MASTER BUILDERS
AUSTRALIA

Submission

to the

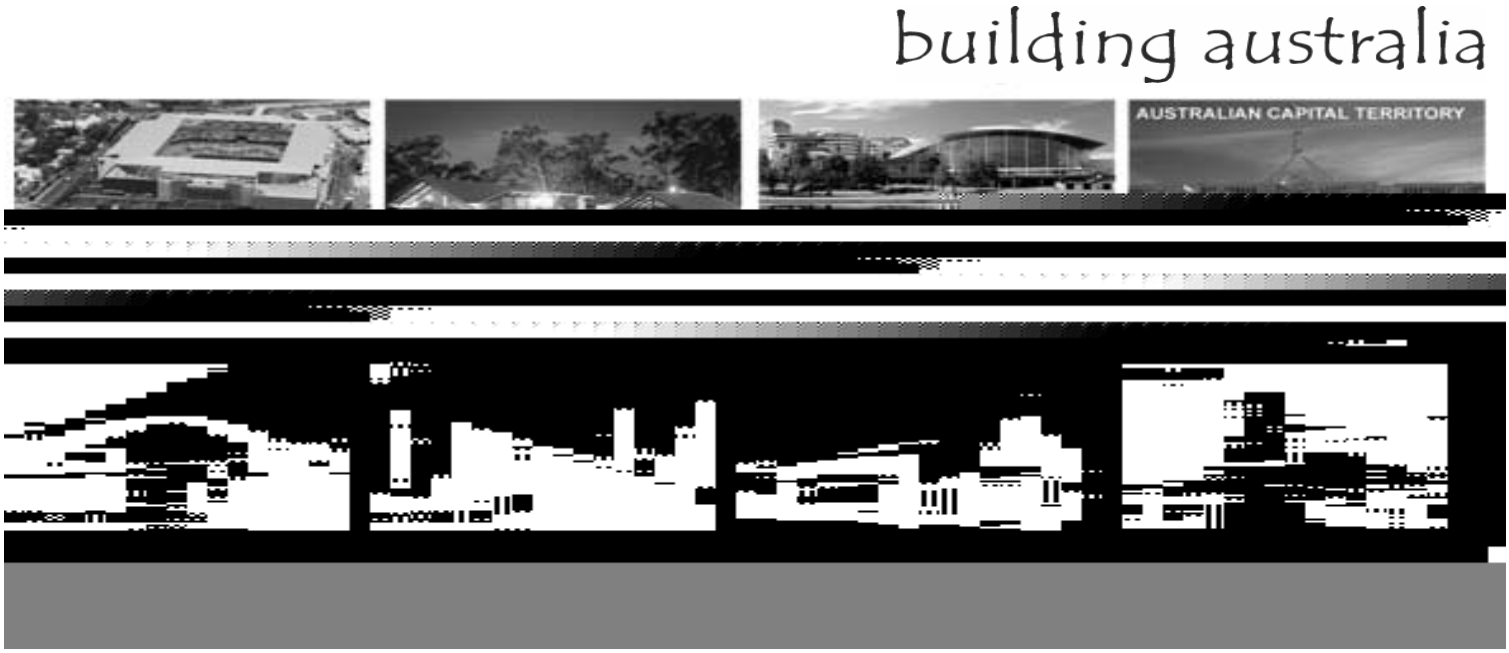
Commonwealth Taskforce Inquiry

into

Reducing the Regulatory Burden on Business

November 2005

Master Builders Australia Inc ABN 701 3422 100



1. Introduction

1.1 This submission is made by Master Builders Australia Inc (Master Builders). Master Builders represents the interests of all sectors of the building and construction industry. Master Builders consists of nine State and Territory builders' associations with approximately 28,000 members.

1.2 Building and construction contributes around 6.5 per cent of annual GDP and 8.5 per cent of Australia's total workforce. The industry provides a major underpinning of general economic activity and employment as a result of important and widespread linkages with the rest of the economy.

2. Regulation Taskforce

2.1 The Prime Minister and Treasurer on 12 October 2005 established the Regulation Taskforce to identify practical options for alleviating the compliance burden on business from government regulation. The Taskforce is required to identify Commonwealth Government regulation which is unnecessarily burdensome, complex and redundant or duplicates regulations in other jurisdictions:

- € indicate which regulation should be removed or significantly reduced;
- € examine non regulatory options; and
- € provide practical options for alleviating the Commonwealth red tape burden on family run and other small businesses.

2.2 Master Builders supports the review currently being conducted into the regulatory burden that regulations have on business.

2.3 Master Builders' submission will focus on the following areas:

- € Building Regulations;
- € Erosion of National Consistency;
- € Accountable and Rigorous Regulatory Impact Statement;
- € Reducing Complexity;
- € Standardising Administrative Procedures;
- € Standards Australia;
- € Industry Training; and
- € OH&S

3. Building Regulations

3.1 Background

3.1.1 The Building Code of Australia (BCA) is developed and coordinated through the Australian Building Codes Board (ABCB). The ABCB was established through the Intergovernmental Agreement (IGA) signed in 1994 by the Australian Government and the State and Territory Ministers responsible for building regulation reform. Standing Orders were established in conjunction with the IGA to provide for administration of the ABCB and implementation of the ABCB's objectives. The Agreement was amended in 2001 following an independent review.

3.1.2 The ABCB's mission is 'to provide for efficiency and cost effectiveness in meeting community expectations for health, safety and amenity in the design, construction and use of buildings through the creation of nationally consistent building codes, standards, regulatory building requirements and regulatory systems'.

3.1.3 ABCB membership comprises the Australian, State and Territory Governments' chief executives responsible for building regulatory matters, a local government representative and four industry representatives. ABCB members are appointed by Ministers.

3.1.4 The Building Codes Committee (BCC) is the peak technical body with responsibility for advice to the ABCB on reforming, maintaining and upgrading the Code and its standards.

3.1.5 The current BCA was first developed in 1996 and has been progressively refined and amended. While all States and Territories have adopted the BCA, most have variations and additions to the Code. These variations are of concern to industry because they reduce the efficiency and cost effectiveness objectives of the ABCB. The Code is intended to articulate (minimum) requirements for building practices for most building types and for a variety of aspects of building performance.

3.1.6 The BCA covers all commercial and domestic buildings, but not 'non-building' or engineering constructions (such as roads and bridges). The BCA identifies 10 classes of buildings, each covering a particular type of building. The BCA has to adhere to four broad levels of guidance and obligations:

- € Objectives;

- € Functional statements;
- € Performance requirements; and
- € Deemed to satisfy.

3.1.7 At the broadest level, objectives outline what the ABCB has judged to be the 'community expectation' in relation to a particular area of building performance. For example, in relation to the structure of a building, the Code has the objective of safeguarding people and other property from injury and loss of amenity from a structural failure malfunction.

3.1.8 At the next level, the functional statement describes 'how it is proposed that the building will be designed and constructed to meet those community expectations' (Guide to the BCA 2004, p A0.8). In relation to structural provisions, for example, the functional statement states that a 'building or structure is to withstand the combinations of loads and other actions to which it may be reasonably subjected' (BCA 2004, vol 1 p BP1.1). Both the objective level and functional statements are provided for information only are not formal requirements for a building to meet the BCA.

3.1.8 The third level of detail in the BCA is the performance requirements. The performance requirements form the backbone of the BCA and enunciate what level of performance is required for a building to meet the BCA. The purpose of these requirements is to meet the functional statements and objectives of the Code and outline the minimum standard that a building must meet. The performance requirement does not preclude builders or designers from achieving a higher standard if they (or the consumer) desire.

3.1.9 The fourth level is deemed to satisfy. This level sets out perceptive measures that are deemed to comply with the performance requirements.

3.2 Building Regulations: Removing the Compliance Burden

3.2.1 Removing the Conflict between Policy and Regulatory Development

Master Builders is concerned that effectively the ABCB sets both the policy and regulations for Australia's building code without a rigorous process of accountability particularly at the front end of the regulation setting process.

3.2.2 Master Builders believes that these two roles should be independent. The Commonwealth Government in consultation with industry should set the policy parameters and only then should the regulators set out to develop minimum cost effective provisions that deliver the independently determined policy objectives.

