



Our Reference: DG 7503

Your Reference:

The Commissioner
Study into Reform of Building Regulation
Productivity Commission
PO Box 80
Belconnen ACT 2616

- 7 JUN 2004

Attention Ms M Eibisch

Dear Ms Eibisch

Re: Reform of Building Regulation - Productivity Commission Issues Paper (March 2004)

Thank you for the opportunity to comment on the above Productivity Commission Issues Paper on the reform of building regulations. I apologise for the delay in responding.

The Department has been connected with the regulatory reform process over the past 15 years through its membership of the NSW Building Reform Advisory Council. The ABCB has achieved many significant reforms since 1994, particularly in long-overdue areas such as fire safety reform and performance provisions. Many of these reforms have become models of regulatory reform, setting international benchmarks for building regulation.

The questions raised in the Issues Paper are wide-ranging, and the Department can only respond to those matters within its purview. However as the largest residential property owner in Australia with a portfolio of some 130,000 dwellings, there is value in contributing to the Commission's review, as follows:

- **The ABCB's mission:** The Department believes that the ABCB's mission remains relevant to the community and to the Department, that is " *...provide for efficiency and cost effectiveness in meeting community expectations for health, safety and amenity in ... buildings through the creation of nationally consistent building codes, standards, regulatory building requirements and regulatory systems.*" The Department believes that continuing national regulation reform is best served by retaining the mission of the ABCB, increasing its capacity to achieve reform, and redefining the scope and funding of the BCA.
- **The Department's interests** are in its residents' health, safety and satisfaction with the accommodation provided, in improving ongoing maintenance and management of its large portfolio, in the life cycle value of its properties and in the long-term sustainability of its assets. In this regard, the Department has a different perspective on building regulation to that of the residential development sector.

- **The 2000 Laver Review:** Although the 2000 Laver Review flagged sustainability issues for future reform, and the BCA has addressed some sustainability issues', a comprehensive regulatory approach is needed to address the many challenging issues that will affect the community and the Department in the near future. A broad sustainable reform agenda will better link energy efficiency and universal access regulation initiatives to other regulation.
- **Regulation reform:** The slowdown of reform in the ABCB may be in part related to the market-driven nature of the building industry. The diversity of stakeholder opinion has meant that achieving an acceptable resolution of 'harder' reform issues, such as energy efficiency and greenhouse gas impacts, has been difficult without Commonwealth government commitment.
- State and local government bodies have introduced wide-ranging environmental sustainability regulations to address a national policy vacuum in this area. In some cases, sustainability regulation has been removed to statutory planning areas. Many of these State and local regulations have an impact on the Department's portfolio.
- As a central element of building industry infrastructure, the regulation reform process requires sufficient time, sufficient investment and active government backing to plan and gain community support for the introduction of nationally consistent sustainability reforms. In particular, sufficient research funding and consultation to achieve viable reform that demonstrates government commitment to reform is essential. The expectation that this can be directly market funded needs to be re-examined.
- **Sustainability regulation:** An effective regulatory environment is needed to allow the development of efficient and effective markets in sustainable areas - the current carbon tax debate is a case in point. The assessment of cost-benefits and pricing of externalities are required to address the sustainability agenda, where there are broad community benefits but higher regulation costs. Transparency of process will encourage wider community support. Cost transfer mechanisms are required to ensure that the building industry is not unduly impacted.
- A new paradigm is required to address the traditional distinction between building and planning regulation, and provide new and better ways to regulate sustainable agendas. Many sustainable issues cross into ecology, human behaviour and public health, and wider cross-sector representation is essential to improve current regulation.²
- Nationally consistent regulation should continue to be an ABCB goal. Many Department contractors operate across State borders, and materials and products are sourced interstate. However administration of the BCA could be considered a State matter and is a separate issue to BCA reform.

¹Recent examples are BCA salinity measures, and material durability in Australian Standards

² A case in point is health professionals' advice to encourage 'porous' (naturally ventilated) buildings, while energy efficiency regulation promotes sealed buildings.

- **Research & policy:** To retain the BCA's world-class reputation for regulatory innovation, the ABCB needs to rebuild its research and policy areas. A period of BCA consolidation followed the rapid regulatory evolution of the early-mid 1990s. The scope and quality of Regulation Impact Statements and reform processes appears to have declined over the last five years. Lengthy coordination delays, difficult consultations and stakeholder resistance appear to have contributed to regulation uncertainty and lack of innovation.

The Issues Paper raises BCA implementation issues. Some operational concerns of the Department could be addressed in this review, as follows:

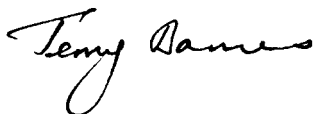
- **Local government administration of the BCA** is inconsistent across local government in areas such as:
 - BCA requirements applied to all work in existing buildings.
 - Excessive prescriptive BCA deemed-to-satisfy planning approval conditions;
 - A reluctance to consider alternative solutions without extensive and costly support documentation, despite reference to similar solutions approved elsewhere.

See Attachment 1 for examples.

- **Active compliance** with certain alternative BCA solutions requiring ongoing 'active' compliance, regular inspection/compliance certification, such as the provision of staff to assist fire evacuation;
- **Blurring of planning and building regulation**, such as the inclusion of the NSW energy rating tool BASIX into planning legislation (SEPP). This suggests that sustainable regulation may require links to both areas.
- **Support tools** such as national product certification, are required.

Please contact Mark Singer, Manager Asset Policy and Technical Advice on (02) 8753 8707 if you have any inquiries regarding this response.

Yours sincerely



Terry Barnes
Director-General
Department of Housing

Attachment 1

01 JUN 2004

TTY Call Centre **1800 628 310**

ATTACHMENT 1

EXAMPLES OF OPERATIONAL ISSUES RELATED TO BCA COMPLIANCE THAT MAY BE EXAMINED IN THE 2004 ABCB REVIEW

BCA requirements applied to all work in existing buildings

An upgrade of 3 storey flat buildings in a Sydney public housing estate required consent to current BCA requirements for egress although the only changes proposed were to internal unit layouts, and external upgrades of existing fabric. This condition was not practically achievable, and the egress condition (requiring an separate fire-isolated stairway for 6 units), was deleted.

Excessive prescriptive BCA deemed-to-satisfy planning approval conditions

A 2001 inner-Sydney council order for fire upgrading in three Department high-rise residential buildings, included conditions requiring installation of sprinklers throughout the whole building (including within fire stairs) plus other prescriptive conditions such as full compartmentation, 4 hr fire doors, thermal detectors, EWIS systems, and fire doors to lift compartments. The complete package was costed at \$12M, compared to a fire-engineered solution at \$6.5M.

A reluctance to consider alternative solutions without extensive and costly support documentation, despite reference to similar solutions approved elsewhere

An inner-Sydney council would not accept fire-engineered upgrade documentation (as part of a Development Application of a 3 storey flat building), that referred to an identical fire-engineered building upgrading completed in a nearby LGA. Council required full fire-engineered documentation for the second inner-Sydney flat building.