

**Human Rights and
Equal Opportunity Commission**

Disability Discrimination Commissioner

Study into Reform of Building Regulation
Productivity Commission
PO Box 80
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Dear Sir/Madam

Thank you for the opportunity to make this submission on a number of matters raised in your Issues Paper on Reform of Building Regulation. I wish to restrict my comments to those areas where the Commission has had direct involvement with the work of the Australian Building Codes Board (ABCB).

Background

The Commission has worked closely with the ABCB over the past six years on the development of changes to the access provisions within the Building Code of Australia (BCA). The aim of this work has been to ensure the BCA better reflects the requirements of the *Disability Discrimination Act* (1992) in relation to access to and use of premises.

Since the DDA commenced operation in March 1993, complaints to the Human Rights and Equal Opportunity Commission (HREOC) and to several equivalent State and Territory bodies have highlighted inconsistencies between the BCA and anti-discrimination laws.

In response to this clear inconsistency in 1995 the ABCB established the Building Access Policy Committee (BAPC).

The BAPC was formed to recommend changes to the BCA in order to achieve greater consistency between the BCA and the DDA. Its task was to consult widely with industry and community, and to provide advice to the ABCB on access-related issues. While a number of changes were achieved through the work of the BAPC it was clear there were many fundamental access issues that still needed to be addressed.

In April 2000, an amendment to the DDA to allow the Attorney-General to formulate a Disability Standard on Access to Premises (Premises Standard) came into effect. This amendment allows for a mechanism that would clarify accessibility requirements under the Act and ultimately ensure consistency between the BCA and the DDA.

Human Rights and Equal Opportunity Commission

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The Commonwealth Government asked the ABCB to task the BAPC with developing proposals to change the current BCA (BCA96), to form the basis of the proposed Premises Standard.

The effect of a Premises Standard would be that owners and developers of buildings used by the public would be able to meet the objectives of the DDA (as they apply to buildings) by meeting the requirements of the Premises Standard. In the absence of a Premises Standard, people with disabilities, owners and developers would continue having to rely on the individual complaints mechanism of the DDA as the only means of defining compliance. This situation does not provide the surety the building industry understandably seeks and, I believe, leads to considerable inefficiency for the building industry.

Building Access Policy Committee (BAPC)

The membership of the BAPC has broad representation from the property, government and disability sectors. These members represent:

- Attorney-General's Department;
- Australian Building Codes Board;
- Australian Construction Industry Forum;
- Australian Procurement and Construction Council;
- Australian Local Government Association;
- DDA Standards Project – disability sector representatives;
- Department of Industry, Tourism and Resources;
- Human Rights and Equal Opportunity Commission;
- Property Council of Australia;
- Building Surveyors, and
- The design professions.

The Committee's objectives are:

- To assist industry, regulators and service providers to achieve equitable, cost effective access to buildings, and to the facilities and services available in buildings, for people with disabilities;
- To make recommendations to the ABCB of amendments to the BCA which will ensure that it is consistent with the objectives of the DDA and is sufficient to be adopted as part of the Premises Standard; and
- To pursue this objective in consultation with industry, the community, the Federal Government, and State, Territory and local governments.

The BAPC has been responsible for developing recommendations in consultation with all interested parties and is currently in the process of assessing submissions made in relation to the draft Premises Standard which was released for public comment in January 2004.

Efficiency and surety – benefits for the building industry and the community

As previously stated, under the current law people with disabilities have the right to make a complaint under the DDA against a building owner or operator if they believe they have been discriminated against in terms of access to, or use of, any building.

The Commission attempts to conciliate an agreement between the parties, but if that is not possible the complainant may proceed to the Federal Court or Federal Magistrates Service.

While some complaints may result in changes that benefit large numbers of people, usually those changes may only affect one person or one building. The same building owner or operator may be subject to a further complaint at a later date and further changes to a building may be required.

As a result no-one knows when and where a complaint will be made, no-one knows exactly how to build a building and be sure they have done all they can to avoid discriminating, and no-one knows that access provisions in one building will be consistent with access in the next.

All members of the BAPC agreed that this was not a good state of affairs. There are clear benefits for everyone if we can create as much clarity and surety as possible through the development of a Premises Standard.

The benefits for people with disabilities are:

- A clearer definition of what the DDA requires in terms of access
- Far greater surety that access in one building will be replicated in the next
- Greater confidence that rights will not have to be pursued through complaints, and
- A clearer benchmark against which to assess whether a building provides appropriate access.

The benefits for the property sector are:

- A clearer definition of what access is required, and how to deliver it
- The surety that compliance with the requirements will protect them from successful complaints under the DDA
- National consistency of access requirements, and
- Confidence that complying with building law will ensure compliance with the DDA for those things covered by the Standard.

The benefits for approval bodies and certifiers are:

- Significantly reducing the difficulty of second guessing what the DDA requires
- Reducing the conflicts with clients over access requirements
- A clearer set of specifications against which to assess compliance, and
- Elimination of the need for several sets of compliance requirements.

I believe that completing this project will result in the clearest and surest way of addressing the current inconsistencies between building law and anti-discrimination law.

Role of ABCB in facilitating regulatory compliance

The ABCB has played a critical role in facilitating discussion between regulators, industry, government and community interests in the development of the draft Premises Standard.

The process we are involved in at the moment is essentially concerned with identifying the most efficient and effective way of achieving compliance with existing legal responsibilities under the DDA in a way that mirrors existing building regulatory regimes. In doing this we are ensuring industry can most easily meet its existing responsibilities by continuing to use the tools it is used to using – the BCA.

The ABCB's leadership in creating mechanisms for this to happen and negotiating between interested parties has been decisive in getting to the point we are currently.

Specific questions relating to the Premises Standard

Your Issues Paper raises two specific questions in relation to the Premises Standard.

- *Is the proposed Premises Standard (and associated revisions to the BCA) the most efficient and effective means of meeting building access requirements under the DDA?*
- *Is the Administrative Protocol likely to be effective in ensuring that decisions are consistent with the DDA and in minimising the need to resort to DDA disputes processes? Will it provide greater certainty and consistency in determining unjustifiable hardship? Are there better ways of achieving these objectives*

These two questions are currently being considered as part of the community consultation on the draft Premises Standards and at this stage I would not like to comment at length.

I would note, however, that as a member of the BAPC the Commission supports the approach being taken by that Committee. I am confident the proposed Premises Standard and Administrative Protocol offer us an opportunity to address important human rights and building regulation issues in a way that will be of considerable interest to overseas countries facing similar inconsistencies.

Yours sincerely

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Disability Discrimination Commissioner

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