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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]

TUESDAY, 7 APRIL 2009

MELBOURNE

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Tuesday, 7 April 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 Andrews, Mr Dreyfus, Ms Neal and Mr Perrett

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

ANTONE, Ms Rachel, Senior Legal Officer, Disability Discrimination Section, Attorney-General's Department 1

DONALDSON, Mr Ivan James, General Manager, Australian Building Codes Board 1

FOX, Mr Stephen, Principal Legal Officer, Disability Discrimination Section, Attorney-General's Department 1

INNES, Mr Graeme, Human Rights Commissioner and Disability Discrimination Commissioner, Australian Human Rights Commission..... 1

JUMPERTZ, Mr Detlef, Manager, Building Policy Section, Manufacturing Innovation Branch, Manufacturing Division, Department of Innovation, Industry, Science and Research..... 1

NEWHOUSE, Mr Kevin, Manager, Australian Building Codes Board 1

RYAN, Mr Greig, Assistant Manager, Building Policy Section, Department of Innovation, Industry, Science and Research 1

SMALL, Mr Michael, Senior Policy Officer, Disability Rights Unit, Australian Human Rights Commission..... 1

Committee met at 12.22 pm

ANTONE, Ms Rachel, Senior Legal Officer, Disability Discrimination Section, Attorney-General's Department

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RYAN, Mr Greig, Assistant Manager, Building Policy Section, Department of Innovation, Industry, Science and Research

SMALL, Mr Michael, Senior Policy Officer, Disability Rights Unit, Australian Human Rights Commission

CHAIR (Mr Dreyfus)—I declare open the House of Representatives Standing Committee on Legal and Constitutional Affairs roundtable discussion on the draft Disability (Access to Premises—Buildings) Standards. The roundtable is open to the public and a transcript of what is said will be placed on the committee's website. If anyone here would like further details about the inquiry or the transcripts, they should ask the committee's secretariat staff here at the hearing.

Welcome all. We have with us here today representatives of the Attorney-General's Department; the Department of Innovation, Industry, Science and Research; the Australian Building Codes Board and the Australian Human Rights Commission.

You have all heard this before. The committee does not require you to speak under oath, but you should understand that these are formal proceedings of the Commonwealth parliament and giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We have two hours and 55 minutes for this roundtable. The way I thought we could proceed is for me to just make an introductory statement—a bit of a reversal of the invitation I extended to everyone when they appeared as witnesses—perhaps to indicate what we think is the use of bringing this particular group of people together in this format.

I know that everybody here has followed the proceedings of this inquiry, either by being present, in the case of Mr Jumpertz and Mr Ryan—I do not think you missed a single hearing—or, if they have not been present at the hearing, everybody here has been able to look at *Hansard* to see what has occurred and has been able to look at almost all of the submissions that we have

received. We have received a few more—another 10 came in between the last hearing and now—and they will be up on the committee’s website as of today.

The committee had a sense that it might be useful to get those who have been most closely involved in the preparation of the standards, that have been involved for in some cases over 10 years in the process, to come together and, in this roundtable format, which we think is useful—it is a little less formal than receiving evidence from witnesses one by one—discuss some of the difficult issues which have been raised by witnesses and in submissions.

What I wanted to do was simply tell you, by way of giving you a list, the issues that we hope to get through. You will hear in a minute that it is quite a long list. To that end, I would ask that people keep their contributions short. I know there is a temptation to keep talking, particularly when it is a topic that you know a lot about—and I know all of you do know a lot about the issues here—but I am conscious of the time. My purpose in reading through the list is just so you know that we do intend to get to this range of things.

We have divided our topics up into three sections. The first deals with issues that arise as to what the scope of the standards should be. The second group of issues are concessions, exemptions and exceptions, which is a scope related question. The third deals with issues that are not presently dealt with in the standards; and there are some issues around whether or not they should be. Finally, there is a list of particular issues that have arisen in the course of submissions and the hearing.

I just want to give the topics to you. In that first area of the scope of the standards there is obviously the issue of residential accommodation, both as to class 1a and class 2 buildings, about which a great deal of the hearing time has been spent; class 1b accommodation; fit-out in premises other than buildings; the issue of persons with responsibilities under the standards, particularly access consultants; and the issue that has been raised as to the slightly different obligations that are imposed on existing buildings as against new buildings.

Moving to the group of issues that are concessions and exemptions, the first one there is small buildings and the way in which the exemption there has been arrived at; other exemptions in clause D3.4; unjustifiable hardship; fire isolated stairs and the lessee concession. Under the area of issues not addressed by the standards, we wanted, if possible, to talk about wayfinding and emergency egress.

The list of specific issues includes compliance with international law, the objects section of the standards, performance requirements, the 90th versus 80th percentile point, the question of triggers for application of the premises standards, the requirements of the standards for toilets in classes 5, 6, 7, 8 and 9 buildings, lifts, class 3 buildings, an issue about swimming pools, hearing augmentation—if we get through all of these, I will be surprised—wheelchair seating, signage, car parking, transport standards and—one issue I very much want to deal with—the process for review of the standard. The last two are the protocol and an issue raised about transitional arrangements.

As you can see, there is quite a long list. We may well not get through it, but we are going to make an attempt, because I am very keen to have the assistance of the people in this room.

I will start off, under the broad topic of the scope of the standards, with the issue of residential accommodation and ask for comment about the submissions that we have received from quite a number of people about class 1a buildings, to which the standards do not apply, and class 2 buildings. I am going to try and break this up by dealing reasonably quickly with class 1a buildings. It is the case, as I understand it, that there is a pretty strong argument that the Disability Discrimination Act presently does not and is not intended to deal with the interior of class 1a buildings at all, they not being public spaces. The question is whether there is capacity at all for standards to be developed under the Disability Discrimination Act in respect of class 1a premises themselves. There is the subsidiary question of access to class 1a buildings. Who wants to kick off?

Mr Innes—It is fair to say that it has never been the view of committees working on these standards that they would cover private housing accommodation. That is not to suggest that I do not think it is very important for the private housing accommodation to be covered. Whether it is under the DDA in specific terms is problematic, but certainly in the objects of the DDA. But in relation to the more practical needs of the ageing population and the fact that our housing stock needs to be accessible, I am not sure that this is the method to do it. The commission called two years ago now, I think, for a national action plan on private housing accommodation, which will probably be led by public housing. There have been some initiatives. I do not want to take the committee's time on that now, but it is fair to say that this is not the instrument to do it—not that it does not need to be done.

CHAIR—Does anyone else want to comment on that. Mr Fox?

Mr Fox—Yes. Certainly there is a question about the extent to which the standards can address residential accommodation and it has been looked at a number of times over the years, with particular reference to class 2. As Commissioner Innes has said, at the present time the government's intention is very much to focus on accommodation which is provided as a service and not to deal with residential accommodation.

CHAIR—Yes. Unless anyone else wants to comment on that, I will move on to the much more difficult issue of class 2 buildings. Is anyone able to explain why it was that the class 2 buildings were removed from the draft which has been exhibited, given that they had been included in the published draft of this standard in 2004?

Mr Innes—I think it was a political decision. There was a concern expressed about the issues which including class 2 buildings would raise amongst small investors and owners of single units in two- and three-storey walk-ups. The overhang of that concern, which is a concern that has been around at government levels in the previous government, caused a decision to be made to exclude class 2 buildings. I do not think it is a valid concern because of the unjustifiable hardship provisions that would mean it would be highly unlikely that a two- or three-storey existing building would be expected to install lift access. I will not reiterate all the arguments as to why the commission thinks that class 2 buildings should be included, because I think you are well aware of them.

CHAIR—Yes.

Mr Innes—I am happy to talk about them if you want me to.

CHAIR—I do not think we need to. I am more interested in what technical problems might arise. We have had a lot of submissions and some very eloquent statements to the effect that class 2 buildings should never have been dropped from the standard. Clearly it is a matter that the committee is still going to have to consider and deliberate on. But that is the background against which we are raising this. Probably more attention has been given in more submissions to that topic than any other single topic.

Mr Innes—It is seriously problematic not to include class 2 buildings. It causes a great deal of uncertainty, not only for people with disabilities, but for the building industry, because of course the DDA would still apply. Then we get individual decisions and how they are going to be interpreted.

Mr Fox—We believe that there is a technical issue associated with the inclusion of class 2 insofar as the coverage of the DDA extends to buildings accessible to the public. There is a question about the extent to which premises that are privately owned and occupied or rented long term are in fact accessible to the public in the relevant meaning of that term. If that view that there is an issue about what is a premises accessible to the public pursuant to section 31(1)(c) of the act is a correct one, then there is a problem insofar as the class 2 designation under the Building Code of Australia does not distinguish between owner-occupied or premises that are provided for rental on a long-term basis—or, indeed, on a short-term basis.

While it is true that buildings which start off life as privately occupied residential complexes then can undergo a change of use or a change of purpose and effectively become serviced apartments or some other mix of short-term and long-term accommodation, there is not a practical mechanism for addressing how that use is monitored and covered in terms of the requirements of the building code, which is obviously prospective in its operation. In order to retain consistency in the approach that the government has adopted of having a matching set of requirements under the DDA or under the premises standards and within the building code, there is an argument that including class 2 within the DDA standard then requires some additional changes to the operation of the building code, which may have some difficulties of practicality.

CHAIR—What would those changes to the building code be? Perhaps I would ask Mr Donaldson.

Mr Donaldson—Thanks very much, Chairman. The question of distinguishing between the use of a building prior to its construction on the basis of whether it is going to be privately owned and used or whether it is going to be used for commercial purposes and therefore have common areas which are accessible to the public is a subset of a wider debate that the ABCB has been engaged in for some time with the states and territories. That is about the question of fire protection, because class 2 provisions are different to class 3 provisions for fire protection reasons. There are good reasons for that: familiarity at one end and a lack of familiarity on the part of people using the buildings.

CHAIR—That all rests on a premise that class 2 are not going to be really commercial.

Mr Donaldson—Exactly.

CHAIR—Which was the historical position.

Mr Donaldson—That is right.

CHAIR—It is a problem that has affected both building codes and planning schemes across Australia, because it is a new use, where completely different uses can be made of identical building fabrics. We are all grappling with this problem.

Mr Donaldson—We are. We have grappled with it and we have been unable to get a common understanding between the states and territory administrators about the definition of a ‘serviced apartment’. If we were able to do that, then we would be in a position to target that particular set of buildings and building use. We understand that the administration in Queensland has got to the point of issuing some draft guidelines in relation to trying to deal with that in a post-construction world, but those guidelines have not yet been adopted into regulation in that state.

In the debates we have been involved in—and, Kevin, you might want to add to this—we have been unable to classify it sufficiently. The issue is: where do you draw the line? It is one thing for someone to say, ‘I’m building a class 2 building,’ get it built and then the next day turn it into serviced apartments. That is one thing, and that seems to be quite contrary to the legal intent—

CHAIR—But is in fact happening.

Mr Donaldson—but can happen.

CHAIR—Can and does happen.

Mr Donaldson—Yes, indeed. But then you have got the other end of the spectrum where I go away for a month’s holiday, I find someone to occupy my apartment, and we come to a commercial arrangement about them looking after my security and paying me a subsidised rent. Am I captured if I therefore change the use of my class 2 building? Am I now required retrospectively to apply the provisions of a class 3 building in terms of its upgrading in relation to fire protection?

The answer is that that is not very workable, because the building code is pre-construction. With a change of use that triggers the building regulations and a building approval certificate at state level, we just do not have people on the ground that walk about knocking on people’s doors and asking them whether they own specific premises. It is not able to be administered in that way. Kevin, would you like to add anything to that general proposition that I have put? Do you have a difficulty with that?

Mr Newhouse—Only to say that enforcement is always going to be difficult with a provision like that, and there was a lot of concern expressed at the time when we were developing some finetuned descriptions of these buildings, that they would be overly restrictive for people that did want to, for example, let their apartment on the Gold Coast on an irregular basis—during Indy week or something like that—which would basically mean that they would be contravening the building code by doing so.

Mr Innes—I know I have had one go on this issue, but can I say briefly—

CHAIR—That is why it is called a roundtable.

