



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

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

FRIDAY, 3 APRIL 2009

BRISBANE

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Friday, 3 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 Neumann, Mr Perrett and Mr Slipper

Terms of reference for the inquiry:

To inquire into and report on:

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

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

WITNESSES

BEDWELL, Mr Daniel David, Private capacity	39
DESHON, Mr John Popham, Private capacity	33, 57
GILDERSLEEVE, Mr Christopher Paul, Chairman, Engineers Australia, Society of Fire Safety (Queensland Chapter).....	29
GOW, Mr Stephen, Director, Planning and Environmental Services, Armidale Dumaresq Council	20
LAIKIND, Mr Lawrence Alan, Solicitor, Disability Discrimination Legal Advocacy Service, Welfare Rights Centre	1
MACPHERSON, Dr John Robert, Member, Spinal Injuries Association.....	46
MAYO, Mr John Nicholas, Manager, Community Relations, Spinal Injuries Association	46
MURRAY, Dr Max, Private capacity.....	57
STRUTHERS, Ms Rita, Private capacity	39
TOMASICH, Ms Susie Vivi, Lawyer, Cairns Community Legal Centre Inc.....	14
WAKEFIELD, Mr William Hubert, Director, Masterlifts Pty Ltd	54

Committee met at 8.47 am**LAIKIND, Mr Lawrence Alan, Solicitor, Disability Discrimination Legal Advocacy Service, Welfare Rights Centre**

ACTING CHAIRMAN (Mr Slipper)—Welcome. I declare open this public hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs, and in particular the inquiry into draft Disability (Access to Premises—Building) Standards. The hearing is open to the public and a transcript of what is said will be placed on the website of the committee. If anyone would like any further details about the inquiry or transcripts, please ask the secretariat staff here at the hearing, or alternatively contact the secretariat in Canberra. I would like to welcome everyone here today. We obviously have a quality, not necessarily quantity representation here this morning. This is the sixth public hearing the committee has undertaken for this inquiry, and I am sure that our discussions will, as always, be very informative. Mr Laikind, is there anything you would like to add to the capacity in which you appear?

Mr Laikind—I appear as a solicitor who has been operating the Disability Discrimination Legal Advocacy Service at the Welfare Rights Centre since 14 February 1994, with a two-year break for my Masters in law at Oxford.

ACTING CHAIRMAN—Thank you. Although the committee does not require you to give evidence under oath, you should understand that these are formal proceedings of the Australian parliament and the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We have not had to lock anyone up yet, and we do not anticipate doing that at this stage. Before we proceed to questions, would you like to make a brief opening statement of two or three minutes just to highlight some of the aspects you would like the committee to particularly take note of?

Mr Laikind—I am in favour of the access-to-premises standards in that although all rights are presently available with the Disability Discrimination Act as it stands, and the Building Code of Australia, it will lead to more certainty not only for persons with disabilities who use it, but also for developers, landowners, architects, building certifiers. Although rights are presently available and they have been for a long time, very few people use the legislation. There are only about 100 access-to-premises complaints every year under the Disability Discrimination Act, which I will shorten to DDA, and about the same number for each of the state antidiscrimination acts. As such, there could be many thousands of successful discrimination complaints. I have done access audits of towns like Warwick, and I have pointed out where hundreds of successful complaints could be—whether it be where there is a small lip into a shopping centre or a toilet that needs re-doing or maybe automatic doors—but people simply do not bring the complaints. They are looked at as a complaint for somebody else to do—a good Samaritan type issue. There are far more discrimination complaints for persons concerned with their unemployment or for their children.

That is one point. Another point is that a result is obtained that is generally on a one-to-one basis. A respondent, even if they are a very large respondent, will fix the single thing in question rather than look at all of their access issues of the same nature. For instance, I have had complaints against the state of Queensland that have resulted in a lift in a particular school, but it

has not resulted in a lift for a thousand schools; automatic doors for a bank are put in just one branch. Things are done by way of a confidential conciliation agreement. Over 98 per cent of my matters over the past 15 years have resulted in things not going to hearing and it just has not made that many changes. So if one has the ability to, with compromise, get an access-to-premises standard that is reasonably good, workable even if it compromises some rights, it is going to improve the situation. So if things will be done at this point of certification for a building then that is a much better way to go.

I would like to conclude by saying that I have worked in this area for a number of years and that some of the people who will follow me today are people I know very well, such as John Mayo, who, when I did *Cocks v the State of Queensland*, was the publicity officer for the Paraplegic and Quadriplegic Association of Queensland, which has changed its name to the Spinal Association of Queensland. He has been a major player in this area for many years. So is John Deshon, who is not here yet. He was my architect and a pro bono architect for many discrimination complaints. Sue Tomasich is my counterpart in Cairns—she is the second person on the list; I am not sure whether she will be here in person or by phone—and she has done a pretty good job over the last three years. And there is Rita Struthers who was my rehabilitation officer when I was going through university the second time. I was a dentist; I came back, lost my vision. She was working at the Commonwealth rehabilitation centre on the Gold Coast and was my case manager while I was doing law at QUT. You have those people to look forward to in the next three hours or so. I will leave it at that and I am ready for questions.

ACTING CHAIRMAN—One can only admire you as a role model. You had one professional qualification and then you had to go out and get another one and you have obviously been successful in both. You tell us you have a 98 per cent success rate on legal matters; there would be very few lawyers who could claim such a record. I listened carefully to what you said about the fact that there very few complaints lodged. Why do you think that is?

Mr Laikind—I think that is because people with disabilities look at the situation as a job for somebody else to deal with when it comes to an access-to-premises issue, whereas if they have lost their job because of an epileptic seizure or mental illness, they are more likely to bring a discrimination complaint. One needs to have a proactive group. I can tell you that from 1994, after *Cocks v the State of Queensland*, there were two ladies in Cleveland who called themselves the HUGI Action Group—it stood for Help Us Get In; they had an emblem of a koala on a wheelchair—and they had 73 complaints with me, and with my counterpart when I was in Oxford for those two years, over a four-year period of time. They were all successful; they were all seeking something that was reasonable, and each one settled. They were two very active ladies. There is another active lady in Hervey Bay area whose name is Sheila King. She and her husband, Robin, who is a retired engineer, go around with a ruler and look at the Australian standards—the AS1428.1—and they have brought a number of discrimination complaints—

ACTING CHAIRMAN—Is she disabled?

Mr Laikind—Yes, she has post-polio syndrome and uses a walking stick and sometimes a wheelchair.

ACTING CHAIRMAN—Do you think another reason why there are not many complaints is that disabled people are resourceful; they work around the problems and get on with their lives as best they can?

Mr Laikind—I think they simply leave it alone, they do not want to be involved in this sort of thing where they can see it is for the community benefit. It is a public interest thing; it might affect them a little bit, but they would work around it and would rather just keep on going rather than be involved with something legal. I talked to Faye Druitt many years ago, when I first started this in 1994, and she said: ‘I don’t bring discrimination complaints or access complaints because I am jack of it. I don’t want to get involved.’

ACTING CHAIRMAN—I think you have touched on this, but how does the Welfare Rights Centre consider the premises standard will improve on the current situation for enforcement of access-to-premises requirements? In other words: what is going to change?

Mr Laikind—What is going to change is that, at the certification stage for new premises and modification of existing premises, the certifier will apply the Building Code of Australia, which will include the access-to-premises standards. That will be looked to before one can be certified as far as work. Whatever it is in, the access-to-premises standard becomes incorporated in the Building Code and that compliance will be needed at that stage to whatever is set in the access-to-premises standards. That is how things will change: rather than waiting for an endpoint, waiting for somebody to come to me with a discrimination complaint and the landholder, the lessee, holding up their hands and saying, ‘You’ve got me fair and square; I’m going to change this now in conciliation,’ we will change that so that hopefully the thing will be addressed before one gets to that stage.

ACTING CHAIRMAN—The committee has heard from New South Wales Disabilities Discrimination Legal Centre that there are issues under the current legislation relating to standing for advocacy organisations to bring complaints. Can you give us some further information on these difficulties?

Mr Laikind—That arose in 2004-05 with the Sheila King case. Her group was the Access for All Alliance. That group did not have standing in its own right as an unincorporated association in a Federal Court to bring the matter, because it was looked at as not all of the members of the organisation were affected with a disability. It is a bit like the FIDO case in the mid-eighties regarding locus standi for interlocutory injunctions, equity and that sort of thing. The organisation was said not to have standing and, as such, the complaint, which was about access to basins and toilets in one of the outdoor areas in something owned by the council of Hervey Bay, simply did not make it past that first issue.

ACTING CHAIRMAN—How is your organisation funded?

Mr Laikind—The organisation does social security work and disability discrimination work from a variety of sources. The Disability Discrimination Legal Advocacy Service is funded very poorly, about \$70,000 a year, solely from the Commonwealth Attorney-General’s Department. It receives no state funding, so the service I have been operating simply has very poor funding from the Commonwealth Attorney-General’s Department. It has the same level of funding as when it started, on 14 February 1994.

Mr NEUMANN—I will call you Lawrence, and you can call me Shayne.

Mr Laikind—You can call me Larry if you want.

Mr NEUMANN—Larry, okay. I presume that you think a better regulatory approach to access to premises will reduce the need for organisations such as yours to actually bring enforcement actions. I presume that is what you are saying—the Hervey Bay experience will not happen.

Mr Laikind—The Hervey Bay experience hopefully will not happen, but that is only one thing. What I hope for with this is that, because there is such a paucity of access-to-premises complaints, things will be addressed before they ever reach the need to come to me. That is what I am hoping for.

Mr NEUMANN—I found this a bit curious. You have reason to believe that the antidiscrimination laws currently apply to class 2 buildings. On page 7 of your submission you start talking about that and you mention a case of C and A. I have to confess I have not read the case, but I saw a bit of a head note in your submission. Why do you say that?

Mr Laikind—I will give you a summation. That was a situation with a couple, and the lady was Swiss. She had multiple impairments. They purchased not only a nice house on their Sanctuary Cove premises but a unit in an exclusive building complex. They were owner occupiers in this unit building on the south bank of Brisbane. I will not name it for reasons of confidentiality, but the case was referred to by letters only. The lady had progressive impairments and had only a limited life span left, but in order to gain access to her apartment building she had to get past heavy doors to the gate, another one into the building, another into her tower and also into the recreation areas where the pool was. She had a little bit of strength but not enough to use the heavy doors.

One of the main issues here was that, although she was treated less favourably, was there an actual area of discrimination? For the previous 10 years, I had been advising people that the antidiscrimination legislation covers public access—that the Disability Discrimination Act, the DDA, and the Queensland Anti-Discrimination Act, the ADA, do not apply in the situation of your own house or in a private unit building where there is no commercial enterprise out of it. That was the case in this situation, but I tried this as a test case to see whether or not this could fit in terms of areas of discrimination.

Douglas Savage, a QC, found there to be two areas of discrimination here: both the accommodation and fact that the body corporate itself was providing a service to its owners, lot holders, in entrance to the common areas—access to the large lounge facilities, to the pool and to the barbecue area. That itself was both access to premises and a service provided by the body corporate, plus it fell within the accommodation provisions. For Queensland, that was a big step forward because it changed the nature of this. The Queensland ADA now applies to class 2 buildings. It did not go on appeal, so the Queensland ADA will be applying that and has applied that for the last three or four years.

That is why I say that the situation for units has changed since the Building Units and Group Titles Act in 1979. There used to be strips of units with very little common areas. It would be

like four or five individual houses, but now you have large complexes. I used to own two units in the Astor Serviced Apartments on Astor Terrace. On level three there was a swimming pool, spa, sauna, barbecue and it had a lot of common areas in the car park and halls. That is the situation which has been predominant on the Gold Coast, Sunshine Coast and Brisbane since the first Building Units and Group Titles Act.

The nature of class 2 buildings has changed through the years. That was actually quite an important decision. It was not under the Queensland ADA, but that is currently the law that is being applied.

Mr NEUMANN—That is a point that has been raised by the Queensland members of this committee. Mr Perrett has joined us. I have raised on numerous occasions the amorphous basis and how difficult it is to categorise apartments, particularly in Queensland on the Gold Coast and Sunshine Coast, where it is very clear that common areas in apartments are very common. I presume you also hope that the standards apply clearly to class 2 buildings and make it very clear that they do. Is that your position?

Mr Laikind—Yes, that is my position. That is the position that I placed in the submission. That is the position that applied in the 2004 draft that came to the Human Rights Commission, but it is not the present draft. I will be strongly advocating that class 2 buildings be included in the access to premises standard.

ACTING CHAIRMAN—The Welfare Rights Centre submits that where small buildings are used for certain essential purposes—for example, a health centre—the small building exemption should not apply. I think that is on pages 8 and 9 of your submission. How straightforward would it be for an owner or a building certifier to determine the usage of a building at the time of a building application and how could you foresee a change in use in the future?

Mr Laikind—I am not sure how easy or difficult that is. I am thinking whether something could be applied at a later stage, whether it is pursuant to local government usage. I can see that where there are a number of rental premises possible and there is a choice of ground floor or first floor premises being let to a medical centre, a dentist or some government agency that, if this were part of a local government rule or contractually something which was required, then there could be compliance with that. I do not know how difficult it is going to be as far as the certification is concerned. It may be very difficult at certification. I am simply not aware of that.

ACTING CHAIRMAN—You could imagine a medical centre wanting to open but not wanting to use a purpose-built building. They usually would seek to rent existing premises that may have been certified on the basis of it not being a building to be used for health care were your proposal to be accepted. I see that as an obstacle that is almost unable to be overcome.

Mr Laikind—I have had a number of complaints—about four or five—through the years against medical centres with access to premises issues. I can see further use of buildings being difficult in that area. I can also see another point. If there were stairs in premises that lead to the first floor or the second floor, it would be a very minor accommodation needed to accommodate me—a luminous strip would need to be added. But if the first or second floors of buildings that are under 200 square metres are removed totally then that particular accommodation, which would not cost very much at all, would simply not have to be done. I can see that for the

expenditure of a very small amount of money that accommodation, which is beneficial to someone like me with very degraded sight, would be very beneficial.

Getting back to your other question, again, I have not been able to work out how the change of usage could be done in that situation, or whether it is simply too difficult. Another possibility is to leave out a situation from the standards themselves, to leave it open to bringing a complaint. But there are problems with that too because the whole issue of these access to premises standards is to have as many things in them as possible and to give as much certainty as possible. So if you left out small buildings, medical usage or other things then that is still going to create problems because people will not bring complaints anyway.

ACTING CHAIRMAN—I think that a lot of people would be concerned were you to give some sort of authority to the planning department of the local authority, because they are extraordinarily slow in processing applications as it is, and quite costly. So I think that would not be an option either.

Mr Laikind—I do not think so; I think you are correct there. I cannot think at this time what is an easy solution regarding the situation where you have a medical service, government service or accountancy and you are in a small regional rural area. Are you going to allow that to happen? A person who uses a wheelchair simply will not be able to go to the doctor or dentist at all. I do not know. When I was a dentist in England sometimes I made home visits to people who could not get to the surgery because they used a wheelchair. That does not happen very much over here regarding dentistry.

ACTING CHAIRMAN—It would be very difficult to take the dental equipment, wouldn't it?

Mr Laikind—I took mobile dental equipment.

Mr PERRETT—Could you give us an example of the services that would not have to be exempt? What sorts of services would people with disabilities not access? I am talking of the smaller buildings. I am just thinking that it is going to be a very extensive list of services—say, government et cetera.

Mr Laikind—They would not have to go to a real estate agent. There would be more than one wherever they live, generally, and the real estate agent would be quite happy to come to them. Clothing stores, second-hand stores, food outlets—things that would be able to be repeated in very many places.

Mr PERRETT—You are based in Stones Corner?

Mr Laikind—Yes.

Mr PERRETT—And there are a lot of these class 2 type buildings there—two stories and more or less than 200 square metres of floor space? I am just wondering how it would affect your area if we went with your recommendation.

Mr Laikind—I am not aware of many medical health services on the first or second floor.

Mr PERRETT—There are a few government buildings there, but I think they have access to the floors above ground floor.

