



**MASTER BUILDERS
AUSTRALIA**

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

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1. INTRODUCTION

- 1.1. This submission is made by Master Builders Australia Inc (Master Builders).
- 1.2. Master Builders represents the interest of all sectors of the building and construction industry. The association consists of nine State and Territory builders' associations with over 25,000 members. The building and construction industry contributes around \$75 billion of economic activity annually to the Australian economy.
- 1.3. Master Builders believes that the Building Code is an important document. It sets minimum benchmarks for industry and provides a consistent and level playing field and, at the same time, delivering a minimum acceptable building standard for the community. The BCA delivers a national set of building requirements consistent across Australia, making construction cost-effective and producing efficiencies for industry.
- 1.4. Master Builders is strong of the view that Australia's building and construction industry requires a national and uniform building code and regulatory system to ensure the development and continuation of an efficient and internationally competitive building industry. The imperative is to ensure the contemporary and evolving expectations of business and the community of the built environment are satisfied in a consistent and cost effective way. The broad objectives behind the Inter-Governmental Agreement (as amended in 2001) to establish the Australian Building Codes Board has delivered certainty and efficiency to the building industry as well as benefits to the community and must therefore continue.
- 1.5. Master Builders believes that continuing Australian Government involvement in the future of the ABCB is critical, particularly given that recent major ABCB projects have provided a means for delivering nationally consistent government policy initiatives including energy efficiency, access, aged care and a more sustainable built environment.
- 1.6. The current approach on building control by the States and Territories offers room for improvement with the need to pursue a holistic building control model that creates a regulatory framework and one that provides the opportunity to deliver a nationally consistent administrative process, including licensing systems for practitioners, education and training.

2. EFFECTIVENESS, PRODUCTIVITY AND EFFICIENCY

- 2.1. The question has been asked whether the mission statement of the ABCB is appropriate for the intergovernmental body responsible for reform of building regulation.
- 2.2. Master Builders Australia is of the view that, on balance, the 10 objectives in the mission statement are appropriate. In coming to this view, we recognise, however, that there exist tensions in setting an appropriate benchmark or benchmarks in relation to meeting the 10 objectives of the Intergovernmental Agreement.
- 2.3. The tensions arise out of the continually changing community expectations for health, safety and amenity in the design and construction of buildings. Increasing community expectations create tensions with other objectives, particularly those relating to the interpretation of “minimum acceptable” and “cost effectiveness”. Master Builders Australia is concerned that these tensions are minimised by the adoption of more stringent performance objectives against which claims for change be assessed.
- 2.4. We would submit that the work of the ABCB should remain focussed on developing nationally consistent building codes, standards and regulatory systems that are the minimum acceptable and which are cost-effective. The recent performance of buildings strongly suggests that, in terms of health, safety and amenity, no major problems exist in relation to the current code.
- 2.5. We strongly support the need for nationally consistent building codes, standards and regulatory systems. We believe that this approach has created significant economies of scale and benefits. It has provided certainty to the industry stakeholders ranging from manufacturing, builders, design professions, as well as professional services. For instance, a nationally consistent BCA has allowed for building products to be modularised, it has also allowed for prefabrication, and for these to be transported across State boundaries. For designers, it has provided nationally consistent design parameters. For builders it has meant that they can work easily across State boundaries and it has also assisted in the development of consistent practices in areas such as occupational health and safety and training.

