



Australian Building Codes Board

The Commissioner
Productivity Commission
Disability Discrimination Act Inquiry
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Dear Commissioner

I write to you in relation to the Disability Discrimination Act Inquiry and the Commission's recent request for the Australian Building Codes Board (ABCB) to make a submission.

Firstly, I would like to thank you for the opportunity to make a submission.

Included with this letter is a submission from the ABCB, which provides details of the ABCB's role in the development of the Disability Standards for Access to Premises. The submission contains information in relation to the organisations and the key stakeholders involved in the development of the Standard and the process and work program we are following. The submission also provides an outline of the work which has been completed to date and that to be undertaken in future.

I hope that the information provided assists you with the inquiry and I welcome further requests for additional information.

Yours sincerely

Ivan Donaldson
Executive Director

June 2003

PRODUCTIVITY COMMISSION

INQUIRY INTO THE DISABILITY DISCRIMINATION ACT 1992

**SUBMISSION FROM
AUSTRALIAN BUILDING CODES BOARD**

JUNE 2003

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1. The Australian Building Codes Board

The Australian Building Codes Board (ABCB) is a Commonwealth, State and Territory funded body. The Board brings together government, industry, the professions and the community to develop the regulatory environment affecting health, safety and amenity of people in buildings in Australia. The Board was established by means of an inter-government agreement signed by the Commonwealth, State and Territory Ministers responsible for building regulatory matters on 1 March, 1994. The ABCB is responsible for:

- developing and managing a nationally uniform approach to technical building requirements, currently embodied in the Building Code of Australia (BCA);
- developing a simpler and more efficient building regulatory system; and
- enabling the building industry to adopt new and innovative construction technology and practices.

Board members include a number of industry representatives, the Commonwealth, State and Territory Governments' chief executives responsible for building regulatory matters, and a Local Government representative. The ABCB reports directly to the Commonwealth, State and Territory Ministers responsible for building regulatory matters, and provides a vital link for the building industry between building practice and Government building regulatory policy.

2. The Building Code of Australia

The Building Code of Australia (BCA) is developed and maintained by the ABCB on behalf of the Commonwealth and the State and Territory Governments, who each have statutory responsibility for building control and regulation within their jurisdiction. The BCA is a comprehensive statement of the performance and technical requirements relevant to the design and construction of buildings and other related structures. The BCA is therefore a national code, which is administered at a State and Territory level.

The BCA is referred to as a 'performance based' code, describing acceptable Performance Requirements that buildings and other structures throughout Australia must meet. An example of a Performance Requirement for access is that "Access must be provided to the degree necessary to enable, safe, equitable and dignified movement of people within the building". The requirements cover, among other things, the structure of the building, the fire resistance of buildings and materials, health and amenity, certain access and egress issues, maintenance of services and equipment.

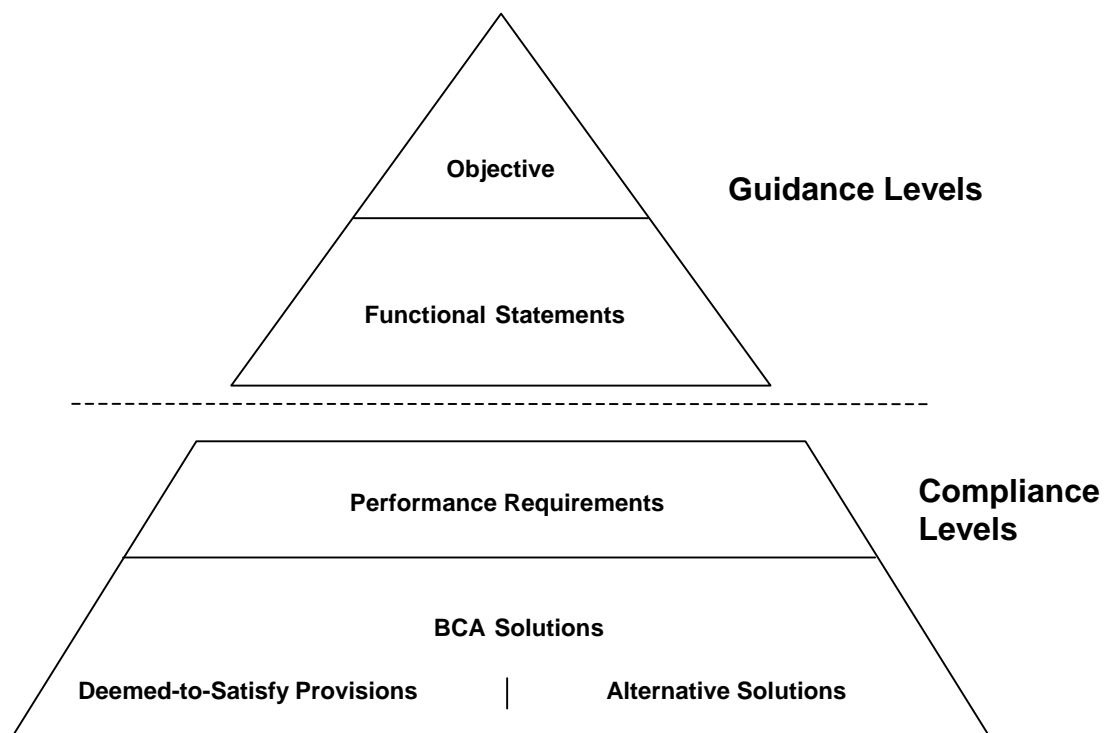
The BCA contains Objectives and Functional Statements which provide guidance on the Performance Requirements.

Performance Requirements must be satisfied by the design and construction of the building. This may vary depending on the building classification – (for example, there

may be different requirements depending on whether the building is a theatre, an office building or a hospital).

