

Blind Citizens Australia



Submission to the Productivity Commission Review Reform of Building Regulation

May 2004

1.0 Blind Citizens Australia

Blind Citizens Australia is the peak national organisation of people who are blind or vision impaired. We have fifteen branches across Australia in metropolitan, regional and rural locations. Our 3,600 (approximate) members come from all States and Territories and include people from various ethnic and linguistic groups.

Through their involvement in local branches and our state and national publications, our members gain opportunities for peer support and social interaction and access to blindness-specific information and advocacy support. Our national and Victorian offices provide individual and systemic advocacy support, and our NSW and Western Australian offices a limited information service, to all people who are blind or vision impaired.

2.0 Community expectations of access and amenity

Amenity must be interpreted more broadly than the level of comfort of use of a premise; amenity must include the ability of a person to use a premise with dignity. As the development of the DDA Standards for Access to Premises (the Premises Standard) demonstrated, achieving dignified access for people with disabilities is a structural issue as much as it is a matter of addressing fittings and fixtures and, as such, is well within the scope of the Building Code. Issues impacting on dignified access for people who are blind or vision impaired include designing premise entries so that they can be readily distinguished, using colour and luminance contrasting and tactile indicators to identify steps, and identifying exits, toilets and other essential features of a premise through accessible maps and signs.

Explicitly incorporating dignity into the definition of amenity is particularly vital in the context of a “least-cost” approach to building regulation.

Recommendation

That the definition of amenity explicitly include dignified access to premises for people with disabilities.

3.0 Effectiveness and efficiency

3.1 Efficiency & effectiveness through consistency

The efficiency and effectiveness of the building industry and the Building Code can be maximised through greater commitment to training in disability access and improved national consistency.

The nature of blindness is such that consistency and predictability in the design of buildings is vital and can be the difference between safety and a serious injury. An example is the use of warning tactile ground surface indicators. These tiles warn a person who is blind or vision impaired that they are about to encounter a hazard such as an obstacle on the path of travel or traffic. The relevant Australian Standard lists clear requirements for the installation and characteristics of the tiles, including that the tiles must have a minimum level of luminance contrast with their background and that they must be installed 300mm back from the hazard (this gives the person who is blind or vision impaired the opportunity to assess the nature of the hazard from a safe position). These requirements are included as deemed-to-satisfy measures in the Building Code.

People who are blind or vision impaired must be able to assume that every tactile indicator in every State and Territory is installed according to these specifications if they are to be able to place their trust in them and navigate their environment safely. Unfortunately, this consistency is not being achieved. Across Australia warning tiles are being installed incorrectly and in ways that put the safety of people who are blind at risk. In part, this reflects the poor understanding of blindness among designers, auditors and certifiers (see Section 5 for a detailed discussion of the importance of training in achieving consistency). However, it is our experience that inappropriate and idiosyncratic designs are often cost cutting measures masquerading as performance requirement innovations.

Blind Citizens Australia understands the importance of innovation and we fully support pioneering design which maximises universal access and minimises the need for special accommodations for people with disabilities. We also support continual improvement and its promotion through the Australian Standards process. However, blind and vision impaired Australians cannot afford to allow the integrity of tools such as tactile ground surface indicators to be undermined through inappropriate installation. We strongly recommend that the physical characteristics and placement of modifications for people who are blind be treated only as deemed to satisfy provisions, not as performance requirements,

in both the Building Code and the Premises Standards. This will improve efficiency and promote economies of scale reductions in costs.

Recommendation

That the Building Code be amended such that premises are only assessed as being compliant with it if tactile ground surface indicators are installed according to the deemed-to-satisfy provisions.

3.2 Efficiency & effectiveness through consultation

Efficiency and effectiveness can also be improved through early consultation with a broad range of people with disabilities. As the peak organisation of people who are blind or vision impaired, Blind Citizens Australia is frequently called on by construction companies, state governments and local councils to provide advice on major projects. However, almost invariably, this consultation occurs too late for poor design to be redressed easily and without additional cost.

Recommendation

That the building industry seek the input of people with disabilities at an early stage in the planning and design process.

People with disabilities are sitting on local government disability advisory committees across Australia without having received any training to assist them to fulfil this role. People with disabilities urgently need access to affordable and accessible training in Australian Standards, the Building Code, the Premises Standard and the Accessible Public Transport Standards, as well as relevant state and local regulations.

