

INFORMATION PAPER Building Standards and the *Child Care Act 2002*

BACKGROUND

One of the key objectives of the new legislation is to address duplication between the agencies involved in setting standards for licensed child care services. One of the key areas that had been identified as needing streamlining is the building standards for child care centres.

Previously, local authorities were responsible for ensuring that buildings were constructed in accordance with relevant building legislation. The previous legislation, the *Child Care (Child Care Centres) Regulation 1991* contained building requirements which were monitored by authorised officers of the Department of Communities under that legislation. This often resulted in duplication in the monitoring of building standards.

To avoid this duplication, in the new regulatory framework for child care the building requirements for child care centres do not appear in the *Child Care Act 2002* and instead are incorporated into the Queensland Development Code (QDC) Part 22 – Child Care Centres.

Local authorities or private building certifiers are responsible for ensuring that child care centres are constructed in accordance with the standards outlined in the Queensland Development Code (QDC). Their role is to ensure that building work for which they are engaged complies with all requirements within their area of jurisdiction. Individuals planning to build and operate child care centres will still, however, refer to the Department of Communities for information relevant to the licensing and operation of a child care centre.

The building standards are based on the building requirements in the previous *Child Care (Child Care Centres) Regulation 1991*.

The new building standards are written as **performance based standards**. This allows for flexibility and innovation. The standards focus on outlining the intention or rationale behind each requirement making it possible to achieve the objective in more than one way.

The standards are structured around **performance criteria**. Each performance criteria specifies the outcome but does not specify the means to achieve it.

For each performance criteria there is an **acceptable solution**, which sets out the detailed steps that will guarantee achieving the performance criteria. If a licensee uses the acceptable solution, he/she will meet the standard.

The **acceptable solution** is only one way of complying with the performance criteria.

If a licensee is unable to meet the acceptable solution he/she may offer **an alternative solution**. The alternative solution must satisfy the performance criteria to be acceptable. The alternative solution may be offered in place of or together with parts of the acceptable solution. The building certifier will refer these applications to the Department of Communities who will determine whether the 'alternative solution' meets the performance criteria and is acceptable.

Example: Alternative solution for Outdoor Play Facilities

The licensee/applicant meets all of the requirements of the acceptable solution, but in respect of shading offers an alternative: ie the use of large shady trees in the yard to satisfy the shading requirement.

The use of performance based standards recognises the possibility of new and innovative solutions to building works in child care centres and will allow for the incorporation of new concepts and experiences in the future.

BUILDING STANDARDS AND SCHOOL AGE CARE

The Building Standards contain specific building requirements for school age care services, based on the *National Standards for Outside School Hours Care* and include indoor and outdoor space requirements, the number of toilets required and kitchen/food preparation requirements. These National Standards were released in 1995 and school age care services have been working towards meeting these Standards.

Feedback during consultations for the *Child Care Act 2002* indicated that school age care services needed longer than three years to meet the building standards. The legislation reflects the needs of the school age care sector and these services have five years from the commencement of the legislation to meet the building standards (ie until 1 September 2008).

Some participants in the consultation sessions were concerned about the ability of school age care services to meet the proposed building requirements. The Government has already identified and responded to these concerns with the 2001 State Government election commitment to provide \$4 million over three years to assist in the upgrade of existing school age care services in Queensland. In 2004-2005 an additional funding round was held for \$1 million. An additional funding round to assist in the upgrade of existing services has been offered for 2005-2006, applications closed 12 December 2005, to assist existing school age services to meet the building standards.

In addition, the building requirements for school age care services are expressed as performance based standards and will, therefore, allow for flexibility in how services can meet these. The standards contain acceptable solutions that meet the performance criteria. Individuals who do not wish to use the 'acceptable solution' proposed in the standards could offer alternative solutions. The building certifier will refer these applications to the Department of Communities who will determine whether the 'alternative solution' meets the performance criteria and is acceptable.

BUILDING LEGISLATION AND THE BUILDING APPROVAL PROCESS

The building standards for child care centres are contained in an annexure called the Queensland Development Code (QDC) Part 22 – Child Care Centres. The changes to the QDC which include the incorporation of the building standards for child care centres occurred at the same time as the proclamation of the *Child Care Act 2002*, on 1 September 2003.