There are two ways to meet the Performance Requirements. These are referred to as Building Solutions and include:

1. Using the **Deemed-to-Satisfy Provisions**. The Deemed-to-Satisfy Provisions are detailed prescriptive technical requirements within the BCA of how the building is to be constructed and equipped. For example, a technical requirement will state where you must provide access in a building. A building provided with appropriate access is deemed to have met the Performance Requirements. Most building designers choose to develop a solution following the Deemed-to-Satisfy Provisions. The Deemed-to-Satisfy Provisions include reference to technical details found in Australian Standards. One such example is AS 1428.1, which is currently the main Australian Standard covering access related issues for people with disabilities.
2. Using an **Alternative Solution**. An Alternative Solution is one that can be demonstrated to meet the Performance Requirements of the BCA by other means. The purpose of an Alternative Solution is to allow for new ways of achieving the required levels of performance. The onus is on the building applicant to show that the Alternative Solution complies with the Performance Requirements. Figure 1 below shows the BCA hierarchy.



The BCA is amended annually in May to reflect changes in building practices, usage and technology. The ABCB, through its Building Codes Committee, drafts a Regulation Document and a Regulatory Impact Statement for broad community consultation before recommending changes of a major nature for particular issues.

3. The ABCB and the DDA

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

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.

4. Building Regulations

Each State and Territory has building control legislation that references the BCA as the document containing the technical design and construction requirements for buildings.

While States and Territories may include minor variations to the BCA in their legislation and different criteria, or 'triggers' for how they apply it to existing buildings, essentially the BCA applies to the following:

- all new buildings;
- new building work in existing buildings, such as additions and alterations; and
- existing buildings that are to be used for a purpose different from that for which it was originally designed. This is often referred to as "change of use".

5. Building Access Policy Committee

The ABCB has a committee called the Building Access Policy Committee (BAPC). The BAPC was formed to recommend changes to the BCA, to consult widely with industry and community, and to provide advice to the ABCB on access-related issues. While there has already been some progress made, there are still many issues to be addressed.

The membership of the BAPC has broad representation from the property, government and disability sectors. These members and the organisations and groups they represent are details in Appendix A.

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 a Premises Standard; and
- To pursue this objective in consultation with industry, the community, the Federal Government, and State, Territory and local governments.

The BAPC is responsible for developing recommendations in consultation with all interested parties. The BAPC Terms of Reference have been included in Appendix A.

6. Disability Standards for Access to Premises

In April 2001, the Commonwealth Government asked the ABCB to task the BAPC with developing proposals for changes to the BCA which, if adopted, would allow the BCA to be referenced as part of a Premises Standard, (refer Appendix E). As the BCA only deals with certain design and construction issues in new buildings and buildings undergoing alterations or additions it cannot address all the issues that could be covered in a Premises Standard also, the ABCB will not be incorporating issues such as Emergency Egress or Wayfinding into the Premises Standard at this point in time, due to the lack of information available and the need for further research to be undertaken. Research has commenced for both Emergency Egress and Wayfinding.

While the existing complaints provisions under the DDA will continue to apply, compliance with the Premises Standard is intended to create greater certainty for the community, building developers, owners or operators in respect to their obligations under the DDA.

7. Protocol for Administering Building Access

The DDA recognises that in some cases, eliminating all barriers to access may impose an unjustifiable hardship on the owner or operator of a premises. Only the Federal Court of Australia or the Federal Magistrates Service can authoritatively determine what constitutes 'unjustifiable hardship' in any particular case.

The revised access provisions of the BCA will apply to all new buildings and to existing buildings undergoing new building work where compliance is required by State and Territory legislation. There will, however, always be questions about how to interpret the Deemed-to-Satisfy and Alternative Solution provisions of the BCA. For existing buildings there will also be legitimate questions about whether or not a requirement might involve an unjustifiable hardship. For example, some existing buildings may have been designed and constructed many years ago, and it may be simply impossible technically, to meet the requirements of the revised BCA/Premises Standard in full.

Leaving these questions to individual interpretation or requiring legal action to resolve the matter does not appear to be appropriate or effective. For this reason the BAPC has also been working on drafting an Administrative Protocol suitable to be used by State and Territory building control administrations, which will assist them in achieving the best possible resolution to these issues.

Under the Administrative Protocol, each State and Territory building control administration would set up or designate a methodology, to deal with two very specific issues:

1. Determining whether or not a proposed Alternative Solution meets the *Performance Requirements* of the revised BCA. This applies to both new buildings and existing buildings undergoing new work.
2. Determining whether or not a provision in the revised BCA applied to a certain design would result in unjustifiable hardship for a particular development.

The Protocol will not form part of the Premises Standard, but it will be open to State and Territory administrations to adopt voluntarily. People will continue to have the right to lodge a complaint with the Human Rights & Equal Opportunity Commission (HREOC) and the courts if they feel that an incorrect decision has been made. It is expected, however, that the expertise used to apply the selected methodology and the guidelines under which it will work will result in decisions that are consistent with the DDA.

A draft Protocol is currently being finalised and will be made available to the Commission later on in the year, when it is released for public comment.

8. Work Program

The BAPC's work includes:

- Clarifying the scope of the BCA and developing recommendations to the ABCB on possible additions and amendments in order for it to form the basis of a Premises Standard (in consultation with industry, government, the disability sector and regulators);
- Identifying and conducting research projects to assist in developing the recommendations;
- Making recommendations on what classes of buildings should be covered by the new Premises Standard and what type or degree of new building work on existing buildings should 'trigger' the application of the new Premises Standard;

- Proposing consultation strategies and providing information on developments to all interested parties; and
- Developing recommendations on a national Administrative Protocol for the application of the BCA to building work.

The BAPC also has a number of working groups that are providing guidance on research matters and technical questions.

The BAPC and its working groups are reviewing the current BCA provisions and developing technical proposals for possible inclusion in the Premises Standard. A number of specific issues are being addressed which will require resolution before a draft Premises Standard can be released for public consultation.

9. Process for change

An extensive communication process has been underway since 2001, with stakeholders, peak bodies, government agencies as well as with the community through information sessions that were held in early 2002. These consultations are assisting in the development of technical provisions for the Premises Standard.

