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Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

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

THURSDAY, 19 MARCH 2009

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
Thursday, 19 March 2009

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

Members in attendance: Mr Andrews, Mr Dreyfus, Mr Melham, Mrs Mirabella, 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

APPLETON, Mr Robert George, National Director, Technical and Regulatory Policy, Master Builders Australia 19

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Committee met at 8.29 am

CHAIR (Mr Dreyfus)—I now declare open this public hearing of House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into the draft disability (access to premises—buildings) standards. For the benefit of those listening by audio webcast I will introduce the members of the committee who are present this morning: Mr Shayne Neumann, Ms Sophie Mirabella and Mr Daryl Melham. I am the chair, Mark Dreyfus. The hearing is open to the public, and a transcript of what is said will be placed on the committee's website. If you would like any further details about the inquiry or transcripts, please ask any of the committee secretariat who are present here.

I welcome everyone here today. This is the third public hearing of the committee in relation to this inquiry and I am sure our discussions will be informative. I now call the representative of the Housing Industry Association, Ms Kristin Tomkins.

[8.30 am]

TOMKINS, Ms Kristin Ann, Executive Director, Building Policy, Housing Industry Association

CHAIR—Although the committee does not require you to speak under oath, you should understand that these hearings are formal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you want to make a brief introductory statement before we proceed to questions?

Ms Tomkins—Thank you for the opportunity to address the committee today. HIA believes that the introduction of the Premises Standard is an important move in aligning the Disability Discrimination Act with the Building Code of Australia, providing certainty for all building owners, occupants and visitors. Therefore, we are supportive of the standard being introduced at an appropriate time in the cycle of building regulations. It is important to recognise that HIA members are involved in the construction of buildings of all classes, including class 1B, 3 and 9C buildings, which are captured by the proposed standard. Equally, the business premises of HIA members will be subject to the standard to varying extents. HIA has made a number of comments in our written submission which relate to both the Premises Standard and the supporting documents, in particular the draft protocol. These comments are focused on ensuring that the regulatory regime for the standard is consistent with the current planning and building approval system; that the standard avoids unnecessary expansion, duplication or potential inconsistencies between future building regulations and the current approval processes; and minimising any unintended consequences from the introduction of the standard.

HIA does not see that any of these issues are insurmountable and has suggested minor technical amendments, in the main, to address most of these concerns. The key issues for HIA relate to providing a 12 month transition period for buildings with existing development approvals, clarifying who is responsible for determining alternative solutions as part of a building approval; the who, when and how in relation to unjustifiable hardship decisions; the processes for future changes to building standards and also Australian standards; alignment of the proposed reference standards; the intention and operation of the proposed protocol; and the responsibility and authority of the proposed access panels. HIA's written submission sets out the details of these concerns and I would be pleased to respond to any questions you have today.

CHAIR—I want to jump straight in on the unjustifiable hardship claims. Although, in your submission you say that HIA supports the proposed unjustifiable hardship provisions, I see that you have some concerns about the clarity of the provision. I am wondering if you could explain to us what the HIA's preferred model is for approval of unjustifiable hardship claims.

Ms Tomkins—The primary uncertainty we have flows from the fact that the act and the Premises Standard set up the ability to have an unjustifiable hardship determination. But then it is very murky as to who is responsible for making that decision and when exactly, in the approval process for a new building, that decision will be made. Right now we have been working in the scenario where we have always been dealing with existing buildings; we have always had people taking an action under the DDA against a building that is there.

CHAIR—Just to interrupt you for a moment, we are talking now about a prospective process which is looking at buildings yet to be built?

Ms Tomkins—Yes; that is right. The suite of documents establishes a framework that goes into the planning and building system for getting approvals. In particular, the protocol and the standard do not specify that it would be the responsibility of the building certifier, the council, an access panel or some other body to make those decisions. That is our primary concern.

CHAIR—Have you set that out in the written submission?

Ms Tomkins—Yes.

CHAIR—My question goes to what you would be recommending should be the model to be followed for assessing an unjustifiable hardship claim.

Ms Tomkins—Our preference is to look to the current planning system, despite the many downfalls of the current planning system. The majority if not all of these buildings will be receiving development or planning approval from an authority prior to them getting building approval.

CHAIR—Sorry to keep interrupting you but I am trying to pin this down a bit. Have you formed an assessment in each of the states and territories whether what you have just said is in fact correct? Are there any states with looser planning control in which there might not be any intervention in the planning system in relation to the building of a building?