The information below outlines the relationship between different pieces of building legislation and the building approval process. (*Also see Attachment 1 for a diagram of this information*).

The *Integrated Planning Act 1997* (IPA), which commenced on 30 March 1998, introduced the Integrated Development Assessment System (IDAS), providing an integrated development application assessment system for all development, including building work. It also provides the head of power for private certification and the application, decision and appeal procedures applicable to building work. Building applications are development applications under the IPA, while an approval is in the form of a decision notice, which is also referred to as a development permit.

The *Building Act 1975* (BA) provides the head of power and administrative provisions for the *Standard Building Regulation 1993*, variations of the SBR, the fencing of swimming pools, enforcement provisions for matters not dealt with in the IPA, the accreditation of building certifiers and transitional provisions for existing building work.

The *Standard Building Regulation 1993* (SBR) is a code for the purposes of the IDAS and references the BCA as the technical standards applicable to building work. It also contains operational and technical provisions covering building work documentation, assessment and inspection, setting standards, floating building standards, pool fencing standards, and the accreditation of building certifiers.

The Building Code of Australia (BCA) is a national code of technical standards which applies to all building work in Queensland. The BCA in turn also references a number of Australian and international standards for application to building work.

While the BCA provides deemed-to-satisfy solutions for most situations, building designers have the option to adopt alternative solutions which satisfy the performance requirements of the BCA. Where alternative solutions are submitted for approval, building certifiers will need to assess them to ensure they satisfy the performance requirements. While it is important for all building certifiers to document reasons for any such assessments, private certifiers have an obligation to lodge documented reasons with the local government as part of required documentation.

The Queensland Development Code (QDC) is a code that contains a series of standards which will apply to specific types of buildings and building work in Queensland. The QDC provides performance criteria and acceptable solutions in a similar way to the BCA. The building standards for child care centres is located in Part 22 – Child care centres of the QDC.

The *Standard Building Regulation 1993* will reference the QDC giving it the same legal status as the BCA. Where alternative solutions are submitted for approval against the QDC, building certifiers will be required to ensure, where necessary, they are forwarded on to either the relevant referral agency or local government for assessment. The QDC's individual standards will generally only provide specific requirements for certain aspects of new or altered buildings. The requirements of the BCA will still apply to the work being assessed for the rest of the application.

CHILD CARE BUILDING APPROVAL PROCESS (see *Flowchart 1* for a diagram of the steps)

Step 1: Application

An application for the carrying out of building work can be made to a building certifier. This can be either the relevant local government or a private certifier (in their own private practice). The application is made on a generic IDAS (Integrated Development Assessment System) form which sets out only minimal information about the proposed building work. The form is very broad as it is used for all classes of buildings. The form is generally supported by detailed plans so that assessment against the various codes can be carried out.

Step 2: Assessment

The building certifier assesses the application against all relevant building codes and standards. As part of this assessment stage the building certifier must ensure all other necessary development approvals are effective. For example, an approval under a Local Government planning scheme may be required to allow a particular type of building use on a site. In the case of these standards, the Department of Communities is the concurrence agency and when a proposal is put to the Department regarding alternative solutions, the certifier cannot progress the assessment application until a decision is provided.

Step 3: Decision

Once all other approvals are effective the building certifier can then issue a decision notice which will effectively allow the building work to commence. If there are concurrence agency requirements they must be included on the decision notice issued by the certifier. It will be up to the concurrence agency to include a requirement for any inspections to be carried out in respect to their conditions. The building certifier is compelled to provide the concurrence agency with a copy of this decision notice within 5 working days of it being made.

Step 4: After the building work is complete

Once the building work is complete, the building certifier must issue a Certificate of Classification before the building can be lawfully occupied. Occupying the building before a certificate is issued is an offence under the *Building Act 1975* for which the building owner can be prosecuted. Restrictions can be placed on the use of a building. For example, an alternative building solution may have been approved to allow lesser fire exit requirements on the basis that the maximum number of occupants in the building did not exceed 30. The Certificate of Classification will generally detail that condition and it is the building owners' responsibility to ensure the condition is adhered to.