As the Deemed-to-Satisfy Provisions of the BCA include reference to the technical details found in some Australian Standards, the BAPC is also assisting in the revision of those technical specifications through participation in standards committees and the involvement of Standards Australia in BAPC.

10. Program for change

As a guide to the way forward, the following outlines the key steps leading to a change proposal being put to Commonwealth, State and Territory Ministers prior to a Standard being considered by the Commonwealth Parliament.

- The ABCB, with assistance from the BAPC, is developing a draft Regulation Document (RD) and a draft Regulatory Impact Statement (RIS) (refer Appendix C for consultant's brief) on the proposed changes to the BCA and the content of a draft Premises Standard for public consultation. The RD will provide details of the changes that are proposed and the RIS will provide an analysis of the social and economic impacts of the proposals. The main purpose of the RIS is to determine whether the draft proposals are the most cost efficient, effective, and equitable way of meeting building access requirements under the DDA.
- Following an assessment of comments and any necessary revisions, a final proposal will be developed. This proposal will be forwarded by the ABCB to the State and Territory Governments, who are responsible for adoption of the BCA in building law, as well as to the Minister for Industry, Tourism and Resources and to the Federal Attorney-General.

11.Timetable

The ABCB has finalised the development of the draft technical provisions for the Premises Standard and is part way through development of a regulation impact statement expected to be completed in the next few months.

The next stage of the process is expected to begin further public consultation towards the end of this year and continue into early 2004. Once consultation is completed, final proposals for change are currently proposed to be submitted to Ministers during 2004.

12. Appendix A – BAPC Terms of Reference

Preamble

Amendments to the *Disability Discrimination Act 1992* (the 'DDA') allow the Attorney-General to formulate a disability standard relating to access to premises.

The Australian Building Codes Board (the 'Board') directs the Building Access Policy Committee (the 'Committee') to develop recommendations for changes to the Building Code of Australia (the 'BCA') which if followed would allow the BCA to be adopted as part of a draft Standard on Access to Premises.

Committee Objective:

To help industry, regulators and service providers achieve equitable, cost effective access to buildings, and to the facilities and services available in buildings, for people with disabilities.

The Committee will undertake its work with the objective that a revised BCA be consistent with the requirements of the DDA and sufficient to be adopted as part of a DDA Standard on access to premises.

The Committee will pursue this objective in consultation with industry, the community, Federal Government, State governments and local government by recommending to the Board changes to the BCA that are able to be applied through the building control process.

Establishment and procedure of the Committee:

The Committee is established by the Board.

The Committee's members are:

- A representative of the Board (Chair)
- The Executive Director of the Board
- Three representatives of the DDA Standards Project
- A representative of the Property Council of Australia
- One representative of public sector property management
- A representative of the Australian Local Government Association
- The Disability Discrimination Commissioner
- A representative of the Attorney-General's Department
- A representative of the Department of Industry, Tourism and Resources
- A representative from the design professions
- A representative of the Australian Construction Industry Forum
- A representative of the Australian Institute of Building Surveyors
- A representative of Standards Australia (observer status)

Members of the Committee may be represented by proxies as the need arises.

The Committee is to conduct its deliberations informally.

The Committee should meet at least quarterly and more frequently as the need arises.

Responsibilities

It is expected that members of the Committee will have the authority from the bodies they represent to negotiate over the content of the recommendations and should strive to reach consensus in good faith. It is recognised that members are representatives and will need the opportunity to consult with their organisations as appropriate.

The Committee is responsible for:

- Providing advice to the Board on issues relevant to the access to and use of buildings by people with disabilities.
- Making recommendations to the Board on changes to the BCA that would allow the BCA to be adopted as part of a draft Standard on Access to Premises.
- Providing recommendations to the Attorney-General through the Board and the Minister for Industry, Science and Resources on amendments to the BCA which, if adopted, would allow the BCA to be considered to form part of a draft Standard on Access to Premises, and any other matter relating to the content of a draft Standard on Access to Premises.
- Providing a forum for consultation and cooperation between governments, industry, building regulators and users with disabilities on the development of recommendations for changes to the BCA and development of a Regulatory Impact Statement (RIS).
- Promoting understanding of issues relevant to equity and social justice, building safety, environmental values and technical feasibility.
- Developing a national administrative protocol for the application of the BCA/DDA Standard to building work.
- Promoting national consistency in the application of access provisions incorporated in the BCA/DDA Standard.
- Coordinating a consultative strategy on the draft BAPC recommendations on changes to the BCA.
- Identifying possible mechanisms for addressing access related issues in relation to premises outside the scope of the BCA.

The Board is responsible for:

- Approving or declining the recommendations of the Committee concerning amendment of the BCA and development of appropriate administrative arrangements.
- Deciding the content of the BCA and associated administrative arrangements.
- Presenting the recommendations of the BAPC in relation to a revised BCA, or options where necessary, through the Commonwealth Minister for Industry, Science and Resources to the Commonwealth Attorney-General for consideration as part of a DDA Standard. The recommendations or options presented to the Board by the BAPC are to be presented in their entirety and unamended and may be accompanied by a report from the Board concerning whether the recommendations or options are supported by the Board.
Publishing on the Board's Internet site, and in other ways as appropriate, material agreed by the Committee for discussion.
- Publishing the recommendations from the Committee for change to the BCA.

- Providing reasons to the Committee and affording the Committee an opportunity to comment before the Board implements a relevant change to the BCA, if the Board decides that a recommendation of the Committee not be accepted.

For the purpose of developing a revised BCA that is intended to be adopted in a DDA standard, the views of people with disabilities have particular significance for the Board's deliberations.

Funding of Committee:

Travel and accommodation costs of Committee members will be the responsibility of the organisation represented on the Committee.

- Secretariat support for the Committee will be provided by the Board.
- Research costs will be met by the Board.
- Development costs associated with changes to the BCA will be met by the Board.
- Costs incurred in consulting on recommendations for amendment to the BCA to allow it to be adopted as part of a draft Standard on Access to Premises will be met by the Board.