- 2.6. For clients, financiers and investors, it has provided certainty. This certainty for instance has brought benefits such as lower insurance cover, reduced investment risks, and more affordable buildings. This has resulted in improved productivity, particularly in the area of multi-factor productivity. Australia's building and construction industry has been judged to be one of the most productive in the world. Our productivity has been well regarded overseas and our practices have been actively sought out by many countries for replication.
- 2.7. With regard to the IGA objectives, we recognise that not all have been fully achieved and implemented. We believe that there are two objectives that should be included in any revised IGA. They are objectives 1 and 2. It is important that the BCA remain consistent between States and Territories, remain cost effective and performance-based, and take account of modern and efficient building practices. We are also strongly of the view that the objective of minimum and least-cost solutions also remain. We believe it is also very important that the ABCB continue to be charged with having to consult and liaise with industry to achieve transparency and accountability.
- 2.8. We are concerned that demands for increased standards be justified. We believe that there should be greater onus put on the proponents for change to demonstrate that the existing code or standards are either inadequate or otherwise deficient in the area of health, safety and amenity. We are concerned that the ABCB simply does not react for more stringent requirements and that it be given authority to more rigorously contest such claims.
- 2.9. It should also be recognised that the issue of health, safety and amenity be considered in the broader context other than building. These matters should also be looked at in the context of the surroundings and environment in which buildings are placed and which, in the majority of cases, are the domain of State and Local Council laws.
- 2.10. An important future objective of the ABCB is for it to also have a focus on maintenance of the current BCA. Considerable investment has been made in the Code and therefore its implementation and adoption should remain one of its key priorities for the future.

- 2.11. Master Builders believes that the proposed future Building Code which is currently in its initial design phase is the right vehicle to provide cost-effective and efficient minimum building regulations across Australia. It is our view that the new BCA will add certainty and provide cost-effective minimum standards with a performance approach.
- 2.12. The new BCA should continue to incorporate performance measures with clearly defined verification methods that the designer or builder can demonstrate that they have met, not just a measure against the deemed-to-satisfy provisions. The future building code should cover all issues pertaining to sustainable buildings, environmental issues that impact directly on the building itself and other elements. For example, plumbing and electrical regulations and any other building related regulations should be incorporated into the BCA. This will ensure that all relevant regulations are incorporated into one nationally consistent document that is fully adopted by all administrations. Such adoption will make access to codes and regulations simple and easier and provide greater certainty to industry.

Minimum Acceptable Standard

- 2.13. Minimum standards are not inconsistent with best practice. Best practice can work in conjunction with the BCA. Throughout the industry stakeholders do market and produce products and deliver services that are higher or superior than the minimum prescribed in the BCA to meet individual clients' needs. But this provides no justification to keep lifting "the bar" with building requirements contained in the BCA.

Annual Amendments

- 2.14. The cost-benefits associated with the recent move to an annual amendment cycle for the BCA is, in our view, a positive step that will allow industry adequate time to prepare for changes to the BCA. It has been argued that change needs to occur on a regular basis to keep up with innovative products and systems. However this argument is flawed because a performance building code provides the scope and the opportunity for new products, systems and innovation to be incorporated into building designs and construction processes and practices.

Deregulation

- 2.15. The intergovernmental agreement has as an objective to de-regulate certain areas controlled by the BCA. It is Master Builders' view that this issue has not received enough attention over the years and the opportunity to de-regulate in certain areas would add efficiencies and reduce costs and streamline the building approval process.
- 2.16. For instance, the BCA calls up Australian Standards that specify installation requirements that differ from manufacturers' specifications. This puts the builder in a conflict position between having to comply with standards and the installation methods specified by manufacturers. Master Builders' view is that manufacturer's specifications should have precedence unless it can be shown to be deficient or inconsistent with the BCA.

3. INSTITUTIONAL ARRANGEMENTS

- 3.1. The Productivity Commission has asked for comments on the appropriateness of current institutional arrangements for the ABCB.
- 3.2. Master Builders Australia is strong of the view that that the organisational integrity of the ABCB be strengthened to ensure that it can continue to play an important role in the maintenance and further development of nationally consistent building codes, standards and regulatory systems. This will create particular challenges in that the ABCB exists through a Deed of Agreement between the Commonwealth and the States, and where the States have the Constitutional powers in the area of building as well as associated areas such as planning.
- 3.3. In recognising the fact that the ABCB has no legislated power to make regulatory reforms, we believe there is a case for the IGA to have authority to arrange better interaction and referencing between planning and building provisions. This would go some way to alleviating the conflict that currently exists between the requirements of the BCA and the requirements being imposed by State Government and Local Councils in addition, or separate to, the provisions contained in the BCA. We believe that this interaction and cross-referencing should be formally written into the IGA as opposed to the current practice whereby this is done on an ad-hoc basis.