Mr Laikind—Yes, and my recommendation is that if they have the building then as long as there is a service on the ground floor that would be sufficient. So if it is a government service then they can gain access to the service from the ground floor. We do not need to go up to the first or second floor. If it is a medical or dental surgery, if there is one accessible surgery on the ground floor then that is fine. The government services generally have the building. Centrelink, for instance, is there. They have a big two- or three-storey building, but the ground floor is accessible. That is the sort of thing I would envisage.

Mr PERRETT—I am just teasing this out. Often the government would be a tenant of those buildings. Likewise, medical services et cetera would be tenants of the buildings. When you say: ‘if they have got the building’, is your position that if they are the major tenant they should make it accessible?

Mr Laikind—Yes. If they are the major tenant of the building then they may not need to make the first and second floors accessible, but they may need to provide the service at least on the ground floor. I suppose the larger the building the more likely it may be that employees with various disabilities/impairments may need access to the first and second floors. The bigger the building and the bigger the service, the more one would expect access to these floors—but perhaps not in a small building of 200 square metres or less. In the bigger buildings it would be required anyway, and 200 square metres is actually fairly small. It is about the size of a three-bedroom, one-bathroom house. It is not a huge area.

Mr NEUMANN—It is about 200 years since Louis Braille invented braille.

Mr Laikind—It is exactly 200 years.

Mr NEUMANN—Yes. The access code requires braille and tactile signage to be provided, in buildings required to be accessible, in relation to sanitary facilities, spaces with hearing augmentation systems and accessible entrances. There are also requirements for the design of braille and tactile signs. We have heard a number of submissions to the effect that there should be a much wider range of building features and signage covered by requirements for accessibility. You recommend that visual egress alarms be installed in new buildings or buildings that have been modified. Do you think that tactile signage is something that we should expand as well? What other improvements in signage should happen?

Mr Laikind—Braille is important as a tactile way-finding device for persons with vision impairment. I have been involved in a major shopping centre complaint for the TGSIs, the tactile ground surface indicators, around the mall. I studied law by learning grade 2 braille in a month and I made braille notes of what people read to me. I also did my masters in law at Oxford by making braille notes in the library. If you have no vision it is the way to go, and there are a significant number of people who rely upon braille. It might only be one per cent of the population or several; if you wish to exclude them, that is fine. I do not wish to exclude them, but an issue with the access standard is that it is not going to accommodate everybody. They initially thought 90 per cent of the people would be included. It was taken down to 80 per cent. It depends. This is something in which one can assist. I think braille is important. I am not the one

making the submission from Vision Australia. I am sure you will hear from, or you have heard from, Vision Australia in Melbourne. I do support the use of braille both in schools and as a way-finding device.

As far as hearing augmentation is concerned, I have represented many groups of people and people with hearing impairments. Visual signage is useful. I can support both of those.

Mr PERRETT—Going back to the hearing impairment, was it your position then that auditory loops would be included?

Mr Laikind—Yes.

Mr PERRETT—Such as at a medical practice?

Mr Laikind—Depending upon the size, a medical service would be a good place—or an auditorium or a hospital.

Mr PERRETT—Depending on the use of the space?

Mr Laikind—Yes.

Mr NEUMANN—Larry, when a lessee wants to modify a building, because lessees do it all the time—they seek to modify buildings because have grown or for whatever reason they want to make their space suitable—you say there should be a requirement for accessible path of travel to the new part of the building.

Mr Laikind—I will give you two examples from when I was in England doing my masters of law from 1995 to 1997. I had a friend in Glasgow that had an 80-bedroom hotel. He did some modifications and was required to have a fully accessible rest room in his pub. This was a 17th-century pub in Drymen. He was very proud of his accessible rest room. I said, ‘Yes, this is excellent, but there are three steps into here and it would only be of use to people who had to use a wheelchair from an accident that happened inside the pub.’ The same requirement was there when I was in the Merton College Oxford. There were brand-new buildings for accommodations for students. On each floor there were great accessible toilets. But the problem was there were two flights of stairs into the building and no lifts. Unless you broke your leg and used a wheelchair inside when you are there, it was not of much use. I see the same problem. To have your accessible toilet requirement but without a path of travel nullifies or makes nugatory the whole process. It needs to be an integrated process. You have got to be able to get into the building as well and leave the building to get full use of the accessible toilet or the other accessibility features that the lessees is being required to put in. I just cannot see the thing actually working. You might as well have no access requirements as far as the lessee is concerned if that is not integrated with the path of entry.

Mr NEUMANN—You are a lawyer. There is almost always a lease if it is a long-term arrangement between a lessor and the lessee. The lease obviously outlines the obligations and responsibilities of both the lessor and the lessee. Who do you think should have the cost and responsibility of providing the accessible path for travel?

Mr Laikind—My own personal opinion is the lessor regarding the egress and entry into the building. That is my opinion. Then, once you get inside the building, one can transfer obligations to the lessee.

Mr PERRETT—Mr Laikind, as another lawyer, wouldn't it then be just passed on to the lessee anyway?

Mr Laikind—Probably.

Mr PERRETT—So it will wouldn't really matter.

Mr Laikind—You would probably have the agreement as such and they would probably also have to pay the legal costs.

Mr NEUMANN—Mr Perrett, I can assure you I drafted leases over the years—that does happen.

Mr PERRETT—Landlords are not charities.

Mr NEUMANN—That is right. There is a certain tension between the premises standards and the DDA.

Mr Laikind—Yes.

Mr NEUMANN—Can you comment about that—not necessarily in specifics?

Mr Laikind—What do you mean by 'tension'?

Mr NEUMANN—You have obviously got some federal legislation and you have these premises standards that do not always marry up. The DDA is an aspirational piece of legislation. We know that. It sets out rights and obligations, but it really sets out what we want to do as a country in terms of disability. The premises standards seem to be the ultimate in compromise, if I can put it like that. We have had comments from various people—the Property Council, various disability support groups, and a number of organisations—on the inherent tension between the two. What would you like to see done in the future in relation to the attention?

Mr Laikind—The way I see your tension being resolved is to start with access to premises standards with what I have put in, more or less. So include some things like the class 2 structures, get them up and running, and then a review, as Michael Small has said, after five years and see how it works. That is probably a pragmatic way of doing things. I disagree to some extent that the DDA is a theoretical thing.

Mr NEUMANN—I do not believe that at all; it is aspirational.

Mr Laikind—'Aspirational'? A quality piece of legislation is what it is.

Mr NEUMANN—I agree.

Mr Laikind—It is designed to remove barriers to allow more equal participation in the community in a number of areas. That is what it aspires to do.

Mr NEUMANN—There is an educative aspect to it, too, in informing the community about these issues.

Mr Laikind—The education comes from the Human Rights Commission; it comes from the objectives of the legislation. That is where it comes from, but I cannot say that it is ‘aspirational’ in that I have used it in over 1,000 matters over last 15 years and generally very successfully. This area of access to premises is one of the strongest since Cox and the State of Queensland. The bar, as far as unjustifiable hardship, was set so high that one can look at previous cases such as Blair and Venture Stores, Ellis and Metropolitan Transit Authority, or Woods in Wollongong and see a very low bar, but after Cox and the State of Queensland, respondents, particularly if they are state government, maybe Commonwealth, would have to show a whole lot in order to be able to succeed with a defence of unjustifiable hardship or unreasonableness.

These became the complaints that, once I brought them, were nearly always accepted and nearly always settled in conciliation. It was just the obdurate body corporate in the C and A case. It would have cost them about \$10,000 in accommodations, had they have provided them, rather than \$200,000 in orders and legal costs. That does not happen. I am just saying that this is an area that actually works. All 73 of the HUGI cases got exactly what they were seeking as far as their accommodations were concerned and none went to a hearing. This is an area that is more than simply aspirational, particularly in the access to premises area. There are very few complaints that are bought there.

Mr PERRETT—Mr Laikind, have you had cases—not necessarily going all the way to case law—for small, class 2 buildings?

Mr Laikind—Yes, I have.

Mr PERRETT—And where the owner has accommodated your client’s concerns?

Mr Laikind—Yes.

Mr PERRETT—Okay. Good. Could you, without naming buildings or owners, walk us through some of the things that have occurred—and the type of tenants?

Mr Laikind—Some of the things have been accessible toilets and ramps in small buildings. In one pub the fellow was fairly wealthy. He put a lift in—and not just one of these small, cheap lifts but the full quality lift. I have been in this area for longer than anybody else in this country probably. Cox and the State of Queensland was in July-August 1994 and I have been doing ever since, except for two years while I was at Oxford.

Mr PERRETT—The type of thing might be your client frequents the pub and says, ‘It would be nice to go to the next floor or it would be nice to be able to enter with dignity rather than having someone drag me up the steps or something?’

Mr Laikind—Yes.

Mr PERRETT—Could you take me through actually what happens? A pub would be more than 200 metres?

Mr Laikind—That was more than 200 metres. It was a fairly large one and they did have some large events at that pub. So that one was more than that.

Mr PERRETT—And that is a benefit obviously for the publican, obviously, because there are a lot of older people and you can get prams et cetera.

Mr Laikind—Yes.

Mr PERRETT—Those are commercial benefits. Could you take me through what has happened in some of the other ones where there is less obviously a commercial benefit for the building owner or for the major tenant? As I said, I do not need to know the details.

Mr Laikind—Okay. There have been ramps and lifts in a few circumstances. There have been other things, such as automatic doors, redoing toilet facilities, putting in handrails and various bits of access type issues.

Mr PERRETT—Where the landlord says, ‘I can see the benefits of this,’ or ‘I don’t want to go to court to sort it out,’—

Mr Laikind—The landlord just does it. Both of those would probably be the actual arguments. The landlord in conciliation raises his hand and says, ‘I’m really sorry for discriminating against your client,’ and the landlord does the accommodation.

Mr PERRETT—I was just looking for some better angels for landlords rather than the—

Mr Laikind—It is not a magnanimous jurisdiction here as far as most landlords go. It is something where basically they have said, ‘We’ve been caught—fine. Let’s not go to court and fight about that because the bar has been placed fairly high regarding unjustifiable hardship.’

Mr PERRETT—It is more stick—

Mr Laikind—Yes.

Mr PERRETT—and less carrot.

Mr Laikind—That is right.

Mr NEUMANN—‘No magic’ is the expression I think you used about the 40-metre perimeter for swimming pools.

Mr Laikind—I guess that was in relation to things such as the general occupational requirement defences in, say, section 25 of the Queensland Anti-Discrimination Act where it has to be genuine. The requirement that a person with epilepsy not have had a seizure for 10 years is, according to Ms Copeland, ‘no magic’. It could have been five years; it could have been 15 years. I could not see the what the calculations were for how a 40-metre perimeter was derived

or, more explicitly, I could not see what percentage of hotels, motels with fairly large swimming pools were used to work out this particular figure. That is where 'no magic' comes in.

Mr NEUMANN—So I presume you would be in favour of a reconsideration of the 40-metre—

Mr Laikind—Yes, reconsideration or disclosure as to how it was derived.

Mr NEUMANN—And reconsideration of the exclusive use exemption in relation to class 1 buildings in that regard?

Mr Laikind—Yes.

Mr NEUMANN—What about the removal of the sling-style swimming pool lifts which are allowed by clause D5.5? They were not allowed under the 2004 draft. What do you think about that?

Mr Laikind—Can you describe the particular—

Mr NEUMANN—I have not got a visual image. I want to know what they are like.

Mr Laikind—I remember crane lifts into swimming pools. They were acceptable. There was not too much complaint about those. I once did one with the HUGI group. After one of their first complaints in 1994 that is what was put in. They said that was what they wanted. I am not an architect in order to give an opinion there. I know there are a variety of designs. One is a sloping design of a swimming pool.

ACTING CHAIR—Maybe that could be your next career.

Mr Laikind—No, but I would be more than happy to sit on an access committee that perhaps deals with issues of unjustifiable hardship as far as the standard. One of my colleagues made the submission that it should be done by a court, but I can see it being done much better if there is a group of persons such as me and John Deshon, who is an excellent architect, and John Mayo who have had experience in this area in the past 15 years. I can see a better result doing it that way than giving it to a judge to judge it from the law.

Mr NEUMANN—I agree. I have seen it in circumstances such as aged-care facilities, hospitals and the like but I was interested in what you had to say in relation to swimming pools.

Mr Laikind—On that particular design I would be asking John Deshon, John Mayo or Bryce Tolliday or perhaps other disability groups regarding the efficacy of the situation because I have not designed that. I was familiar with that 15 years ago, and that was perfectly acceptable. I do not know if that is what is wanted now.

Mr PERRETT—My perception, as a reasonably able-bodied person, would be that I would want to go into the pool under my own steam wherever possible. Being put up in a crane, certainly in a public pool, would not be my idea of something that has dignity.

Mr Laikind—It draws attention to yourself. It would not be my idea either. My idea of the best way to go is in swimming pools that I have seen that are sloping from the front. It is the same thing with the design of shopping centres: if you can remove all of the kerbs, as is required in the United States now, then everybody can go in their wheelchair from the car park into the shopping centre, and a number of supermarkets are now required to have motorised wheelchairs for their patrons. That design for pools, sloping straight in at one end, is much better. You do not need a crane, it seems safer and it does not draw attention to yourself. It is a bit like with some of the designs for cars, where the crane situation used to exist for a number of vehicles accessible for wheelchairs. I agree with you.

ACTING CHAIRMAN—The point you made about getting into the pool makes a lot of sense in one sense, but if you had a sloping ramp at one end instead of a defined end it would be rather difficult to use that pool for competition, wouldn't it?

Mr Laikind—I think so, unless there was some area on the side that sloped that was not the competition part. So it would still be possible to have a competition pool by having a sloping bit on the side.

ACTING CHAIRMAN—Sure. It is just a question of design.

Mr Laikind—Yes, it is a design issue.

ACTING CHAIRMAN—As there are no further questions, we would like to thank you very much for attending the hearing today. The secretariat will send you a copy of the transcript for any corrections that need to be made. If, on reflection, there is any other information you would like to provide the secretariat, please feel free to do so.

Mr Laikind—I will just ask if this would be useful for you. I did my two-year master's in law on a Commonwealth scholarship from 1995 to 1997. It is getting a bit out of date now, but for one year of that I did as a thesis a comparison of the defence of unjustifiable hardship as between Australia, the UK and Canada. It is about 100 pages and it is divided into inflexibility, cost benefit and the various legislations. That may be of use for this committee; I am not sure.

Mr PERRETT—I would like a copy. That is case law as at 1997?

Mr Laikind—That is correct.

ACTING CHAIRMAN—If you could provide a copy of that thesis to the secretariat.

Mr Laikind—I do have it on me, but I will have to get a photocopy. It was done before the time of computers as far as things being able to be emailed, so I can have it photocopied and sent to the secretariat.

ACTING CHAIRMAN—That would be greatly appreciated. As I said, we will send you a draft of the transcript for checking, if you could get it back to us as soon as possible, and if there is anything else you would like to send us, feel free to do so. The witness is excused.

[9.40 am]

TOMASICH, Ms Susie Vivi, Lawyer, Cairns Community Legal Centre Inc.

Evidence was taken via teleconference—

ACTING CHAIRMAN—Welcome. Although the committee does not require you to speak under oath you should understand that these hearings are formal proceedings of the Commonwealth parliament and that giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. There are three members of the committee present: Mr Perrett, the Labor member for Moreton; Mr Neumann, the Labor member for Blair; and me, Peter Slipper, the LNP member for Fisher, based on the Sunshine Coast. I invite you to make a brief introductory statement before we proceed to questions.

Ms Tomasich—I would like to thank the committee for giving me the opportunity to give evidence at this parliamentary inquiry. The Cairns Community Legal Centre Inc. is a not-for-profit community organisation which provides legal services for the benefit of socially and financially disadvantaged members of the community. The centre includes a generalist service, which is the core service of the centre; a disability discrimination legal service; and a seniors legal and support service. We were confident that the committee would receive sufficient submissions from individuals and organisations addressing whether particular provisions in the premises standards met access needs for people with disabilities.