3.2.3 Master Builders concern is supported by the Victoria Competition and Efficiency Commission (VCEC). In its July 2005 draft report into Housing Regulation Victoria said

> "… the Commission does, however, see scope for improvement in three related areas. First, modifications to the key components of the regulatory framework would streamline regulation. Second the regulators focus on the outcomes set by the Government should be sharpened and their accountability increased. And third the implementation of new regulations can be improved."[1]

The Commission further went on to say:

"…the Commission believed that the best outcomes can be achieved from regulatory systems where

- € the Government specifies the outcomes that it wants the regulators to achieve;
- € roles are assigned to those best placed to undertake them;
- € measures exist to ensure that regulators are held accountable for their actions

3.2.4 Master Builders is of the view that significant efficiencies as well as greater accountability can be gained by Government independently setting the appropriate policy stringency for building regulation. This would remove the conflict where regulators set both policy and draft regulation and then also undertake the Regulatory Impact Statement (RIS) to justify the policy and regulations they have developed. Contemporary public policy governance demands separation of these functions to ensure transparency and accountability. An example of the benefits of this approach follows.

3.2.5 The Productivity Commission's 17th November 2004 inquiry into reform of building regulations, Recommendation 6.9, said the ABCB should work in consultation with interested parties (include fire authorities) towards determining whether the BCA should contain property protection requirements with respect to fire and if so resolve differences in the level of protection provided across jurisdictions. This should be done using rigorous impact analysis.

[1] Page xxiii

3.2.6 In response to the recommendation the ABCB adopted the following process in carrying out this pre-assessment work before going down the path of creating draft regulation and supporting RIS documents. This strategy worked very well and consisted of 5 stages:

(i) a draft position paper to include economic analysis and fire safety comparisons with other countries;

(ii) the position paper to be agreed by the Board, ABCB office and State and Territory administrations;

(iii) arrange meeting with stakeholders

(iv) issue position paper to stakeholders at the meeting; and

(v) establish an annual meeting to discuss fire safety in Australia from a holistic, National and whole of Government approach.

3.2.7 Master Builders observation of this process while it did not fully cover the concerns in sections 4 and 5 it was very affective in identifying key issues up front as to whether the current fire requirements in the BCA needed to be upgraded. The economic analysis and fire safety comparisons in the position paper concluded that with upgrading the fire requirements to consider further property protection was not going to deliver better cost/benefit outcomes. Unfortunately this approach is not uniformly applied by the ABCB.

4. Erosion of National Consistency

4.1 Master Builders strongly supports the need for a nationally consistent building code, standards and regulatory system. 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.

4.2 Master Builders is very concerned that the State and Territories continue to erode the National Building Code of Australia with State and Territory variations. It is acknowledged

that there has been an effort over recent years to reduce as many State and Territory variations as possible.

4.3 However, this objective has been substantially undermined by Victoria's 5-star housing energy provisions, NSW introduction of BASIX and the ACT introduction of ACTHERS. This goes against the underlying objective of the Intergovernmental Agreement (IGA).

4.4 Master Builders strongly supports the Productivity Commission's recommendation 10.2 to prepare a new more robust IGA to deliver more consistency and produce further efficiencies for industry by reducing variations.

4.5 A further problem with the erosion of National Building Code requirements is the proliferation of local government variations to the BCA across Australia. Master Builders completed a survey earlier this year which found that local Government variations to the BCA in building regulations adds approximately $600 million to construction costs above and beyond the BCA requirements per annum. These local laws are created to override the BCA in planning schemes and local bylaws. A copy of the survey response is at Attachment A.

4.6 An additional issue with the creation of these local Government by-laws and planning controls is that often these regulations are developed in isolation, they conflict with other Building Code requirements, causing unsuitable outcomes. There is no requirement for local Government to complete a Regulatory Impact Statement before introducing add hoc local laws.

4.7 We believe there is a case for the IGA to include provisions which prohibits local councils from by-passing the building provision of the (BCA). This would overcome the current situation where local councils use the planning laws to impose higher standards to their local built environment.

4.8 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.

4.9 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

9.4 There are a range of regulations that need to be relaxed if we are to achieve fundamental reform in developing a flexible and modern training regime for the building and construction industry.

9.5 Master Builders is very concerned that State based regulations compound the business risks that building companies have to take, in engaging apprentices. These risks, to an increasing number of builders, are too high and unacceptable and therefore act as a disincentive in taking on apprentices.

9.6 There has been much talk about the lack of apprentices in the building and construction industry. Whilst there are many structural reasons why this may be the case, one of them is not the lack of availability of young people who wish to take up a trade, but more the fact that there are not enough employers to place them.

9.7 The business risks faced by employers are many including:

- The cost of insurance;
- The additional cost of payroll tax;
- Manslaughter and OH&S provisions;
- Unfair dismissal laws; and
- Workers Compensation.
- The payment of tax on employer incentives

9.8 The issue is more than just the additional cost. It also covers the high cost of compliance and the associated disclosures. For many small businesses these business risks and compliance burdens are considered too high for no perceived gain at the enterprise level. Master Builders therefore strongly urges the Regulation Taskforce to give consideration to these matters and to make recommendations for initiatives that can provide employers with relief from these business risks.

10. Occupational Health and Safety

10.1 Master Builders has formulated an Occupational Health and Safety Policy Blueprint (the Blueprint) that details aspirational aims for this subject area. A copy of the Blueprint is attached to this submission as Attachment B.

10.2 Regulation of occupational health and safety is dealt with comprehensively in the Blueprint. The discussion of this area commences on page 15 and extends to page 22. The

recommendations in the Blueprint that deal with changes to regulation are recommendation 6 to recommendation 11 inclusive. The problems with occupational health and safety regulation are set out at pages 20 to 22.

10.3 Recommendation 10 is specifically brought to the attention of the Taskforce. This recommendation calls for nationally consistent uniform occupational health and safety laws to be introduced as a priority in the building and construction industry. It was anticipated that this would be achieved by national declaration and then the jurisdictional take-up of the National Standard for Construction Work that was declared by the National Occupational Health and Safety Commission (NOHSC) in April 2005. However, unfortunately, the Workers Compensation and Rehabilitation and Other Acts Amendment Bill 2005 (QLD) was passed by the Queensland Parliament on 27 October 2005 and given assent on 2 November 2005. The Act gives legal force to aspects of the National Standard for Construction Work. It particularly takes up those aspects of the National Standard that relate to extending OH&S obligations to persons with responsibilities for construction work separately from obligations usually imposed as an incident of the employer/employee relationship.

10.4 Following Master Builders' lobbying, the amendments to give effect to new obligations in the National Standard for Construction Work have a delayed commencement in line with the agreement with NOHSC regarding introduction of the legislation. However, national consistency has not been assured. In the legislation class 1A buildings (for domestic dwellings) have been excluded from the obligations of designers, project managers and clients. This has been misrepresented by some industry participants as a general exclusion for domestic housing construction from the National Standard for Construction Work. Whilst we have been assured by the Queensland Government that the exclusion solely relates to obligation holders of designers, project managers and has already been a move away from nationally consistent regulation. Accordingly our concern is that this rolling out of the law will merely add to current occupational health and safety obligations without resulting in consolidation of an already excessive regulatory burden.

10.5 In addition, Master Builders is concerned that where there is a change in regulatory burden, regulatory impact statements should include a regulatory benchmarking study. In the instance where the new National Standard for Construction Work establishes new duties based upon the concept of "control of work" rather than as an incident of the employee/employer relationship, it is vital that benchmarking studies of this nature are undertaken. This recommendation is set out as recommendation 8 in the Blueprint. This recommendation is given added force when those who are legislating the obligations, for

example, set out in the National Standard for Construction Work merely place them in the legislation as additional burdens rather than as a means to consolidate existing regulation.

10.6 Master Builders commends the OH&S Blueprint to the Taskforce.

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MASTER BUILDERS NATIONAL SURVEY

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.

A total of 299 replies were received, comprising 211 residential projects and 88 commercial projects.

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.

Results of the survey are presented below, both at the national level and at the State/Territory level.