Mr Innes—that I agree with everything that Stephen, Ivan and Kevin have said, except that I would assert that those arguments can be used as much to justify the inclusion of class 2 buildings in the standard as to keep them out.

CHAIR—Yes, and we can see that.

Mr Innes—Then I do not need to develop that argument.

CHAIR—One thing that has occurred to us is that there may well be an impossibility of ever arriving at a distinction that satisfies everyone or that is usable in a regulatory sense so as to achieve whatever is the desired control, be that a building control or a planning control or, indeed, an accessibility control.

From the accessibility point of view, it might be that you can simply leap over the problem of distinction and say, ‘We’re going to make it apply to all class 2 buildings,’ and that is the argument. It means that we, or the people who will be enforcing this accessibility standard, will not have to engage in the difficult problems that the planner from the City of Sydney told us about and, indeed, I am familiar with myself from professional practice. It is an ongoing problem about how you deal with use, which is a different concept to building fabric.

Mr Fox—I do urge the committee to consider the extent to which there may be an issue associated with the extent of the power provided for under the DDA to actually regulate the entirety of class 2 buildings in practice.

CHAIR—I do not think it is suggested—and nor did we get submissions to this effect—that everything in a class 2 building should be subject to the standard. It is very much confined to the public areas of class 2 buildings.

Mr Fox—I think that secondarily there is still an issue associated with the extent to which, in looking at the power for the standards to operate, that power applies in relation to buildings that are accessible to the public and, insofar as a class 2 building is not regarded as being accessible to the public because it is designated for private residential use, then it may be that it is not able to be covered in terms of the power provided for in section 31(1)(c).

CHAIR—Perhaps there is a policy decision to be made about whether or not it could be left to some litigation down the track from a well-heeled developer that thinks that it is worth their while to take the point of statutory construction which will arise to a court. That is ultimately the only way that it is going to be resolved.

Mr Small—If I remember correctly, the 2004 draft, in an attempt to recognise the issue that Mr Fox is raising, specifically said that the premises standards in relation to the common areas of class 2 buildings covered those class 2 buildings which were being used for short-term rental purposes. So the premises standard itself is actually restricted to those very types of class 2 buildings that Mr Fox is referring to—the holiday type accommodation.

The way we were going to capture the whole of class 2 common areas was through the BCA. The BCA would say: class 2 buildings, common areas, it does not matter what purpose they are used for, the premises standard will say, ‘This only applies to those premises that are used for

short-term rental.' But because the building code is the driver for all of this, it would result in us capturing the common areas of all class 2 buildings. So it would overcome the legal problem that Mr Fox raises.

CHAIR—It addresses the problem. We will have a look at that. You have indicated anyway, Mr Small, that the problem was already identified in 2004 and there was a mechanism at least that was canvassed in 2004.

Mr Small—Yes.

CHAIR—Can anyone tell me what the 2004 regulation impact statement said about the costs if class 2 buildings were to be included? It might be something we can check. No-one can recall off the top of their heads?

Mr Ryan—The cost for new buildings was \$25 million per annum and for existing buildings—for building upgrades—was \$34 million per annum, so a total of \$59 million per annum to provide access to the common areas of class 2 buildings. It was about 8.9 per cent of the cost of the RIS on the \$662 million proposal. Actually, that number has changed slightly. That was before we had the revised RIS. It is around nine per cent.

CHAIR—But there was a cost identified in 2004.

Mr Ryan—Yes.

CHAIR—A number of the submissions have made a suggestion that omitting class 2 buildings altogether would increase the likelihood of a decline in hotel class 3 accommodation and increase the use of class 2 buildings for the provision of serviced apartments. Is there any way to judge the correctness or otherwise of that assertion?

Mr Newhouse—I think that is also a current problem because of the differences between class 2 requirements and class 3 requirements, and access is only one of the issues that differentiates those types of buildings under the building code.

CHAIR—Does anyone else want to say anything about the class 2 point?

Mr Jumpertz—Yes. In relation to the class 2 versus class 3 distinction and whether, by excluding class 2s, that is going to move part of the hotel-motel segment into the serviced apartment area, I do not think there is any hard evidence, but I would have thought that, if class 2s were not covered by the actual premises standard but were still subject to a complaint under the normal provisions of the DDA, there would be some testing of the particular service aspects of a serviced apartment and the accessibility provisions around that, and there would be some case law developed which might dissuade that particular move in a prospective sense.

Mr Innes—It is a pretty blunt instrument to do it with, though. You are probably right.

CHAIR—No-one else on the class 2 point?

Mr ANDREWS—Mr Newhouse, you said it is a current problem. Can you elucidate?

Mr Newhouse—In some of the evidence that has been presented, the hotel sector have indicated that it is much easier to build a class 2 building. It is cheaper, you do not need as many licences and so on. In their view, by virtue of the current arrangements, people are encouraged to build them as class 2 even though they might be used for uses similar to a class 3 building in the future.

Mr ANDREWS—In fact, I think the TTF at our Melbourne hearing—and this may not be exactly what they said—were suggesting that very few new hotels were being developed; rather, that class 2 buildings were being developed in significant numbers because of that.

CHAIR—But it was not confined to accessibility issues.

Mr ANDREWS—No.

CHAIR—It is across the board that there is a lighter regulatory impact on the construction of class 2 buildings in this country.

Mr ANDREWS—But to pursue that argument a little further, it would require some analysis of what is the cost associated with this aspect of the difference between a class 2 building and a class 3 building, and the other differences between a class 2 and a class 3 building. I presume from what has been said that there is no hard evidence that we could look at.

Mr Newhouse—The other thing to bear in mind is that, even if the class 2 proposals from 2004 were reinstated, there would still be a difference between class 2 and 3 in terms of the access provisions because the class 2 provisions still would not require any rooms or sole occupancy units to be accessible, it would only be the common areas, whereas in class 3 buildings a percentage of the actual rooms themselves would have to be accessible.

CHAIR—Mr Fox, do you have a comment?

Mr Fox—Yes, Mr Chairman, only to emphasise that in the material that has been presented—and there is certainly no statistical data but, rather, assertions of a similar nature to those received by the committee—the view is that there is already, as Mr Newhouse has said, a different regulatory impact between class 2 and class 3, and the non-inclusion of class 2 within the access provisions would exacerbate that regulatory distinction; therefore, it is then argued by those who are operating class 3 buildings that that is an unfair regulatory impact upon them in terms of the competitive position that they are placed in vis-a-vis people building class 2 buildings and offering them for short-term rent.

Mr Innes—I just want to make sure that the committee is aware that there has been at least one state discrimination law case in this area, where the Queensland equivalent of the DDA was found to apply to a class 2 building. It is coming back to this question about whether or not the DDA covers buildings to which the public have access. This complaint was lodged by a member of the body corporate against the body corporate. I would suspect that if these buildings were not included in the standard it would be likely that you would see complaints coming from that area. It is not just a question of public building access but a question of members of a body corporate lodging a complaint because of access issues. There was a decision made in that case, *C v A*,

which required a level of access which we would have thought was above the level of the standards, and that is the sort of inconsistent result that I am concerned that we could get.

CHAIR—It is understood that that is where the matter would be left if the standards did not include class 2 buildings. We would be left with complaint based enforcement.

Mr Innes—Yes.

CHAIR—Could I move to class 1b buildings—bed and breakfasts and eco-lodges—which, as we are aware, are referred to in the standard, and the standard will only apply to them if they have four or more bedrooms. As I understand the position, the 2004 draft had offered a threshold of three bedrooms. The regulatory impact statement process identified some significant costs associated with accessibility for these buildings and the threshold was revised upwards to four as a consequence of that. Again, we have had a lot of submissions about this, some suggesting that the threshold should be reduced to where it was, to three; some saying it should be eliminated entirely; and others suggesting that the hotel type requirements for class 3 buildings should be applied to class 1b buildings. Is anyone able to comment on why the threshold was increased from three to four or, indeed, whether it should stay at four? Mr Fox?

Mr Fox—Again, Mr Chairman, in the consideration within government there were a variety of views. As the Attorney said when introducing these standards, in some senses government had to make a decision because there had been inability of the various sectors to agree. In relation to this particular matter, there was a view on the one side, the disability sector in particular, that if they were forced to accept a concession it should be three, and on the other side—effectively, the property sector—that if they were forced to be involved in this requirement it should be five.

In the end I believe the government saw that there was a difference of one in between the two and felt that, in trying to resolve this issue, some choice had to be made in terms of the potential cost against the potential benefit. In the mix of the range of measures that were provided for in the standard, it was felt that it was an acceptable approach to settle upon four, in the context that there were a number of matters that had to be decided on by government in the absence of agreement between parties.

Ms Antone—That was a pragmatic compromise.

Mr Fox—A pragmatic compromise.

CHAIR—The Human Rights Commission told us that the effect of making four the trigger rather than three was to exclude about 60 per cent of this industry, the bed and breakfasts and eco-lodges. If it was three, it would be about 40 per cent.

Mr Innes—I just add the caveat that that was on the limited research that, with our resources, we were able to do, but we are not aware of any other research that challenges that assertion.

CHAIR—It actually has not been challenged in any of the submissions that we have received.

Mr Innes—No, that is right.

CHAIR—That does not necessarily make it right, but we can all readily understand that the higher the threshold, the more of the industry. And it is a cottage type industry. A one-room difference is likely to have a much greater impact in this area of tourism than, say, a one-room difference for a large hotel, which is not going to make a whole lot of difference across the board.

Mr Jumpertz—It is probably fair to say that as part of the government's consideration there was, as Mr Fox has outlined, a degree of debate as to where the line should be drawn in this particular case, but I think there was a general feeling that if you are at a level of four or above, particularly on the cabins, you are more likely to be a commercial operation than a figure below that, which might be more of a family-run business et cetera. So that was one of the considerations as well: that where it was strictly a commercially run operation by quite reasonably large sized players, then there should be an obligation on them, but for those smaller operators it was a case of trying to codify that. It is probably fair to say that the current provision of the premises standard still allows the general provisions of the Disability Discrimination Act to go ahead and apply to those below the four-bedroom threshold as well.

Mr Small—May I add a couple more comments to that. The second bit of unscientific research that the committee referred to that we undertook was to try and get information from local governments around Australia, particularly in areas which are well known for their tourism focus. The information we got was that a number of local governments—those that had the authority through planning tools—around Australia are already requiring accessibility in these types of establishments which is far more demanding than the proposed threshold of four.

Whilst I obviously cannot speak for the local governments, if this is not properly balanced we could well find ourselves where we undo some of the surety that we have been looking for, because local governments may continue to impose a higher level of accessibility than the premises standard does. For example, some councils were requiring every bed and breakfast to show reason why, even with one bedroom, they should not have accessibility facilities. Some were requiring, where there were three, there be an automatic requirement that at least one be accessible. That other bit of research added something—

CHAIR—Why is that a problem? I will let Mr Donaldson answer first, and we will come back to you, Mr Small.

Mr Donaldson—There is a wide debate that is current that ministers responsible for the building code and the Commonwealth minister responsible for the Building Ministers Forum have identified, and that is the question of the impact of the 700 councils in Australia—not just in this area but more broadly—intervening in the marketplace and imposing, through planning laws and other ordinances, requirements over and above the building code. That is seen to be a problem. It is a problem because of the lack of certainty around that, along the lines that Michael has mentioned, but also from the point of view of trying to get some consistency across the nation about the way in which you would have an industry operating to deliver particular designs, particular products and the sorts of costs associated with that. We have done work on this and we have been able to identify costs imposed on the construction of buildings in this country of the order of two to 14 per cent over and above the national standard.

CHAIR—By additional planning controls?

Mr Donaldson—Yes.

CHAIR—That is not confined to the accessibility area?

Mr Donaldson—No, not at all. It is a far wider reach than that, because there is a tension to some extent between planning law and building law. I am sure you are more familiar than I am, Chairman, with that from your practice and experience. But there is a legitimate role for both and governments need—and there is work in progress through local government and the Planning Ministers Council—to delineate more effectively the appropriate roles of planning and building. The building code, to capture the national approach to minimum standards, is where these things should fall from a wider policy perspective. The notion of a BCA aligned to the DDA in relation to these matters would seem to assist in that particular direction in this area, and we would strongly support that from a practical point of view, trying to manage building regulations and their impact on the community in terms of costs.

