Butterfield, Graham Huxley. *Review of the Australian Building Codes Board*, Feb 2000, www.ABCB.com.au (accessed 8 April 2004)

This issue of resources including increased efficiencies is discussed in detail in the body of this submission.

Recommendation:

The Productivity Commission study should consider if the ABCB have sufficient resources to comply with the Inter Government Agreement objectives.

1.1.2 Has adequate follow-up occurred to ensure accepted recommendations were adopted and assessed ex-post for their effectiveness?

There is insufficient information to determine actually what happened to the recommendations of previous reports. The failure to clearly articulate the outcomes and intended action is problematic and unacceptable.

In the last five years there have been 4 major reports into issues relating directly to national building regulatory reform. These reports provided a comprehensive insight into issues impacting on the national system and identified sound and workable recommendations to resolve many of the issues under review in the current Productivity Commission Study.

Organisations such as BPIC expend significant resources in order to participate in these reviews providing comment in a professional and constructive manner.

It is hoped that the outcomes from this study are implemented to ensure the efforts of all concerned achieve significant progress and consolidation of the national building regulatory system.

Recommendation:

- a. The assessment of previous recommendations is not possible due to the lack of transparency regarding the response to the outcomes of those reports.
- b. The outcomes from Productivity Commission study for the enhancement of the national regulatory system must be implemented or adopted in a transparent manner with clear implementation timeframes and benchmarks readily available for review by the broader community.

1.2 Scope of this study

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

A need to move forward

In recent times there have been numerous studies addressing the role of the Inter Government Agreement and the national system. A cursory review of these reports indicates an overwhelming support of a nationalised building regulatory system.

However, we find that a key area of assessment of the study as described in the Productivity Commission's Issue Paper (p.1, item 1.2) is "*whether the past achievements and future role of the ABCB justify ongoing support from the Australian Government*".

Support from the Australian Government is critical to the ongoing success of the national system and a committed and strategic role will be pivotal to the future success of this process.

The Commonwealth have much to gain from a successful national system especially in regards to expediting important national policy agendas such as sustainability and disability access as the difficulties in implementing this reform on an individual State by State basis would require an extensive resource commitment.

State and Territory governments also stand to gain from the continuation of the national process especially in regards to resource rationalisation. This conclusion is continually reinforced in a number of credible reports on this matter including:

Review of the Australian Building Codes Board, February (Mr Peter Laver, Chairman),

Allen Consulting Group 2002, Harmonisation of Building Control Administration: Costs and Benefits of the National Administrative Framework, Report for the Australian Building Codes Board, December 2002.

BRRT (Building Regulation Review Taskforce) 1991, *Microeconomic Reform: Building Regulation: Building Regulation Review Taskforce Final Report*, November.

KPMG, *Australian Building Codes Board: Impact Assessment of Major Reform Initiatives: Final Report*

The ABCB is part of a continuum of national regulatory bodies initiated by a co-operative agreement between governments in 1964 that recognised the importance of a nationally consistent building regulatory system.

This process has delivered significant reforms with subsequent extensive savings to the community, industry and all tiers of government. The principles and objectives behind the initial agreement remain as valid today as then, that is, to establish codes, standards and regulatory systems that are, as far as practicable, consistent between states and territories, cost effective, performance based and incorporate modern and efficient building practices.

The building product sector support the concept of a national regulatory body. Indeed the need for this type of organization is increasing rather than diminishing with the nationalisation of building processes and the growing awareness of the importance of viable international export markets as seen by recent moves by the timber industry into Japan and the growth of trade with New Zealand.

However, in order to be in a position to take full advantage of these opportunities, industry must be confident of the stability, consistency and pre-eminence of the national system. Any uncertainty in these areas will divert valuable resources into resolving regional concerns and weakening our international competitiveness to the ultimate detriment of Australian society.

BPIC strongly urge that Government accept the importance of the national building regulatory system and move their resources into an examination of how to make the national body more effective.

Recommendation:

- a. There is obvious and overwhelming support for a national code writing body.
- b. There is a need to move on from the question of whether a national body is required to how do we make the national body more effective.

2. The Commission's approach

2.1 Effectiveness

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

BPIC believe that with the inclusion of a specific statement addressing the issue of sustainability that the ABCB mission statement is sufficiently broad enough to address all aspects of the Inter Government Agreement and allow for the future evolution of the organisation.

Recommendation:

The mission statement is acceptable, provided sustainability is included as a specific element.

2.1.2 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?

Community expectations for health, safety and amenity have been established as an integral part of the historical development of government building regulations in this country. In a sense that acceptable standards are explicit in the regulations of the day and are continually refined as part of the ongoing evolution of building standards.

Australian building codes provide a continuum of community standards in that the requirements are essentially the same as that in earlier codes with changes introduced only after significant public review.

For instance the Building Code of Australia 1996 includes many of the requirements from BCA 1990, which in turn included the provisions from the Australian Model Uniform Building Code (AMUBC), which was based on State and Territory building requirements of the day.

Community standards continue to evolve as part of the ABCB regulation development process, which includes significant periods of public review. In most instances the BCA amendment process is initiated by a Regulatory Document fully explaining the reasons for the proposed change and seeking public review for periods in the vicinity of 2 months. This provides an insight into community acceptance of the proposal including cost quality trade-offs.

BPIC believe that the ABCB have been able to develop national regulations on a case by case basis with a reasonable understanding of community expectations and cost/quality trade-offs.

However, a complete reappraisal of community expectations is considered to be unachievable under the current structure and resource arrangements.

This is particularly important as a major review of the BCA and community expectations should be implemented as part of the future building code development.

Recommendation:

- a. The determination of community expectations is inherent in the existing regulatory requirements.
- b. ABCB have the capacity to determine community expectation on a case by case basis. However, major reform initiatives such as the future building code are beyond the capacity of the current organisational arrangements.

2.1.3 *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?*

BPIC believe that the issue of amenity and the extent of interpretation is not a major problem. The concept of amenity from a building regulatory perspective is defined by first principles and enshrined in the objectives of the building legislation at State and Territory level.

It is clear that building regulations should be focused on the construction of a building to ensure it meets accepted minimum community standards.

Aesthetic values relate to Town Planning type matters and relate to the built environment within defined regional areas.

The relationship between amenity and those not occupying the building is not a building regulatory matter. External factors beyond the actual building are controlled by other legislation such as environmental, town planning and health.

Recommendation:

Further definition of the term amenity is not required.

2.1.4 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?

In its November 1991 report “Microeconomic Reform Building Regulation”, the Building Regulation Review Taskforce commented that microeconomic reform of building regulation would assist the competitiveness of the traded goods sector by increasing the productivity of the building and construction industry, which was sheltered from the discipline of global competition but upon which the exporting and import-competing sectors of the economy relied for infrastructure and buildings.

BPIC endorses building regulatory reform. But it is important to recognise that building product manufacturers are much more trade exposed than was the case in the early 1990’s. In some building product segments the extent of import penetration has increased very significantly in recent years.

Because the Australian market for building products and materials is small by global comparison it is essential that Australian manufacturers of building products can achieve production efficiencies through greater consistency in building regulation.

The proliferation of building standards and requirements at a state level, although often directed at buildings and the building construction process, can cause fragmentation of the market for building products and have a deleterious effect on manufacturing capacity utilisation and cost structures.

The further this fragmentation occurs the more cost will be imposed on manufacturers as they attempt to address these variations by negotiation, attempt protracted efforts to amend by laws, revise product to cater for the regional control or ultimately remove their product from that particular market. These costs will be passed to the consumer. The spiralling costs in coping with a fragmented Australian system will reduce the consumer's capacity to acquire the latest and most efficient products leading to an erosion in health, safety and amenity standards.

An example of consumer loss is reflected in the decision of Karingal council in NSW to ban the use of termite chemical treatments. The treatment methods were approved by the National Registration Authority for use in Australia, the BCA and the Australian Standard. However, they could not be used in this particular municipality.

The inability of the residents in that municipality to use chemicals severely reduced the range of product available and was particularly problematic for existing buildings where the replenishment of existing chemical barriers was critical to maintaining an ongoing effective system. The result was that many buildings in the region had reduced or no termite management systems exposing them to termite infestation and the consequential damage to buildings.

The failure of the municipality to adopt the national standards severely restricted the amenity within the buildings in that region by exposing them to unnecessary risk of termite attack. Harmonisation of building regulation across Australia is vital to retaining domestic manufacturing capacity for the building industry and ultimately ensuring cost effective, affordable products are available for the consumer.

Recommendation:

National consistency is critical for ensuring an efficient and competitive Australian building products industry can provide cost effective health, safety and amenity products at a realistic price to the community.

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

BPIC believe that progress can be made on the adoption of uniform administrative legislation, especially if previous experiences are taken into consideration.

The Interstate Standing Committee for Uniform Building Regulations (ISCUBR) established in 1964 by an agreement between Commonwealth, state and territory governments developed a national model uniform building code called the Australian Model Uniform Building Code (AMUBC). The most important and exciting aspect of this code is that it contained both technical and administrative regulatory provisions.

The AMUBC was a significant development in regulation reform. The importance of having both technical and administrative provisions in the one document cannot be underestimated.

The AMUBC was issued in 6 major series between 1970 and 1972. The document was designed to form a national model and each state and territory would adopt as changes were made to their legislation.

All states, except Tasmania adopted the AMUBC between 1973 to 1984. Although, the significance and universal acceptance of the reform is not clearly conveyed by this time frame as the remaining states except the Northern Territory and Victoria had adopted the AMUBC by 1976, a period of 3 years.

In 1988 AUBRCC produced a draft Building Code of Australia. The most dramatic change was the loss of the administrative model regulations. In addition, work on the adoption of a model building act ceased despite significant advances in this most important reform.

Accordingly, it can be readily argued that the initial progress achieved by the Inter Government Agreement and associated regulatory reforms especially in regards to the national administrative framework has been lost.

The Allen Consulting Group in their report *Harmonisation of building control administration*³ in Section 4 of that report provides a range of options in which to achieve national consistency. This report should be considered in detail by the Productivity Commission as part of this study.

BPIC also believe that reform can be readily commenced by adopting the work of the model building act, which provides an important platform for the successful implementation of this national reform objective.

³ The Allen consulting group, *Harmonisation of building control administration, costs and benefits of the national administrative framework*, December 2002 (for the Australian Building Codes Board).

Recommendation:

- a. Progress can be made on adopting uniform administration by:
 - i. Ensuring signatories of the Inter Government Agreement are committed to the proposal.
 - ii. [REDACTED]
- b. Possible harmonisation models suitable for consideration are described in the Allen report.

