



Australian Government
Attorney-General's Department

Civil Justice Division

03/13630

30 April 2004

Study into Reform of Building Regulation
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Ms Holmes

The Commonwealth Attorney-General's Department would like to make some comments in response to the questions raised on page 16 of the Productivity Commission Issues Paper *Reform of Building Regulation*.

The paper asks whether the proposed Premises Standard is the most efficient and effective means of meeting building access requirements under the *Disability Discrimination Act 1992* (DDA). As you are aware, the Attorney-General has the power to formulate disability standards under section 31 of the DDA in the areas of employment, education, accommodation, public transport, the administration of Commonwealth laws and programs and access to premises. I note that the Productivity Commission's Draft Report *Review of the Disability Discrimination Act 1992* considered the effectiveness of disability standards in more general terms and requested further information about the costs and benefits of complying with disability standards and recommended that the DDA be amended to allow for disability standards in all areas covered by the DDA. The Final Report is due to be provided to the Government on 30 April 2004.

There is widespread agreement that the requirements of the DDA and the Building Code of Australia (BCA) need to be harmonised in order to provide both an appropriate level of access to buildings, and sufficient certainty for builders and the industry. In essence, the aim is to avoid a duplicated and inconsistent regulatory regime.

In 2001, the Government formally asked the Australian Building Codes Board (ABCB) to task its Building Access Policy Committee (BAPC) with recommending changes to the BCA so that it could form the basis of a national disability standard on access to premises. A disability standard governing access to premises will provide more certainty, because the more detailed requirements of the Standard replace the general anti-discrimination provisions within the Act, for the particular area they cover. Thus, if a person has complied with the requirements of a Standard once it is in place, they will automatically meet the requirements of the DDA.

The BAPC includes representatives from the ABCB, the Human Rights and Equal Opportunity Commission, the Property Council of Australia, the disability community and this Department. The proposed Standards have been the subject of extensive, ongoing public consultations, with the latest round in February 2004. Following these, the public were invited to consider the draft documents

and to make submissions to ABCB by 30 April 2004. The draft documents include a draft Regulation Impact Statement which outlines various options for achieving compliance with the DDA in the area of access to premises and concludes that “the development of a Premises Standard and a revised and aligned BCA is the only option that will provide consistency and certainty for people with a disability, building owners and developers through codification of the DDA”. This draft RIS, along with the other draft documents, is available for public comment until 30 April 2004.

To assist with the practical application of the revised BCA and Premises Standard, it is anticipated that the Administrative Protocol (including provisions for expert Access Panels) will be a tool to assist building certifiers in applying the BCA. The intention is to ensure that certifiers will not be making unconnected decisions about issues such as the determination of whether the BCA should apply to a particular situation with or without modification. It is expected that the Access Panels will develop an understanding of judicial decisions in the anti-discrimination area and develop a database of precedents that would not be inconsistent with the DDA.

We would like to note the valuable contribution of the ABCB and the BAPC in developing the draft Premises Standard. Without the ABCB undertaking a central role in liaising with States and Territories and providing technical expertise, it is likely that the process of developing the drafts to this point would have been more difficult and protracted.

After 30 April 2004, public submissions will be considered in detail by BAPC and any amendments to the draft that are required will be made, for endorsement by ABCB, before submission of the draft to the relevant Ministers. It is premature to comment on whether the proposed Standard provides the most effective way of assisting the building sector to meet their obligations under the DDA, until the submissions from the public have been considered

The action officer for this matter is Sonja Wigney who can be contacted on 6250 5679.

Yours sincerely

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