Step 5: Appeals

1. *Decisions made by the concurrence agency (the Department of Communities)*

Any appeals would go to the Building and Development Tribunal set up under Chapter 4 Part 2 of the *Integrated Planning Act 1992* (IPA). The concurrence agency has the power to require an assessment manager (private certifier) to refuse an application or place conditions on the decision notice it issues for the commencement of building work. It is the refusal or the conditions placed on the decision notice issued by the certifier that are appealable.

When an applicant appeals this decision and it is about the concurrence agency's response, the concurrence agency is made a co-respondent for the appeal. The appeal would be heard by a referee of the Building and Development Tribunal, and another representative with the relevant expertise, which is likely to be a person or persons from the Department of Communities. (The certifier will not be involved in the appeal if the decision is in regard to the concurrence agency's decision). The referee would need to be someone impartial and not party to the initial decision making process.

This appeal process will be activated when the Child Care Building Standard is called up by the *Standard Building Regulation 1993* either directly or through the Building Code of Australia.

2. *Decisions made by the building certifier*

- (a) There is a complaint process in place when an applicant appeals the decision made by the building certifier. This process is administered by the Queensland Building Tribunal (QBT) established under the *Integrated Planning Act 1992*.
- (b) For serious issues made against the building certifier that may constitute professional misconduct, the Building Standards Australia (BSA) would be involved.

THE *CHILD CARE ACT 2002* AND LINKAGES WITH THE BUILDING STANDARDS

General Provisions

Under section 28 of the *Child Care Act 2002* the Chief Executive must be satisfied that the child care centre is safe and suitable for use as a child care centre. The matters the chief executive must consider include whether the centre is on, or includes, a level above ground level.

In addition, if the centre is in premises that also contains a home, the Chief Executive must be satisfied that:

- (a) the centre and the home have separate entrances; and
- (b) there is no direct access, inside the premises, between the centre and the home; and
- (c) in all the circumstances, it is appropriate that child care be provided in the centre.

For this Act, premises are suitable for use as a child care centre if the premises comply with the Building Act requirements. A "child care centre" includes premises proposed to be used as a child care centre.

Existing licensed child care services

Existing licensed child care services will not be required to be reassessed against Part 22 – Child Care Centres of the QDC as the new standards are based on the requirements in the previous *Child Care (Child Care Centres) Regulation 1991* existing licensed child care services will already meet the new building standards.

However, the following are two examples where child care services will be required to be reassessed against Part 22 – Child Care Centres of the QDC

- (a) If an existing licensed child care service undertakes structural renovations

If an existing licensed child care service undertakes renovations that require development approval, the building works will be assessed against the new building standards and will require a new Certificate of Classification. The licensee will be required to provide a copy of the Certificate of Classification to the

Department. Approved plans and information about the ages of the children, licence capacity and the operating hours may also be required.

(b) If the building standards are not being met or maintained

Under section 143 of the *Child Care Act 2002*, if at any time, the Chief Executive is concerned that the licensee is no longer meeting the building standards, the Chief Executive may give the licensee of a centre based service a notice requiring the licensee to comply with the Building Act requirement within a stated time of at least 30 days.

If after the time stated in the notice, the authorised officer of the Department reasonably believes the child care centre still does not comply with the Building Act requirements they may give a licensee a notice requiring the licensee to obtain and give the Chief Executive within a stated period of at least 30 days, a written certificate from a building certifier confirming that the child care centre complies with the Building Act requirements.

Further to this, section 45 of the Act sets out grounds upon which the Chief Executive may suspend or revoke a licence at any time. This may occur if the Chief Executive is satisfied that for a centre based service the child care centre is unsafe or unsuitable for use as a child care centre or the licensee has failed to comply with a building compliance notice.

Similarly, under section 46 of the Act a licence can be immediately suspended if the Chief Executive is reasonably satisfied it is necessary, in the interests of the wellbeing and safety of children being provided with child care under a licence, that the licence be immediately suspended.