NOTE: Further comment on a possible strategy to adopt national administrative provisions by using the model building act process is provided in item 5.1.2.2 of this submission.

2.1.6 *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?*

BPIC are adamant that there is a need for only one national building code being the BCA and there is no reason for individual communities to unilaterally develop additional requirements.

Further there is no need to introduce State and Territory variations to the BCA in regards to fire, cyclone or climatic issues. Building solutions relating to these variations are not restricted to state and territory borders or municipal boundaries. If there are valid regional construction requirements unique to a particular region then these should be codified in the BCA to enhance and enrich the national system.

Building regulation should reflect nationally accepted cost effective requirements broad enough to cover all national regional variations. Market forces will provide the stimulus for products to exceed these benchmarks. It is not necessary or desirable for municipalities to unilaterally introduce their own requirements above the national benchmark.

Unfortunately, in the current regulatory environment it would appear all too easy for municipal governments to increase standards beyond the BCA leading to a complete breakdown in the national regulatory system.

[REDACTED]

[REDACTED]

[REDACTED]

Municipal government do not have the resources to ensure a proper and transparent building regulation development process is implemented. They do not appreciate or have the capacity to address the broader national building reform agendas and display little or no understanding of the importance of consistency to support a competitive national and international construction industry. It is also obvious that they fail to understand that a healthy national system will have subsequent positive economic benefits in their community with reduced building material costs, availability of product and increased choice of building systems.

State and territory heads of power allowing municipal governments to create their own regulations should be revoked where they directly conflict with the BCA. This can be achieved by amending the relevant building acts to incorporate a similar provision to the Victoria Building Act 1993 Section 13 that prevents any local law having affect if it provides for any matter addressed under the Building Act 1993 (ie the BCA).

Where this legislative provision currently exists in a number of jurisdictions such as New South Wales, governments should implement procedures to enforce the requirement in a more rigorous manner to ensure municipalities are accountable in their local law making to the broader community.

Recommendation

- a. It is feasible and achievable to have one national code to control all building related issues for the Australian community.
- b. It is not desirable to have individuals or communities enforce higher standards to that in the national code.
- c. States and territories should introduce legislation similar to Section 13 of the Victorian Building Act 1993 as a matter of urgency. In situations where this provision is available, States and Territories should ensure the requirement is rigorously enforced.

2.1.7 *Why are some differences in regulation intractable?*

BPIC do not believe that there are reasonable technical grounds for having different levels of regulation in Australia. The main reason difference would be intractable is due to a political failure to commit to the national regulatory system.

As discussed previously in this report, BPIC believe the current Inter Government Agreement is flawed and not sufficiently robust to ensure States and Territories work in a unified manner to achieve harmonised national regulation. The failure to work as a cohesive body leads to intractability, where State and Territory views take precedence over the greater national benefits.

[REDACTED]

[REDACTED]

This failure by the signatories of the agreement to fully support the system is detrimental to consistency.

In this instance intractability should be perhaps better equated to indifference.

Recommendation:

BPIC do not believe there is any justification to have intractable regulation in Australia.

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

BPIC believe that this issue has been satisfactorily addressed in earlier reviews of the ABCB.

The Laver review has considered in detail the effectiveness of the ABCB in achieving their ten objectives. The findings of this review should be considered in detail during the Productivity Commission study.

In regards to harmonisation of administrative provisions (predominantly objectives 1 and 7), the Allen Consulting Group report has considered in detail (p. 21 to 29) the issue of cost and benefits, which inherently provide quantitative indicators.

These findings are particularly important as they highlight an area where ABCB efforts in achieving the Inter Government Agreement objectives can be improved.

National administrative provisions have been on the ABCB (and its predecessors) agenda since the early 1980's culminating with the extensive Model Building Act project in 1992. This important reform faltered for a number of reasons. However, the progress achieved by this project has not been addressed seriously since. The failure to move forward with this early work provides an indication of where one of the objectives has not be achieved to its fullest potential in a quantifiable manner. BPIC concur with the findings in recent reports, which included consultation with a broad range of stakeholders providing informed analysis. The reports indicate that further reform is required and provide qualitative and quantitative measures to substantiate their recommendations.

Recommendation

Many of the recent reports on the ABCB including the Laver review and the Allen Consulting Group report provide qualitative and quantitative examples to assess the ABCB's performance against the 10 Inter Government Agreement objectives.

2.2 Productivity

2.2.1 *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?*

Perhaps the most simplistic approach to defining productivity is determining the fiscal implications relating to each strategic option as addressed in earlier reports.

The Laver review, Terms of Reference Number 2, p.23 provides considerable and informed comment on the issue of productivity gains for government, which comments:

“A survey was undertaken of State, Territory and Commonwealth administrations to identify the approximate costs to administrations if the ABCB did not exist. Most administrations advised that individually they would not be able to provide the same level of service currently provided by the ABCB. However, in spite of the reduced level of service, the cost to administrations to replace the service provided by the ABCB would be in excess of \$2M annually.”

Accordingly, it is clear that there are direct productivity gains for the government and the community by using the ABCB process.

The Laver report also considered the KPMG report on major reform initiatives⁴, which included the following comment (p.24)

“In general the study indicated that project savings using the BCA were in the order of 1-5% of the capital cost. As an example, had the Melbourne Docklands Stadium been required to conform to BCA 90 egress provisions, 5% more floor space would have been required which, given the private funding and marginal financial justification for the stadium, might have rendered it economically unfeasible. Had this occurred, a cornerstone development

⁴ KPMG Consulting Pty Ltd, *Australian Building Codes Board Impact assessment of major reform initiatives*, www.ABCB.com.au, 24 February 2000 (accessed 8 April 2004).

for the entire Docklands precinct might have been jeopardised with major economic implications for the community.”

The performance building code is obviously providing productivity advances for the commercial construction industry and is an important step in national reform.

The national framework for building regulation, the ABCB (1994) and BCA (1996) was developed as a result of a number of government and business inquiries which revealed the costs of duplication, inefficiencies and compliance burden of each state and territory building controls.

Back in 1988 Graham found that *“the system of regulation in Australia is too complex, it serves relatively narrow interests, does not respond to change or innovation, is not readily accessible to the public, it creates unnecessary levels of cost and it provides only a narrow range of benefits.”* (Graham 1988, University of Tasmania, *The Regulation of Land and Building Development: An Overview* p.32.).

The study went onto to suggest that the cost of inefficient building regulation was in the order of \$1 billion per year. This data was used as the basis for the work of the Building Regulation Review Taskforce (*Microeconomic Reform: Building Regulation* March 1991).

Similarly the Regulation Review Unit of the Victorian Department of Industry, Technology and Resources conducted an inquiry into the building and construction regulations of Victoria out of concern that over regulation was increasing costs to both industry and consumers. The inquiry found that controls involved some fourteen government agencies administering 106 Acts and 213 regulations. The Unit found that the cost of unnecessary regulation alone was in the range of \$300m to \$720m per annum (VRRU *Inquiry into Building and Construction Regulations* 1990, p v.)

In 1995 the Industry Commission assembled evidence of the benefits of technical and administrative reform for building and planning control. The IC conservatively estimated that savings would be equivalent to 1.5% of building and construction activity annually. Based on current levels of activity this equates to about \$1.2 billion. (*Industry Commission The Growth and Revenue Implication of Hilmer and Related Reforms: A Report by the Industry Commission to COAG, AGPS Canberra* 1995).

Such studies revealed the magnitude of the inefficiencies impacting on productivity and some were instrumental in the decision to establish by inter-government agreement the Australian Building Codes Board (ABCB) in 1994 and first performance based national technical code, the Building Code of Australia (BCA) in 1996.

More recently, the Allen Consulting Group in 2002 indicated that there were additional and unrealised benefits that could accrue from a national administrative framework in the order of some \$400m per annum. (*Harmonisation of Building Control Administration, Costs and Benefits of the National Administrative Framework, December 2002.*)

The findings in previous studies, such as the Laver review indicate that there are considerable productivity gains to be achieved in all areas of the building industry by reforms introduced by the ABCB.

Recommendation:

BPIC believe there is sufficient evidence and consideration of measurability in previous reports justifying the importance of a nationally consistent regulatory system and the implications for national productivity.

2.3 Efficiency

2.3.1 *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?*

The current Inter Government Agreement objectives (with minor amendment such as explicit statements relating to sustainability) are suitable for a national regulatory body and offer the scope to ensure the development of a sound and credible national building system that will deliver substantial benefits to the community in an efficient manner.

However, BPIC welcome the observation in the Productivity Commission's Issue Paper, p. 6, "*At the broader level, efficiency concerns whether resources and economic enterprise have been allocated so that national welfare is maximised*" as it clarifies that true efficiency can only be achieved with adequate resources.

Without a realistic commitment to resource arrangements it is difficult (albeit impossible) to fully realise all potential efficiencies provided by the Inter Government Agreement objectives.

Recommendation:

Assessment of the ABCB efficiency against the ten objectives of the Inter Government Agreement is unreasonable without due consideration of ABCB resources.

2.3.2 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.

BPIC would like to offer the following observations regarding the importance of an effective national regulatory body.

BPIC is concerned that the fragmentation of the Australian market by the disparate regulatory arrangements of the Commonwealth, 8 State and Territory Governments and 700 local councils is not only adding directly to the affordability problem but exposing manufacturers of building products and systems to unnecessary costs and these will be passed onto the consumer. This trend, by working against the development of a single market for building products, may be exposing Australian manufacturers to greater import competition placing pressure on market survival and consequential implications for employment.

The current array of regulatory arrangements for building is costly to administer, costly to comply with, provides no certainty and stifles innovation. Clearly, there has been a move away from the key principles established by COAG on national standard setting and regulatory action (Nov 1997).

The fragmentation of an already small market for building products and systems acts as a disincentive for investment in the latest plant and equipment, R&D or innovation. This serves to reduce the chances of the production of more efficient building and construction products and processes that can help reduce inefficiencies or contain cost pressures on building.

In a BPIC-HIA joint survey of Chief Executives of building product manufacturing companies, respondents identified their cost impact of complying with the State and Territory variations at any where between 1 per cent and 5 per cent of turnover. Even at a conservative 2 per cent cost impact this equates to some \$600m annually on building product manufacturers alone. All respondents commented that regulatory inconsistencies were on the increase and the highest areas of cost impact were in the area of inconsistent environmental regulation, OH&S, workers compensation, technical building codes and workplace relations.

