

**REPORT OF**  
**THE OVERVIEW GROUP ON THE WEATHERTIGHTNESS OF**  
**BUILDINGS**  
**TO**  
**THE BUILDING INDUSTRY AUTHORITY**

**ADDENDUM: SECTION 3**  
(Refer page 39 of the main report)

**31 October 2002**

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**Don Hunn**

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**31 October 2002**

**3 Whether failures are attributable to deficiencies in the Building Act, the building regulations, or in the manner in which these are administered by the Authority or by Territorial Authorities (including the role of Building Certifiers), and whether the purposes and principles of the Act under Section 6 have been properly observed and followed by the Authority.**

**Recommendations**

**Recommendation 21**

That the BIA:

- a) advises the Minister that there are features of the Act and the Code that are deficient and have contributed to the weathertightness problem; and
- b) recommend to the Minister that the Department of Internal Affairs reassess and broaden the scope of the current review of the Act to address these features.

**Recommendation 22**

That the BIA:

- a) complete as a matter of urgency the current review of the Approved Documents relating to Durability B2 and External Moisture E2 including the verification method criteria (refer also Recommendation 11);
- b) review the procedures and criteria relating to review of the operation of Territorial Authorities and building certifiers in relation to their functions under the Building Act; and
- c) review the processes and scope of information disseminated to industry and in particular to the Territorial Authorities and building certifiers.

**Recommendation 23**

That the BIA works with BOINZ to develop more definitive criteria for achieving the “satisfied on reasonable grounds” test for compliance with the Code (refer also recommendation 7).

**Recommendation 24**

That the BIA recommend to the Minister that the Department of Internal Affairs review the role, structure and resourcing of the BIA with a view to enabling it to provide a more comprehensive service to the public and the industry.

**Recommendation 25**

That the BIA recommend to the Minister that the current review of the Building Act should include a reassessment of the scope and implementation of the functions of the BIA in relation to how the BIA is to achieve the purposes of the Building Act.

## Introduction

The Building Act 1991 represents over a decade of comprehensive analysis and wide consultation. The Overview Group is conscious that the process that has produced this report has not been equally thorough and that our views have been formed in the context of a single problem, albeit a major one. Nevertheless, we contend that the issues arising from weathertightness have more general application and point to the need for a more widely based reassessment of the Act than appears to have been intended by the current review being undertaken by the Department of Internal Affairs.

Our reasons for suggesting such a reassessment are:

- the Act is very much the product of its time and the *laissez-faire* philosophy that prevailed in the 1980s and early 1990s. Opinions on light-handed regulation, the concept on which the Act is based, have changed. There is now a greater consciousness of the need to manage the balance between flexibility and intervention;
- the legislation was not enacted in the form proposed by its originators, the Building Industry Commission. If it had been, it is possible some part of the failure described in the report could have been avoided. The question is whether the version of the original proposal that was eventually passed into law, integrated sufficiently all the elements required to make it work

See **Annex A**: “The Building Control System and the Report of the Building Industry Commission (BIC)” (attached)

- the light-handed regulatory approach in the legislation has been reinforced by the manner in which the Act has been implemented and administered. It has been put to the Overview Group that compared, for example, with such an area as fire prevention, Government intervention through the Department of Internal Affairs and the Building Industry Authority, has been minimalist. The question here is whether a more rigorous approach within the same legislative framework would have picked up the problem of weathertightness earlier and avoided the serious situation in which we now find ourselves.

## **Legislative framework**

At the 1982 Building Controls Reform Forum, the building industry expressed their concern at the increasing costs associated with the building controls operating at that time. An outcome of that forum was the establishment by the Government in 1986 of the Building Industry Commission. The Commission's primary objectives were to:

- Determine, within a suitable economic framework, the most appropriate and publicly beneficial regulatory system for building control; and
- Where it considered minimum performance standards necessary, prepare a simplified and uniform performance-oriented national building code that would bind the Crown.