SERVICES BUILT AND LICENSED AFTER 1 SEPTEMBER 2003

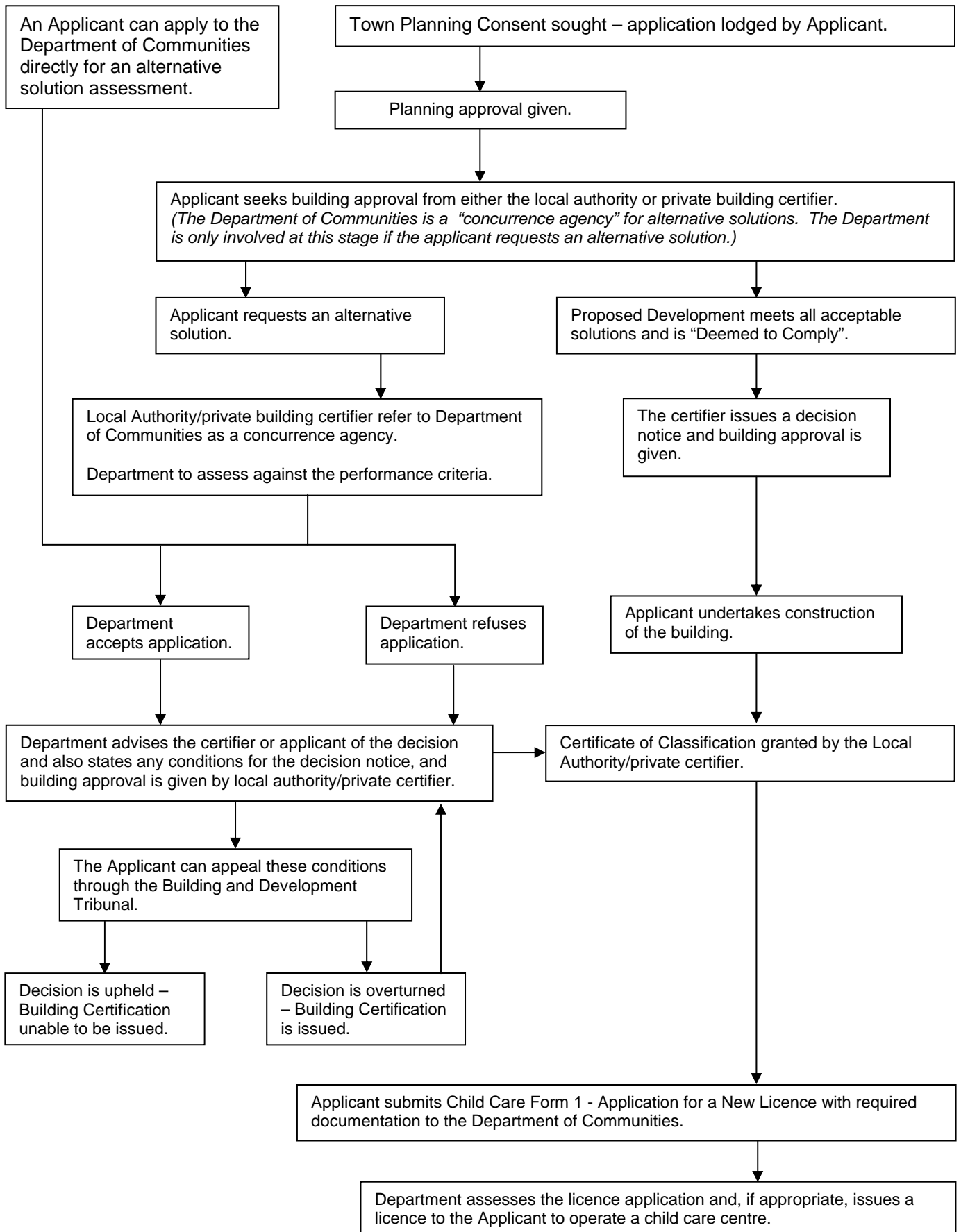
Child care centres built after the commencement of the Act will have to comply with the standards in the building legislation. The building compliance certificate (Certificate of Classification) is only one of many documents that will be required for licensing and does not guarantee that a licence will be issued. Other documents to assist in licensing will be approved plans and the license application, including proposed information about the ages of the children, licence capacity and the operating hours. The responsibility for issuing a child care licence lies with the Chief Executive (or delegated officer) of the Department of Communities. In determining an application for a child care licence the Chief Executive (or authorised officer) will need to be satisfied that the premises are safe and suitable for the purpose of operating a child care service. If the service requests an alternative solution they will need to complete Child Care Form 21 – Application for an Alternative Solution. This form requires the applicant to detail the type of alternative solution they are requesting and how it meets the performance criteria.