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)

EXTRA BUILDING LAWS

Extra Building Laws	37	(38)

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

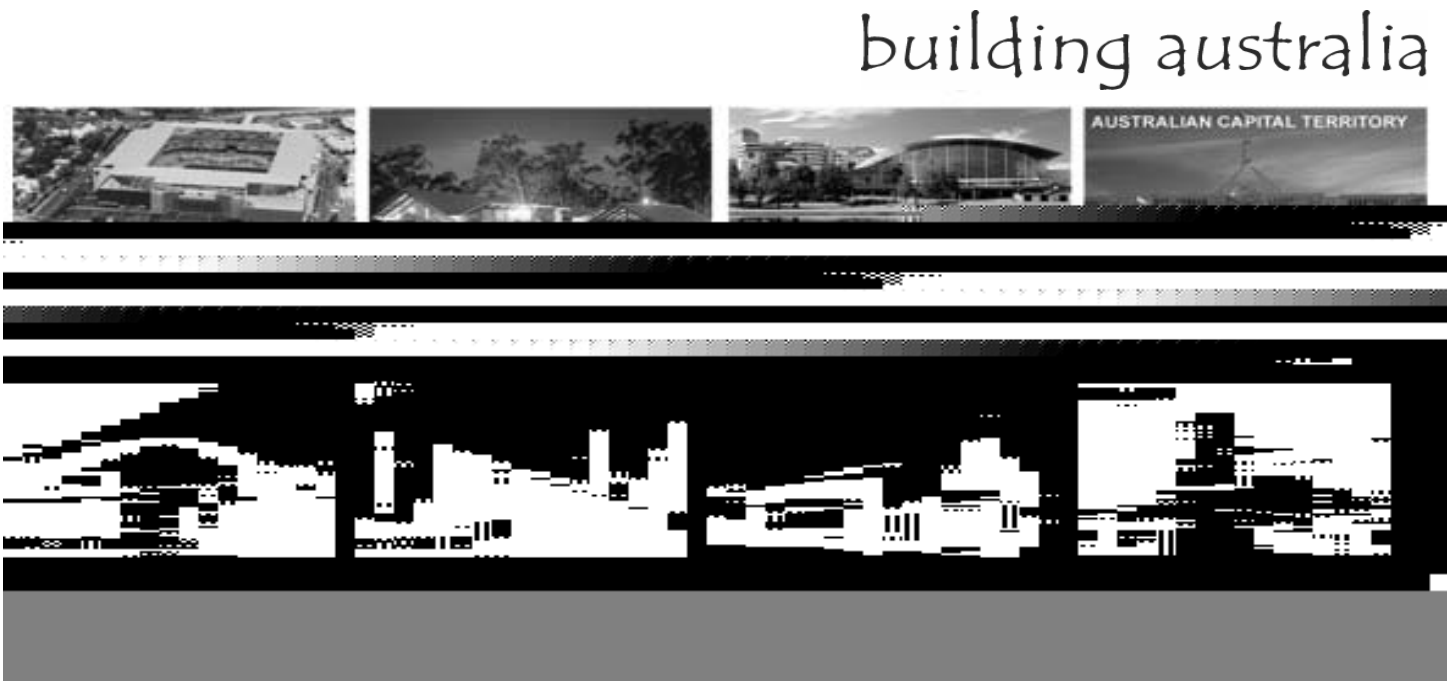
ACT	100
NEWCASTLE	93
NSW	85
QLD	84
SA	92
TAS	80
VIC	79
WA	67

MASTER BUILDERS
AUSTRALIA

Building A Safer Future:

Master Builders Occupational Health and Safety Policy Blueprint

2005 - 2015



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About Master Builders Australia Inc

Master Builders Australia (Master Builders) is the major Australian building and construction industry association. Its primary role is to promote the viewpoints and interests of the building and construction industry and to provide services to members in a broad range of areas including training, occupational health and safety (OH&S), legal services, industrial relations, building codes and standards, industry economics and international relations.

Master Builders is Australia's oldest industry association. Founded in the early 1870s in Melbourne, Sydney and Newcastle, the movement quickly grew with Master Builders Associations being established in each State and Territory of Australia. It was federated in 1890.

Over the past 114 years, Master Builders has grown to over 28,000 member companies with representation in every State and Territory in Australia.

Today, Master Builders' membership consists of national, international, local and residential, commercial and industrial builders and civil contractors together with subcontracting firms, suppliers and professional industry advisors. Membership of the Master Builders' movement represents 95% of all sectors of the building industry.

Master Builders has offices in all capital cities as well as major regional cities in Australia. The movement employs over 260 experienced staff with qualifications in a diverse range of disciplines including building, engineering, law, management, economics, marketing, accounting, industrial relations, safety, building surveying, international business and training.

Master Builders Australia is the national body representing the Master Builders movement. Its members include all nine State and Territory Master Builders Associations.

Master Builders' OH&S Policies

Master Builders' two main policy objectives for OH&S are:

- to achieve improved building and construction industry OH&S performance; and
- to achieve national, consistent OH&S arrangements in the establishment of an appropriate regulatory framework.

Master Builders supports the development of a nationally consistent regulatory framework to be adopted by the nine (9) jurisdictions through national standards supported by national codes of practice, underpinned by guidance materials. Master Builders supports appropriate mandatory requirements for national introduction of OH&S training programmes.

It is important that the specific situation of small business be recognised in planning for OH&S. Small firms predominate. The great majority of businesses operating in the building and construction industry (around 95%) are small businesses employing fewer than five people. Contracting and sub-contracting is a notable feature of the industry. Practical guidance material should be promoted to and accessible to small business employers.

A greater focus upon the needs of small business does not mean that Master Builders is in favour of two sets of laws, one law for large participants and one law for small and medium sized enterprises. Importantly, all businesses should be free to choose OH&S management systems best suited to their needs in discharging their OH&S responsibilities, rather than through a cumbersome and overly prescriptive process that is imposed upon them. The focus should be upon outcomes not processes and should be structured so as to engage the participants.

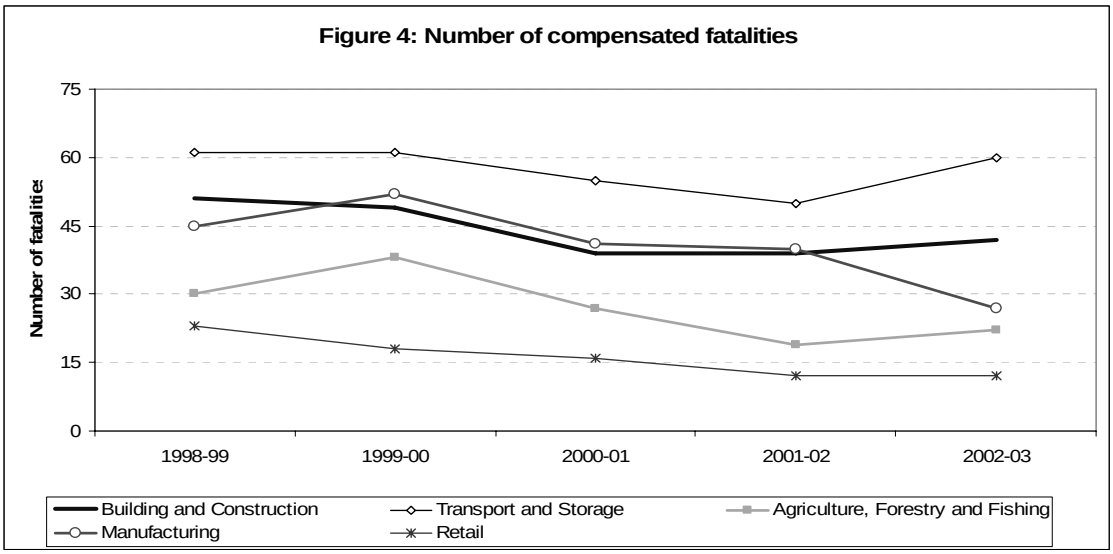
Master Builders supports the principle that all businesses and all employees have a basic duty of care to safeguard their own and others health and safety.

Employment Profile of the Building and Construction Industry

The Australian Bureau of Statistics estimates that employment in the construction sector was 857,000 in May 2005. Given that activity is at or close to reaching a peak, a period of more moderate employment growth on average is likely over the next 5 years. Medium term developments are difficult to predict, but the cycle in prospect is likely to be milder by comparison with previous episodes. Employment in the construction sector fell by around 15 per cent in the early 1990s recession and by 7 per cent in the 2000-01 downturn.