CHAIR—To remind us, you spoke to us about this earlier in the inquiry, Mr Donaldson, and that was helpful.

Mr Donaldson—I probably have, yes.

CHAIR—But this is at a COAG level, something that is the subject of agreement at the moment. It has not been legislated on, this desirability of not including building type requirements within planning controls.

Mr Donaldson—It has not been decided on by COAG, but it is before the COAG processes, because at least two ministerial council forums are engaged in finding solutions to that issue, yes.

CHAIR—We will try and bear that in mind, and it is helpful to be aware that we are working in a wider context here—

Mr Donaldson—Yes, I appreciate that.

CHAIR—within which these accessibility standards fit. Does anyone else want to comment about the class 1b point? No? We will move on. In relation to fit-out in premises other than buildings, the Disability Discrimination Act gives a very broad meaning to ‘premises’. It is described as:

(a) a structure, building, aircraft, vehicle or vessel; and

(b) a place (whether enclosed or built on or not);

That definition can obviously apply to any aspect of a building; it can apply to parkland. The draft standards that we have before us do not apply to parkland; they apply to what traditionally are conceived as buildings. The consequence that has been drawn to our attention in a lot of submissions is that fit-out issues—the heights of counters and those sorts of things—are not the subject of the standards. Other Disability Discrimination Act regulated issues like widths of footpaths, surfaces of footpaths and the like also are not covered by these standards.

Does anyone want to comment on the several submissions that we received which were to the effect that the standards should be extended to apply to the fit-out and should apply to a broader range of 'premises', in the sense that that word is used in the Disability Discrimination Act? I would point out, before throwing it open to comment, that quite a lot of the submissions noted the issue but accepted that now was not the time and that the standard should be allowed to go forward. However, they flagged this very much as an issue for further consideration. Commissioner?

Mr Innes—There are two broad reasons. The first is that this piece of work was done to achieve uniformity with the Building Code of Australia. So where the standards would go was prescribed by the narrower piece of regulation, which was the building code which applied to buildings in that stricter sense. We have all been aware that the broader fit-out within premises and outside, in parklands, is an area that the DDA covers and where there may well be a need for future regulation. The second reason was that the aim was to bite off a piece of work that could be chewed, and it has taken us 10 years to chew it.

CHAIR—There may be other reasons for that, Commissioner. It might not be just to do with the bite-sizeness of the work.

Mr Innes—No, that is true, but there was a logic in having this tranche of work guided by the limitations of the building code. The commission absolutely agrees with the assertion that work in the area of fit-out in the broader premises is the next step.

CHAIR—Mr Donaldson, did you want to say something about this?

Mr Donaldson—I certainly agree with Commissioner Innes about the reasons why. Life safety, focus on the fabric, health, and fit-out issues are only relevant in the context of OH&S considerations. OH&S considerations are outside of the BCA. So our chunk of focus is non-OH&S. That may be an explanation why historically the building code has not touched on that. Kevin, is that a reasonable proposition?

Mr Newhouse—Yes, and also because things like counters, furniture, and internal fittings change over the life of the building and do not necessarily need any sort of building approval or are not interrogated for their compliance with the building code. The building code has never dealt with those issues. As Commissioner Innes said, the task given to the Building Access Policy Committee was to develop provisions that fell within, firstly, the remit of the DDA, obviously, and, secondly, the remit of the Building Code of Australia. So that is the work that we have done.

CHAIR—So this is an issue that, in a sense, is dictated to some extent by the scope of the code rather than some of these other scope issues which are about the scope of the act.

Mr Newhouse—Yes.

Mr Small—For my sins, the commissioner has asked that one of my next pieces of work be to focus on fit-out issues and the broader premises—parklands, barbecue areas, footpaths and so on. We have already issued some guidance in many of those areas. Standards Australia has been working on a fit-out standard, which is one of the things that we want to look at next. We would

certainly want to work with Standards Australia and other interested bodies to look at how we might develop that work up to be able to offer some clearer guidance to people who manage and are responsible for services operating out of buildings. It may well be that sometime in the future an addition to the premises standard might be considered, but I think that is quite some way off.

CHAIR—Thank you for that indication.

Mr Fox—I would offer a reminder, too, about the history. The power to make standards with respect to premises, of course, was only introduced into the act in 2000 and this process of review and consideration began in 2001, effectively. Again echoing and supporting the comments of Commissioner Innes, the government certainly does not rule out—naturally, because the legislation does not—these broader areas of coverage, but in a sense there is a need to start somewhere. There is a certain logic in the support that might be garnered from the property industry and those who are responsible for the creation of these developments in terms of the advantages to them from certainty in their liability under the DDA and compliance with the building code. There is a logic to containing this first tranche of standards within that framework so that it has something to offer the parties that are involved and that it is able to be in some sense assessed, reviewed and considered on its merits as a single entity.

CHAIR—Thank you. I am going to move to the next topic, which is this notion of whether or not access consultants should be somehow referred to in the standard. At the moment the standard has got responsibilities that apply to building certifiers, building developers and building managers, who are all required to ensure compliance with the standard. We have had a number of submissions—not all from access consultants—that suggest that access consultants should be expressly added to the class of persons with responsibilities under the standard.

As I understand it, ‘access consultant’ is a relatively new field of expertise and one that is contributing greatly to this area. There are professional bodies that have been created for access consultants which do not have statutory force but are established bodies and it does seem to be a recognised field. Does anyone have a comment to make on whether or not it would be possible for the standards to refer expressly to that class of expert, or whether it should? Mr Small, jump in.

Mr Small—No-one else seems to want to jump in, so I will. Part 2.2(3) describes ‘responsible people’ as being ‘a building developer’ and it then gives examples. It says:

A *building developer*, for a relevant building, is a person with responsibility for, or control over, its design or construction.

The examples include designers, architects, builders and project managers. It would seem to me that, just in terms of a space where access consultants might be identified, it would be under that heading. However, I think that there is a difficulty here, and part of that is that, as you noted, there is currently no formally accredited profession of access consultants. It is, essentially, a person who puts their hand up and says, ‘I have this experience and therefore I qualify to have that title,’ and I am not sure that those access consultants actually do have ‘control over’. I think they offer advice.

CHAIR—I do see designers there, though. While designers probably would like to have control, they often do not. It is much more often the owner that has real control over what happens.

Mr Jumpertz—As Mr Small has indicated, it is an emerging profession and there is no accreditation. The range of categories that have been listed within the standard implies a degree of professional qualification and indemnity type, insurance related coverage. If you broadened the category to include access consultants, I am not 100 per cent sure what sort of legal requirement that would then place on those particular consultants and what it might mean with regard to their own liabilities. I do not know whether that has been thought through in some of the submissions that have come to you from access consultants, but in the main I think that was one of the reasons why it was limited to those particular areas, because there is a degree of accreditation of professional bodies, and some degree of responsibility, in that the people who are signing off on these things will be the ones that, if there is a complaint lodged, will have to respond to those particular issues.

Mr Small—I am not sure whether I am retracting what I said earlier, but I would just observe that under section 122 of the DDA, access consultants could be subject to a complaint if they ‘aided or permitted another person to do an act’. ‘Aided’ is perhaps the relevant part. So, on the basis that perhaps an access consultant performing their role in relation to a building might possibly be captured under section 122 of the DDA, a similar liability might be considered in relation to their role under the standards.

Mr Fox—To endorse the comments of Mr Jumpertz, firstly I would say that these have had some period of development. ‘Access consultant’ certainly is a new concept and the profession is being developed almost as we speak. There is also, I think, an issue of looking to the words of the provision rather than the specific examples that are listed there. I noticed that the examples use ‘could be’ rather than ‘are’ and it is ‘a person with responsibility for, or control over, its design or construction’.

Firstly, it is possible perhaps that an access consultant is included within 2.2(3) already, if they are indeed a person with responsibility for, or control over, the design or construction. The examples are only examples; they are not a list. Secondly, a person who is a building developer must be ‘a person with responsibility for, or control over, its design or construction’. I think it is an open question whether or not an access consultant would have that level of power within the arrangements for the construction of a building.

CHAIR—That is quite a good point you make, Mr Fox: these are intended in the standard to be a range of examples. It is not offered as a definitive list of those persons who are to be regarded as persons with responsibility, so it is going to be a factual question.

Moving along, because I am conscious of the time, the next point relates to the slightly different obligations that the standards impose on new as against existing buildings. Generally speaking, the standards ask for new buildings to comply in their entirety with the standard, whereas, subject to unjustifiable hardship claims or exemptions, for existing buildings it is only the affected part that is said to be subject to the standard, defined as the part of the building to which the building approval applies:

(i) the principal pedestrian entrance to the building; and

(ii) any part of the building that is necessary to provide a continuous accessible path of travel from the entrance to the new part of the building.

Again, there are a number of concessions for existing buildings, including the lessee concession, the lift concession and the toilet concession, and probably you could say the unjustifiable hardship exemption is more likely to apply to existing buildings than to a new building. We have had evidence from a number of witnesses who suggested that the greatest cost arising from the standards relates to upgrades of existing buildings, rather than new buildings, and that a greater differentiation between new and existing buildings in the standards would have allowed more stringent requirements to be applied to new buildings, while maintaining current standards for existing buildings. That leads to a question that some of you might be able to comment on as to how the benefit-cost ratio might differ for new as against existing buildings. The submissions did not go to this as much as we might have hoped. Does anyone want to comment?

Mr Jumpertz—Mr Chairman, the 2004 RIS and the current RIS: it is indicative that 25 per cent of the cost, I think, is wrapped up in new buildings and 75 per cent relates to refurbishment of existing buildings. The range of concessions and exemptions that were introduced post the 2004 draft did go ahead and reduce the overall cost from about \$26 billion down to approximately \$10 billion, but, as you have heard in evidence quite regularly, no-one seems to have a real problem with new buildings; all the cost component is in the existing building stock and the refurbishment of those buildings.

CHAIR—Could the standard be differently drawn so as to impose different accessibility requirements for new as against refurbished buildings? It is not at the moment, other than as to scope. Mr Fox?

Mr Fox—Undoubtedly it could. I think the question really is about trying to examine the history of the process and understand or give some weight to that history in terms of it being a set of negotiations that were designed to not walk away from but certainly ameliorate the cost impact of that 2004 proposal, to respond to that concern that there was too heavy a cost as opposed to the benefit, and to deal with that in a way which still provided the core of access which would be broadly acceptable to carry forward the process of providing better access for people with disabilities. So I think the answer is yes, but there is a history of negotiation to take account of and give some weight to in your deliberations, I would submit.

CHAIR—I am going to move to this whole different area of concessions and exemptions, and start with the small buildings requirement. Again, this is a matter that we had a lot of submissions about, questioning whether or not the 200 square metre threshold should be less—some people said it should be greater; whether such buildings should be exempted from all accessibility requirements or just the most expensive—lifts and ramps, those sorts of things; and we had another group of submissions which were focused on the use to which small buildings are put, suggesting that there ought to be differential treatment for small buildings that are used for medical practices or solicitors' offices or government services and that they should not be exempted. Is anyone prepared to explain—and we had an explanation for this offered at the Sydney hearing, which you may recall, Mr Jumpertz, because you were there—why the 200

square metres was chosen as the threshold for this exemption? You do not need to repeat the offering of the Sydney hearing!

Mr Jumpertz—It is fair to say that it was a pragmatic decision. A line had to be drawn somewhere and a decision was taken that the 200 square metre threshold was appropriate. Obviously, there were a range of views either side of that particular threshold, with some in industry wanting a significantly larger threshold and others from the disability sector wanting a smaller threshold, but in the end 200 square metres was the threshold that was determined.

CHAIR—Is it possible to get any feel for what the impact would be of increasing or decreasing the threshold, say to 100 square metres one way or 300 square metres the other?

Mr Jumpertz—I do not think so. It is very difficult to get that from building approvals type data, with respect to the size of buildings and their respective storeys, let alone their floor area. It is probably going to have to be a guesstimate if someone does that. It would probably have to be done through some form of representative sample type approach.

Mr Innes—There is the work that we did, and the photo essay, which the commission has, I think, made available to the committee.