The essence of the Commission's findings were:

- The system of building regulation was multi-levelled, disparate and inefficient. It involved 19 Government Departments administering provisions contained in over 30 Acts as well as their own codes of practice and guidelines; territorial authorities at a local level with their own bylaws which differed around the country; and other authorities such as the Fire Service Commission with jurisdiction over particular aspects of building.
- The building industry faced high compliance costs due to the need to follow prescriptive building bylaws.
- There was little scope for builders and developers to use cost effective alternatives due to the prescriptive nature of the building controls.
- Regulatory intervention should be limited to:
  - Provisions safeguarding people's well-being where there is insufficient assurance that voluntary arrangements, such as market forces, self regulation or self-interest will do the job;
  - Provisions protecting other people's property;
  - Provisions relating to the national interest.

## **The Building Act, Building Regulations, and Building Code**

On 1 January 1993, the Building Act came fully into effect. It provided a national system of building control; was performance-based (specifying what the outcomes are to be) as different from being method-based (specifying how the work is to be done); placed the responsibility for enforcing building control at a local level with the territorial authorities; introduced mandatory compliance requirements; and introduced a maximum liability limitation period of 10 years for civil proceedings arising from the construction, alteration, or demolition of buildings or from the application of building controls. The Act's stated purposes and principles (s6) include the following provisions:

- The purpose of the Act is to provide for necessary controls relating to building work and the use of buildings, and to ensure they are safe and sanitary and have means of escape from fire.

- In providing the controls, particular regard shall be had to the need to safeguard people from possible injury, illness, or loss of amenity; limit the extent and effect of fire; protect other property affected by building work; provide facilities for people with disabilities; and facilitate the efficient use of energy.
- In determining the extent of such controls, due regard shall be had to the national costs and benefits of any control.

The Building Act does not attempt to control or limit an owner's choice of design style, or protect or optimise an owner's commercial investment. Neither does it regulate professional or trade groups such as architects, engineers, drainlayers or electricians, all of whom are covered by separate legislation.

The intent of the regulatory framework is set out in the preface to the NZ Building Code Handbook (s1.1.4 & 1.1.5), which state –

*“The building control system regulates only those matters essential for ensuring that buildings perform in a way which:*

- *Safeguards people from injury and illness.*
- *Safeguards people, particularly those with disabilities, from loss of amenity.*  
*(Amenity is defined in the Act as “an attribute of a building which contributes to the health, physical independence, and well being of a building’s users but which is not associated with disease or a specific illness”).*
- *Protect other property from damage.*
- *Facilitates efficient use of energy.*

*The controls do not provide for regulatory intervention in the owner’s choice on other matters such as aesthetics or non-essential building features provided solely for comfort or convenience of users. Nor do they protect an owner’s economic interests in terms of ensuring value for money or through losses due to lack of care or competence”.*

The Building Code is a schedule to the Regulations and contains the mandatory provisions for new building work to meet the purposes of the Act. It is performance based. An owner is free to use any materials, components or construction methods that comply with relevant performance criteria set out in the Code. The Act provides that an owner has the choice to demonstrate compliance with the Code either by complying with the ‘Approved Documents’ or adopting an ‘alternative solution’.

#### **‘Approved Documents’:-**

- Comprise acceptable solutions and verification methods.
- Are authorised by the Building Industry Authority.

A territorial authority or building certifier must accept that compliance with an Approved Document is a means of establishing compliance with those provisions of the Code to which that Approved Document refers.

#### **‘Acceptable Solutions’**

- Are prescriptive (‘cook-book’) solutions for those who prefer specific guidance on how to comply with the performance requirements of the Code.
- Provide examples of materials, components and design and construction methods or tests, which, if used as specified, will result in compliance with the Code’s

functional and performance requirements and must be accepted by territorial authorities and building certifiers as such.

- Also serve as guide-lines for alternative solutions.