A period of more moderate output growth of say 2 percent per annum, coupled with continued productivity growth could realise employment growth around 1 per cent per annum, on average, over the next 5 years. That would result in construction sector employment of around 900,000 in 2009-10, an additional 43,000 on current levels. This number would be less to the extent that output growth was lower and/or productivity growth was higher. Activity levels and their correlation with OH&S performance is analysed in the discussion under Outcome 1. Whilst the numbers presented later show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two variables, the numbr show that there appears to be no correlation between these two

Secondly, from a statistical standpoint, the numbers do not allow much confidence in predicting sustainable trends into the future.



Another perspective on fatality data is to compare numbers and trends with an exposure denominator such as the level of building activity *(Figure 5).* One of the intuitive responses to fatalities is that they occur when time pressures and labour supply shortages lead to poor practices.

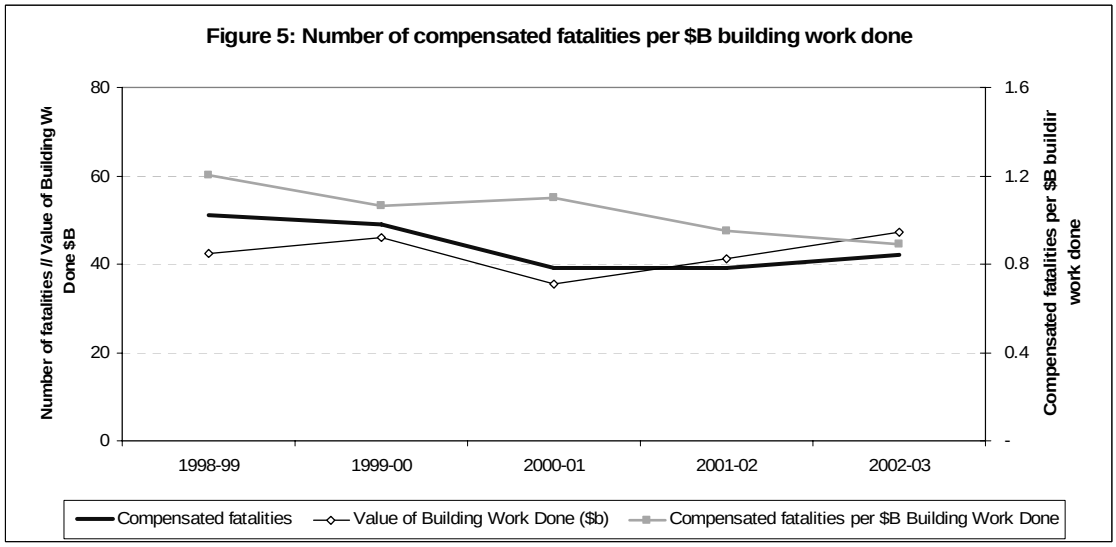
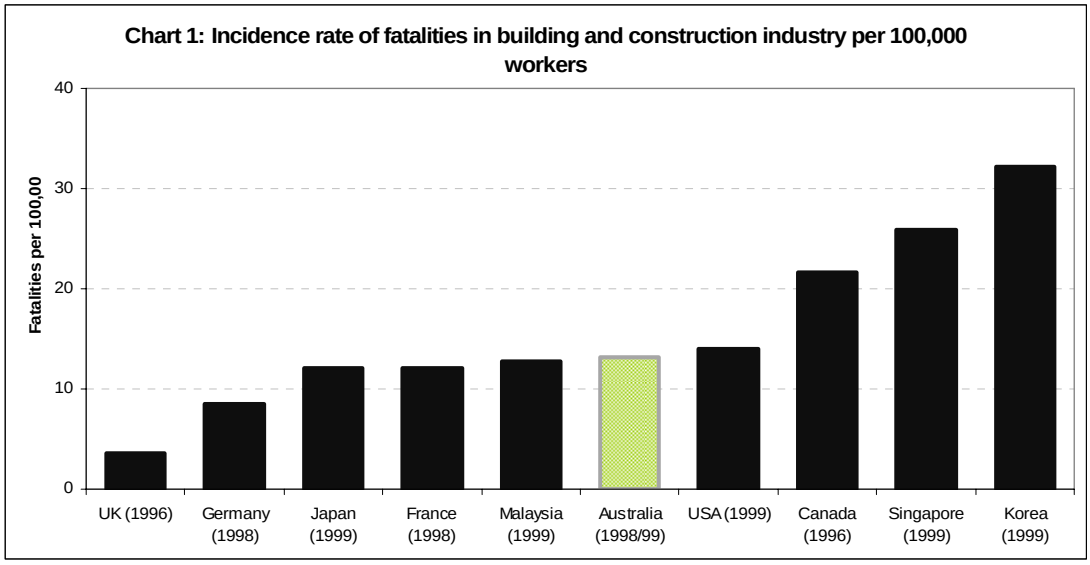


Figure 5 shows the relationship between the level of building activity and fatality numbers and rates. The raw numbers appear to track the activity levels although there is a trend away from this in the last year shown. The compensated fatalities per $B Building work done suggests there is no relationship between the two variables and indicates the reasons for fatalities may be more to do with practices unaffected by activity peaks. This observation does not rule out the possibility that with better and more extensive data, especially a longer time series, the relationship will prove positive.

A further dimension in trying to understand fatality data is to see how Australia compares to other countries. Data drawn from the Japan Construction Safety and Health Association (Visual Statistics of Industrial Accidents in Construction Industry 2001) and published by the Japan Industrial Centre for

Occupational Safety and Health shows a comparison of fatality rates. The sources used to compile the chart in Chart 1 include the ILO, and respective OH&S agencies in each country.



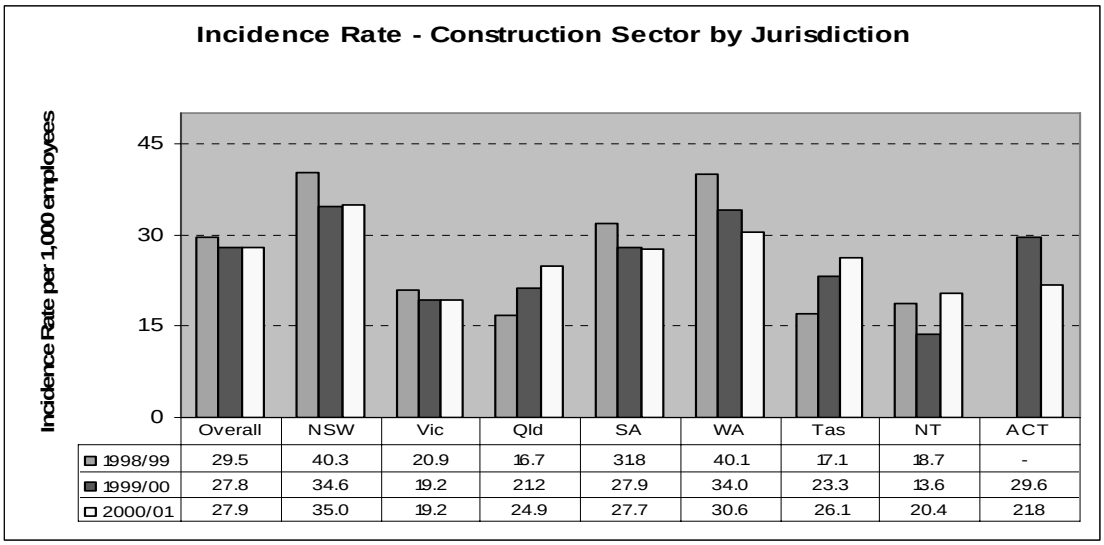
Performance Varies Across Jurisdictions

The variation in performance across jurisdictions can be a basis for trying to identify success factors or barriers to improvement. The 5 year period used here cannot be disaggregated down to jurisdictional comparisons but research from another project concentrating on the initial three year period can be used.

The Comparative Performance Monitoring Case Study[3] on the building and construction industry published in 2004 shows that New South Wales and Western Australia have the highest incidence and frequency rates for the period 1998/99 to 2000/01 but are improving off the back of relatively high rates. The jurisdictional profile remains similar even where the severity of injury increases (as measured by claims of 30+ and 60+ days duration).

[3] Workplace Relations Ministers' Council Commonwealth of Australia, Comparative Performance Monitoring, Case Study on Performance Outcomes in the Building and Construction Industry, February, 2004.

Chart 2 from the CPM Report is reproduced below to illustrate jurisdictional variations[4].