CHAIR—You have, and that was a very small sample.

Mr Innes—It is a small sample.

CHAIR—It was a sample based piece of work.

Mr Innes—Yes.

CHAIR—It was helpful, because we did not have much else.

Mr Innes—Yes, and that is the problem, but I just did not want to give the idea that there was no work at all. You are right, it is a small sample, but from our knowledge of suburban and rural Australia it is a quite representative sample. It would be always better to have a broader coverage of research, but that is what we were able to do.

CHAIR—Anyway, the research is not there at the moment that would enable a good estimate to be made of the cost impact of increasing or decreasing the threshold?

Mr Small—Might I just add a little bit to that. You will remember in our photo essay we did use the figure 200 square metres as a benchmark, as a reference point. We did that well before the government proposed 200 square metres as the solution. It just happened to be the figure we picked. The only thing I want to add to that is that, assuming we have two storeys, 200 square metres downstairs and 200 square metres upstairs, the relative cost of providing access in that basic building when we first did this exercise was based on figures that we got from the ACT government about square metreage cost of class 5 or class 6 buildings, and the figure that we used at that time was that there was an average of \$1,200 per square metre for those types of buildings. When we multiplied that up, that therefore suggested that a basic building of 400 square metres would cost around \$480,000 to \$500,000, and a stairway platform lift \$40,000 to

\$50,000. We were talking about around 10 per cent additional cost to provide that access, which is, you may remember, significantly less than the 15 per cent that the Property Council was suggesting as a cut-off point.

I have since then got new figures from Reed Construction Data, which I understand is probably the most authoritative costing resource in relation to construction. Their most recent figures are very complex, but I think they are suggesting that a more appropriate figure would be about \$1,800 to \$2,000 per square metre for those types of two-storey buildings, and I would like to table that data here today. When we use those figures, the cost of a 400 square metre class 5 or class 6 building goes up to around \$720,000 to \$750,000, so the relative cost of providing access to the upper floor in that building moves from around 10 per cent to six or seven per cent.

CHAIR—Nevertheless, it is still a substantial sum.

Mr Small—It is a substantial sum, but I offer that information simply to question any need to increase the concession in relation to small buildings.

Mr PERRETT—Mr Small, was that figure for new tenancies?

Mr Small—New buildings.

Mr PERRETT—For new buildings?

Mr Small—Yes.

CHAIR—On this question of lifts, a lift is often identified as the biggest single cost for a two-storey small building. But it leads to the question of why the standard exempts small buildings from all accessibility requirements. Would it be possible for the standard to exempt buildings from the requirement for a lift but nevertheless impose some lesser requirements about tactile ground surfaces or handrails—some kind of accessibility requirement that everyone would accept is not going to massively add to cost?

Mr PERRETT—But also be significantly beneficial.

CHAIR—But be useful.

Commissioner Innes—The short answer is, yes, it would be possible for the standard to do that.

Mr Jumpertz—Mr Chairman, I have a point of clarification. I think you are just referring to the upper floors of small buildings, because the ground floor will always be accessible.

CHAIR—Understood. It is just that the submissions that focused on this issue very often used the cost of a lift as a real barrier and a real imposition on what we all understand to be very small businesses in the scheme of things. Being suddenly hit with a \$50,000 additional cost in the construction of a relatively small building that is going to house a relatively small business is a real imposition, whereas putting in handrails or tactile ground surface indicators is not nearly such a big imposition.

I am trying to get at why it is that the standard offers a complete exemption for buildings below the threshold. Would it be technically possible to write the standard in such a way that it exempted buildings from identifiable large-cost items, if I can put it that way, or identifiable larger impositions? It may be that it is not. It may be that there are definitional problems about describing the level of requirement. Alternatively, I can imagine a standard that did not so much exempt by reference to individual things but said it is exempt 'but for' and then put back those parts that are seen to be cheaper and understood to be cheaper. Mr Fox?

Mr Fox—Mr Chairman, the question that immediately occurs to me is the extent to which making some provision for access then provides a complete answer to a claim under section 23 of the DDA. I was not involved in the process, but it may be that some thought was given to whether or not it was better to leave the whole of the area subject to a general complaints regime under section 23.

CHAIR—Stopping you there, that will be the position. If the small buildings exemption is continued in these standards, then all small buildings will continue to be subject to the complaints regime. No?

Ms Antone—No.

CHAIR—Not at all?

Mr Newhouse—In respect of the 200 square metre concession, if you are under the trigger you are protected from a complaint.

CHAIR—You are protected from a complaint.

Mr Newhouse—But that is different to the situation of how small 1b buildings are dealt with where. If you are under the four-bedroom threshold, you will still be subject to a complaint.

CHAIR—Thank you for the clarification.

Mr Fox—I will withdraw.

CHAIR—So for all purposes it is an exemption, including relieving small buildings of any exposure to a complaint?

Ms Antone—Yes, Mr Chairman. The small building exemption is quite unique. Correct me if I am wrong, anyone at the table. There is kind of a 'covering the field' aspect to it, whereas by contrast, as was mentioned at the other end of the table, the three-bedroom B&B, for instance, would be left to the DDA. So this is a different context, yes.

Mr Innes—The only comment that I will make about that is that there is still the question of section 24 of the act—

Ms Antone—Yes.

Mr Innes—which means that if a dentist, a solicitor or a doctor is providing a service in the upper level of a small building, there will still be a basis for a complaint against the provision of that service, which is not to do with the building; it is to do with the provision of the service. It is not clear how that will play out, but I cannot see that the standard will prevent that section applying. Maybe what that will mean is that a different solution will have to be found—in other words, the service might need to be available somewhere else in an accessible building so it is not going to impact on the building.

Ms Antone—Mr Chairman, I will add to that. Without providing information that conflicts with the commissioner's view on that, there is some doubt on how all that will play out—

Mr Innes—Yes, I agree.

Ms Antone—because the provision in the Disability Discrimination Act that empowers a standard—that makes a standard as forceful as it is—provides that, if a particular act is done in direct compliance with a standard, then, insofar as that act is concerned, it is completely immune from any of the operative provisions in part II of the Disability Discrimination Act. So it is not only okay in terms of access to premises but it is okay in terms of any of the requirements under part II of the act. So it will become a question of whether or not the service provision falls within the particular act that we are looking at.

Mr Innes—Yes, that is right.

Ms Antone—So if access is covered in the service provision, and we purport to cover access in this standard, then that will provide complete immunity, even to a complaint made under the service provision part of the DDA.

Mr Innes—I think we are agreeing.

Ms Antone—Yes.

Mr Innes—It depends on how it plays out.

Ms Antone—That is right.

Mr Innes—It depends on the interpretation.

Mr Small—To come back to your original question, Mr Chair—and I look to my colleagues from the ABCB—it would seem to me that it would be quite easy to rewrite section (f) of clause D3.4 to specifically say that class 5, 6, 7b and 8 buildings that meet those criteria do not have to provide vertical transport of an accessible form, or words to that effect, which would still allow for all of the access features of a stairway, which we have certainly submitted on and I know many other organisations have.

CHAIR—Before leaving this, the other matter that submissions raised about small buildings was this focus on the actual use to which particular small buildings are presently being put, particularly focusing on medical premises, emergency services and health related services. Is it possible for the standard to engage in that way with buildings?

Mr Innes—It is difficult.

CHAIR—That is what I thought you would say.

Mr PERRETT—I wanted a list of services that would not be covered. It sounds like they are the types of businesses we are talking about.

CHAIR—It raises the same problem we were discussing about change of use in relation to serviced apartments.

Mr Innes—However, it is fair to say that there are places in the world that have taken that approach. New Zealand has done exactly that. So it is not impossible, but it is difficult.

Mr Ryan—With the case of New Zealand, their regulatory environment is substantially different to what we have here. We did look at that and it is somewhat problematic because the essential services are listed inside the building regulation. These essential services are regulated here under our planning regulations. So you are looking at two or three different regulatory environments in a federal system, at state, territory and Commonwealth level, to all line up. So there are some significant administrative issues attached to it.

CHAIR—Thanks for that indication. Moving on, clause D3.4 of the code lists a whole range of exemptions, including areas used only for maintenance or raw and hazardous materials, upper floors of warehouses used for wholesale or logistic distribution purposes and plant rooms.

We have had submissions that focus on the suggested effect of that exemption, which will be to create discrimination in employment: it will create a problem for people with disabilities, in that they will be excluded from a number of areas at workplaces in which they can safely work. We have had, again, a range of submissions, going from removing the exemptions entirely or limited to areas that simply cannot be made accessible—lighthouses were offered as an example—or for there to be consideration on a case-by-case basis, or to replace the presently drafted exemption with something that focuses on simply a clear health and safety risk to persons with disabilities. I was wondering if I could have comment on that range of submissions we received about clause D3.4. I hope I have done justice to the arguments that have been put forward.

Mr Newhouse—In the BCA, the current provision states that access is not required to an area if access would be inappropriate because of the particular purpose for which the area is used. It is basically a subjective performance type statement. Through the process of reviewing those provisions, practitioners identified that it was very difficult to actually identify when that occurred, so they were looking for more certainty, and the list that we now have under D3.4 was a negotiated set of areas worked on through BAPC to identify those areas that were thought to be inappropriate, as the previous intent of the clause stated. Whether we have got them right or not is another matter, of course, but that was the outcome of those negotiations.

Mr PERRETT—That was negotiation with a big group?

Mr Newhouse—Yes, the Building Access Policy Committee.

CHAIR—To be very specific, why should a bunded area be exempted?

Mr Newhouse—Bunded areas can make it very difficult to allow, for example, wheelchair access without compromising the purpose for having the bunding there in the first place.

CHAIR—So you can't get wheelchair access and make the bund work, in effect?

Mr Newhouse—You probably could, but it would be very difficult. Effectively, what you would have to have would be a ramp in all areas where the bunding is, rather than simply a raised area to contain liquids or spills and so on.

Mr PERRETT—So the bund is not an aesthetic thing; it is actually a functional bund?

Mr Newhouse—Yes.

Mr PERRETT—That is the presumption.

CHAIR—In oil refineries and places like that.

Mr Newhouse—Yes. Dangerous goods legislation, for example, requires certain areas to be bunded to contain spills.

Mr PERRETT—Yes, and mining areas use it a lot as well.

Mr Newhouse—Yes.

Mr Small—Mr Chair, from memory, one of the particular issues that the disability sector were concerned about was obviously the potential for exclusion from employment opportunities in places like behind a bar and so on.

CHAIR—Yes, and readily understandable examples were given of disabled people in management positions needing to have access to just these spaces, even if they themselves might not be physically working in the space.

Mr Small—That is right. In particular, item (d) came up time and time again, which is the upper floor of a warehouse used solely for wholesale and/or logistic distribution. Someone might rather cynically put forward a notion that the office staff are involved in logistics and distribution issues, therefore we do not need to make that area accessible, and areas like that may change use from time to time and move from being a pure storage area to something which is much more public and open. I am not quite sure where I am going with this—

CHAIR—You have made it sound pretty difficult.

Mr Small—other than to say that we certainly have some sympathy with the idea that this list, in trying to give greater surety to industry, which was the plan, may in some places have overstated it.

CHAIR—Mr Fox.

Mr Fox—Mr Chairman, the only other comment I could make is that, yes, while there is not a direct correlation, some effort could be said to have been engaged in, in this list of exemptions, to pre-chart what might be the basis of an unjustifiable hardship claim. To the extent that you could argue that some of these areas could not be the subject of a successful claim or might be defended on the basis of unjustifiable hardship, the list provides, if you like, a pre-determination of that issue.

CHAIR—And it is, as I understood from Mr Newhouse, driven by a desire for certainty.

Mr Fox—Yes.

CHAIR—That is the reason why they read the way they do. I will move on from there and go to unjustifiable hardship. It is a very lengthy provision that appears in section 4.1 of the standard. I suppose I could summarise the submissions by saying that there was a fair degree of acceptance of this provision, but there have been a few criticisms expressed, notably as to the particular factors listed that are to be taken into account. 4.1(3)(k) is one that was picked out—that is the loss of heritage values; the regional or remote location, which is 4.1(3)(f); and the ability to achieve compliance by less onerous means, which is 4.1(3)(l). Is anyone prepared to comment on why regional or remote location should be included as a geographic factor?

