



11 October, 2004

Mr Tony Hinton
Commissioner
Reform of Building Regulation
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Hinton,

Reform of Building Regulation Commissioned Study

The Property Council welcomes the opportunity to participate further in this Productivity Commission Inquiry.

In our first submission we argued for national consistency in the application of building regulation and called for an overhaul of the Australian Building Codes Board's (ABCB) structure. Those arguments stand, and this current submission should be considered in conjunction with its predecessor.

In summary, our key concerns relate to:

- structural reform of the Australian Building Codes Board;
- a rigorous and effective Inter-Governmental Agreement;
- national consistency in building regulation; and
- the contents of the Building Code of Australia

If you would like to discuss the issues in this or the previous submission further, please don't hesitate to contact me on (02) 9033-1956.

Yours sincerely,

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**PROPERTY
COUNCIL**
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Contents

Introduction

Summary of Recommendations

A Reconstituted Australian Building Codes Board

A Stronger Inter-Governmental Agreement

National Consistency

The Building Code of Australia

Conclusion

Appendix 1: The Property Council of Australia

Appendix 2: Responses to Recommendations

Appendix 3: Elements of a New Building Regulatory System

Introduction

The Property Council welcomes the opportunity provided by this Productivity Commission study on the Reform of Building Regulation.

We believe that this is the ideal time to strike out towards proper national consistency of building regulation and provide a strong platform for Australia's ongoing economic development.

The Property Council supports the Australian Building Codes Board (ABCB) and its work.

However, we believe that by strengthening the organisation and ensuring commitment from state, territory, and local administrations, the next phase of reform can begin.

For too long, national consistency in the application of building regulation has been forgotten in favour of a focus on the technical provisions of the Building Code.

While that may have been a reasonable approach up until this point, the time has come to ensure that building regulation is truly nationally consistent.

The creation of a statutory authority, answerable to a COAG Ministerial Council and underpinned by a rigorous Inter-Governmental Agreement, together with the appointment of a Federal Minister for Building will ensure that there is strong commitment to the goals and principles of the ABCB.

This submission complements the arguments in its predecessor, with a specific focus on the appropriate structure of a revamped ABCB. It also addresses each of the findings and recommendations of the draft Report.

The two submissions should be considered in tandem.

For further information on this or the previous submission, please contact Paul Waterhouse on (02) 9033-1956.

Summary of Recommendations

1. That the ABCB be reconstituted as a statutory authority, as outlined in the Property Council's proposed structure in Appendix 3 of this submission.
2. That a Ministerial Council under the auspices of COAG be established to guide the building regulatory process.
3. That a Minister for Building be appointed, reporting to the Industry Minister, who would have direct responsibility for building regulation issues.
4. That building regulation be vested only in the Building Code of Australia and that governments agree not to introduce variations.
5. That Board members of the ABCB should:
 - a. have expertise in building matters;
 - b. attend meetings consistently;
 - c. be nominated by the Australian Construction Industry Forum, if representing industry; and
 - d. represent a "whole-of-government" perspective if representing government.
6. That the Australian Government negotiate a new IGA with the state and territory governments.
7. That the IGA should:
 - a. confirm the commitment of each government to the ABCB, to regulatory reform, and to the automatic adoption of BCA amendments without variation;
 - b. support the inclusion of all areas of building regulation within the BCA;
 - c. endorse the requirement for a demonstrated need and evidence of the cost-effectiveness of proposals to be shown before regulation is introduced;
 - d. confirm the commitment of governments to regulation representing minimum acceptable standards;
 - e. identify the need for incentive mechanisms to encourage leading industry practice; and
 - f. confirm the commitment of each government to regular reviews of existing regulation and the reduction of the regulatory burden.
8. That the IGA should confirm:
 - a. that variations from the BCA requirements should not be possible under any circumstances, but proposed changes negotiated through the ABCB; and
 - b. that planning regulations should only be able to cover planning issues, not areas of building control.
9. That asset protection only be included in the BCA if sufficient evidence is provided of market failure.
10. That the role of private practitioners in building certification be protected.

A Reconstituted Australian Building Codes Board

A Statutory Authority

In its draft research report, *Reform of Building Regulation*, the Productivity Commission made it clear that the creation of a statutory authority reporting to a Ministerial Council was not a preferred outcome.

Reasons given in discussions were that the option was, in the Commission's view, politically untenable, and that the legislation creating a statutory authority would be unlikely to pass through the Senate.