	Overall	NSW	Vic	Qld	SA	WA	Tas	NT	ACT
1998/99	29.5	40.3	20.9	16.7	318	40.1	17.1	18.7	-
1999/00	27.8	34.6	19.2	212	27.9	34.0	23.3	13.6	29.6
2000/01	27.9	35.0	19.2	24.9	27.7	30.6	26.1	20.4	218

Performance Varies Within Different Building and Construction Sectors

The building and construction industry is diverse and represents many different types of construction activities and their attendant hazards. For statistical purposes the industry is classified into two divisions each with a number of sub categories as described below:

41 General Construction

- *411: Building Construction*: covers the construction, alteration and repair of housing and other residential buildings; and non-residential buildings such as hotels, hospitals and prisons;
- *412: Non-Building Construction*: covers the construction and repair of structures such as roads and bridges, railways, harbours, dams and pipelines.

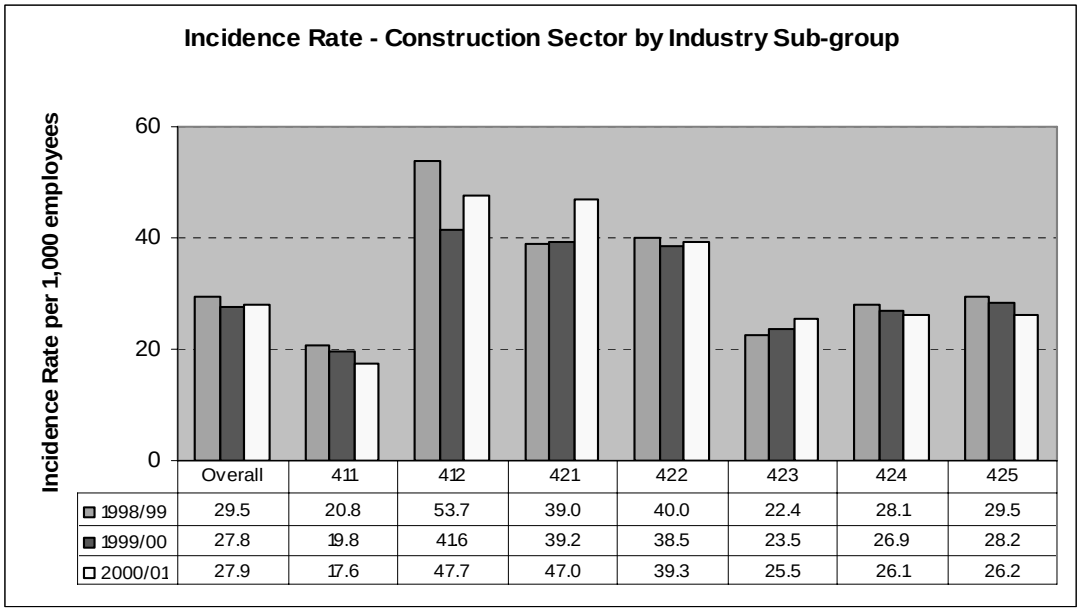
42 Construction Trade Services

- *421: Site Preparation Services*: covers activities such as earthmoving, such as in excavating and trench-digging, and the hire of excavation equipment with operators;
- *422: Building Structure Services*: covers activities such as concreting, bricklaying, roofing services and structural steel erection services;
- *423: Installation Trade Services*: covers activities such as plumbing, electrical, air conditioning and heating services and fire and security system services;
- *424: Building Completion Services*: covers activities such as plastering and ceiling services, carpentry, tiling, painting, decorating and glazing services; and
- *425: Other Construction Services*: covers activities such as landscaping and other special services such as sand blasting and scaffold construction.

Differences in risk exposure are found in these industry sub groups and these may influence claims performance. Chart 16 reproduced from the CPM report shows *411*: Building Construction has the lowest incidence rate and *412*: Non-Building Construction has the highest incidence rate along with *421*: Site Preparation Services and *422*: Building Structure Services.

[4] Ibid, p.19.

Chart 16 from CPM Report.[5]



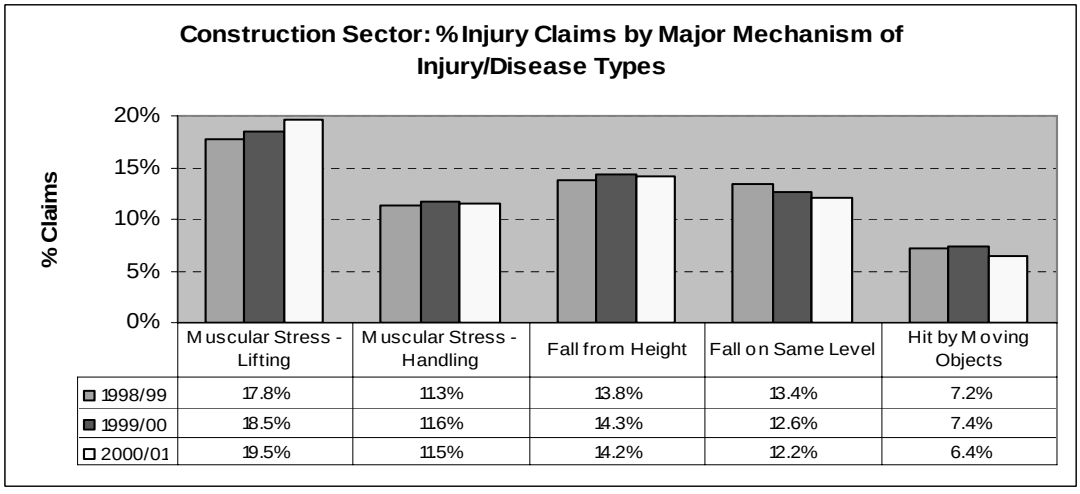
	Overall	411	412	421	422	423	424	425
1998/99	29.5	20.8	53.7	39.0	40.0	22.4	28.1	29.5
1999/00	27.8	19.8	41.6	39.2	38.5	23.5	26.9	28.2
2000/01	27.9	17.6	47.7	47.0	39.3	25.5	26.1	26.2

Within the three highest rate sectors NSW's poor performance dominates non building construction, Victoria's poor performance dominates Site Preparation Services and NSW and WA dominate the Building Structure Services profile. Fatality incidence rates are also highest in these three industry sectors.

Injury Profile Has Not Changed Significantly

Whilst there is evidence of reductions in claims numbers and rates, the profile of injury has not changed significantly. The CPM Report outlined the 5 major injury categories in a chart which is reproduced below:

Chart 7: Injury by mechanism (%)[6]

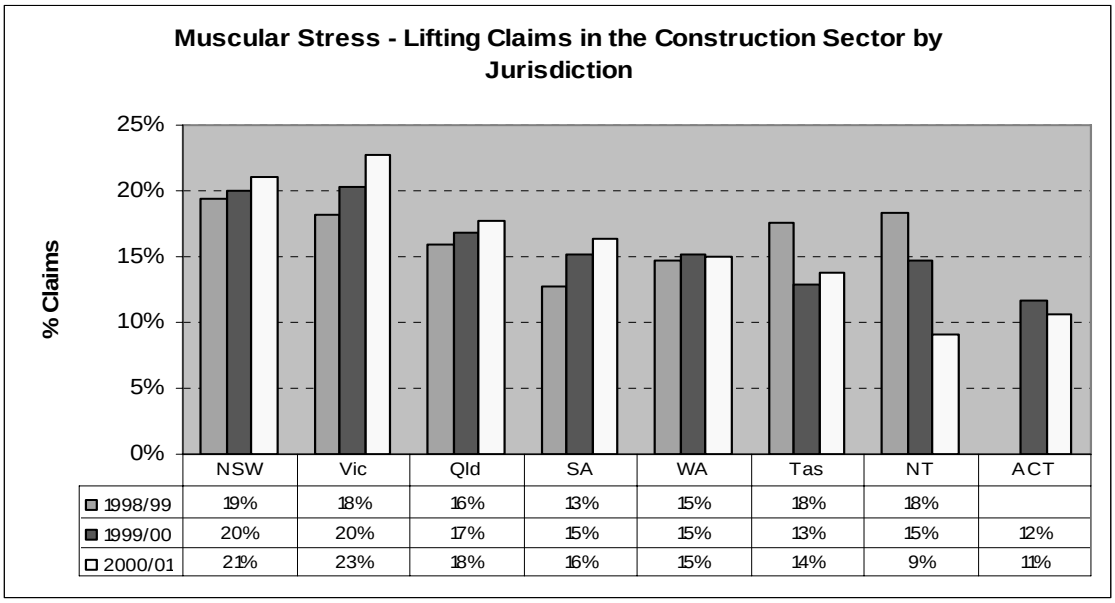


	Muscular Stress - Lifting	Muscular Stress - Handling	Fall from Height	Fall on Same Level	Hit by Moving Objects
1998/99	17.8%	11.3%	13.8%	13.4%	7.2%
1999/00	18.5%	11.6%	14.3%	12.6%	7.4%
2000/01	19.5%	11.5%	14.2%	12.2%	6.4%

Over the three years these major injury categories have not changed at an aggregate national level. If the largest category, muscular stress, is examined further by comparing
jurisdictional experience a pattern of stability and slight increases in big jurisdictions is evident.