Mr Innes—Mr Small can assist the committee with that. There is some history to that.

CHAIR—Thank you. You are really rolling, Mr Small!

Mr PERRETT—Could I say I am particularly interested, as a Queenslander, which is the most decentralised state.

CHAIR—Sure.

Mr Small—I will pass the baton to Mr Newhouse in a moment, but my memory of the discussion around the Building Access Policy Committee table on this issue was influenced by some discussions that I had, along with Kevin's predecessor Matthew McDonald, with members of the tourism industry in Jindabyne, in the snow country. The message we came back from those meetings with was that because of, in this case, snow and ice—some features which are unique to a particular area—it may well be that some of the requirements pose a particular problem. For example, a ski lodge may have three entrances, but for seven months of the year two of them are only usable if you are coming in on skis. There were some questions about the number of entrances there needed to be on an accessible path of travel.

When we came back with that information, we sought to write into the unjustifiable hardship provisions some way of recognising that. When this was being drafted, there was no intention whatsoever to imply that there would be two Australias, that simply being in a remote or rural part of Australia in itself justified any lesser levels of accessibility. It may well be that the words are clumsy in that particular section.

CHAIR—Our question would be: why isn't it picked up by (a)—which is the cost consideration—sufficiently, avoiding sending whatever message might be sent by reference to 'regional or remote location'.

Mr Small—Indeed. I acknowledge that. All I can say is that we were influenced by the vigour of the ski field operators. They particularly wanted something which recognised their potential problems.

Mr ANDREWS—Why wouldn't some description of 'peculiar environmental factors' or something like that be a more accurate way of putting it?

Mr Small—In fact, it would seem to me that (f) is okay if you just took out 'regional or remote location'.

Mr ANDREWS—As I understand what you are saying, it is not intended to quite have the reach that the present words might imply. You do not tick that off just because you live in Queensland, Mr Perrett.

Mr PERRETT—No.

Ms NEAL—Or the Central Coast.

Mr PERRETT—That is right.

CHAIR—Moving to the other one I mentioned, the heritage one, perhaps this reflects my professional background, but what is the significance of differentiating between essential and incidental features of a heritage building? I ask that because, if we are concerned to devise a standard that gives certainty, use of quintessentially subjective terms like 'essential' or 'incidental' as a differentiator between features of a heritage building does not really do it.

Mr Innes—As you might appreciate, there was a great deal of energy from the heritage lobby in terms of the development of these standards, and the Human Rights Commission takes a fairly robust view in regard to heritage issues because we think that the needs of people ought to trump the needs of buildings, but this was the compromise: to make some reference to heritage in the unjustifiable hardship provision. The term was used to minimise the chances that heritage aspects might have of diminishing access. I do not think I can give a much better explanation than that. I share your concern.

Mr ANDREWS—Can you give an example, Commissioner Innes, of what is essential versus what is incidental?

Mr Small—I can.

Mr Innes—Good, because my example would be fairly guarded, in the sense that I do not rate heritage highly, as against people.

Mr Small—There are a couple of examples that I have actually had some connection with. One was where arguably—and it was certainly the technical advice that we were given—to

provide access to a particular old family home, which is now a heritage tourist centre, through the principal public entrance where everyone else accessed would require the destruction of part of the doorway and part of the balustrade around—the landing around—which was a particularly unique feature of this type of building—certainly unique in that area. That was regarded as an essential part of the building.

However, a separate one—and this was an example from Armidale, if I remember rightly—was an old teachers centre, where again there was a question about providing access through the path that everyone else without a disability got access, and the only way to do that was to create a ramped area which ran up in front of the balcony area of this particular building, which was already protected from vision by a set of trees that had been there for 50 or 60 years. Arguably, there was already something there which was impinging on the visual importance of this building and the ramp would have added another visual element to it. The argument was that, because there were already other visual blockages there, the ramp would be incidental.

Mr ANDREWS—To take another example, to build a ramp up the front steps of Parliament House in Victoria might be regarded as impinging on the essential character of that building.

Mr Small—Yes, indeed.

Mr ANDREWS—But to put an entrance at the side could be regarded as incidental.

Mr Small—Yes.

Mr Ryan—To support that notion further, buildings are either heritage because of the actual architectural value that they have, because they are unique, or because of some event that may have taken place in the building, like the building at Appomattox in the US where the Civil War ended.

CHAIR—Or some person who lived in the building.

Mr Ryan—Yes. I think the degree of being essential and incidental is that, by having to make changes to the building to make it accessible, you are affecting it. If the building is heritage because somebody lived in it, then it would be incidental. The building would essentially still be there. But if it is a heritage building because of its architectural and aesthetic value, then it is an essential feature of the building.

With the unjustifiable hardship provisions, the list itself may appear long. It was modelled on the public transport standards. The remote and regional are not included in those. The premises standards contain a benefit in their own right, just by their existence and by the DDA. The unjustifiable hardship provisions that are specifically listed act more as a check list so that people from the disability community or building owners can see how they might claim unjustifiable hardship, but it is not a prescriptive list in the sense that, ‘I can tick this box.’ You still have to make a case against the particular issue.

Ms NEAL—So it is illustrative rather than prescriptive?

Mr Ryan—Yes, that is right.

CHAIR—Thank you. We are going to take a short break so that people can stretch their legs. Thanks for everyone's efforts so far.

Proceedings suspended from 1.56 pm to 2.05 pm

CHAIR—I want to start by asking about the provision for review of the standards, about which we have had quite a number of submissions. A lot of the submissions identified problems that have been experienced with the review of the transport standards. Would anyone care to offer a comment as to why the review of the transport standards has not yet been released? If no-one wants to comment because it is going to hurt people's feelings, then I will ask a different question. What has been learnt from the review of the transport standards, about the way in which this might be provided for or what might be a better procedure?

Mr Innes—The first thing that has been learned is that there needs to be an end date rather than a commencement date for the review, and that was in our submission. The second thing that has been learned is that a review in the broad without some greater specificity is not going to give the most effective assessment that could be gained of the standards. The third thing that I would say is that there is a clear need for the areas in which data collection is to occur to be indicated so that that can be occurring earlier in the process. The fourth thing is that it would be very helpful to have specific areas for the review to focus on.

CHAIR—Commissioner Innes, how will the review of the premises standard be conducted? What is going to be done to collect baseline data? Perhaps I am asking the wrong person. This is the advantage of a roundtable process.

Mr Fox—There is no exact science associated with the undertaking of the reviews. With the transport standards, there was an attempt to garner views and understand better the progress that had been made in relation to both the implementation of the standards and the experiences that people had as users of the services that had been provided by the public transport operators.

The review itself tends to have a consultation aspect to it, an element of consideration of the impact of the standards in terms of the scale and quantity of buildings that would be made more accessible and the speed at which the implementation had occurred in terms of new buildings and existing upgrades.

CHAIR—Would it be by self-reporting or would you send out a survey? How do you do the transport one?

Mr Fox—The transport one was not actually conducted by the Attorney-General's Department. It was conducted by the transport department, who then engaged Allen Consulting as a private consultant to undertake it, and a number of questionnaires were developed in relation to that, but as far as I am aware there is no determined methodology for undertaking these reviews. The standards themselves are, of course, new. The education standards were only introduced in 2004. So, except to the extent that there is obviously an attempt to pursue this in a logical and consistent fashion, there is no criterion that we are required to observe, other than adequate assessment. Adequate data is sought to be obtained, and explanations of why that data does not exist, if it does not exist, is necessary in order to justify the analysis or the outcomes.

That has been one issue, I think, with the transport standards. Because of various delays, the data that was collected early in the review process has dated. The head is sort of almost around where the tail is, in that the conclusions that one could draw from the data are outdated because there is new data or potentially more data available, which is not, of course, collected, and so you then spend more time collecting the data and find that you are still behind in terms of what the situation is.

The short answer is that there is no clear methodology that has been developed at this point in time. I am not sure that it would be easy to accurately identify ahead of time what data would be available and be able to be collected in an effective fashion. In terms of putting an end point on the collection of that data and the writing of the report, I think it is for the government to make a decision about whether it wishes to place itself under that constraint, but obviously it is a matter for the committee to consider.

CHAIR—I take it from that last comment that you understand the arguments that have been put forward as to why an end date is appropriate or may be appropriate?

Mr Fox—Absolutely. It is an instruction from the legislature, in effect, although it is, in some senses, the executive giving itself an instruction to complete something by a particular time.

Ms Antone—Mr Chair, I might add to that, if I may.

CHAIR—Yes.

Ms Antone—Firstly, I must say that the government is definitely learning from and has learnt from the transport standard review process. You alluded to that earlier, and you are absolutely right. Secondly, I can shed light on a couple of things in particular that we have learnt. They are not only the end date question but also the commencement date question. There was some contention as to the interpretation of the review provisions in the transport standard and whether they meant we were supposed to commence the review within five years or after five years, and there were quite disparate views on even the commencement, not just the end, so we have noted that and we are keeping that in mind for the next review process.

Another aspect is delineating exactly what needs to be recorded from an early stage. As Mr Fox has pointed out, it is difficult to say before we even finalise the standards exactly what those parameters will be, but we have learnt that there needs to be some articulation of what needs to be recorded because, under the transport standards, one of the issues that was identified was that each jurisdiction was doing its own recording and reporting, and the recording from each of the jurisdictions was quite disparate. We were getting data from some jurisdictions and a very different dataset from other jurisdictions because of the way in which it was being recorded. There are a number of factors that we are learning from, and this was the first review of a disability standard, I must add, so it is not that we are ignoring that issue. The government certainly has kept that in mind.

CHAIR—Thanks for that.

Ms NEAL—Following on from that, what are the essential requirements of the review? Is it looking to see if there is something wrong with its operation or is it seeing where it can be improved or where it can be extended to fruitfully?

Mr Small—Can I offer my view on that question? It seems to us—and we have said this, in some ways, in our submission—that we are looking for a number of outcomes from a review. One is to assess whether the premises standard and its ‘deemed to satisfy’ technical references are actually being implemented. That, it seems to me, can only be done by sample audits. The question then is: who does those sample audits, what number, and in what range of buildings do those audits take place? So we need to find out whether there is actual accurate application of the standards themselves.

We need to know whether the concern about the standards stifling creative alternative solutions has any reality, so we need to look at whether or not alternative solutions to the ‘deemed to satisfy’ provision are being used, and we need to know whether the questions that are taken to access panels, if they are established, reflect particular interpretive problems and identify particularly onerous demands, particularly on existing building owners and operators.

That seems to be the information we need to collect, and the reason we need to collect it, I think, is that we need to give confidence to the disability community that the standard is working for them. We need to allow the professions, through the review, to identify areas where they need to supplement training information and professional development for their professional members, because problems in implementation will come out. Finally, the benefit for industry is that they will, through that review process and monitoring, be able to identify areas where their concerns are shown to be correct. As a result, if they can justify that their concerns are correct, then some changes can be made.

What Rachel and Stephen said about the things that we have learnt from the transport standard review makes me feel even stronger about appealing to this committee to recommend that some significant work take place prior to the premises standard being formalised, in discussions with ABCB, who I think are in the best position to identify how to collect that data and to identify what resources are needed to do so. We would argue strongly that that work needs to be done immediately.

Mr Fox—The base question that the review would need to ask is whether or not it has achieved the objects of the standard, and I know you have some questions on that to come, or an issue to discuss in relation to that. Has the standard been reasonably achievable? Has it provided cost-effective access to buildings and the facilities and services within them for persons with disabilities? Has it provided the certainty that it is intended to provide? Is it in fact giving effect to the objectives that are the reason for implementing the standards in the first place?

CHAIR—I know Mr Perrett wanted to raise a related question to this, which is really the question of where overall the standard and regulatory regime is heading. So I will hand it to him.

Mr PERRETT—I wanted to refer to the Queensland Anti-Discrimination Act first and in the *Cox v State of Queensland* (1994) where they quote that. In the preamble they say:

(b) the protection of fragile freedoms is best effected by legislation that reflects the aspirations and needs of contemporary society; and

(c) the quality of democratic life is improved by an educated community appreciative and respectful of the dignity and worth of everyone.