The Board, as sole funding agency, undertakes to provide the necessary funding for the work of the BAPC and will determine the amount of available funds and the expenditure of the funds.

13. Appendix B – Media Release

MEDIA RELEASE – AUSTRALIAN BUILDING CODES BOARD

ACCESSIBILITY AND THE BUILT ENVIRONMENT

Draft measures designed to improve access for people with disabilities to public buildings throughout Australia are expected to be out for public comment late next year before being put to relevant Commonwealth, State and Territory Ministers.

The Australian Building Codes Board*, has been working on the measures since 2001 at the request of the Commonwealth Government with the support of the various State and Territory governments.

“The Board recognises the strong industry and community support for greater certainty in this area. Its objective and number one priority, has been to codify the level of building access and facilities for people with disabilities in a manner that is suitable for adoption as part of the Disability Standards for Access to Premises (Premises Standard) under the Commonwealth Disability Discrimination Act (DDA).

Board Chairman, Mr Peter Laver, said good progress was being made by its Building Access Policy Committee and highlighted the need to allow sufficient time for comprehensive consultation with industry and the community.

The development of a Premises Standard will translate into an amendment of the access provisions for people with disabilities in the Building Code of Australia.

Mr Laver said a wide range of interested parties had been working with the Board to deliver equitable, cost effective access to buildings, and facilities and services available in buildings, for people with disabilities.

The proposed amendments will address access to public buildings, both government and privately-owned.

Privately owned residences are outside the scope of the Premises Standard. Nevertheless, the Board is also well aware of community interest in concepts such as accessible, adaptable, universal and visitable housing and of changing community expectations.

“However, the question of whether or not individual jurisdictions wish to regulate for accessible housing, and how they do that, is a matter for the State and Territory governments,” Mr Laver said.

The Board will now consult through its Building Access Policy Committee, industry and peak community groups, the Human Rights and Equal Opportunity Commission, as well as the Cooperative Research Centre for Construction Innovation and State and Territory Governments on the way forward for accessible housing.

“The Board needs to develop a shared understanding of what strategies need to be pursued to improve accessibility in the private housing sector. Experience both overseas and locally will be drawn upon,” Mr Laver said.

The Board will take a lead role in researching and developing technical provisions from a national perspective.

In keeping with the Board’s goal of promoting nationally consistent approaches to building regulation, the Board has decided to include accessible housing on its program for 2003. The Board has agreed that a forum to further discuss the matter and to program a future work plan should be held early in the New Year.

ABCB Office, Canberra

December 2002

* The Australian Building Codes Board (ABCB) is a Commonwealth, State and Territory funded body. Its role is to develop the Building Code of Australia and to promote building industry regulatory reform. The Board brings together government, industry, the professions and the community to develop the regulatory environment affecting health, safety and amenity of people in buildings in Australia. For further information on the Board’s work program in respect of accessibility please call Matthew McDonald, ABCB Office. 02-6213-7289, fax 02-6213 7287 or E-mail Matthew.McDonald@abcb.gov.au.

14. Appendix C – Regulatory Impact Statement Brief

This Appendix provides the RIS consultancy brief for the Premises Standard. A consultant has been engaged and at the time of writing, is currently producing the RIS and approximately half way through the consultancy. It is expected that the draft RIS will be completed by the end of July 2003.

Statement of Work

The Australian Building Codes Board (ABCB) invites suitably qualified consultants to submit a proposal to prepare a draft Regulatory Impact Statement (RIS) on the proposed Disability Standard for Access to Premises (Premises Standard). The budget for this project is a maximum of \$100 000 (including GST) and the duration of the consultancy will be 12 weeks from the date the tender is awarded.

Background

The ABCB is a joint initiative of all levels of government in Australia. The ABCB's mission is to meet community expectations of safety, health and amenity in design, construction and use of buildings through nationally consistent, efficient and cost effective technical building requirements and regulatory systems. Research in support of regulatory reform is a key activity in the achievement of this mission.

The development of building regulations in Australia should be based on robust evidence, analysis and research outcomes that are justifiable, relevant and reflect community expectations.

The ABCB has identified a number of proposals for changes to the access provisions of the Building Code of Australia (BCA) that will enable the BCA to form part of a new national Disability Standard for Access to Premises under the Disability Discrimination Act 1992 (DDA). The changes aim to ensure that premises that the public are entitled or allowed to enter or use are accessible to all users, whilst also providing certainty for building owners, developers, operators and practitioners about their obligations under the DDA.

The ABCB is seeking a consultant to develop a Regulatory Impact Statement to examine the financial and socio-economic impacts of the proposed Premises Standard.

The purpose of this consultancy is to prepare the draft Regulatory Impact Statement for the proposed Premises Standard, which may include a proposed amendment to the BCA access provisions. Details of the regulatory proposal are contained in Clause 1.7.

Since the DDA commenced operation in March 1993, complaints to the Human Rights and Equal Opportunity Commission (HREOC) and to equivalent State and Territory bodies have highlighted inconsistencies between the BCA and anti-discrimination laws. In 1995 the ABCB established the Building Access Policy Committee (BAPC). The BAPC was formed to recommend changes to the BCA, to consult widely with industry and community, and to provide advice to the ABCB on access-related issues. For details on the BAPC, including membership, refer to DDA Disability Standard on Access to Premises Directions Report – ABCB December 2001 (available on the ABCB website, www.abcb.gov.au/access).

The DDA makes it unlawful to discriminate against a person on the ground of disability in a range of areas, including employment, accommodation, education, public transport and access to premises. The current access project aims to overcome any inconsistencies by modifying the BCA provisions dealing with access-related matters, so that the BCA reflects the objectives of the DDA.

In April 2000, an amendment to the DDA to allow the Attorney-General to formulate a Disability Standard for Access to Premises came into effect. This amendment allows for a mechanism that will clarify accessibility requirements under the Act and ultimately ensure consistency between the BCA and the DDA. The Commonwealth Government has asked the ABCB to task the BAPC with developing proposals to change the current BCA (BCA96), which will form the basis of the proposed Premises Standard.