Respondents went on to indicate that such variations and uncertainties often meant limiting the size of the potential market, increases to the technical specifications of their products, a reduction in hiring intentions, a reduced willingness to invest in innovation and R&D activity and increased uncertainty for capital expenditure plans. These responses need to be seen in an environment where national building product manufacturers have reported a significant increase in imports over the last five years.

The Building Code of Australia has been amended thirteen times since 1996 with each change accounting for cost increases of anywhere between a few hundred to a few thousand dollars. Other cost impacts are not being tracked as regulatory impact statements are either not being undertaken as the regulation is emerging through the planning rather than the building system. Regulators are failing to recognise the cumulative costs arising from the incremental impacts of each change or variation introduced over time on housing.

At the last count there are over 1100 pages of the national building code, some 100 state and territory government variations and additions, and over 200 standards relating to building products, design and construction referenced or called up in the BCA.

In addition to these requirements there are numerous planning regulations and codes covering bushfire, water, waste management, salinity and energy efficiency.

Local Councils are able to, and frequently do, add to or amend these requirements through planning and building by laws, often in a prescriptive way for example require a particular form of energy or water saving device or limit the use of certain materials.

Further to these direct building and planning regulation costs, businesses are faced with differing workplace relations, training, occupational health and safety and licensing of professionals across the state and territories.

In March 2002 a survey funded by the Department of Industry, Tourism and Resources (*Innovation in the Australian Building and Construction Industry – Survey Report, Price Waterhouse Coopers, p. 38*) indicated that building regulations and non uniformity within and across governments was rated by business as one of the top four barriers to innovation.

The industry is striving to keep pace with the evolving roles, responsibilities and requirements of the multitude of agencies at all levels of government involved in what can be built, where and of what materials.

There is a growing feeling within the building products industry that there will be soon some 709 government views and associated regulations.

All these matters are within the ambit of government to change.

Sensible and practical steps are needed to accelerate microeconomic reform to support growth, jobs, exports and provide more affordable national infrastructure including affordable and safe buildings.

Recommendation:

The consistency of national building regulations and the removal of State, Territory and municipal differences are essential to the Australian community and ongoing productivity, efficiency and effectiveness.

3. Institutional arrangements

3.1 Institutional arrangements

3.1.1 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?

Considering the current problems facing the national building regulatory system especially the fragmentation and dilution of the BCA requirements in New South Wales and Queensland there is an obvious need to revamp the current process by implementing the following reforms:

1. Restructure the Inter Government Agreement.
2. Restructuring of the ABCB (refer to item 3.2.2 for comment)
3. Control the status and influence of private code writing companies such as SAI by legislative amendment.
4. Introduce a credible and cost effective building certification system.
5. Introduce national administrative provisions (refer to item 2.1.5 for comment).

In essence BPIC believe the current system needs to be refined with the commonwealth government taking a prominent role in facilitating the overall development of the national building regulatory system. The introduction of these reforms will ensure a workable platform for a successful and cost effective evolution of the national building regulatory system.

Conceptual discussion on each of these matters is considered below.

1. Government commitment to national reform

One of the major concerns in recent years has been the fluctuation of state and territory building departments and the consequential erosion of building regulation quality.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Recommendation:

To avoid this type of problem BPIC believe the ABCB structure needs to be amended:

- a. To relieve pressure on the State and Territory administrations during the code development process, while allowing them to focus on the key function of administering the regulations in their jurisdiction.

- b. State and Territory representation on ABCB committees and boards at all levels must be by people with extensive experience in building.

Note: This item is discussed in further detail in our comments on question 3.2.2.

2. Restructuring of the ABCB

Refer to question 3.2.2 for comment.

3. Control of SAI

Government need to consider carefully the role of Standards Australia International (SAI) in the national building system.

SAI, once a publicly funded body due to the significant “public good” aspects of standards, but now a private company, uses significant intellectual property to generate income, charging industry for the standards publications. Government and consumer interests are not a priority when compared to the demands of the shareholders.

In an increasingly competitive environment where customisation and innovation are seen as key determinants of growth the continued proliferation of standards may not represent the best interests of the community or industry.

There are some 2,500 standards relating to building and construction, over 200 of which are directly called up in the BCA. For each one of these standards references in the code there are secondary and tertiary reference standards. Any of these standards may be used by any state government or local council.

To add to this array of Australian Standards there are thousands of International Standards that may be used by regulators.

Despite the efforts in developing a national building code, the Trade Practices Act allows standards to be used by tribunals in consumer building disputes.

Standards are now being used as “state of the art defence” by courts. Even where these standards are not statutory requirements, manufacturers are being assessed against compliance with the latest product standard. This represents another form of regulatory creep. Such voluntary standards have not been scrutinised for costs and benefits, yet take on the status of de-facto regulation.

Government must clarify by legislation that the BCA is the pre-eminent building code for regulatory compliance and unreferenced standards prepared by private companies are for guidance.

Recommendation

- a. Government legislation must be introduced to clarify that the BCA is the paramount code for building construction in Australia.
- b. The trade practices act must be amended to remove the dependence on Standards Australia.

4. National certification

The current process for amendment to the BCA is limited to annual changes. Changes to reference codes such as an Australian Standard can take up to 4 years.

In a dynamic and solution driven industry this delay in obtaining recognition of new and innovative products is unacceptable.

To rectify this problem an effective national certification system needs to be implemented to allow recognition of innovative building systems between amendments to the traditional codes. Certification is an essential part of building regulation and was a clear objective under the AUBRCC agreement.

Government must be actively involved in this process to achieve national and international credibility for certified products. The continual operation of the ABCB product certification system is essential.

The ability to get innovative products into the market that are “fit for purpose” and complying with regulatory requirements is an essential part of the building regulatory environment.

Permit authorities are becoming aware of their obligations in regards to approval of innovative systems and are now beginning to question the validity of systems outside the prescriptive provisions of the BCA. In fact some Professional Indemnity policies have exclusion clauses prohibiting the insured permit authority determining an Alternative Solution.

This shift to a more conservative attitude to product approval will influence designers, architects and builders especially when specifying or using any system that does not comply with existing standards. This is due to the delays in obtaining a Building Permit while the performance of a product is verified and prescribed checks and balances have been completed.

There are distinct advantages in having a strong and successful government system, especially for manufacturers considering expansion into international markets where the government sanctioning of their product would provide significant leverage in obtaining access to perhaps otherwise closed or difficult to penetrate markets.

Accordingly, BPIC support the work being undertaken by the ABCB on the ANZBuild scheme especially the maintenance of the national register.

Recommendation:

- a. BPIC support the work of the ABCB on the ANZBuild system.
- b. The Government sanctioning of certified product is critical.
- c. The national system must be technically and financially accessible for all product manufacturers.
- d. State and Territory governments, must legislate for mandatory acceptance of ANZBuild certificate.
- e. The system must provide mutual recognition of industry based certification systems.

5. Introduce national administrative provisions

Refer to item 2.1.5 for comment.

3.1.2 *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?*

BPIC believe the planning and building processes can work together. However, there are serious problems in some jurisdictions due to the failure to co-ordinate these two disciplines at State and Territory government level. This is particularly obvious in New South Wales and Queensland where the break down of control at municipal level is creating unnecessary problems for the building industry.

This failure to control regional variations and uncertainty between town planning and building is exacerbated by the current ABCB BCA amendment process.

The recent failure to achieve consensus within the ABCB over the national energy code is of great concern to industry. Even with provision for Australian wide climate zones in the BCA, States and Territories continue to enforce new and various energy efficiency provisions.

The prolonged processes for amendments to the BCA dictated by the Inter Government Agreement works against regulatory cooperation and national consistency. Many jurisdictions have decided not to wait for the ABCB processes to be finalised and introduced energy requirements under their town planning codes.

Increasingly, the authority of the ABCB is being challenged by the intrusion of planning issues into the building approval system. Planning schemes are imposing controls that impact on the “health, safety and amenity” of buildings directly conflicting with State and Territory building legislation.

This problem is two fold being:

- a. A failure of government to manage the application of the legislation at municipal level; and
- b. The protracted BCA amendment process.

Recommendation:

- a. State and territory statutes generally provide clear delineation between Town Planning and building matters.
- b. State and territory government’s reluctance to enforce the statutory requirements tends to create the problems.

- c. The delineation between Town Planning and building can be readily achieved.
- d. No planning legislation should override the BCA.
- e. The BCA amendment process should be reformed to expedite change and remove the trigger for unilateral municipal level changes.

3.1.3 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?

This question is rather interesting when considered within the context of this Productivity Commission study as the range of issues such as transparency, best practice, cost efficiency, community benefit, international process etc associated with the complexities of developing national building regulations. There are no reasons why this level of complexity should not apply to municipal building requirements on a micro level.

The House of Representatives Standing Committee on Economics, Finance and Public Administration in its report on *Rates and Taxes: A Fair Share for Responsible Local Government*⁵, otherwise known as the Hawker Report, highlighted the many issues faced by local governments. The Report found; (p. 10) that:

"As local government had expanded its roles and responsibilities to meet growing community expectations the Committee questioned councils about whether they are trying to be all things to all people at a price they cannot pay."

With the burden to local governments becoming increasingly large and complex BPIC would argue that the complexities of the BCA preclude local government from being able to effectively administer additional requirements over and above the BCA

⁵ The House of Representatives Standing Committee on Economics, Finance and Public Administration, *Rates and Taxes: A Fair Share for Responsible Local Government*, Commonwealth of Australia, November 2003, Canberra.

BPIC believe there is no benefit in individuals and communities enforcing higher requirements than the BCA.

Recommendation:

There is no reason for councils to apply requirements beyond the BCA.

3.2 The ABCB

3.2.1 Are ABCB funding and charging arrangements appropriate?

BPIC have significant concerns regarding the current ABCB resources and operational arrangements. Signatories of the Inter Government Agreement need to consider the resources of the ABCB as part of the overall reform of the Inter Government Agreement discussed in item 3.2.2.

To assist in the question of resource arrangements a brief comparison with Government bodies with relative degrees of responsibility provides an interesting insight into this issue.

The National Transport Commission (NTC), are empowered to undertake a range of functions relating to national transport reform very similar to the ABCB objectives. The NTC is also established by Inter Government Agreement between the States, Territories and Commonwealth and the signatories are committed to provide a budget of \$7 million per annum.

The NTC web page⁶ provides the following statement:

“The decision to form the NTC was based on an independent review of the NRTC. The review committee estimated that total net benefits from road transport reform for the national economy up until end of 2003 were in the region of \$400 million.”