However, with the Coalition Government looking increasingly likely to gain control of the Senate, there has been no better time to pursue such an important nation-building reform.

Unlike other statutory authorities with more obvious political overtones, an ABCB underpinned by legislation is less likely to grandstand and more likely to pursue its core purpose, namely national consistency in building regulation.

The Productivity Commission should therefore be concerned with outlining the most effective options for delivering building regulation reform. Political considerations about the success of such options are ultimately be the responsibility of the relevant ministers.

Recommendation: *That the ABCB be reconstituted as a statutory authority, as outlined in the Property Council's proposed structure in Appendix 3 of this submission.*

A Ministerial Council and a Minister for Building

In order to ensure proper ministerial oversight of the statutory authority, the Property Council proposes the establishment of a COAG level Ministerial Council.

This will allow commonwealth, state, and territory ministers to demonstrate an ongoing commitment to building regulation reform, while still being able to set directions for the ABCB that reflect government policy.

The Australian Government's interests would be served through the creation of a Minister for Building, who would chair this Council on behalf of the Commonwealth.

While we recognise that planning and building regulation are primarily state and territory responsibilities, Canberra's support for this industry is essential in the drive towards national consistency and a national administrative framework.

The construction industry is worth billions of dollars to Australia's GDP each year. To date the Industry Minister has been a good ally, but we believe that a junior minister with direct responsibility for construction and planning is now necessary to provide much needed support to Minister Macfarlane.

The Australian Government has to be more engaged in this area than merely providing some funding, and take up a significant role in building regulation, planning issues, and the development of a national urban strategy.

Without this commitment, the benefits of national consistency could be lost in the inefficiencies of regional politics.

Recommendation: *That a Ministerial Council under the auspices of COAG be established to guide the building regulatory process.*

Recommendation: *That a Minister for Building be appointed, reporting to the Industry Minister, who would have direct responsibility for building regulation issues.*

An Executive Agency

The purpose of creating a statutory authority to replace the ABCB is to ensure that it has sufficient independence and authority to pursue reform.

If such a move proves to be politically unpalatable, the new Board should at the very least be established as an executive agency, to ensure that there is direct ongoing involvement from the Australian Government.

The Power to Make Regulation

Regardless of its status, the ABCB or its successor must be given power to develop binding building regulation.

It should not be possible for state, territory, or local authorities to develop variations to the BCA. Such a move negates the benefit of having a national document.

States and territories should commit to minimum standards residing in the Building Code of Australia and not being raised unilaterally, and the ABCB must have the power to enforce this commitment.

Recommendation: *That building regulation be vested only in the Building Code of Australia and that governments agree not to introduce variations.*

Composition of the Board

As previously mentioned, the Property Council of Australia has recommended a new structure for a revamped Australian Building Codes Board.

We believe that there needs to be more commitment from Board members to the ABCB and to the work of the secretariat and its committees.

To this end:

- all Board members should have expertise in building matters, regardless of whether they represent government or industry. This is because the Board is making decisions that will affect the entire construction industry and members should be aware of the impacts of their decisions;

- a new Inter-Governmental Agreement (IGA) must emphasise the need for representatives to attend Board meetings regularly and consistently. Too often over the past few years the work of the Board has been hampered by a constant stream of changing government representatives, which is disruptive and results in a loss of corporate knowledge;
- the Australian Construction Industry Forum, representing the majority of construction industry industry associations, must continue to be the nominating organisation for industry Board members, to ensure that the interests of the whole industry are represented; and
- there needs to be greater commitment to the ABCB from all levels of government – government representatives should be sufficiently senior to be able to speak from a ‘whole-of-government’ perspective.

Unless there is appropriate commitment to, and support of, the ABCB, the drive towards greater national consistency will undoubtedly fail.

Recommendation: ***That Board members of the ABCB should:***

- *have expertise in building matters;*
- *attend meetings consistently;*
- *be nominated by the Australian Construction Industry Forum, if representing industry; and*
- *represent a “whole-of-government” perspective if representing government.*

A Stronger Inter-Governmental Agreement

The most important aspect of building regulation reform, and the one issue that appears to be accepted by all stakeholders, is the need for a new Inter-Governmental Agreement (IGA).

The Property Council supports the general contents proposed by the Productivity Commission for inclusion in a renegotiated IGA. However, the IGA must have “teeth”, for unless the agreement binds governments, the ability for real reform will be lost.

Furthermore, the agreement must be signed by the state Premiers or Chief Ministers, or at least ministers of sufficient seniority to represent a whole-of-government position.