Ms Tomkins—For new buildings, no; they would all require planning approval. A two- to nine-class building in every state and territory would require planning approval.

CHAIR—That is helpful. So, on that basis, you can proceed to say, ‘We can at least look at this on the basis that there will be an intervention in the planning control system in every state and territory.’

Ms Tomkins—Where there is variation is for the change of use of a building. So on commercial premises small occupancy changes there is a bit of a hodgepodge across Australia as to whether they need approval at all or whether they need a single approval or whether they need two approvals. That is a little bit more complicated.

CHAIR—Just to pin that down a little, generally speaking, a larger renovation or rebuilding—

Ms Tomkins—Yes, building work.

CHAIR—would require planning approval?

Ms Tomkins—Yes.

CHAIR—So, equally, a larger renovation or rebuilding would require a building permit, and, conversely, minor works probably will not require either?

Ms Tomkins—Yes.

CHAIR—So you would not get any involvement of the building code in the first place?

Ms Tomkins—That is right, yes. I think it is probably reasonable to say that those minor works will not throw you into the realm of the DDA. They are not going to be the kinds of things that make changes significant enough for a building to get thrown into the planning system. Right now all states and territories to varying degrees have a planning regime which involves needing to ask other bodies for comments, approvals or whatever they may be. So there are varying levels for that sort of thing.

This to me looks like one of those kinds of issues that really need the oversight, wisdom or whatever you might choose to call it of the consent authorities, with the expert input of another group which can consider the unjustifiable hardship and the potential discrimination issues that go with not complying with the premises standard once it is in force.

CHAIR—At a practical level, how would you see the determination of unjustifiable hardship working? Who is going to do it, in your opinion?

Ms Tomkins—In my opinion, the approval would be given by the planning authority—the council, in the main—depending on which way you choose to do it. It could be a concurrence, which means that the authority cannot give their approval unless they get a yes from the other body. So an access panel could be arranged in way such that it must say yes or no and the council accordingly makes its determination. That is the way integrated development in New South Wales operates as a referral system. There are then lower versions of that process which look at the secondary body providing comments and leaving it to the discretion of the planning body to decide if they will or will not agree with those comments. Ninety-nine per cent of the time they agree with those comments and do what they have been requested to do by the other body.

Mr NEUMANN—Just to follow on from that, your paper says:

If retained for the purpose of an unjustifiable hardship determinations, HIA also has concerns regarding the probable make up of an Access Panel and the relevant authority which would oversee such a Panel.

Can you expand on your concerns?

Ms Tomkins—If this type of access panel is established its primary role will be to make a decision about unjustifiable hardship. It will be making that decision under the Disability Discrimination Act; it will not be making that decision under the building laws or the planning laws. Therefore, in terms of the responsible authority, it would seem sensible to me that, if we are divesting the process from the federal level to the state level, it be the state discrimination authorities with their various names across Australia rather than the building authorities and the building regulatory authorities that have carriage of the panels. As I say, ultimately I think that is because we are making a discrimination decision not a construction decision at the highest level.

I think it would be inappropriate for the panel to be made up of a disproportionate number of planning and building type people—and I can say that, as I am one. There needs to be expert

advice provided to the panel by building authorities and planning people but there needs to be a good balance with people who are aware of discrimination issues and are aware of the role of the DDA. With the way the protocol has been drafted, it has been put forward as part of the building system. It has been written by the Australian Building Codes Board, so it gives that impression. To establish these panels within state building administrations could cause a lot more confusion down the track if they were to operate—

Mr NEUMANN—So it is the additional knowledge of discrimination rather than the knowledge of the building codes, the building industry or construction that you really think counts.

Ms Tomkins—I think that is where this act lives. That should be the driver of the decisions.

CHAIR—You made a point in the submission about the length of time for development approvals, the length of the delays in the development approval process, and you put forward the suggestion that there ought to be some sort of transitional arrangement. Are you able to elaborate on how long the development application process is? I appreciate it is not possible to be specific, but I suppose you can generalise about it across Australia.

Ms Tomkins—Absolutely. For class 2 to 9 buildings in the main part and, sadly, sometimes for houses as well, from the beginning of your design to liaising with the council to getting the planning approval you would be looking at quite easily within the realms of 12 months and sometimes blowing out to 18 months or two years. Constructing a 70-storey building is not a small feat, so there is a lot to do. But, having said that, I think the system could be a lot more streamlined. The current proposal of the standard makes reference to ‘building approvals’. Building approval is the secondary stage for these buildings. There has been and will always be planning approval first.