The focus in our submission is to look at how the premises standards would be expected to operate in a legal framework to ensure that buildings in future would be compliant with the Disability Discrimination Act, the DDA. After all, we are the ones who would be using the legislation to assist clients who allege they have been discriminated against in access to premises. We consider it important that the premises standards, as subordinate legislation, are subject to the DDA and not the Building Code of Australia. Therefore, we recommended that the premises standards adopt the objects of the DDA.

Even though the premises standards will give certainty to the building and design industry we would expect industry to continue to refer to and rely on the BCA, secure in the knowledge that the compliance with the BCA will guarantee compliance with the DDA. The people who would use and rely on the premises standards document itself—those people who have been discriminated against and their advocates—need a document that is easy to navigate and understand.

Next, since the access code in the premises standards will update various provisions in the BCA, it is important to ensure that existing provisions in the BCA are not diminished by the premises standards. In our submission we have identified several instances where the changed provisions resulted in a reduced level of performance requirement and consequently a lower level of access. In looking at application of the premises standards we addressed inclusion of class 2 buildings and class 4 parts of buildings and where a significant change of use without change of classification of building occurs.

A further local example not included in our submissions is a complex of over 300 holiday apartments constructed in 13 buildings, all assessed as class 2, with five pools, one lap pool and one beach pool, none of which is required to be accessible under the premises standards. Most of the buildings have stairs at the main entrance and only two buildings include lifts, where they have four floors of residential units.

The exceptions and concessions part of the premises standard has generated serious concerns for us. We appreciate the reasons for the building industry wanting to have exceptions for unjustifiable hardship included. However, the BCA does not include such considerations currently in its application and we understand that this is not intended to change. In our submission we put forward a range of reasons why we consider that unjustifiable hardship provisions should be removed in their entirety.

Furthermore, the BCA has 75 performance requirements which various state building regulations require construction of buildings to comply with. Of those, only nine relate to access and egress, four to lift installation, and three to sanitary facilities. The building regulations require that all relevant performance requirements are complied with through either deemed-to-satisfy provisions or alternative solutions which are at least equivalent to those provisions. We questioned, therefore, how and why unjustifiable hardship should be a consideration for 16 requirements which were not previously exempted and not for others. We then looked at the provisions in the Access Code of the premises standard and compared them to existing provisions in the BCA and to other provisions in the Access Code itself. We identified several discrepancies which cause confusion or do not clearly achieve the stated objective for the change and others which resulted in diminished requirements and a lower level of access.

Since the driving force for the premises standard was the gap between access levels provided in the BCA and that required in the DDA, we looked at what mechanism could best ensure compliance with the revised BCA and therefore the DDA. We cannot see how a panel that only advises on questions which are not relevant to the BCA can work to ensure compliance with the DDA. As an alternative to the access panel for the administration of building access we put forward a proposal based on the Victorian Building Appeals Board, an independent statutory authority established under that state's Building Act. We are of the opinion that compliance and modification functions of that building appeals board would serve to adequately ensure compliance with the DDA if its functions were expanded to include investigative, corrective and disciplinary functions. I am now happy to answer questions relating to our submission.

ACTING CHAIRMAN—Thank you very much. What proportion of the work of the Cairns Community Legal Centre would be in the area of this inquiry?

Ms Tomasich—I am the only solicitor in the centre who deals specifically with disability discrimination. I would estimate that approximately 25 per cent of my time would be devoted to access requirements.

ACTING CHAIRMAN—I noticed what you said in your submission in respect of heritage. I think you said that these values are already catered for and that alternative solutions do not need to be included in unjustifiable hardship. What do you mean by this statement and how does the centre see the relationship between alternative solutions and unjustifiable hardship?

Ms Tomasich—The way I understand that the BCA operates is that if, for whatever reason, the designers or building engineers cannot comply with the deemed-to-satisfy provisions, they can put forward an alternative building solution that will still have to meet the performance requirements. This is important in heritage buildings or others where they cannot, for whatever reason, comply with the deemed-to-satisfy provisions but still have to meet the basic requirements of the performance requirements. Under the BCA there is no component under which they can look at unjustifiable hardship. They might put that forward as one reason but it is not going to be the main reason for approving or rejecting a modification.

ACTING CHAIRMAN—The centre recommends that all nine existing performance requirements relating to access and egress and the BCA be included in the standards. What would be the benefit of including these performance requirements in the standards?

Ms Tomasich—By having them in the standards, if there is any complaint about, for example, circulation spaces—which would be covered under the existing performance requirement No. 2, which has been left out—that would be covered under the premises standards and it would therefore be either a clear-cut compliance issue or not and they would not have to go through the current complaints process of lodging a complaint with the Australian Human Rights Commission and having to take it forward individually through the courts. Whatever compliance system you set up, whether it is the access panel or the Building Appeals Board as suggested, it would cover everything that is included for access for people with disabilities. It does not leave anything out.

ACTING CHAIRMAN—Before I invite my colleagues to address any matters to you, I have one last question. The centre recommends removing the lessee concession in paragraph 79. Do you accept that, where a lessee only occupies a small part of the building, there might be a significant cost involved for a lessee to provide an accessible path of travel?

Ms Tomasich—The way I understand it, it is not the responsibility of the lessee to provide the upgraded path of travel from the principal entrance; it is up to the building owner. The lessee is responsible for the building costs within their own tenancy.

Mr PERRETT—In your submission you said the standards:

... should also apply to any building or part of building which undergoes a **significant change of use** without a change of Classification.

Did you really mean any building, or did you mean class 2 buildings and above?

Ms Tomasich—I mean any building to which the premises standards apply. They would not apply to building classification 1.

Mr PERRETT—I want to take you to some of the bed and breakfast type buildings—class 1B. If you have four or more, you have to make one of them accessible. What are your thoughts on that?

Ms Tomasich—I have no real thoughts on that. I thought other people would address that. I have seen some submissions suggest that that should be reduced to one in three, but personally I have no particular opinion one way or the other.

Mr PERRETT—The example you gave of a holiday centre with 200 rooms—

Ms Tomasich—It was actually 300 apartments.

Mr PERRETT—Is it for holiday people? What sort of building is it?

Ms Tomasich—The one I spoke to in my introduction or in the submission?

Mr PERRETT—The one you spoke to in your introduction.

Ms Tomasich—In that example, there are over 300 apartments constructed in 13 separate buildings, therefore they are either permanent letting or holiday letting.

Mr PERRETT—So they are obviously not going for the disabled market.

Ms Tomasich—No, and most of the buildings are not accessible.

ACTING CHAIRMAN—What proportion of the clients do you think would be disabled and would need the benefit of some special provision?

Ms Tomasich—I do not have those figures on hand. I would have to take that on notice. I think, if you look at the Australian Bureau of Statistics, they would give you some sort of guide on what proportion of the population generally have access or mobility impairment.

ACTING CHAIRMAN—Can you maybe check that for us and get that information to the secretariat at some time, please?

Ms Tomasich—Yes, I will.

ACTING CHAIRMAN—Thank you very much.

Mr NEUMANN—Ms Tomasich, you have recommended that the idea of the access panels be done away with and you have recommended that in their stead we look at a different approach entirely. You are talking about the Building Appeals Board in Victoria as the prototype for what you are suggesting. Have you had a good look at the composition of that board? It does not include any experts in disability, except perhaps occupational therapists in certain circumstances. Would you recommend, if we adopt that approach, that there be experts in the area of disability?

Ms Tomasich—I think the access consultants, in paragraph 136.8, would serve that function.

Mr NEUMANN—They are the people you are recommending with expertise in disability?

Ms Tomasich—Yes, for disability access.

Mr NEUMANN—I apologise; I did not pick that up. Have you looked at decisions that have been made in the past by that Victorian board—the jurisprudence that has developed over the years?

Ms Tomasich—The PowerPoint presentation that was delivered at the conference that I mentioned gave case examples where applications for modifications had been submitted. One example was an assembly building that had previously been used as a warehouse. They wanted a permit so that access for people with disabilities would not be provided. The background to it was that the warehouse was supposed to be used as a place of worship, and access to the building would be via a doorway and then up a stairway consisting of eight rises. They said that to install a ramp would result in a ramp link of 20 metres and that it would require cutting through existing concrete floor slabs. The applicant argued that the building would be unviable and impractical and would result in unjustifiable hardship for the owner. In that particular instance the determination was refusal to give the approval because, as the building was an assembly, it would not be in the public interest to approve such a request.

Mr PERRETT—Maybe they thought faith healing was really going to take off.

Mr NEUMANN—How would the board be different from, say the access panels? How would it improve compliance with the standards over the access panels?

Ms Tomasich—The applications can be made to the board for compliance certification. So if there were any doubt in the planning stage as to whether something would comply with the BCA, they would put in an application and within four weeks get a determination. If they feel that they cannot comply with the deemed-to-satisfy provisions and they want to put in an alternative solution because they feel that that particular provision should not apply, they can apply for a modification. Again, this is during the planning stage. The board would then make a determination which is actually binding on the developer, on the designer. So they would have to actually have the plans drawn, and it would be compliant with the BCA, so there would be no problems later on with trying to rectify things. The access panel that is being put forward under this premises standards proposal would simply act as an advisory body to certifiers on whether unjustifiable hardship should be taken into account or whether or not a particular building solution should be approved. It has no enforcement procedures. It has no authority to actually enforce compliance with the BCA.

Mr NEUMANN—I presume that you would not support this suggestion of some people that the access panels be given jurisdiction to determine those issues and thereby fetter, say, the access to courts. We have had submissions from certain organisations that access panels be given that power to adjudicate and that the alternative remedy to court is therefore nullified. I presume you would not agree with that.

Ms Tomasich—There would not be any need to take it to the court if the Building Appeals Board had made a determination on whether or not it complies with the BCA.

Mr PERRETT—In your submission you make a number of observations about possible impacts resulting from the extension of access requirements as proposed by the standards compared with those in the building code. I take you specifically to the class 1b buildings and swimming pools. Your proposition in paragraph 149 is that that only constitutes a minor percentage of total building approvals. Where did that notion come from? Is that the Cairns experience or are you surmising generally?

Ms Tomasich—I did not rely on any figures, just general observations about the types of buildings that are being constructed in our area.

Mr PERRETT—Do you have any idea of what the cost might be like for this sector in particular in trying to comply? I do not know the costs of modifying swimming pools. I do not know whether you buy swimming pools off the shelf or whether they are designed generally, when you are talking of class 1b buildings.

ACTING CHAIRMAN—Would they fit on the shelf?

Ms Tomasich—I have no idea on the cost. The provisions would be for new applications for pools with a surrounding distance of 40 metres or more.

Mr PERRETT—I am not sure how big that pool is—not that big, I suppose.

Ms Tomasich—I do not think the small bed and breakfast places would be covered by the premises standards, simply because of the size of the pools they would have in that location. I have no figures to actually base that on; it was just a normal expectation.

Mr PERRETT—Thank you.

ACTING CHAIRMAN—As there are no further questions, Ms Tomasich, we would like to thank you very much for being a witness at the hearing today. The secretariat will send you a copy of the transcript for any corrections that need to be made. I would appreciate it if you would liaise with the secretariat in relation to the information you have undertaken to provide the committee. We would appreciate that information as soon as possible, but I understand that it could take some time to collate. We very much appreciate your joining us.

Ms Tomasich—Thank you for the opportunity.

[10.01 am]

GOW, Mr Stephen, Director, Planning and Environmental Services, Armidale Dumaresq Council

ACTING CHAIRMAN—Welcome. Mr Gow, would you please state the capacity in which you appear before us.

Mr Gow—I am Fellow of the Planning Institute of Australia. I have 30 years experience in private sector and local government planning both in Australia and in the UK.

ACTING CHAIRMAN—Thank you for travelling to join us; it is greatly appreciated. Although the committee does not require you to speak under oath, you should understand that these are formal proceedings of the Australian parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you like to make a brief opening statement, perhaps summarising some of the key points you have made previously?

Mr Gow—Thank you. It is a privilege to give evidence this morning. My professional experience in this area is augmented by some personal experience and, as with one of the previous speakers, by tertiary studies in relation to this area. Armidale Dumaresq Council is a regional council that serves an area of 4,000 square kilometres and a population of over 24,000 people based around the regional centre of Armidale in New South Wales.

Council will be a responsible party for ensuring compliance under 2.2 and 3.1 of the draft standards. This statement is supported, and it formalises an important role played by local government planning and building surveying staff in ensuring access standards are carried into effect in the built environment. My council, and I would imagine most significant regional and metropolitan councils, also has an important role as the owner and manager of a range of public and community buildings, including public transport premises, to which the standards will apply.

I have just a few brief comments on some of the matters in the submission we made to you in relation to the standards. Generally, we support the alignment between the standards and the Building Code and the improved certainty and clarity that will bring for users of the standards, from building designers, to the assessment process within councils or by private certifiers through to the construction industry. Importantly, all of those areas have to play a part in the outcome.

I have handed up a development control plan that our council has produced. A significant part of that document, from page 18 onwards, is an access audit checklist which has proved very useful as a tool, a quality assurance mechanism, if you like, to ensure that the many detailed aspects of the standards in the Building Code and the related Australian standards are recognised and delivered, from the design process through to actual construction. If any one of those steps falls down, the outcome can be less than satisfactory.

Our major area of concern—one that we see as a major area of uncertainty—remains in relation to the question of existing buildings. I notice that was brought up by other speakers this morning. In our submission we pointed out that in New South Wales there is a rule in the Environmental Planning and Assessment Regulation that provides that where over 50 per cent of the volume of a building is being altered it is open to councils to require full compliance with the Building Code. As a regulator and a person involved in the implementation of standards, I think that sort of threshold would provide a neat tool to allow us to say to people, ‘You’re in that category; you have to comply.’ Nevertheless, it is understood that the unjustifiable hardship criteria will still apply in every case, and even if we had that threshold they would apply to other cases for alterations of existing buildings.

I notice in 4.1 of the draft standards that the criteria are extensive and detailed. There is a concern about whether local government and other building certifiers can readily determine unjustifiable hardship. We have had problems in terms of both privacy and our capacity to interpret that information in the past and it remains, in our view, an area for potential dispute. We notice in the protocol the proposal for access panels, which we have just been discussing. That would be a new initiative in New South Wales and we would support having an expert body which we could refer to, but we have raised questions in the submission about the availability of that resource, the cost, who pays and the reliance and liability issues that would arise from referring a matter to such a panel.

Also in our submission, to briefly wind up, we have raised questions about councils’ abilities to move beyond the draft standard in local policy. In our local development control plan, for example, we require a proportion of medium density housing developments to be adaptable for people with disabilities. That would be over and above the standards which we would like to retain as a local policy. It has been well accepted and obviously it addresses the ageing population and provides for at least a small percentage of the housing stock to be designed with access in mind.

The question of changes of use where there is no change in the building classification came up with our council last year, when we had a change from an office premises to a dental surgery. That was a significant issue that the standards may not address at the moment, because there is no change in building classification. But generally we appreciate the consultation process over the draft standards. We are very pleased to see them finally coming through, since the act was enacted some considerable time ago.

In conclusion, in our submission we have asked that the process of implementation of the standard should involve comprehensive training and advance notice for those people like councils that will have to implement it. We would ask respectfully, coming from regional Australia, whether that process could be delivered across the country, not just in metropolitan centres.

ACTING CHAIRMAN—I know Armidale well—my daughter went to school there for a while—but is Dumaresq another town? Are you an amalgamated council?

Mr Gow—Yes, we are. Dumaresq shire was the shire that surrounded Armidale city for many years. We amalgamated in 2000.

ACTING CHAIRMAN—What is the total area of the council?

Mr Gow—Just over 4,000 square kilometres.

Mr PERRETT—Armidale is the major town?

Mr Gow—Armidale is the major centre, yes.

Mr PERRETT—There are no other significant centres?

Mr Gow—No. The other population centres are small villages and we are by far the biggest centre. The nearest other major centre in the region is Tamworth.

Mr PERRETT—Does the 25,000 include uni students?

Mr Gow—The question of uni students is always a difficult one in terms of where they indicate on the census they reside. But, as an indication, I believe the current on-campus enrolment at UNE is around about 4,000 students.

