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Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Disability (Access to Premises - Buildings) Standards [draft]

THURSDAY, 12 MARCH 2009

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
Thursday, 12 March 2009

Members: Mr Dreyfus (*Chair*), Mr Slipper (*Deputy Chairman*), Mr Andrews, Mr Butler, Mr Georgiou, Mr Melham, Mrs Mirabella, Ms Neal, Mr Neumann and Mr Perrett

Members in attendance: Mr Dreyfus, Ms Neal, Mr Neumann, Mr Perrett and Mr Slipper

Terms of reference for the inquiry:

To inquire into and report on:

The draft Disability (Access to Premises - Buildings) Standards covering:

- the appropriateness and effectiveness of the proposed Premises Standards in achieving their objects;
- the interaction between the Premises Standards and existing regulatory schemes operating in state and territory jurisdictions, including the appropriateness and effectiveness of the proposed Model Process to Administer Building Access for People with Disability;
- whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector; and
- any related matters.

WITNESSES

ATKINSON, Mr Darren Thomas, Executive Officer, Australian Building Codes Board 1

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**GREEN, Dr Michael, General Manager, Manufacturing Innovation Branch, Manufacturing
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NEWHOUSE, Mr Kevin, Manager, Australian Building Codes Board..... 1

**PARSONS, Mr David Wayne, Principal Officer, Construction Policy, Legislation, Codes and
Standards, ACT Planning and Land Authority 19**

Committee met at 9.29 am

ATKINSON, Mr Darren Thomas, Executive Officer, Australian Building Codes Board

DONALDSON, Mr Ivan, General Manager, Australian Building Codes Board

NEWHOUSE, Mr Kevin, Manager, Australian Building Codes Board

GREEN, Dr Michael, General Manager, Manufacturing Innovation Branch, Manufacturing Division, Department of Innovation, Industry, Science and Research

JUMPERTZ, Mr Detlef, Manager, Building Policy Section, Manufacturing Innovation Branch, Manufacturing Division, Department of Innovation, Industry, Science and Research

CHAIR (Mr Dreyfus)—I declare open this House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into the draft Disability (Access to Premises) Standards. For the benefit of those listening by audio webcast, I will introduce the members of the committee present. On my left we have Ms Belinda Neal; Mr Shayne Newman; the deputy chair of the committee; Mr Peter Slipper; Mr Graham Perrett; and Mr Daryl Melham.

This is the second public hearing that the committee has undertaken for this inquiry. The hearing is open to the public and a transcript of what is said will be placed on the committee's website. If you would like any further details about the inquiry or transcripts, you should ask members of the committee secretariat, who are here at the hearing. I welcome everyone here today and I am sure our discussions will be very informative.

CHAIR—I welcome representatives of the Australian Building Codes Board and representatives of the Department of Innovation, Industry, Science and Research. Although the committee does not require you to speak under oath, you should understand that these hearings are formal proceedings of the Commonwealth parliament and that giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do any of you gentlemen want to make an introductory statement before we proceed to questions?

Dr Green—If I may, I would like to make a brief opening statement. The Innovation, Industry, Science and Research portfolio and its predecessors has policy responsibility for building regulatory matters for the Commonwealth. In that sense it provides policy advice and direction to the Building Codes Board and also governance arrangements for the Building Codes Board, which is a joint Commonwealth state entity that operates under a intergovernmental agreement. That is the capacity in which way have been mainly involved in this issue.

Our role in the standards has been primarily to advise our minister on the issue and how to implement improved standards for disability access that would not pose an excessive burden on the property and construction industry. So our approach generally has been to consider how the premises standards can best serve the objects of the Disability Discrimination Act and provide certainty to industry and to the disability community and other stakeholders by reflecting those obligations in the Building Code of Australia.

I think it is important for the committee to note that the aims of the Disability Discrimination Act do not extend to private homes. That is an important issue that the committee has been thinking about. Disability access in private residential homes is an important social issue, but it is not one that is dealt with in the Disability Discrimination Act. That is important to bear in mind.

We have been involved in this process since 2001. It would be fair to state that until the release of the Building Access Policy Committee public RIS in 2004 we had a fairly minimal involvement that mainly involved ensuring that the process was being carried out in accordance with the policy objectives of improving disability access consistent with the Disability Discrimination Act and aligning it with the Building Code of Australia to provide certainty.

Since the board's advice was provided to ministers in 2005 we have worked closely with the Attorney-General's Department to look at a range of technical and policy issues with the support of the Building Codes Board. We have had periods of intense activity and also periods in which ministers have been considering the various options before government. We have sought detailed advice on a range of issues relevant to that policy advice following careful consideration of the issues. Of course we are aware that there are some people in the community who believe that what we have currently got before the parliament does not provide a sufficient extent of improved access. We are also aware that there are people who also think that the burdens are considerable.

The premises standard is a complex piece of technical and legal policy. The policy position that has been put forward to the parliament by the government represents a carefully negotiated position that seeks to strike an appropriate balance between the various interests. We think it needs to be addressed as a whole package, and that whole package provides a very substantial improvement in the extent of access that will be provided to the community. Finally, I would like to point out that the time frame for the development of this proposal is similar to the time frame that has been taken for other relevant standards, such as the transport standard and the education standard that have been developed under the Disability Discrimination Act.

Also, I would like to note that the way that the Disability Discrimination Act operates is as, in a sense, aspirational legislation that seeks to improve access to the built environment to the extent possible—that is the aspiration—subject to a gross disproportion test driven by a complaints process. On the other hand, the Building Code of Australia is mandatory minimum regulation and there is a certain tension between those two philosophical positions in the legislation. One of the issues we have had to grapple with is trying to have a standard that meets the requirements of the Disability Discrimination Act to provide access to the extent possible whilst also being consistent with a regulatory framework that is sensible for the Building Code of Australia. Thank you.

CHAIR—Thanks very much. Before I ask if anyone else would like to make an opening statement, Mr Neumann has one question he wants to ask—it also interests me—about this philosophical tension you have just mentioned.

Mr NEUMANN—Could I ask you to explore further the 'certain tension' you just mentioned—the last statement you made. We have heard that before and I would like you to elaborate on it.

Dr Green—This is from memory rather than having the legislation in front of me. I think the intent of the Disability Discrimination Act is to improve access to the extent possible subject to an unjustifiable hardship offence. The way the building regulation operates is that there is a minimum regulatory requirement that all buildings would have to comply with. So, on the one hand, there is an obligation to do everything reasonably practical subject only to unjustifiable hardship. On the other hand, you have a mandatory requirement that has to be acceded to. That is the tension I am alluding to.

Mr PERRETT—I have not read the second reading speech for the DDA, but is that what it says—that, if you can afford it, that is what we should move towards? Does it go further than that? My recollection is that it goes further such that it should be available to everybody. This is a very vague recollection of this area of law.

