

Master Builders Australia

Submission to
Productivity Commission
on
Business Regulation Benchmarking:
Role of Local Government

6 June 2012



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1 Introduction

- 1.1 Master Builders Australia is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders Australia's members are the Master Builder state and territory Associations. Over 122 years the movement has grown to 33,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.
- 1.2 The building and construction industry is a major driver of the Australian economy and makes a major contribution to the generation of wealth and the welfare of the community, particularly through the provision of shelter. At the same time, the wellbeing of the building and construction industry is closely linked to the general state of the domestic economy.
- 1.3 Building and construction is the third largest industry in the Australian economy, with the cumulative task over the next decade estimated to require work done to the value of \$2.4 trillion. The residential and non-residential building sectors combined will require \$1.25 trillion worth of work and the engineering construction sector \$1.15 trillion.
- 1.4 The building and construction industry provides more than 1 million jobs or 9 per cent of the workforce. Growth in the industry is expected to result in an additional 300,000 employees to around 1.3 million by 2021.

2 Purpose of this Submission

- 2.1 The Productivity Commission (PC) is undertaking a study to benchmark the extent to which particular approaches to the exercise of regulatory responsibilities by local government authorities, affect costs incurred by business, both within and between jurisdictions.
- 2.2 In supporting this study, Master Builders welcomes the opportunity to communicate some general observations on red tape and the regulatory burden faced by the building and construction industry, as well as some more specific issues relevant in the local government sphere.

3 Background

3.1 The responsibilities of local government authorities in Australia can be wide-ranging, covering areas such as planning and zoning, development and environmental assessment. In addition to requirements to enforce certain powers delegated to them by state and territory governments, local governments in most jurisdictions have the ability to make and enforce local regulations.

3.2 In undertaking the study, the Commission is to:

- Identify the nature and extent of regulatory responsibilities exercised by local government authorities (including on behalf of other levels of government) where these responsibilities are likely to impose material costs on business, and significant variations in the distribution of these responsibilities between jurisdictions;
- Clarify to what extent local governments implement and enforce national and state/territory policies (sometimes differently), and to what extent they apply additional policies of their own.
- Identify indicators and use them to assess whether different regulatory responsibilities, and the approach to the exercise of those responsibilities, have a material effect on costs experienced by business; and
- Identify whether particular approaches to the exercise of regulatory roles by local government have the capacity to reduce unnecessary costs incurred by business while sustaining good regulatory outcomes, and could therefore be described as best practice.

4 Related Submissions

4.1 In recent years Master Builders has made a number of related submissions to government which include local government planning, zoning and development assessment issues and policies.

4.2 These include Master Builders' submission to the PC on "Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments"; a submission to the Senate Select Committee on "Housing Affordability in Australia"; submission to the Henry Tax Review

on “Infrastructure Charges: Where Bad Taxes Beget More taxes”; to the PC on “Local Government Revenue Raising Capability”; and our submission to the PC benchmarking study into Regulatory Impact Analysis.

5 Reducing Business Red Tape

- 5.1 The current PC study is the latest in a number of Government initiatives designed to better assess regulation and indeed cut the burden of red tape. The initiatives follow on from the landmark Banks Report *Rethinking Regulation*, which identified practical options for alleviating the compliance burden on business from government regulation.
- 5.2 Master Builders calls on all levels of government to continue the process of removing regulation that is unnecessarily burdensome, complex and redundant or duplicates regulation in other jurisdictions. Master Builders supports practical options designed to alleviate the red tape burden on family run and other small businesses.
- 5.3 Master Builders’ business regulation policy priorities focus on reducing the regulatory burden, particularly for small business. Many of the smaller businesses are family run — often a husband and wife partnership whether incorporated or not — through which, in the main, the husband carries out his particular trade. While Master Builders recognises that, in general, small business will be best served by policies that promote the interests of the business community as a whole, the inherent differences associated with small businesses must also be taken into account.
- 5.4 Master Builders therefore advocates specific policies that work to reduce the incidence of local government taxes and charges, reduce compliance costs of regulation and reduce the number of regulatory imposts.

6 Building Regulations – National Overview

- 6.1 The Building Code of Australia (BCA, now part of the National Construction Code) provides the key regulations for building and construction that apply nationally, apart from State and Territory Variations. Supporting the regulations are relevant Australian Standards referenced by the BCA. Master Builders strongly supports this approach of having national, consistent, cost-

effective, minimum acceptable building standards and believes they are important to the economy, the industry and the community.