⁶ National Transport Commission, National Transport Commission born, <http://www.ntc.gov.au/NewsDetail.aspx>, (15 April 2004)

The reform period is understood to be approximately 12 years, which equates to approximately \$33 million per annum of net benefits to the community.

The KPMG report into major reform initiatives of the ABCB, p.3 concluded that during 1996 and 1997 the cost savings for commercial buildings alone was in the vicinity of \$64 million (approximately \$32 million per annum). This value is conservative and fails to recognise amongst other things domestic construction savings, the construction boom in recent years, product marketability and access and international competition benefits.

It would be fair to conclude that both the NTC and the ABCB would be providing similar cost savings to the community, if anything the ABCB is likely to deliver a higher return. However, the funding to the ABCB is in the vicinity of \$2 million per annum.

A further comparative analyse of government funding is worthwhile. It is understood that SAI receiving federal funding in the order of \$2 million annually to represent Australia on international standards forums. These forums are focused on the achievement of international standardisation and mutual recognition arrangements.

It is somewhat contradictory that a private company receives \$2 million in federal funds to participate in international forums, while the national building regulatory body responsible for Australian and international code development and harmonisation receives \$1 million per annum in federal funding.

A comparative review of government funding to similar organizations should form an essential element of the reform of the Inter Government Agreement as discussed under item 3.2.2 of this submission.

Recommendation:

The current ABCB resource arrangements should be considered during the reform of the Inter Government Agreement.

3.2.2a. Is the ABCB structure and membership appropriate for achieving its objectives?

The current structure of the ABCB is not effective for the following reasons:

a. [REDACTED]

[REDACTED]

[REDACTED]

d. The structure is not sufficiently independent from the commonwealth department. The ABCB directorate are answerable to the federal government department and this often conflicts with sound national regulation policy.

The Laver review, p 39 stated *“A particular matter of concern raised with the Review Panel related to a requirement for the ABCB’s strategic objectives to be aligned with the Commonwealth Department’s goals rather than those defined by the ABCB. In addition, the ABCB staff are required to undertake certain training programs at the direction of the Department, rather than consider the particular needs of the ABCB.”*

This relationship with the department complicates management of the ABCB process and directly conflicts with the underlying philosophy of the Inter Government Agreement where the ABCB is to be a cooperative body between States, Territories and the Federal Government. The arrangement must provide for independence.

- e. There is no obligation for signatories to adopt the BCA provisions. An amendment prepared and approved by the ABCB can be readily varied by each of the States and Territories including non-adoption. This is highlighted by some 100 variations to the BCA and the reluctance of some states to adopt proposals developed after significant national review.

A recent example of this is the NSW failure to adopt the national energy efficiency provisions to the BCA. This has directly contributed to the unravelling of consistent requirements in that state as municipalities develop their own provisions mainly to compensate for the lack state requirements.

Industry is frustrated by the inability to progress reform due to the failure to have balanced representation on the governing and technical boards of the ABCB and the protracted consultation process.

There is also a concern within the BPIC membership that insufficient research is undertaken into long term strategic planning.

The current ABCB arrangements tend to be more reactive, and fail to provide sufficient emphasis on the importance of understanding the future construction needs of our society, say within 10 to 20 years time. This type of analysis is essential in the development of successful regulations, while also allowing industry to develop product to meet future demands.

This type of long term strategic planning and analysis is also equally applicable to international construction trends that should be analysed by the ABCB to assist in the determination of government policy and associated building code requirements that can be aligned if appropriate. This will increase our international competitiveness in accordance with item 8 of the Inter Government Agreement objectives.

BPIC have proposed an alternative model to address these concerns, which is discussed in item 3.2.2b below.

Recommendation:

The current ABCB structural model should be revised in line with the BPIC suggestion detailed in item 3.2.2b.

3.2.2b. *Are there other institutional models that would improve the effectiveness of national reform?*

BPIC believe there are a number of institutional models that would provide a viable platform for future efficient national building regulatory reform. These include Food Standards Australia and New Zealand (FSANZ) and the National Transport Commission (NTC).

The FSANZ model offers many benefits including the linking of Australian and New Zealand reform initiatives, which is consistent with the establishment of the Trans-Tasman Building Regulatory Reform Council as announced recently by the Australian Industry Minister, Ian Macfarlane, and New Zealand Minister for Commerce, Margaret Wilson.

However, BPIC tend to favour the National Transport Commission (NTC) model, which is the successor to the National Road Transport Commission that has been successfully operating for the past 12 years.

A recent review of the NTC in light of its overwhelming success saw the broadening of its powers to include rail and inter modal regulatory reform to its existing transport portfolio. This is an example where the Commonwealth have recognised the importance of a national reform body and increased its operational charter. All tiers of Government are benefiting from the process due to the rationalisation of resources and the efficiencies to be delivered to industry.

The NTC is established under the Commonwealth National Transport Commission Act and facilitates reform including the establishment of model legislative provisions. State and Territory governments are committed to the NTC under an Inter Government Agreement containing many requirements that would be consistent and applicable to a national building regulatory body.

BPIC believe that a workable national body can be developed based on key aspects of the NTC model and should be seriously considered as the basis for the reformed ABCB structure. Important features of the revised model would be as follows:

- a. The ABCB becomes a commission established under Commonwealth legislation similar to that used to create the National Road Transport Commission.
- b. The Commission would be responsible for developing model legislation including the BCA, associated administrative provisions, international code development and other tasks defined in an Inter Government Agreement. It is noted that the objectives would be consistent with those currently listed in the Inter Government Agreement except the issue of sustainability would be explicit.

- c. Signatories of the Inter Government Agreement agree to implement reform in a nationally consistent and uniform manner by adopting approved model legislation developed by the Commission and ensuring consistency in each State and Territory. This would include active administration of building and control of municipal government by laws.
- d. A Ministerial Council is formed to meet on an annual basis to approve work of the Commission. Council votes will be on the basis of a simple majority. The Council will consist of:
 - Federal, State and Territory Ministers.

The Ministerial Council is to sanction the annual work of the Commission.

- e. A Commission Board will be established to advise on policy and reform objectives. They will meet four times a year. The Board will be chaired by the Commissioner. Each member of the Board will have a vote. Board votes will be on the basis of a simple majority. Membership will consist of:
 - A representative from each State and Territory with a significant degree of knowledge in building and building regulation.
 - Four representatives from industry associations such as the HIA, AIBS, RAIA etc. Membership will be rotated on a 3 yearly basis and selected by the Minister whose department is responsible for the Commission.
 - One representative from the manufacturing industry.
 - One representative from an Australian building research organization.
 - One representative from Standards Australia International.
 - One representative from local government.

The Board will be focused on strategic and policy issues relating to the running of the Commission and national and international agendas impacting on building regulation. The Board will not be involved in technical review of proposed amendments to the BCA and associated legislation.

f. A Commission to be established with:

- A Commissioner appointed by the Ministerial Council. The performance of the Commissioner would be reviewed on a 2 yearly basis.
- Commission staff with appropriate experience to develop policy, technical and administrative legislation suitable for adoption in State and Territory legislation and other tasks defined in the Inter Government Agreement objectives.

The Commission has two distinct functions being the administrative/policy role and technical development role. The administrative/policy area serves the Board and Ministerial Council and develops policy addressing national and international agendas.

The technical area works with expert technical review panels to develop model legislation and BCA amendments in a format suitable for adoption in State and Territory legislation. The changes, including proposed new reference standards, will be supported by appropriate impact assessment and be subject to extensive public review.

Amendments will be finalised and approved technically by the Commission Technical area in conjunction with the expert review panels providing the highest level of technical approval.

g. Technical Review Panels to be formed on an as needs basis:

- Review panels will be selected nationally (and internationally if necessary) by the Commission from experts with appropriate experience in the issue under consideration. Panel members will be compensated for time commitments to ensure costs do not become an exclusive element that prevents the best people for the job being considered. Panels should be formed as workable units with maximum membership limitations (perhaps 10 people).
- Panel members will be responsible for advising on the development, consideration of public comment and approval of the final amendment. This will ensure the provisions are established on the best current knowledge.
- Panels will include appropriate representation from State and Territory governments to ensure legislative and community interest issues are considered. Representation would be in the range of 20% of the overall panel membership. Experts could also be nominated by State and Territory governments if appropriate.

- h. Resources should be determined on a basis consistent with the importance of the revised functions of the Commission.

A diagrammatic representation of the proposed structure is contained in Figure 1.

Further information regarding the establishment of the NTC including the Inter Government Agreement can be obtained from www.ntc.gov.au.

Recommendation:

The Inter Government Agreement should be amended to introduce an Australian Building Commission established under Commonwealth legislation and in line with the above proposal.

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

BPIC believe the Commonwealth Government must take an active and prominent facilitative role in the next important transitional stages relating to the national building regulation system.

[REDACTED]

Accordingly, the Commonwealth must provide the leadership and appropriate environment and resources to facilitate continuation of the national body.