The effect of a Premises Standard would be that owners, designers, developers and operators of buildings used by the public would be able to satisfy obligations under the DDA (as applicable to buildings) by meeting the requirements of the BCA. In the absence of a Premises Standard, people with disabilities, owners, developers, operators and building practitioners would continue having to rely on the individual complaints mechanism of the DDA as the only means of defining compliance.

The Premises Standard will set out specific accessibility requirements for owners, designers, developers and operators of premises. To the extent of their application, the contents of the Premises Standard will replace the general 'non-discrimination' provision of the DDA in relation to access to premises. This means that, for those buildings that are covered by the Premises Standard, meeting its provisions will be sufficient to satisfy the DDA.

The Building Code of Australia is developed and maintained by the ABCB on behalf of the Commonwealth and the State and Territory Governments, who each have statutory responsibility for building control and regulation within their jurisdiction. The BCA is a comprehensive statement of the performance and technical requirements relevant to the design and construction of buildings and other related structures. The BCA is therefore a national code, which is administered at a State and Territory level.

The ABCB is charged with both simplifying building regulations and encouraging greater innovation in the design and construction of buildings. The BCA is referred to as a 'performance based' code describing acceptable Performance Requirements that buildings and other structures throughout Australia must meet. The BCA contains Objectives and Functional Statements that provide guidance on the Performance Requirements.

Performance Requirements must be satisfied by the design and construction of the building. There are two ways, referred to as Building Solutions, to meet the Performance Requirements. They are:

1. Using the *Deemed-to-Satisfy Provisions*, that are detailed prescriptive technical requirements within the BCA of how the building is to be constructed and equipped. The Deemed-to-Satisfy Provisions include reference to technical details found in Australian Standards
2. Using an *Alternative Solution*, which is one that can be demonstrated to meet the Performance Requirements of the BCA by other means. The purpose of an Alternative Solution is to allow for new ways of achieving the required levels of performance.

Prior to the introduction of any regulatory changes, Ministerial Councils and Standard-Setting Bodies, such as the ABCB, are required to prepare a regulatory document and regulatory impact statement for broad community consultation.

Each State and Territory has building control legislation that references the BCA as the document containing the technical design and construction requirements for buildings. While States and Territories may include minor variations to the BCA in their legislation and different criteria, or 'triggers' for how they apply it to existing buildings, essentially the BCA applies to the following:

- all new buildings;
- new building work in existing buildings, such as additions and alterations; and
- existing buildings that are to be used for a purpose different from that for which it was originally designed. This is often referred to as "change of use".

The Premises Standard will contain:

- definitions, commencement and application provisions that describe what classes of buildings and types of building work must comply with the technical requirements; and
- the BCA technical requirements.

The Premises Standard will not contain triggers (these will reside in State and Territory legislation) however it will apply to building work that is the subject of a building application and other defined building work.

The General Provisions of the DDA recognise that in some cases, eliminating all barriers to access may impose an unjustifiable hardship on the owner or operator of premises. The DDA does not require access to be provided to the premises if it would impose such 'unjustifiable hardship' on the person who would have to provide the access. Only the Federal Court of Australia or the Federal Magistrates Service can authoritatively determine what constitutes 'unjustifiable hardship' in any particular case, but the DDA states that all relevant circumstances of the particular case are to be taken into account.

The revised access provisions of the BCA will apply to all new buildings and to any new building work in existing buildings where compliance is required by State and Territory legislation. There will, however, always be questions about how to interpret the Performance Requirements of the BCA. There may also be legitimate questions about unjustifiable hardship in existing buildings, including where there are requirements to apply the new BCA provisions beyond the extent of the proposed building work.

The BAPC has drafted an Administrative Protocol (Protocol) suitable to be used by State and Territory building control administrations, which will assist them in achieving the best possible resolution to these issues.

Under the Protocol, each State and Territory building regulation body would set up or designate a methodology, to deal with two very specific issues:

1. Ascertaining whether or not a proposed Alternative Solution meets the Performance Requirements of the revised BCA. This applies to both new buildings and existing buildings undergoing new work.
2. Ascertaining whether or not a provision in the revised BCA applied to a certain design would result in unjustifiable hardship for a particular development in an existing building.

The Protocol will also play another very important role. It will define triggers that describe what level of new building work in an existing building would prompt upgrading beyond the new work in part, or all, of an existing building.

It is not proposed that the Protocol will form part of a Premises Standard, nor be recognised by the DDA, but it will be open to State and Territory administrations to adopt as a voluntary process for industry. Even if the Protocol has been administered, people will continue to have the right to lodge a complaint with the Human Rights & Equal Opportunity Commission (HREOC) and the courts if they feel that an incorrect decision has been made.

It is expected, however, that the expertise used to apply the selected methodology and the guidelines under which it will work will result in decisions that are consistent with the DDA. In applying the Protocol, building owners, developers, operators and practitioners will have the greatest surety possible that they will not be subject to a successful DDA complaint.

The draft Protocol will be the subject of a separate financial and socio-economic analysis, resulting in an additional Regulatory Impact Statement, which together with the Protocol, will be released for public consultation.

Scope

The ABCB's mission is to meet community expectations of safety, health and amenity in design, construction and use of buildings through nationally consistent, efficient and cost effective technical building requirements and regulatory systems.

In addition, the consultant is to provide a comparative assessment as to whether the Premises Standard is the most equitable, efficient and cost effective means of ensuring buildings are accessible for all users, including people with disabilities.

The consultant must undertake direct consultation with key stakeholders, including their representatives on BAPC. Systems must be put in place that ensure stakeholder views are clearly understood by the consultant.

