

# **Comments on the Draft Research Report on Reform of Building Regulation**

## **A Submission to the Productivity Commission**

### **by Disability Council of NSW**

#### ***Introduction***

The Disability Council of NSW is the official advisory body to the NSW Government on disability issues and policy, and functions in NSW as the State's Disability Advisory Body to the Commonwealth Government commenting on Commonwealth issues that affect people with disabilities and their families in NSW.

To make this document easier to read Disability Council of NSW has been referred to throughout as *Council*, the Productivity Commission as *the Commission*, the Australian Building Codes Board is referred to as *the ABCB*, the Building Code of Australia as *the BCA*, the Disability Discrimination Act 1992 as *the DDA* and the Draft Research Report on the Reform of Building Regulation as *the report*.

Council is aware that the task of balancing competing views expressed by stakeholders is a daunting one and the Commission's recommendations reflect its appreciation of this complexity. Council is also appreciative of the opportunity to provide supplementary comment on what it understands the Commission sees as an important aspect of the debate.

As noted in its presentation to the Commission Council feels that the draft report does not adequately address disability related issues when reviewing the need for building reform. In particular Council is concerned with the deprecating language employed to describe people with disabilities, the model of disability it perceives as underlying the report's findings, the Commission's justification for the continued design of inaccessible buildings and the failure to address the issue of *equity* as it relates to access to the built environment.

#### ***Language***

The report refers regularly to people with disabilities as *disabled people*. Council acknowledges that the British disability movement has adopted the term *disabled people* but only to underscore a position endemic to the emerging British model of disability: *the social model* (see discussion below). In Australia adopted terms are *people with disabilities* or *people with a disability* (and more recently *people with disability*). The commonality of these descriptors is that they use the word *people* first, underlining the philosophical position of being regarded (and treated) as *people* first.

In addition Council is concerned with the use of *the disabled* within the report. (See for instance p XXI of the Overview). Council advises that both these terms may be classified by some (in Australia) as offensive and as such should be avoided. It is surprising given the high quality of the Commission's Inquiry into the effectiveness of the DDA that such terms are found in one of its reports.

## ***Models of Disability***

A review of the report suggests its writers have not given due consideration to the model of disability they endorse.

The *deficit model of disability* views disability as an individual condition. It maintains sway perhaps because of the medical profession's role in treating both ailments and impairments and is often referred to as the medical model.

The *social model of disability* acknowledges that impairments may be usefully treated by the medical profession but places *disability* as the outcome of a society's failure to treat all its citizens equally and impose restrictions on some (eg the lack of equitable access to the built environment). The British have adopted the term *disabled people* to refer to that group of people with impairments who are *disabled* by the way society is structured. The phrase is intended to make a political point that this group share a common interest in addressing their government's failure to meet its obligation to its citizens.

The references to disabled access throughout the report also suggest there are two forms of access (one for people with mobility impairments and one for those without them). This type of logic and phrasing has been responsible for feeding the current planning and building system and infers that the objective ought to be to create and maintain a parallel system of access and building functionality. It maintains the argument of the deficit model of disability and chooses to ignore Government's obligation to address the needs of ***all*** its citizens.

While these points are often dismissed as semantics Council is confident they do in fact set up a mindset within the reader that reinforces a framework of separateness and difference. This ultimately works to disadvantage the person living with the experience of disability as social disadvantage can be seen as an inevitable consequence of impairment.

## ***Equity***

*Disabled people* (using the British terminology) are those that are treated inequitably due to design failures in the social fabric (including the built environment).

As noted in Council's initial submission to the inquiry the Australian Government has endorsed *the Commonwealth Disability Strategy* (2000) updating it in November 2003. This notes in its opening remarks that it is:

*...about enabling full participation of people with disabilities...(and)...**(t)his means ensuring that people with disabilities have the same access to buildings, services, information, employment, education, sport and recreational activities as everyone else in the community.***

(<http://www.facs.gov.au/disability/cds/cds/intro.htm>)

In practice this is clearly **not** the case.

Council can understand the logic of including access to buildings under the heading of *Amenity* in the BCA. Without access to all or any aspect of the environment individual amenity clearly suffers. However Council would argue that access to the built environment should be the right of all citizens thus it is more than reduced personal amenity that people suffer as a result of restricted access. Council notes however that the BCA's coverage is generally restricted to buildings and has nominal impact on broader built environment issues (including the need for universal housing design).