Owner/designers have gone through that extensive period of time in good faith designing on the current building standards and the current access arrangements, with the knowledge that the DDA still applies or they may still make a mistake. To then have this standard commence on whatever day it commences and only capture the building approval has the potential that planning approvals will need to be reopened and adjusted and actual cost changes made to the construction of the building. This standard in itself is not really in the public domain for builders today. They may know that there is something going on, but they are not having regard to this standard when they are designing buildings today that may go to council in two months. So that is why the transition period would be an important tool.

CHAIR—I wonder if I could just focus on that for a little. Like all regulation, this proposed set of regulations has to start at some point or another. Is it not the case that planning approval generally is at a lower level of detail—in other words, it is on concept drawings or sketch plans and the overall shape of the building rather than the fine detail of its floor design, particularly the fine detail of internal designs? Given that the purpose of this standard is to increase certainty and reduce the prospect that you might be the subject of a complaint under the Disability Discrimination Act, what is the vice in having it apply as from its commencement to, as it is put, ‘applications for construction approvals submitted on or after the commencement date’? Given that there might be the odd case where planning approval has gone to some level of detail—and I know some Victorian planning schemes, which are the ones I am most familiar with, go to quite

a lot of detail about building construction—application of the standard might require change but, by and large, it is going to be one that is able to be adjusted for?

Ms Tomkins—Unfortunately, planning approvals are no longer sketches. They have shifted quite considerably, particularly in states like New South Wales and Queensland. When you are talking about a building that is beyond a home that has two, three, four or 70 stories in it, you do not get planning approvals on sketches. In some jurisdictions, and it is appropriately so, you would lodge both applications at the same time, so you are providing the full detail. Planning approval is now a very detailed beast. I take the point that there may not be significant changes that are needed, but we do have both Western Australia—which provides a 12-month transition in their building regulations to deal with this kind of major shift in building regulations—and Victoria, which has more of a discretionary transition and there is no fixed figure; some would say three to six months. A building designer and an applicant could seek the building certifier to give them an approval under the old regulation rather than the new if they can show they were in significant design.

We do have those transition periods and I think that is also an issue. If this standard has that statement in there, how will we grapple with those two states and make sure we align the systems for those states that have transitions? Our preference would be that the standard is applied and that for the first 12 months there is the discretion for a building owner to choose to come up to scratch with the new standards or still be permitted to have building approval under the first proposed plans. You have to acknowledge that if a building owner does that they are taking a risk, and we accept that. So a conscientious building owner may bother and hopefully they will bother, but I think locking them into a system which throws them back into many months of adjustments of planning approvals and potential adjustments in the design of the building are things that could be avoided just with a small transition.

CHAIR—Thanks. You have made some comments in the submission also about the model process. I wonder if I could ask you to elaborate on what changes the HIA would be recommending to improve the model process.

Ms Tomkins—Is that the model protocol?

CHAIR—The protocol. It is referred to variously as the model process or the protocol. It is the same thing.

Ms Tomkins—We touched on this earlier. We discussed the role of access panels and their make-up and who should be responsible. If I could go to the beginning of the comments on the protocol. It is unclear right now, as I say, who will make a decision on unjustifiable hardship under the protocol. Would it be the panel or the building certifier or could it be somebody in between? It is unclear whether a decision of the panel, if it is made, is binding and, more importantly, it is unclear whether their decisions would be binding under the DDA. We need to have some clarity to know that if access panels are developed, mandatory or voluntary, and if their good advice is provided to a building owner or a building approval body that it means something.

There is really not much point in creating the administration that would go with access panels if their decisions do not have some weight. The building owner will be reasonable offended if

they have spent the time and money, got the ‘yes’ from an access panel and then still end up with a claim against them under DDA and potentially are found at fault. Arguably, if it stays the way it is currently drafted, the advice of an access panel would be reasonable information for the tribunal to take into consideration but it is not binding. I think that if we are going to go to all that effort to create the system then there should weight to their decisions; otherwise the value of adding that to the system is marginal.

CHAIR—In essence—and I hope I am doing justice to it—it is a plea for certainty that you are making here.

Ms Tomkins—That is the intention of the premises standard in the first instance, and hopefully the whole process that flows from the premises standard should give certainty.