[5] Ibid, p.40.
[6] Ibid, p.21.

Chart 9 from CPM Report reproduced below:[7]



Other Factors: Size and Occupation

Not all jurisdictions collect data about the size of company but in those that do the pattern is clearly that the very small organisations have higher incidence rates compared to larger firms. This factor influences Master Builders' focus upon the need for small business to be an important target group in steps to engender better OH&S performance.

Reliable data is difficult to find about occupational experience in the building and construction industry as statistical collections do not disaggregate the data into meaningful classifications. A Victorian study of occupational "black spots" in the building and construction industry[8] identified 11 occupational groups and the matching hazards or injury "blackspots" for each group. The groups were:

- Painters (Falls from height, especially ladders and stepladders)
- Crane, earthmoving operators (Falls and manual handling of vehicle attachments)
- Bricklayers (Falls from height, predominantly from scaffolding)
- Plasterers (Falls from equipment they stand on while working)
- Tilers, pavers, concreters (Manual materials handling)
- Steelworkers (Falls from height)
- Roof layers (Falls from roof, power tools)
- Plumbers (Falls from height)
- Carpenters (Power tools and falls from height.)
- Electricians (Falls from height, electrical safety)
- Other construction workers (Falls from height, power tools)

The study concluded that the four main injury risk types were falls from heights, exchange of energy (mobile equipment, power tools etc.), overexertion and chemical exposure.

[7] Ibid, p.22

[8] Monash University Accident Research Centre, *Reducing serious injury risk in the construction industry*, a report prepared for the Victorian WorkCover Authority, 2001.

Focus For the Future

The focus for the building and construction industry is to maintain the current trend of reductions in injury and fatality incidence rates. The industry is committed to its part in achieving the goals of the National OH&S Strategy[9]. Master Builders was motivated to make this commitment by a concern to reduce fatalities and serious injuries in the industry and to become part of the improvement process. The National Strategy is centred on the achievement of the following targets:

- Sustain a significant, continual reduction in the incidence of work-related fatalities with a reduction of at least 20 per cent by 30 June 2012 (and with a reduction of 10 per cent being achieved by 30 June 2007); and
- Reduce the incidence of workplace injury by at least 40 per cent by 30 June 2012 (with a reduction of 20 per cent being achieved by 30 June 2007).

Figure 6 below shows the improvement trend required by the building and construction industry to achieve these national targets.

Never losing sight of the fact that one death is one death too many, the statistics should be analysed. Translating the statistical trends into raw data with around 40 fatalities a year currently, the building industry would need to reduce fatalities to around 32 per year by 2012 to achieve a 20% reduction. With claim numbers at 12-13,000 per year currently, a 40% reduction would be needed to reduce this number to about 7,500 by 2012. Of course with the employment growth outlined earlier the target might be better expressed as about 8,000 claims.

The National Strategy is to be achieved by a number of strategic priorities. They are:

- Reduce high incidence/severity risks;
- Develop the capacity of business operators and workers to manage OH&S effectively;
- Prevent occupational disease more effectively;
- Eliminate hazards at the design stage; and
- Strengthen the capacity of government to influence OH&S outcomes.

The building and construction industry has a key role to play in each of these priorities but has particular impact in the areas of management of high risk, capacity development and safe design.

[9] *National OH&S Strategy 2002-2012*, National OH&S Commission, Commonwealth of Australia, 2002.

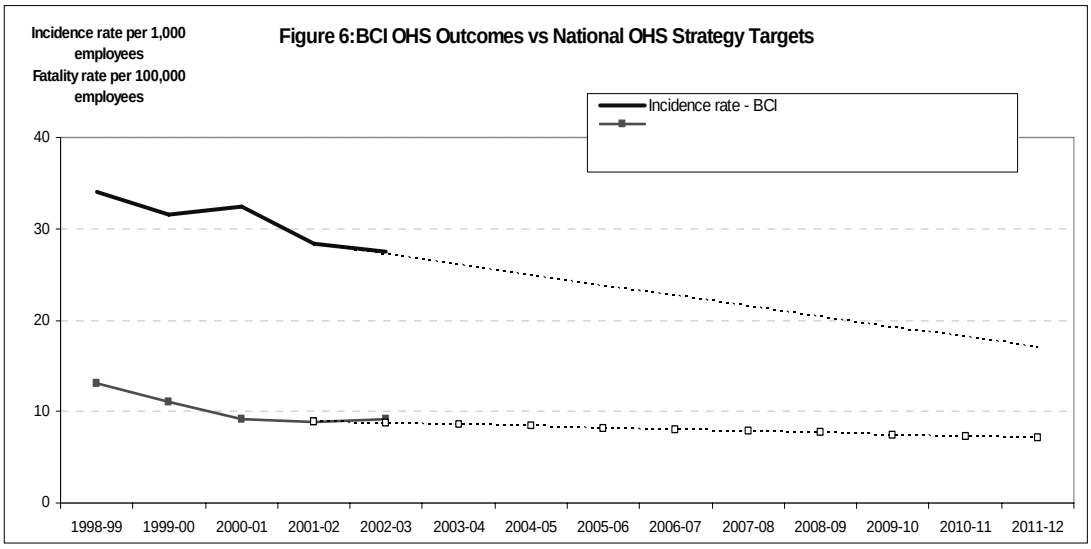


Figure 6: BCI OHS Outcomes vs National OHS Strategy Targets
Incidence rate per 1,000 employees
Fatality rate per 100,000 employees
Incidence rate - BCI
40
30
20
10
0
1998-99
1999-00
2000-01
2001-02
2002-03
2003-04
2004-05
2005-06
2006-07
2007-08
2008-09
2009-10
2010-11
2011-12

The State and Territory training authorities conduct their supervision of this process in a partisan manner. The funding of the OH&S component of vocational education and training should be tied to an audit of appropriately consistent presentation of the training.

Recommendation 3:
Commonwealth funding should be tied to the requirement that OH&S training as part of endorsed training packages is consistently taught Australia wide

Master Builders is of the view that the training regime, through the CPSISC, should be the driver to ensure the principles of OH&S are embedded in training at all levels and that OH&S authorities should not create an additional regime. The OH&S training regime should be left to those with competence in training rather than to the OH&S authorities to licence or maintain.

Learning on the job also means that builders should provide OH&S training for their employees so that their system of work is safe for particular tasks. Self employed and specialist contractors should ensure that they regularly refresh their OH&S knowledge. Master Builders promotes a suite of training in OH&S and encourages life long learning and at least annual upgrading of skills in this essential discipline.

Recommendation 4:
OH&S training should be vested in the agencies responsible for vocational education and training

C) Small Business and OH&S

Actively engaging with small to medium sized business (SMEs) on OH&S issues has been and continues to be a major challenge for governments and regulators. They rely heavily on employer and industry associations like Master Builders for this purpose.

Meeting that challenge is a priority in the National OH&S strategy. Small business must be recognised as having a different range of needs to other OH&S stakeholders.

Whilst businesses with significant OH&S skills and resources need to be allowed to apply appropriate common systems across the nation, the OH&S system must also be sympathetically crafted to the special needs of businesses with lower level skills or resources.

To achieve improved OH&S performance in the SME sector, initiatives must be developed which provide:

- meaningful guidance materials;
- a reduced level of regulation, with national consistency;
- improved quality of regulation with provisions that can be properly understood;
- targeted workplace assistance; and
- face-to-face advice.

Small business is the growth sector of the Australian economy, yet is the sector with fewest capacities and resources to manage OH&S regulatory obligations or to invest heavily in new plant or equipment.