Dr Green—This is the area that is really one of the reasons why the standard is being developed, because there is an obligation to provide access to the extent possible. There is no codification of what that means. There is no certainty for the building sector or, frankly, for anyone else, including the disability community, about what the obligation means. The only clarification is through the courts process, where a claim might be made that a building does not provide access to the extent reasonably possible. Then the owner or occupier of the building would have to make a defence that it would impose unjustifiable hardship on them to provide that access. That is the uncertainty that we are attempting to bridge with the standard. But, in terms of debates that I have been involved in in this area, one of the tensions is whether or not the standard does everything reasonably possible.

Mr PERRETT—And my reasonable might be different to my 84-year-old grandmother's reasonable, I suppose.

CHAIR—Thank you for that. It is an important point and we are conscious that the legislative framework for each of these pieces of legislation—the building code as against the Disability Discrimination Act—are different. Seeing how they can mesh together is indeed the focus of this inquiry. Mr Donaldson.

Mr Donaldson—I wanted to make some brief preliminary comments and perhaps I can add to the certain tension debate as well. I would like to make clear what the board's role has been during this lengthy process of getting to where we are today before this parliamentary committee. Up until 2005 it was the board's role to coordinate policy development. We did that through our engagement with a range of stakeholders, through public consultation and through the development of technical provisions to settle on a policy position to take to our board that could then be taken to the Commonwealth. Up to that point, we had the policy coordination responsibilities. From June 2005 our role changed. Our role has become one of a technical adviser to the Commonwealth in relation to the development of what is a Commonwealth policy, which would, from the Building Codes Board's perspective, become a standard which we as a board would support the building code aligning too—aligning too in every way so that all of the technical material in the DDA standard for access to premises would be mirrored in the building code of Australia. The board supports that as a notion, and I guess the primary reason we do support that and the policy approach that has been taken is because of the creation of certainty that is involved here.

I will come now to this distinction about tension. With the DDA currently operates post-construction. So if something happens, a complaint is made and processes go forward. With the building code being in place you get a preconstruction resolution of the matter because it becomes simply a part of the building approval process where councils, local building certifiers, play the role—and access panels as they may evolve through this process—in determining these things so that designers and the building industry and indeed those who we are aiming to improve access for have a greater deal of certainty. So there is a post-construction model and there is a preconstruction model. We are moving from one to the other. In doing that, of course, the debate becomes to what extent, because the reality is that the building code as it currently is does have access provisions and has had for many years. The board accepts that those provisions need to change and accepts that if there is going to be a national approach to this that the sensible vehicle to deliver those changes is the building code because otherwise you will be creating the burden of additional compliance, additional administration and other bureaucracy when you already have a system in place. There is something like 4,000 people out there in an industry that employs a million people whose responsibility is to determine the regulatory approval for the design and construction of all buildings in the country.

CHAIR—Who makes up that 4,000?

Mr Donaldson—Who is this legion of chosen people? They are employed by councils and they are private certifiers. They would be licensed and approved under state legislation. They are known—

CHAIR—It varies from state to state, does not it?

Mr Donaldson—It does. We are in the business of trying to change that too. But building certifiers and building surveyors—that is often the expression used; the Americans call them building officials but building surveyors is the title that is the norm.

CHAIR—Good. That is helpful. I take it that you have spoken on behalf of the board and on behalf of the department and no-one else?

Mr Donaldson—Yes.

Dr Green—Yes.

CHAIR—I am going to ask what is, I suppose, a technical question. We are about to hear from the Australian Capital Territory Planning and Land Authority, who put forward a submission which was only authorised today so you will not have seen it yet. One of their propositions expresses a concern about the fact that that the standards do not go to class 2 buildings. If the premises standards are finalised in their draft exposure form, in the document we have all been looking at, will they prevent state and territory authorities from mandating accessibility to buildings which are not covered by the premises standards, such as, for example, a class 2 building?

Mr Donaldson—Can I ask a clarifying question first?

CHAIR—Yes.

Mr Donaldson—Is the proposition from ACTPLA to apply them to class 2 buildings or to the common areas of class 2 buildings?

CHAIR—To the common areas.

Mr Donaldson—So it is not the private residences?

CHAIR—No, it is not the whole building, just common areas in class 2 buildings.

Mr Donaldson—Okay. That was an issue that was looked at in some detail and formed part of the original 2004 set of proposals that came forward from the Building Access Policy Committee. The question you ask about whether the states would be able to—

CHAIR—And territories.

Mr Donaldson—and territories would be able to intervene over and above this provision is a legal question. I do not think I am qualified to comment on it. I thought the intention was, however, that the Commonwealth, the states and the Territories would, through this process, come together and there would be national agreement on the way in which these matters would be addressed, so that a break-out of that sort would be a matter that would be resolved in the context of Commonwealth, state and territory discussions.

CHAIR—None of the submissions I have seen suggest that the states should be permitted to break out, to use your term, to impose lesser requirements. That is why I have chosen the common areas of class 2 buildings as an example.

Dr Green—Let me just say that the proposal that we have for the premises standards does not cover class 2 buildings, but that does not mean that class 2 buildings are not covered by the Disability Discrimination Act, as they are now—

CHAIR—Of course, yes.

Dr Green—So, in respect of the proposal, those buildings would still have the same obligations as they have now under the Disability Discrimination Act, so I guess the proposal is not to codify those obligations in the premises standard. My understanding is that, on areas that were not covered in the standards, the states could actually, as a matter of law, take their own initiatives. Part of the certainty that is delivered by the standard is that complying with a standard under the Disability Discrimination Act provides you with a certain defence that you have met your obligations under the act.

CHAIR—Just to extrapolate that, unilateral action by a state or territory—I am not asking you for a legal opinion here—might be possible but would fall outside the combined effect that we are seeking to achieve with these particular standards, which is both the Building Code and Disability Discrimination Act.

Dr Green—Okay—

CHAIR—They are not offering the certainty in terms of the DDA.

Dr Green—Let me just say exactly what I mean about the certainty. A state or territory, in my understanding, could make some arrangements for class 2 buildings outside the proposed premises standard. However, someone could still make a complaint about access and the building owner, for example, would still have to make an unjustifiable hardship defence. The fact that they had complied with whatever the state and Territory had put forward would not necessarily constitute a complete defence.

Ms NEAL—But that would be a substantial way towards it.

Dr Green—Obviously, they could make that part of their case. Having something in the standard means that that is the end of your requirements. You can go into a court and say, ‘I have met the requirements that are set out in the premises standard; that is all I have to do.’

Mr NEUMANN—Are you aware of any state or territory that is contemplating making any changes in the way that you are saying?