- 3.4. We believe that the ABCB structure and membership is adequate to meet its objectives. We are very concerned at proposals which seek to broaden membership on the ABCB Board. We believe that such a “democratisation” approach is not appropriate. We would support, however, mechanisms whereby input from a broad range of stakeholders can be sought, as is currently the case. We believe that this works well and gives those stakeholders who are not on the Board or the relevant committees the opportunity to provide meaningful input. We believe that extending the size of the Board would make the whole process unwieldy and can only dilute the focus on developing a nationally consistent building code. We believe it would also work against the ability of the ABCB to respond in a timely manner.
- 3.5. We are concerned, however, with the current ABCB structure, in being able to respond in a timely manner to effect or implement change. We believe that the Committee structure of the ABCB needs to be reviewed, including resources, to ensure that amendments and other technical matters can be dealt with expeditiously. Industry is concerned that amendments and changes can take up to three years or longer. This has led to frustrations by a number of jurisdictional agencies who then seek to implement or pre-empt the proposed changes before the BCA into their own jurisdictional area of responsibility and thereby weakening the objective of a national and uniform building code.

Australian Standards’ Role

- 3.6. Master Builders supports the recent Memorandum of Understanding (MOU) signed between Standards Australia and the ABCB. We support the concept of Australian Standards only being amended or drafted after a clearly demonstrated need to amend or draft a new standard has been determined by all stakeholders.
- 3.7. The current MOU has gone a long way to prevent the ad hoc production and amendment of standards which leaves the industry with considerable difficulty and cost in keeping up with the amendment process. We are made aware of industry practitioners regularly and inadvertently breaching standards and building codes because they have not been able to keep up with the rate of change.

- 3.8. We believe there needs to be better control over the development, integration and coordination of Australian Standards called up by the BCA. Currently Builders and practitioners are legally exposed because of continually changing standards. As a result, courts later deem that the builder, designer or certifier has used the inappropriate version of the document. This is not in the best interest of the industry, the community or government to have practitioners being sued for not being aware or familiar with amended Australian standards not called up or referenced by the BCA.

State Regulations from the Model Building Legislation by AUBRCC

- 3.9. Most State/Territory administrations have different protocols and administrative requirements within their State/Territory building regulations which call up the BCA. It is Master Builders' view that to provide efficiencies and reduce costs there should be nationally consistent alignment with the State/Territory building administrations to ensure consistency with the objective of a national model.

Funding

- 3.10. Master Builders Australia is strong of the view that the ABCB should be appropriately funded and that the current co-funding model remains.

Role of Commonwealth Government

- 3.11. The Commonwealth Government has played a critical role in achieving national reform to building regulation and therefore we are strong of the view that this remain. Increasingly, the Commonwealth has had an important role in the development of the BCA in areas such as the Disability Discrimination Act and energy provisions.
- 3.12. The question of whether the ABCB be more independent is a vexed issue. In an ideal world, a case could be made for it to become independent but unless it has legislative support this is simply not feasible. We believe, however, that there is a case for the ABCB to be more administratively independent. We believe there is a case for the ABCB and its administrative arm to have the status equivalent of a statutory body having a reporting responsibility through a process such as COAG. The ABCB office is currently incorporated into the Commonwealth Public Service. We see no cogent reason for that to be the case in the future. The current arrangement runs the risk of raising conflict in the areas of priorities and policy independence.

Planning and Local Government – BCA versus Planning

3.13. Increasingly we are made aware of instances of planning schemes and planning provisions being introduced into areas of building at a local level which would normally be dealt with under the BCA. Building requirements within the BCA are being expanded into planning schemes and upgraded. This level of additional documentation, when conceptual plans are used for planning approval, is adding significant costs and delays to the assessment and approval process. It is our view that planning matters should only deal with the allotment or land use issues and environmental and other issues outside the building. Within the building envelope the building laws and regulations, i.e., the BCA, should control all the health, life, safety and amenity issues.

Building/Local Government Laws

3.14. Local government is adding confusion, cost and delay to the building and construction process with building by-laws which affects housing affordability. Generally, there are no educational or training programs to inform developers, builders and designers on how to comply with these local provisions. Often designers and builders are not aware of particular local government by-laws until they seek to obtain development approval.