The IGA should not merely state the goals and intentions of the organisation, but commit all governments to national consistency in building regulation. It should cover both the policy development process and the administrative framework for building regulation.

Specifically, the IGA should:

- state the support of each government to the ABCB and to regulatory reform;
- confirm government commitment to the automatic adoption of BCA amendments without variation;
- confirm that all building regulation will be incorporated in the BCA, following national agreement. This will include:
 - health and OH&S provisions;
 - sustainability, and
 - energy efficiency;
- endorse the principle that there will be no regulation introduced unless there is a demonstrated need and proof that the potential benefits will clearly outweigh the likely costs;
- confirm the commitment of governments to regulation representing minimum acceptable standards;
- identify the need for incentive mechanisms to encourage industry to move beyond minimum standards, if so desired by government policy; and
- commit to regular reviews of existing regulation and the reduction of the regulatory burden.

Whatever form the ABCB ultimately takes, a rigorous IGA will be essential to ensure the ongoing success of building regulation reform.

Recommendation: *That the Australian Government negotiate a new IGA with the state and territory governments.*

Recommendation: *That the IGA should:*

- *confirm the commitment of each government to the ABCB, to regulatory reform, and to the automatic adoption of BCA amendments without variation;*
- *support the inclusion of all areas of building regulation within the BCA;*
- *endorse the requirement for a demonstrated need and evidence of the cost-effectiveness of proposals to be shown before regulation is introduced;*
- *confirm the commitment of governments to regulation representing minimum acceptable standards;*
- *identify the need for incentive mechanisms to encourage leading industry practice; and*
- *confirm the commitment of each government to regular reviews of existing regulation and the reduction of the regulatory burden.*

National Consistency

The purpose of the Australian Building Codes Board is to provide national consistency in building regulation.

However, the lack of a national administrative framework has allowed state, territory, and local governments to participate in the debate on changes to the BCA, but still override the agreed outcomes under their relevant Building Acts.

Planning regulation is also frequently used to introduce variations without any attempt to assess costs or benefits of such changes. This makes a mockery of the rigorous amendment process pursued by the ABCB.

National consistency of building regulation must be enshrined in the Inter-Governmental Agreement.

This means that:

- state, territory, and local governments should not be able to vary the BCA under any circumstances;
- planning regulations should only be able to cover planning issues, not areas of building control, unless:
 - they are dealing with an area not presently covered by the BCA, in which case they should be retracted once BCA regulations are developed; or
 - if the state, territory, or local government agrees to undertake a full Regulation Impact Statement assessment of the proposal, as per the Office of Regulatory Review guidelines;
- instead, any regulatory changes must be negotiated through the ABCB and its committees;
- if governments have a desire to encourage better performance, they should do so through the use of incentives and other market mechanisms;

The National Administrative Framework is, therefore, a matter of priority in that it aims to deliver a consistent approach to the administration of building regulation. It is up to the ABCB as to whether this should be achieved through reworking the model Building Act or by pursuing a new initiative.

Recommendation: *That the IGA should confirm:*

- *that variations from the BCA requirements should not be possible under any circumstances, but proposed changes negotiated through the ABCB; and*
- *that planning regulations should only be able to cover planning issues, not areas of building control.*

Disability Access and Local Government

The Property Council strongly opposes the view proposed by the Human Rights and Equal Opportunity Commission that local governments should be allowed to introduce changes to building regulations.

The justification for this statement was the argument that there may be access needs specific to an area that a council would wish to enforce.

The Building Access Policy Committee has been negotiating a national standard for access to premises for a long time now on the basis that it would be a nationally consistent approach to compliance with the DDA. It is agreed amongst all stakeholders that certainty and consistency are key benefits of having a national Standard.

It is disingenuous of HREOC, therefore, to state on the one hand that the process provides certainty and then to endorse the continuation of a process that will completely undermine that certainty.

In reality, the ability of local government authorities to raise the bar on access issues above the nationally negotiated Premises Standard without any need for a Regulation Impact Statement will negate the work done by the BAPC over the last eight years.

Local government should not be able to set differing levels for any reason. This issue provides further justification to clamp down on local government variations.

The Building Code of Australia

The draft report highlighted a number of issues with the contents of the Building Code of Australia, which will be discussed here.

Performance-based vs Principle-based Requirements

Although the Property Council does not entirely disagree with the Commission's suggestion that the performance requirements are more a statement of principles, at present we would be reluctant to see any changes that may undermine the current operation of the BCA.