Dr Green—I am not aware of that. This issue has been one of the most difficult issues in the whole development of the standard.

CHAIR—Perhaps I should pause for a moment to say that what we are talking about, for anyone in the room that does not realise, is that class 2 buildings are predominantly residential apartment buildings. There are a couple of other classes that might fit within class 2, but mainly—is this right?—we are talking about residential apartment blocks.

Dr Green—Yes. I will again make the statement that I made in the opening statement: residential dwellings are not covered, in a sense, by the Disability Discrimination Act.

Mr Donaldson—I would like to clarify. Once again, not having access to the ACTPLA proposal, I am not at all sure that we are actually talking about all class 2 buildings. We may only be talking about class 2 buildings that are rented. In the debate at one stage there was a—

Ms NEAL—Their submission does not say that it was—

CHAIR—No, it is general. They are talking about common areas in class 2 building and about facilities and services provided within common areas in class 2 buildings. They are not making distinctions within the class. Some were at one stage—that was an issue.

Mr NEUMANN—This is an issue for, say, tourism industries and places on the Gold Coast and Sunshine Coast in Queensland. What are your thoughts about that? You guys are at the coalface; you guys deal with this all the time. I would like to know what you think about this particular issue.

Dr Green—It has been one of the most difficult issues to resolve in developing this standard. Access for the disabled or the general community to housing, to residential accommodation and to tourist accommodation of various kinds is obviously an important social inclusion objective. One key issue is that it is not necessarily an objective that can be well pursued under the Disability Discrimination Act and it may well need to be pursued through other means. For example, I think a range of states and territories are setting requirements for a certain percentage

of apartments in multiunit apartment blocks to be made accessible and so on under their planning laws or other laws. The fact is that the drafters, and the parliament, that passed the Disability Discrimination Act in the early nineties did not extend it to cover private dwellings.

Mr Donaldson—One of the issues that we have wrestled with in this particular area, not necessarily only from an accessibility point of view but from the point of view of what level of regulation should apply to these buildings, is the situation that you often see—including on the Gold Coast, which is a good example—where we have been asked through the Building Code to redefine class 1 and class 2 buildings so that there is a distinction made prior to construction about whether the use of the building is for private purposes or commercial purposes. Of course, we got to a point where we really were not in a position, through a fairly broad instrument like a building code, to make such a distinction. You can imagine the situation where—

CHAIR—It is a planning control issue, isn't it?

Mr Donaldson—Yes, precisely. It falls very much into the area of planning controls because it is postconstruction use of a building, and unless there is a significant change in the use of a building the building code does not come into operation after the construction.

CHAIR—That is quite an interesting example. How do you deal with the situation of a developer coming along and constructing a building that is equally suitable for use as entirely privately owned or privately leased apartments or alternatively as, let us say, a serviced apartment/hotel type arrangement?

Dr Green—The position we have come to in the standard is not to include those buildings in the proposed standard. In effect, someone who is operating such a building for commercial, say, serviced apartment type services has obligations under the Disability Discrimination Act. The fact that those are not codified does not avoid those obligations. They have those obligations.

Mr Newhouse—In designing one of these buildings, a developer has the choice of designing the building so that it will comply with the Building Code in respect of both uses and therefore it can be adapted over time. That is one solution. But if it is designed specifically for a single purpose then it is very important that the right classification is applied under the BCA in the first place because it not only affects disability access it also affects fire safety and a whole range of things. I know, for example, the Queensland government has issued guidelines to their industry to assist it in delineating between these owner occupied or long-term rented apartments and ones that might be used more for holiday accommodation. So they have addressed this issue by providing guidance to their industry.

Mr NEUMANN—But things change. For example, at Christmas I was staying in a place and it was almost entirely owner occupied, but years ago that was not the case. So things like that change. This is a big challenge to the industry and a big challenge in this regard. It is very hard to legislate.

CHAIR—It is the case though that we have multiple possible controls and this particular objective might be served also through the imposition of planning controls and conditions in a development approval or a planning permit—they are called different things in different states—which might say, 'If you wish to change the use of this block of flats from an entirely private

building to one which has much more public use, then you are expected, as a condition of that planning approval, to provide a certain standard.

Mr PERRETT—In terms of the 4,000 enforcers or gatekeepers—

CHAIR—Officials.

Mr PERRETT—officials, the maintainers of standards, do you go to their conferences? Do they talk about the problems between—

CHAIR—Mr Donaldson is one of the chief ones.

Mr PERRETT—There must be issues between Coolangatta and Kowanyama in terms of how they maintain standards across all these different places, so would it be easier if we just had one rule that fitted everyone, which is that every new building should be accessible to all?

Mr Donaldson—But this standard applies to new buildings and new building work. That is a very important thing to keep in mind because, existing buildings being subject to significant refurbishment—

Mr PERRETT—Sorry; I mean every building every time.

Mr Donaldson—Do you mean houses as well?

Mr PERRETT—Private as well.

Mr Donaldson—But the DDA does not extent to private residences.

Mr PERRETT—That is what I am saying: in terms of enforcing it, it would be a much simpler idea.

Mr Donaldson—I cannot see the point. How do you mean it would be simpler?

Mr PERRETT—There are differences with a private dwelling that is rented out and then becomes owner occupied, and all of those boundaries are going to blur more and more as society changes.

Mr Donaldson—If you took that view then you would include houses.

Mr PERRETT—That is my proposition and my belief.

Mr Donaldson—There you go; the DDA has a scope and it does not extend that far. You would either change the DDA, but that is a matter for governments, or you would only capture some of the buildings because some of the buildings would not be captured.

Mr PERRETT—I am talking about new buildings, and eventually all buildings in Australia would be accessible.

Mr Donaldson—But eventually all buildings that are covered by the DDA will be accessible under these arrangements. It will take time.

Mr PERRETT—But those people in the public buildings have to go home somewhere eventually.

Mr Donaldson—That is another debate. But to get back to the legions, just to make the point, we are talking about building surveyors and people who play an important role in the building process. As we speak, the ABCB has a seminar in Perth at the moment—probably in another couple of hours. Every year we have a couple of thousand people coming to our seminars. Generally speaking we would work with the building surveyors, designers and the building industry to explain what was happening in relation to building policy issues and the building code.

Mr PERRETT—Architects as well?

Mr Donaldson—Absolutely; of course. All of the major design and construction professions are involved in one way or another in the development of the building code, and the building certifiers play an important role. They participate at most levels of our activity and we are in close contact with their national body, the Australian Institute of Building Surveyors, who I imagine will be making a submission. I have seen a number of submissions from individual building surveyors.

Mr PERRETT—Are they the certifiers in Queensland?

Mr Donaldson—That is right; yes.

Dr Green—It is important to understand that enforcement requires there to be a law that gives you the power to enforce. The DDA does not provide that power in respect of private residences.