ACTING CHAIRMAN—Some of those would deem the university to be their home and some would deem where their parents are or where they come from to be their home.

Mr Gow—Yes, that is correct.

ACTING CHAIRMAN—And you only get funded for those who deem themselves to be actually living in Armidale, although you have to provide the services for them all.

Mr Gow—That is right. We are the planning authority for the university, so access to university buildings is a significant part of our work, and obviously it is critical.

ACTING CHAIRMAN—Is that a contractual arrangement? Is that unusual?

Mr Gow—No. In New South Wales, universities are required for most of their developments to obtain development consent from councils, but in relation to actual construction certification they do not need to come to a local government agency to do that. But we do have that arrangement with UNE, because they requested that we provide that service.

ACTING CHAIRMAN—Can you tell us a little bit more about this award-winning development control plan for access and mobility, which you mention on page 5? What awards have you got? What are the main features and how are factors such as unjustifiable hardship taken into account in the plan?

Mr Gow—The document, which I have handed in for the committee, originated in the mid-nineties. The document you have at the moment has been updated to take account of changes since that time in the legislation and the standards. It arose directly out of some tertiary studies I did at the University of Western Sydney. It also arose out of some experience we had as a council that I referred to in my introductory remarks. The quality assurance process for ensuring access goes from cradle to grave, from the design right through to the construction process. We

had a building that was constructed in Armidale where the design was okay, the assessment process was okay, but it fell down in the construction phase and the accessible requirements were not actually delivered on site. This led, because it was a council building, to some expensive retrofit requirements later on.

Mr PERRETT—The builder was at fault?

Mr Gow—Yes, that is right—did not follow through with the design. That is an example of what can happen. As I said, it can happen at any one of the stages of the process. Born out of that experience and the studies that I was doing and a professional relationship with the access adviser at council, we decided that we needed a more robust policy basis. The Building Code is there; but, in terms of delivering a document that the local industry could use, we felt this would be a useful tool and that it would also be useful for our staff.

The key component of that document, as I mentioned, is the audit checklist, which is used at the construction certification stage. It can be used by designers when they are actually putting a proposal together, bearing in mind that the Building Code covers a whole range of different issues, of which access is only one. So for an architect this is one matter that they have to consider now, with, for example, part J of the BCA covering energy efficiency in enormous detail as well. We just felt this would be a handy tool that would bring into one place the relevant Australian standards in a tick the box form: have you provided this; have you provided that?

So far as unjustifiable hardship is concerned in the DDA, the document does refer to that and it refers to the criteria in the legislation. Obviously, we are not a legal practice, so we did not go into a lot of case law in there; we just alluded to the fact that this is a consideration if you are altering an existing building and that the preference is always to provide access. With the provision of an access panel, we would obviously need to amend this document, if that was to come in, and make relevant advice available to users.

Mr PERRETT—How have the developers in Armidale taken to it over the last 10 or so years?

Mr Gow—I think it has been very successful.

Mr PERRETT—They could have challenged it legally?

Mr Gow—Any development control plan, in the sense that it is used in connection with a development assessment process, is theoretically appellable in the New South Wales Land and Environment Court. We have not had any appeals of that sort.

Mr PERRETT—And they have come along happily?

Mr Gow—Yes. We routinely get these checklists submitted with construction applications. I think they see it as a useful tool. We are a modest sized regional town. We do not have access to a huge range of professional consultants. We have, for example, two local firms of architects, one of whom is a single practitioner, so any advice and guidance like this that we can provide, in that context particularly, I think is useful.

You asked about the award. We won a Planning Institute of Australia award for this document when it was first produced in the nineties.

ACTING CHAIRMAN—I imagine that as you are a regional council, and not a big town, everybody would sort of know everybody—

Mr Gow—To some extent, yes.

ACTING CHAIRMAN—so the fact that you have been able to bring in this plan and not have opposition means that you must have consulted widely before doing so.

Mr Gow—Yes. We are required to go through a formal exhibition process. As you say, it is a small community, and the number of people involved in the development industry is not that extensive, so we do have a good working relationship with all of those people.

ACTING CHAIRMAN—Maybe you should come to the Sunshine Coast!

Mr Gow—The area where we do have the biggest challenge, as I have said, is in relation to existing buildings, and here we are often dealing with people who may only make one development application. There was the dental surgery I mentioned—again, a single practitioner trying to set up a practice in a country town which desperately needs medical services but wanting to locate on the first floor of a building with a steep staircase. The officers in that case put a report to council saying that they felt there should be access provided and the council overturned it, so the council allowed him to go ahead.

In the first week of that practice operating, he actually provided services for Veterans' Affairs and one of his clients had the very undignified experience of having to get up the staircase on his backside. So that was really very unsatisfactory. That was a case where the applicant argued unjustifiable hardship issues. We did get some information from this practitioner about his financial situation, which is always awkward and difficult for us as a local government organisation. We recommended there should be access in those circumstances and the elected council decided that the community interest of having the dentist there outweighed the issues.

ACTING CHAIRMAN—How would access have been provided?

Mr Gow—There was a lift at the back of the building. But from the lift to the practice you still had to negotiate three or four stairs. We were looking at the area of those three or four stairs as being amenable to a short platform lift that could have been put in for that area or a ramp system being put in on the first floor.

ACTING CHAIRMAN—Clause D3.4 of the access code exempts the upper floors of buildings of less than four storeys with an area of less than 200 square metres from providing accessibility features. Does the council believe this exemption is justified? How many buildings in the area of your council would be likely to be affected by this exemption?

Mr Gow—I can appreciate the reason for the exemption. I cannot speak for the elected council here; I am speaking for myself. I would support that exemption. I can understand the reason it is there. In terms of how many buildings where this might apply, in our commercial

centre I am pretty confident there would not be very many buildings of that type that would be less than 200 square metres. There would not be very many as a proportion of the total. But I could not give you an exact number.

Mr PERRETT—As in most of them would be more—

Mr Gow—Most of them would be more than that.

Mr PERRETT—Even with a couple of tenants?

Mr Gow—I am talking about the entire building size. If we are talking about a tenancy, an individual tenancy may well be below 200 square metres. Is that the threshold?

Mr PERRETT—Yes.

Mr Gow—Sorry, I misunderstood.

Mr PERRETT—It is 200 square metres. It is for the building, isn't it?

Mr Gow—I thought it was for the entire building.

Mr PERRETT—It is not for the tenancy.

Mr Gow—I think there would not be too many buildings in our commercial centre. Most of them—

Mr PERRETT—Even though they might have three tenants in a building?

Mr Gow—Most of them would be more than 200 square metres.

Mr NEUMANN—I was going to ask you a question about 'unjustifiable hardship' being fraught with danger for local government, but you have brilliantly outlined the situation with your dentist example. There has been some suggestion that the draft standards should cover the field in the circumstances. But you seem to say that you think it remains possible, and you would hope that it remains possible, that local councils can apply provisions which go beyond the draft standards. Would you explain why you say that and what you would hope from those decisions?

Mr Gow—At the moment the New South Wales legislation, although it is continually changing, provides for us to have tools like development controls plans whereby we can set local policy. Therefore, if we wish to go beyond the Building Code in this particular area, at the moment we have the legal power to do so. I might add that the local development industry are quite happy to do that. For example, with multiple-unit housing, they see that to provide accessible housing is a good marketing and a good commercial thing to do to. In fact, some have gone beyond the minimum requirement, bearing in mind the population is ageing anyway.

Mr NEUMANN—Does your community consider it appropriate? Is that the feeling in your community?

Mr Gow—Yes, absolutely. There is strong support for that. It is accepted very much as now a part of what we do. There is the particular Australian standard—and I am sure you know it; it is 4299 of 1995—that deals with adaptable housing, which is about designing a house that initially may not be fully accessible but can easily be adapted to become accessible. We are also getting a significant amount of housing for older people, and of course there is a New South Wales requirement for the buildings to be accessible. As I see it, there should be the opportunity for local councils to work with their communities, and if they are happy to have additional requirements that is great. I know there is a debate—and we have touched on it in our submission—about residential buildings and small bed-and-breakfasts being accessible. I will probably leave that for your wise consideration, bearing in mind that we do have an ageing population, these people have to be housed and maybe that will be a future addition to the premises standards.

ACTING CHAIRMAN—They say the only problem with ageing is when it stops.

Mr Gow—Correct.

Mr PERRETT—I want to take you to those bed-and-breakfasts in terms of businesses with four or more bedrooms. You say you are concerned that many such premises may effectively preclude people with disabilities from their clientele. I do not know the numbers, but I assume that you would be more likely to have one or two or three rooms where—

Mr Gow—In a regional town like ours, it is exactly that. There are a lot of small bed-and-breakfast enterprises in Armidale and the surrounding rural areas, with farm-stays and so on. I am not saying that every one should be accessible. I am just wondering whether the level has been set correctly given that there are a lot of small businesses like this.

Mr PERRETT—One suggestion would be to make it every fourth one. But you would make the first one universally accessible and then you could have three that did not have to have that requirement.

Mr Gow—That is correct.

Mr PERRETT—So you have flipped it around. If you only had one room, you would have to make it accessible to everybody, but then if you were to have a next three you would not have to worry about it.

Mr Gow—Again, we would often come back then to the question of existing buildings. In our own case it is a quite historic town. As well heritage would be an issue. I think the point that we were trying to make is that there are a lot of these small businesses that operate with three bedrooms or less. We just wanted to make sure that the committee was aware of that.

Mr PERRETT—I was wondering what your thoughts would be on that idea with new buildings.

Mr Gow—I am glad you have raised that. I think for new buildings there is no reason why that could not be required. Our own experience has been that if these access requirements are incorporated into the design of a building from day one then the cost implications are fairly

minimal. Given the example that I alluded to earlier, it is when you have to go back in and retrofit a building that you really start to experience significant cost consequences.

Mr PERRETT—We heard a submission from, I think, the Australian Hotels Association; it was the first group of people in Melbourne on Monday. They were basically saying this—and they were talking about five-star hotels, I should say—

ACTING CHAIRMAN—It was the TTF.

Mr PERRETT—Okay, it was the tourism and transport alliance, was it?

ACTING CHAIRMAN—The forum.

Mr PERRETT—Their submission—and they were talking about five-star hotels—was that they were the last room to be let because they were seen as the worst room in the hotel.

Mr NEUMANN—They said that in Sydney as well.

Mr PERRETT—Okay. I have not had a lot of experience in looking at those rooms in five-star hotels. I would imagine that with a new room where you had universal access features it would be seamless and you would not even know that it was universally accessible.

Mr Gow—I would agree. I will give you my personal experience. I have stayed in a number of bed-and-breakfast establishments, including recently one in Launceston with my 91-year-old mother, who needed an accessible room. It was a new room. It was perfectly indistinguishable from any other room, except for its bathroom—and that was fine. There is another one that I know of in the Blue Mountains and for that the same principles apply. I can understand the difficulty with existing buildings, especially historic buildings. But in a new building I think it is perfectly okay. I cannot see why anybody would not want to stay there if they had that opportunity.

Mr PERRETT—In fact, I had an example from—I think it was in Koroit in your electorate, Mr Chairman—

ACTING CHAIRMAN—It was a bit further north.

Mr PERRETT—All right. Maybe it was not Koroit, although I remember thinking that it was in your electorate. The example was that it was the most desired room because people did not realise that it was universally accessible; it was just the best room.

ACTING CHAIRMAN—We did hear from another witness that in some five-star hotels the fit-out of the accessible room is very clinical and not very welcoming.

Mr NEUMANN—That evidence came from the Australian Hotels Association in Sydney, which I think was in relation to what Mr Perrett was referring to. I think that was from the Australian Hotels Association.

Mr Gow—I think it is a matter of good design. I have certainly had experience of ones that have been very well designed and not at all unpleasant to go into as a guest.

Mr PERRETT—With no hospital air about them?

Mr Gow—Correct.

Mr NEUMANN—We were incredulous as well, by the way.

ACTING CHAIRMAN—Thank you very much for appearing before us, Mr Gow. We will send you a copy of the transcript for any corrections. If there is any extra information that you would like to provide to us, please feel free to do so. We are going to have a very brief break for about five minutes. Our next witnesses are not able to bring their appearance forward but the Society of Fire Safety (Queensland Chapter) has been kind enough to agree to change places. They will be here, presumably, in five minutes, so we will resume as soon as they arrive.

[10.31 am]

GILDERSLEEVE, Mr Christopher Paul, Chairman, Engineers Australia, Society of Fire Safety (Queensland Chapter)

ACTING CHAIRMAN—Thank you, Mr Gildersleeve, for bringing forward the time of your appearance. Would you please state the capacity in which you appear before us.

Mr Gildersleeve—I represent the Society of Fire Safety, which is the college of the institution of Engineers Australia. It is the learned society.

ACTING CHAIRMAN—I wondered what it was when I first saw its name. Although the committee does not require you to speak under oath, you should understand that these hearings are proceedings of the Australian parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. Would you like to make a brief opening statement of a few minutes? Then we will proceed to some questions.

Mr Gildersleeve—I would like to bring the committee's attention to a few relevant papers which we did not refer to in our submission and which I think might inform the considerations. The first paper is one that was prepared for the Fire Australia conference last year. It is entitled *Egress and disability: goals of equality and dignity*, and it was prepared by Alistair Morrison and Trevor Everleigh of Arup. I think it is quite relevant in that it includes a review of available professional guidance within Australia and then examines international guidance in this area. It carries out a comparison of available guidance in Australia to overseas. It looks at design codes in the United States, China, Hong Kong, Singapore, New Zealand and the United Kingdom and identifies best practice. It includes a summary table which compares Australia with the USA, the UK, New Zealand, Hong Kong, China and Singapore in terms of guidance available for and legislation providing for access, egress, refuge, two-way communications, emergency lifts, lift evacuation and protected lift lobbies. It is quite clear from that review that Australia is lagging behind those other countries in this legislation in its provisions for emergency egress for persons with disabilities.

I would also like to bring your attention to a paper that was prepared on the topic in Canada in March 2002 by Guylene Proulx, who is an expert in fire safety. The paper is entitled *Evacuation Planning for Occupants with Disability* and includes extensive discussion on the topic of planning for fire safety, including provision for various means of safety such as areas of refuge and safe elevators. It summarises the state of the art from an engineering and fire safety point of view. It is a very good document by a very well respected speaker on an international level, and I think it would inform the considerations greatly.

Another paper I would like to introduce to you is *Emergency Egress Strategies for Buildings*, which is a paper that was produced on behalf of NIST—that is, the National Institute of Standards and Technology in the United States—and which was a direct response to the September 2001 emergency and to the difficulties that were associated with evacuation of those buildings via stairs. It concludes that the industry in the United States needs to and will be moving very quickly towards the use of elevators for evacuation of all occupants, particularly in

high-rise buildings. That is quite a strong statement that is being made on behalf of the industry, NIST being the premier industry in that area in the United States, which has the largest population of buildings of that nature. So it is a very strong statement in support of the use of lifts for evacuation, which I think is a key to one of the most powerful strategies that is available to us to deal with the issues.

ACTING CHAIRMAN—Following on from what you said about the use of lifts, all of us can recall some fairly high profile incidents which necessitated getting people out as quickly as possible. What strategies are currently employed to safely evacuate people with disabilities in the case of fires and other emergencies? My feeling is that we really do not have adequate procedures in place at this point in time.

Mr Gildersleeve—Current procedures vary, but if you are working within the limitations of the Building Code then you may arrive at solutions which would not use lifts. You may arrive at solutions which would not use refuge areas. But there are opportunities and those solutions have been adopted in buildings on an engineering basis. Sometimes they are outside of the strictest interpretation of the Building Code but under different legislation have been permitted. They are two very powerful strategies that can be used. The use of refuge areas, protected areas, around the floor—for example, waiting close to a lift lobby and close to an emergency stair where there is safety provided in the form of either fireproof or smokeproof wall construction—allows occupants to wait in a safe area pending either the use of the stairs or the use of the lift. That is quite a well-known and accepted strategy. Another strategy is the use of horizontal access within buildings, which of course is permitted under the Building Code by provision of fire resistant walls on floors so that you can move people into a relatively safe area on the floor without having to change level in the building.