So we have got these aspirations in terms of your legislation. Then we have landlords, building owners and the community that want some certainty. But I would suggest—and I am certainly putting it to the committee—that there is the opportunity for the committee to put down some of those aspirations and needs of contemporary society. Rather than looking at all the exemptions and whether it is 14 metres by 14 metres or 14½ metres by 14½ metres or whatever, what are the aspirations that we should be applying for? We should also be attempting to guide our society in what would be best for a contemporary society.

I am certainly supportive of that idea of talking about where society might be going to. If you have seen my comments in the past, I am very persuaded by the UK experience of making all new buildings, with a view to eventually ‘all buildings’, universally accessible. Would Mr Donaldson or anyone like to comment?

Mr Donaldson—I thought that your question was directed to the committee. Perhaps I misunderstood.

CHAIR—No, Mr Perrett is asking for comments from people attending.

Mr Donaldson—Let’s put to one side the question of the DDA’s applicability or not.

Mr PERRETT—Yes.

Mr Donaldson—I am sure you are not focused on that. You are going beyond that and the consensus is—

Mr PERRETT—Our brief is broad enough for us to canvass this, that is for sure. I think that is right.

Mr Donaldson—We are now in the realm of universal access; adaptable housing; the concept of ageing in place; the notion that Australia, like many other nations, is faced with an ageing population, and do we have into the future houses and apartments which are going to meet our needs and the needs of all people, not just people with disabilities? Is that the sort of area?

Mr PERRETT—Yes.

Mr Donaldson—We have done work on all of that. Whilst we are not expert on what has been happening overseas, we certainly keep a close eye on those things. I know that there have been significant policy initiatives in the UK. There have been some in the United States too, but unfortunately they have not really led to significant change. Looking at it from the regulation point of view, you would only ever have to see that as one of the instruments, because a lot of this is about attitudes in the community and awareness of need. Those of the demographic which

is not in need of some of these things might not appreciate that down the track they might need these sorts of services and facilities in their homes, so there is an education issue.

Mr PERRETT—Could I make a point there. I think it is that people are not aware. I never thought about it until I had to push a pram everywhere. I will put my cards on the table: I am mates with Kevin Cocks, so I was aware. But you actually have to push a pram to find out how hard it is to get into some buildings.

Mr Donaldson—Yes. People become aware of this because of their circumstances over time.

Mr PERRETT—Yes.

Mr Donaldson—Whether society needs to respond by way of a regulatory intervention, or whether better awareness of those concerns needs to be inculcated into the education system, or indeed whether governments want to intervene in other ways by encouraging the building industry or councils to provide other forms of assistance to encourage the industry to provide a different level of housing design, there are a whole range of things that might be done. Many of those things, of course, are in the ambit of state governments rather than in the federal government's sphere. I know that a number of state governments have already acted to provide some measure of service above and beyond the minimum standards that apply generally to housing.

Mr PERRETT—And councils as well.

Mr Donaldson—Yes.

Mr PERRETT—I was very impressed with a lot of the submissions.

Mr Donaldson—So I understand. A lot of that goes beyond the building code too, because it goes to the built environment, which is another very important dimension of all of this.

Mr PERRETT—Yes.

Mr Donaldson—My observation is that perhaps the building code is not necessarily the vehicle for the delivery of this sort of intervention in response to this concern. The building code is rather a blunt instrument. There are eight million houses in the country and only 150,000 next year will be subject to the building code, because those eight million houses are already there and it does not apply to the existing built environment. Over time, of course, that accumulates. Hopefully, it will be 250,000 next year.

Ms NEAL—You have to start somewhere.

Mr Donaldson—Yes, we can only hope. It is that sort of order of activity. Within four years, it is a million, so over time it does have an impact, but in the short term we need to think about what we are going to do with the built environment generally, because there are eight million houses that exist out there. It is more than just something like the building code that is going to be relevant.

Ms NEAL—So you are suggesting some sort of policy outcome brought about by carrot rather than regulation or ‘you must do this’ and ‘you must do that’.

Mr Donaldson—It has certainly got to be one of the things that governments think about at state level.

Mr Innes—I agree with what Mr Donaldson says, except to say two things. The first is that, as we said earlier, in particular with reference to housing, we think there needs to be a national plan of action in this area and we have made recommendations. I am happy to make available to the committee the presentation that I made on that two years ago rather than take up time now, because I would welcome the committee recommending that policy be taken in a similar direction. It is action by state and federal governments in this area. The second thing is to recognise what Mr Perrett says: that we broadly have regulation in this area because we have the Disability Discrimination Act and it is a question, to a degree, of assisting to ensure that that regulation becomes the reality. That is what you are talking about.

Ms NEAL—There is the possibility of making policy changes. Looking at something roughly equivalent in New South Wales, one of the LMPs they are looking at is providing the capacity for people to have greater floor space for buildings that provide affordable housing. You can provide that sort of incentive to virtually anything you are aspiring to, including better access for people with disabilities. In the end it does not cost money because the market provides the additional funds for it.

Mr Innes—You will be pleased to hear—I understand this is correct; please correct me if it is not—that there has been a requirement for at least a portion of the public housing funded by the stimulus package to be universally designed to take access requirements into account. I would have liked it to have been all of the public housing to be built. The argument against that, as I understand it, is that the extent of the public housing which Minister Plibersek has announced will be existing stock, which will be purchased, and so they did not want to have to retrofit existing stock. But it is my understanding that that is occurring. There are some initiatives in the wind by state governments. So there is some momentum building, but it needs to continue and it needs to be coordinated nationally. That is why we are looking for a national action plan.

Ms Antone—You mentioned aspirations and articulating aspirations. I would certainly second the commissioner’s comments with respect to the Disability Discrimination Act generally. While it has teeth and it has a remedy built into, it is an aspirational document. I suppose the intention behind developing a standard is to provide a little bit more detail on how it is that aspiration becomes a reality, as the commissioner was saying. I would hasten to add that this instrument is certainly not the be-all and end-all of the requirements for accessibility forevermore. It is just a place to start.

I think possibly, Ms Neal, you touched on this earlier when you mentioned, in the context of review, whether there is possibility for improvement, not just having a look at what is already in a standard. There is no impediment to looking forward. I think also the government has indicated its willingness to embrace these aspirations with its ratification of the Convention on the Rights of Persons with Disabilities, which is an even broader statement to the community and a commitment on behalf of the government, saying, ‘We’re looking forward and we’re looking at progressively implementing and progressively improving’—whether it is access to buildings or

access to anything else or just more generally the inclusion and participation of people with various disabilities in the community.

Mr PERRETT—Some of the shopping centres in Brisbane, for example, have already gone above and beyond. I do not know whether it is the market or the complaints. I am not sure what motivates the shopping centre owners. Is it possible that these new standards might mean that people are not encouraged to go above and beyond? I am arguing the flip side of this.

Mr Innes—I do not know. I feel like we are getting into a world where we are trying to second-guess. I think the reason that places like shopping centres go above and beyond is because developers realise that they want to attract people to those places and people are attracted by wide corridors and good facilities. It is a market-driven thing.

Ms NEAL—Yes, it is risk management. You do not want to spend millions or billions of dollars on a building and then five years down the track they change the requirements and you do not comply.

Mr Innes—That is true.

Mr Donaldson—I should also make the point that one of the qualifications we made in our impact analysis was that we cannot assume that everyone is simply following the building code, and the consequence is that there is a difference between that and what is being introduced, because in here the market is responding.

CHAIR—Yes.

Mr Donaldson—The very existence of the 2004 documentation and an expectation that there was to be a change has probably encouraged some people to reflect on what they are going to be designing into the future anyway, so there has probably been a bit of a linkage into the market.

CHAIR—Good. That was a helpful exchange, because it is important to see the context in which these standards are occurring. I wanted to ask about the interaction with the transport standard, which is part of page 2. It is the case, of course, that the broad premises related aspects of the transport standard have now been incorporated in these premises standards. We have in clause H2.1:

The Deemed-to-Satisfy Provisions of this Part apply to the passenger use areas of a Class 9b building used for public transport.

We have had a number of submissions from state governments and transport groups which raised really technical issues. I would like to first of all ask the general question as to why this course of drafting has been adopted. Why is it that the public transport buildings parts that were in the transport standard have now been incorporated in the premises standard?

Mr Innes—My understanding is that it was felt that it should stay with the logic that buildings are dealt with by the building code, so we were trying, wherever we could, for the building code and the premises standard to mirror each other. There was logic in bringing across those provisions of the transport standards which applied to buildings so that there would be less

confusion. While I am aware of the submissions from the states, I have not seen any detail. I have heard states express the view that there are problems. I am not sure that we have seen too much detail as to what those problems are.

CHAIR—It is clear we are still awaiting a submission from the New South Wales government.

Mr Innes—Yes.

CHAIR—They came and gave some oral evidence about this aspect, and we are proposing to put some formal questions to the RailCorp representatives from New South Wales about this. We are still pursuing the specifics, but I am raising this question with the people assembled here. One of the points put forward was that certain exemptions that exist under the transport standards will no longer be valid under the premises standards. Is that right?

Mr Innes—Only to the extent that of course we cannot grant an exemption under a standard that does not exist.

CHAIR—Good point! That is understood.

Mr Innes—I heard that put and I found it a somewhat fatuous submission really. There is no reason why the people to whom those exemptions are granted could not apply for an exemption under the premises standard when it comes into force. Obviously, without wanting to pre-empt any commission decision, it would be hard to see, without other factors having an effect, why the exemption would not just be rolled across into the premises standard. I just think that is nonsense really.

Ms NEAL—I suspect the concern is that there are a large number of transport premises that do not comply. They have an exemption at the moment and they are frightened that they may not get an exemption again, and will be in serious trouble, since they have no budget provision to upgrade those buildings.

Mr Innes—I think you could well be right, Ms Neal. But if they have an exemption, then all those issues have been taken into account in the granting of that exemption. Exemptions are not normally granted because organisations cannot comply. In other words, the commission has a policy of not granting exemptions for what would be described as unjustifiable hardship. We would normally allow complaints to be lodged and determined by a court. I do not know that there would be too many of that sort of exemption.

The exemptions that are granted are in areas where organisations have said, ‘We can’t do it by following path A but we can do it by following path B,’ and the commission says, ‘Okay, that achieves the objects of the act, so we’ll grant that exemption.’ I can see no reason why you would not move those exemptions across as the premises provisions move across to the premises standard. I do think it is jumping at shadows.

Mr Small—Thinking back to my memory of the discussions on this issue, it was a pretty simple task that we tried to set ourselves, and that was: we have already got a transport standard which covers transport related buildings and we do not want to confuse the building industry or

people responsible for transport related buildings by moving the goalposts and getting them to suddenly start having to comply with the access to premises standards, so what is the easiest way we can try to reassure transport service providers that we are not moving the goalposts? The easiest way of doing it is to simply take from the transport standard everything to do with a transport related building and put it into the access to premises to standards and say very clearly, very emphatically, 'If your building has anything to do with the provision of transport, you follow the transport standards, not the access to premises standards.'

Mr Innes—Moving where the law sits.

Mr Small—Yes.

Mr Innes—In fact, there are some provisions which go further than the premises standards do in other buildings, but the proposed regulation does not wind them back because it recognises that that is what the transport operators have been working with. So it takes that into account.

CHAIR—We are all suffering from a bit of a disadvantage, in that we do not have a submission from the New South Wales government, so I do not know what the detail is of the proposition expressed to us at the hearing in Sydney, which was to the effect that there were contradictions between some of the transport standard provisions and the proposed premises standard provisions. Are any of you aware of any such contradictions? And I hear what Mr Small says about the intention being not to create contradictions—indeed, to prevent contradictions.

Mr Newhouse—Certainly the provisions that we have taken out of the transport standard and put in the premises standard are different to the ones that are in the main body of the premises standard. For example, they refer to different versions of Australian standards.

CHAIR—Can that be made to conform or should it be made to conform?

Mr Newhouse—I understand that the difficulty in doing that is that we are part way through a compliance time frame for transport buildings and those that have met their obligations under those time frames so far would then have to meet new obligations. That was one of the difficulties. The other thing to bear in mind is that the building code applies to transport buildings, so the upgraded provisions that we were to put in the BCA when this process finished would have been in conflict with the transport standard had we not overridden them by transferring that information into the premises standard.