This is because the current batch of performance requirements are a direct result of the way the BCA was developed, and are widely accepted and supported by industry.

If there are to be changes, the Property Council would be very keen to know what is being proposed, as change in itself does not constitute reform.

Additional Policy Areas

The Property Council agrees that all building regulations should be incorporated into the BCA.

However, it is natural that other policy makers will still seek to introduce regulations that affect construction.

Thus, there will need to be a clear set of guidelines as to how regulation can be introduced and what needs to be done to incorporate it into the BCA.

The Property Council suggests that, before changes can be made:

- an appropriate business case will need to be presented demonstrating market failure;
- regulators must recognise that the BCA can only set minimum acceptable standards, not introduce high benchmarks for their own sake;
- consideration should be given to conducting more reviews of the BCA in order to reduce the amount of regulation affecting the industry; and
- regulators should investigate the potential market mechanisms or incentives to generate the desired outcomes before turning to regulatory instruments.

The Property Council's experience to date with energy efficiency and sustainability reforms has been that stringent requirements are introduced in the naïve assumption that only regulation will generate change.

This attitude must be challenged, as it has the potential to stifle innovation and limit variety.

Asset Protection

The Property Council does not oppose the proposal to introduce asset protection into the BCA per se, but it is important that appropriate evidence be provided to support such an inclusion.

To date we have seen very little to suggest such a change is warranted.

If there is a good case for asset protection to be incorporated into the Building Code, it must be on the basis of demonstrated need and setting minimum acceptable standards.

What we do not wish to see is a situation where insurers are given more opportunity to limit the potential for successful claims and shift costs onto property owners. It is alarming, for example, that the Insurance Council can suggest that a building that is compliant with the Building Code is not guaranteed to be insured (p.142). Such a situation is unacceptable.

Arguments of community expectations must be weighed up against what a community is willing to pay and what the likelihood is of a fire not being controlled. Insurers and fire authorities do not necessarily represent the community view and should be made to justify their calls for greater asset protection.

Like other areas of regulation, unless a strong business case can be made for the need for change, it should not be countenanced.

Recommendation: *That asset protection only be included in the BCA if sufficient evidence is provided of market failure.*

Private Certification

On page 175, there was a view expressed by the South Australian Government that building certification should be returned to councils.

We consider this to be a retrograde step that will reduce efficiency without guaranteeing better outcomes. In fact, with the limited resources available to councils at present, it is highly unlikely that such a move would be possible.

The Property Council emphatically opposes this proposal. Private building surveyors are highly experienced and very professional. They have been delivering good outcomes in construction and there is no evidence that a change is warranted.

Recommendation: *That the role of private practitioners in building certification be protected.*

Conclusion

The creation of the Australian Building Codes Board and the development of the Building Code of Australia were significant reforms to building control across the country.

Having one set of building regulations has delivered savings for government and industry and helped to reduce confusion within the community.

However, the lack of consistency in applying the Code, and the ability of state, territory, and local governments to introduce uncoded variations through planning regulation, seriously undermines these reforms.

The Property Council calls for greater national consistency, a strengthened Inter-Governmental Agreement, and an independent ABCB to ensure that this important reform is not built on shaky foundations.

Appendix 1: The Property Council of Australia

The Property Council of Australia comprises the leading developers, financiers, owners and managers of investment property in Australia. Our members currently own more than \$300 billion of domestic assets.

In addition, the Property Council's members include all the major construction, professional, and trade services suppliers working within the property sector.

The Property Council is convinced that nationally consistent and performance-based building regulation is crucial to the competitiveness, accessibility, safety, affordability, and amenity of commercial, industrial, and residential property in Australia.

Appendix 2: Responses to Recommendations

DRAFT FINDING 5.1

Agreed. This demonstrates the need for provisions within the Building Code of Australia to be reassessed constantly, to ensure that the document delivers consistent and appropriate level of regulation.

DRAFT RECOMMENDATION 5.1

Agreed. It would be helpful if the Productivity Commission were to provide advice as to how this should occur.

DRAFT FINDING 5.2

Agreed. It would appear that energy efficiency is being pursued for political reasons, rather than demonstrated need. This is an area of regulation where minimum acceptable standards are being jettisoned for ulterior motives.

There should be no potential for the BCA to be varied, whether by states, territories, or local governments. Such an ability undermines the push for national consistency.