#### **‘Alternative solutions’:-**

- Are solutions utilising materials, components and design and construction methods or tests different from those set out in the Approved Documents, but which nevertheless comply with the Code’s functional and performance requirements.
- Need demonstration of compliance with the Code by the owner when seeking a building consent.
- Need the territorial authority or building certifier to be satisfied on reasonable grounds that the alternative solution will achieve the performances required by the Code.

The Act at s12(1) establishes one of the functions of the Building Industry Authority as being: “*Approving documents for use in establishing compliance with the provisions of the building code:*”. The procedures that the Authority is to follow are specified in s49.

The BIA has developed Approved Documents relating to each of the 35 technical Clauses in the Building Code, for example, B1 Structure; B2 Durability; C3 Spread of Fire; E2 External Moisture; H1 Energy Efficiency etc. All Approved Documents have at least an acceptable solution or a verification method; some contain both. Alternative solutions are any design put forward that does not follow the Approved Documents.

Evidence presented to the Overview Group clearly indicates that there is confusion regarding the terms “acceptable solutions”, “alternative solutions” and “verification methods”, and that this confusion exists throughout industry generally, including building officials. It is therefore recommended that some other nomenclature be adopted to assist the understanding and that better guidance notes be developed to explain the intended meaning and the inter-relationships (refer Recommendation 21).

Part VIII of the Act provides for proprietary materials, components and construction methods to be ‘accredited’ by the Building Industry Authority on application by the proprietor. Accreditation must be based on an assessment of appraisals given by recognised independent specialists confirming that a particular material, component or construction method conforms with the requirements of the Code.

### **Consumer protection**

The Building Act is concerned with achieving social objectives and is written almost entirely in terms of duties imposed on building owners and enforced by territorial authorities. It clearly accepts that providing the consumer with protection against latent defects in the construction of the building is a matter for the general law. That matter was considered by the High Court, the Court of Appeal, and the Privy Council in the *Hamlin* series of cases, which confirmed that in New Zealand, unlike in England, territorial authorities could be sued for negligent performance of their building control functions.

In some cases there have been more than two defendants, sometimes with one or more third parties also, who might include developers, engineers, architects, and so on. Sometimes one defendant was found to be liable for breach of contract and another for negligence, with corresponding differences between the limitation periods and the rules as to contribution.

Those complications, and particularly the involvement of multiple parties, means that such cases are frequently complicated and time-consuming, with high legal costs.

## **Other Legislation**

The Consumer Guarantees Act 1993, the Fair Trading Act 1986, the Sale of Goods Act 1908 and the Companies Act 1993 might have been expected to provide some readily accessible and meaningful protection to the new homebuyer. In the opinion of the Overview Group, they do not.

The Consumer Guarantee Act 1993, relates to goods and services being of “acceptable quality”, which is defined in terms of - fit for purpose; acceptable in appearance and finish; free from minor defects; safe; and durable. It requires all service providers, including designers, builders, and subcontractors, to do their job with reasonable skill. However, the Consumer Guarantee’s Act does not apply to a contract for the sale of “ a whole building attached to land ..... designed for residential accommodation ”.Nor are goods covered when their purchase has been put out to tender.

The Fair Trading Act 1986, relates to misleading or deceptive conduct or disclosure of information and false representation of goods or services. This could have application, for example, in the case of a vendor on-selling a property without disclosing or having covered up known leaks. Consequently, the Fair Trading Act does not offer much protection in the case of a newly constructed dwelling, and in any case would be difficult to prove.

The Sale of Goods Act 1908 may apply to materials bought for use in a residential building but any remedy under it would be limited to consumers who had particular contractual agreements with builders and subcontractors. The statutory contractual remedies are not readily available to subsequent purchasers of a building or in respect of multiple party situations.

The Companies Act 1993, imposes certain personal liabilities on the directors of a company, to do with ‘reckless trading’. However, it is understood that even this offers little in the way of protection to a home-builder/buyer consumer in the event of the vendor company (say a builder or developer) being put into voluntary liquidation by the directors for the purposes of avoiding potential litigation. This leaves a homebuyer vulnerable to an unscrupulous builder or developer who has failed to provide a ‘fit for purpose’ product.