Mr PERRETT—But it is talking about the difference between complaint based changing of society versus legislators changing society.

Mr Donaldson—I suppose you could call it codification.

Mr PERRETT—Yes. But for the brave people who have taken on cases over the last 20, 30 or 40 years, the gentleman down the back would not be in this room because he would not have been able to access the building.

Dr Green—I think it is important to understand that what is before you is a substantial improvement and will provide a very substantial improvement in the accessibility of the built environment.

CHAIR—And I think everyone is proceeding on that basis, Dr Green. To return to the officials point, there are differences in the delivery of control or the manner of administration of the building code in different states and the two territories. How different is the administration, and is the possibility of that difference because you have much greater level of private certifiers in some states than others? Is that something taken into account in the drafting of this standard?

Mr Donaldson—There are differences. There are eight pieces of relevant legislation in each of the jurisdictions and there are different approaches. For example, when we looked at the question of access panels and the protocol to deal with unjustifiable hardship and performance solutions as an alternative to the deemed to satisfy provisions in the standard, the responses of various states differed in the sense that in some states—for example, Victoria—such a concept could easily be integrated within the existing administrative framework for the delivery of the building code. That is not the case in New South Wales, I understand. Their position—and I understand they are making a submission to this committee, so they will be explaining that themselves—is that the access panel concept perhaps does not have the same level of ready adoption, that they might want to use a different approach. I do not want to speak on behalf of the New South Wales government on that matter, but I believe that would be the case. In the area of the building code I am pretty sure I am right in saying that there are no variations at the technical level in terms of its application on access to premises at the moment. Kevin?

Mr Newhouse—The only variations are in respect of the types of buildings that get caught. We spoke earlier about the fact that some states apply accessibility provisions to some class 2 developments, so there are variations on the scope but not necessarily in the technical details.

Mr Donaldson—South Australia has a requirement, which I think might be honoured in the breach, that, if you have a development with 20 sole occupancy units, one in 20 is required to be accessible. I think that is a state policy.

CHAIR—And that is a percentage policy which has been applied in some other states. It is proposed to be applied in some development approvals. It is at the planning control end.

Dr Green—I guess there is a constitutional issue of the primacy of Commonwealth legislation where it applies. The obligations that we are talking about here under a standard under Commonwealth law would be a requirement throughout the land. They would also provide a complete defence. The Commonwealth has a stronger hand in this area because it has Commonwealth legislation, the Disability Discrimination Act, but it does not have that in many other areas of building regulations which are wholly state responsibility in terms of the legislative power. The standard that would be proposed under this legislation would have to be compliant and would also override to the extent that issues are covered—not this cluster issue which is not proposed to be covered; it would be a separate issue—and it would be the requirement.

Ms NEAL—Going back to the issue of whether states and territories can go beyond the code of strict requirements, I think that if you have a look at the ACT submission, they clearly argue that with this provision they cannot. Clause 41 of their submission says:

The ACT is a party to Council of Australian Government (COAG) decisions that discourage planning instruments from regulating building construction matters that are the purview of the BCA, at a higher level of stricture than the BCA. Those decisions will force the ACT to align its regulatory systems with the BCA, and if the BCA mirrors the premises standards, that will mean that the ACT will have to omit from its laws the above-mentioned provision about passenger lifts in relation to class 2 buildings.

In relation to the question we had earlier—which is: can the ACT or territories and states generally go beyond this code—clearly they believe that they cannot.

CHAIR—I am not sure they are right, but that is a question we are going to have to sort out with them.

Ms NEAL—We will need to call someone about that.

CHAIR—I am aware, personally, of planning instruments in Victoria that go to extraordinary levels of detail about building construction.

Ms NEAL—But this is what they agreed to as part of the COAG process. Essentially, there has been a COAG discussion on it, and the way that those mechanisms work is often that funding arrangements are dependent upon compliance with agreements at COAG.

CHAIR—Is that right? I will ask you, Mr Donaldson, is that right that COAG discourages planning instruments from regulating building construction?

Mr Donaldson—I would not pretend to speak on behalf of COAG, but it is certainly an aspiration that—

CHAIR—Building being the Building Code and planning being the planning.

Mr Donaldson—Yes, and there is active work before COAG at the moment to deliver something along those lines.

Mr Jumpertz—And the intergovernmental agreement, covering the Australian Building Codes Board, has as one of its key objectives to try and reduce, as far as possible, the number of state and territory based variations—that is, as they apply to strict building regulation. I do not think there is anything similar, by way of either an IGA or a firm directive, in relation to the planning side of things.

CHAIR—I think we are digressing a bit, interesting though it might be.

Mr NEUMANN—You mentioned emergency exits before—or made a cryptic comment in passing about emergency exits. I was just wondering about the specific standards in relation to emergency exits for people with a disability. Even if you look around Parliament House and other buildings—the bells go and we quickly nip down the stairs, but that is a challenge for people who are physically disabled. Can you comment on why we haven't got any specific standards about that?

CHAIR—Can I pin down the question a bit. There are no specifics about emergency egress in these premises standards.

Mr Donaldson—But there are provisions in the Building Code for emergency egress for people. The question is whether they are adequate in relation to people with a—

Mr NEUMANN—Can you comment on that?

Mr Donaldson—Yes, and I can comment on that, and Kevin you might want to add to that as well. It is an area that we have been looking at very closely for some time. It is not

straightforward. By the way, we are in favour of there being better ways in which we can get people who may have a disability that would inhibit their safety out of buildings. That is a matter of principle and we support it strongly. But at one time there was a notion, during this debate, about a concept called ‘places of refuge’. Let me explain what that was and why it did not go anywhere. This was the notion that we could be in this building, and our friend Doogie over there would be faced with a fire. We would leave, but Doogie would go off into a place of refuge and he would be locked in there while the building burned down, and we would come back and get him later. I have to say that that concept did not really get a great deal of support from the ABCB or from others, as you might recall. But it is an issue that has been wrestled with internationally.

The World Trade Centre collapse was an issue that gave us a valuable insight into emergency egress for people, generally, including people with disability. We have been working with US authorities on that very subject. The notion there is: can we use lifts to evacuate people? It has become more relevant as buildings have got taller in the world. And of course, faced with an emergency of any sort—be it a human created or natural event—the need to get people out expeditiously and safely is very important. Everyone below the impact levels of the World Trade Centre buildings actually evacuated safely—everyone below the impact level. There were some above, actually, that got out, but everyone below that got out, including any people with a disability. And people did the best they could. It was not ideal, but they did. The people who died, by and large, were the people above the impact zone and the emergency workers who came in to rescue people. There were some important lessons there. We do not believe that the technical solution at the moment in relation to lifts is cost effective. There are some very significant costs associated with protecting a lift in the event of fire, but it is an area that we will continue to work on with the US and others. Kevin, do you want to add anything to that?