Recommendation

That training courses for people with disabilities serving on disability advisory committees be developed and widely provided.

4.0 Minimum Standards versus Best Practice

Since the passage of the Disability Discrimination Act in 1992 there has been a tension between the Building Code and the requirements of the Act.

Theoretically this should be overcome by the Premises Standard however, the limited scope of the first stage of the Standard's development means this will not be the case (see section 7 for further discussion about the Premises Standard).

This tension has led to state, territory and local governments introducing requirements that exceed those of the Building Code in order to achieve equitable, safe and dignified access for people with disabilities.

Blind Citizens Australia supports state, territory and local governments continuing to have this capacity as long as the requirements they introduce are based on Australian Standards. We are unfortunately currently faced with several examples of state and local governments introducing provisions which do not meet the minimum requirements for access as outlined in the relevant Australian Standard.

Recommendation

That state, territory and local governments continue to have the capacity to regulate for improved access for people with disabilities and that these improvements be based on the relevant Australian Standard.

5.0 Australian Standards

Blind Citizens Australia is a member of the Standards Australia ME64 Committee which develops the suite of standards related to access for people with disabilities.

The Australian Standards we contribute to are solidly grounded in research and the experiences of people who have a disability. Our input to the Standards is informed by available research and the experience of our members. We consult widely with people who are expert in access and people whose expertise is their daily experience of blindness. We also regularly liaise with representatives of other disability organisations.

In our experience, the Standards process could be improved in three ways:

- greater coordination of input from government and industry;
- increased responsiveness of Standards Australia to feedback; and,
- a greater commitment to using the Standards process by government and industry.

5.1 Greater coordination of input from government and industry

The ME64 Committee and the sub committees established under it have a broad range of representation, including positions for representatives of disability organisations, government, industry associations and professional

associations which are involved in the building industry. It is expected that the people filling these representative positions will have effective processes in place for consulting with their constituents. This has not always been the case. It is incumbent upon all sectors to ensure that their representatives are accountable and effectively represent them.

Recommendation

That the disability sector, government, industry and professional associations review the consultation and reporting processes used by their representatives on Standards Australia committees.

5.2 Increased responsiveness of Standards Australia to feedback

The process of developing and reviewing Australian Standards is time consuming – suggestions for changes need to be considered and the appropriate wording developed, drafts need to be widely distributed for comment, comments need to be reviewed and, where competing feedback is received, suitable resolutions identified. While this delay is frustrating, it is vital to ensure that the revised Standard is robust.

In between full revisions of the Standards however, it is possible to issue amendments – a process that is considerably quicker than a full revision. This process lends itself to correcting drafting errors in the Standards and to implementing changes to the Standards that are developed in negotiations undertaken outside the Standards Committee process. For example, in 2003, changes to AS 1428.4 in relation to railway platforms were agreed to in national discussions involving the Human Rights and Equal Opportunity Commission, railway service providers, disability organisations and Standards Australia.

Standards Australia does not make sufficient use of this capacity to update Standards relatively quickly and thereby keep the Standards relevant.

Recommendation

That Standards Australia makes greater use of the amendment process to ensure that Standards remain relevant.

5.3 Greater commitment to using the Standards process by government and industry

The Australian Standard process has the capacity to effectively consider alternative proposals which may achieve the same outcome at less cost. However, perhaps as a result of the poor consultation processes in some

sectors and the slow pace of change of Standards, some organisations have attempted to bypass the Standards process and implement individual solutions.

As already stated, Blind Citizens Australia opposes this approach because it leads to inconsistency. However, it is also inefficient. By bypassing the Standards process, potential improvements are not brought to the attention of the Standards Committee and therefore cannot be incorporated into future Standards to benefit all Australians. In addition, government and industry do not get the benefit of having potential solutions reviewed by people who are expert in disability access. In many cases, flaws in proposed alternative solutions can be readily identified before costly mistakes are made.

Recommendation

That government and industry recommit to using the Standards Australia standards development process to ensure consistency and best practice are achieved.

5.4 Alignment with international standards

Blind Citizens Australia in principle supports aligning Australian standards with international standards. It is important to note however that in the area of disability access, Australia is a world leader.

Recommendation

That Australia's position as a world leader in the development of disability access be acknowledged.

6.0 Achieving Uniformity and Consistency

Blind Citizens Australia has addressed the impact of different approaches across jurisdictions on national consistency above. We have also outlined our concern that the Building Code allows the building industry too much scope to implement idiosyncratic designs.

