

**Human Rights and
Equal Opportunity Commission**

Disability Discrimination Commissioner

Ms Maggie Eibisch
Productivity Commission
PO Box 80
Belconnen,
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20 September 2004

Dear Ms Eibisch

Thank you for the opportunity to comment on the draft research report on Reform of Building Regulation.

Overall I welcome the positive assessment in the draft of the value in pursuing national building regulation and the role of the ABCB in achieving clear national consistency.

In particular I welcome the recommendation that work continue on the review of the BCA and the development of a Premises Standard (draft recommendation 6.2).

I would, however, like to make a few comments on specific draft recommendations.

1. While the report recognises the need to assess the appropriateness of including additional regulation within the BCA on issues such as environmental objectives and energy efficiency there is no reference to assessing the need for additional regulation in relation to access issues.

For example, the BCA does not currently address adaptable or universal housing design, fit out issues (such as the height of reception desks, switches or internal fixtures such as telephones) or signage, other than very specific areas relating to lifts, toilets and egress. A more generic recommendation to the current draft 6.6 - one requiring a framework for assessing the need for additional regulation in a range of areas - might be considered.

2. While I recognise the value of national consistency I would like to raise some concerns about the possible consequence of draft recommendation 6.9 which seeks to limit the authority of Local Governments to impose additional requirements.

The access provisions required in the proposed new BCA and Premises Standard will benchmark the minimum access that needs to be provided to ensure non-discriminatory access. Currently many Local Governments have Development Control Plans or Access Policies that might, because of very specific local circumstance, require more than the minimum.

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For example, a Local Government might in its DCP require more accessible car parking spaces in a car park because there are a particularly high number of Accessible Parking Permit holders in the area. Similarly a new shopping development might be required to provide additional wayfinding features because of high usage by people with vision impairments.

I would not want to see Local Governments stripped of the authority to make additional demands on developers where such increased requirements can be justified.

3. I strongly support draft recommendation 7.3 which is concerned with improving compliance and enforcement of the BCA. In participating in the review of the access provisions of the BCA the Commission has become more aware of the frequency with which buildings are occupied without meeting even current BCA requirements, particularly in relation to the use of the deemed-to-satisfy referenced Australian Standards. This failure to apply the Australian Standards or an equivalent alternate solution means that buildings that should be accessible are not.

4. I support draft recommendation 8.6 which, among other things, seeks to find agreement with States and Territories to allow for free access to the BCA. I believe that free access to the BCA could assist in assuring compliance. More importantly, however, from our perspective is the need for ease of access to the Australian Standards referenced within the BCA. Application of the Australian Standards can be critical in achieving access to buildings for people with disabilities and making them freely available would assist in achieving compliance.

5. I strongly support draft recommendation 9.1 concerning industry partnerships in the area of training. In our work on the access provisions of the BCA it has become clear that not enough professionals in the building and certification industry have the expertise necessary to ensure full compliance with the BCA's access provisions. Training and professional development initiatives developed in partnerships with organisations such as RAIA, AIBS and the ALGA are critical to achieving compliance.

6. Interest groups like the disability sector are significant beneficiaries from the work of the ABCB and have much to contribute to its work. The disability sector, unlike the property owning sector, does not have a position on the Board and there are no ongoing mechanisms to ensure their input to the Board's work. The report might consider means by which other significant sectors might provide ongoing input to the work of the ABCB.

7. While understanding the need for a rigorous testing of the rationale for regulation I would like to comment on the proposed emphasis on 'net benefit' in the draft recommendation 11.2.

In undertaking a Regulation Impact Statement of the proposed access related changes to the BCA the greatest difficulty experienced has been that of attributing a dollar value to the benefits greater access will provide. There is very little data, research or understanding on how to assess the benefit from having a more inclusive and sustainable built environment. My concern would be that the proposed Objective will lead to a mechanistic and simplistic process of adding up only quantifiable dollar costs and benefits. It needs to be made clear that 'net benefit' does not necessarily

mean that a specific dollar benefit need be shown as broader social and political factors need to be considered as part of the assessment.

8. I would like to make a couple of other comments in relation to section 6.3 'Disabled access'.

It has been my understanding that the intention of the Building Access Policy Committee (BAPC) in developing the Premises Standard was to define a level of access required for new buildings that took into consideration the notion of unjustifiable hardship as part of the negotiation. For this reason, up to this point, BAPC has not seen it necessary to also include a provision in the standard for new buildings having access to an unjustifiable hardship defence. Having such a provision reduces the certainty that all concerned have sought to achieve.

Section 6.3 states "While people with disabilities can still lodge complaints, these will be dismissed where owner/managers comply with the deemed to satisfy provisions of the Premises Standard." In fact it is my understanding that if an owner/manager can show they have met the performance requirements within the standard by either deemed to satisfy or an alternate solution then they will have met the requirements of the standard.

Finally I would like to suggest, in order to ensure use of appropriate terminology, terms such as 'disabled access provisions' be replaced with 'access provisions for people with disabilities.' The section on page XXXII, recommendation 6.2 and section 6.3 on page 117 should also be edited to ensure appropriate terminology.

Thank you again for the opportunity to comment on the draft and I look forward to receiving the final report.

Yours sincerely