Mr Newhouse—Yes. Emergency egress for people with a disability was identified fairly early on in the development process of the premises standards. In fact, we commissioned some research to look at what the options might be. As Mr Donaldson said, there are some difficulties with some of the technical solutions still. We have looked at a lot of overseas countries to see what they are doing and we continue to work on that. The issue is: should we wait until those technical solutions are fully developed, tested and costed before we move forward with the premises standards, or do we move forward now and look at that as further work for the future?

CHAIR—To move to another matter in the premises standards, there are also not really detailed provisions about way-finding for persons with disabilities in these premises standards. Is there a specific reasoning behind that?

Mr Newhouse—Once again, we did some research on way-finding to try and identify what would be the best way of codifying the requirements. That research was done in conjunction with the Victorian Building Commission and through the CRC for Construction Innovation. The outcome from that research was that it is very difficult to try and codify a solution that would be suitable for all buildings and, in fact, it may be much better to try and provide guidance to the industry on the issues that should be taken into account when they are designing these buildings to make sure that the way-finding is implemented in an appropriate way. But the research that we undertook indicated that there was not a single technical solution or a number of technical solutions that you could apply through the building code that would be suitable for all circumstances.

CHAIR—We have had in submissions a number of suggestions about provision for disabled parking spaces. At the moment these draft premises standards have got certain numbers on them. Are any of you able to comment on the possibility of increasing the numbers because, generally speaking, the thrust of the submissions are about increasing the numbers?

Mr Donaldson—I will make one comment. That was one of the matters that was unanimously agreed on through the process that came forward from the building access policy committee. That very issue was agreed to. I was surprised to see some of that coming out. The comment I would make about it is that it is not just a question of the number of parking spaces that are available. Their dimensions are relevant too, and another consideration is the administration of car parking spaces. The question of who has right of access to a space is not necessarily consistent with a demographic called ‘people with disabilities’; it extends beyond that. It is often administered at a local GP level within individual states and territories. You would have to seek state input and advice about how they see that being appropriately monitored, audited and managed because the use and abuse of licences and access is a consideration.

CHAIR—I suppose that is a comment that can be made generally about all of these standards. It is one thing to make physical provision; it is another to make sure they are used in a way the physical provision has provided. I want to move to another matter. The standards have particular provisions about approvals for new work in upgrades of existing buildings. What they provide, as I understand it, is that the standards will apply to the upgraded area and also to a path of travel from the principal entrance to the new part. In fact, I think the premises standards used the term ‘the new part’, and they work off that. The kind of accessible paths of travel we are talking about are possibly a new lift in, access features in the lift, removing a step or all sorts of things like that. The standards, however, seem to say that, where a lessee is renovating part of the building, not the owner, they will not generally need to provide a path of travel to the renovation that they are undertaking. Have I got that right so far?

Mr Newhouse—Yes.

CHAIR—What is the effect of that exemption for lessees?

Dr Green—This is something that was discussed in the disability access reference group which I chaired with Peter Arnaudo from AG’s last year. One of the concerns about this issue was, for example, whether work within a subtenancy of a building would trigger an obligation on the building owner to do additional work throughout the building.

CHAIR—Just pausing there: are we going to get path-of-travel works from the owner?

Dr Green—The proposal is that, where the building owner initiates a building upgrade, the building owner would have to do all of those things in respect of providing enhanced access. There are certain obligations and some exemptions in terms of particular arrangements for toilets and lifts that have been part of that. That is the main mechanism that we would envisage as being the sort of upgrade path for providing comprehensive new access. The obligation is not there for an individual tenant within a building—unless they are the tenant of the whole building—to do some work within their own tenancy. They are only obliged to provide the upgrade within the facilities that are subject to their application.

CHAIR—Are any of you in a position to offer an assessment of how usual it is for tenants or lessees to do very major works on their premises? My anecdotal view of this would be that, by and large, in commercial buildings it is generally the owner that does large capital works and it is not common for tenants to undertake anything of any scale. They might decorate, but they are not likely to undertake major structural works.

Dr Green—I think that is right. The issue is that some of those renovations or fit-out upgrade works might require a building approval. For example, you would typically require a building approval if you renovated a toilet within your tenancy that required some adjustment to plumbing or relocation of that toilet. Whether or not it is appropriate for that sort of work to then trigger what might be quite an extensive obligation on the owner of the building is the nature of the mechanism.

CHAIR—I understand the mechanism. The reason I am asking the statistical question is to see how much we should really worry about the fact that lessees are exempted from this path-of-travel obligation.

Mr Donaldson—Can we take that on notice? That is one where we might be able to give you some answers.

CHAIR—That would be helpful. Do you think it is possible to determine?

Mr Donaldson—We certainly wrestled with it.

Ms NEAL—It is probably more likely that in 20-year leases that is the situation, rather than—

CHAIR—Which aren't themselves common.

Ms NEAL—No.

Mr NEUMANN—It was also common in lots of the leases I drafted when I was in private practice. There were provisions there that lessees had to require the consent and approbation of the lessor to actually do this sort of renovation work. So it is not like the lessors do not know anything about it, have not got clue what is going on; they have to effectively sanction it.

Ms NEAL—It is most common with government leases to have those really long term ones where they actually take on the responsibility for maintaining the building.

CHAIR—By and large, we have commercial leases in this country that make fit-outs landlord's fixtures—

Mr NEUMANN—Absolutely.

CHAIR—which is a major disincentive for tenants to spend much money. But we would be interested to know how much we have to worry about this because, if it is in fact the case that there are not that many really major works being carried out by commercial tenants in this country, this exemption becomes less important to us.

Mr Donaldson—We will do our best to provide you with some written information on that.

CHAIR—You have said that the length of time that these standards have taken in preparation is similar to, at least in the same timescale, the education standard and the transport standard. The framework at the moment envisages a five-year review. What scope is there for the standard to be looked at or reviewed inside of those five years? In other words, there is going to be a review at the end of five years, but let us say that something comes to light that they are really not working, or industry comes back and says that they really need a change or some other group comes forward with reason and says that there needs to be a major.

Dr Green—That sort of option is always possible in theory. I guess we thought that five years was an appropriate time in terms of volume of building work and adjustment within the building community and the access provisions. At least in part this was raised from looking at the existing buildings and the upgrade cycle for existing buildings and five years was thought appropriate. Obviously if there were some major glitch or fairly significant unforeseen consequence it would be open to the government of the day to undertake some further amendments.

CHAIR—I am interested in this because five years is a relatively long review period. We quite often see government programs that are given a three-year review, for example, but your indication is that five has been selected because it will take that long to bed down in industry and for people to become accustomed.