ACTING CHAIRMAN—The premises standards currently exclude fire isolated stairs and ramps from requirements for accessibility. Would provision of accessibility features such as dual handrails, braille, tactile signage, TGSIs, luminescents and contrast nosing on stairs have a positive or negative effect on the use of fire stairs in an emergency? Does your society believe that this exception is appropriate?

Mr Gildersleeve—I do not think I am in a position to give a clearly defined yes or no answer to that. There may be occasions where it could be beneficial, but whether or not that would be particularly the right solution or a justifiable solution in a given case would depend on the application.

ACTING CHAIRMAN—You have suggested that the premises standards should require the provision of visual emergency alarms. How common is it currently for such a system to be provided? Are you aware of the approximate cost of installing such a system? Also, do visual emergency alarms provide any benefits to people who are not deaf or hearing impaired?

Mr Gildersleeve—Visual emergency alarms are used commonly in buildings where there is a concern about the audibility of an alarm. As for the frequency, I could not comment on that. But I know from experience that wherever it is a concern in the design then that is readily provided, because it is not considered to be a large proportionate cost of the building. So I do not think the cost of that provision often dictates whether or not it is included; it is more about whether or not there is a functional need.

ACTING CHAIRMAN—Thank you.

Mr PERRETT—Mr Gildersleeve, if I can take you back to the NIST recommendation, can you expand on what they are saying? Is it independent lifts and independent power sources? Is it over a certain number of floors that they become more efficient in moving people down? Is it for everybody in the building? Can you talk me through it a little bit more.

Mr Gildersleeve—I will read for you the conclusions—

Mr PERRETT—I am asking this in the context of Mr Slipper's question about all those other things to do with fire isolated stairs and ramps.

Mr Gildersleeve—Okay. If you will permit me, I will summarise the paper's conclusions:

From this discussion it appears obvious that protected elevators will become a primary means of vertical travel in tall buildings. Assuming regulatory agreement with the performance goal of total evacuation in one hour or less, occupant egress elevators would be required in buildings taller than about 50 stories and fire service access elevators in buildings taller than (6 to 9) stories. At the estimated one floor per minute rate, buildings of up to 50 stories can be evacuated in one hour or less using stairs alone. Most fire departments report a preference to use elevators to access fires above the sixth floor. Discussion and consensus is needed on the role of stairs, refuge floors, communication systems, and procedures for egress, relocation, or protection in place in the range of incidents that may be encountered in any building. In some cases, formal threat assessment may be needed to identify scenarios that need to be considered.

Where protected elevators are provided for occupant egress much of the occupant load would be carried by the elevators. Thus there may be less need for wider stairs, and the avoided costs of wider stairs should be more than adequate to cover the additional costs for protecting the elevators and adding monitoring. Owners would then be free to place assembly occupancies high in the buildings without the need for increased stair capacity. People with disabilities would be afforded the ability to self-evacuate with all other occupants without the need for special arrangements or equipment. In an event where the incident commander decides to require simultaneous evacuation of a building, the entire population should be capable of clearing the building in an hour or less.

Mr PERRETT—I would not imagine there would be too many buildings in Australia with more than 50 floors.

Mr Gildersleeve—There is a proportion of them; not a large proportion, I agree. But this is a statement in the United States, where obviously there are a lot more of those buildings.

Mr NEUMANN—We have heard submissions in relation to small buildings concerning the exemptions—the 200 square metres. Some people have submitted that that should be done away with; some people have suggested it should be retained. What is your view on that? You mention on page 3 of your submission that you do not believe, based on a cost-benefit analysis, that people should be required to upgrade their facilities if the buildings were erected prior to 1990. What is your thinking in relation to small buildings?

Mr Gildersleeve—Could you repeat the first part of your question?

ACTING CHAIR (Mr Neumann)—Some people have questioned whether the 200 square metre threshold should be less or more in relation to small buildings. That is the exemption. You

have commented in relation to those types of buildings that you do not believe that people who erected their premises prior to 1990 should have to upgrade their facilities—it is unreasonable on a cost-benefit basis. Have you any figures or empirical evidence in relation to that?

Mr Gildersleeve—I have not got figures but I know from experience that there are a significant number of those buildings in Queensland. I have seen and been involved in buildings of that type on several occasions. I cannot necessarily quantify the cost but I can visualise the complication associated with trying to incorporate a retrofit of a suitable means of access and egress from those types of facilities simply because of the constraints of the existing construction. Although I cannot comment on the costs I would hazard to say that the difficulties and practicalities associated with complying with this requirement would be significant.

ACTING CHAIR—And you say it is in direct conflict with the building act, don't you?

Mr Gildersleeve—Yes. That is the interpretation of the building act that I have been given. I am not an expert in the building act but I know that that is a common interpretation by building certifiers, and under the current arrangements building certifiers would invoke that opportunity to allow owners not to have to provide for this.

Mr PERRETT—They also talked about eight- and nine-storey buildings, didn't they?

Mr Gildersleeve—Yes.

Mr PERRETT—In terms of two-, three-, four- and five-storey buildings, do you think that is the way we would move in the future? If a lift is going to be used for 50 storeys or 15 storeys, in providing a means to evacuate in an emergency why not five storeys?

Mr Gildersleeve—I would foresee that in the future that is the way that we will evacuate buildings because it is a natural means of moving people. As long as you can provide those facilities in a safe manner, I would see no strong argument against the use of the lift at all. It is a common way to enter a building; therefore, it should be a common way of exiting a building.

ACTING CHAIR—Mr Gildersleeve, thank you for attending today. We appreciate it very much. Thank you for referring so frequently to those other items.

Proceedings suspended from 10.48 am to 10.55 am

DESHON, Mr John Popham, Private capacity

ACTING CHAIR—Thank you very much, for coming, Mr Deshon. We appreciate you coming in an impromptu way today.

Mr Deshon—My appearance here initially is to assist Dr Max Murray when he arrives from Townsville. I do appreciate the opportunity to answer some questions and to make an opening statement about my position on this business.

ACTING CHAIR—Perhaps in your brief introductory statement you would like to give details of your qualifications and background. Although Mr Perrett and I both know it, it would be useful for the record.

Mr Deshon—I appreciate the circumstances under which I appear. I am a qualified architect, I am an accredited access consultant and I am an accredited mediator. My practice has been involved in human rights and accessibility for some 38 years now, commencing with research work in Oxford and then, since 1993, when the DDA was enacted, as a specialist in that field. My work as an architect these days is to advise projects large and small about their accessibility and to advise the courts on the cost of fixing up houses for people in personal injury cases. As an advocate within this business I have sat on Standards Australia drafting committees. I am active both within the Institute of Architects in their access committee—I was chair of that for four years—and in ACAA, the Association of Consultants in Access, Australia.

ACTING CHAIR—It is in the context of your expertise in personal injuries that I know of you. As someone who practiced as a litigator for many years, I have heard of you. Your reputation goes before you in that regard.

Mr Deshon—Thank you.

ACTING CHAIR—I would like to hear from you from a philosophical point of view—we have heard a lot of concepts, and you have been here this morning—your thinking on the premises standards and the concept of unjustifiable hardship and the interrelationship with the DDA. I would like to hear what you have to say as someone who is very experienced in this area.

Mr Deshon—Alright. I have not prepared notes for this for it, so I hope I get this in some reasonable order.

ACTING CHAIR—We are giving you carte blanche almost.

Mr Deshon—First, trying to match human rights legislation with a piece of building legislation is difficult. Compromises will always have to be met because of the nature of those sorts of enactments. Second, if we were only dealing with new buildings or buildings about to be built, this would be easy. Because we happen to be unblessed with a very large infrastructure of existing structures, the picture is clouded. I have said somewhere in the past that we should not let the mistakes of the past cloud our vision of the future, but that is what is happening.

The concern of the Property Council and others—building owners and managers—is that if we set the standard for new buildings too high, it will accelerate the depreciation of old buildings and in fact make them redundant more quickly because the cost of bringing them up to the new level would be too great. If you are renovating a 30, 40 or 50 storey inner city office building, which happens every 15 years or so, the outcome is that it should be able to compete reasonably fairly with the building stock that is being built now. If the sorts of things we are talking about change the net lettable floor area too much, then the cost of fixing that building becomes uneconomical. That is a simplistic view, but I think that is where the Property Council comes from. It is hard.

Compare the standards under review with the disability standards for accessible public transport, which also deals with buildings, but some particular buildings. It does not take the view that the trigger is the renovation of the building; it takes the view that all buildings, as all conveyances, should be fixed up, but it gives the owners or operators a time line to do so. The structure of the Building Code and the state legislations which empower it do not allow that sort of operation. I think that is where our problem rests.

Philosophically, Elizabeth Hastings, who I think was the first disability commissioner—who has now left us; Phillip Adams wrote a wonderful obituary for her—said, ‘We must be prepared to give up some individual rights in exchange for certainty.’ She was talking in 1996, I think, about the creation of disability standards. ‘We must be prepared to give up individual rights in exchange for certainty.’ The more precise we can make any disability standards, the better certainty we achieve.

That leads me to a couple of things in the current document. One is the very poorly drafted Australian Standards, which are exhibits 9, 10 and 11. I make no excuses for them: they are very poorly drafted. Standards Australia has had activity available to it for four years at least to get those things right. My understanding is that it has ignored the opinions of its technical committees—it has not called them. I understand that this is being recorded. I think it must take some responsibility for the poorly drafted documents which it has presented. There might be good reasons for it, but on the face of it they are crook bits of paper.

As far as the premises standard, the draft access code part of it, is concerned, you have heard the arguments over and over again about the major disagreements: whether it is an A80 or A90 wheelchair and the passage, ramp and walkway widths and all those others; and whether in fact it is reasonable to have signs and buildings which some people cannot use. My view of signage is that if the signs are necessary—and I think there are eight signs outside this building that say ‘Don’t take your cup into the room.’ If you are Larry Laikind—

Mr PERRETT—I thought they were only suggestions.

Mr Deshon—Well, the view is that, if they are necessary, everyone should be able to use them. Larry Laikind did not know they were there. Perhaps we put up more visual signs than we need to put up. The view is that, if we need the signs, as many people as possible should read them.

On the egress from buildings, I have worked with Chris Gildersleeve; I am not sure if he presented his case as strongly as he might have, but he is a fine advocate for this work and he

knows his stuff. In answer to one of the questions you asked him, I would say that the provisions in most buildings in Australia, particularly older ones, for egress with people with disabilities are nil—there are none. Given that question, that is the way I would have answered it. So A90, signage, egress—there is a fourth one?

ACTING CHAIR—I was interested in hearing your thoughts also on unjustifiable hardship.

Mr Deshon—I wonder if we are able to codify this in a way which the Queensland Building Act allows a building certifier discretion as to whether or not he or she applies the current BCA. I do not know whether that has been raised yet.

The Building Act says that if the area of alteration, the area of a building being altered, is less than a certain proportion of the overall building area then the building surveyor, at their discretion, decide whether in fact the current use of the BCA will be imposed. That is measurable. It does not require a building owner divulging the commerciality of his building. It does not require the opinion of people about what alterations will cost. The problem with unjustifiable hardship is that it is so hard to verify. I was a witness as to both Coffs Harbour and North Coast Cinemas and the convention centre case. In fact I have advised Larry Laikind on most of the cases that he mentioned. The point about the South Bank apartments was that, when the complainant bought her apartment she had no disability. She developed that after she had bought. I am going to lose my track here.

ACTING CHAIR—Unjustifiable hardship.

Mr Deshon—That is right. In all those cases the respondent has had to divulge information which is sensitive commercially—and in a public forum too because they have been forced to really have the idea tested rather than try to negotiate it. I am not entirely sure if that is a satisfactory way, for a free-capitalism country to intrude into people's commerciality.

ACTING CHAIR—There are about 16 factors set out in terms of that. We have heard submissions that there should be included such factors as regional or remote locations, loss of heritage values and the ability to achieve compliance by less onerous means. I thought the point that you were making and seemed to be stumbling for the words for—

Mr Deshon—I would like to simplify it.

ACTING CHAIR—People actually have to discover that, or the owner or the landlord has to say, 'Look, I really can't afford it; it is really going to cost me too much,' and then they have to disguise all their financial affairs in open court, if I can put it like that. That is very embarrassing.

Mr Deshon—I would certainly feel uncomfortable if I were on that end of the business, particularly if I were in a particularly competitive field of building ownership or building rental. I do not know how we would do it, but I would like to think we were smart enough to be able to do it. In other words, and I think Dr Murray will say this, if we are smart enough to codify what constitutes an acceptable level of accessibility with our buildings, we should be able to and smart enough to codify why we should not do it. At the moment the DDA says, 'The reason we shouldn't do it is unjustifiable hardship.'

ACTING CHAIR—Surely there will be a body of case law precedent developed over time in relation to it.

Mr Deshon—It might be. But with Coffs Harbour, though, the condition upon which the respondent divulged the information was that it remain confidential. The Queensland QC hearing that case agreed to the confidentiality. In fact, I was accused of divulging that—which was not true; you try to discredit a witness, as you know, if you can.

ACTING CHAIR—I will hand over to Mr Perrett in a moment. I have one more question. It deals with the question of access panels. I would like to hear your thinking on that. We have also had evidence from some people, particularly from the property lobbyists, such as the Property Council mainly, who were saying that they would really like to get this out of the hands of the courts. They would like the access panels to be able to determine this issue. The words they used were they would like to fetter the courts. As you are someone who is expert both in the area of building and of architecture and also very experienced in dealing with the courts, as an expert witness, I would like to hear your thoughts in relation to that particular aspect.

Mr Deshon—Although I have some legal experience, I am not a lawyer—you are. You will appreciate that judges, with all respect to our judges, get very stropy if the application of the law of the country is taken out of their hands. I cannot put it more bluntly than that. The reason that the Federal Court is involved in these cases now is that they objected to HREOC and its commissioners applying the law. Personally, I have no difficulty with it. It may need some endorsement in the end by the judges, but there is no doubt that people who understand the intricacies of buildings, the difficulties of financing them and the practicalities of modification or of planning—and, dare I say, some idea of the difference between good design and mediocre design—should be involved in the process.

Mr PERRETT—Mr Deshon, I want to take you to your experience in modifying class 1 buildings primarily—in terms of personal injury, people who have received money after motor vehicle accidents and the like. I wonder whether you can give me some commentary on the general types of costs that are involved. I know we are talking about class 1 buildings, but I am referring to retrofitting et cetera.

Mr Deshon—This is not as difficult to answer as you might think.

Mr PERRETT—I am interested in the costs.

Mr Deshon—One of the exercises I do quite regularly is to take an average new Queensland project-built house. You might ask how long is a piece of string. But the HIA and the REIQ give us this statistical information very regularly—every quarter. We know how many houses are approved, we know what they cost and we know how big they are. There are two lumps. There is a lump of starter houses—and there is going to be a bigger lump in the next year or two—

Mr PERRETT—Thanks to the Rudd government!

Mr Deshon—Yes. There is then a lump of more established houses. Somewhere in between is the one I have to take. It is a three- to four-bedroom house. It has a floor area of 160 square metres without the garage—less than the 200 we are talking about; it has a very small en suite;

and it has the usual open kitchen and double garage. If I am going to alter that house on a convenient site—in other words, the magic level site—

Mr PERRETT—And this is as-built?

Mr Deshon—Yes, take this house and then alter it. I am going to spend between \$70,000 and \$150,000 fixing it up. The difference depends on whether I need to air condition it fully and whether I need to install some hoists. Those are the two primary things. There may be some particular things about safety of corners and the protection of walls and so on, but that is the range.

Mr PERRETT—And that was for a \$350,000 house. Is that what you are saying?