3.15. Master Builders has carried out a national survey of its members on this particular issue. Results from the survey are discussed further in this submission

The Consultation Process

3.16. Master Builders is very concerned that there are too many Council, local laws or by-laws being produced across Australia incorporating building requirements covered by the Building Code of Australia. An example is Exhibit A. State/Territory governments are producing various energy rating measures and systems which vary from the BCA. We are concerned by the fact that local government does not have to go through any RIS regime and the lack of transparency and accountability that results. It is Master Builders' view that local government should not be able to override, delete or impose different standards or building laws pertaining to issues contained in the BCA. If there are local issues that are not covered by the BCA, it is our view that local government only then should have the opportunity to create a by-law or local law to cover these particular local issues after following a transparent consultation process.

The Building Appeals Board/Dispute Resolution

- 3.17. The Building Appeals Board (BAB) mechanism that operates in some States/Territories is an effective and efficient mechanism to deal with dispute resolution, modifications to building regulations, and to hear technical related building appeals outside a formal legal process. Master Builders Australia recommends that similar Building Appeals Board be created in each State/Territory and include industry experts in various disciplines such as architecture, planning, building, building surveying and engineering. These experts should hold full-time positions on the Board as they would if they were a member of a Tribunal or similar. Practitioners undertaking this work on a part-time basis while also operating their own businesses in the industry is not practical and can lead to conflict of interests.
- 3.18. Most building disputes are technically related and some contractually related. MBA believes the BAB with a panel of industry experts would deal with technical dispute resolution more effectively and in a more timely manner than a Tribunal or Court. Building disputes that have contractual issues should be sent to the relevant jurisdictions for resolution.

4. ASSESSING THE CODE

- 4.1. The BCA is under considerable pressure to incorporate increasing community expectations in the design of buildings and how they perform.
- 4.2. Master Builders Australia, on balance, believes this is appropriate and, if nothing else, an inevitable outcome of an increasingly sophisticated and more wealthy community. However, these additional requirements will increase the tension in achieving the objectives of minimum and cost-effective requirements. For instance, higher requirements in residential building leads to lower housing affordability. This reinforces our concern already outlined for the objectives of the ABCB to remain focused on achieving minimum and cost-effective solutions and that those seeking higher standards be required to demonstrate the imperative for such higher standards rather than the ABCB having to defend and argue against such increasing stringency.

Disability Access

- 4.3. Master Builders supports the concept of codifying the DDA and to set minimum acceptable levels for disabled access and facilities into the BCA. This should ensure the delivery of cost effective requirements. The draft premises standard and the draft AS 1428.1, in our view, however, goes far beyond what is considered fair and equitable to deliver dignified access to buildings and the provision of facilities within buildings. This is not achieving community expectations in a fair and cost effective way. It does not meet the objective of the BCA and is inconsistent with how requirements for regulations are developed or amended in other sections of the BCA dealing with fire, smoke, health and amenity.

Is the Building Code of Australia (BCA) the appropriate vehicle for future water, energy and sustainability needs?

- 4.4. Master Builders Australia believes that the BCA is the appropriate vehicle for future building-related standards pertaining to water, energy and sustainability and any other issue related to buildings. It can deliver a nationally consistent and cost-effective regulatory framework for builders operating across Australia, particularly for builders working across State/Territory boundaries. A BCA containing a wider regulatory framework will deliver a more cost-effective and streamlined product to the consumer. We also believe that a more comprehensive code with all relevant building legislation in one document will assist to design, develop and deliver one training package that is nationally consistent. This is much more efficient and effective than delivering numerous variations across Australia and will assist in the training of industry.

Maintenance

- 4.5. There has been a proposal that maintenance issues be included or covered by the BCA. As a general principle, we strongly oppose the coverage of maintenance in the BCA. This matter we believe is the responsibility of owners in the normal commercial management of buildings. We support, however, the setting of maintenance requirements for essential services such as fire services, health and safety, but we would oppose the inclusion of general maintenance.

