



## ISSUES PAPER SEPTEMBER 2003

### **Productivity Commission Inquiry into First Home Ownership**

#### **Building regulation – the hidden costs of building and planning regulation, technical codes and standards.**

##### *Introduction*

The Building Products Innovation Council (BPIC) is an authoritative group for the suppliers of building products on strategic codes and standards issues.

The Council's mission is to promote the most efficient and innovative use of building products within a nationally consistent regulatory environment for building.

The Council enjoys senior representation\* across the spectrum of the product side of the building industry including timber, steel, glass, windows, bricks, cement and concrete and insulation and members account for over \$30 billion in activity annually.

The Council views the maintenance of a more harmonised building regulatory environment as the priority policy issue for the building products sector.

##### *Issues for the Inquiry*

The Building Products Innovation Council welcomes the Government's commitment to inquire into factors affecting declining housing affordability particularly for first home buyers.

Through research and analysis of supply side issues the underlying structural problems making housing less affordable, and more broadly affecting building affordability, may be identified and appropriate policy responses implemented. Dealing with these supply side issues will address affordability in an enduring and systematic way and more likely result in delivering efficiency gains for the economy.

Public discussion has already been generated on issues affecting the efficient operation of the supply side, including land availability, government taxes, charges and infrastructure planning and pricing policies.

The building materials manufacturing industry is keen to see the analysis and debate broaden to incorporate the regulatory system within which houses are designed, specified, built and maintained. Technical building codes and standards impact on material and construction costs and therefore the final cost to the consumer.

Policy and process issues relating to the Building Code of Australia and development of technical standards by Standards Australia International have significant impact not only on the cost of building products but on the choice of materials, design solutions and construction and maintenance of buildings. These impacts span the building supply chain.

Hidden costs, including what does not happen as a result of regulation eg innovation, are yet to be identified by standard regulatory impact analysis.

It is not commonly understood that the building materials industry competes in an open and international market. As a trade exposed sector, the building materials industry believes that effective building regulation is essential to maintaining the community health, safety and amenity and exports, jobs, R&D and building affordability.

During the early 1990's industry participated in the processes that saw the signing of the inter-government agreement establishing the Australian Building Codes Board and the Building Code of Australia in 1994.

The ABCB was created to reform the building regulatory system to effect extensive savings to the community, industry and all tiers of government. The principles and objectives behind this move remain as valid today as then, that is, to establish codes, standards and regulatory systems that are, as far as practicable, consistent between states and territories, cost effective, performance based and incorporate modern and efficient building practices.

Reform has been delivered but much remains to be done.

Of growing concern to building material manufacturers and suppliers is the growing inconsistency around the country in building and planning regulation. There is a trend for State and Territory planning schemes to override the building and construction requirements set out in the Building Code of Australia. This trend is adding costs to business, limiting cross border trade within Australia and putting at risk the future of the national building code.

Activist governments are able to introduce regulations over and above what is mandated in the BCA without impacting on their own budgets or by raising community taxes. The costs of such regulation are borne by business and the community.

Similarly the ten separate and distinct occupational health and safety and workers compensation schemes operating in Australia adds costs to business.

The number of agencies within each state that have a regulatory impact on the building materials industry is growing, resulting in confusion, duplication and further inconsistencies. There is little coordination within states and territories let alone on a national scale.

This trend of inconsistent regulation and “regulatory inflation” fragments the scale of markets and dictates against a world competitive building materials manufacturing base, limiting industry rationalisation, innovation and investment strategies.

With major free trade agreements in negotiation, minimum effective technical building codes and standards will be important to maximising the benefits of these trade arrangements for Australian industry.

Many of the issues raised in this paper were the subject of recent commentary in a speech by the Chairman of the Productivity Commission in March on the subject of “Reducing the Business Costs of Regulation”. The speech highlighted the growing amount and complexity of prescriptive legislation, the growth in the number of agencies designing and implementing regulation, the use of regulatory impact statements to justify the introduction of legislation and the onerous impact of compliance on small business.

The Council looks forward to formally expanding on the matters outlined below and suggesting policy recommendations in a full submission to the public inquiry.

#### *Affordability - Issues for Consideration*

##### ➤ **Towards a Nationally Consistent Building Regulatory System**

Where regulation is justified it needs to provide certainty, be simple, keep business costs down and eliminate unnecessary inconsistencies.

A review of the effectiveness of the building regulatory system, including the role and authority of the ABCB is important to the achievement of the goal of national consistency.

Increasingly, the authority of the ABCB is being challenged by the intrusion of planning issues into the building approval system. Planning schemes are imposing controls beyond the scope of “health, safety and amenity” of buildings.

Planning regulation is not subject to the same level of scrutiny as building regulation. For example there is no requirement for cost benefit analysis, industry consultation or regulatory impact statements.

Such regulatory “creep” has meant that new imposts and uncertainties are emerging from planning processes rather than building control. Administrative discretion is rife within planning and decisions are often based on qualitative

issues, without reference to the latest science or information about the range of materials technologies available or the minimum standards referenced in the Building Code of Australia.

Keeping up to date with BCA changes, new and reviewed Australian Standards on building, the various state and territory regulations and some 700 local council quasi-regulations, impose significant challenges and costs for the industry. Industry is in “continuous amendment management mode.”

The recent experience of the development of the national mandated energy code exposed significant problems in the structural framework within which the ABCB is forced to operate. The elongated consultative approach imposed on the ABCB increases the risks of states and local governments acting unilaterally and precipitately.

Unlike other inter-government agencies such as the Food Standards Australia New Zealand, ASIC and APRA, the ABCB does not operate under Commonwealth and mirror State legislation and, without legislative backing, the ABCB lacks the authority to maintain a consistent Building Code of Australia. Similarly there is no model administrative framework for the state and territory administrations to implement interpret and monitor the provisions of the building code.

