



Australian Government
Department of Employment

Your Ref
Our Ref

Secretary
Renée Leon PSM

Mr Jason McNamara
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
1 National Circuit
BARTON ACT 2600

Dear Mr McNamara

This letter certifies that the process undertaken by the Department of Employment (the Department) in implementing the Government's election commitment to develop a legislative building code for Commonwealth-procured construction work satisfies a similar process to that required for a Regulatory Impact Statement (RIS) as set out in *'The Australian Government Guide to Regulation'* (the Guide).

Election commitment

Prior to the 2013 federal election, the government committed to developing a building code and guidelines that would be consistent with guidelines issued by the state governments of New South Wales, Victoria and Queensland. This commitment is part of the Government's greater plans for Australia's building and construction industry which includes the re-establishment of the Australian Building and Construction Commission as the specialist workplace relations regulator for the industry. To ensure the quickest possible implementation of this commitment, the government established the *'Coalition Task Force on Re-establishing the ABCC'* (the ABCC Task Force).

The ABCC Task Force undertook a review and consultation process prior to the 2013 election which assessed the ongoing issues in relation to the industry. The ABCC Task Force met with key industry stakeholders and reported to key decision makers including the now Prime Minister.

To meet the Government's election commitment, the Department has developed a draft building code that meets the Government's election commitment and which will be formally issued under section 34 of the Building and Construction (Improving Productivity) Bill 2013 (the Bill) once it is enacted. To assist industry to prepare for its introduction, the Government published an advance release Fair and Lawful Building Code 2014 (Building Code) on 17 April 2014.

The Government intends to shortly publish a further advance release Building Code. This advance release takes account of issues raised by stakeholders since April 2014.

Addressing the RIS questions

The Department considers that the process undertaken by the ABCC Task Force and the Department itself in developing the Building Code addresses the seven RIS questions set out in the Guide.

- Questions 1 & 2 – The *'Coalition Policy to Improve the Fair Work Laws'* describes the policy problem and the need for Government action.

The ABCC Task Force examined the policy problem and response in detail prior to the 2013 election, including through broad consultation with industry and unions and reported to the now Prime Minister.

The policy problem and the Government's intended response were extensively canvassed by the Coalition amongst stakeholders and in public prior to the election.

The election commitment essentially involves reinstating a building code that existed under the previous Coalition Government. Accordingly, the policy problem and intended solution have been well understood and debated publicly and directly with stakeholders over many years, showing there is already a good understanding by stakeholders and decision makers about the policy problem and the proposed regulatory response to be implemented.

In the lead up to the 2013 election, the Coalition released in excess of 15 media releases outlining the workplace relations problems encountered in the industry; proposed to disallow the former Government's *Building Code 2013*; and its intention to release a stronger building code was discussed in a range of media articles.

Current Minister for Employment, Senator the Hon Eric Abetz, reiterated the ongoing problems faced by the industry and the proposal to re-establish the ABCC while addressing a number of workplace relations conferences and other forums held by associations such as the Law Institute of Victoria, Master Builders Association and the Australian Mines and Metals Association.

- Questions 3, 4 & 6 require consideration of options to best address the policy problem and the need for Government action.

In accordance with the Guide, a RIS covering matters which were the subject of an election commitment will not be required to consider a range of policy options. Only the specific election commitment need be the subject of the regulatory impact assessment, with focus on the commitment and the manner in which the commitment should be implemented.

The processes described under questions 1 and 2 above ensured the implementation details for the announced option were progressed in consultation with stakeholders, with consideration by the Minister of iterative changes to the draft Building Code to respond to issues that were identified. One key implementation issue was whether the

Building Code should be in the form of a legislative instrument or administrative guidelines.

The Government considered repealing the existing Building Code 2013, a legislative instrument, and replacing it with administrative guidelines similar to the 2006 version introduced by the Coalition during its previous term in office. However, to minimise risks that action taken by funding entities to enforce the requirements of the Building Code would amount to adverse action under the *Fair Work Act 2009*, the Government determined that its preferred option was to issue a legislative building code made under section 34 of the Bill once enacted.