DRAFT FINDING 5.3

DRAFT RECOMMENDATION 5.2

The current batch of performance requirements are a direct result of the way the BCA was developed. The Property Council does not disagree with the suggestion that the performance requirements are more a statement of principles, however, we would be reluctant to see any change introduced that undermines the current operation of the BCA.

DRAFT RECOMMENDATION 5.3

Agreed. More important, however, is the need to reinforce the importance of the BCA including minimum standards. The issue of egress for people with disabilities is an example of performance requirements sometimes limiting options for the development industry.

DRAFT RECOMMENDATION 5.4

DRAFT RECOMMENDATION 5.5

This appears to suggest that general maintenance provisions should be incorporated into the BCA. Although the Property Council would accept provisions being prescribed for the maintenance of essential services, we believe that, if applied to general maintenance, this will place too much restriction on the management and operation of property.

DRAFT FINDING 5.4

DRAFT RECOMMENDATION 5.6

The BCA needs to be accessible to all audiences. It should therefore be in plain English and should aim to remove inconsistencies.

Furthermore, the BCA should aim to retain acceptable construction practices, rather than changing processes at the whim of an individual regulator. The longer something remains in the building code, the better the compliance.

DRAFT FINDING 6.1

DRAFT RECOMMENDATION 6.1

Agreed.

DRAFT RECOMMENDATION 6.2

It is important to recognise that minimum standards should be pursued in access, as in other areas, rather than the high benchmarks that are currently on the table.

While the Property Council supports the creation of a Premises Standard, we have grave concerns that what is being put forward is an unsustainable ambit claim. Rationality and cost-effectiveness need to be brought back into the debate.

DRAFT FINDING 6.2

We disagree with this. All elements of construction should be incorporated into the BCA, to ensure that inconsistency and inefficiency are reduced.

This is particularly important with the proposed move to restrict water use within the BCA. It does not make sense to be pushing for including other regulatory requirements in the BCA, but backing away from including plumbing.

DRAFT RECOMMENDATION 6.3

Agreed.

DRAFT RECOMMENDATION 6.4

More information is required as to what is being proposed here.

DRAFT RECOMMENDATION 6.5

The Property Council has no problem with this proposal in principle, but would be very interested to hear how it was to be achieved.

DRAFT RECOMMENDATION 6.6

Agreed.

DRAFT FINDING 6.3

DRAFT RECOMMENDATION 6.7

Agreed. However, this should be done with all types of building regulation. Unless benefits clearly exceed costs, regulation should not be pursued. It is a lesson that has not been heeded in the recent energy efficiency amendments to the BCA.

DRAFT FINDING 6.4

This is noted. However, that does not mean that there is sufficient evidence available to support the level of asset protection being proposed by the authorities or the insurance industry.

The Productivity Commission should be careful not to give more opportunity to insurance companies to shift risk to the consumer and to charge higher premiums.

DRAFT FINDING 6.5

Agreed. However, very little evidence has yet been provided to support increasing asset protection in commercial buildings either.

DRAFT RECOMMENDATION 6.8

As noted in the response to draft finding 6.4, evidence is needed to support any level of asset protection being introduced into the BCA. Cost-shifting should be avoided.

Nothing has been presented to the Property Council as yet to demonstrate that there is significant market failure in this area, nor that there is a strong requirement for additional fire engineering to be made mandatory.

DRAFT FINDING 6.6

DRAFT RECOMMENDATION 6.9

Agreed. This should be prevented, as such amendments at a local government level are never costed through a Regulation Impact Statement and rarely justified. Local government should never be allowed to amend building regulations.

DRAFT FINDING 7.1

DRAFT FINDING 7.2

Noted.

DRAFT FINDING 7.3

It is important to pursue national consistency across all aspects of the building approvals process, as has been found by the Development Assessment Forum.

Development, construction, and engineering firms are increasingly operating across state and territory borders, as are the clients they serve. The more inconsistency that exists, the more the cost that will accrue to these companies, as they will need to have staff experienced in dealing with the variations in every jurisdiction.

DRAFT FINDING 7.4

Agreed, although the Property Council contends that there is more perception of potential conflicts than actual examples of conflict of interest. Guidelines would be very useful to help deal with these perceptions, as do the current professional indemnity provisions.

DRAFT RECOMMENDATION 7.1

Noted. While we do not oppose this proposal, it is not as high a priority as pursuing national consistency in dealing with building regulation.

DRAFT RECOMMENDATION 7.2

Agreed, so long as the focus is on essential infrastructure and the need to regulate only for minimum standards. General maintenance requirements should not be captured by these provisions.