CHAIR—In the same vein, of certainty, you have noted at paragraph 2.1.5 in the submission that, correctly, the Australian standards themselves might be changed at different times to the premises standard, insofar as we have in the premises standards cross-referencing—and the Building Code works like this throughout—to other standards. To digress, this is a problem we ourselves encountered right at the start of these hearings by having to make sure that the cross-referenced standards are available to all members of the public who are participating in this set of hearings. As I understand it, you are here referring to the fact of a five-year review, which is what the standard provides for, but are making another point about the possibility of change of the cross-referenced Australian standards. Could I ask you to elaborate on the practical consequences of those possible changes during the life of the standard?

Ms Tomkins—Currently, Australian standards are drafted by the entity Standards Australia. Many Australian standards are called up via regulation—so the Building Code would call up the premises standard, the plumbing standard and the like. But there are also a raft of Australian standards that are not called up by regulations; they are drafted for good intentions and apply to and for anyone who chooses to read them. The current arrangements for the making of Australian standards involve industry consultation and, where it is a regulated standard, the regulatory body usually is a member of the standards committee but, it is not the authority responsible for the standard. I guess what I am bringing to the table is that there are some issues in standards development which are not necessarily an issue for this committee but affect how the standard will play out over its life. Is it time for prayers? No?

CHAIR—Since you have asked, thank you very much for your consideration, Miss Tomkins. We do not have to attend the commencement of parliament but if the bells ring, which we believe is quite likely to occur this morning, we will all be leaving. We hope that we will not have to leave for too long and we will attempt to recommence the hearing if that occurs. But that will be after nine o’clock.

Ms Tomkins—To that end, standards are on a little bit of a treadmill. They are adjusted when someone asks for them to be adjusted, whether that be the regulatory body or not. This is slightly off point, but firstly we have put forward that, given that this is already a regulated standard under the Building Code and it will become a regulated standard under the premises standard and the DDA, changes to that standard should be at the behest of those two bodies. We should not have a situation where, because it is around time and some people are not happy with the current standard, Standards Australia says, ‘We’ll form a committee and start making some

changes,' just for the hell of it. They may not see it that way but that is how it would play out if it has not been requested by the regulatory body. That is the first point.

Then, in terms of changes, it may be that a year in we have some glaring errors, that we have some problems in what we have adopted in the standard and we need to amend 1428 or any of the other standards. If we are in a constant treadmill of doing that, we again lose the certainty of the premises standard. The Building Code of Australia is currently amended annually; I accept that. And, I will be honest, that is not a great situation. We would prefer the Building Code of Australia to be amended over a longer time frame, to provide better certainty for the building industry. So certainly if AS 1428 is constantly in a state of review and this standard in the building code is constantly then in a state of review, we are losing a lot of integrity for building owners and also for visitors, who may be the people making these claims, on what the rules are.

CHAIR—What is your suggestion as to how we overcome that possible uncertainty?

Ms Tomkins—I think future amendments of AS 1428 should be with the five-year review of this premises standard so that there is an ongoing collection of information and concerns. Then, at the appropriate time, when this premises standard review commences, those are then put forward on the table for Standards Australia to deal with then come back and go through the review process.

CHAIR—It might be unfair to ask you to devise for us exactly what mechanisms are used, but I understand the thrust of the submission, which is looking for a way to achieve some stability in these premises standards.

Ms Tomkins—Yes.

Mr MELHAM—Why isn't the industry calling for a longer period of time for changes?

Ms Tomkins—In the Building Code?

Mr MELHAM—Yes.

Ms Tomkins—We have been.

Mr MELHAM—So why has it been resisted? I am interested—if it is such a one-way argument.

Ms Tomkins—The intergovernmental agreement which establishes the Building Code has a five-year lifespan. We were successful. Up until the early 2000s, the Building Code was reviewed twice a year. We were successful in getting it changed from twice a year to once a year, to give greater certainty. There is a review of the intergovernmental agreement going on right now. In HIA's submissions, and I suspect other submissions, we have suggested it be at least a two- or three-year review period. It might sound simplistic, but buildings are not falling down. We do have a very good building code. We do have appropriate standards. What we are usually talking about in amendments are around the margins—the fine detail of those building codes—and to be playing with that all the time is probably creating work for no real good and it could be done over a longer time frame.

Mr PERRETT—I go back to the interplay between the certifier and the role of the access panels in terms of your dream world. I do apologise for coming in late; you might have covered this already. Is it your position that the certifier will make the decisions about access? You use the term ‘advice’ from the access panels. I am not sure whether you meant they would approve it or whether they would give advice and then the building owner would make the decision and then it would be certified.