- Question 5 asks who will be consulted about the election commitment and how will they be consulted.

As indicated above, both the Government and the ABCC Task Force debated the Government's proposed regulatory response both publicly and directly in the lead up to the 2013 election.

The Department has also undertaken comprehensive consultation with industry and government stakeholders. For example, on 30 October 2013 the Department convened a formal consultation meeting with industry stakeholders, comprising unions and employer associations, to discuss the Government's proposed regulatory response to the industry's problems at which detailed proposed provisions for inclusion in a new Building Code were circulated for discussion.

On 9 December 2013, a further consultation meeting of stakeholders, including state government representatives, was convened by the Department. A draft building code was circulated for discussion. During this meeting, the Department also sought views on transitional issues, the requirement that certain contractors submit a Workplace Relations Management Plan for approval (the only regulatory burden over existing arrangements), and compliance and monitoring arrangements. While unions did not support the proposal for a new Building Code, they provided technical feedback on the operation of the proposed Building Code. Following this meeting, the draft Building Code was amended to take into consideration feedback by stakeholders and was provided to the Minister for approval – pending passage of the Bill – in March 2014.

As the election commitment was to release a Building Code that is consistent with existing state codes (in New South Wales, Victoria and Queensland) the consultation and analysis undertaken prior to implementation in those jurisdictions is also relevant. The Victorian Government, for example, undertook a public consultation and submission process.

- Question 7 asks how the regulatory option will be implemented and evaluated.

Commonwealth-funded construction activity has been subject to varying forms of regulation since 1998. Consistent with past practice, the effectiveness of the Building Code, when it is formally issued, will be subject to ongoing review.

Estimation of the regulatory burden

The regulatory proposal will require short-listed head contractors to submit a Workplace Relations Management Plan to a re-established ABCC detailing how the requirements of the Building Code will be implemented on the project to which it relates. This is the only additional requirement over the existing arrangements.

The increased regulatory burden is offset by the removal of the existing requirement for all contractors who undertake work on Commonwealth-funded construction projects to establish a fully documented Workplace Health, Safety and Rehabilitation Management System that covers the ways in which people are expected to work safely on tasks undertaken by the contractor.

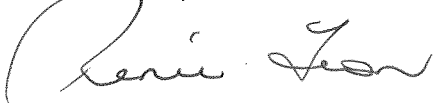
Regulatory Burden and Cost Offset (RBCO) Estimate Table

Average Annual Compliance Costs (from Business as usual)				
Costs (\$million)	Business	Community Organisations	Individuals	Total Cost
Total by sector	(\$1.048)	\$0	\$0	(\$1.048)
Cost offset (\$million)				
Agency	Business	Community Organisations	Individuals	Total by source
Agency	\$0	\$0	\$0	\$0
Are all new costs offset?				
<input type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input checked="" type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$million) = (\$1.048)				

I am satisfied that the processes followed by the Department in developing the advance releases of the Building Code represents a thorough analysis of the impact of the Building Code on Australia’s building and construction industry. I am satisfied that these processes are equivalent to those required for a RIS as set out in the Guide. Relevant background documents are attached for your information.

Should the Office of Best Practice Regulation have any queries in relation to this matter, please contact Mr Steve Kibble on 02 6240 9013 or at Steve.Kibble@employment.gov.au.

Yours sincerely



Renée Leon

2/12/14

Attachments

- Attachment A:** Implementation options paper – circulated to stakeholder meeting 30 October 2013
- Attachment B:** 'Marked up' version of draft Building Code provided to Minister (incorporating changes flowing from stakeholder discussion)
- Attachment C:** Attendees and agenda – consultation meeting of 30 October 2013
- Attachment D:** Attendees and agenda – consultation meeting of 9 December 2013