Mr Jumpertz—Also it is the nature of the construction cycles. If we are talking about large commercial buildings and volume of particular work, you can have a building project that takes anywhere between 18 and 24 months to go ahead and construct. Then, by the time you have tenants and occupation of the particular building, you may not actually have any real hard data and evidence any earlier than that to see how well the standard is operating. That is a consideration as well I think in this particular instance.

Dr Green—Another point that I would like to make is that part of the whole business of the standards is to provide a degree of certainty. Having too short a review period tends to open up uncertainty rather than provide certainty for a period of time at least.

Mr Donaldson—I was just reflecting that, from the perspective of the ABCB, from time to time issues emerge in the community which require early consideration by government. I am thinking of my immediate experience in relation to the bushfires in Victoria. That was not something that bore on commercial buildings generally. The emergency egress issue, for example, might be something. We find that the American work comes forward a little earlier than we might have anticipated and we might well want to put material before governments about that. But it is a matter for government. From our point of view if there is a public safety issue and it bears on people then it ought to be all encompassing. Therefore we would be putting forward our advice in relation to whether something needed to change. But that would not be, at the end of the day, a decision for us of course.

Mr PERRETT—In terms of the government's overlap in education and transport and now premises and the corporate knowledge from the processes and the learnings, I guess the people with disabilities might be the constant group through those areas in terms of providing their

advice. Do they have to go through three lots of red tape or are there some learnings or common pitfalls? You are probably not the guys to ask this.

Mr Donaldson—Perhaps not.

Mr PERRETT—Have you got contacts and have you caught up with people from the transport and education areas?

Mr Donaldson—Over the years we certainly have engaged. In fact both of those standards did have premises type implications. There was a need for an interaction but Michael may be able to comment on that too.

Dr Green—I think there is one common body, which is the Attorney-General's Department, which has responsibility for the Disability Discrimination Act and the responsibility for the drafting of all the standards under it.

Mr PERRETT—In terms of corporate knowledge, are there the same people involved in all of them or is it a churn of people because it has been so long?

Dr Green—I can only answer in respect of the premises standard. Obviously the transport department has had a major role, as have the state government transport authorities, in the transport area, which we have not been directly part of. Similarly, the education department here in Canberra, the state education authorities, private schools and so on have been actively involved in the education standard in a way that we were not.

CHAIR—I want to ask you about the protocol, which, as I understand it, is intended to describe a model process to be adopted by state and territory administrations for determining access requirements to buildings. Can anyone offer a comment on how you think the protocol will work in practice?

Mr Jumpertz—My understanding of it is that we would seek to get the agreement of the states and territories to adhere to a core set of principles et cetera with regard to the operation of the access panels. The states and territories would have to see how they could meld that into their existing building administration and appeals processes, and that would differ between the states. The key objective here is to ensure that, whichever mechanism is used in the jurisdiction, they adhere to a common framework in making particular decisions, as they relate to providing either advice and/or pseudo-approval, with regard to a solution that would fit the requirements of both the DDA—

CHAIR—The protocol envisages access panels.

Mr Jumpertz—Yes.

CHAIR—Are they going to be able rule on unjustifiable hardship?

Dr Green—One of the issues here is that there are a range of alternative solutions available to people, especially where there are building upgrade works involved that would perhaps fall beyond the prescriptive provisions that are set out. We have recognised that there would be a

need for a mechanism to resolve the issue of what constitutes a legitimate alternative solution. The provisions should be appropriately informed by expertise and so on and they cannot be ultimately definitive, in the sense that they cannot usurp the power of a court. Both of the main stakeholders, the property sector interests and the disability community, have not conceded that they would never want to have the right of appeal to a federal court, for example, in relation to a decision. Having got a ruling on a particular alternative solution from an access panel, they also want to be reasonably confident, in implementing that solution, that it will have some certainty and that it will not be subject to unreasonable challenge. So we have attempted to provide as much flexibility for people to make sensible arrangements, especially in relation to building upgrades; to have a properly constituted expert body that can help provide that advice; and to provide as much certainty as possible from the decisions of a panel, but recognising that we cannot ultimately usurp the power of the courts to—

CHAIR—To interpret the act.

Dr Green—Yes.

Mr Donaldson—This is a comment and does not represent ABCB policy. To my way of thinking, they are a necessity as an interim measure. I am not convinced that the certifier community is sufficiently mature in relation to the extent and nature of these proposals, and that will take some time. In an ideal world, we would not need any of that because we already have a system in place. We have certifiers whose responsibility every day of the week is to determine some very important issues associated with the design and construction of a building. This ought to be simply integrated into that process without the necessity of another layer of bureaucracy. I can see that one might criticise that but, if you recognise that there is this awareness-education process that is going to need to follow the introduction of the standard—which I hope we would play a role in; certainly the certifier community would be a major player in it—you would understand that certifiers will need some support during that period. That is the way I see these access panels and the protocol operating in the early years. But, in time, it would simply be part of the normal process of getting a building approved.

Ms NEAL—I have always assumed that the standards, once adopted, will only apply to buildings that are being built, not existing buildings. Is that correct?

Mr Donaldson—No. They apply to existing buildings that are having significant work undertaken on them. There is a definition about it.

Ms NEAL—But there is obviously a large number of buildings all around the place.

Mr Donaldson—The standards do not apply to existing buildings. The DDA applies to existing buildings but this standard does not apply to existing buildings.

Dr Green—We have to be careful here, because it does apply where an existing building is being upgraded in a significant way.

CHAIR—Thank you very much for attending the hearing today. It has been really helpful. The secretariat will send you a copy of the transcript for any corrections that need to be made.

Mr Donaldson, could you please liaise with the secretariat about the additional matter you have offered to provide to the committee.

[10.31 am]

PARSONS, Mr David Wayne, Principal Officer, Construction Policy, Legislation, Codes and Standards, ACT Planning and Land Authority

CHAIR—Welcome. Although the committee does not require you to speak under oath, these proceedings are formal proceedings of the Commonwealth parliament and the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I now invite you to make a brief opening statement before we proceed to questions.

Mr Parsons—Thank you for the opportunity to attend the hearing today. My background is in civil engineering and building surveying. This includes intensive building and construction policy and legislation development since 2006. In 2003 I represented the ACT government on the Building Access Policy Committee, which developed much of the technical content of the 2004 version of the draft premises standard, which forms the basis of the current draft standards. I continue to represent the ACT on the Australian Building Code Board's Building Codes Committee, which develops technical content for the building code, as well as working in the area of the ACT government that regulates the building and construction industry.