Other non-statutory/market-forces regulation offer limited protection through some building industry warranty schemes, which are available on a voluntary basis by some builders and product manufactures. There is no industry-wide warranty scheme in New Zealand that provides a home purchaser protection against defective design, materials or workmanship. The house buyer has to rely by and large on the skill and judgment of the parties – from the architect through to the compliance inspector. The Overview Group considers this to be a reasonable expectation but considers that the legal redress available to the homeowner when that reliance is misplaced is too slow, difficult to access, expensive and time consuming, and that the power imbalance can, and does work, against the smaller home owner.

## **Failures attributable to deficiencies in the Building Act and Building Regulations.**

In general, those interviewed by the Overview Group support the performance-based approach of the Act and do not want a return to the non-uniform and highly prescriptive method-based controls. There is ample evidence that the Act has provided real benefits by allowing innovation in, and the freedom to choose, design, materials and construction solutions. Likewise, the emphasis the Act has given to issues relating to safety, health, fire protection, facilities for disabled persons and energy efficiency has produced good results.

The Overview Group acknowledges that it has taken a major crisis in the industry to expose deficiencies in the legislation, which in many cases are quite subtle. The Act is acknowledged as being a complex piece of legislation that took many years to formulate. It was recognised at the time of its introduction as being a world leader in performance-based building control legislation.

Despite the issues that have emerged, the Overview Group considers the Act to be fundamentally sound. However, as a result of the investigation into the weathertightness problems, the Overview Group concludes there are a number of areas where the Act may be deficient in relation to residential dwellings and these are likely to have contributed to the current weathertightness problems.

These include:

- a) A lack of emphasis that a residential building must provide shelter to its occupants, ie, be weather-tight and durable. .
  - b) The integration of key Code provisions.
  - c) A reliance on “light-handed” control.
  - d) A failure of the proprietary product and processes accreditation system.
- a) **A lack of emphasis that a residential building must provide shelter to its occupants, ie be weather-tight and durable.**

Balancing the concept of flexibility and freedom of choice should be recognition of the basic human need for shelter and protection from the elements. As the Overview Group and others have stressed, a citizen’s home may be his or her castle but it is much more than that not least being the community’s guarantee of an orderly and productive society. Housing is not just another commodity. It has a special call on the Government’s attention and the regulatory framework must reflect this - it cannot be left to market forces alone, as influential as they will continue to be.

When the Building Bill was introduced into Parliament its principles were limited to safeguarding people from possible injury, illness, or loss of amenity, protecting household units and neighbouring property from physical damage (including fire), and providing access and facilities for people with disabilities. As the Bill progressed, other principles relating to the storage and processing of hazardous substances and energy efficiency were added. These are all commendable principles, but unless the framework, structure and cladding of a dwelling is durable, they cannot be sustained. Durability in this context is principally a function of the weathertightness of the cladding system of the dwelling as well as of its structural stability.

The Act in section 6, Purposes and Principles, reiterates and reinforces these principles. However, the Overview Group concludes that it does not place sufficient emphasis on the basic human need for shelter and protection from the elements. As a consequence the aspects of weathertightness and durability requirements have not been given appropriate attention and emphasis throughout the Building Code and Approved Documents that complement the legislative provisions.

**(b) The integration of key Code provisions.**

Clause B1 of the Building Code relates to Structure, and states “The objective of this provision is to:- (a) safeguard people from injury caused by structural failure, (b) safeguard people from loss of amenity caused by structural behaviour.”

Clause B2 of the Building Code relates to Durability, and states “The objective of this provision is to ensure that a building will throughout its life continue to satisfy the other objectives of this code.”

Clause E2 of the Building Code relates to External Moisture (weathertightness), and states “The objective of this provision is to safeguard people from illness or injury which could result from external moisture entering the building (leaking).”