Mr Deshon—Yes, thereabouts. If I take the cost of that house and then compare it with the cost of a purpose-built house, the difference is not all that significant, believe it or not. The reason for that is that a lot of the things I do to the project house are not there in the first place—in other words, I do not have step-free access at the front door, a porch over the front door. Some are there. I either have to add a bathroom or change a bathroom. It does not have wall protection, it does not have safety switches, it does not have air conditioning—it does not have a lot of the things you would put in, whether you were putting them into an existing house or you were installing them in a new house. There are extreme ones. Those things can cost \$200,000. But that is not a paraplegic person who is able to mobilise independently. If I have high spinal injury, and I have lost my dexterity and I am still trying to live as independently as I can, those costs go up.

Mr PERRETT—Have you had any experience with workplaces as well, in terms of accommodation for a workplace?

Mr Deshon—Very little. The occupational therapists will usually tackle that in these cases. There has to be some assumption in the first place that the person is able to return to work.

ACTING CHAIR—Is there anything else you would like to add? We are giving you open slather here for the next minute or two.

Mr Deshon—I appreciate that very much. I think the conclusion is that I would love to see Standards Australia brought to task and really informed, maybe directed even, because I suspect that whatever direction comes out of parliament to it is all that it will ever do. It cannot change the standards after they have been established without going back to parliament, because they are part of the premises standard. In other words, once those are referenced in a disability standard the regular review of Australia's standards, which is programmed, cannot take place. At least the review can take place; the publication and endorsement of the standards cannot take place because they are part of a disability standard. This has happened to the transport standards; it will happen with the premises standards.

ACTING CHAIR—Yes, we know a bit about the transport standards. It is a bit like *War and Peace*—or the Hundred Years War, I would describe it as. Thank you very much for your impromptu and extremely helpful dissertation. We value your time and thank you for coming.

Mr Deshon—I appreciate the opportunity. Thank you.

ACTING CHAIR—We would be grateful if you would liaise with the secretariat on any additional questions the committee may have and any material you may care to provide.

[11.16 am]

BEDWELL, Mr Daniel David, Private capacity

STRUTHERS, Ms Rita, Private capacity

ACTING CHAIR—Welcome. I am the member for Blair, in South-East Queensland. It is an electorate based in Ipswich and the rural areas outside. Mr Perrett is the member for Moreton, which is a south-west Brisbane electorate. So we are a couple of local lads. Thank you for coming up from the Gold Coast to attend the hearing. Although the committee does not require you to speak under oath, you should understand these are formal proceedings of the Commonwealth Parliament of Australia. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make a brief introductory statement before we proceed to questions?

Ms Struthers—Yes, we would love to. On behalf of Daniel Bedwell and myself, I would like to thank the federal government for its efforts in moving the access to premises standard along. We would also like to thank the committee members for the opportunity to appear at the hearing. And we would also like to thank Serica Mackay for her assistance in putting our submission together. Daniel is an access consultant and we both currently work as social planners with the Gold Coast City Council. We would like to stress that our submission was made and our presence here today is as private individuals and our views are not put forward on behalf of council.

We very much applaud the efforts to harmonise the Disability Discrimination Act with the Building Code of Australia. We would like to stress, though, the importance of a strong access to premises standard. It would be of concern if the access to premises standard had lower access requirements—and we believe they are lowered access requirements compared to the Australian Human Rights Commission advisory notes on access to premises. With lower disability standards you actually impact on the content and the integrity of the Disability Discrimination Act.

If you have lowered disability standards, particularly in access to premises standards, a consequence could be that you will have buildings that just will not work for the community. John Mayo, who will be appearing later, quite often talks about maximising the investment in buildings. If you provide good access for the whole community, that initial investment of design, construction and maintenance is an equitable, cost-effective outcome for the community.

ACTING CHAIR—Mr Bedwell, is there anything you would like to add?

Mr Bedwell—In our recommendations we are trying to encapsulate where the advisory notes have provided compliance with the intent of the DDA and where we can see a slight variation with the actual current access to premises standards.

ACTING CHAIR—We appreciate the fact that you are not speaking as representatives of the Gold Coast City Council but as individuals. The Gold Coast City Council is a very large council

in south-east Queensland. It is, I think, the second largest after Brisbane City Council, which is a very big council—the biggest in Australia. So your experience in that regard will be invaluable, and we would like you to feel free to refer to that in your evidence. We acknowledge that you are not speaking on behalf of the mayor, put it that way. We are going to ask you a series of questions probably related to your experience with and observation of the council and how it anticipates it will happen. We accept that you are speaking as individuals.

There really are some practical consequences of the draft standards, aren't there? I think Ms Struthers was referring to those. Can you elaborate upon the current practices in the Gold Coast City Council? The standards set certain things. You talked about lowering the standards. Can you comment further on that? You made reference to that in your introductory statement.

Ms Struthers—I did. I would like to paraphrase your question so that I know I have heard it correctly. You are hoping that we will talk about our experience as private individuals working with the council?

ACTING CHAIR—Yes. With the different levels of access, you mentioned that you were concerned that the standards would be lower in the draft standards as opposed to, for example, current practice on the Gold Coast.

Ms Struthers—Yes.

ACTING CHAIR—Can you expand on that?

Ms Struthers—I would be happy to. Current practice at Gold Coast City Council will be best practice, and certainly this is something that Daniel and I and other social planners encourage.

ACTING CHAIR—I would like you to explain 'best practice', too, because you keep mentioning it. I can understand why Don Watson, who is pretty picky and—

Mr PERRETT—The weasel words!

ACTING CHAIR—You used that term repeatedly, and I kept on thinking: 'I must ask about that.'

Ms Struthers—Yes, I think we probably should have clarified 'best practice' in our submission. Best practice is above and beyond the Disability Discrimination Act.

Mr PERRETT—Above?

Ms Struthers—And beyond the DDA, yes. Daniel and I encourage officers to work to the advisory notes on access to premises as a minimum. Where the standards—whether it is the advisory notes or the Australian standards—do not deliver access for our community, we encourage best practice. For example, I think we may have mentioned in the submission that the advisory notes recommend ramp gradients of one in 14 with landings every six metres. We have had feedback from the community that this actually does not deliver safe, independent access to ramps, so, through Daniel's input and insistence from other access consultants, we have

encouraged officers to design and construct walkways instead of ramps. Walkways offer a gradient of one in 20, a gentler gradient for the community.

Mr PERRETT—So one in 20 would be more acceptable?

Ms Struthers—Yes. One of the things that I was keen to state at the hearing was that the compliance regime relating to disability and the built environment is actually quite complex and difficult to navigate. There is a tendency to work to a minimum rather than to best practice, when it comes to a whole range of things but certainly to access. For many years officers thought that the Building Code of Australia delivered access. It is really about encouraging and educating officers that it is actually the Disability Discrimination Act that they need to observe for compliance, as well as the advisory notes. So an access-to-premises standard that offers lowered access requirements will add to the complexity of the discrimination compliance for local government authorities.

Mr PERRETT—I imagine that on the Gold Coast there are a lot of class 2 buildings.

Mr Bedwell—Yes.

Ms Struthers—Yes.

Mr PERRETT—I do not know what the demographics on the Gold Coast are. I have in mind a distorted population pyramid of a lot of seniors and a lot of young people. Is that right? Is that what the ABS data reflects?

Mr Bedwell—That is correct. There is an increasingly ageing population on the Gold Coast.

Mr PERRETT—So you are older than the rest of Australia.

Mr Bedwell—The demographics would state that. I think the age bracket of over-65 is about 13 per cent. I am just quoting some figures off the top of my head here, but I believe that will increase to 25 per cent—

Mr PERRETT—And you have very young areas as well.

Mr Bedwell—Yes, we do. There is a young demographic as well.

Mr PERRETT—In terms of that mix of population and those class 2 buildings, how have you found that in practice? Do you get many complaints from people? I am not sure what a social planner disability and seniors does in terms of engaging with the community. Is it responding to complaints, or planning so that there are not complaints?

Mr Bedwell—We are receiving feedback from the community with regard to people who want to make adjustments to class 2 buildings, but there have been instances where the body corporate do not recognise their obligations or duties under the DDA to make adjustments to the common areas of class 2 buildings. With class 2 buildings there are instances where the premises are holiday rentals, as well as sole-occupancy residences. There have been cases in the past within DDA law where the complainant has actually made complaints that the common areas of

a class 2 building have not met their requirements, and there has been a successful outcome for them and the body corporate have had to comply with the DDA.

Mr PERRETT—The C and A case?

Mr Bedwell—Yes.

ACTING CHAIR—There has been a growth in population on the Gold Coast. Mr Perrett and I were discussing the Gold Coast just before you came in. Because of the growth in population the ABS data from last year came with an enormous growth in the northern part of the Gold Coast. A lot of the old units are very different to the units that are being built today. Class 2 buildings are really residential units. But they are very different, aren't they?

Mr Bedwell—Yes.

ACTING CHAIR—There are a lot of common areas—there are swimming pools, playground equipment, barbecues and a lot of areas. They are not really the kind of old residential areas that people envisaged. And a lot of them have been converted into short-term stays as well. So they are very different. I think I used the word 'amorphous' before. It is very difficult to identify exactly what a class 2 building is now compared with what it was 30 or 40 years ago.

We have heard some evidence in relation to that and we know that the 2004 draft standards would have imposed obligations on common areas in class 2 buildings. We have heard a large number of submissions recommending that accessibility requirements should be imposed on the principal entrance and the common areas of class 2 buildings. In fact, some people have really gone the full Monty, if you know what I mean, and said, 'Really, we need to just impose it across the board, even on class 1 buildings.' What is your thinking in relation to class 2 buildings? The case of C and A was mentioned, and we heard evidence this morning from the Welfare Rights Centre. There seems to be some suggestion that even though class 2 buildings were formerly considered essentially residential premises, it may be the case that they are required to provide access for people with disability in light of C and A. What do you think about that C and A decision?

Mr Bedwell—I am totally in agreement. In principle, access needs to be provided to the actual unit entries of a class 1 building.

Mr PERRETT—Class 1?

Mr Bedwell—Sorry, to a sole-occupancy unit.

ACTING CHAIR—You are talking about class 2.

Mr Bedwell—Sorry. Access needs to be provided to the point of entry of the unit itself as well as to the common areas. That is what I would advocate.

ACTING CHAIR—So does the Gold Coast City Council impose real accessibility requirements? Are you vigilant about that?

Mr Bedwell—We have advocated that in the past for all the common areas of class 2 buildings.

ACTING CHAIR—You have advocated or you have actually imposed them?

Mr Bedwell—I have advocated.

Mr PERRETT—I cannot help but hear that that is probably not a Gold Coast accent. When you talked about the class 1 buildings, I think it was a slip of the tongue.

Mr Bedwell—Sorry, it was.

Mr PERRETT—My understanding is that in the UK the access requirement is to the front door of even class 1 buildings. Have you a background there?

Mr Bedwell—In the UK I was mainly in the health care sector. I was an access officer for the local health authority. I cannot really comment on that one, to be honest.

Mr PERRETT—Okay. That was just some evidence that we heard—that in the UK in every new building you had to have access to the door.

Mr Bedwell—Through talking to other professionals I understand that is the case.

ACTING CHAIR—We have heard lots of evidence in relation to emergency egress issues. Lots and lots of people have submitted their views in relation to this. Do you have any suggestions to ensure that there is independent and dignified emergency egress from buildings?

Mr Bedwell—I would like to answer that.

ACTING CHAIR—Go for your life!

Mr Bedwell—With regard to prescriptive recommendations?

ACTING CHAIR—Yes.

Mr Bedwell—A lot of research has been done over the years. I know—and I speak for many access professionals—what we would like to see. We think that the intent of the DDA with regard to egress needs to be upheld. Independent egress needs to be provided to buildings where—

Mr PERRETT—Independent and dignified.

Mr Bedwell—Independent and dignified. When we talk about independent egress we talk not only about people who are mobility device users but about people who are ambulant. They may have paralysis where they have the use of one side. They may need handrails on both sides of a fire stairwell in order to egress the building. They may have a vision impairment. There is no colour links contrast to standard stairway nosings. So I believe there are a lot of people who

would benefit from these prescriptive requirements. Also, mobility device users would benefit not only from staged evacuation, such as refuge spaces within both stairwells and lift lobbies, but from stairway devices that are used in instances of terrorism, where they need to get out of the building quickly.

Not only is there staged evacuation but there may be instances where you need to get people out of the building quickly. Therefore, stairway devices do not require someone to transfer out of their mobility device. They can actually be fixed to this device without requiring transfer, which would minimise the stress involved in the egress situation. So you would have emergency devices used in stairways as well as stair refuges.

Mr PERRETT—Can you just explain that a bit more?

Mr Bedwell—Stairway devices?

Mr PERRETT—Yes.

Mr Bedwell—There are instances where evacuation chairs can be used.

Mr PERRETT—Can you describe what they are?

Mr Bedwell—An evacuation chair is a chair which is used to climb a stairway, but someone in a wheelchair does not necessarily have to transfer out of their wheelchair to use it. They can be fixed within their wheelchair to this stairway device.

Mr PERRETT—Yes, sorry. You see them advertised on TV.

Mr Bedwell—Yes. One of the plans for emergency standards actually quotes the use of these evacuation devices, but I think this needs to be represented within both the Building Code of Australia and also the access to premises standard to make people aware of what management policies are needed in the event of egress.

Mr PERRETT—I see them as more of a one-level type of thing; they are not going to get you out of a 10-storey building, are they?

Mr Bedwell—In the instance of a 10-storey building, the refuges would serve their benefit because they would allow for staged evacuation until such a time, for example, that lifts are fully operational and it is safe to re-enter the building. Also, there would be communication points within the stairwell. So someone would be informed by the fire emergency services as to what was happening with regard to the emergency.

ACTING CHAIR—I have only one last question and it relates to the trigger. It only applies to buildings at the time of an application for building approval. We have heard a number of suggestions recommending that the trigger for compliance be changed to apply to where more than 50 per cent of the building is subject to a building approval—I would say over a three-year period or in accordance with a defined timetable for compliance. You mentioned the 50 per cent trigger in your submission and recommendations to us. What benefits do you think would flow from your suggestion of a 50 per cent trigger?

Mr Bedwell—The benefit I see is that it would provide greater access for people with disabilities over the course of time with existing building stock. At the moment, there are a lot of people with disabilities who have been provided access to existing buildings due to this 50 per cent trigger. It is a guaranteed way of someone being able to use an existing premises. While I do agree with the fact that an owner who is making an application for a building permit will be providing access from their principal entrance along a continuous path of travel to their service, I would also like to see associated components of the building become accessible in line with the 50 per cent trigger. So if there was a renovation of more than 50 per cent over the course of five years then you would see these triggers happening. Eventually you would see a scenario where a building becomes entirely accessible as opposed to just having a new part of the building and an affected part of the building. That is where I see the benefit of the 50 per cent trigger being derived from.

ACTING CHAIR—Thank you both very much for coming. We really appreciate you coming and the submission you have given to us has been very helpful in the circumstances. The secretariat will send you a copy of the transcript for any corrections that need to be made and we would be grateful if you could liaise with the secretariat about any additional questions the committee may have or material that you have undertaken to provide.

Ms Struthers—My apologies, but may I ask one question?

ACTING CHAIR—Yes.

Ms Struthers—Daniel and I have been concerned about the impact of the access to premises standard on section 24 of the Disability Discrimination Act. In some ways that might be out of the scope of this inquiry. Its impact will be this. Obviously, many goods or services are provided out of buildings. We are concerned that the idea of a lowered standard will have an impact on that provision for people to get two-way services provided in a building.

ACTING CHAIR—Thank you very much for that. We will record that in your evidence.

[11.41 am]

MACPHERSON, Dr John Robert, Member, Spinal Injuries Association

MAYO, Mr John Nicholas, Manager, Community Relations, Spinal Injuries Association

ACTING CHAIR—Welcome and thank you very much for coming to give evidence. Although the committee does not require you to give evidence under oath, you should understand that these hearings are formal proceedings of the Commonwealth parliament and that the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Before we proceed to questions, would you like to make a brief introductory statement?

Mr Mayo—Yes.

ACTING CHAIR—Please proceed.