During the development of the 2003 premises standard, the Building Access Policy Committee gained great insights into the difficulties that people with disabilities face in accessing services in the built environment. Delays in implementing the standards are therefore disappointing—as was the omission of provisions covering common areas of class 2 buildings, such as apartment building foyers and corridors leading to sole occupancy units. Increasingly, many class 2 buildings are being used not only as sole occupancy units. Particularly on Queensland's holiday coast but also nationally, including in Canberra, class 2 apartment buildings are being partially used as serviced apartments or as furnished overnight accommodation.

I understand that many class 3 hotel or motel rooms are unattractive to people with disabilities due to the compact nature of the rooms and the need for larger access for people using wheelchairs, for example. Class 2 apartments often have larger living spaces than comparably priced hotel or motel rooms, so they are more favourable to people with certain kinds of disability. However, the vast majority of class 2 apartment units are well above ground level, and often above an undercroft car-parking story, making wheelchair access impractical without a lift. Most class 2 apartment buildings constructed for the low end of the market are walk-up units, meaning that they have no lifts and instead the occupants have to walk upstairs to access the units.

There has been recent controversy about the use of class 2 buildings for short-term accommodation. The argument is that class 2 classification is intended to capture long-term residential accommodation not short-term accommodation. However, that is not my view. The Building Code defines the term 'class 2' as: 'a building containing two or more sole-occupancy units, each being a separate dwelling.' The code defines the term 'sole-occupancy unit' as: 'room or other part of a building for occupation by one or joint owners, lessee, tenant or other to the

exclusion of any other owner, lessee, tenant or other occupier' and includes (a) a dwelling or (b) to (d) which talk about class 3s and other classes of buildings—so they are irrelevant.

The Building Code does not define the term 'dwelling', but the *Macquarie Dictionary's* definition of 'dwelling', as a noun, includes: an 'abode'. In turn, the definition of an 'abode', as a noun, includes a 'sojourn'; the definition of which, as a noun, also includes a 'temporary stay'. Therefore, I believe that the Building Code definition of class 2 buildings fits with the historic practice of using some class 2 buildings as serviced departments and overnight furnished apartment accommodation.

My agency receives complaints about apartment buildings being used as serviced apartments but generally, provided no part of the building is being used for non-residential purposes, the length of stay of occupants is not an enforcement issue. However, if it is found that part of the building is being used for a hotel style reception desk, that is genuinely inconsistent with the lease-purpose clauses and the use allowed for the building under the Building Act 2004. Such use is more consistent with a class 3 hotel or motel and not a class 2 apartment building.

When building certifiers are faced with having to approve class 2 buildings, they face the dilemma of knowing that some of the proposed apartments are statistically likely to be used as serviced apartments. I believe that kind of use poses the same question of disability discrimination under the DDA as does a certifier approving a building containing class 3 hotel rooms. The premises standard will afford discrimination claim protection for certifiers in the case of a compliant class 3 building but not for a class 2—even if the class 2 building is built to class 3 standards, because the premises standard will not provide protection for class 2 buildings, as drafted. That is as far as I got.

Mr NEUMANN—I am going to give you total control of this issue. Tell me what you would do. I have great sympathy with the position you have put in your submission, so I am going to give you a free kick. This is a full toss on middle stump. Go for your life.

Mr Parsons—As background, currently the ACT's planning instrument requires all class 2 buildings to be built with disability access provided, to the relevant Australian standard. As noted in the submission, if we were to align our regulatory system with the proposed Building Code reflecting the proposed standard, that would mean a rollback. Just to answer Ms Neal's point about the ACT being bound by those COAG agreements: neither the COAG agreements nor the IGA—which the territory is signed up to and which continues the Building Codes Board—fetter our rights to make laws. So we could override those agreements, if you like. The minister wanted to make the point in the submission that, if we were to follow through with the sentiment in the IGA and the COAG agreements, then there is the suggestion that, even though there might be aspirational requirements, we should not be going above the Building Code requirement in our planning instruments. So I believe that my agency, the Planning and Land Authority will probably not keep that requirement despite the Building Code not reflecting class 2 requirements.

Ms NEAL—Can I just clarify. You are saying that, despite the fact that there is an aspirational agreement, as you say, a 'best endeavours' type agreement, you still—

CHAIR—Sorry to interrupt you. Let us be precise about this. This is an intergovernmental agreement in the COAG process—

Mr Parsons—Sorry, there are two matters. There are COAG aspirational statements and there is the intergovernmental agreement, which the minister did not mention in his submission. Both are driven, I think, by the Productivity Commission's review of the building industry, which found that many councils, in particular, use their planning instruments to dictate how buildings ought to be built, even though the Building Code has purview over those sorts of matters. It was causing an awful lot of added costs which did not seem to be justified. For example, if a road forms a boundary between two council areas, on one side of the road the buildings might have to have a three-metre-high storey for certain types of buildings, because the planners say so, versus the other side of the road, where buildings can drop down to a 2.4 metre height, saving 600 millimetres—

CHAIR—Sorry, I interrupted Ms Neal. I just wanted to identify what instruments you were talking about.

Ms NEAL—What I guess I was clarifying is that you believe that the ACT can still have greater requirements than the code.

Mr Parsons—Perhaps I can clarify that. Nothing in those agreements, not even the IGA, even though they are agreements signed by the minister, fetters the ACT Legislative Assembly's right to make whatever laws it thinks are fit. It can contravene those agreements because those agreements do not fetter the assembly's entitlement to make a law as it sees fit.

Ms NEAL—But is there any funding provided by the Commonwealth that might be altered by a failure to comply with those agreements?

Mr Parsons—Not that I am aware of, as yet. In fact, the ACT government funds the Building Code; the flow of revenue is actually the other way around.

Ms NEAL—I am not necessarily talking directly about the Building Code. It is a very common mechanism that the Commonwealth uses—

Mr Parsons—They have not used it yet in this regard.

Ms NEAL—to link agreements, principles or regulations as to funding.

Mr Parsons—Not as yet. To continue answering your question about what we would do—

Mr NEUMANN—I want to get you to talk about how you would get certainty and equity. If I gave you complete and utter control, how would you do it?

Mr Parsons—There are probably two ways to go about it. Because of the fact that the DDA does not cover an individual's castle, their own home, whether it be a class 1 house or a class 2 sole occupancy in a building, I do not think that we could extend the premises standard to the insides of class 2 units if the certifier at the time of approving the plan does not know the intended use. If it simply says class 2 on the plans, he does not know that the unit will be used

for a public purpose, a bit like a motel style room. The cheapest option is to assume that they will all be sold to individual owners who will rent them out long term or live in them.

My suggestion is that an approach would be to take the blinkers off the standard and not just look at its fundamental role of saying, 'This is what you must build to and therefore you get protection if you built to it.' One of the mechanisms that would provide comfort and certainty would be to say, through the standard or through the DDA, that building a class 2 building's common areas in a way that complies with the class 3 equivalent requirements for common areas at least gives the defence against disability discrimination claims. At the moment, a diligent certified building manager who tries their best to build a class 2 apartment building even to meet the draft standards does not get that protection. That is not how the mechanism works. So if we could put that mechanism in that would at least go part of the way.