The Overview Group contends that the weathertightness of a building is fundamental to the achievement of so many of the other provisions in the Code that the objective for External Moisture (weathertightness) should have incorporated aspects (1) safeguarding people from loss of amenity caused by undue entry of external moisture and (2) ensuring that a building throughout its life continues to satisfy the other objectives of the Code (with particular regard to durability).

**c) A reliance on ‘light-handed’ control**

Many of those interviewed by the Overview Group expressed concern that the Building Act and Regulations are not providing sufficient protection to the house buyer/owner. We have been asked several times by distressed home-owners “how can a near-new building which has a Code Compliance Certificate be leaking to the extent that major and costly repairs are required and health and safety concerns are being exposed?” The public perception is that surely the Building Act must protect them. This may be a misconception. It is the Overview Group’s view that it is the building industry as a whole that must itself answer this question by addressing the causes. However, irrespective of the causes, there is the overarching question regarding whether or not the Act does provide for “necessary controls relating to building works” and “ensuring that buildings are safe and sanitary”, all as prescribed in Section 6 in the Act, Purposes and Principles. In light of the evidence obtained, the Overview Group considers it is not. The controls are many and varied but the end result is considered unsatisfactory.

By way of one example, there is currently nothing to stop the unscrupulous developer or builder from liquidating their company on completion of the project to avoid claims and action from dissatisfied purchasers. Evidence of such practice abounds and many owners interviewed have been unable or are having extreme difficulty in resolving outstanding leakage related problems for this reason. The Overview Group was also advised of instances of developers using Trusts as a vehicle for undertaking housing projects as these can be liquidated more quickly because they do not require public notification.

There is too much reliance on “voluntary arrangements, such as market forces, self regulation or self-interest” (Building Industry Commission, 1990). Currently, they are not working. If all the parties in the process interpreted the Building Act, Code and Approved Documents as no doubt intended by their authors and acted in a professional manner exercising their ‘duty of care’ responsibilities, there would probably not be an issue. However, such an ‘ideal-world’ environment does not exist. Stronger incentives need to be provided. The industry is highly competitive, disparate in its structure, and lacks formal accountability, all of which has contributed to the systemic failure of the building industry with regard to this matter.

A significant proportion of new-build housing, and in particular multi-unit complexes, is being undertaken by developers. It is in this sector of the industry that the problem is most prevalent. The building industry is too complex an environment to place so much reliance on market forces. In addition, the Overview Group considers that the significance of the consumer/supplier power imbalance is such that a higher level of regulatory control is necessary and justified. The majority of those interviewed from within the industry advocate some increase in the level of regulatory control and the Overview Group supports this view. The Overview Group advocates that a wide-ranging review of the current controls be undertaken to determine whether or not they are achieving the intended objectives.

The Act places great emphasis on – “ensuring the health and safety of building occupants”. But, where do house-owners obtain protection from inadequate building practices that affect their investment and the long-term viability of the building fabric that may also house high standard utilities and functional features? The Secretary for Internal Affairs said in the Foreword to the publication, *Constructive Guide to the Building Act* (written by the Department of Internal Affairs, and published in 1992 at the time of the introduction of the new legislation):

*“The new building control system is designed to allow market forces to be combined with regulatory controls to ensure that the statutory purposes and principles of building control can be achieved, with minimal compliance costs.”*

The Building Act has clearly succeeded in providing the building industry with the scope to develop innovative and cheaper building solutions. However, hand-in-hand with the service or product provider being given the ability to determine and provide design and construction solutions must go a responsibility and accountability to guarantee their performance against the Building Code’s requirements. This has not happened. It is recommended that the current review of the Building Act look at ways to redress this either in this or other legislation.

The Overview Group has come to the realisation that the majority of the population knows relatively more about the pitfalls of purchasing a used-car than buying a house, and that the used-car market sector has better regulation in terms of safety and quality performance, ongoing warranty, and consumer protection.