DRAFT FINDING 7.5

DRAFT RECOMMENDATION 7.3

Agreed. There needs to be a needs to be a whole-of-industry approach to this, not just concentrating on building certifiers. Furthermore, any best practice model should look at reforming the entire administration of building regulation.

DRAFT FINDING 8.1

DRAFT RECOMMENDATION 8.1

The Property Council agrees that the ABCB tries to deliver Regulation Impact Statements (RIS) that deal with relevant issues and give reasonable cost assessments of the likely impacts of regulation.

However, there appears to be a tendency of late for consultants to Statements that attempt to sell, rather than assess, the regulation.

A case in point is the RIS on the proposed changes for disability access. Despite finding a \$13 billion deficit between costs and benefits, the authors still claimed that the regulation should be introduced. The Property Council was given the impression that the consultants were “delivering a product for a client” rather than assessing regulation.

In our view, such outcomes are unacceptable. If RISs are not balanced and impartial, they serve no purpose. An RIS should assess the efficacy of regulation, not attempt to justify its introduction.

Another concern is the degree to which stakeholders are informed of proposed changes. Building regulation has the potential to impact upon many different sections of the community and interest groups have the right to know what is being proposed. The ABCB needs to ensure that, for any proposed amendments, a very wide group of potential stakeholders are informed, not merely those who have a direct interest in the construction industry.

The Property Council agrees that the ABCB needs to pursue further improvement of its RIS process. In particular, future RISs should focus on whether regulation is needed, as required by the guidelines of the ORR. Such a determination should be made prior to the development of regulation.

DRAFT RECOMMENDATION 8.2

DRAFT RECOMMENDATION 8.3

The Property Council agrees that, if international standards are to affect regulation, they should be overseen by government. While this is not rejecting a role for Standards Australia International (SAI) per se, it is important to ensure that government, community, and industry interests are protected in the development of regulatory documents.

Similarly, we agree that there is a clear need for transparency and cost-benefit assessment of Australian Standards. The Property Council's suggestion is:

- A document should be developed that sets out a businesses case as to why the Standard needs to be revised and amended;
- A master document should be developed during the development of a Standard that shows what is being changed and the reasons for such a change;
- The new Standard and the old Standard should both be assessed against a theoretical building type to show what the potential cost increases may be and to demonstrate where the benefits may fall. The assumptions used in this verification should be provided, so that other people can assess the findings;
- All these documents should be released with the draft Standard during the public consultation period, so that stakeholders can properly consider the merits of the amended Standard.

This process allows an assessment of impacts, while stopping short of a full Regulation Impact Statement. Such an approach, we believe, will ensure that Standards are not being changed merely because it suits a particular industry's purpose, but because it is the most appropriate outcome for the good of the community.

DRAFT FINDING 8.2

The Property Council believes that the Productivity Commission should recommend ways of streamlining the development process. The current regulatory development process is often held up because of disagreement between states and territories, and this should be resolved, rather than allowing unilateral action to be undertaken by those same administrations.

We believe that the most effective way to encourage reform is to bind administrations to implementing the BCA unaltered and to reinforce in the IGA that no agreement will mean that the status quo remains. If governments want change, they will be forced to compromise, rather than stalling in the Building Codes Committee and introducing their own variations separately.

DRAFT RECOMMENDATION 8.4

The Property Council agrees with this suggestion, so long as it does not impact upon the cost-effectiveness and appropriateness of the proposed regulation. It will serve nobody's interests if regulation is pushed through merely to meet a deadline.

DRAFT RECOMMENDATION 8.5

Agreed. It is important to ensure that regulation is reviewed and justified, so that the industry does not become over-regulated. Wherever possible, regulation should be reduced, and market mechanisms should be allowed to operate unimpeded.

DRAFT FINDING 8.3

DRAFT RECOMMENDATION 8.6

Noted. The Property Council would not oppose this, as anything that makes the BCA more useable is a positive step. However, it should only be freely accessible on-line, not in hard copy, and the Federal Government should contribute extra funding to the ABCB to off-set lost income.

DRAFT FINDING 9.1

Agreed.

DRAFT FINDING 9.2

DRAFT RECOMMENDATION 9.1

Agreed.

DRAFT FINDING 9.3

Agreed, so long as there is no potential for such documents to be made mandatory by other administrations or used in courts of law. The ABCB should seek legal advice on how to keep guidance documents voluntary.