The consultant must undertake a comprehensive financial and socio-economic analysis considering, but not limited to, the following:

- Groups affected by the provisions to be identified and quantified, and the type and magnitude of the impacts investigated.
- Groups likely to benefit from improved access to be identified and quantified (in numbers and as a proportion of total population). Data concerning the different types and occurrence of disabilities should be identified along with any data available about future projected occurrence. Other beneficiaries, such as the elderly, families with young children, carers and those with temporary disabilities, or carrying luggage or shopping should be identified as well as any data relating to the demographic changes of an aging population and its effect on access related matters. Benefits to business and service providers also must be considered. The benefits attributed to each group must be discussed and, where possible, quantified. In addition, where variations occur, the benefits applicable to different classes of building should be identified.
- Costs and benefits applying to the public and private sectors should be identified and quantified.
- A review of other freely and readily available research, RIS and similar studies to identify nationally and/or internationally relevant data on societal benefit and other aspects of this RIS. The sources of some material will be provided by the RIS Steering Committee.
- A review of construction activity to:
 - identify current building stock affected by the provisions; and
 - verify the suitability of buildings identified in the Matrix of case studies for inclusion in the analysis.
- The existing level of compliance of current building stock with any of the requirements of the proposed provisions.
- Impacts on small business, such as compliance costs and paperwork burden, and on the environment to be discussed.
- Comparative analysis of the proposed provisions with the existing BCA access provisions, identifying the changes and potential cost effects applying to new and existing buildings in the Matrix of case study buildings. The impact of individual provisions on different classes of building is to be identified.

- Consumer participation in particular socio-economic activities, the degree to which the proposal improves participation, and the associated costs and benefits.
- The current BCA references AS 1428 Part 1 -2001 (based on the 80th percentile wheelchair dimensions). The Premises Standard will entail increasing the coverage of buildings, and areas within buildings. In addition, the revised AS 1428 Part 1 – 2003 (based on the 90th percentile wheelchair dimensions) will be referenced. A comparative analysis of the costs and benefits for both the 80th and 90th percentile wheelchair spatial dimensions, as they relate to new and existing buildings undergoing new building work, should be included in the RIS. In respect of the 80th percentile, the analysis would be limited to the additional coverage proposed above current BCA requirements. All data and statements should be annotated with relevant sources, assumptions, limitations and inconsistencies.

Impacts to be considered in the analysis, which may be qualitative analysis where the scope of financial impact is not definitive, include, but are not limited to:

- The risk of possible litigation under the DDA for non-compliance;
- The difficulties encountered in attempting to comply with the complaints-based DDA;
- Design practice integrating, rather than subsequently adding, access provisions; and design opportunities for achieving the most cost effective application of the Deemed-to-satisfy (DTS) Solutions;
- The application of more cost effective Alternative, rather than DTS, Solutions;
- Unjustifiable hardship and upgrade plan provisions, as they may be applied to all or part of new work in existing buildings;
- Currently available construction materials and products, and associated manufacturing processes, as well as current building practices (quantitative and qualitative analysis of both direct, indirect and consequential costs and benefits);
- Potential changes to the patronage of businesses in, for example, the tourism, retail, hospitality and entertainment sectors;
- The incidence of access related accidents in and around buildings, and resulting medical and legal cost burden;
- Potential changes to disability workforce participation and demand for provisions of accessibility related services;
- Potential changes to net lettable areas and any impacts on property rental values/rates and resale values.

Financial analysis should:

Use building cost estimate expertise to identify the unit cost of each proposed Deemed-to-satisfy provision as it applies to the Matrix of case study buildings and express the cost as a percentage of the total building cost. The matrix includes the following:

- different classes of building;
- new and existing buildings undergoing new building work;
- low, medium and high value buildings in each class (where significant variation occurs).
- Using construction activity data, extrapolate case study estimates to determine national annual costs for the provisions, and as a percentage of total building costs. Tests for variations (where they exist) between states and territories, capital cities, and between metropolitan and regional areas should be made to verify the given data as nationally representative.
- Where possible, allocate a value to benefits, by reviewing examples of new accessible buildings and new accessible work in existing buildings to seek actual costs and data on benefits, such as changes in usage and revenue from sales.
- Consider initial (one off) costs and compliance (ongoing) costs; and direct, indirect and consequential costs associated with the provisions.

The target audience for the consultancy includes the Commonwealth Government, the Board, the BAPC and the communities they represent, the RIS Steering Committee and all stakeholders. The RIS will assist all stakeholders to provide feedback to the ABCB prior to decision making. Stakeholder feedback will be taken into account/addressed before a final RIS is provided to the Board and the Commonwealth Government for their consideration.

Office of Regulation Review (ORR) comments will be sought by the ABCB before the RIS is released for public consultation and on the final RIS that will be considered by the Board and the Commonwealth Government. The ORR will be commenting on whether the type and level of analysis is commensurate with the economic and social impacts of the proposal and whether alternatives to regulation are adequately considered.

The RIS will also be made available to the broader industry and the public as part of the ABCB's communication strategy.

The following documents should be considered in response to this RFT.

From the website www.scaleplus.law.gov.au

- Disability Discrimination Act – 1992

From the ABCB Website www.abcb.gov.au/access

- RIS on RD97/01 – Provisions for Access and Facilities for People with a Disability – ABCB August 1998
- Building Access Outcomes Report – ABCB 1998
- RIS & RD on Access for People with Disabilities – Braille and Tactile Signs – ABCB August 2001
- Directions Report on DDA Disability Standard on Access to Premises – ABCB December 2001

From the HREOC website www.humanrights.gov.au Disability Rights then Access to Premises page

- HREOC Advisory Notes

Draft of the BCA Regulatory Proposal – ABCB 2003 – Commercial-in-confidence

Draft Protocol for Administering Building Access – ABCB 2002

Matrix of Case Study Buildings – ABCB 2003

Summary of Construction Activity Data – ABCB 2003

Outline of Draft AS1428 Part 1 - 2003 (containing the 90th percentile wheelchair dimensions)

Objectives

The objective of this consultancy is to identify and analyse the financial and socio-economic impacts of the proposed Disability Standard on Access to Premises.