Ms Tomkins—I touched on two issues. The reason it is probably not clear is that the protocol itself is a bit muddy. What we have discussed already is that, in terms of unjustifiable hardship, I believe that will always require a planning approval and therefore the approval body should probably be the council, the consent authority—sometimes that is the state government—with some input from the access panel. But the first point I make there is about alternative solutions, and I treat those and see those as different issues. The protocol does not. I have tried to draw out the fact that an alternative solution is part of a building approval right now and that that is always given by the building certifier. In some situations—and you will see the table there—there are some states which get a bit of advice from a fire authority or someone like that, but the decision ultimately still comes back to the building certifier.

Mr PERRETT—I assumed that they had some interplay with whatever the state body is in terms of knowing what to consider, one would hope.

Ms Tomkins—You would hope. As decisions on unjustifiable hardship are made, that would provide a book of things to reference. So in the short term they may be a little bit in the dark, but that is perhaps a consequence of new regulations. It was the same when the Building Code itself changed and introduced alternative solutions. Building surveyors as a profession needed to learn how to deal with making those arbitrary decisions. I think, in the main, they do those now on all issues, including life safety. So I do not see that access needs to be any different.

Mr NEUMANN—In paragraph 2.1.10 you talk about change of use, which often happens with buildings. You give an example of an individual shop changing from a dress shop to a jewellers shop and you talk about the need for amendments. I would like you to expand on that. You gave an illustration and I expected when I was reading it that you might give a real-life scenario. I would like you to expand on it and tell us how you would see the changes that need to be made carried out.

Ms Tomkins—Primarily this is an issue of a slight mismatch between the guidelines and the standard. The standard already has a proposed concession which would apply for change of use, the concession being that you do not need to upgrade the entry parts of the building to get to that premises. It says that concession applies where the applicant is not the owner. So my first concern there was that the owner may be the applicant and should still be entitled to that concession. I presume the logic was that if an owner is the applicant then the owner has responsibility for those entry areas, so you could make them do something. But I think that falls short when you think of the practicality that you are changing a shop from a shop or a dentist to a doctor. There are some small building works in there but ultimately the building itself remains the same. Therefore, should the upgrade requirements of this standard apply, I would say no. That is the first concern in the actual concession. The guidelines do not make reference to the concession clearly enough and they give the impression that those kinds of changes of use could

be required to upgrade. So that is more of a drafting issue. There is not parity between the two documents.

CHAIR—Just to give this a bit of context, it is only in New South Wales that such a change of use, used in the lay sense, would require development approval?

Ms Tomkins—In the main, yes, but the standards is—

CHAIR—We will have to suspend the hearing to go to a division in the chamber.

Proceedings suspended from 9.02 am to 9.33 am

CHAIR—There is some fuzziness between class 2 and class 3 buildings. This is the serviced apartments issue if I have given that to you in shorthand. I am wondering if you have got any comment for us in relation to that.

Ms Tomkins—I knew this question would arise, so I have prepared some notes.

CHAIR—It is a question that has been the subject of quite a large number of the submissions, and a number of the witnesses who have appeared before the committee to date have raised this with us.

Ms Tomkins—I will put some points and if they raise further questions I can answer those. Ultimately, I think there is no simple or correct answer to the question of the difference between class 2 and class 3. The DDA will continue to apply to the public areas of class 2 buildings, despite this standard not going there. A person may still take an action against a building owner. We are not relieving the class 2s of any responsibility; what we are doing is not giving them perhaps some certainty.

I think the failure of the regulatory system to police the use of these types of buildings—class 2s—is a bigger issue and not necessarily an issue that this standard or this act can resolve. The DDA at this point in time only applies to the public areas, which is a given. The overall nature and use of class 2s has been and will continue to be for private occupation. I think that is the primary issue. It can be argued by some that these buildings fall outside the scope of the DDA, but that is not an argument we are putting to you but it could be said that really they are a private building, so perhaps that was why it was decided to remove them from the standard between 2004 and now.