Mr Mayo—There is not much doubt about the fact that a standard is critical to the future of Australia. What we are very concerned about is that the present draft standard on the table seems to have a considerable amount of inequity and inadequacy in it and we are also concerned that this product would be the sort of product that would go forward. We are also concerned, to some degree, about the confining of the language around disability. We appreciate the fact that so much of what is before us has been driven by the disability sector and so has this disability component, but the truth of the matter is that it is more than just people with a disability who require accessible outcomes in Australia. Clearly, people who are ageing, people with a medical condition and people with a temporary injury and parents with prams, in addition to people with a disability, tend to constitute those who are seeking access to goods, services and information. It is important to note that we are reaching a moment in history, one never previously coped with, with regard to our ageing population, who will fairly soon be in the order of 26 per cent of the overall population. That will make them the single greatest cohort, both numerically and financially, so this group is going to be certainly on the warpath as far as access is concerned. If in fact this nation does not deliver accessible outcomes for this group, parliamentarians will know about it and so will everybody else. If this group cannot get a service from a retailer, they will shop by email. They will have the experience and the savvy and the wit and the money to simply find another way to get there. They will be fairly unforgiving of those of us who do not actually consider their needs into the future.

On the subject of seamless connections, at the heart of what we are dealing with here is the need to try and overcome some of the inadequacy in Australia of people's ability to access the built environment. If I asked those of you sitting at the table where you went yesterday, I already know that because you are able-bodied you would have left the front door of your accommodation and you would have gone to a variety of venues during the course of your day and returned to your accommodation. Other Australians want to be able to do the same as you do, but in fact they currently find that quite difficult because they cannot seamlessly connect from their front door to a range of places and contribute to their community in the same way that you can. That has occurred because our building regulation is so ineffective. If I asked you if you

want your children to live in an inclusive community, you would say, ‘Yes, of course we do,’ and my response would be, ‘And so does every other parent.’ But we are a long way short of that at present and the standard before us will not deliver the sorts of outcomes that we are talking about.

Local government is under pressure to deliver inclusive communities, and the federal and state governments are now operating under banners of social inclusion—and that is a very good thing. But all of that momentum will be stalled by lobbyists who want to segregate people by allowing access and egress through only 50 per cent of building entrances, for argument’s sake; by the same people who seem to have convinced some parliamentarians equal access to toilets, which is a basic health and hygiene issue, is unnecessary; and by those who have no real interest in the ability of Australians to be employed or to have access to services in two- and three-storey buildings. Two- and three-storey buildings make up the bulk of the buildings across Australia. The inadequacies and inequities in the standard at the moment are quite significant.

The last thing I would like to say to you, if I may, is about the community’s fear with regard to this standard. There are many people who would say that they have reason to fear the parliamentary process and that it will not deliver the goods on this occasion. Part of that is because parliamentarians do not seem to have shown much interest in this topic since the DDA was first introduced in 1992, nor since the first successful test case involving the DDA in August 1994. We are concerned about the fact that a draft standard had been produced and was available in 2004 but since then another product has been produced. Certainly the disability sector have not in any way ticked it off, so we are wondering how it got to be where it is.

We are also in fear of what we might call lip-service by parliamentarians who claim the services of their electoral offices are available to people and yet so many of them are actually inaccessible. I would cite an example in Queensland, for argument’s sake. The office of the member for Wide Bay, in the Bundaberg area, has been inaccessible forever despite the countless times that people have asked to gain access to that office. I have chosen Bundaberg in particular because, outside of Brisbane and the coast, Bundaberg happens to house the highest number per capita of people with a physical disability of any centre in Queensland—if you take out Brisbane and the Gold and Sunshine coasts. So, yes, there is some real concern about the capacity of the parliament to deal with these issues.

From the community’s standpoint, the access to premises draft is in some respect putting the parliament on notice, because on the evidence the capacity of the parliament to offer a fair go to Australians is absolutely in question here. If, in fact, parliamentarians are not prepared to deal with the inequity and inadequacy that we are seeing in this proposed standard, you are being asked: please do not put it forward. Do not progress it. Rather let those of us who work at the coalface keep going with what we have because we are managing okay—not well but okay. We are managing to resolve issues in legal jurisdictions. So park it until at some point in history the parliament will have come to understand why this standard is such an enormous lever and is really so significant in terms of maximising Australia’s social and economic performance.

ACTING CHAIR—Dr MacPherson, would you like to add to that?

Dr MacPherson—Yes. The current draft standard really seems to improve very little on the current Building Code. So in effect we are really only saying that, yes, the Building Code is

DDA compliant, where in fact in the past we have found any number of cases that have gone to court or gone through conciliation where that was not the case. Therefore, while we applaud the idea of a building standard, it would seem to improve very little on the current position.

The 2004 draft provided quite a good guideline for people to design. I have just come from a building that was built to the 2004 draft. A building just up here, newly created, is also to the 2004 draft. We are falling back from that. People are actually building to a standard that is above what we will have if the 2009 draft is ratified as is. So it seems a step backwards, which is unfortunate—very disappointing, actually. We are just endorsing the status quo. There are many things that we could criticise in the current standard. I will not go into detail there—I will allow you to move on to your questions—but, regrettably, it seems to have failed to take the opportunity to seize the day and advance the ability of people to participate fully in society, rather than being alienated from it by the fact that they can get into so few places.

I recognise that this standard will only cover those areas that the Building Code or the transport standard currently cover and would say that that in itself is good, but I would urgently request that we look at the connections to all of these things. How do we get between these accessible buildings? Upon what footpaths do we travel? Footpaths are covered by the DDA but not regulated under the DDA. We live in homes—most of us live in homes. Some of us do not, but most of us live in homes, none of which comply with any discrimination act, because no discrimination act covers them. Therefore, finding a home is difficult. I searched for a very long time before, unfortunately, some poor old digger died. He was disabled and I bought his house, but that was probably the only way I would have got a house without doing major modifications at that time. The situation has not changed.

We need to urgently look at those areas that are not covered as premises under the DDA but that are under article 19 of the UN convention on disability, such as housing. We need standards for these areas. Most of us live in the most important building that we will ever have, and that is our home. It is not covered. I acknowledge that under the Building Code it could not be covered, but it needs to be. So yes, we have something here. I am disappointed that it has gone so little distance beyond the Building Code and I would urgently request that we look at all of those areas of the built environment which are outside the premises standard and the existing transport standard.

ACTING CHAIR—Thank you, Dr MacPherson. The message we are getting from you is: ‘Park it. Don’t put it into practice.’ Is that what you are saying?

Dr MacPherson—Yes.

ACTING CHAIR—When you referred to a couple of buildings this morning, as you were coming in, were you saying that in your experience people are voluntarily complying with the draft 2004 standard, which is infinitely better—if I can put it in my words—than the 2009 standard? Is that what you are saying?

Dr MacPherson—That is correct. Yes.

Mr Mayo—I am actually saying something slightly different. I am saying that there are many, many organisations that are complying with the DDA advisory notes on access to premises,

which were developed in the mid-nineties. Mr Deshon, who gave evidence this morning, had a very large hand in the development of that document. That document has been used consistently for a number of years. Many people would say to you that it is the bible, and in my view it clearly outperforms the 2004 draft. So I am finding, as an advocate dealing with these issues and working with developers and designers, that much of their work is meeting the requirements of those DDA advisory notes on access to premises.

ACTING CHAIR—Correct me if I am wrong, but you are saying that the standards should apply to all classes of buildings.

Mr Mayo—Absolutely.

Dr MacPherson—And to all premises. The DDA defines ‘premises’ as virtually anywhere, so the footpath out there is a premises.

Mr PERRETT—So it should be to all classes of buildings?

Mr Mayo—Yes, all classes of buildings.

Mr PERRETT—And new buildings?

Mr Mayo—Yes, unequivocally.

Dr MacPherson—Yes.

Mr PERRETT—My question was going to be why 1B should be treated the same as 3, but I suppose you have answered that. I guess many people will say that the cost will be too high. You can hear the arguments. We have heard the arguments over the last—

ACTING CHAIR—The ‘unjustifiable hardship’ argument. What do you say to the argument put in by the Property Council and the Master Builders, for example, whom we have heard from in relation to the additional costs that their members and their clientele are going to suffer in the circumstances?

Mr PERRETT—Hotels et cetera.

ACTING CHAIR—What would your response be to that?

Dr MacPherson—If we were to say ‘1A: housing’ I would dispute that it is actually going to be much more expensive at all. It depends on how it is done. A lot of the arguments that they are putting forward seem to be trying to modify what is done currently, which is proving to be less than adequate for the market anyway, rather than asking, ‘How do we build this way and make sure that we keep within cost?’ With all due respect, they do not like change. Therefore, any argument—oh, please don’t smile!

ACTING CHAIR—We have been sitting through days of those arguments!

Dr MacPherson—Yes, I know: ‘We can’t retool; we’ll all be ruined!’

ACTING CHAIR—I reckon I could construct a brief and argue the case for every view.

Dr MacPherson—Yes, I understand that.

Mr PERRETT—If they paid us a lot of money!

ACTING CHAIR—I am no longer paid the same, by the way.

Dr MacPherson—The Brisbane Housing Company is actually putting together units which are to universal design standards and which they tell us are no more expensive than other units. That is class 2. They are saying that those units are no more expensive to construct and that in fact they make far more sense because they are safer for the public—they lead to less falls. Therefore, what is the argument?

Mr PERRETT—And that is for everyone: people with prams, people in wheelchairs.

Dr MacPherson—Yes. I have spoken to a gentleman called Peter Wood, who is a property developer, who put in something to a document that the now-defunct SEQROC produced, who produced homes—ordinary, stand-alone 1A dwellings—at no extra cost that fully complied with that document, which was one of the cutting edge universal housing designs of 2004. He sold those at a premium. People saw the value in them—their children were safer in them, their aged parents were safer in them. So I think it is a matter of the big players not liking change. They have their designs, they have their ways of doing it and they want it to keep on going that way, thank you.

Mr PERRETT—With either of those examples, the Brisbane Housing or the other one, did they have similar square-metre dimensions?

Dr MacPherson—Yes, they are about the same size. They are no greater.

Mr PERRETT—We heard the figure of five per cent in terms of costs. I think for the hotel rooms they had to add five per cent for space.

Dr MacPherson—If you go to the very bare minimum, that might be the case. As I recall one argument, they were looking at Department of Housing dwellings, and that was an increase because they did actually start building that way. They were building to the bare minimum anyway, as opposed to the McMansions, which you could actually make smaller and they would be very much more accessible anyway. So, when you are starting to move away from the bare minimum, there is no difference. If you are starting off at the smallest and nastiest point possible then yes, I believe that five per cent is accurate.

Mr PERRETT—But no more than five per cent?

Dr MacPherson—That would be the worst case scenario, and very few people are looking for a Department of Housing dwelling anyway.

ACTING CHAIR—You have advocated, haven't you, the abolition of the 80th dimensions? You want the 90th percentile? And you are also advocating that the small business exemption should be removed?

Dr MacPherson—Yes. The providers of public transport are locked into the 90th percentile. They are now moving into the premises standard, so we will have a premises standard with two different percentiles—one is for 80 per cent in one is for 90 per cent. So at a dotted line in Westfield you will cross into a public transport premises and the rules will change. We have big bus stations in many shopping centres. There is a rail station under the one at Toowong. All of a sudden you will have gone from an area with no lighting requirement for people with disabilities to a very strict lighting requirement for people with disabilities. They will lose their way if they are not under those lighting conditions. But once you cross the line no longer do those conditions apply.

Mr Mayo—Just to add to that, there has always been an acceptance about the fact that unjustifiable hardship would remain accessible to those who felt a need to seek it. That has never been in question.

Mr PERRETT—And it is not your suggestion to change that?

Mr Mayo—Absolutely not.

Dr MacPherson—There are circumstances you will never escape. On steep topography how do you build a one in 14 ramp? You might not be able to at all.

Mr PERRETT—Just going back to the 1Bs, we heard a proposal earlier from the Armidale Dumaresq Council talking about how, with the 1Bs, by making it every four or above it would effectively mean for a lot of bed and breakfasts in a lot of regional areas in particular that they would never be accessible because not many would have that fourth unit. I have had the idea put to me that there is no problem with one in four but making it the first rather than the fourth one so that, as per your recommendation, every new building would be accessible.

Dr MacPherson—That is a compromised position but it does deliver an outcome, yes. You would have one accessible and three inaccessible. We would of course prefer that there were three and four accessible before they even thought of that. I suppose, understandably, we take that position. I can see that they are looking for compromise in that. We would prefer to avoid it if we could.

ACTING CHAIR—I want to talk about the emergency egress. The standards do not provide specific provisions relating to emergency egress, but they rely on some very general emergency egress provisions in the Building Code, don't they?

Dr MacPherson—Yes.

ACTING CHAIR—The lack of specific consideration for the needs of people with disability has raised a lot of concern in considerable submissions to this inquiry. I would like to hear your views on what could be done to improve emergency egress for people with disability. We have heard a lot of submissions from other groups, but I would like to hear from you.

Mr Mayo—John will do better than me in the technical areas, but the notion of only 50 per cent of entrances in buildings, as proposed in the standard, is the very first thing to identify. It is absolutely critical that all people have the opportunity to be able to easily understand where egress is. At the moment, signage with regard to egress in public buildings is lacking. It is nowhere near as good as what it could be. We do not necessarily have the proper sort of alarms for people who have a sensory disabilities, for argument's sake. We certainly have a tremendous number of existing emergency egress doorways where you open the door and on the other side there is a drop of some description of various vertical heights and some quite questionable paths of travel from that exit point as well. Those are the fundamental items, in a way. They do not really answer your question, because I think you are looking to try and understand what improvements we can make on what we have now and what I am basically saying to you is that the fundamental things are not there now.

Dr MacPherson—I would like very much to look at what is considered somewhat heretical and consider the use of lifts in some circumstances for emergency egress. I will now criticise the building I pointed to with some pride before! It actually did take into account emergencies quite well in terms of providing places of refuge, so at the 40th-odd floor you can go into a place of refuge. If your floor is the one affected you can wait there to be evacuated down the fire stairs by the fire brigade—and it is a long way. That is opposed to having the fire refugee outside perhaps the service lift, so we had a smoke and fire rated door outside the service lift and people could be evacuated by the emergency services personnel via that lift. I read some material from the UK to say they are putting that up as not the only answer but as certainly a best-practice answer. I would strongly suggest that we consider that, while carrying people down fire stairs from fire refuges might work in one- and two-storey buildings, it would be fairly inadequate once we got into multistorey buildings. Therefore that has really left us with one option, to use an emergency lift, which could be the goods lift or could be another lift. I would see that as the only realistic way to actually remove people from the affected floor.

ACTING CHAIR—Is there anything else that you would like to add in the circumstances? You have made your position very clear, and I thank you very much for that.

Dr MacPherson—Can I make one more comment on emergencies?

ACTING CHAIR—Yes.

Dr MacPherson—People who are deaf cannot hear warnings. In the Brisbane Square building they have a yellow light and a white light. One flashes very brightly to say, 'Warning,' and the other one says, 'Evacuate'. They are placed so that they can be seen from any point on the floor. People who are deaf get the same message as that from the audible tones coming through. That is so very easily done, and that should be a requirement.

ACTING CHAIR—Thank you very much.

Mr Mayo—I have one final comment to make, if I may please. This is around the issue of cost, because cost will keep arriving at your feet during the course of your inquiry. So may I simply say, as you have posed the question whether Australia can afford to become accessible—

ACTING CHAIR—I was being a contrarian. I was being the devil's advocate. If only you knew my personal views!

Mr Mayo—Quite right. The comment that I think I would really like to make here is that we look at the various different forms of expenditure of this nation. Look at Australia's Christmas expenditure and look at Australia's gambling expenditure. We have managed to take these in our stride as a progressive society. I certainly think there would be a clear willingness by the Australian community to do so on this matter, because accessibility is such a fundamental item and it is also so closely linked to safety. If you provide accessible outcomes invariably you enhance safety at a location. So there are some really sound reasons to do this. We are a nation that survives based on certain types of industries and means of income. Mining is huge for us. So is tourism.