Similarly, Council is aware of the argument that *sustainability* is a category/header needed under the BCA and that access for people with disabilities sits more comfortably as an issue of sustainability than amenity. This too has merit as with an ageing population, and the likelihood of a greater proportion of citizens experiencing a characteristic loss of sight, hearing and mobility through ageing, future planning needs to consider their ongoing needs. The need for a completely accessible built environment is shared by all though what constitutes *completely accessible* will vary from individual to individual. Council believes that the means to meet the access needs of all is an issue which should dominate planning and construction of the future environment at least as much as other considerations do.

If people are not included equitably when planning the built environment a need (indeed demand) for alternative systems is created to offset the disadvantage from not being included initially. Council cannot understand the argument that a system can be sustainable if it is built on the premise that it excludes part of the population it is designed to serve and the number it fails to accommodate increases as the population ages.

While appreciating the merit of that argument, in Council's view it would still be more appropriate to add the header of *Equity* (rather than sustainability) to those that address health, safety and the environment in the BCA as *Equity* should be seen as the measure more than amenity achieved or the sustainability of the system.

This follows from the pursuit of amending the BCA to achieve consistency with the principals and objectives of the DDA through the development of an Access to Premises Standard which is mirrored by the BCA provisions. If the BCA is to function as an effective instrument to achieve human rights then a central focus must surely be 'equity' complemented by sustainability and therefore delivering the same level of amenity to all.

### ***Unjustifiable Hardship***

The Commission's suggestion that *unjustifiable hardship* should remain as a defence to builders who argue new dwellings are too cost prohibitive to be made accessible to all endorses a position contrary to the Commonwealth Disability Strategy. Likewise the ABCB's suggestion that an Access Standard should recommend a percentage of businesses/ dwellings are made accessible (rather than **all** buildings)

fails to address the need for equity or the fiscal and social realities of many Australians.

The argument most often forwarded against making all buildings accessible relates to perceived exorbitant costs. However these arguments fail to consider that item costs are market driven and therefore are not static. Nor do such arguments take into account the innovation of industry to provide alternative solutions.

Further, assessment of these cost implications fail to consider the massive social cost borne by people with disabilities who are restricted from schooling, work and social opportunity, the higher welfare costs imposed by their inability to find work in an inaccessible environment, the costs this transfers onto families or the cost of maintaining an alternative system to accommodate their needs.

Council argues that greater recognition is needed that these costs are real and that a way is needed to factor these into decision making if any effective assessment is to be made.

### ***Compliance with the DDA***

Although within its Terms of Reference the Commission seems to have decided not to examine how well or badly the BCA/DDA process is going as it is complex and work is already underway. Council feels that the Commission's *draft recommendation 6.2* might be rephrased (and strengthened) to introduce the need for rigour in defining compliance with obligations under the DDA. The Commission might also give more direction about the outcome required rather than merely recommending that the process should continue until arriving at an unspecified conclusion.

Council also noted the composition of the ABCB with some interest. It argues that there should be "a place at the table" for someone with expertise in the issue of inclusive access. This Council contends should be a representative voice of people with disabilities rather than a government employee with no real experience of the issue.

The Commission has accepted the appropriateness of industry input rather than having government advocate on their behalf and Council cannot see why the representation of other stakeholders is not equally appropriate.

Also caution is needed when exercising the term 'stakeholder' in this instance. Reducing the involvement of those affected to 'stakeholders' involves a risk of believing that each party is equally resourced, equally represented and equally affected by the outcome. Clearly this is not the case. While the outcome for some may impact their business profits, policy, management or training requirements for others it may significantly reduce their life opportunities. It is unlikely therefore that any one third party could adequately represent all the needs of those most at risk.

Though the Commission may not be aware the Commonwealth has recently funded the Federation, an umbrella organisation made up of the major Commonwealth

Disability Peak bodies. This organisation may be an appropriate body to consult to ensure people commenting on access have the appropriate expertise.

## ***Conclusion***

From Council's perspective the reform agenda needs to incorporate a clear message that building regulation must serve all citizens equally rather than maintain a dual system where the rights of some (a growing number) are abrogated as a cost saving measure. The Australian Government has given assurance under the Commonwealth Disability Strategy that equity of treatment is its main goal. Council believes that this can only be achieved by developing a single sustainable system that meets the needs of all. Therefore, it looks forward to addressing this goal through ongoing liaison with government and the housing sector as building reform is an essential step in ensuring government's vision is appropriately translated into practice.