In part, the lack of consistency reflects a lack of information and understanding of disability and its impact on the way that a person uses a building.

To go some way to addressing this, Blind Citizens Australia is developing a Frequently Asked Questions about Blindness booklet, with the assistance of the Australian Institute of Building Surveyors. The booklet aims to explain to

builders, architects and surveyors how people who are blind or vision impaired make navigational decisions.

This will be a good start, but it is essential that building professionals are provided with greater training in disability awareness throughout their training courses and through ongoing professional development programmes.

Recommendation

That disability awareness training form a greater part of building industry professions' training and ongoing professional development.

7.0 Compliance

7.1 Current situation

It is clear that building certifiers are not able to accurately assess a building's compliance with the Building Code in relation to access for people with disabilities. The list of examples of buildings which have been approved but which do not comply is endless. A prominent example is Federation Square in Melbourne. Federation Square opened in late 2002 and is an important public space, used for community meetings and major public events. It was certified as meeting the Building Code despite not doing so in many ways including:

- braille signage being installed upside down
- luminance and colour contrast on the extensive external stairs not being sufficient
- the edge of large plate glass doorways protruding into the path of travel and
- glass doorways not having appropriate glazing

The site is also problematic for people with a range of other disabilities.

While the project was still in the design stage, advice was given to the project managers about minimum steps that needed to be taken to ensure the building met access requirements. These changes were not made. Blind Citizens Australia is currently in negotiation with Federation Square management to redress the access issues, but we have been told that due to financial restrictions it will take some time to fix the problems. Had these matters been addressed in the original planning, the additional cost of retrospectively making the building compliant would not have been incurred.

Another example is the refurbishment of Melbourne Central, a shopping centre in Melbourne city, which is currently being undertaken. Features of the

redevelopment, including newly installed stairways, have been opened to the public, despite not complying with the Building Code.

Recommendation

That people with disabilities and their representative organisations be consulted at the early stages of building design to ensure that their needs have been considered.

7.2 Access consultants

Many projects employ access consultants to make sure that the project meets Standards for access for people with disabilities. Our experience is that the quality of these consultants varies considerably; many consultants are expert in access for people with physical disabilities but know little about the needs of people who are blind or vision impaired.

Recommendation

That a registration process be introduced to ensure that access consultants have a wide range of experience and knowledge about all disabilities.

8.0 DDA Standards on Access to Premises

Blind Citizens Australia has been disappointed that the approach taken to the development of the Premises Standard – prioritising harmonising the Building Code and the DDA – has restricted the range of access issues that can be addressed, with the negative impact of this restriction falling disproportionately on people who are blind and vision impaired.

The draft Premises Standard contains few deemed-to-satisfy provisions that specifically address the access needs of people who are blind or vision impaired. Essential features to assist a person who is blind or vision impaired to locate and use a building in safety and with dignity are not included, such as braille, raised tactile or audible signage about building names or tenant information and braille or raised tactile floor numbers outside lift doors.

The draft Premises Standard also do not include instructions for how to provide:

- braille, raised tactile or audible maps
- braille, raised tactile or audible signs for finding services or facilities in a premises or
- safe and detectable paths to a building from a street

A key reason for this is the lack of reliable research in these areas. This issue is addressed in section 11.

9.0 The Administrative Protocol

Blind Citizens Australia has identified three issues of concern related to the proposed Administrative Protocol. These are the role of third parties, the selection of access experts and the voluntary nature of the protocol.

9.1 Role of Third Parties

Blind Citizens Australia is extremely concerned that people with disabilities do not have standing under the Administrative Protocol to refer a matter to an Access Panel.

We believe that this lack of standing decreases the accountability and transparency of the process and is not consistent with the right generally conferred on members of the public to make complaints about perceived breaches of the Building Code. Under the proposed Protocol which is designed to specifically deal with disability access issues, people with disabilities have less capacity to raise concerns than under most general building review and dispute schemes. This could result in the absurd situation that whereas a person may have had the right to make a complaint under existing processes, because the matter has been referred to an Access Panel, the person does not have a voice.

People with disabilities should have standing to both refer a matter to an Access Panel and make submissions to an Access Panel. The disability sector contains significant expertise and its involvement will improve the access outcomes for people with disabilities. Notice should be given to the public that a matter has been referred to an Access Panel. There should be a requirement that an Access Panel consult with relevant disability organisations or people with disabilities likely to be directly affected by the decision of the Panel.