- 4.6. Master Builders supports the concept of recent moves to incorporate Maintenance of Essential Services into the BCA. With a performance Building Code which relies on active system to ensure safe egress from the building, it is imperative that these systems are maintained to a level that will ensure the proper operations of such systems.
- 4.7. However, recently there appears to be an effort to incorporate general maintenance into the BCA which Master Builders cannot support. General maintenance of doors, heating and cooling systems for example should be maintained by the manufacturer's recommendations. This will prevent voiding warranty periods and the like.

Access to the BCA

- 4.8. Results from our National Survey revealed that 77% of builders surveyed had a copy of the BCA or had access to the BCA. The cost appears to be a significant issue with most builders. A review should therefore be conducted as the appropriateness of the current pricing structure and to assess what impact pricing has on accessing the BCA by practitioners.

The Fire Authorities versus the Building Code of Australia

- 4.9. This is an important issue that needs to be resolved because of the conflicting objectives between the BCA and the fire authorities.
- 4.10. The BCA's prime objective is to ensure the safe egress of people from a building and that the fire is contained to part of the building or the whole building until fire services can arrive. The fire authorities on the other hand are more concerned with property protection by seeking to prevent the fire from spreading to adjoining allotments/properties.
- 4.11. We do not support for the BCA objective to be changed to property protection. We believe that the cost of compliance across Australia, in the event that one day a building may catch on fire, would be prohibitive.

5. INSPECTIONS AND PRIVATE CERTIFICATION

- 5.1. The private certification model adopted by most States/Territories in Australia has been one of the most progressive and innovative models produced across Australia. It has led to more efficiencies and a framework to meet the high demands of building approvals. However, we are concerned at the inadequate number of qualified people in the industry. Practitioners are experiencing problems with obtaining professional indemnity insurance. They also have difficulty in keeping up with the changes to the regulatory framework which leads to many of them leaving the industry.
- 5.2. The inspection process is coming under greater scrutiny by governments. There is a view by some administrations for the inspection process to be the 100 per cent of the entire project. There is an imperative for these inspections to be carried out at key intervals throughout the project to verify compliance at stages of critical structural adequacy. It is not the responsibility of the certifier or the building inspector to ensure that quality control has been completed to meet all standards and Building Code requirements throughout the entire project. It is unrealistic to expect every element of the construction phase to be inspected. To achieve this, a building surveyor/inspector would be required to be on-site all day every day. This would be cost-prohibitive nor would there be resources available to achieve this.
- 5.3. However, the issue needs to be addressed from a legal perspective. The current legislative framework seeks to check compliance at various structural stages throughout the project but there is no requirement to check the 'quality' of work relatively aesthetic matters or non structural elements of the work. However, the legal profession and the legal system are seeking total compliance, at all stages of a project, which impacts on the costs and availability of Professional Indemnity Insurance. Those unable to obtain insurance leave the industry.

6. MASTER BUILDERS NATIONAL SURVEY

- 6.1. As part of Master Builders Review of the Building Code of Australia (BCA), in conjunction with the Productivity Commission inquiry, a survey of members throughout Australia was conducted.
- 6.2. 299 replies were received, comprising 211 residential projects and 88 commercial projects.

- 6.3. Builders were asked to respond to a range of questions regarding the work they undertook on either their last or current contract. This provided a snapshot of business activity comprising \$77 million of residential activity and \$87 million of commercial activity.
- 6.4. Results of the survey are presented below, both at the national level and at the State/Territory level.
- 6.5. Figures in brackets for the national results refer to the outcome for the residential sector alone and in interpreting the State results, caution should be used for the results for ACT, SA, and WA, as the survey's sample size was quite small.

DO YOU HAVE ACCESS TO A COPY OF BCA?

Yes hard copy	61.5	(61.1)
Yes electronic	16.1	(13.3)
No	22.4	(25.6)

Overall, 78 per cent of respondents had access to a copy of the BCA with the majority of these possessing it in hard copy form. The results for the residential sector were not significantly different to the overall outcome with not surprisingly a higher proportion of commercial builders having access to the BCA in electronic form.

USE OF BCA

Use regularly	23.7	(21.8)
Never refer to	6.4	(8.1)

At the national level 94 per cent of respondents indicated that they use the BCA at sometime. This result was replicated in the residential sector, where 92 per cent of respondents indicated that they used the BCA sometimes.