I wonder whether or not in your travels you have come across Simon Darcy's research at the University of Technology, Sydney, on tourism. He has basically said that in 1996—this is based on his research—Australia was losing \$2½ billion per annum in lost domestic tourism because people with a disability were unable to participate. He added to that the fact that we were losing \$3 billion—and these are annual figures—from the disability sector in lost daytrips. Amongst those figures he was not talking about just Australians with a disability. What he was doing, quite rightly, was connecting the people to them—their families et cetera. So here we are with some really first-class research—as you will see if you choose to look it up—and here is a person who has spent a considerable time at the department of leisure and tourism within that university examining these issues and he has come out and said in 1996 that this country is losing \$5.5 billion because we do not have an accessible tourism and retail sector. My question back is this: we are now in 2009, we continue to rely heavily on tourism and retailing and yet it is just basically one sector, so if you add the multiplier effect to a loss of \$5.5 billion in 1996 what on earth are the sums of money that we are losing across the total spectrum of our economy? One might well pose the question: can we afford not to provide accessibility in this country?

ACTING CHAIR—Thank you very much. I will hand back the acting chairmanship to Mr Slipper.

ACTING CHAIRMAN (Mr Slipper)—My apologies, as I was called away. As there are no more questions, I thank you for appearing before us today. Thank you very much for your attendance. The secretariat will send you a copy of the transcript of your evidence for you to check and make sure you have been recorded accurately—and not verballled! If there is any other information which you have undertaken to provide to the committee, we would appreciate it if you could pass that to the secretariat. Also, if you think of something else that you would like us to know about, feel free to pass that on to the secretariat.

[12.20 pm]

WAKEFIELD, Mr William Hubert, Director, Masterlifts Pty Ltd

ACTING CHAIRMAN—Welcome. Is there anything you would like to add to the capacity in which you appear today?

Mr Wakefield—My company specialises in providing lifts around Australia for people with disabilities.

ACTING CHAIRMAN—Do you provide lifts in other buildings as well?

Mr Wakefield—No, we do not.

ACTING CHAIRMAN—You are a specialist company.

Mr Wakefield—Yes.

ACTING CHAIRMAN—Although the committee does not require you to give evidence under oath, you should understand that these hearings are formal proceedings of the Commonwealth parliament and giving false or misleading evidence is a serious matter and may regard it as a contempt of parliament. Now it is over to you.

Mr Wakefield—I understand that. I appreciate that it is very likely that what I am going to talk about is probably of far less significance than fire access and egress from multi-storey buildings.

ACTING CHAIRMAN—Just focus on what you want to tell us.

Mr Wakefield—Okay. There are a couple of anomalies in this disability access code that apply to part 14 lifts. Part 14 lifts seem to be treated as insignificant because they only travel to one metre. What has been grossly misunderstood is the number of these that are in demand and the number of buildings that require a lift that will travel just a metre to access small mezzanine areas or entrances to buildings. There are many buildings that should have one, but do not. Here in the consultation draft, under E3.6(b) ‘Application of features to passenger lifts’, it says:

Handrail complying with the provisions for a mandatory handrail in AS 1735.12—

applies in all lifts except—

(a) a stairway platform lift—

which runs upstairs—

complying with AS 1735.7; and

(b) a low-rise platform lift complying with AS 1735.14.

It travels vertically; it only travels one metre, but they are saying here there is no requirement for a mandatory and compliant handrail. Of all of the access consultants and architects that we have spoken to since we started to read this through, we have not found one of them who can understand why that is being left off the part 14 lift. One consultant says it is as if they treat it as of no consequence at all. But there are more of these little lifts out there and in demand than what there are for the part 16, even though in this publication it says that the most significant small low-rise platform lift is a part 16. That is not quite true; there are more part 12s in demand and being used.

Another thing it says is:

Lift car and landing control buttons complying with AS 1735.12—

in all lifts except—

(a) a stairway platform lift ... and

(b) a low-rise platform lift complying with AS 1735.14

Having car and landing control buttons in this reference refers to having a controlled station on each side of the car and that the buttons also have braille and are tactile, which we have all seen in full-level lifts. However, once again, why would we not have the same convenience for our disabled people in a low-rise lift? Just because it only goes one metre is no reason why it should be excluded.

If anybody is talking about it, it is going to be a big cost. Frequently when we have submitted what we consider and what access consultants have considered to be a BCA compliant lift, the developer has said, 'Look, all I want is the cheapest lift that I can get. It does not have to be BCA compliant.' Access consultants are saying, 'It should have these things. Now, here's the cost.' To get a compliant hand-rail would cost, at maximum, \$100. How anybody could say that is an excessive cost, I do not know. A second control station would cost, including fitting, approximately \$340 extra. To get braille and tactile buttons would cost an extra \$220. So the cost is minimal.

If this goes through, it is saying, 'You don't have to have braille and tactile buttons.' It also means that if someone has no ability in their right hand and the buttons are on the right-hand side, they mostly cannot reach them. The idea of having the two is that if a person has a disability on one side they can at least get to the buttons on the other side. As I said, the cost is minimal.

ACTING CHAIRMAN—Thank you. We are almost out of time but I would like to ask one question and then invite my colleagues to ask a question. Can you give us the options for dignified swimming pool lifts—the cost and suitability for commercial application—and do you have any comments to make on sling lifts?

Mr Wakefield—Thank you very much for asking about that. In the United States and in fact in most parts of the world—I think this recommendation is talking about a wheelchair lift and a platform lift only. That is certainly essential for those in wheelchairs who cannot move out of a wheelchair. But there are many people who use swimming pools who do have upper body mobility and they can transfer from a wheelchair to a seat. There is a lot less money involved in installing one of these seated swimming pool lifts than what it costs for the larger ones—the full platform.

ACTING CHAIRMAN—Do you have any costings?

Mr Wakefield—Yes. The large platform lifts start at about \$13,000 whereas the seated pool lifts—and there are many installed in Australia already in hotels and public pools—are a little over \$6,000.

ACTING CHAIRMAN—Thank you.

Mr PERRETT—Is there a gear mechanism on the side of the pool and they lower themselves into the pool?

Mr Wakefield—It is automatic. Yes, the ones I am referring to can be geared or just water powered—no motors, no electricity at all.

ACTING CHAIRMAN—That is efficient. Thank you very much for popping in and filling in a gap in the program for us. The secretary will send you a copy of the transcript of your evidence; it is your responsibility to make any necessary corrections. If you want to give us any more information about the matters you have been talking about, please contact the secretariat as the committee would be very happy to receive it.

Mr Wakefield—Thank you very much.

[12.29 pm]

DESHON, Mr John Popham, Private capacity

MURRAY, Dr Max, Private capacity

ACTING CHAIRMAN—Welcome. Do you have any comments to make on the capacity in which you appear?

Dr Murray—I am appearing in a private capacity. I thank you for allowing John Deshon to assist me.

ACTING CHAIRMAN—It is a pleasure, Mr Murray. Although the committee does not require you to speak under oath, you should understand that these hearings are formal proceedings of the Australian parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We have not locked anyone up yet, and I anticipate we will not have to do so today, sir. May I ask: in what discipline did you obtain your doctorate?

Dr Murray—I read nuclear physics. I used that to learn nuclear medicine and then I did my PhD in my base discipline, which was veterinary science.

ACTING CHAIRMAN—Would you like to make a brief opening statement of maybe two or three minutes before we proceed to questions?

Dr Murray—Yes, if I may. You will have before you my complete opening statement, which has a section at the end on my credentials. At this stage of the inquiry, there is very little disagreement that disability access to premises standards are needed. However, the draft premises standards, in my mind, do not meet their stated objectives and therefore also fail to meet the objectives of the DDA. There have been previous attempts to codify the requirements from the DDA for access to buildings, and these have certainly built up an expectation for A90 access ways and the provision of accessible toilets in every block and similar amenity. The draft premises standards do not prescribe this A90 level of access expected, and, even as noted in the RIS, these expectations have been supported by court rulings.

Further, they are silent about access to class 2 buildings and egress for people with mobility disabilities from any buildings, and they are inadequate with respect to wayfinding for people with vision impairment—and, for that matter, signage as it pertains to directing all people. There is an enormous impasse between the commercial building industry sectors and those who stand to gain access to buildings where this has been previously denied. This situation needs to be corrected. The problem obviously lies with existing buildings, so the solution for a way forward will undoubtedly be found through existing buildings also.

I have tried to make suggestions on how this way forward might be achieved because I think that the A90 level of expectation really needs to be achieved. First we need to upgrade the requirements of the draft premises standard and its referenced Australian standards. We need to

ensure that, if building work is anticipated in any existing buildings, the full force of the premises standard should be applied unless unjustifiable hardship can be established. It follows that all new and future buildings, of course, should be fully compliant with all the provisions of the premises standard. Finally, we need to establish a reliable and legally determinable process by which to measure unjustifiable hardship before any building work commences—that is, unjustifiable hardship needs to be codified in the same way that accessibility is codified. To finish, we all need the standard finalised and I am confident the gaps in the document can be remedied over the next few months with the support of this committee.

ACTING CHAIRMAN—Thank you very much. On what basis do you suggest that the standards should meet the access needs of 90 per cent of people with a disability?

Dr Murray—Because I fall outside the A80 area. Maybe that is not a legitimate reason, but—

Mr PERRETT—It is very honest.

ACTING CHAIRMAN—They say, actually, that if you go to the races and there is a horse called ‘Self Interest’ back it, because at least you know it is trying!

Dr Murray—Yes. But it is deeper than that. At least the A90 discriminates against a lot less people than the A80—in fact, really only about half the number. So there are legitimate reasons to take it as far forward as we can. I know the question has been asked: ‘How far should we go in taking it forward?’ Those people who fall outside the A90 area might say, ‘Right to the wire.’ I guess that would be achieved in hospitals, where you have to accommodate all people. I have chosen the A90 for a few established reasons. One is that we have an Australian standard which addressed it and also our first and only disability discrimination commissioner recommended that in her guidelines, and these have really set the benchmark for the future.

ACTING CHAIRMAN—You have mentioned that maybe the hardship arrangements should be codified.

Dr Murray—Yes, I did.

ACTING CHAIRMAN—In what way would you seek to achieve that?

Mr PERRETT—Would you be removing judges or tribunals from the process, basically?

Dr Murray—Definitely not. The courts should always have the final say in these matters. I would certainly not like to remove their powers.

ACTING CHAIRMAN—Don’t you think it might be difficult to actually codify it?

Dr Murray—It would be difficult to codify. I do not think that is a reason not to attempt it. As I said in my submission, the first draft of the model administrative protocol did attempt this. They have gone by the wayside—I guess because they ended up in the too-hard basket. I would have thought that there must be rules by which the courts make their decisions, and some attempt to use those would lead to some ground rules that would stop frivolous attempts. I do not know whether John has any comment on that. Can I ask John?

ACTING CHAIRMAN—You don't think it might be like trying to codify the powers of the Governor General?

Mr Deshon—Try a bill of rights! The wish for some form of codification anticipates that there are some instances of claims of unjustifiable hardship which may be solved by ticking the boxes. There is no doubt that the DDA itself reserves for the courts a judgment on a claim of unjustifiable hardship. It does not just relate to buildings; the DDA is a much broader instrument than that. If codification can help the courts or reduce their load, hopefully significantly, then I think it is a good reason to have a go at it.

Mr NEUMANN—You make some reference to the fact that Australian courts have upheld the DDA standard on access to premises in relation to 90 per cent. Do you have any cases that you can refer the committee to?

Dr Murray—I guess I don't specifically in relation to A90 versus A80. It is suggested that the courts were agreeing with the 2004 draft premises standard, and I know that the courts have not thrown out a lot of claims—although claims have not been numerous. Part of the reason for that is the hardship experienced by people trying to bring claims that prohibits them from doing so.

Mr NEUMANN—You mentioned in your submission on page 8 that the underlying trigger for a building upgrade is quite unclear. In what way do you think it is unclear in the circumstances? How would you recommend it to be changed to make it less unclear?

Dr Murray—By looking at the time lines again, perhaps even removing the time lines, and saying, 'If a building lives for 100 years and never gets any building work done on it, then perhaps it should remain the inaccessible mess that it will be.' Whereas if buildings are being upgraded in any way they should be totally upgraded and the decision should be made by the person doing the upgrade to do that. I guess that came from the bit on lessees in the draft premises standard, which I think leave them open to a certain amount of fraud. If we did that, we could say that that deals with the trigger for the existing buildings. I cannot find any reason in my mind why new and future buildings should not meet the full requirements of the standards.

Mr Deshon—Can I contribute to the A90 issue just a little. One of the difficulties we have is that cases which are conciliated are often not published. In fact, one of the conditions of conciliation agreements is that they remain confidential. However, there is no facility of which I am aware in all the cases that I have seen or been involved with which has complied with AS1428 part 2 1992—in other words, the A90 standard—which has been subject of a complaint. There are plenty, of course, which satisfy the BCA, which are A80s, which are subject to complaint and often subject to either successful complaint or a satisfactory conciliated outcome.

The advice that I and other access consultants give is based on the observation that, if you meet 1428 part 2—in other words, the A90 standard—you are giving your building owner or your client the best possible protection against complaint. So it is turning it the other way, but that is a fact. If we add for a moment that the Brisbane convention centre case was successful not because the building met part 2, which it did, but because it failed to provide a design solution which got people through the front door, it was not a matter of A90, A80 or A50. It was absolutely a matter of simply providing access through the front door.

Mr PERRETT—Dr Murray, I commend you on the submission. It is very, very detailed. There are obviously a lot of things in the draft standard that you would like corrected, but in general are you supportive of the introduction of the draft standards, even if we do not make those amendments? Would you like to make some general commentary?

Dr Murray—Thank you for that. I think the quick answer would be no. If we do not upgrade it in that way, we may as well stay with what we have. Should we upgrade it? The question has been asked before: should we introduce it? I think we should not introduce it prematurely. I think it is possible to get it right and I think that it might take a bit of work. It might take some hard work by a lot of people to get it done quickly, but should we do it? Yes, I think we should, but not prematurely. Other than that, we should release it as soon as possible, but not until it is corrected.

Mr PERRETT—And proposed reviews in the future? What suggestions do you have for proposed reviews and what criteria would you suggest be used?

Dr Murray—One of the reasons why I would not like to see it phased in is, having been in the building game a little while, I would hate to find myself building to a code and then, five years down the track, find that all those buildings I had built were no longer compliant. That is another reason for getting it right the first time. But how long? The draft asks for five years. We have seen the experience that has occurred with the transport standard and I do not think that that is helping that area at all. The Building Code, which has been our bible to date, has been updated every year. Reviews should be between one year and five years. I think that it is a matter of keeping our eye on the ball and making sure that we do not get too far behind.

No doubt the committee is well resourced with data on what this is about, but the Canadian Human Rights Commission sponsored a review of international codes which gives a good guidance on what is best practice. I think we need to keep an eye on how that is changing and how Australia is playing its part in the development of an ISO standard on access and working through that standard, because it will be reviewed all the time. Then I think we will know what is happening. I would be happy with five years but, should it need to be updated sooner, I think we would need to start working on it sooner. If it ends up running out as far as seven years that would be because there is no need to amend it. I do not think we need to fix what is not broken.

Mr Deshon—Could I add to that that the review of the transport standard was confused (a) by the occurrence of a federal election and (b) by the fact that the review really only started when the five years was up. It seems to me that, if we are to get this right, we will give plenty of notice that the thing is to be revised on the fifth anniversary and ensure that any submissions that are to be considered are made well before the deadline. I think that is the way to do it. The right way of keeping anything under review is to keep it under review, not to let it rest for a week, a month, a year or five years because the review period deadline is not looming. That is a matter of practice.

Dr Murray—I think that was what I was saying: it needs to be kept under review and then dealt with in a proper way.

ACTING CHAIRMAN—Thank you very much, Dr Murray and Mr Deshon. The secretariat will send you a copy of the transcript of what you have said today for you to check and correct as required. If you do want to let the committee have any other information, please send it to the

secretariat. On behalf of the committee I would like to thank you for attending. I would also like to thank our gallery for attending. Thank you for your attendance, and thank you to Hansard.

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

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

Committee adjourned at 12.52 pm