

PRODUCTIVITY COMMISSION DRAFT REPORT REFORM OF BUILDING REGULATIONS

Comments by the Building Products Innovation Council, October 2004

Draft Recommendation (DR) 5.1: The objectives of the ABCB (or its replacement) should be clarified in order to remove unnecessary conflict, overlap and imprecision.

While this recommendation is made in the light of the imprecise nature of some of the references in the current objectives for the ABCB the BPIC would suggest that the objectives must continue to promote the core criteria of national consistency as the prime driver.

DR 5.5: Where a building solution imposes maintenance requirements throughout the life of a building, these should be required by regulation to be documented and prospective owners and occupiers should be informed of these requirements.

The Commission notes that both awareness and regulation may be appropriate to enshrine the value of inclusion of maintenance provisions in the BCA. BPIC supports this objective and notes that this should lead to improved, or at least better considered, material selection options at the design stages, taking into account issues of affordability.

BPIC also considers that in certain circumstances, for example where performance based fire safety systems have been incorporated into the building, it may be a requirement that these be maintained throughout the life of the building. Obviously in such circumstances maintenance requirements take on an even more important role.

DR 6.6: The ABCB (or its replacement) should set up a rigorous framework to assess whether it is appropriate to include any additional mandatory requirements in relation to the environmental objectives in the ABCB.

Even since the commencement of this inquiry the involvement of industry and governments in the discussion around environmental and energy issues has magnified. BPIC holds that the BCA is the appropriate administrative and regulatory body to inform and enforce issues of energy efficiency and sustainability to the extent that they relate to the built environment. We do however note that this support is based on adoption of a more responsive and authoritative ABCB.

DR 6.7: The ABCB (or its replacement) should put in place a system for assessing mandatory standards for buildings energy efficiency to ensure they are soundly based (with benefits greater than costs) and that they are applied consistently across jurisdictions.

BPIC does not underestimate the task in hauling back the growth in independent energy assessment mechanisms. We agree that a mandatory standard applied nationally would, with the state and local government support, adequately handle this issue. We are not

convinced that the new or proposed amendments to an IGA would ensure the nationally consistent approach that is identified as beneficial.

DR 6.9: The future work agenda for the ABCB (or its replacement) should include an examination of ways to reduce the scope for the national consistency objective of building regulation to be eroded inappropriately by Local Governments through their planning approval processes. Avenues for this include:

- *the possibility of Local Governments being required to seek prior approval from the relevant State Government to apply building requirements that are inconsistent with the BCA;*
- *these requirements should be assessed as to whether net benefits would accrue.*

To assist the design of such a system, the ABCB (or its replacement), in consultation with key stakeholders, should examine the possibility of defining a clear delineation between those issues to be addressed by planning regulation and those issues to be addressed by building regulation.

BPIC fully supports the need for a clear delineation between building and planning issues to ensure that progress can be made on the above objectives. BPIC would like to think that once this agreed delineation was declared State and Territory Governments would implement measures to ensure that building regulations are not dealt with on a local basis. BPIC also fully supports the need for a net benefit test at every level of control where variations are proposed, however in our preferred scenario this would involve state governments, not local, considering any variations.

Request for Input – the adequacy of training and education arrangements in the building and construction industry, and the role, if any, that the ABCB should take.

BPIC are of the view that while training and education can always be improved, the real question may in fact be the ability of the BCA to respond to alternative solutions that derive from more advanced training and education. Coupled with this, there are certain sectors that face critical skills shortages. While there are many reasons for this, BPIC is mindful that one of the detriments arising from a widening brief for the ABCB or its replacement is a more complex BCA. This must be carefully considered as if a core knowledge of the BCA is considered an appropriate aim for future builders then it must be presented in a form that is developed from the client perspective. The client is in fact the builder. BPIC believe that the ABCB would need to develop competencies in this work area and therefore it would be better to involve other authorities such as the Australian National Training Authority, HIA, MBA, ACCI, etc.

DR 7.3: The ABCB (or its replacement) should work at identifying and communicating best practices that improve compliance and enforcement of the BCA. The development of a best practice model, for use by States and Territories, is one option for achieving this.

BPIC agrees that this should be a priority for the ABCB. BPIC sees this activity as being yet another piece in the design to arrive at a nationally consistent approach which does not stop at written form but extends to application and interpretation at all levels of Government.

DR 8.1: The ABCB (or its replacement) should continue to pursue improvement in its use of Regulation Impact Analysis, drawing on the advice of the Office of Regulation Review.