**(d) A failure of the proprietary product and processes accreditation system.**

This issue has been discussed in detail elsewhere in the Report (see pages 26-32, and Recommendations 12 and 13). In summary, the evidence presented to the Overview Group indicates that this system has failed to meet the intended objectives as articulated during the passage of the Bill and implied in Part VIII of the Act, and the unofficial product appraisal certification process that has evolved has been inadequate and the reliance on it by territorial authorities and building certifiers has been misplaced.

**Recommendation 21**

**That the BIA:**

- a) **advises the Minister that there are features of the Act and the Code that are deficient and have contributed to the weathertightness problem; and**
- b) **recommend to the Minister that the Department of Internal Affairs reassess and broaden the scope of the current review of the Act to address these features.**

## **Administration of the Building Act and Regulations by the Authority or by Territorial Authorities (including the role of building certifiers)**

### **Building Industry Authority**

A general view of the performance of the BIA in administering the Building Act and regulations is outlined in the next part of this section. The following addresses the relationship of the BIA, Territorial Authorities and building certifiers together with the administration of the Act particularly with respect to Approved Documents, audit and information dissemination.

The Overview Group has concluded that the Approved Documents relating to Durability and External Moisture (weathertightness) do not provide adequate rules and guidance for achieving the Functional Requirement and Performance criteria provisions of these Clauses of the Code. The Approved Documents are exceedingly light on detail and lack any objective or quantitative guidance. The lower priority that the Act gives to these aspects and the lack of established research and of developed design knowledge when compared with other equally important aspects of building performance (eg Energy Efficiency as addressed in H1/AS1 and H1/VM1) has led to the development of inadequate compliance criteria. This has created difficulties for both designers and building certification officers.

Reviews of territorial authorities and building certifiers by the BIA are considered to be adequate but if more rigorous audits were done, it would contribute to an improved and more consistent service. As part of this process it was suggested that it would be beneficial if auditors were to place greater emphasis on their recommendations and guidance advice.

Clearly the BIA has developed processes for the dissemination of information to the industry through its many publications and seminars. However, it is questionable whether this has adequately addressed issues such as the weathertightness problems, which appear to have been apparent for several years.

### **Recommendation 22**

#### **That the BIA:**

- a) **complete as a matter of urgency the current review of the Approved Documents relating to Durability B2 and External Moisture E2 including the verification method criteria (refer also Recommendation 11) ;**
- b) **review the procedures and criteria relating to review of the operation of Territorial Authorities and building certifiers in relation to their functions under the Building Act; and**
- c) **review the processes and scope of information disseminated to industry and in particular to the Territorial Authorities and building certifiers.**

### **Territorial Authorities/Building Certifiers**

Section 24 of the Act prescribes various functions of Territorial Authorities. These include:-

- The administration of the Act and the regulations
- To receive, consider, approve or refuse any application for a building consent within the prescribed time limit
- To enforce the provisions of the Building Code and regulations
- To issue Code Compliance Certificates

Part VII of the Act defines a building certifier as a person approved by the Building Industry Authority to issue building certificates with respect to specific provisions of the Building Code. A building certifier may be employed by an owner as an alternative to using a Territorial Authority for checking the building consent application technical aspects within the BIA's scope of approval. If satisfied that they comply with the provisions in the Code, the certifier completes a building certificate covering those aspects so that the Territorial Authority may then issue a Building Consent. A building certifier may also perform inspections of the physical work in progress and issue a certificate that certifies that the work complies with the Code (Code Compliance Certificate) if within the scope of their approval.

The responsibilities of a Territorial Authority are broader than those of a building certifier. However, in the area of Code compliance there are some mutually shared concerns. Both have had difficulties in applying the "satisfied on reasonable grounds" test for compliance with the Code. The Act (s49), states that the Approved Documents established by the BIA shall be accepted as establishing compliance with those provisions of the Building Code to which it relates. In relation to the Durability and External Moisture provisions, the "satisfied on reasonable grounds" compliance test cannot be measured against any definitive or quantifiable criteria - unlike most of the other provisions. It must be subjective, thus leading to the very inconsistency the Act was designed to avoid.