- 6.2 Master Builders is concerned that the BCA appears to be increasingly seen as the panacea for broader social objectives leading to more and more regulation and consequently increased costs of construction. If nothing else this demonstrates the urgent need for an open and transparent Regulatory Impact Statement (RIS) process for considering increased requirements imposed on the ABCB.
- 6.3 Master Builders is concerned that local government continues to further increase the stringency of building regulations without adequate justification or cost-benefit analysis. The Government should work with State, Territory and local governments to change the current system by introducing controls on local government so that it no longer has a free hand to add new regulations and conditions on buildings that inflate costs and hinder development.
- 6.4 The ABCB is currently involved with the development of a new National Construction Code (NCC) which will include building, plumbing, electrical and telecommunication provisions. This was developed under direction from COAG for a combination of building and plumbing requirements for BCA 2011. Master Builders is aware that a new Intergovernmental Agreement (IGA) is being produced under which ABCB operates and the BCA is produced. This has not been made public and should be, to facilitate industry comment. As the BCA is critical to our industry, we believe there should be more transparency surrounding this development.
- 6.5 Master Builders believes that the application of the BCA by local government should be transparent. Local government should develop their own RIS processes to justify any deviation from the BCA.
- 6.6 Good public policy making requires involving those outside government in the policy making process. This includes consulting with those who are the target of the policy, whether they be individuals or groups, families, industry businesses or community organisations.
- 6.7 Master Builders believes that the failure of local government to undertake RISs has been detrimental to the work of the ABCB and to industry's

expectation of transparency and consultation in the relevant deliberations and arriving at optimal public policy outcomes.

- 6.8 Master Builders supports the use of independent, third party product certification authorities. Moves to protect the builder/developer and the consumer in the market place from faulty and/or non-compliant building products would be welcomed.
- 6.9 In respect of planning and development, Master Builders believes there needs to be an ongoing role for DAF (the Development Assessment Forum) to ensure effective and ongoing reform of planning and development regulations.

7 Development Assessment Forum (DAF)

- 7.1 For many years Master Builders has been a member of DAF. As an independent think tank and advisory forum of government, industry and the professions, DAF develops and recommends leading practices for planning systems and development assessment (DA) in Australia. Master Builders believes that the continuing role of DAF is essential in the reform of and addressing inefficiencies in, the planning and DA systems.
- 7.2 The DAF was formed in 1998 to recommend ways to streamline development assessment and cut red tape - without sacrificing the quality of the decision making. The DAF Plenary meets twice a year in different jurisdictions. A working group progresses the work of the DAF between Plenary meetings.
- 7.3 In the past, through its linkages with the Planning Officials Group, DAF provided advice and recommendations to Local Government and Planning Ministers. Secretariat Support and some project funding for the work program was provided by the Commonwealth Department of Regional Australia, Regional Development and Local Government. These linkages no longer exist as those groups have been closed due to government rationalisation.
- 7.4 DAF is continuing in an ad-hoc manner while it tries to find a new home. DAF's work program is developed annually with projects undertaken directly by members, or where appropriate, consultants. The DAF's work program stems from its Leading Practice Model for Development Assessment, which provides a model for national development assessment reforms for Australia.

- 7.5 Australians are demanding more from their built environment and from the development systems that shape it. Sustainability and environmental issues are more prominent, our economic needs are becoming increasingly diverse and we now understand more about the role the built environment plays in delivering community benefits.
- 7.6 In response to these changes, planning systems must adopt more efficient processes that deliver the best possible social, environmental and economic outcomes.
- 7.7 Land use planning is a complex process. It requires the coordination of development assessment decisions taken at different times and by different agencies and stakeholders that would otherwise be made independently of one another.
- 7.8 Streamlining government processes and regulations will reduce the paperwork and regulatory compliance burden on small business. Reduced compliance burdens and more flexible regulatory systems should improve business efficiency, stimulate growth and help business generate employment.
- 7.9 Master Builders urges the Government to back the DAF in its important role of reform by providing a Secretariat and some funding towards its program of reform.

8 Local Government Building Regulations

- 8.1 Master Builders continues to advocate strongly for regulatory reform, particularly in areas involving local governments, including:
- planning and development processes - reduce costs and delays;
 - infrastructure charges and levies - reduce inefficiencies or abolish; and
 - land supply – improve responsiveness.
- 8.2 Planning approvals. Master Builders believes more reform is needed within the planning approval system. Governments and councils need to effectively develop strategic planning frameworks to encourage more investment expenditure to facilitate opportunities for growth.

- 8.3 Master Builder's key policy objectives are to:
- Involve independent experts in decision making;
 - Create a statutory framework for private certification;
 - Allow as of right compliance with planning schemes; and
 - Ensure planning schemes are easily accessible and drafted in plain English.