To be consistent with its core objectives (as currently stated or suggested) the ABCB must very carefully consider any proposed additional or modified regulation. BPIC agrees that a thorough regulatory impact assessment must be undertaken and include consideration of those issues mentioned in the draft report which encompass full life cycle assessment, revisiting the decision to ensure that assumptions were valid in the face of actual outcomes, proper consideration of compliance costs, etc.

DR 8.2: The Australian Government should examine the appropriateness of a private company (Standards Australia International) being the sole Australian representative in international standards forums and consider the merits of having the ABCB (or its replacement) also perform this role for building and construction matters, perhaps in conjunction with SAI.

DR8.3: The Memorandum of Understanding between Standards Australia International (SAI) and the ABCB and the Referenced Documents Protocol should be re-negotiated to provide for a clear requirement for RIS-type analysis to be undertaken by SAI (perhaps in conjunction with ABCB, or its replacement) at an early stage in the development of standards that are expected to be referenced in the BCA, and are likely to have non-minor effects.

BPIC agrees that a rigorous RIS analysis must form part of any consideration of referenced documents. It would be preferable that this again is applied at the earliest stage of consideration, i.e., at the Standards committee initial consideration and not be left to the end of the “technical” process.

It is important that the Commission note the core issues are the appropriate mix of technical skills to debate the issues and the system to convey the outcomes of debates or discussion to the Australian interests. The ABCB is well placed to take part in this role, resources permitting.

DR 8.4: The ABCB (or its replacement) should continue its efforts to expedite BCA reforms. Governments could consider incorporating into a revised IGA explicit target timeframes for different stages of the consultation and decision-making process. However, any such timeframes must appropriately reflect the need for comprehensive consultation and rigorous impact analysis.

BPIC feels that what is needed is an ABCB with properly informed and empowered membership, such that issues of national significance and implication like sustainability are not bogged down in administrative system. State and Territory Governments have a significant role to play in acknowledging that the BCA is the appropriate regulatory regime through which to pursue this approach. BPIC would also ask the Commission to consider

the timeframes and the RIA, and whether in fact the outcome of the RIA should determine the speed with which action is taken, not a timeframe set prior to any assessment process.

DR 8.6: The ABCB's cost recovery arrangements should be amended to be made consistent with the Australian Government's cost recovery guidelines. The revised IGA, when presenting future funding for building regulation reform, should be structured so as to provide sufficient funding for the reform agenda and to enable a minimum level of access to the BCA, free of charge.

BPIC still holds that the BCA should be provided free of charge to promote it as the primary guide to building in Australia, but we also recognize the resource issues that this raises under the current ABCB funding structure. While these issues have been raised in the draft report it is important to note that perhaps greater exposure, achieved by reducing costs of access or increasing means of access, may be a significant development in promotion of the BCA.

Product Certification: BPIC have included this issue at this point as although there is no specific recommendation on the matter there is a view expressed by the Commission that there are incentives for firms to voluntarily apply for certification and that a non-mandatory scheme combined with an education campaign would be a low cost, more efficient solution.

BPIC would like to reiterate that we see two separate issues here, the first being the ability of a national certification system as a more timely (commercially based) recognition of innovation in materials design and application, and secondly as a means for ensuring minimum standards of health and safety are met. BPIC does not agree with the Commission that mandatory certification is more of a barrier to imported than to local products and if in fact such an assertion is made then surely it should be on the basis of particular bi-lateral trade market access issues. It is our view that in effect, to achieve any long term product support infrastructure in Australia a provider of materials will always seek to have a product achieve certified status, thus increasing the market penetration and indicating the level of commitment demanded by most significant purchasers. This may of course differ where product is sold through retail operations to non-licensed operators, but BPIC would argue the standard should still apply. It is not, as is suggested by the Commission comments, a non-tariff barrier. It is an equally applied barrier to product from all sources and is aimed at a minimum level of performance for health, safety, amenity and possibly environmental reasons.

Further to the above the BPIC membership is keen to further explore methodologies that will allow for a speedier inclusion of innovative products and practices through to the BCA. It is probable that product certification may provide an avenue to assist in this process and BPIC is continuing to explore this area. BPIC also believe that the BCA should provide for mutual recognition of suitable industry based certification programs.

DR 10.1: There should be a recommitment by governments, in a revised IGA, to the objective of consistency across jurisdictions for building regulation. State and Territory

Governments should ensure that BCA amendments determined by the ABCB (or its replacement) are automatically referenced in State and Territory legislation and that jurisdictional variations and additions are minimised.