As noted elsewhere, the Overview Group is concerned at the reliance Territorial Authorities and building certifiers have been placing on BRANZ Appraisals in relation to cladding products and systems as well as on Producer Statements. In many cases, these appraisals and statements are being accepted without any additional scrutiny. Further, the inspection regimes being applied fall short of what the Overview Group considers appropriate to satisfy the "satisfied on reasonable grounds" compliance test.

### **Recommendation 23**

**That the BIA works with BOINZ to develop more definitive criteria and guidance for achieving the "satisfied on reasonable grounds" test for compliance with the Code (refer also recommendation 7)**

## **The BIA's proper observation and following of the Purposes and Principles of the Act under Section 6**

Section 12 of the Act prescribes various functions for the Building Industry Authority. These include:

- Approve documents for use in establishing compliance with the Building Code.
- Undertake reviews of the operation of Territorial Authorities and building certifiers
- Disseminate information and provide educational programmes on matters relating to building control.
- Generally take all steps as may be necessary or desirable to achieve the purposes of (the) Act". "A principal purpose of the Act is... to provide for the necessary controls relating to building works....".

The general view of those interviewed, which is shared by the Overview Group, is that the BIA could and should be taking a more active role generally. Reasons given include - there is no government department specifically devoted to building; the Department of Internal Affairs has only an arms length involvement; only the BIA has direct access to government. It has been argued that the BIA should be more active in developing standards; monitoring and controlling new products; managing the appraisal process; providing greater assistance to

industry in areas such as education; developing guidelines; and responding to technical queries and concerns. There was some criticism that the BIA was – “difficult to access; slow to respond; defensive in its responses; its advice, rulings and determinations are too vague and highly qualified; front-line industry practitioners need more specific answers to their queries”.

It has also been suggested to the Overview Group that more of the levy monies collected on behalf of the BIA could and should have been available to the BIA for the likes of more extensive educational programmes and to increase its staff numbers and thereby the level of service provided.

In summary, the consensus was that to date the BIA has adopted a relatively low-key administrative role with respect to its perceived responsibilities. In the present circumstances it has insufficient staff to fulfil its role and provide the level of service that is needed. It may well be argued that the BIA has been fulfilling its statutory functions, and we are not aware that any Minister of Internal Affairs has questioned the BIA’s performance of its role since 1991, but according to the responses received it is not meeting industry or public expectation. It may be that the potential benefits of a wider role for the BIA have only now become apparent as a result of the growing realisation of the systemic failure across the industry.

### **Recommendation 24**

**That the BIA recommend to the Minister that the Department of Internal Affairs review the role, structure and resourcing of the BIA with a view to enabling it to provide a more comprehensive service to the public and the industry.**

In 1999, the Government initiated a review of the Building Act by the Department of Internal Affairs. The Terms of Reference established in 2000 included the following:

*To review the operation of the Act and to identify options, both legislative and non-legislative, for improving the effectiveness of the overall building control regime and quality of regulation provided for by the Act. The emphasis is on identifying ways in which further innovation and efficiencies can be achieved,*

The review is being undertaken by a small team within the Department of Internal Affairs, in consultation with an overview group of representatives of the BIA, LGNZ and the construction industry. A discussion document was issued in August 2001 and submissions closed in October 2001. The Overview Group considers Section 6 of the discussion document, “Alternative Solutions and Innovation”, to be particularly relevant to the current issues surrounding weathertightness. The findings set out in our report relating to Alternative Solutions offer a detailed case study that should be used to test the efficacy of any provisions.

More generally, the Overview Group considers that the focus of the review is too specific. The review needs to be broadened to look at more fundamental issues such as how well the overarching objectives are being met, whether the purposes of the Act need to be expanded, the adequacy of the controls, and the manner in which the Act is being administered.

### **Recommendation 25**

**That the BIA recommend to the Minister that the current review of the Building Act should include a reassessment of the scope and implementation of the functions of the BIA in relation to how the BIA is to achieve the purposes of the Building Act**

