

Registered Master Builders Association of New Zealand Incorporated

Submission on the Commerce Commission Draft Report

1 September 2022

Commerce Commission Draft Report Submission

The Registered Master Builders Association (RMBA) welcomes the opportunity to provide feedback on the Commerce Commission's residential building supplies market study draft report.

We represent over 3,000 commercial and residential builders and are the leading sector advocates on the built environment. We are responding here only to the systemic issues we have expertise in. Our feedback follows recommendations we made recently in our submission to MBIE's building consent system review.

We agree with the Review's intent to improve competition in the sector.

Competition will help with price, variety and availability of products, especially in times of difficulty, such as COVID-19 supply constraints. We believe the barriers to competition are accurately identified. However, we do not agree with the conclusions the Commerce Commission made regarding solutions. There is a risk the Commission makes recommendations which only play around the edges, rather than evaluate options at a systems level.

In the final report we want to see greater consideration of alternative systems, particularly options for harmonising standards with international building codes (e.g., Australia or the EU) and the merging of 67 BCAs into a national consenting body. We believe competition is predominantly hampered by complex systems and multiple arbiters, underpinned by a bespoke approach to implementing regulation.

If these underlying challenges can be resolved, new products from other markets will be more readily available to builders, with less need for review of current process complexities. Oversight of competition objectives can also stay with the Commerce Commission, who we consider best placed for resolving specialist competition issues.

Our specific feedback to recommendations is outlined below.

Draft recommendation 1

RMBA believe more competition in materials, combined with a more flexible regime and a more active regulator, can better promote sector innovation and productivity.

We are not convinced that a new objective overseen by another regulator will achieve this.

Safety, durability, and affordability objectives are measurable outcomes for actual buildings. Competition is a way of operating. It seems unlikely that other regulators (MBIE) have the expertise to properly fulfil this function.

Our view is that competition should stay with the Commerce Commission, who have specialist knowledge of competition issues, but with more resources dedicated to oversight and enforcement.

Enforcement of existing BCA system objectives is already a major problem for MBIE, as noted in our BCS review submission. We asked for greater technical expertise inside MBIE and more stringent oversight and performance management of BCAs.

It is also not clear that an additional objective would result in faster or lower cost approvals, given the sheer number of BCAs involved in interpreting consent system objectives/rules and the mixed outcomes our members already experience between BCA jurisdictions. Unless regulatory

consistency is prioritised and adequately enforced, including competition as a sector objective will only complicate existing systems and dilute MBIE's regulatory focus.

Draft recommendation 2

We support this recommendation.

Draft recommendation 3

We would like to see the case for building code harmonisation with international codes explored in greater depth to understand the opportunities and any perceived risks(e.g., Australia or EU).

This does not appear to have been properly considered. In our view, the case for a bespoke regulatory system on account of New Zealand's climate is not compelling. If this is the prevailing position of the Commission, it needs to be adequately justified and defended.

Solutions like enabling international bodies to certify products as compliant or adopting other Codes should be explored in the final report, like the case for food standard harmonisation which drove the 1995 Australia New Zealand Food Authority (ANZFA) Agreement, resulting in lower compliance costs for industry, fewer regulatory barriers, and more consumer choice.

Harmonised standards can be rationalised based on risk, with lower risk products adopting international standards and higher-risk products subject to additional clauses by exception, and guidance issued to identify means of proving compliance.

We believe harmonisation will make increasing sense as embodied emissions are subject to stricter regulation (i.e., international standards could allow easier lifecycle emissions assessments to be shared across regions rather than duplicated in New Zealand).

Draft recommendation 4

All certifications should be based on technical specifications not brands, with enforcement overseen by MBIE as regulator of BCAs.

We would also like to see a full review of the MultiProof scheme, which was intended to develop over time but in practice has seen limited use. If this is a potential solution (which we encourage), a better understanding of its benefits and how to scale the scheme is necessary. We are willing to participate and contribute insights to a review.

Draft recommendation 5

See response to recommendation 3.

Outsourcing low-risk product certification to international bodies and harmonising with existing regulations in larger markets (e.g., the EU) could remove many issues with local certification and appraisal chokepoints.

We note BRANZ appraisal has become the de facto minimum for certification, however there is no statutory role for BRANZ and it is not necessarily designed or resourced for this function. This contributes to congestion in certification processes. We recommend a review of the role that BRANZ can or should play to modernise its role in the regulatory trapestry affecting the construction sector.

Draft recommendation 6

We strongly support merging BCAs from 67 entities to a national consenting system. Consent risk should be rationalised and streamlined (e.g., low risk, high risk, and alterations). This reform could greatly free up resource to centralise and specialise technical information on building supplies, such as a national key building products register (as recommended).

We do not think a centre of excellence for BCAs will be especially effective so long as there are 67 BCA bodies operating and MBIE is under-resourced to regulate their performance.

Draft recommendation 7

Rebate structures that breach the Commerce Act as outlined in the draft report should be investigated.

This is an example of an area where the Commerce Commission are best placed to promote competition in the sector.

Draft recommendation 8

We support this recommendation.

Conclusion

The building system is large with overlapping regulatory responsibilities, often with gaps and grey areas in regulation and enforcement. Competition is a niche and complex issue best managed by existing regulatory bodies with this expertise (the Commission).

We strongly believe that harmonisation with international standards elsewhere could fix many of the competition issues facing New Zealand's construction sector, as well as set up the industry effectively for embodied emissions regulation. The merging of the 67 BCAs into a national consenting system with shared labour resource can also contribute to reduced uncertainty and greater product innovation.

Some issues have been left out of this review that could be included. Plumbing and electrical supplies are not included but face many of the same problems as other construction supplies. Any final recommendations should consider these.

Finally, the structure of the building system means there are many SMEs, which shapes how residential building supplies are purchased and structured.

We welcome the opportunity to speak to our submission with the review team.

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