DRAFT FINDING 10.1

Agreed. The Property Council believes that the Australian Government should take a more significant role in building regulation reform through the appointment of a minister responsible for construction issues and the creation of a statutory authority to replace the ABCB, under the direction of a COAG Ministerial Council.

DRAFT FINDING 10.2

The Board has been hamstrung in the past with changing membership and inconsistent government positions. The mere presence of government representatives does not ensure the public interest is protected, as a lack of continuity in membership potentially undermines the good work undertaken by the ABCB.

The Property Council has previously suggested an alternative structure which we believe will be more effective (See Appendix 3). We agree that there is a role for government representatives on the Board, but these must be appointed for set terms, and not change constantly as a result of altering priorities.

Industry representatives should continue to be nominated by the Australian Construction Industry Forum, which represents almost all of the construction industry associations. This will ensure that the wider interests of the construction interest are protected.

DRAFT RECOMMENDATION 10.1

Agreed. Variations should not be possible, other than for climatic differences, as the BCA represents a national approach to building regulation. Indeed, if the Board is supposed to be representing the public interest, there should be no need to vary the provisions in the BCA.

DRAFT FINDING 10.3

The Property Council believes that a Ministerial Council overseeing the ABCB will demonstrate ongoing commitment to building regulation reform, while providing ministers with a very good opportunity to set policy directions for the ABCB. This is a fundamental part of our proposed structure.

DRAFT RECOMMENDATION 10.2

It is difficult to see how a Chairman could be completely independent, although we agree that they should never be a government representative, as such a move would be too politically sensitive. More important is the need for any Chairman to be experienced and knowledgeable in building regulatory issues from a practical, rather than purely policy, perspective, as this will ensure that regulation is appropriate to deliver on the needs of industry and the community.

DRAFT FINDING 10.4

One of the major criticisms of the ABCB is the delays that occur in delivering changes to regulation, often as a result of stalling by state and territory administrations. It is not correct, therefore, to claim that *“current institutional arrangements for pursuing building regulation reform have been reasonably effective”*. While the ABCB has tried to streamline the regulatory process, the ongoing delays and the lack of any administrative framework mean that a lot more needs to be done to improve the system.

DRAFT FINDING 11.1

The continuing lack of a National Administrative Framework is disappointing. National consistency in the application of building regulation must be a priority for the ABCB, if true building regulation reform is to be achieved.

DRAFT RECOMMENDATION 11.1

The ABCB’s mission statement should also talk about cost-effectiveness. While the Productivity Commission argued that efficiency means cost-effectiveness, the link is often not at the forefront of regulators’ minds and the principle should be explicitly stated.

The ABCB, and the state and territory administrations, should pursue minimum standards to abolish poor practice. Anything beyond that should left up to market forces. If a higher standard is desired, governments should encourage that improved practice through the use of incentives.

DRAFT RECOMMENDATION 11.2

Proposed Objective 1 should say *“address efficiently, **and cost-effectively**, relevant health”*, for reasons already mentioned in the recommendation above.

It would be also useful either to have another objective, or to make a reference in Objective 4, about the need to reduce the current amount of regulation, rather than just reducing “the reliance on regulation”. The problem with the BCA is that regulations are constantly being added, but very few are ever removed

DRAFT FINDING 11.2

The Property Council does not disagree with this finding.

DRAFT RECOMMENDATION 11.3

Although the name of a revamped organisation is ultimately not very important, it would be useful if any name change attempted to reduce the current confusion about whether “ABCB” refers to the Board or to the secretariat.

DRAFT RECOMMENDATION 11.4

As mentioned previously, the ABCB should be a statutory authority overseen by a Ministerial Council to ensure sufficient independence from government whim and consistency in the development of building regulation. The Property Council's proposed structure will help to achieve this.

If such a reform is not possible, at the very least it should be transformed into an Executive Agency, to give it some real independence.

Either way, a new, more rigorous IGA is essential. This should concentrate on government commitment to the work and output of the ABCB and on achieving national consistency in building regulation.

Appendix 3: Elements of a New Building Regulatory System

In the first submission to the Productivity Commission, the Property Council proposed a new structure for a revamped ABCB.

This should be a statutory body, reporting to a Ministerial Council established under COAG, with responsibility over a broad range of construction policy issues.

The key components of the revised structure would be as follows.

1. The Ministerial Council for Building

This would be made up of relevant Ministers from all Australian States and Territories, the Australian Government, local government, and possibly New Zealand.

The Commonwealth would chair the Council, which would meet once a year.