Detailed Requirements

The consultancy will comprise the following component tasks (leading to the Deliverables listed in Clause 6).

Stage 1

- Initial meetings with RIS Steering Committee, ABCB Access Project Manager and ABCB RIS Project Manager.
- Review Draft Premises Standard and further detail proposed methodology for the study.
- Literature search of relevant freely available data and studies.
- Preliminary Analysis (1) identifying and quantifying stakeholders who will be affected by the proposal, and the nature, and the size and/or value, of the impacts.
- Consult with key stakeholders (which may be focus groups of up to 5 participants) to validate stakeholder concerns.
- Review construction activity data to:
 - identify and quantify those buildings affected by the provisions; and
 - verify the suitability of buildings identified in the Matrix of case studies for inclusion in the analysis.
- Develop the matrix of factors to be considered against each case study building.
- Develop a draft RIS outline, including any revisions to proposed methodology.
- Complete any amendments required after ABCB Office review of Stage 1 submission.

Stage 2

- Financial Analysis (2) quantifying individual costs and benefits, followed by a Cost Benefit Analysis to aggregate the total costs and benefits of the proposal.
- Socio-economic Analysis (3) of non-financial impacts which have economic values that may not be quantifiable in monetary terms.

- Complete an Overall Assessment and analysis of the proposal discussing the findings (1-3 above), and the aggregate assessment of costs and benefits, in detail.
- Compare individual access provisions with valid alternative means of achieving the objectives to test for appropriateness and cost effectiveness.
- Compare the main proposal with alternative means of achieving the objective. The alternatives include, but are not limited to:
 - Maintaining the status quo (current BCA provisions, referencing AS1428 Part 1-2001, and HREOC Advisory Notes), ie do nothing;
 - The Premises Standard (whilst maintaining current BCA provisions), ie no alignment between the Premises Standard and BCA access provisions;
 - The Premises Standard and amended BCA provisions, referencing AS1428 Part 1-2001 (80th percentile wheelchair dimensions).
- Conduct a Sensitivity Analysis to determine how sensitive the cost benefit ratios are to relevant variables.
- Prepare a Concluding overview of the impact of the proposal and its ability to meet the regulatory objectives.
- In addition:
 - Prepare an Executive Summary outlining the content and findings of the RIS; and
 - Generate a series of questions specific to the analysis for inclusion in the RIS Public Comment Response Sheet.
- Respond to ORR comments on the draft RIS, and make any necessary amendments, prior to the release of the document for public comment.
- Complete any amendments required after ABCB Office review of Stage 2 submission.

Rather than identifying a sample design drawing for each case study building, it is envisaged that these case studies will be expressed as numerical models to which appropriate multiples of the unit costs of relevant provisions will be applied.

The consultant is to meet fortnightly with the RIS Project Manager and the Access Project Manager, who will provide interpretive and technical support. In addition, the consultant must engage sufficiently with the ABCB officers to ensure they have a clear understanding of the analytical process and methodology, and of the sources of information, utilised in the study. BAPC and their Technical Working Group sub committee papers, which record the development of the Standard and the BCA technical provisions, will be made available to the consultant.

Tenderers should note that it is possible that the RIS may also need to be amended as a result of comments arising from the public consultation phase and further advice from ORR. Should this be required, the scope of, and payment for, this work will be negotiated separately.

The RIS should be presented as a 'stand alone' document, which presents the key findings in a clear and comprehensible manner. The methodology used for the study should be outlined in an appendix to the document.

The RIS should satisfy the requirements of the Council of Australian Governments' Principles and Guidelines for National Standard Setting and Regulatory Action – November 1997 (available at www.dpmc.gov.au/publications.cfm) and the ORR's A Guide to Regulation – December 1998 (available via the Productivity Commission website, www.pc.gov.au). The RIS should also follow the ABCB Economic Evaluation Model – June 1997 (available on the ABCB website, www.abcb.gov.au). It is envisaged that a high level of rigour and a balanced assessment of both the costs and the benefits will be required in the RIS.

The Board's Responsibilities

The ABCB responsibilities in relation to this RFT will be to select the most suitable respondents from the information provided, using the selection criteria outlined in Section 12.

The ABCB will provide input for the duration of the project both in regular meetings and when requested by the consultant. The active involvement of selected ABCB officers within the project team is encouraged.

The ABCB will review and provide comment to the consultant on reports within one week of receipt of the report and support documents.

The ABCB will make payments on the completion of the each stage of the project, based on the production of deliverables to the complete satisfaction of the ABCB.

Deliverables

The consultancy will deliver the following outputs:

At the completion of Stage 1, the consultant will provide the ABCB with a written report providing details of action undertaken and results generated for all activities listed under Stage 1 of the detailed requirements:

- 5 hard copies of the Draft Report, bound;
- 1 unbound hard copy;
- 1 electronic 'Microsoft Word' copy;
- 1 copy of any supporting data collected (in hard copy and any related 'Microsoft Excel' spreadsheet files).

At the completion of Stage 2, the consultant will provide the ABCB with the completed draft Regulatory Impact Statement (RIS):

- 5 hard copies of the draft RIS, bound;
- 1 unbound hard copy;
- 1 electronic 'Microsoft Word' copy;
- 1 copy of any supporting data collected (in hard copy and any related 'Microsoft Excel' spreadsheet files).

All written material will be in Arial font, 12-pt minimum. Adobe Acrobat PDF documents are not to be submitted. The use of complex tables in Word documents, such as those with split cells and wrapping text, is to be avoided. While simple numerical data tables are acceptable, tables of text should be presented in columns or other formats where possible.

Microsoft Word's 'track changes' tool is to be used on revisions of the draft documents, so that amendments may be readily identified.

The consultant should recognise that the recommendations must be based on robust evidence and analysis that is justifiable, relevant and reflects community expectations

Timetable

The duration of this consultancy will be twelve weeks from the date the tender is awarded. At the earliest, it is expected that the contract will commence mid April 2003, and be completed by mid July 2003.