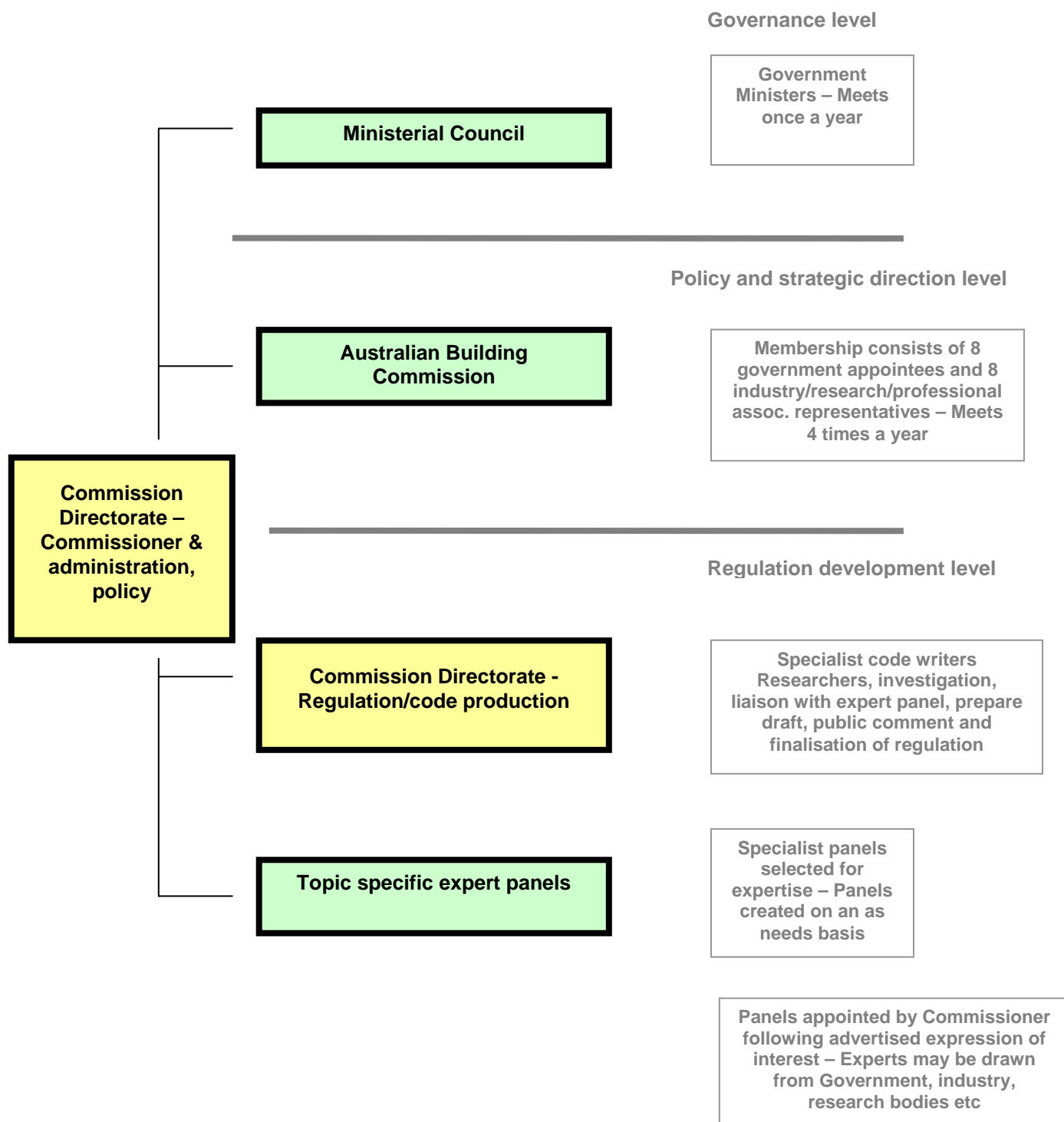


FIGURE 1 – THE AUSTRALIAN BUILDING COMMISSION - PROPOSED REVISION OF ABCB STRUCTURE

There is an obvious need for reform of the Inter Government Agreement and the ABCB structure and the Commonwealth is in the best position to achieve the necessary changes to ensure a successful transition of the current ABCB into the new organisation as outlined in our proposal under question 3.2.2b of this submission.

In saying this, the type of involvement should be facilitative in establishing a national body that has the capacity to operate independently on behalf of all governments, as the existing arrangements between the ABCB and the Government department tend to hinder and dilute the effectiveness of the national body due to the sometimes conflicting imperatives of the government department and the ABCB.

Recommendation:

The Commonwealth should facilitate the reform of the ABCB and the Inter Government Agreement.

3.3 Code making process

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

Standards provide an important technical underpinning to the building regulatory system. While the BCA is performance based, some 200 or more prescriptive standards that provide a quantitative solution or outcome against which a performance based solution might compare, serve as primary references in the BCA. Supporting these mandated standards are volumes of secondary and tertiary reference guides.

The development of standards is emerging as a big issue for industry.

Perhaps one of the most disturbing points of concern is the unbalanced representation on SAI committees mainly due to the SAI policy of not paying participants. The representation at standards committees can be constrained for academia, industry, community and government due to the costs imposed in travel, accommodation and time away from core responsibilities. This means that the most appropriate representatives may not be always able to participate in the committee process.

This problem is compounded by the ABCB inability to actively participate in all the standards called up in the BCA.

The ABCB have one full time standards representative and approximately 11 part time people, responsible for ABCB involvement in 200 BCA primary standards and all associated sub standards. This easily equates to over 700 documents.

The ABCB represent the States and Territories on standards committees nominated in the BCA and accordingly have a direct responsibility to ensure community/stakeholder interests are achieved. Other obligations include drafting to align with legislative protocols, least cost solutions, balanced input from experts and other commitments related to the Inter Government Agreement objectives.

Unfortunately, these standards are continually evolving and it is impossible for the ABCB representatives to keep fully informed of changes to these documents exposing the BCA to possible corruption due to poorly considered reference standards.

This issue of ABCB resources may be overcome if SAI undertook independent and credible impact assessments prior to publishing their documents. This would provide a degree of confidence in the merits of the proposed new or revised code. The failure of the SAI to complete this process is significant for a number of reasons not the least of which is the fundamental issue of whether the change is necessary and the potential economic implications if other alternatives are not explored.

The Memorandum of Understanding⁷, recently signed by the ABCB and SAI fails to instil confidence that these concerns will be addressed. Item 4.2(3) and (4), p. 4 and 5 suggests the issue of impact assessment is not accepted by SAI leaving the responsibility with the ABCB.

The current arrangements between the ABCB and SAI are not productive to achieving the underlying objectives of the Inter Government Agreement. A more collaborative and cohesive approach is required.

⁷ Australian Building Codes Board, *Memorandum of understanding between the Australian Building Codes Board and Standards Australia International limited*, November 2003 (accessed http://www.ABCB.gov.au/documents/ABCB_office-sa_mou_nov2003.pdf 26.4.04)

Recommendation:

- a. The process by which standards are made is not balanced and community and government concerns are not often available in committee deliberations.
- b. SAI should pay participants in their code development committees as appropriate to achieve greater balance and representation.
- c. SAI should undertake impact assessments for each new code and amendment and the ABCB should be required to play a proactive role in both the development and impact assessment of standards in parallel and in conjunction with SAI and other standards writing bodies in order to minimise the need for further delays caused by ABCB RIS taking place after the development of standards as opposed to in parallel with them.
- d. The ABCB need to fully resource the review and development of standards to ensure their key stakeholders are adequately represented.

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

Major trading blocks and nations including the European Union, USA and Singapore have aggressive programs to develop and review international standards with the primary goal of economic development.

Australia must adopt a similar strategy and work to ensure consistency is achieved wherever possible. However, alignment with international codes should not be to the detriment of Australian construction practices and unnecessary disruption to manufacturing processes.

Unfortunately there are significant problems with Australian endeavours in this area as Government have handed over responsibility for representation on international standards committees to a private company namely SAI.

The issue of who represents Australia is fundamental to the development of a competitive construction industry both nationally and internationally and the extent of benefits that flow into the broader community.

SAI receives federal funding in the order of \$2 million annually to represent Australia on international standards forums. These forums are focused on the achievement of international standardisation and mutual recognition arrangements. These arrangements, the associated debate and related issues are critical to effective government policy regarding national and international trade.

SAI obtains valuable knowledge in relation to international codes that becomes commercial in confidence information. Consequently this data is not available to government departments responsible for national and international code development including (and perhaps most importantly) the ABCB. .

Long term government strategic planning and analysis of international construction trends (often reflected in international codes) is critical to a healthy and competitive manufacturing industry and building system.

Government should be managing the Australian input into these international committees to ensure national interests are pursued in an unbiased, coordinated and focused manner. The intellectual knowledge gained from these forums should be analysed and utilised to the benefit of the Australian community and not monopolised by a private company.

It is unacceptable that SAI a private company provide an “Australian” perspective in these international forums.

The appropriate body to undertake this task is the national regulatory body directly responsible to Commonwealth and State and Territory Governments. Accordingly, the ABCB must take over the role of co-ordinating and representing government in international building and construction code development forums for the long-term benefit of the Australian community and in accordance with item 8 of the Inter Government Agreement objectives.

Recommendation:

- a. BPIC believe that there should be alignment between international and Australian standards wherever possible.
- b. Alignment should not be to the detriment of Australian construction practice or costs.
- c. SAI should not represent Australian interests on international building and construction code writing bodies. The work should be undertaken by the ABCB.

3.3.3a 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)?

BPIC believe the consultation process should be improved as detailed in our proposal under question 3.2.2b of this submission.

Although mentioned earlier, it is important to emphasize that one of the most problematic areas is BCA development in that it is too lengthy and vulnerable to State and Territory technical review process. This tends to stifle important reform.

It is impossible to have sound and effective reform if people approving the process are not fully briefed or have the capacity from a resources perspective to consider the issues under review. There is an obvious need to introduce reform into the ABCB advisory committee and board processes to ensure amendments proceed based on technical merit established by national experts rather than bureaucrats.

Recommendation:

The ABCB consultation process must be reformed in line with item 3.2.2b of this submission.

3.3.3b 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?

The ABCB has two types of BCA amendments as follows:

- a. Major reform initiatives, such as disability access and energy efficiency; and
- b. Minor consequential changes.

BPIC believe the consultation process for major reform initiatives including advertising in major papers and easily accessible internet access to proposed reform papers is effective and provides sufficient means for parties outside the advisory committee process to comment.

However, for what are deemed to be minor consequential changes the level of public scrutiny outside the advisory committee process is unacceptable.

Perhaps the most disturbing are changes that see the inclusion in the BCA of new standards and amendments to existing codes. The ABCB appear to have taken the view that standards having been developed by a consensus committee process and with a public comment period are acceptable.

However, the Standards public review is based on consideration of the standard as a published document, not on whether it should form part of State and Territory government building legislation.

As discussed earlier, the costs associated with the introduction of new standards can be significant and the ABCB should provide an impact assessment (developed by SAI) in conjunction with an extensive public review period to determine if the adoption of the code is in the best interest of the community.

The successful review process used for major reform proposals should be applied to minor consequential amendments with appropriate public review time frames.

Recommendation:

The ABCB review process is not consistent and the rigor and public consultation used in major reform initiatives such as energy efficiency should be adopted for minor changes, such as the inclusion of new standards.

3.3.3c Does the ABCB have the necessary representation to determine what meets community expectations for health, safety and amenity?

Community representation on the ABCB is provided by government representatives.

This is considered reasonable as government by virtue of being the elected representatives of the community develop policies they determine as aligning with their electoral obligations. In theory these policies are then applied by the government representatives on the various ABCB committees.

This process is dependent on the capacity and experience of the bureaucrat, if there is no clear government policy, their views will be presented rather than a representative informed position on the needs of the community.

BPIC believe that a reformed ABCB with the inclusion of specialist technical committees taking responsibility for the development of amendments to the BCA will have a greater capacity to determine community expectations as a broader and more balanced cross section of the community will be involved. This process is explained in item 3.2.2b of this submission.

Recommendation:

The ABCB under its current development arrangements does not have the capacity to determine what meets community expectations on health, safety and amenity.