Recommendation

That people with disabilities should have standing to both refer a matter to an Access Panel and make submissions to an Access Panel.

Recommendation

That Access Panels should consult with relevant disability organisations or people with disabilities likely to be directly affected by the decision of the Panels.

9.2 Access Experts

Blind Citizens Australia is also concerned that an Access Panel only has to contain one person competent in access. The Protocol does not state that this person has to be an expert in disability access. The Protocol simply states that a "person competent in access" is defined as a person recognised as having the necessary qualifications and experience in access matters. This would presumably include all architects and building surveyors. We believe that all members of an Access Panel should have extensive and compulsory training in disability access issues.

We are strongly opposed to the proposal that in the one State which does not have existing administrative building review processes, Access Experts be appointed to consider alternative solutions and unjustifiable hardship.

Recommendation

That all members of an Access Panel should have extensive and compulsory training in disability access issues.

9.3 A Voluntary Process

Blind Citizens Australia is concerned that there is no requirement that a proposed alternative solution or a question of whether unjustifiable hardship exists be referred to an Access Panel. The Impact Analysis refers to the relatively low risk of a discrimination complaint being lodged under the current situation. A Building Control Authority or private surveyor might consider the risk worth taking by not referring a matter to an Access Panel rather than potentially increasing the costs of a building project. We are concerned that there will be pressure on building surveyors and Building Control Authorities to not "waste time" referring matters to an Access Panel.

This would result in a process which confers no benefit for people with disabilities. A possible solution would be to require alternative solutions to be referred to an Access Panel for the first two years of the Protocol and Access to Premises Standard.

Recommendation

That an alternative solution or decision that unjustifiable hardship exists must be referred to an Access Panel during the first two years of operation of the Protocol and Access to Premises Standard.

10.0 Fire safety

We would point out that the draft Premises Standards do not contain provisions for emergency egress for people with disabilities. We understand that the ABCB plans to address this in the near future, however, in the mean time people with a disability are left vulnerable in emergency situations.

Recommendation

That emergency egress provisions for people with disabilities be addressed as a matter of urgency.

11.0 The ABCB and the Accessibility of the Code

Blind Citizens Australia's experiences of working with the Australian Building Codes Board have been positive. We have found them to be responsive to our concerns and skilled at communicating complex technical issues in clear language.

To contribute effectively to the development of the Building Code, people who are blind or vision impaired need access to information about proposed changes in accessible formats. This information should be provided at no cost and should include as much detail from the Building Code as is required to competently comment on the proposed changes.

Recommendation

That information about proposed changes to the Building Code be provided in accessible formats.

12.0 Awareness and research

Comparatively little research has been done in Australia or internationally on ways to ensure that people with disabilities have equal access to buildings. With the exception of research into the effectiveness of tactile ground surface indicators, the research that has been done in the area of blindness has tended to concentrate on high-tech solutions, at the expense of more simple measures that might improve access. As a consequence, people with a disability have been disadvantaged in relation to the development of the Building Code and the Premises Standard because we have often been unable to point to specific research to back suggestions for changes and have not had the resources or expertise to pursue these research projects independently.

There has been improvement in this area. In 2002 a research project aimed at helping people who are blind navigate the built environment commenced, funded by the Co-operative Research Centre for Construction Innovation. It is hoped that this project will lead to further research projects.

In our view there is an unexplored potential for more effective research to be undertaken through trials undertaken at the local level. The Australian Building Codes Board and other organisations should work with local councils and people with disabilities to identify small scale research projects into disability access. State and territory governments are well placed to incorporate practical trials of access measures through their public premises such as railway stations, hospitals and galleries. People with disabilities cannot contribute financially to research, but we can contribute our time and energy. The few trials of access measures in the area of blindness have attracted significant interest from people who are blind. Such an approach would benefit people with disabilities and would foster innovation. To maximise its effectiveness, information about the trials should be collated and reported to people with disabilities on a regular basis.

Recommendation

That more funding be allocated to research in the area of disability access.

Recommendation

That the Australian Building Code Board work cooperatively with state, territory and local governments and people with disabilities to identify opportunities to conduct small scale research projects into disability access. Information about these trials should be collated and reported to people with disabilities on a regular basis.