Developer or Infrastructure charges

- 8.4 Developer charges constitute a major cost for property developers which flow through to new home buyers. As the NSW Department of Planning recognised (Media Release 3 April 2008): "In essence, developer contributions have become an uncontrolled form of backdoor taxation (of) the family home".
- 8.5 Traditionally the cost of infrastructure supply was shared amongst the general community through local government rates and/or state/territory government taxes. By contrast, developer charges, as the nomenclature indicates, impose the cost of infrastructure provision on the developer and, through them, new home buyers.
- 8.6 Master Builders has identified a number of problems with the current approach of imposing developer charges for new infrastructure. Developer charges reduce housing affordability, involve a lack of transparency and result in 'gold plating' and hidden cross-subsidies.
- 8.7 Master Builders is particularly concerned at the adverse impact of developer charges on housing affordability. Such charges add to the price of new homes, exacerbate the under-supply of residential property, reduce the supply of rental housing and push up rental prices (the latter of which particularly disadvantages lower income earners and/or those dependent on social welfare support.)
- 8.8 Master Builders' Policy Paper ("Infrastructure Charges: Where Bad Taxes Beget More Bad Taxes" 2009) found in growth areas of Sydney, developer charges can be as much as \$66,000 – or 30% of sale price – for a single block of land zoned for residential development.

8.9 The Henry Review supported use of infrastructure charges where they are applied efficiently (that is, reflect the true cost of provision) and to ‘avoidable’ infrastructure (that is, infrastructure which would not be needed if the property development did not proceed).

8.10 However, the Henry Review warned of costs associated with poor use of developer charges, in particular their potential to add to house prices and to reduce housing affordability:“... where infrastructure charges are implemented poorly or are designed to operate as taxes, they can discourage housing supply and contribute to higher house prices.” (Henry Report: 426).

8.11 Master Builders’ recommendations for reform of developer charges are shown in the Box.

1. Disallow developer charges that undermine housing affordability objectives
2. State/Territory government infrastructure charges subject to affordability assessment
3. Establish an official Infrastructure Charges Info-Hub
4. Mandatory public disclosure of developer charges
5. Greater Commonwealth funding of local government
6. Increased use of general revenues to fund infrastructure to better reflect user-pays principles
7. Increased consideration of debt-financed infrastructure
8. Abolish rate caps and review rate exemptions
9. Reconsideration of the upfront provision of all infrastructure
10. End harmful cost-shifting between levels of government
11. Place developer charges on the Council of Australian Government (COAG) reform agenda
12. Change in timing of developer charges
13. Australian Local Government Association (ALGA) representation on the Ministerial Council.

- 8.12 Land Supply. Australia has plenty of habitable land. Restrictions on the supply of land are driven by State and local government policies largely to reduce urban sprawl. Limiting urban sprawl became a predominant policy as governments became increasingly less willing to fund new urban infrastructure associated with growth.
- 8.13 Public policy now typically seeks to contain growth within existing urban footprints, citing the need for more efficient use of existing infrastructure (through higher density) and attempting to prescribe this outcome by creating urban land boundaries around major cities.
- 8.14 Master Builders advocates that all governments, at all levels, collaborate to increase both the supply of affordable land and the construction of well-planned infrastructure to support new land releases.

9 Housing Supply & Affordability – Impact of Regulations & DAs

- 9.1 While governments have made some small steps to improve the regulatory and administrative systems associated with planning, zoning and development assessments, there is still a significant amount of change required to make these systems more efficient and effective.
- 9.2 There are limits to what the Federal government can do directly, given that constitutionally housing is a state and territory government responsibility. Nonetheless, the Australian Government needs to take a strong leadership role. While the Australian Government and COAG have committed to various measures in reform of these systems, the progress is exceedingly slow.
- 9.3 There is an urgent need to develop a unified national strategy to combat the crisis in housing affordability. Australia has suffered for over a decade from policy neglect at all levels of government.
- 9.4 The key will be in implementing promised improvements in cooperation and collaboration between the Commonwealth Government and the states and territories and local governments. The housing issue needs a national approach and hence the importance of enhanced cooperative arrangements between the Commonwealth and other governments through the COAG process.