3.3.4 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?

BPIC are concerned that both of these systems are open to criticism and have the potential to be undermined.

The majority voting system is ineffective if voting members do not have the capacity to understand the issues under consideration.

This is highlighted by the current membership of the Board, in particular members who have a town planning background and are formulating key national and international building regulatory policy without the proper understanding of the building regulatory system. It is not possible to achieve effective outcomes with this type of committee arrangement.

As an alternative option the consensus process is flawed if the membership of the committee is not balanced and representative of a national Australian position. As discussed earlier the standards committee system is particularly flawed as SAI do not pay for participants, which excludes potential input from government departments, academics and the like who have limited funding in which to pay for review of committee papers, travel and accommodation necessary to participate in this voluntary committee process.

After reviewing both options BPIC believe that the voting rule is the most effective provided the committee is balanced and has the capacity to understand the issues under consideration.

In order to achieve this objective the Inter Government Agreement must be amended to ensure representatives on the ABCB can only be appointed if they meet the predetermined experience criteria suitable for their role as national regulators.

Recommendation:

- a. BPIC believe the majority voting rule is the most appropriate provided the committee has a balanced and informed membership.
- b. The Inter Government Agreement must be amended to ensure members have the appropriate experience to contribute to national regulatory reform.

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

As discussed previously, BPIC strongly support the establishment of national administrative provisions and the adoption of the BCA by each jurisdiction would form a fundamental aspect of the national requirements.

This would provide a consistent adoption process and a consequential stabilisation of the national system. Under the BPIC proposal, the revised ABCB body would be responsible for the preparation of draft ABCB changes, any necessary legislative amendments to the national model building act and regulations including drafting instructions for each State and Territory parliamentary council.

As part of the national administrative development process the national regulatory body would be required to determine the needs of each State and Territory and their legislation operational heads of power so that discrete packages can be prepared. Although, with the adoption of the national model building act in each State and Territory the work commitment should be minimal due to the consistency in legislative arrangements.

This process has many advantages for State and Territory administrations, not the least of which will be the shifting of resources from developing appropriate legislation amendments to administration and enforcement.

Recommendation:

National administrative provisions should be developed and the adoption of the BCA should form one aspect of those provisions.

3.4 Evaluation of costs and benefits of reform proposals

3.4.1 *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 integrity and rigour of the Regulatory Impact Statement (RIS) or impact assessment continues to be a source of frustration for our industry. Based on recent experience the RIS/impact assessment typically fails to factor in supply chain impacts, practical information on the current manufacturing base, capacity, logistics and installation issues etc. This appears to be due to the limitations in the ABCB consultation process. Although it is acknowledged that the enhancing of working groups with manufacturer expertise is addressing this issue.

It is important that a comprehensive impact assessment form part of any amendment to the BCA including referenced building standards as they form an integral part of government legislation.

Under previous State and Territory legislative arrangements any changes to their regulations including amendment to technical building codes would have been subject to a Regulatory Impact Statement and scrutiny from an independent parliamentary council to ensure the integrity of the proposed reform.

The adoption of the national BCA has isolated the State and Territory parliamentary council process and they are not directly involved in the review of BCA amendments. It is understood that this arrangement was permitted by parliaments on the proviso that the ABCB would prepare a national Regulatory Impact Statement reviewed by the Office of Regulatory Review. Unfortunately, this process is not implemented consistently.

All changes to the BCA must be subject to an impact assessment to ensure the changes are in the best interests of the community and objectives 2 in regards to determining least cost solutions and 4 relating to lowering costs of the Inter Government Agreement are being achieved.

It should also be recognised as part of the cost benefit analyse that the RIS/impact assessment process is not an end in itself.

Regular review is needed to ensure the objectives of the regulatory intervention have been achieved including what if any unintended consequences may be emerging, the nature and level of compliance and other implementation/compliance issues. This will assist in improving the overall design and utility of the RIS for the ultimate benefit of the community.

The National Transport Commission on their web site⁸ includes the following statement in relation to monitoring reform.

Monitoring of Implementation

Transport Ministers, at their meeting in November 2000, asked the NRTC to increase its role of monitoring the implementation of reforms on-the- ground and to report back to them. This mainly involves reviewing the national policy against the way in which it has been implemented by each government.

BPIC believe the ongoing review and refinement of changes is essential and the ABCB need to formalise this process as an integral part of the RIS operational arrangements.

Recommendation:

- a. The ABCB RIS/impact assessment process should be considered for all changes to the BCA if overall assessment has not been possible in the review and development of the changes.
- b. SAI and other standards writing bodies should be required to undertake impact assessments in conjunction with the ABCB where possible during the development of standards...
- c. The RIS/impact assessment should be considered for possible revisiting 12 months after the introduction of the regulation to assess the validity of the original proposal and assumptions.

⁸ National Transport Commission "http://www.ntc.gov.au/ (accessed 15 April 2004)

3.4.2 *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?*

Any change to building regulation should be justified by a comprehensive impact assessment.

Unfortunately local government is not obliged to provide an impact assessment, broad industry consultation or consider national policy agendas outside their regional boundaries.

Accordingly, changes directly impacting on BCA requirements can be made by municipal government with relatively minor consideration of broader societal concerns.

In addition costs for constructing in municipalities will vary increasing the financial burden on people wishing to build. Recent experience with energy efficiency and sustainability reforms at municipal level have shown significant increases in construction costs especially in regions where construction norms are not consistent with stipulated modelling energy tools being adopted in by laws by municipal governments.

This was the experience in the Shire of Nullimbik in Victoria, where earth building was a major part of the character of the area. However, the mandated use of FirstRate modelling tools and the associated star rating process excluded this form of construction without prohibitive modifications to the building structure. This had the potential to lead to the demise of the earth industry in that municipality. Major economic and cultural damage was averted only with the introduction of an exemption for earth buildings.

This situation could have been averted with a more informed local government by law process.

Local government laws are often based on qualitative issues determined by political whim, without reference to the latest science or information about the range of materials technologies available or the minimum standards referenced in the BCA. This situation is not acceptable and counter productive to national building reforms.

Recommendation:

Local government should not make laws on issues addressed in the BCA.

4. Assessing the Code

4.1 Code objectives

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

The ABCB are achieving limited success in meeting their objectives under the Inter Government Agreement due to the current structure of the ABCB and the Inter Government Agreement.

There are many issues impacting on the ABCB capacity to effectively deliver on the objectives and these have been discussed at length in earlier sections of this submission.

Without the formation of an independent Commission as discussed in item 3.2.2b the ABCB are severely restricted in regards to fulfilling the objectives.

BPIC believe the Laver review has analysed the performance of the ABCB in relation to each objective in sufficient detail and the outcomes should be considered by the Productivity Commission as part of this study.

Recommendation

- a. The ABCB does not have the capacity to ensure BCA compliance with the objectives of the Inter Government Agreement under the current funding and structural arrangements.
- b. The Laver review provides important analysis of the ABCB performance in relation to the objectives.

4.1.2 *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 of the Inter Government Agreement are sufficiently broad enough to provide scope and flexibility to achieve effective regulation without conflict.

Deregulation is intrinsically related to the maintenance of community standards in a sense that it will only occur if there is an overall benefit to the community. Evidence must be provided before this change has a chance to occur.

BPIC have commented elsewhere in this submission that the ABCB review process is flawed in some instances in that it is not sufficiently robust to balance community interests with deregulation. This has led to a conservative approach to regulation as the decision makers will tend to opt for safety that stifles potential amendments that could be construed as deregulation.

Accordingly, deregulation is not easily achievable under the current ABCB structure.

Recommendation:

- a. The ABCB objectives do not conflict.
- b. Deregulation will be limited under the current ABCB BCA amendment process and approval committees.

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

There is a sensible and workable relationship between minimum acceptable standards and maximisation of community standards.

Minimum acceptable standards are defined by community expectations. The national building regulatory system has a clear objective to ensure BCA amendments reflect a minimum least cost solution. This commitment is consistent with state and territory building legislation objectives.

Maximising net benefits to the community will be achieved by determining the minimum acceptable standard is based on:

- a. Community health, safety and amenity are preserved.
- b. The solution has the least cost impost.

Provisions that extend beyond a least cost solution will introduce unnecessary costs on the community reducing building affordability and therefore not providing a maximum net benefit to the community.

Recommendation:

The pursuit of least cost solutions is compatible with community expectations as the interests of the community are inherently contained within the least cost solution.

4.2 Coverage of the code

4.2.1 Building access for people with disabilities

4.2.1.1 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?

BPIC support the consolidation of any related building construction issue in the national building code. The inclusion of requirements that provide compliance with the DDA is essential and should be incorporated in the BCA provided they are the most cost effective solution and the proposed changes are consistent with the BCA performance code philosophy.

Consolidation of building requirements in the one national code is a priority of BPIC especially when the numerous benefits can be realised including efficiencies in the development process, resource rationalisation and centralised review.

The current work being undertaken by the ABCB and the Human Rights and Equal Opportunities Commission regarding the DDA is an important example of the potential cooperative benefits of the national regulatory system. The existing situation where people complying with the BCA can be prosecuted as not meeting the requirements of the DDA is unacceptable.

Changes to the BCA as a result of this process should provide the certainty required and are warmly welcomed by BPIC.

Recommendation:

- a. The Premises Standard reference in the BCA is the most effective means of meeting building access requirements under the DDA.
- b. Changes introduced into the BCA to accommodate the DDA must comply with the Inter Government Agreement objectives, be the least cost solution and comply with the BCA performance philosophy.

4.2.1.2 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 administrative protocol is too broad in its current form to provide effective administration of the DDA on a national basis.

The reason for this is due to the extensive inconsistencies in administrative arrangements that exist between each state and territory. These differences make it difficult to develop a relevant national protocol due to the need to generalise statements of intent.

These generalised statements of intent are not concise enough for each individual state and territory building legislation and will ultimately lead to disputes in interpretation between statutory requirements and protocol intent.

To work successfully the protocol will need to be amended by each state and territory administration to ensure it accurately reflects their legislative requirements.

This situation highlights the need for a nationally consistent administrative system.

Recommendation:

The administrative protocol will not achieve consistent decision making in line with the DDA.

4.2.2 Energy efficiency

4.2.2.1 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?

BPIC believe that the BCA should address all matters relating to sustainable development that impact on the construction of a building including plumbing and electrical requirements.

The BCA has the capacity to address any concerns regarding climate variability and other differences across Australia. There is no valid reason to provide variation based on jurisdictional or municipal boundaries.

