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## **REFORM OF BUILDING REGULATION - PRODUCTIVITY COMMISSION RESPONSE BY ASSOCIATION OF CONSULTING ARCHITECTS - VICTORIA**

### **SUMMARY**

This report is the response to the draft research report (August 2004) on reform of building regulation by the Productivity commission.

The key objectives that should be satisfied are summarised as follows:

- To protect the health, safety and amenity of those affected by imposing minimum mandatory, nationally consistent building standards.
- To continue to change the basis of the BCA from a prescriptive to a performance based document.
- The conclusion of a new IGA for signing by all nine governments.

### **DRAFT RECOMMENDATIONS**

The draft research report contains many draft findings. The material supporting the draft findings is generally agreed by the ACA, however this report is primarily concerned with the draft recommendations. Comments are as follows:

- **Draft Recommendation 5.1**

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

Generally agreed. However, the means to achieve this should be incorporated into the “revised objectives” (refer Draft Recommendation 11.2 below)

- **Draft Recommendation 5.2**

*The ABCB (or its replacement) should enhance efforts to make the performance-based requirements in the BCA more effective. This should include providing measurable criteria to aid in judging compliance and clarifying the assessment process to be used. This should be given a high priority.*

Agreed.

- **Draft Recommendation 5.3**

*The ABCB (or its replacement) should enhance efforts to ensure that all deemed-to-satisfy provisions in the BCA offer an equivalent level of building performance to that required by the performance requirements.*

Agreed.

- **Draft Recommendation 5.4**

*The BCA and related regulations should require that buildings continue to meet the health and safety requirements of the BCA throughout their life, irrespective of whether they were constructed using alternative solutions or deemed-to-satisfy provisions.*

Generally agreed, however this should only apply to the maintenance of primary life safety (not property) systems and essential services.

- **Draft Recommendation 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.*

Agreed.

- **Draft Recommendation 5.6**

*The ABCB (or its replacement) should continue to examine ways for the BCA to be expressed more clearly and simply, to articulate building requirements better and to enable access by all levels of building practitioners.*

Generally agreed. The ABCB should also give consideration to additional concise guideline documents or the incorporation of examples in the preamble to each section of the BCA, where appropriate.

- **Draft Recommendation 6.1**

*The ABCB (or its replacement) should continue to work on incorporating into the BCA, as far as practicable, all mandatory requirements affecting building (ie current objective 7)*

Agreed.

- **Draft Recommendation 6.2**

*The ABCB (or its replacement) should continue its work on amending the BCA whereby disabled access provisions would be linked to the Disability Discrimination Act 1992 so that compliance with the BCA would also ensure compliance with the obligations under the Act.*

Generally agreed, however consideration must be given to the timely introduction of some of the more onerous requirements in terms of cost and benefit to the community.

- **Draft Recommendation 6.3**

*The ABCB (or its replacement) should continue to work with the eight plumbing associations to identify and resolve differences between the BCA and the PCA and on-site gas requirements.*

Agreed.

- **Draft Recommendation 6.4**

*The ABCB (or its replacement) should continue its work to identify and resolve differences between the BCA and on-site electrical installation and telecommunications requirements.*

Agreed.

- **Draft Recommendation 6.5**

*The ABCB (or its replacement) should continue its work on removing inconsistencies between occupational health and safety (OH&S) legislation and the BCA and incorporating relevant OH&S requirements that impact on building into the BCA.*

Agreed.

- **Draft Recommendation 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 environmental objectives in the BCA.*

Agreed.

- **Draft Recommendation 6.7**

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

Agreed.

- **Draft Recommendation 6.8**

*The ABCB (or its replacement) should pursue, in consultation with interested parties (especially fire authorities), increasing the asset protection objective of the BCA in relation to building categories other than stand alone residential housing, to align with the requirements generally imposed by fire authorities and favoured by insurance companies.*

Generally agreed. The ABCB should definitely work more closely with the fire authorities. Consultation with the insurance companies is also important but not critical.

- **Draft Recommendation 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 approval from the relevant State Government to apply building requirements that are inconsistent with the BCA;*
- *Requiring these changes to be assessed as to whether net benefits would accrue.*

*To assist the design of such a system, the ABCB, in consultation with the 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.*

Agreed.

- **Draft Recommendation 7.1**

*The ABCB (or its replacement) should work to facilitate a national template for home building contracts.*

*Generally agreed, however this is not considered a high priority.*

- **Draft Recommendation 7.2**

*The ABCB (or its replacement) should work towards reaching agreement across jurisdictions as to the most appropriate and efficient administrative provisions for maintenance requirements.*

*Generally agreed, however this should be for life safety (not property) systems and essential services.*

- **Draft Recommendation 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.*

Agreed.

- **Draft Recommendation 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.*

*Generally agreed, however the ABCB should also consult widely enough to ensure that all relevant stakeholders are given the opportunity to contribute.*

- **Draft Recommendation 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.*

Agreed.

- **Draft Recommendation 8.3**

*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.*

Agreed.

- **Draft Recommendation 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.*

Agreed.

- **Draft Recommendation 8.5**

*The ABCB (or its replacement), as a high priority, should continue to work towards maintaining and updating the core technical requirements in the BCA.*

Agreed.

- **Draft Recommendation 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 the access, free of charge.*

Agreed.

- **Draft Recommendation 9.1**

*The ABCB (or its replacement) should enhance its BCA awareness campaign, including investigating opportunities for further partnerships with industry in the provision of training.*

Agreed.

- **Draft Recommendation 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.*

Agreed.

- **Draft Recommendation 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.*

Agreed.

- **Draft Recommendation 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.*

Generally agreed, however the emphasis must be on minimum standards in the light of the cost and benefit to the community.

- **Draft Recommendation 11.2**

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

*Proposed Objective 1*

*Establish building codes and standards that are 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.*

Generally agreed, however the emphasis must be on reducing the amount (volume) of regulation.

- **Draft Recommendation 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.*

Agreed.

- **Draft Recommendation 11.4**

*A new Intergovernmental Agreement should be negotiated by all nine governments, so as to implement many of this study's recommendations:*

- *establish the Australian Building Regulation Board (ABRB) in place of the ABCB*
- *clarify the ABRB's mission statement and objectives*
- *agree to shared funding and removal of charges for the BCA*
- *re-confirm the commitment to national consistency*
- *strengthen the use of regulatory impact statements to enhance rigour for mandatory regulations*
- *outline the future work program, as proposed.*

Generally agreed, however the ABCB should eventually develop into at least an executive agency, if not a statutory authority (preferable). In either case a revised IGA is essential so that the current good work of the ABCB can be further improved.

## CONCLUSION

The current IGA requires revision. It is imperative that the new IGA is given weight in the first instance with execution by the leaders of all nine governments. The purposes of efficiency, productivity and cost-effectiveness are critically dependant on imposing minimum mandatory, nationally consistent building standards.

The Association of Consulting Architects - Victoria is keen to discuss further any of the matters raised in this submission.