It might come down to an economic analysis to see whether that is worthwhile, knowing that the low-end apartment buildings do not have elevators in them at the moment. That might have been the tipping point, the pivotal point in working out whether it is cost-effective to apply disability access requirements, particularly elevators, to low-end units. Maybe there needs to be some cost-benefit analysis done to say that in low-end of the market apartment buildings it is not cost-effective to force elevators to be put in. But, as you go up the scale of prestige in units, large units usually do have elevators with quite a large floor plan. So maybe there can be a cost-benefit analysis and proportionate regulatory investigation that determines what level is the right one to pitch the standard at for what type of building. The standard provides the mechanism so that if the building owner complies with that level of construction and it is cost-effective then they get the shielding, the comfort of knowing that, with regard to the aspects that they have complied with, they have a defence against disability discrimination claims under the DDA. Does that make sense?

Mr NEUMANN—Yes.

Mr Parsons—The other end of the spectrum would be as Mr Perrett suggested. It would simply be to apply it—maybe not to class 1, because I think that is a slightly separate argument—to all common areas in class 2 buildings, which I understand was the flavour of the 2004 version of the standard. My memory is a bit hazy on how far we went then, but certainly class 2 was in there. There might have been some exemption for some common areas. I cannot quite remember.

Mr PERRETT—You are surrounded by New South Wales. Developers can easily go over the border. I do not know this area very well; I only know a couple of rooms in this building, really. Is there any suggestion that, because you are at the vanguard of this, developers are moving? I know it is crazy financial times at the moment.

Mr Parsons—On the basis that our planning law requires class 2s to be fully accessible?

Mr PERRETT—Yes. Are the ACT's demographics different to the rest of Australia?

Mr Parsons—Yes, it is a generally more affluent society.

Mr PERRETT—More affluent. And older—or not necessarily?

Mr Parsons—I do not know that we are necessarily older, but I think our developers are also, in general terms, more affluent—I do not know if affluent is the right term, but we do not seem to have a lot of very small-scale suburb-type apartment buildings going. They tend to be the large stuff along Northbourne Avenue and surrounding, if you like, the CBDs. You do not often find, probably because of our planning instruments, many apartment buildings going up, as you do in some of the suburbs sprinkled through Sydney. I would not be surprised if the ACT loses developments to other centres where it is more cost effective because of the lack of a requirement there, but I also think that it is a much more complex equation than simply looking at that. The returns that you might get from an apartment building on Northbourne Avenue might well be such that it is worthwhile putting in those extra things anyway rather than using whatever land you could get for the same money closer to the CBD of Sydney or wherever else. But certainly it was boom times up until, probably, one year ago in the ACT. They were some of the highest rates of construction of apartment units in the ACT that we had ever seen. It has now tapered off a bit for various reasons; it even tapered off slightly before the current economic circumstances.

CHAIR—To give us a bit of a sense of this, how long have the access and general mobility code requirements applied to class 2 buildings in the ACT.

Mr Parsons—That I do not know. I come from the area of the Planning and Land Authority that looks at the building side rather than the planning side, but as far as I know it has been there at least three years and possibly even longer.

CHAIR—In a practical sense, how do the requirements of the ACT's access and mobility code differ from what the premises standards would impose on other building types like class 3 buildings?

Mr Parsons—The ACT's code purely enforces the requirements of the relevant Australian standard. I think it does not do much more above and beyond that. My understanding of what is happening in the—

CHAIR—And it is directed at common areas of class 2 buildings?

Mr Parsons—Yes, in that we have separate planning requirements and rules that look at the percentage that you talked about earlier, with a certain number of developments within a group of developments—I think the number is 10; again, this is in the planning realm, which I am not expert in. I understand that if a development is going to have 10 or more sole occupancy units within it then 10 per cent of that total has to consist of fully accessible sole occupancy units. So it is a separate issue, if you like. Where all class 2 units have to comply is with the access standards to the door, if you like, of the sole occupancy unit, so you only have to venture inside the unit with your requirements if the 10 per cent rule applies.

Mr PERRETT—And the door reflects that as well?

Mr Parsons—The entry door?

Mr PERRETT—No, the door of the apartments.

Mr Parsons—Yes.

Mr PERRETT—Can they only hover around comfortably in the foyer or are there some—

Mr Parsons—I do not know.

Mr PERRETT—That one per cent rule is a particular requirement, is it?

Mr Parsons—It is a separate requirement on top. So, if you have 10 units or more, not only do the general requirements of making the common areas accessible apply but it is also required that all of the interior of the designated sole occupancy units—toilets, showers and everything inside—be accessible. But I do not know about the front door issue and whether it is counted as being part of the outside corridor space. It would seem silly if it did not, in that you would have to get your circular saw out and cut it wider to provide the wheelchair access.

Mr PERRETT—I have a supplementary question. Is there no guesstimation as to the extra costs to the developer or the builder?

Mr Parsons—Of having to comply fully?

Mr PERRETT—Yes.

Mr Parsons—Quite a lot, I would imagine, where they are required to put in an elevator. It is a most often asked question, I think. Developers coming from interstate are putting in their plans without the elevators in them, seeking development approval, being knocked back at that stage and being told, ‘You need to install the elevator.’

Mr PERRETT—What is the cost? A hundred thousand or something like that? I do not know what it is.

Mr Parsons—At least that, I would imagine.

Mr PERRETT—With ongoing service costs.

Mr Parsons—Yes, and maintenance costs. I am guessing that there were a lot of reasons that the class 2 units were dropped out, but the cost of putting in elevators was probably one of them.

CHAIR—Can you give us your estimate of how the provisions of the ACT’s access and mobility code have affected the enhancement of availability of accessible housing? Is it measurable?

Mr Parsons—It is difficult to say because there is no requirement in any of the statutory approval processes to identify who is going to occupy various types of premises. My agency does not do any sort of post-occupancy assessment unless there is a particular need for it. I am not aware that we have done that sort of thing; I am not aware that anybody has lodged any claims of discrimination on the basis of access to premises for buildings that are covered by that guide, for probably self-evident reasons. But numbers I have no idea of.

CHAIR—I thank you very much for coming to speak to us today, Mr Parsons. I also ask you to convey the committee's thanks to Minister Barr for the submission; it has been most helpful and it has drawn attention to a quite important exclusion or, if you like, omission from the standards as currently drafted. The committee will send you a copy of the transcript for any corrections that need to be made.

Resolved (on motion by **Mr Neumann**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day, including publication on the parliamentary electronic database of the proof transcript.

Committee adjourned at 10.51 am