Regulation must adequately recognise the differing capacities of various employers, especially small and medium businesses. Given the growth of small business in Australia, examination should be made of OH&S regulatory frameworks that are more responsive to business realities in this sector. Innovative approaches to the design of OH&S regulatory frameworks that work in small business should be considered, including a simpler framework for meeting their duty of care and the provision of appropriate guidance material. This could include legal recognition of a safety management system that deals in a more certain way with issues of both employer and employee liability in small business. The newly appointed Federal Safety Commissioner should be given resources to tailor a safety management system to small business building contractors that may be trialled using Master Builders' members.

Recommendation 5:
Research on the best way to assist small business should be an urgent priority of all stakeholders in the building and construction industry including work on a simple building and construction industry safety management system- this should be instituted by the newly appointed Federal Safety Commissioner and trialled with Master Builders members

Outcome 5: Reasonable, Balanced and Practical Occupational Health and Safety Regulation that Contributes to Australia having World Class OH&S Systems and Performance, based upon National Uniform Standards

The Role of Regulators

Just as workplace safety matters, so does the quality of workplace regulation and its framework. Poor regulation or bureaucratic frameworks set by governments, parliaments or regulators can hinder, not help, the delivery of safe workplace outcomes.

Industry is seeking to improve the quality and structure of OH&S regulation, not the removal of sensible regulation in areas where it is needed. The capacity of industry to deliver on its commitment to safety relies in part on the practicality of installing and maintaining all the elements of safe systems of work. Merely prescribing regulation without bearing this issue in mind will have adverse consequences for building industry participants as well as potentially raising construction costs, and in particular the cost of housing.

To attempt to change a workplace culture by simply introducing more legislation, or to see regulation as a first or ideal response, is inconsistent with modern workplace management and good human resource practices. It may also have adverse consequences for housing affordability. With the extent and range of often inconsistent regulation currently in effect, this is a major issue for the industry. This proposition does not mean that builders should be free of regulation or that small business should have the capacity to opt out of the OH&S regulatory environment.

However, the role of governments and regulators is to focus on what is reasonable, practical and achievable and to make the right interventions if and when they are needed. This means a framework that facilitates high level OH&S awareness and culture in workplaces, and not the micro-management of OH&S in workplaces.

For the framework to be effective, it must be consistent with the realities of operating businesses in the modern economy and the mobile labour force that particularly characterises the building and construction industry. Poorly established frameworks detract from the achievement of safer workplaces through the objectives set out in this Blueprint.

Regulators also have an important role as information providers in conjunction with business and employer organisations. Regulators should not merely introduce and enforce the law but should actively pursue educational aims that guide industry participants, particularly small business operators, in how to comply with the law. As indicated earlier in this Blueprint, promotion of practical means to comply with the law should be a function required of all OH&S regulators.

Recommendation 6:
Regulators should have a legally defined role that requires them to provide education on how to comply with OH&S laws, not merely act in an enforcement role

The Current Regulatory System

The Australian Government does not have a specific constitutional power to make laws with respect to OH&S (although a combination of other powers could be used). As a consequence, there are nine separate OH&S systems of regulation throughout Australia – one in each of the six States, one in each of the two Territories, and a system of Commonwealth regulation for Commonwealth government employees or employees of companies formerly owned by the Commonwealth (and a maritime industry scheme).

The principal source of law in each of these systems is legislation of the relevant parliament. That legislation is supplemented by regulations, codes of practice, guidance material and by specialist statutes. International instruments, if and when ratified by Australia, can also form part of the body of regulation.

Statutory authorities, government agencies and government inspectorates administer these systems. The courts have a continuing role. As with other statute-made law, the parliaments make the law but the courts interpret and enforce it.

The legislative design adopted in most Australian systems is known as 'performance based' legislation. It is a model where a primary statute exists which imposes general and specific duties on employers, employees and some third parties. The primary duty is the duty of care. In theory at least, this model does not specifically direct employers and employees on how they should meet their duty of care but requires management in each workplace to undertake active prevention activities, risk assessments and training in conjunction with employees.

The primary legislative objects of all of the systems are based around prevention of injuries and the identification and elimination of risks. The underlying philosophy is to impose an active responsibility on employers, managers, supervisors and employees to maintain a safe and healthy workplace. Put simply, OH&S laws require managers and employees in workplaces to treat OH&S as a core business issue. It is not possible to contract out of statutory OH&S obligations, although employment contracts can impose additional duties.

Beyond specific statutory OH&S systems, other laws also impact on the rights and obligations of employers and employees. Workers' compensation laws impose duties associated with the management and compensation of injuries. The common law tort of negligence also establishes a basis for litigation, although statutory workers' compensation schemes have limited (and in some cases) wholly excluded employee-based negligence actions (but generally not third party actions against employers).

Further, employment and workplace relations law also add to rights and obligations, whether through binding workplace agreements made during enterprise or industry bargaining, or through orders and decisions of industrial tribunals in industry-wide or company specific awards, where such provisions are allowable.

Other laws that bind employers can also affect OH&S policy but not always in a consistent manner. For example, some laws limit the capacity of employers to control conduct in their businesses or take action against employees or other parties that put the health and safety of others at risk, such as unfair dismissal laws, privacy laws and some discrimination laws.

What is Required from OH&S Regulation?

Regulation, including OH&S regulation, should not be an end in itself. Regulation must be a step to a broader end objective. To justify regulating activity between private individuals and private businesses, strong underlying public interest considerations must exist. Whilst the prevention of workplace injury and fatality is obviously in the public interest, regulatory objectives can be achieved in many different ways.

The emphasis of regulatory frameworks must be on encouraging the development of a culture of mutual responsibility in the workplace and open and active communication. This culture must extend to employees taking responsibility for their own OH&S. Rather than rely upon a paternalistic legal framework where their responsibilities are minimal, employees should be trained in OH&S so that it becomes a natural component of the way they work.

An effective OH&S regulatory framework will over time, help improve OH&S awareness and behaviour. The principal focus needs to be outcome oriented – by encouraging safe design of workplaces, plant and equipment in the first instance and then by due diligence, effective risk management and injury prevention. Scope must exist for enterprises and their employees to establish business specific commitments and approaches.

To be effective, OH&S regulation must focus on injury prevention and the practical and achievable management of foreseeable risks. The concept of reasonableness that underpins so much of our law and the notion of 'a fair go' has traditionally applied to the regulation of workplace safety.

This requires the application of a statutory, general OH&S 'duty of care' pitched at:

- reasonable care;
- identification of foreseeable hazards; and
- implementation of reasonably practicable measures to eliminate/control hazards/risks.

These are not novel propositions, nor are they outside of well established international approaches. Yet, too often, the Australian experience of legislative and judicial approaches to regulation does not evidence this character. The concepts of 'reasonably practicable' 'foreseeable' and 'control' have been significantly distorted in several Australian jurisdictions, to the point where they no longer reflect what is reasonable, practical or achievable.

The regulatory framework must recognise that no matter how committed employers and employees are to workplace safety or what level of resources are directed to OH&S, neither an employer nor an employee can predict or control every activity or event around them. The framework cannot mandate that employers guarantee safety. The standard set should be the requirement to take all reasonable steps to prevent the foreseeable risk of injury.

Recommendation 7:
Obligations of all participants should be clearly defined and legal recognition must be given to the development of practical and effective safety systems

Unless legal duties are realistic and fair in their application, then the regulatory system becomes unworkable.

Regulation should also recognise the differing capacities of employers. Improvements in OH&S performance must be underpinned by recognition of the needs for differing interpretation and implementation of, for example,, codes of practice. Guidance materials should be drafted so as to suit the needs of the specific business.

There are well established principles, endorsed by the Council of Australian Governments (COAG) and the Commonwealth Office of Regulation Review (ORR) that provide guidance to policy makers and regulators on the nature of regulatory systems, where regulation is necessary.

The ORR checklist for assessing regulatory quality covers the design, implementation and enforcement of regulation. According to the checklist, regulation should be:

- the minimum necessary to achieve objectives;
- not unduly prescriptive;
- integrated and consistent with other laws;
- designed to minimise the compliance burden imposed;
- accessible, transparent and accountable;
- communicated effectively; and
- enforceable.