This information paper has been prepared by the Department of Communities to assist users of the *Child Care Act 2002* and the *Child Care Regulation 2003* in understanding the requirements of important provisions. If there are any inconsistencies between this document and the legislation, the legislation must be followed. You should refer to the legislation to properly understand its requirements.

Department of Communities Regional Office Contacts:

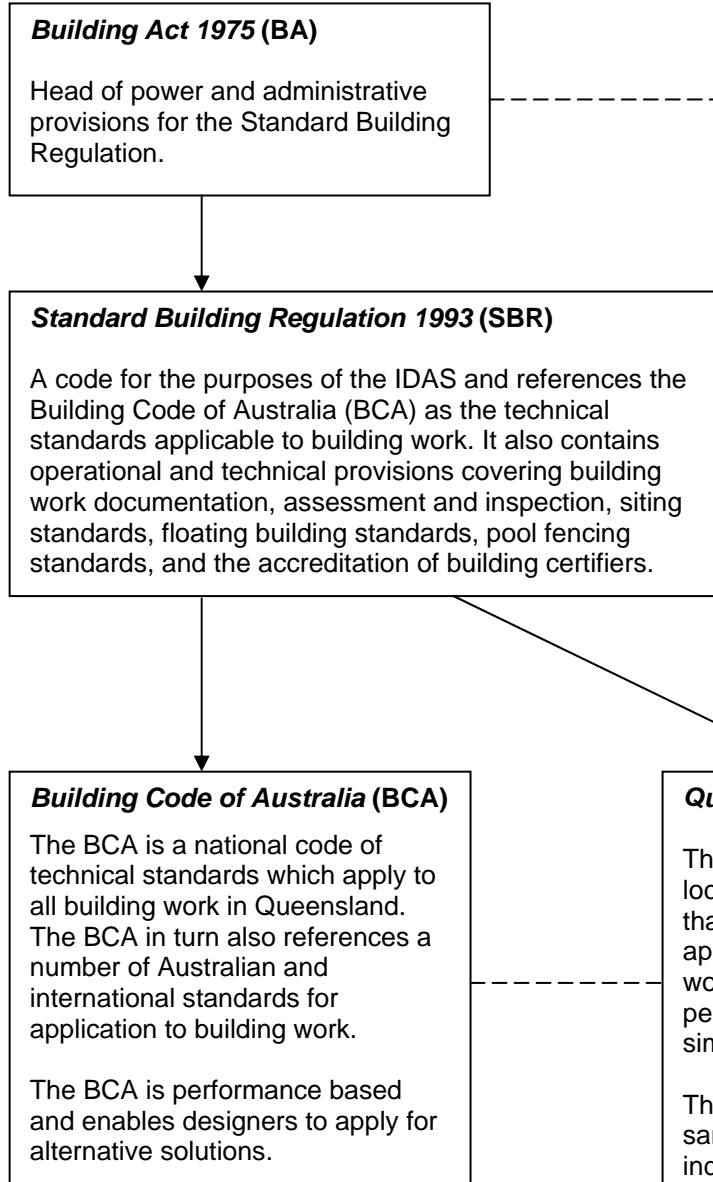
Darling Downs/South West Queensland	4688 4060	Department of Communities
Far North Queensland	4039 8476	Office for Children
Fitzroy/Central West	4938 6715	GPO Box 806
Gold Coast	5583 4400	BRISBANE QLD 4001
Brisbane	3109 0620	Telephone: 3224 4225
Mackay/Whitsunday	4944 8600	Freecall outside Brisbane: 1800 637 711
Moreton	3280 1777	Email: ccis@communities.qld.gov.au
North Queensland	4799 7110	Website: www.communities.qld.gov.au/childcare
Sunshine Coast	5475 0060	
Wide Bay/Burnett	4197 7900	

Flowchart 1: Child Care Centre Building Process



Attachment 1: Related Building Legislation

Building Development Approval



Development Planning Approval