The OECD has recognised that a key to improving the environmental performance of building is to implement a nationally coordinated strategy. Such a strategy needs to set clear objectives (economic, social and environmental), define appropriate regulatory and non regulatory responses and ensure there exists objective measuring and verification systems.

In the absence of a consistent approach from all levels of government (despite the COAG Inter-government Agreement on the Environment 1992) and the building and construction industry, researchers and regulators have stepped in and a confusing array of “green” rating tools and requirements have resulted.

In an alarming development building and planning rating tools and “scorecards”, often simplistic and subjective in nature, are emerging that may be seen as convenient and timely by local councils or state governments but could have unintended and far reaching implications for the building industry. Not only are these tools based on inadequate science and have been developed with no input from the industry, they have the potential to mislead policy makers in purporting to assist in the meeting of “sustainability” objectives.

The creep of sustainability provisions and “trial schemes” into already stretched state and local government development approval processes generally results in less certainty for industry and opens the door for a potential 700 council variations. Much of this has happened without regard for regulatory impact analysis or whether the outcomes could be achieved without regulatory intervention such as guides, skills training and incentives for best practice.

The plethora of rating tools is matched by an increase in the number of bureaucracies with an interest in sustainability, all with separate and distinct (rather than integrated) programs for a range of environmental issues – covering energy, water, land-use, and waste.

It appears that the challenge of coordinating strategies at a state level alone is a gargantuan task, let alone at a national level.

A national framework for building already exists under the responsibility of the Australian Building Codes Board (ABCB). The Building Code of Australia is a national set of technical provisions for the design and construction of buildings and other structures throughout Australia. The ABCB is currently considering whether sustainability will become a goal in the future building code (post June 2005).

For industry the lack of certainty and cost in dealing with the array of confusing regulatory responses is high.

For governments the lack of scientific data can be hazardous, often resulting in applying limited resources to those areas of activity, which may not represent where the main sustainability gains may be achieved and resulting in high direct economic costs.

Accordingly, energy efficiency and broader sustainability issues should be included in the BCA.

In regards to the issue of performance or prescriptive solutions, environmental regulation generally tends to be prescriptive and often is developed without regard to the latest innovations in materials or assessment technology.

There is a need to ensure both types of solutions are available. Particularly as the Deemed-to-Satisfy provisions provide quasi benchmarks for compliance with the Performance Requirements. This is particularly important with the dependence in certain states on computer modelling programs, where the actual requirements that need to be regulated are not clearly understood by users.

The BCA with both performance and prescriptive provisions is the ideal vehicle for national energy efficiency and sustainability provisions.

Recommendation:

The BCA should incorporate all energy efficiency and sustainability issues that relate to building construction.

4.2.3 Fire safety

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?

Fire authorities under State and Territory legislation have an obligation to protect property. This obligation to protect property adds an additional dimension to the underlying objectives of the BCA (reflecting State and Territory building legislation objectives), which relate to health, safety and amenity.

Although there is a difference in the underlying philosophies between building and fire authorities consolidation of accepted solutions in the one national code is essential.

The BRR Taskforce report⁹ p. 70, considered in 1991 that there was an urgent need to resolve the “*objectives of fire regulation in terms of life safety or property protection*”. This issue was identified then as urgent and yet 13 years after this report the matter has not been resolved.

This unfortunately highlights the failure at a national level to follow through on important reform initiatives identified in previous reports. As a consequence the community is still struggling with this inconsistency when construction a building.

The manufacturing industry would benefit by ensuring the requirements in the BCA reflect minimum acceptable construction standards for buildings as required in all government legislation and accordingly support this matter being resolved.

As with any amendment to the BCA the solution must reflect the objectives of the BCA including any outcome being the least cost solution.

This issue is considered similar to the DDA where compliance with the BCA does not protect the owner from prosecution under the DDA. This matter is close to resolution based on considerable work undertaken by the ABCB.

It is suggested that as part of the national reform agenda that the ABCB conciliate a similar solution to ensure consistency between BCA and fire authority legislative requirements.

⁹ Microeconomic reform building regulation, *Building Regulation Review Taskforce Final report*, November 1991

Recommendation:

The ABCB amend the BCA to ensure the requirements satisfy fire authority legislation.

4.2.4 Other areas

4.2.4.1 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?

BPIC are firmly of the view that all building related matters should be consolidated within the one national building code. The advantages of this approach are significant.

One of the major factors for successful implementation of national building controls is creating requirements that are readily conveyed and easily understood by the end user.

Fundamental to this proposition is the consolidation of requirements into logical legislative bundles. Ideally the end user should be presented with all relevant requirements for construction and design of a building in the one document.

The BRR Taskforce report p. 41 in 1991 considered the issue of consolidation of requirements and observed:

“This fragmentation of regulation increases complexity, imposes additional costs on government and consumers and adds to delays in the administration process. Consolidation of building regulation will bring substantial benefits.....”

Accordingly, the benefits of consolidation have long been recognised as an important function of efficient national regulatory system.

Apart from the ease of use and conveying a simple and consistent message to the end user, harmonised requirements are critical to successful holistic design and particularly important for performance-based codes where innovative approaches can (and should) be encouraged. Fragmentation of requirements under other legislation precludes designers and approval authorities from considering the building as a whole.

Consolidation also allows for more efficient management of requirements from a government perspective in that the code writing organisations can be combined providing a rationalisation of resources.

In simple terms all requirements necessary to design a building should be included in the building code.

Further comment is provided in item 4.2.2.1 regarding sustainability and the need for national consistency.

Recommendation:

Building controls be located within the one code to enable transparent interpretation of requirements, encourage holistic design and avoid confusion while ensuring optimum regulatory compliance.

4.2.4.2 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?

The issue of construction costs being transferred into long-term maintenance is not an issue for performance based regulations, but more an issue relating to informed choices when designing a building.

The BCA does not advocate the use of high maintenance building solutions. Rather building developers are opting for the upfront cost savings when constructing a building by using performance option flexibility.

The problem is one of market forces where building owners/purchasers should be informed of the implications when purchasing a building with a high maintenance infrastructure.

From a BPIC perspective there is a definite need to ensure building maintenance is included in the BCA. The maintenance of products and systems on a regular and realistic basis will ensure their long-term performance while maintaining the credibility of the product.

In addition defining maintenance requirements in the BCA will achieve a transparency in understanding the obligations relating to each building design and assist people in making an informed decision.

Indeed consideration of maintenance obligations should form part of any impact assessment and this should be readily available to users of the BCA to ensure informed choices are made.

Recommendations:

- a. Performance building regulations are not responsible for the transfer of construction costs to long-term maintenance.
- b. Maintenance provisions should be contained in the BCA.
- c. Maintenance should be considered as part of the impact assessment process.

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

BPIC strongly support the ongoing efforts to consolidate all building related requirements in the one national building code. This initiative was recognised in the Laver review p. 18, that stated

The ABCB is also currently investigating the consolidation of energy efficiency, aged care, food premises, and maintenance requirements in the BCA. There are potentially many other areas which could be consolidated. These additional areas are often covered by separate pieces of State and Territory legislation outside of the building legislation. Nevertheless, if the requirements relate to building standards, they potentially should be consolidated into the BCA.

The benefits of such an approach are well documented as the spread of responsibility across acts, regulations and agencies increases the chance of conflicting requirements and the dilution of the national technical requirements by planning issues. The spread also represents layers of regulation that add unnecessary costs that are passed onto building owners increasing building costs and restricting growth of the building industry.

These layers of regulation are then compounded with the variations by State and Territory governments on occupational health and safety, workplace relations and licensing of trades and professions.

BPIC members report that in areas such as Workcover the costs of complying with the variations between States and Territories are significant.

In domestic construction Workcover is currently enquiring into working at heights in Victoria and Queensland. In Queensland the initial recommendations for a metal roof would have cost the homebuyer on an average steel roof about \$1,000 extra (240sq m home). The industry established a working group to establish a work method statement. The cost in industry time alone to develop this approximates over \$50,000. The actions will not result in reduced premiums. Even when such costs are incurred the approach has not able be replicated in Victoria due to the different approaches taken by Workcover in each state and territory.

These concerns mirror the issues recognised in the Productivity Commission's recent report on workers compensation schemes, *"Multi-state employers face significant compliance burdens and costs from having to deal with multiple workers' compensation schemes and OHS regimes."* (PC press release 21 October 2003). The Productivity commission went on to say that there was a strong case for national frameworks for workers compensation and occupational health and safety.

These variations also impact on the development of national curricula and the training of installers, fabricators and fixers. For example, in Victoria the installation and fixing of a metal roof can only be done by a person holding a roof plumbing license. No other state requires this. As a result industry is faced with developing different training and professional development regimes to meet the various approaches to trade licensing.

For firms operating in more than one jurisdiction they are faced with multiple internal processes and systems to ensure compliance, time to address inconsistencies in implementing technical requirements and delays and uncertainties.

The industry cannot drive efficiency gains whilst 709 governments are setting prescriptive and often conflicting standards and regulations.

Accordingly, there is a strong need to pursue an agenda of consolidation and national consistency for all regulations that affect the construction of a building.

Recommendation:

BPIC support the ongoing effort to consolidate all building related matters within the one code.

5. Delivering outcomes

5.1 Implementing the code

5.1.1 Accessibility

5.1.1.1 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 BCA is a legislated document and therefore government law. As a community law the document should be freely available on the website and inline with the “in vogue” government philosophy of user pays, hard copies could be purchased at a nominal fee, sufficient to recover printing and handling costs.

BPIC believe that this arrangement should be given serious consideration in the revised Inter Government Agreement as the law of the land must be accessible to all of the community to ensure transparency of purpose, high levels of compliance and government accountability. Legislative requirements that are highly priced introduce exclusivity and preclude access to lower socio-economic groups.

However, it is appreciated that the current funding requires the ABCB to explore alternative revenue sources to enable them to function effectively.

The market penetration of the BCA is understood to be in vicinity of 30% (ie 30% of building practitioners as registered in Australia have a copy of the BCA). Based on economies of scale (ie the cost to produce/distribute 20,000 is the same as 40,000) an increase in code sales to 80-90% should correspond with a reduction in purchase costs, while maintaining a financial stream for the operation of the ABCB.

In a sense, the purchase of the BCA is a quasi levee applied to the building industry; the only concern is that all of the building industry is not “paying” the cost of the levee.

In regards to standards referenced in the BCA there should be a considerable reduction in their cost to ensure transparent and accessible regulations are achieved. As discussed earlier, government legislation including reference codes should be readily available to ensure the laws are understood and followed. Standards should be available at production cost rates.