BPIC fully supports the recommitment by governments to the objectives of consistency across jurisdictions, but again reiterates that this recommitment will in our view only flow through to enforced regulation if the ABCB is allowed to reconvene under a different structure, in our view a statutory authority type of approach. Further to this, the Commission finds that an annual meeting of Ministers bringing to the table a whole of Government approach would be a significant step in achieving the aims of national consistency. BPIC agrees this would be a valuable process, but sees no difference in the ability of this process from that currently in place in terms of nationally consistent enforcement without other supporting structural reforms. This can only be achieved through administrative reform as argued by many of the submissions to the inquiry. Clearly many of the participants to this inquiry believe that the ABCB is the appropriate body for building regulatory development and reform on a national level and that they have achieved significant outcomes under the current arrangements. We want to see the ABCB strengthened to enable it to properly tackle the issues arising from a broadened agenda.

As noted by the Commission, the creation of a statutory authority would create the highest level of independence. The evolving issues demand a more responsive ABCB and a statutory body will provide that, whereas the current arrangements clearly do not. BPIC also notes the Commission's observation that the requirements for statutory authorities to be created under a legislative base may make it difficult to change this base. We are of the view that the work to define the distinction between planning and building regulations will inform the legislative drafting process to a degree necessary to limit any frequent trips to parliamentary draftsman.

As can be extracted from the above, BPIC is not of the view that the MOU between the ABCB and the Department of Industry, Tourism and Resources will provide the necessary independence, although it would be an improvement under the current operating mechanism. While financial and operating independence would be a core to a better outcome for the ABCB and the BCA, BPIC does not see this as the main, although it is one, driving force for a variant in administrative arrangements. The core driver is the outcomes on a consistent national basis with enforcement.

DR 10.2: The ABCB Chairman should be an additional Board member, rather than being chosen from amongst the Government and industry members. The appointment should be independent from sectional interests and based on a demonstrated capacity to advance the work of the Board.

BPIC supports this recommendation and reiterates the view that the skills and attributes of the Board members are important, and that while clearly each state must be represented (at a senior decision making level) the Chairman should have a good grasp of the issues facing the industry. Under our preferred statutory authority approach the skills and representation base are equally important. Given the important role played by the materials suppliers, the housing industry, architects, etc, it is important that they are clearly represented at the

Board. In fact, regardless of the structure the representation should cover those areas indicated in our earlier submission, covering each state and territory, plus one from each of the manufacturing and delivery arms of the building industry.

DR 11.1: The mission statement for the ABCB (or its replacement) should be amended to:

In addressing issues relating to health, safety, amenity and the environment, to provide for efficiency in the design, construction and use of buildings through the creation of nationally consistent building codes and standards and effective regulatory systems.

BPIC supports this amended mission statement.

DR 11.2: The objectives of the ABCB (or its replacement) should be amended to:

Proposed Objective 1

Establish building codes and standards that are the minimum necessary to address efficiently relevant health, safety, amenity and environmental concerns.

In determining the area of regulation and the level of the requirements, the Board should ensure that:

- *there is a rigorously tested rationale for the regulation;*
- *the regulation would generate benefits to the community greater than the costs (ie net benefits);*
- *there is no regulatory or non-regulatory alternative (whether available to the Board or not) that would generate higher net benefits.*

Proposed Objective 2

Ensure that, to the extent practicable, mandatory requirements are:

- *consistent across the States and Territories*
- *performance based*
- *based on international standards*
- *expressed in plain language.*

Proposed Objective 3

Identify and seek implementation of improvements to compliance and enforcement systems for building regulation.

Proposed Objective 4

Identify and seek to implement ways to reduce reliance on regulation by exploring alternative mechanisms for delivering outcomes, including:

- *non-mandatory guidelines*
- *training to increase skill levels of building practitioners and certifiers.*

In terms of draft recommendation 11.2, BPIC would only point out that the requirement for the ABCB (or its replacement) to ensure “that there is no regulatory or non-regulatory alternative (whether available to the Board or not) that would generate higher net benefits” is a significant requirement. We believe that to make this a primary objective could stifle action. All parties would agree that the ABCB will always look at minimizing regulation and given the earlier advanced mission the efficiency requirements would over-ride this requirement.

DR 11.3: The ABCB’s name should be changed to the Australian Building Regulation Board (ABRB), to better reflect its proposed wider responsibilities and future work agenda.

BPIC has previously provided our suggestion that the ABCB become the Australian Building Commission.

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