- 9.5 Master Builders calls on all governments to embrace a package of reforms including improved land release and planning approval processes, a review of developer charges with increased funding from general revenue sources and the replacement of stamp duties with less distorting taxes plus less regulation.
- 9.6 The National Housing Supply Council has estimated the cumulative shortfall in new housing at around 200,000 dwellings, more than one full year of production. The shortfall in new housing is not due to the lack of production capacity of the industry but rather the supply constraints that prevent the industry from supplying not only the required quantum, but also affordable new housing.
- 9.7 The housing sector is constantly subject to increased regulations and standards that add to cost. The cumulative effects of this regulatory cost creep have added to Australia's affordability problem.
- 9.8 The key factors leading to a worsening of housing affordability include:
- Excessive Council planning and building requirements.
 - Regulatory creep pushing codes and standards higher than required.
 - Uncoordinated local and state government environmental regulations.
 - Shortage of available land and inefficient land release strategies.
 - Infrastructure costs being loaded onto developers and in turn passed on to home owners.
 - Excessive infrastructure specifications in subdivisions.
 - Excessive development levies, taxes and charges imposed by all levels of government.
- 9.9 Developer charges have been one of the fastest growing taxes in Australia in recent years, increasing at an average rate of 8.2 per cent per annum. Developer charges have been increasing at more than double the rate of increase in state and local government revenues and more than triple the rate of increase in municipal rates.

- 9.10 In the growth areas of Sydney, for example, developer charges can amount to \$66,000 – about 30 per cent of the sale price – for a single vacant block of land zoned for residential development.

10 Summary

- 10.1 Given the enormous cost of regulatory inefficiencies to the building and construction industry, Master Builders welcomes the PC study on benchmarking local government regulation.
- 10.2 The PC study is very timely and relevant to what has become a major economic and social problem. The need for reform is urgent. It will necessarily involve all tiers of government, particularly local government.
- 10.3 Master Builders believes that a system of benchmarking is required to provide the basis for improved systems designed to ensure more transparent and efficient, long-term development of the nation's housing and other building and construction-related infrastructure requirements if Australia is to meet its economic and demographic imperatives. The current PC study into the Role of Local Government as a Regulator should advance the policy debate.
- 10.4 Master Builders believes that an open, transparent and formal monitoring process should be designed, with appropriate industry involvement. A system of benchmarking would encourage continuous improvement given that rigorous monitoring of public sector performance, with regular reporting, would be in the public domain.
- 10.5 The problem of inconsistency between states and territory jurisdictions and also between local government jurisdictions has long been a major issue for the building and construction industry. This is exacerbated by the trend over more recent years to use the planning system to regulate building regulatory issues. Political interference in the process can also increase the risk and reduce the level of investment.
- 10.6 The compliance costs associated with ensuring the requirements of each state and territory and each local government are met is a serious concern to the industry. This often acts as a disincentive to organisations to work across jurisdictional boundaries and increases risk in the industry.

- 10.7 There have been calls in the past for greater consistency in planning regulation through an inter-government agreement, perhaps leading to a national planning act, a model code or set of guidelines. Master Builders supports this idea and calls for the Commonwealth Government to provide strong leadership in this area and, if necessary, provide supporting funding.
- 10.8 The introduction of greater consistency will lead to greater certainty and confidence in the industry and reduce costs. This will lead to greater investment and reduced costs which will have a positive impact on the community and economy.
- 10.9 Greater consistency will lead to reduced regulation across all areas of the planning system and less variation in rulings and decision-making. It will also lead to delivering appropriate and efficient allocation of resources.
- 10.10 Regulatory Impact Analysis and the Regulatory Impact Statement process needs to play an even more important role in properly assessing the regulatory burden.
- 10.11 Local government should develop their own RIS processes to justify any deviation from the BCA.
- 10.12 Master Builders supports moves to improve RIA and RIS processes with the ultimate aim to reject unnecessarily burdensome, complex and redundant or duplicate regulation. The aim of the PC benchmarking study into Regulatory Impact Analysis should be to improve the efficiency and quality of RIA processes. Master Builders' submission highlighted, from a building and construction industry perspective, a number of shortcomings of the RIA and RIS processes, including: lack of rigour in impact analysis; need for more independent scrutiny of RISs; extent of exceptions and exemptions under RIA processes, and lack of adequate consultation processes.
- 10.13 Required reform of the RIA and RIS process needs to include: when RIA is required and the factors which must be taken into consideration in analysis; the mechanisms in place to ensure accountability and compliance with RIA processes; specific evidence of where the RIA process has resulted in improved regulation; how and when in the decision-making cycle decision makers engage, and whether there are leading practice examples in RIA that might usefully inform reform consideration by individual jurisdictions.

10.14 Master Builders is vitally interested in assisting Government initiatives designed to better assess regulation and indeed cut the burden of red tape. We remain committed to identifying practical options for alleviating the compliance burden on business stemming from regulation, particularly at the local government level.

10.15 Master Builders looks forward to providing any further assistance the PC may require as it undertakes the study.