Currently, the BCA standards package (primary references only) is available at approximately \$1200.00 per annum. This combined with the BCA cost of approximately \$270.00 creates an expensive legislative regime with costs in the region of \$1500.00 per annum for building practitioners to fully understand their legal obligations in regards to building. This cost would perhaps triple if the secondary and tertiary reference codes were included.

These costs are excessive and unreasonable.

SAI should be able to accommodate a reduced fee based on the knowledge that the standard, when referenced in the BCA will become mandatory and therefore attract increased sales. A long- term obligation is ensured as the standards are amended and the associated amendments recognised by the BCA.

It is unacceptable that SAI retain their conventional costing structure when government law requires the document to be purchased and the information in that document forms an essential part of the national building regulatory system.

Recommendation:

- a. The BCA should be available free on the internet and on a cost recovery basis for hardcopies of the document under the revised Inter Government Agreement.
- b. SAI standards referenced in the BCA should be sold at a fee to recover publication costs.

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

BPIC believe the current code is reasonably accessible. However, there is a problem regarding awareness of the code, which directly impacts on the uptake of the document.

There is a distinct need for an extensive public awareness campaign tailored to address each sector of the industry educating them on the importance of the BCA.

Responsibility for awareness should reside with the various industry groups that have a comprehensive understanding of the needs of their industry and can translate the BCA requirements into a language that they understand.

Industry groups also have established information delivery systems including conferences and regular membership publications. This infrastructure provides an ideal platform for achieving maximum industry penetration.

The empowerment and resourcing of industry organizations to undertake this task should form the basis of national regulation policy with both parties benefiting, industry with an informed membership, and the ABCB with increased sales of the BCA.

Unfortunately, current experience has exposed ineffective attempts to inform the manufacturing industry about the ABCB and the BCA and the importance it has to their business. This lack of awareness about the BCA and the ABCB complicates product development processes, creates uncertainty regarding product acceptance and reduces the efficiencies of technical advisory services.

Without a significant broadening of communities understanding of the BCA, the nature of national code reform and the role of the ABCB, the issue of accessibility is redundant as there is no market demand.

Recommendation:

- a. An extensive public awareness campaign should be implemented to educate all aspects of the industry on the BCA and the ABCB process.
- b. Industry associations and representative groups should be supported to enable this awareness campaign to succeed.

5.1.2 Administration and enforcement

5.1.2.1 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?

The answers to these questions would require an extensive level of research and are well beyond the current resources of BPIC. Although, based on experience the costs on non-uniformity are significant.

However, the findings of a recent study in which BPIC partnered with the HIA may be useful.

The study involved a survey of major building product manufacturers to assess the nature and extent of the regulatory variations across government and ascertain the practical impacts on the company's operations. This research although broader than the areas addressed in the building code provided an indication of the extent of issues facing the administration of building regulation.

People involved in the survey were involved in some level of export activity, invested in R&D, and had manufacturing operations in more than one state and often in regional locations.

All respondents felt that regulatory variations were on the increase and that the additional cost of compliance represented anywhere between 2 and 5 per cent of company turnover.

The most costly impacts arising from variations in state and territory regulations were identified in the area of OH&S, workers compensation, workplace relations, technical building code and environmental regulation.

These variations were seen to impact to a significant extent on a company's operations in the following ways:

- Reduce the size of the market for building products
- Create uncertainty about forward capital expenditure plans
- Reduce the commitment to innovation and R&D

- Increase the technical specification for products
- Increase the costs of training staff, fixers and fabricators
- Reduce hiring intentions.

This survey provided an interesting insight into the impact of non uniformity and associated costs. However, BPIC believe that this issue can only be successfully resolved by a specific research project.

Recommendation:

- a. The cost of non-uniformity of national regulations are significant.
- b. The nature and extent of administrative variations and associated costs require a specific research project to determine the extent of these costs.

5.1.2.2 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?

As previously discussed States and Territories have previously adopted national building legislation in the form of regulations outlined in the Australian Model Uniform Building Code (AMUBC).

The loss of the nationally consistent administrative provisions occurred with the introduction of the Building Code of Australia 1990.

At the time AUBRCC were aware of the need to develop an overarching Building Act to accompany the regulations within the AMUBC and initiated the Model Building Act project. This project outlined in 7 published reports provide an extensive review of the legislative framework of the day, explored possible options, developed a model building act¹⁰ and even included parliamentary council drafting instructions.

Unfortunately, the decision to proceed with the proposal was not adopted by the majority of states and territories.

BPIC believe that the model building act process should be revived. The entire process can be adopted from the previous work making the task relatively straight-forward. Although particular care should be taken to ensure difficulties encountered during the process are not repeated.

In addition to the revival of the project, signatories of the Inter Government Agreement must make a commitment with appropriate timelines to adopt the final model. This should form an integral part of the revised Inter Government Agreement.

National administrative provisions have worked in the past. There is no valid reason why they should not be introduced again.

Recommendation:

- a. It is essential that a national administrative framework be adopted.
- b. Adoption of national administrative provisions can be achieve by:
 - i. Obtaining a clear commitment from signatories of the Inter Government Agreement that they will adopt the national provisions; and
 - ii. The process adopted during the development of the model building act is revived with appropriate refinement to ensure the problems identified in the process are not repeated.

¹⁰ Australian Uniform Building Regulation Coordination Council, *The model building act for consideration by states and territories*, Sydney, Federation Press Pty Ltd, 1991.

5.1.2.3 *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?*

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

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

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

BPIC provide no comment on these questions as they do not relate directly to the activities of our members.

5.2 Reforming the risk and liability landscape

5.2.1 Liability reforms

5.2.1.1 *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?*

5.2.1.2 *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?*

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

BPIC believe that liability reform relating to the construction of buildings should be addressed in the national administrative provisions.

The model building act developed by AUBRCC, included specific requirements for insurance, liability exposure, proportional liability etc.

As discussed earlier, the implementation of national administrative provisions and liability reform such as these should be seen as a matter of priority.

Recommendation:

Liability reform should be included in national administrative provisions.

5.2.2 Certification of buildings

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

BPIC offer no views in regards to private certification.

5.3 Awareness and research

5.3.1 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?

The manufacturing sector are concerned that the ABCB awareness strategy has not been sufficient broad enough to inform all aspects of the industry on a regular basis.

The ABCB strategies have been reasonably effective in reaching the main administrators of the code, the building permit authorities. However, other areas of the building industry directly and indirectly affected by the work of the ABCB are poorly informed.

From a manufacturer's perspective, members have expressed concern that there has been insufficient attention into the broader responsibilities of the ABCB in involving all aspects of the industry to ensure a comprehensive and informed development process is implemented. Particularly disturbing was the inability in some areas to understand the complexities associated with product manufacturing and supply. This has significant cost implications in areas such as impact assessment and viability of Deemed-to-Satisfy solutions.

There is a distinct need to develop a more inclusive and comprehensive awareness strategy to ensure people are fully informed on the role and activities of the Board in an ongoing basis and the manufacturing industry form a key part of the Board's consultation process.

Recommendation:

- a. The ABCB awareness strategy is one dimensional and limited.
- b. A more comprehensive awareness program needs to be developed to involve all aspects of the building industry.

5.3.2 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?

BPIC consider the issue of training is not a direct responsibility of the ABCB.

Objective 10 of the Inter Government Agreement relates to education and marketing activities to promote the work of the Board. This should not be seen as establishing training competencies for educational facilities such as universities.

Considering the extent of work required to be undertaken by the Board and the associated resource limitations the employment of a full time educational officer is considered to be a luxury.

Resources would be better allocated to a full time specialist to develop the national legislative provisions or perhaps a public awareness strategist to work with industry groups informing them of ABCB initiatives and reform agendas.

Recommendation:

Education should be limited to awareness type activities to promote the work of the Board.

5.3.3 *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?*

Generally BPIC believe the ABCB are doing a commendable job in the area of research and development. However, there are major concerns relating to information transfer and public awareness in relation to research work.

However, when BPIC members were questioned about ABCB research a number of members responded with "what research". Considering BPIC members spend up to \$2.2 billion in research annually, there is a distinct need to ensure that there is an awareness of research objectives and activities between the two organisations. It is hoped that an increased profile of BPIC within the ABCB including membership of the Board will rectify this situation.

Another issue that is disappointing in regards to the ABCB research program is that the research tends to be initiated by political concerns of the day.

Unfortunately this means ABCB research is not a formulated and structured animal, but tends to lurch from political whim to political whim, essentially dealing with the latest concern raised by the Board.

The national regulatory body should have sufficient resources to undertake a structured and continual review and development of the BCA requirements outside the direct influence of political agendas. Although it is recognised that political concerns should be accommodated they should not hijack a structured research program.

This problem is highlighted by the allocation of ABCB resources on research and development of the Deemed-to-Satisfy solutions in the Housing Provisions.

However, the Housing Provisions are not being developed to keep pace with evolving industry practices and innovative building materials coming on to the market. The implications are that the Housing Provisions are becoming obsolete.

The Housing Provisions when developed were to be a vehicle in which to allow innovative products to be recognised without the need for extensive review processes such as that required by the development of standards. The original development of the code was seen as a preliminary step and a commitment of code specific resources was to enhance the content of the document. This has not occurred.

Instead the ABCB depend on SAI to provide the relevant updates to the Deemed-to-Satisfy provisions via revamped codes, which equates to avoiding their obligation to undertake development of the document on an independent basis.

This solution is far from acceptable as manufacturers are also concerned that the amendment of a standard is time consuming (in the vicinity of 4 years) and often compromised due to the structure of the SAI.

BPIC recognise that currently the ABCB does not have resources to provide the required level of research in a structured and long term managed process. This situation is one of the factors directly contributing to the unravelling of the national regulatory system as the slowly evolving research program forces government departments to develop alternative to the BCA.

Recommendation:

The ABCB do not have the resources to undertake research in an independent long term structured manner.

5.3.4 *Is the research being well managed and conducted cost effectively?*

Refer to the comment provided to question 5.3.3.

5.2.5 *Is the ABCB the appropriate body to conduct and coordinate such research?*

The ABCB should not conduct research, but should be responsible for the co-ordination and undertaking of targeted research.

Research is a fundamental requirement of a national building regulatory system and should be pursued in a structured and cost effective manner. The ABCB are ideally placed to undertake this role especially as they are aware of the priorities required to resolve issues with the BCA and future development agendas.

Recommendation:

- a. The ABCB is the most appropriate body to co-ordinate the research.
- b. The ABCB should not conduct the research.