Mr PERRETT—How does that work in operation? When you get off at the bus depot at the shopping centre, is there only a certain distance that you have to walk before the standards do not apply? You can be following the trail with your cane and then all of a sudden it stops and you are in the shopping centre proper? I assume they draw lines. I am not familiar with the transport one.

Mr Small—My memory is that there are a very small number of differences. For example, to my knowledge the only significant circulation space difference is that the transport standard does adopt the A90 circulation space on passageways—that is, they have to be a minimum of 1,200 millimetres wide—whereas the premises standard currently adopts the A80 provision. In reality we do not get buildings suddenly getting smaller or different simply because of the provision.

CHAIR—I will leave that. I want to go to class 3 buildings. In the table to D3.1 we have got accessibility requirements for class 3 buildings. In particular, there is a ratio of accessible rooms required. There are also requirements about access from pedestrian entrances to at least one floor containing sole occupancy units and so on. The submissions raised the ratios and also raised whether the requirement for access to common areas on floors served by ramps or lifts is more stringent than that required for the entrance floor.

Just starting with the ratios, we had from some hotel industry submitters the suggestion that the ratio for accessible rooms that is provided outweighs the current demand, and we had directly contrary submissions from some disability groups, who suggested that the current provisions for accessible rooms are in fact inadequate.

Mr PERRETT—Is it the Property Council or the TTF?

CHAIR—TTF.

Mr PERRETT—One to 300 would be their ratio, wouldn't it?

CHAIR—I am wondering if we can have a suggestion as to how the ratio that is in the standard was arrived at. Is anyone prepared to comment?

Mr Newhouse—The BCA currently has a ratio for accessible rooms in class 3 buildings and, as part of the process of reviewing the provisions, they were looked at to see whether they were adequate. They were changed slightly and the change is more about the trigger point when you have to require an additional room, rather than a wholesale general increase. That proposal was put out for public comment and through that process we got the same sort of feedback that the committee is now getting. Some people thought it was not enough. Some people thought it was too much. But, generally, the consensus through the BAPC process was that we probably got the numbers about right.

Mr PERRETT—Is that based on ABS data or the median from the responses or the mean from the responses, or what? What was the science? Roll a big dice?

Mr Newhouse—Yes to all of the above!

Mr PERRETT—Of course.

Mr Innes—I am sure that there was some assessment of ABS data taken into account. The problem with basing it strictly on ABS data is, of course, that, as with any other community's facility, you get fluctuations in demand, so you cannot just base it on the number of people in the population. For sporting venues, if you based the number of men's and women's toilets strictly on the population division, then you would get it wrong, so you have to take other factors into account.

Mr PERRETT—And they do.

Mr Innes—They do. But you get it more wrong! That is perhaps not the best example. You have to take other factors into account. One of the reasons that there may be underutilisation is

that there is a change in demographic. Disability is increasing, so the numbers will go up. The number of people with disabilities travelling and moving around is probably also increasing and, as people become more confident about the availability of accessible facilities, then they will be utilised more. And there is no reason, apart from reluctance, firstly by the owners and secondly by the guests, why those accessible rooms cannot be used by people who do not have disabilities. It is not as if you are making fewer rooms available in a hotel; they are just slightly differently fitted out.

Mr Small—To give an example of the reality of the situation, I think I am right in saying that for a hotel or motel of, say, 20 or 40 rooms, the increased provision would require one more room, and for a hotel of 200 or 300 rooms, the increased provision would require two more rooms. In terms of physical space, I do not think it is an onerous demand. I do remember that the person from the hotel industry when he gave evidence acknowledged that, whatever the fors and againsts, the industry itself recognises that at the smaller end of the hotel industry there is a need for improvement, and that improvement is from one room to two rooms. That is all that the draft premises standard is requiring.

Mr PERRETT—New rooms?

Mr Small—Yes, new rooms.

Mr PERRETT—Or newly refurbished?

Mr Small—Yes, that is right.

CHAIR—Moving to another matter, we have had controversy in submissions about whether the 90th percentile or the 80th percentile should appropriately be adopted, the 80th percentile being the dimensions that are currently required by the code. I want to ask why it is that the 90th percentile has not been adopted consistently throughout the premises standards.

Mr Small—To my knowledge, the only place where the 90th percentile has not been adopted is on passageways. For every other circulation space area the proposal is for the 90th percentile.

Mr PERRETT—Including loos?

Mr Small—Including toilets and including lifts.

CHAIR—Forgive the question, in that case, because I had certainly formed the impression from quite a number of the submissions that the 90th percentile had not been adopted on a more wholesale basis.

Mr Small—It is only on passageways.

CHAIR—It is there other than in respect of passageways?

Mr Small—In respect of new buildings.

CHAIR—In respect of new buildings and in respect of the refurbishment, it is there.

Mr Small—If the refurbishment area includes doorways and passageways, yes.

CHAIR—What is the reason for not adopting the 90th percentile in respect of passageways?

Mr Small—I believe it was a compromise. The property sector, as you know, have had a consistent objection to that move and it seems to me that in the discussion around the table the compromise was, ‘Well, it’s not often that long, thin corridors are built. If we’re introducing a turning and passing space requirement as well, it’s not going to be a significant hindrance to the disability sector, but at least it is a bit of a compromise to the building industry that that feature can remain.’ In any public movement area of any new building that I have seen in the past 10 years I have had no experience of people sticking to a minimum of one metre wide anyway.

Mr Innes—None of us like narrow corridors, so buildings are built with wider corridors.

CHAIR—Does anyone else want to comment on that? It strikes me that it is a bit smaller an issue than I had apprehended or some of the submissions suggested.

Mr Jumpertz—Except that the 80th percentile will apply to upgrades in existing buildings where they already comply with the relevant 80th percentile standard. The submissions may have been coming at it from that particular angle, under the existing building front as opposed to the new building front.

CHAIR—But presumably there are practical reasons why one is not going to apply wholesale changes.

Mr Jumpertz—If walls are going to move—

CHAIR—If by definition it will require moving walls, possibly even structural walls, yes. If I could move to something I canvassed when we started, which was a couple of issues that are not addressed presently at all by the standards, the first being wayfinding, which quite a number of the submissions mentioned.

We have had submissions to the effect that there should be a commitment to further research on the issue, some to the effect that there should be preservation of the right to make a complaint under the Disability Discrimination Act about absence of wayfinding, and others that suggested there should be more comprehensive signage requirements inserted in the standards right now. First of all, a specific question, and this is probably directed at you, Commissioner and Mr Small: would people with disabilities retain a right to make a complaint under the act in respect of wayfinding if the premises standards came in in their present form—that is, with no reference to wayfinding?

Mr Small—We asked the very question of the committee. Our submission says that we understand and accept why a whole range of wayfinding issues have not been addressed at this point and support a commitment to completing the research and developing some wayfinding deemed to satisfy provisions, but that at this point in time, because we just do not have those solutions, people should retain their right to make complaints in relation to a wayfinding question that is not covered by the signage provision in the premises standards. In our

submission we essentially said, ‘That is our view. We would welcome this committee’s views on whether we’re right.’

Mr Fox—I am going out on a limb here.

CHAIR—That is why we brought you here in a roundtable format. You will not be alone.

Mr Fox—The government’s position in a sense in relation to this whole exercise is that, in addition to the improvement in terms of the disability access, we are looking for certainty. So, to the extent that a wayfinding matter is a matter concerned with premises, the government’s position is that the standards as proposed contain the class of matters that have to be dealt with in terms of wayfinding in order to comply with the standard. To the extent that there are other wayfinding matters that are not concerned with premises, not concerned with the building structure, then they should continue to be the subject of a potential successful complaint and available for complaint.

For example, if you are talking about an argument for some kind of electronic wayfinding, some kinds of devices in addition, which are built into the structure of the building, then compliance with requirements in the premises standards should be a complete answer to a complaint in that respect. But if one is talking about wayfinding with respect to signage which is not fixed to the building and so on, then that could well be the subject of a complaint. We would suggest that is probably where the government sees the distinction that needs to be drawn.

CHAIR—That is helpful. A lot of the submissions seem to suggest that there is a consensus that there is no consensus about wayfinding provision. Indeed, some of the submissions were to the effect that the building control board’s research had reached that position: that there was not yet an agreed set of provisions that could be made. Am I right in thinking that that is why the standard presently does not make provision in detail for wayfinding?

Mr Donaldson—That research goes back prior to 2005, so that was the position at that time. We have done no further work on it, simply because we have been embroiled in this process, but that was the position that we got to at the CRC for Construction Innovation.

CHAIR—The other matter that is not addressed by the standards is emergency egress, for which there is no specific provision. Rather, there is reliance on the general emergency egress provisions in the building code. That generated a lot of concern in submissions that we received and some of the submissions were to the effect that there ought to be improved emergency egress, reference to visual emergency alarms, bed shakers, places of refuge, accessibility in fire stairs and fire rated lifts. Is there any evidence available about efficacy and desirability of visual emergency alarms?

Mr Newhouse—There are currently some Australian standards that deal with this issue. There were not completed standards at the time that these proposals were developed, so the appropriateness of those standards and what they would cost have not been tested through this process yet. That would have to be done, I would think, before any decision was made to include those provisions in the BCA or the premises standards.

CHAIR—Do other countries require such visual emergency alarms outside high-noise environments?

Mr Small—It is my understanding that some types of buildings require that. I know that there is an increased provision of those visual alarm systems which are voluntarily being put into place by developers, but whether that is because of their own initiative or some local requirement I am not sure.

Ms NEAL—Do you just mean the flashing lights that go on the floor?

Mr Small—Yes.

CHAIR—Is this an area a bit like wayfinding, where it is still, to some extent, a work in progress? Are there measures that could immediately be added to the standards in this area of emergency egress?

Mr Donaldson—I do not believe so. One avenue that we have been exploring is the post 9-11 work that had been done by the National Institute of Standards and Technology in Washington. I spoke to them last week because they have come with a whole series of measures—quite significant initiatives—to facilitate emergency egress for people generally. Contrary to some advice you were given, I think in one of the submissions or in a hearing just a few weeks back, and I cannot recall the specific reference—

CHAIR—The Society of Fire Safety Queensland.

Mr Donaldson—I spoke to NIST last week and was told that NIST's recommendations in relation to emergency egress have not been picked up by any jurisdiction in the United States. Indeed, New York City, who you might have thought were somewhat sensitive to this matter, have actually rejected their proposals on the grounds of cost.

Ms NEAL—Don't they require it in Japan?

Mr Donaldson—Required in Japan? The NIST proposals or, generally, other emergency type provisions?

Mr PERRETT—Certainly that wasn't the representation, was it? I was one of the few people there, apart from the gentleman down the end. It was like it was written in stone.

Mr ANDREWS—What he said was that the US is moving towards the use of lifts for emergency evacuation.

Mr Donaldson—'Moving towards' is a very interesting and generalised expression.

Mr PERRETT—Yes. I must admit, the way he presented it was very compelling.

Mr Donaldson—Then it is misleading. There is no doubt the work has been done and there is no doubt they have identified ways in which you can do this. It is very expensive and, indeed,

New York City has said no for those sorts of reasons, I understand. That is directly from NIST last week.

Mr PERRETT—I assume you need your generator to be serviced. There is no point having emergency stand-alone lifts if the generator does not work.

Ms NEAL—You would also have to have steel shafts.

Mr PERRETT—Yes.

Mr Donaldson—I can tell you what the Japanese do. I wonder if you are interested in this.

Ms NEAL—Yes.

Mr Donaldson—I lived there. Because of the earthquakes and the incidence of fire associated with earthquakes, they have an emergency egress facility. It is a canvas cylinder that is pushed out of the window, above seven storeys, and individuals are inserted at the top and slide down, with friction, to the ground. I had one in my own office in Tokyo.

Ms NEAL—Did you ever try it?

Mr Donaldson—I did not ever try it. One of my staff did, but I was not game.

Mr PERRETT—Those Friday fire drills would be fun, wouldn't they!