Master Builders welcomes and adopts this approach – and commends it to policy makers in OH&S. Master Builders supports the recently declared National Standard for Construction, referred to earlier. It is now essential that the Standard be transformed into consistent laws nationwide and that during the transition period for its introduction all States and Territories reach agreement to facilitate that process. NOH&SC[14] is currently developing a number of codes of practice that will complement the standard. The proposed codes will detail a national approach to the prevention of falls from height in construction work, induction training for construction workers, demolition work, and the management of risk in tilt-up and precast concrete construction work. Similarly, it is essential that these Codes of Practice assist with the process of making nationally consistent, uniformly applied laws in this area rather than as an additional burden of regulation from that currently in place.

Proposals for legislative change should be accompanied by a Regulatory Impact Statement (RIS) which supports the proposition that the OH&S benefits justify the costs that will be incurred by industry in the implementation of the proposed new rights or obligations. In this context, a mandatory requirement should be imposed upon all regulators to conduct a regulatory benchmarking study for each new Standard, Code of Practice or OH&S law. This is an especially important issue where nationally consistent regulation is intended to displace current State and Territory laws, such as with the National Standard for Construction. Regulatory benchmarking must show the duties placed upon owners, occupiers, managers, controllers and all other duty categories. These new duties should be compared with the more traditional duties placed upon employers and employees and other current classes of duty holder. Because of the changing

[14] Ultimately, this work will be performed by the newly created Australian Safety and Compensation Council which will take over t
work of NOH&SC from the passage of a number of Bills introduced into the Spring 2005 sitting of the Commonwealth parliament

landscape associated with both classes of duty holders and the expanded obligations placed upon duty holders, regulatory benchmarking is an essential tool for all industry participants.

Recommendation 8:
Regulatory Impact Statements must include a regulatory benchmarking study when new Standards, Codes of Practice and OH&S laws are proposed

OH&S legislation also needs to be assessed in terms of its conflicting demands and impact on an organisation's compliance with the requirements of other statutes, notably employment protection, disability, privacy and discrimination regulation.

Organisations should not be subject to a multiplicity of conflicting and competing demands. OH&S laws cannot logically expect management to control activities of employees which are beyond their control, or which the employer is specifically prohibited by other laws from knowing or controlling. For example OH&S law cannot logically compel every step be taken by management to eliminate risks to OH&S, when privacy and discrimination law increasingly impose limits on the capacity of employers to know the OH&S risks that employees may be presenting.

In applying nationally consistent OH&S standards, employers use differing approaches. Performance-based standards can be used to develop corporate plans and in-house safety systems to comply with legislation.

In the case of small and medium sized companies, approaches will differ. Some businesses will be able to develop in-house safety systems whilst smaller, under resourced enterprises will use industry guidance. These can be more detailed and provide information on 'what to do' and 'how to do it' in order to comply with relevant legislation.

Recommendation 9:
Industry guidance material, suitable for use by small business, must be made available to guide compliance with OH&S obligations

Problems with OH&S Regulation

There are significant problems with regulatory design and administration of OH&S in Australia.

Over the past decade qualitative and quantitative research and surveys of Australian business have identified OH&S compliance as a critical issue for industry. Whilst this is welcome, in that it reflects a heightened awareness and commitment to OH&S outcomes, it also reveals that the compliance and red tape burdens arising from OH&S regulation are assuming a high order concern that needs to be tackled by governments and regulators.

Some current regulation and the way it is interpreted and implemented, whilst well intended, is counterproductive rather than being a formula for improved OH&S performance.

OH&S systems have generated a plethora of regulation across Australia over the past generation.

The major problems identified by employers are:

Quantity: The quantity of regulation

- multiple sources of regulation on the same topics, including by each Australian government, each Australian parliament and multiple government departments, WorkCover authorities, OH&S regulators and in some cases, industrial tribunals; and
- alternatives to regulation or black letter law are not properly considered or assessed.

Quality: The quality of regulation

- the 'duty of care' interpreted to impose extreme, absolute and, in some cases, impossible duties on employers and designers in meeting performance-based obligations – to foresee the unforeseeable, to know the unknowable and to control the uncontrollable;
- expressed in complex and legalistic terms;
- inadequate defences where conduct has been reasonable;
- fails to account for particular circumstances of small and medium businesses;
- developed without proper cost or economic impact assessments; and
- once made, not accompanied by effective communication to industry, especially about the new duties created.

Frequency of Change: The frequency of change to regulation

- regulation, once introduced, is not properly reviewed;
- additions and amendments to regulation are ad hoc and based on inadequate industry consultation;
- employers can't keep up with the volume of new regulation – for example in the five years to 2003 there were 166 amending instruments of OH&S regulation in Australia involving 1,796 changes to rights and obligations of employers and employees on workplace safety; and
- the practical impossibility for many businesses of keeping pace with often obscure changes in scientific, technical, medical or attitudinal data affecting what they do and the way they work.

Red Tape: The compliance and red tape burden of regulation

- regulation creates excessive compliance and red tape burdens, especially form filling, written reporting and data collection;
- red tape focuses on compliance, not outcomes;
- this is increasingly a high order issue in business surveys, research and census data; and
- businesses carry an excessive burden of compliance with ever changing laws and keeping abreast of those changes.

No National Consistency: The lack of national consistency in core regulation

As indicated in the earlier discussion about the implementation of the National Standard for Construction, Master Builders is in favour of uniform national laws for the building and construction industry. There needs to be, in turn, a very sharp focus upon making general national OH&S laws consistent. Regulation, even on common, basic issues differs amongst six States, two Territories and Commonwealth laws. Nationally operating companies, as well as employees, are prejudiced by lack of national consistency. Further, not all key OH&S standards developed on a national basis are implemented on a nationally consistent basis, or implemented at all as demonstrated in the following *chart*.

Status of Adoption of NOH&SC National Standards
into Regulation as at October 2005

	Extent of Adoption by Jurisdiction								
National Standard	NSW	VIC	QLD	WA	SA	TAS	NT	C'wth	ACT
Noise (2000)	Y	M	Y	Y	Y	M	M	Y	C
Certification (Last revised 2001)	Y	Y	Y	Y	Y	Y	Y	Y	Y
Manual Handling (1990)	Y	M	Y	M	M	Y	M	Y	Y
Major Hazard Facilities (Declared 1996) (Revised 2002)	N1	M	M	N1	N1	N1	N1	N1	N/A
Plant (1994)	M	M	M	M	Y	Y	Y	Y	C
Dangerous Goods (2001)	N1	Y	Y	N1	N1	Y	Y	N1	M
Hazardous Substances (1995)	Y	Y	Y	Y	Y	Y	Y	Y	C
Carcinogenic Substances (1995)	Y	Y	N	Y	N	Y	Y	Y	N
Hazardous Substances (1999)	Y	Y	Y	Y	Y	Y	Y	Y	Y
Lead (1994)	Y	Y	Y	M	M	Y	Y	Y	Y
Synthetic Mineral Fibres (1990)	Y	N	M	Y	Y	M	Y	Y	C
Atmospheric Contaminants (1995)	Y	Y	Y	Y	Y	Y	Y	Y	C

Notes: [11111] Adoption is assessed against key elements of the national standards (which are defined as aspects of the standard for which national consistency is considered important). The assessment is not restricted to OH&S regulations. It is determine whether a jurisdiction has a legal requirement equivalent to the key element irrespective of the body of legislation or legal p that provides the basis for the requirement. The assessment uses the following coding:

Y the key elements have been fully adopted
M most of the key elements have been adopted
N1 Parliamentary counsel drafting bill; or bill in parliament
C adopted as Code of Practice
N/A no MHF's identified

Recommendation 10:
Nationally consistent uniform OH&S laws be introduced as a priority in the building and construction industry and for all OH&S standards and underpinning laws

Inconsistent Meaning: The inconsistent interpretation of regulation

- regulators, courts and tribunals interpret OH&S rights and obligations in different ways – even the same regulation or duties;
- the employer duty of care has been progressively distorted from its initial statutory purpose through interpretation and re-interpretation; and
- in some jurisdictions the duty of care remains based on a test of reasonableness and foreseeability, whereas in other an absolute duty has been interpreted – one hostile to the common law intent and to common sense.

Unbalanced Enforcement: The selective and unbalanced enforcement of regulation

- enforcement through a judicious mix of eduction, training and – where necessary – prosecution and penalty requires balance and judgement;
-