The role of the Council would be to develop the broad policy agenda and regulatory priorities for Building Australia.

2. The Board

2.1. The Chairman

The Chairman of the Board would be appointed by the Ministerial Council for a three year term and would be drawn from the industry representatives. No Chairman would be allowed to remain in the position for more than two terms.

2.2. Membership

Membership of the Board would comprise:

- a representative of the Department of Prime Minister and Cabinet;
- a representative of the Department of Industry, Tourism, and resources;
- one senior representative of the eight State and Territory administrations;
- two representatives of the investment sector (one public and one private);
- one representative of the project delivery (construction) sector;
- one representative of the building design and services sector; and
- the chief executive officer of Building Australia.

Industry membership of the Board would be selected by the relevant Australian Government Ministers on advice from the Australian Construction Industry Forum and would be selected every three years.

2.3. Responsibilities

The Board would meet four times a year. Its responsibilities would be:

- to develop construction policy recommendations for consideration by the Ministerial Council;
- to manage and maintain the national administrative framework and resolve any inconsistencies;
- to consider the advice of the Regulatory Assessment Panel on whether regulation is needed or proposals are appropriate;
- to approve amendments to the Building Code of Australia;
- to decide upon the nature of relationships between Building Australia and other organisations; and
- to oversee the effective operation of Building Australia.

2.4. The Chief Executive Officer

The CEO would be responsible for the day-to-day management of *Building Australia*, the Codes and Standards Committee, and the Regulatory Assessment Panel.

The CEO should be appointed for a five-year term, limited to two terms.

3. Building Australia

3.1. Function

This statutory organisation would carry out the role currently performed by the Australian Building Codes Board.

In short, the key roles of Building Australia would be:

- to develop the Building Code of Australia and reference relevant standards;
- to identify and incorporate other aspects of construction into the Building Code that not currently covered, such as plumbing and electrical work;
- to investigate research into leading practices in the building industry and promote efficiency and innovation within the industry; and
- to finalise (and oversee the implementation of) a national administrative framework for building regulation.

3.2. Codes and Standards Committee

As is currently the case with the Building Codes Committee, the Codes and Standards Committee would be responsible for deciding what technical provisions should be

incorporated into the Building Code of Australia. These provisions would be provided to the Committee by expert panels.

The Committee would also provide advice to the Board on policy relating to building regulations.

The Committee would be constituted along its current lines, but absolute agreement would not be required. Once the national administrative framework is completed and implemented, decisions could be made by voting:

- if two-thirds of the administrators and two-thirds of industry support a proposed regulation, it should be adopted;
- if there is support from two-thirds of the administrators, but not from two-thirds of the industry representatives (or vice versa), the regulation should not proceed; or
- if neither group has a two-thirds majority, the regulation should not be introduced.

All regulatory proposals, except for minor editorial changes or very small recommendations should be subject to regulatory review:

- if the proposal is considered to be a minor amendment to the Building Code, a business case should be prepared to support it; or
- for any other proposals, a Regulation Impact Statement should be prepared.

Decisions by Building Appeals Boards (which should be established in each jurisdiction) should be fed back to the Committee so that any regulatory inefficiency can be identified and so that acceptable alternative solutions can be freely shared within industry.

3.3. Expert Panels

These Panels would comprise experts in their respective fields called together on a need-be basis to develop draft building regulations for specific issues.

Experts could be drawn from private practice, public practice or specialist organisations.

Panels should be chaired by a representative of the administrations, so that public interest is served.

Where considered appropriate by Building Australia and the Codes and Standards Committee, issues can be referred to external expert panels, such as committees established by Standards Australia.

4. Regulatory Assessment Panel

4.1. Membership

This Panel would be comprised of:

- two representatives of State and Territory bureaucracies responsible for the administration of building regulations;

- a representative of the Office of Regulatory Review;
- two representatives of industry;
- a legal practitioner experienced in building issues; and
- a representative of the Australian Government, who will chair the Panel.

All Panel members would be appointed by the Board for a period of two years. No more than two of the Panel members can be participants in other *Building Australia* committees.

4.2. Responsibilities

The Panel would be responsible for:

considering areas proposed for inclusion in the Building Code of Australia and determining whether a sufficient case for regulation has been made;

- considering draft regulatory impact statements and approving their release for public consultation; and
- providing ongoing advice as to the degree to which regulation should be pursued in the building sector.

A diagram of the relationship between the committees described above follows.

Figure 1: Proposed Structure for Revamped ABCB