Mr Innes—I would like to separate out the issues around emergency egress from those around emergency alarms. Subject to some assessment of cost, I would have thought that having visual alarms which replicated audible alarms would not be too difficult to address. If we are talking about lift shafts and other equipment, we are further away from those sorts of things, but I think the committee could look at separating out egress and alarms, because for people who are deaf or have a hearing impairment that could be a key issue, in the same way as tactile ground surface indicators are for people who are blind or have low vision. I am not suggesting that the standards necessarily be held up for that to occur, but I think that is something that could be put on an early action list.

Mr PERRETT—Obviously, for new buildings the cost would be minimal for a flashing light linked to the audible alarm. Some buildings already have them—even, I think, my building. Commissioner Innes, can I ask a slightly personal question. When you come into a building, do you remember very carefully how to get out or are you relying on Mr Small not to run crazily when the alarm goes off?

Mr Small—He doesn't pay me enough for that!

Mr PERRETT—You do not have to answer, but I would be interested.

Mr Innes—Yes. I certainly remember where I have been, in the same way that other people do, although this building is a particularly tricky one. But I would also say that there are deficits

and advantages. If the alarms go off and the lights are not functioning in the building or it is night-time, I would back myself against most of you to be able to get out.

Mr PERRETT—Touche!

CHAIR—I am going to keep asking my specific questions, and I am going to go to fire isolated stairs. D3.3(b) in the document provides that all ramps and stairs must be accessible, except for stairs exempted by clause D3.4 and fire isolated ramps and stairs. What we had in some of the submissions was an argument that that does not adequately protect ambulant people with disabilities and that accessibility requirements such as handrails, tactile ground surface indicators and luminance contrast features should apply on fire stairs. I suppose the question is: why does subclause 3.3(b) of the code exempt fire isolated ramps and stairs from the provision of accessibility requirements?

Mr Newhouse—The current building code provision talks about stairways that are not used by the public not being subject to the accessibility provisions. Once again, this was an attempt to provide some more certainty around that term because practitioners were unaware of what it meant. How do you determine whether a stairway in a building is used by the public or is there for other purposes? Some people had a view that fire isolated stairs were not meant to be used by the public except in emergency egress circumstances, whereas a stair connecting two levels in the middle of a floor obviously would be used by the public in moving between those floors.

CHAIR—So do those submissions rest on a misunderstanding—the ones that said that fire isolated ramps and stairs should have accessibility features?

Mr Newhouse—The current access code does not require them to be provided in those circumstances because they were the ones that were deemed to be not used by the public. The other view that was expressed by some people was that the installation of tactile ground surface indicators on those stairs may be a hazard when people are trying to evacuate under emergency conditions; it might be very crowded and people are not necessarily looking at exactly where they place their feet. Whether that is correct or not is another matter. But, once again, it was simply a matter of trying to codify the concept of when a stair might be used by the public and when it is not.

Mr Innes—To provide a balance to that, the commission would put the view that the arguments put to you are very reasonable and that, whilst they may not be stairs used by the public except for emergency egress, emergency egress would probably be a prime time where you would want the access features for ambulant people with disabilities, and perhaps others who are caused more stress or pressure by the need to evacuate promptly. That was in our submission.

Mr PERRETT—Mr Newhouse, there are campaigns in Queensland saying, ‘Don’t use the lifts, use the stairs,’ especially for office buildings, which might then be the trigger to say that they are public. What was the definition of ‘public’?

Mr Newhouse—That was what practitioners were struggling with under the old clause. In fact, that requirement not to use the lifts in an emergency is a national provision that is required

under the building code: that you have those signs on every lift. The point is that the stairways are primarily there—

CHAIR—Their primary use.

Mr Newhouse—for use in emergencies rather than for general movement within a building during the normal course of occupation.

CHAIR—All right. The lessee concession: this is in 4.3 of the standards and it is a concession in respect of upgrades, where a tenant applies for building approval, presumably on the basis that the entrance and path of travel are not within the tenant's control. It is a concession that extends beyond the lessee to the building owner, the certifier and the architect, and it has been suggested in some submissions that the effect of that concession is to allow building owners to avoid obligations to upgrade buildings and that there might be some different provision that should be made. Does anyone want to offer a view on what the consequences of removing this particular concession would be?

Mr Donaldson—On 27 March I wrote a letter to you explaining the analysis.

CHAIR—Which I have not yet seen.

Mr Donaldson—Which you haven't yet seen? I can rectify that almost immediately. Seeing I have committed that to memory, I do not need it. The last time we appeared you wanted to know whether the question of lessee versus owner upgrades was significant. I have come back with an answer which tells you that we had to make an assumption, because there was an absence of data which would enable us to be definitive about whether it was 60 to 40, 80 to 20, or whatever it was. But we believe that the fifty-fifty analysis suggesting that half is done by tenants and half is done by owners probably results in us, in our RIS, overstating the costs associated with this. At the end of the day all we are doing is delaying it, because ultimately the building is going to be upgraded anyway—or demolished. But anyway, it is going to be upgraded and the owner will be involved in that. So the upgrading of the building will eventually occur.

Mr PERRETT—And the tenant will eventually pay some way.

Mr Donaldson—Yes, of course, because that will be translated into the fees that he pays for services et cetera.

Mr PERRETT—Yes.

Mr Donaldson—The concession translates into ameliorating the costs in the early years of the introduction of the new standards. That is what I think.

CHAIR—So it is a timing question more than anything else?

Mr Donaldson—Yes.

Mr Jumpertz—Gentlemen, you raised the question of if you remove the concession.

CHAIR—Yes.

Mr Jumpertz—The effect would be that, if a tenant undertook a particular range of work that they were responsible for that required a building approval, that would then trigger an obligation on the owner to ensure that the path of travel from the principal entrance to the particular work being conducted would need to be upgraded, which is probably a cost that the owner would not have reasonably foreseen with regard to a short-term obligation that they would have to meet.

CHAIR—I am wondering how big a practical problem it is in fact going to be, though, because under most tenancy arrangements it is not within the power of the tenant to carry out large-scale changes to the building without the landlord's permission. Sometimes you see provisions that say that that permission is not to be unreasonably withheld, but if part of the mix were a triggered obligation on the owner to carry out possibly substantial works, that would be something that would go into the negotiation between the tenant and the landlord as to whether or not these works took place. In other words, on its face it appears to be some major additional burden outside the control of landlords, but in reality it is probably within the control of landlords because of the terms of almost all commercial tenancies that I have ever looked at, which do not leave the tenant free to make up their own mind about what happens to the building fabric.

Mr Ryan—Mr Chair, by way of background, that proposal was put forward by the Property Council of Australia to break a deadlock on how to treat existing buildings during the Disability Access Reference Group. The idea of it was that the assignment of responsibility or who pays should be borne by the person who actually wants it and undertakes the work. Some jurisdictions do not allow building applications to be submitted by tenants. It is only the building owner that can lodge them.

The idea of it was that if, for example, a tenant leases the entire floor of a building and there are sanitary facilities on that floor within his responsibility, then he would be required to upgrade those sanitary facilities, even though at the time there is no accessible path to travel. But after a period of time during the upgrade cycle the owner would provide a link from the front entrance and a path to travel to those upgraded portions. During the Disability Access Reference Group deliberations, it was a fairly major sticking point, as has been the whole issue of existing buildings. There are some concerns within the administrations too, I might add, about how all of that is going to be given effect, because it will be up to the state and territory administrations to enforce compliance with that requirement.

CHAIR—It is helpful, Mr Ryan, to know a bit of background. Thanks for that. We had a few submissions that talked about the use of the word 'dignity' or 'dignified' access, arising in part from the international covenant, but I have got a specific question. In part DP1 there is a performance requirement for access to buildings. A number of submissions focusing directly on this particular provision suggested that dignity of access should be included as part of the requirement. A question that arises is: why is there not a requirement for dignified access in the performance requirements and what difference might such a requirement make?

Mr PERRETT—Arguments against?

Mr Newhouse—Mr Chairman, in the Building Code of Australia our performance hierarchy starts with an objective. The objective currently is and will continue to be, ‘The objective of this section is to provide, as far as is reasonable, people with safe, equitable and dignified access.’

CHAIR—Yes. You think that that is carried through and does not need to be repeated here. Is that the technical explanation?

Mr Newhouse—Yes. The objectives are a statement of community expectations about what the building code would deliver. A performance requirement is meant to be how a building would achieve that objective, so it is a much more detailed description. The issue of ‘equitable and dignified’ is a higher order issue than would not normally be included in a performance requirement in the BCA.

CHAIR—So the distinction you are making is between a kind of objective, which is what appears in the building code, and this, which is a more specific performance requirement?

Mr Newhouse—Correct.

CHAIR—The concept of ‘dignified’ or ‘dignity’ was also raised in relation to the objects of the premises standards. They do not presently contain a statement about dignity. Does anyone here wish to comment on that? I will read them:

The object of these Standards are:

(a) to ensure that reasonably achievable, equitable and cost effective access to buildings, and facilities and services within buildings, is provided for people with disabilities; and

(b) to give certainty ...

The suggestion I am raising is that it might be possible to include some statement about dignity within those objects.

Mr Innes—Chairman, the commission would support that. I understand what Mr Newhouse says about the building code, but in terms of the objects of the premises standards, it would be helpful in clarifying the way that access should be provided.

Mr Fox—I think the government would be happy to consider whether there are recommendations in that regard. As far as the Convention on the Rights of Persons with Disabilities, there is a considerable focus on the issue of dignity and there is clearly a connection there that may have perhaps not been made in this instance.

CHAIR—I think I have reached the end of my very long list—more or less on time, too—but before we part I would like to ask if anyone else wants to make one final or concluding comment, or are we all done?

Mr PERRETT—Are you saying ‘or forever hold your peace’!

CHAIR—No, we are certainly not saying ‘forever hold your peace’, because particularly the people in this room will have a continuing part to play in considering the report that the committee makes.

Mr Innes—Chairman, can I make a comment—and ask a question, if I may?

CHAIR—You can ask the question. I may not answer it.

Mr PERRETT—Mr Dreyfus is a true QC!

Mr Innes—Yes. I will not go into any detail; I just reiterate the comment in our submission about the length of this process and the importance of a prompt conclusion to the process. The question is whether the committee is able to give any indication of a timetable from once the inquiry is completed until its likely recommendations or report.

CHAIR—Certainly. We are proposing to deliver our report in the House of Representatives on 15 June.

Mr Innes—Great. Thank you.

Mr Small—At what time!

CHAIR—We can give you a reasonable estimate, actually. Around about 8 pm, because there are certain limits. Just to explain this, Mr Small, there are some set slots within the parliamentary sitting week that reports can be tabled in. We will be in one of those slots and if it is on the Monday that is the likely time.

Mr Small—Through you, Mr Chair: I wonder whether the Attorney-General’s Department gave any indication of the priority and the speed with which the government might respond to the recommendations.

CHAIR—I do not speak for the Attorney-General’s Department. That is for you, Mr Fox.

Mr PERRETT—It is an aspiration that they respond within three months.

CHAIR—That is right. We will be commenting on this in the report almost certainly. Everybody associated with this process is conscious of the length of time that it has taken. It may not profit us much to examine the reasons why it has taken so long, but it is the fact that it has taken a long time and that is pretty much always undesirable.

Mr Fox—Could I say thank you to the committee firstly for allowing us to participate in the roundtable. We have found it helpful to be involved with our governmental colleagues—and the Human Rights Commission, as an advocate, but heavily involved. It has been a long process. It has been one where a number of the outcomes, although disputed by many of those who have made representations to the committee, have come out of a process of deliberation and consideration, as I think and hope some of the answers today have indicated.

The government has not taken lightly the decisions that it has put forward in these proposals and it certainly values the contribution and the effort that the committee is making here and looks forward to its recommendations, but we do ask that the committee give due weight and consideration to the history in reaching the point that it has in advancing what has been put before it.

CHAIR—Thank you. I thank you all for coming. It has been, from our point of view, very productive. The format was good. It enabled people to listen to each other's views. I would like to thank Hansard for their attendance and assistance here today.

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

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

CHAIR—I declare this meeting closed. Thanks very much for your attendance today.

Committee adjourned at 3.23 pm