As can be seen above the proportion of builders who do not refer to the BCA is very low and around a quarter of respondents indicated that they use the BCA on a regular basis.

IMPACT OF THE INTRODUCTION OF THE BCA

Value added	48 (47)
Detracted value	3 (3)

Respondents were asked about the impact of the BCA on their business. 48 per cent of respondents indicated that the introduction of the BCA had added either a lot or some value to their business, with only a very small 3 per cent indicating that the BCA had detracted value from their business.

EXTRA PLANNING REQUIREMENTS

Extra Planning Requirements	47 (45)
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EXTRA BUILDING LAWS

Extra Building Laws	37 (38)
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Respondents were asked whether in their last contract, the local council had extra planning or building requirements. 47 per cent indicated the existence of extra local council planning requirements and 37 per cent indicated the existence of extra local council building laws. These proportions were similar for the residential sector.

Respondents were asked to provide an estimate of the additional construction costs of these local council requirements over and above the BCA in a range of areas as indicated below. As can be seen major additional requirements were in the areas of energy ratings, termite barriers, insulation and fire safety.

The frequency of these additional requirements across these areas were generally higher in the residential sector than the commercial sector, with the incidence of additional requirements relating to flooding significantly higher in the residential sector. As would be expected additional requirements relating to disability access were lower in the residential sector than the commercial sector.

FREQUENCY OF EXTRA COUNCIL REQUIREMENTS

Energy Ratings	36 (42)
Termite barriers	35 (42)
Insulation	34 (41)
Fire Safety	30 (29)
Glazing	26 (29)
Overlooking/overshadowing	24 (27)
Disability requirements	19 (11)
Gutters and downpipes	17 (21)
Weatherproofing	15 (17)
Construction in bushfire areas	14 (16)
Heating appliances	12 (12)
Flooding	11 (36)
Sound transmission	10 (17)
Swimming pools	10 (10)

ESTIMATED INCREASE IN COST TO BUILD NEW HOUSE

Newcastle	\$3117
NSW	\$2945
Australia	\$2712
QLD	\$1736
VIC	\$1712
SA	\$1357
TAS	\$1121

By comparing the estimated cost of these additional council requirements with the total value of building under construction to which they referred, it is possible to make an estimate of the dollar impact of these requirements on the total cost of building a new house. For the purpose of this exercise it was assumed that the base cost of this construction was \$150,000 in all States and Territories. While clearly building costs do vary across Australia, the standardisation of the new home package to this amount enabled the more potent analysis of these additional council requirements as they vary across Australia.

As can be seen above the impact of these additional council requirements was quite significant with the impact most pronounced in NSW and in particular the Newcastle area where additional council requirements were estimated to add around \$3,000 to the cost of a new \$150,000 house.

The impact of additional was less pronounced in Queensland and Victoria where additional cost was around \$1,700.

STATE RESULTS

COPY OF BCA

ACT	80
NEWCASTLE	71
NSW	81
QLD	73
SA	76
TAS	90
VIC	91
WA	67

USE OF BCA

	USE REGULARLY	NEVER REFER TO
ACT	40	0
NEWCASTLE	29	7
NSW	21	6
QLD	26	5
SA	38	0
TAS	20	10
VIC	24	6
WA	33	0

IMPACT OF BCA

	ADDED VALUE	DETRACTED VALUE
ACT	40	0
NEWCASTLE	64	0
NSW	62	2
QLD	52	1
SA	69	0
TAS	60	10
VIC	49	2
WA	67	33

	EXTRA PLANNING REQUIREMENTS	EXTRA BUILDING LAWS
ACT	60	68
NEWCASTLE	79	57
NSW	65	48
QLD	33	33
SA	31	46
TAS	30	30
VIC	49	21
WA	67	33

IS THE BCA STILL RELEVANT

ACT	100
NEWCASTLE	93
NSW	85
QLD	84
SA	92
TAS	80
VIC	79
WA	67

7. CONCLUSION

7.1. Master Builders supports the current framework with some suggested amendments within the document as outlined above. We believe that the ABCB and the Building Code is generally delivering a cost-effective, minimum benchmark for building across Australia to ensure safety, health and amenity for clients in domestic and commercial buildings.

JB