The consultant will be required to meet the following schedule:

Start Wk 3 April 2003	Commencement of Stage 1 and initial meetings with RIS Steering Committee, ABCB Access Project Manager and ABCB RIS Project Manager (Canberra)
End Wk 3 May 2003	Completion of Stage 1 and submission of Draft Report to ABCB Office (possible visit to Canberra to discuss)
End Wk 1 June 2003	Completion of Stage 1 review by ABCB Office
Start Wk 2 June 2003	Commencement of Stage 2
End Wk 3 July 2003	Completion of Stage 2 and submission of completed Draft Regulatory Impact Statement to ABCB Office

Fee Basis and Payment Schedule

The budget for this project is a maximum of \$100 000 (including GST).

The fee basis shall be a lump sum for the project as described. It shall include preparing all deliverables, all travel costs and any accommodation costs. The consultant should allow for four visits to Canberra, and allow for travel to consult with key stakeholders.

Payments will be made progressively throughout the term of the project (as outlined below), based on achievement of clearly defined and physically verifiable milestones, to the complete satisfaction of the ABCB. The milestone payments will be made as follows:

- Stage 1. Draft Report (as per Clause 6.2) 40% payment
- Stage 2. Completed Draft RIS (as per Clause 6.3) 60% payment

NOTE: Stage 2 of the project will not commence unless Stage 1 of the project is successfully completed to the satisfaction of the ABCB.

The Commonwealth's standard terms for payment are 30 days from delivery of the services and a correctly rendered invoice to the Commonwealth.

Further Information

Tenderers should direct any questions arising during the preparation of a response to this RFT or requests for clarification in writing to Ms. Anne-Maree Kelly – Project Manager (Strategic Development) - at e-mail: anne-maree.kelly@abcb.gov.au or fax: (02) 6213 7287.

The Board reserves the right to circulate questions and answers to all other Tenderers without disclosing the source of the questions or revealing the substance of a proposed tender.

15. Appendix D – 2002 Information Sessions

As part of the BAPC's commitment to wide industry and community consultation, information sessions were held in each of Australia's capital cities. These sessions were designed to provide:

- an opportunity to understand why changes in building regulations are taking place;
- an opportunity to understand how the proposed changes will be developed;
- an awareness of the issues being considered for change; and
- information on how they can provide view on the proposed changes.

The attached CD contains video footage of the presentations given during the information sessions and relevant documentation relating to the sessions.

16. Appendix E – Commencement of Premises Standard

ABCB INITIATIVE ON ACCESS TO BUILDINGS FOR PEOPLE WITH DISABILITIES

The Chairman of the Australian Building Codes Board (ABCB), Mr Peter Laver, today welcomed the Commonwealth Government's initiative to develop the disability standard on access to premises used by the public. The Minister for Industry Science and Resources, the Hon Nick Minchin, has requested the ABCB to assist in this task.

The ABCB's Building Access Policy Committee (BAPC) has been working on changes to the Building Code of Australia (BCA) to harmonise it with the requirements of the Commonwealth Disability Discrimination Act 1992 (DDA).

The Act requires that, unless unjustifiable hardship occurs, people with disabilities should not be discriminated against when providing access to premises used by the public.

The Building Code of Australia has been adopted by all States and Territories. It is the primary technical document which underpins building legislation and regulation concerned with health, safety and amenity for the community in the built environment. It currently contains provisions for building access and provides scope for further changes to be made to these provisions.

Mr Laver said "The Board has reviewed the Terms of Reference for the BAPC to ensure they are suitable to undertake this task. On-going consultations and technical reviews with disability groups, industry and the wider community will occur to enable a successful outcome to the request."

He reiterated that the ABCB's objective has been, and remains, to codify the level of building access and facilities for people with disabilities in a manner which is suitable for adoption in an access standard under the DDA.

He said "This is a welcome initiative. Not only does it provide the opportunity for Australia's built environment to be more accessible, it will create greater levels of certainty for the community, industry and the regulators."

Recognising the significance of the matter for the Australian community, the Board will continue to publish documents to foreshadow the ABCB's future intentions in this area. Early notification will help industry and the community better understand the impact of the changes and encourage their acceptance.

April 2001



JOINT NEWS RELEASE

MINISTER FOR INDUSTRY, SCIENCE AND RESOURCES ATTORNEY-GENERAL

SENATOR THE HON. NICK MINCHIN

THE HON. DARYL WILLIAMS AM QC
MP

10 April 2001

01/139

MOVING TOWARDS GREATER ACCESSIBILITY TO THE BUILT ENVIRONMENT FOR PEOPLE WITH DISABILITIES

The Minister for Industry Science and Resources, Senator Nick Minchin and Attorney General Daryl Williams announced today that the Commonwealth had moved a step closer to the establishment of a National Disability Standard on Access to Public Premises used by the public.

The Commonwealth has tasked the Australian Building Codes Board with developing proposals for changes to the Building Code of Australia to allow it to form the basis for this much needed national standard for access to public buildings, both government and privately-owned.

The proposals will ensure that our buildings do not contain unnecessary barriers to access to public buildings by all Australians, but at the same time accessibility should not impose undue burdens on the construction or ownership of premises used by the public.

The Building Access Policy Committee, an advisory committee to the Australian Building Codes Board, comprising representatives of the disability community, the Human Rights and Equal Opportunity Commission, the building industry, business and government have been working together on accessibility provisions to be incorporated in the Building Code.

Following amendment to the Disability Discrimination Act last year to incorporate a Standard on access to public premises used by the public, this Committee is well placed to progress the development of a draft Standard that would harmonise the requirements of the Disability Discrimination Act and the Building Code of Australia.

The Committee will be consulting widely with interested stakeholders, particularly in the disability and building sectors, prior to making its recommendations in the second half of the year.

We look forward to receiving recommendations that will improve access to public premises for people with a disability, as well as provide certainty and clarity for all relevant stakeholders.