Sustainability is emerging as a government priority and new “societal goal” but the ABCB has been slow to respond to the demand from state and local government regulators for measures to be introduced into the BCA. The result will be a continuing proliferation of requirements within and between states. Environmental regulation generally tends to be prescriptive rather than performance based and often is developed without regard to the latest innovations in materials or assessment technology.

Despite the significant impact of technical codes and standards on the building materials supply side of the industry, the ABCB does not have any representation from the Australian building products industry. The level of industry representation overall is inadequate to ensure the regulatory reform agenda is strong and based on practical industry knowledge.

National consistency is also proving difficult in the area of industry skills and licensing, again with state and territory administrations developing inconsistent approaches to the registration and licensing of building professions and trades.

An ongoing commitment, financially and in principle, is needed from all levels of government to ensure a performance based, national building code. A robust national code and model administrative framework is essential to building affordability, protection of the health and safety of the community and the efficiency of the Australian building industry.

As part of a microeconomic reform agenda, and with funding for current arrangements expiring on 30 June 2005, the Federal Government, with the

support of the State and Territory Governments, will need to lead and coordinate building regulatory reform and ensure funding arrangements and administrative structures that support the delivery of national consistency, certainty and reduce costs to business.

➤ **Australian Standards – public good or private benefit ?**

Major trading blocks and nations including the European Union, USA and Singapore have aggressive programs to develop and review international standards with the primary goal of economic development.

Standards provide an important technical underpinning to the building regulatory system. While the BCA is performance based, some 100 or more prescriptive standards that provide a quantitative solution or outcome against which a performance based solution might compare, serve as primary references in the code. Supporting these mandated standards are volumes of secondary and tertiary reference guides.

Before standards are called up in the BCA the ABCB undertakes a cost benefit analysis of implementing that standard. For standards not referenced in the BCA, there is no such requirement, even when standards are required to be reviewed every five years.

Despite the efforts in developing minimum mandatory codes and standards, the Trade Practices Act allows voluntary standards to be used by tribunals in consumer building disputes. These voluntary standards override the minimum outlined in the BCA and are also used even when standards are not called up in the BCA. Such standards address consumer and property protection issues, having no reference to building code requirements which meet the community's health, safety and amenity needs.

Each year building industry associations, at their own cost, sit on some 64 Standards Australia International (SAI) committees and contribute to the development and review of an extensive array of building and construction standards. SAI, once a publicly funded body due to the significant "public good" aspects of standards, but now a private company, uses significant intellectual property to generate income, charging industry for the standards publications.

The representation at standards committees can be constrained for academia, industry, community and government due to the costs imposed in travel, accommodation and time away from core responsibilities. This may mean the most appropriate consultants may not be always able to participate in the committee process.

Central to the debate about standards is the issue of whether there is a conflict between the established need for a standard and the commercial imperative of SAI to develop new standards and review existing ones.

The recent decision by SAI to walk away from the development of joint standards with New Zealand undermines the principle of having at least minimum regulatory standards jointly. Joint standards have contributed to Trans Tasman trade. When two markets become so integrated the possibility of two different standards for the same product will work against the objectives of the Trans Tasman Mutual Recognition Agreement and the WTO Technical Barriers to Trade Agreement.

This move is particularly at odds with SAI receiving federal funding in the order of \$2m annually to represent Australia on international standards forums. These forums are focused on the achievement of international standardisation and mutual recognition arrangements.

➤ **Good process – rigorous regulatory impact statements (RIS) to identify supply chain and affordability impacts**

Good process is essential to the achievement of minimum effective regulation.

The integrity and rigour of RIS continue to be a source of frustration from industry. Supply chain impacts are not factored into the RIS process and practical information on the current manufacturing base, capacity, logistics and installation issues are inadequately addressed by the current process.

Standards are becoming de facto regulations, used by lawyers to establish liability and “industry practice”. Given this emerging status, both the development and review of Standards should be subject to the same cost benefit analysis as required for building regulation.

RIS are not an end in themselves. Regular review processes are needed to ensure the objectives of the regulatory intervention, say one year on, have been achieved and there is a real assessment of whether the objectives are being achieved, what unintended consequences may be emerging, the nature and level of compliance and other costs. This may also assist in improving the overall design and utility of RIS.

➤ **National, cost effective system for product certification**

The ability to get innovative products into the market that are “fit for purpose”, complying with regulatory requirements is an essential part of the building regulatory environment.

Currently there is no national certification scheme operating that enables new and innovative products to be cost effectively and quickly deemed to be “fit for purpose”. At present following testing of the product or system, state and territory administrations are individually required to give separate approvals.

This process results in an elongated timeframe, often up to two years, by which time the product can represent old technology and missed market opportunities. The declining level of resources within each state and territory administration prevents a streamlined system from operating.

In summary, a nationally coordinated approach to the planning and implementation of regulatory reform is critical to the future of the building and construction industry and fundamental to the achievement of housing affordability.

### **Building Products Innovation Council August 2003**

- BPIC Members :
  - Australian Glass and Glazing Association
  - Australian Steel Institute
  - Australian Window Association
  - Bureau of Steel Manufacturers of Australia
  - Cement and Concrete Association of Australia
  - Clay Brick and Paver Institute
  - Concrete Masonry Association of Australia
  - Copper Development Centre
  - Insulation Manufacturers Association of Australia
  - National Association of Forest Industries
  - National Association of Steel Framed Housing
  - National Manufacturers Council of HIA
  - National Precast Concrete Association of Australia
  - Plantation Timber Association Australia
  - Steel Reinforcement Institute of Australia
  - Timber Development Association
  - Building Designers Association of Australia (founding Affiliate)

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