Following on from that, I think the answer possibly involves some consideration of the different ownership tenures for class 2s and 3s. Class 2 buildings are, on the whole, a group of individual home owners who reside in the one building and they will have a body corporate to oversight matters. You will need to consider whether it is appropriate for that group of private individuals to be open to a challenge under DDA and therefore have to go to whatever may be required to remedy a situation for just the public areas of that building, as opposed to class 3 buildings, which generally have a different ownership structure. They are intended to be commercial buildings; they have a common building owner in the main part that could be legitimately pursued under a DDA claim and should be capable of remedying any problems in that area. Ultimately, I think the issue of class 2s does require more consideration. However, in

the short term HIA considers it is essential to get the standard into operation for other buildings. Time can then be taken to consider the intention of the DDA—which I think is the main hurdle here—and its relationship with private residences, and to develop a measured response.

CHAIR—Thank you very much, Ms Tomkins, for attending the hearing today.

[9.37 am]

LAWDER, Ms Nicole Ann, Chief Executive Officer, Deafness Forum of Australia

CHAIR—Before we start, I ask Mr Neumann to move that a subcommittee consisting of Mr Perrett and Mr Neumann be appointed to take evidence at this public hearing on the draft premises standards inquiry on 19 March 2009 at any time that a quorum is not present. It is so moved.

Welcome, Ms Lawder. 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 the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you like to make a brief introductory statement before we proceed to questions?

Ms Lawder—Yes, thank you. We all have different abilities. Some of us are stronger or better at particular sports. Some of us are good at languages. Some of us get dodgy knees as we get older. Some people have a physical, sensory or intellectual impairment that may affect their ability to do certain things. You can be born with that impairment or acquire it through injury or illness or through an accident in the blink of an eye, or you may acquire that impairment through ageing. These impairments in themselves need not be a disability; it is society and especially our built environment that disables those of us with an impairment by throwing up a barrier in many areas of our daily life. Hearing loss currently affects about one in six Australians and that means that two or three people in this room will have a hearing loss, whether they know it and acknowledge it or not. Hearing loss is very strongly associated with ageing. Around half of the Australians with hearing loss are in the working age group of around 21 to 65 years. The prevalence of hearing loss rises to three out of every four people aged over 70 years.

Whilst many of us in this room may not consider ourselves to have a disability, I can assure you that we are all ageing. So this is an area of concern for all of us, because we will still want to access the facilities and the premises that we take for granted now in the future, such with as the hearing loop in this room, but there may not be loops in all of the meeting rooms in this house. There are many technologies available to provide hearing access. It is quite simple, when you think about it. Any information that is provided in an audible format must also be provided in a visual format and vice versa—just like the bells along with the flashing lights that you have here. That way, people who are blind or visually impaired and people who are deaf or hearing impaired all get access, because these two groups are like two sides of the same coin. They complement each other. So anything that beeps should have a flashing light or text equivalent, and anything that flashes should also have a beep or some kind of sound.

Imagine if Australia's Aboriginal population were only allowed to attend one cinema in every capital city of Australia, or one nursing home or one shopping centre. There would be an outcry about discrimination. Yet for people with a hearing loss that is exactly the situation that they face. The facilities for them are very limited. Obviously there are also safety concerns where premises are not fully accessible, such as hotels, motels or workplaces without flashing light alarms. Building access into premises at the outset is the most cost-effective solution for

everyone concerned. Planning for access in this way, in our view, does not constitute unjustifiable hardship. It is simply a planning matter that must be factored in at the outset. The expense is reduced by planning it in rather than adding it later. It is also an investment in our own future, so that all of us will still be able to access those premises and facilities in the future.

CHAIR—Thanks very much. You have made some comment in your written submission about AS 1428.5, the title of which is *Design for access and mobility: communication for people who are deaf or hearing impaired*, and you have made a recommendation that this part of standard AS 1428.5 should be included. I am just wondering if you can provide further information about the points of difference between that draft standard that relates to the hearing impaired and the provisions we have in the premises standards before us.

Ms Lawder—That particular draft Australian standard contains a lot of extremely specific information relevant to providing communication access for people who are deaf or have a hearing impairment. It includes information about the levels at which hearing loops, FM systems and other assistive listening devices should be set at, the signage, the coverage, ongoing maintenance et cetera. So it is a very comprehensive standard for assistive devices. It has been a very long time in the design and development of that standard, unfortunately for us, but my understanding is that it went to poll late last year and we are expecting it to be passed at any point. So we would like to see it included or referenced in the standards so that it will be referenced by the Building Code in the future.

CHAIR—Can you assist the committee in suggesting how we can get information about when it is likely to be incorporated, if that is the right word, or passed?

Ms Lawder—Australian Standards have told us many times over the past two years that it is about to be released. Unfortunately, that has not been the case. If I could take that on notice, I could check once again with Australian Standards as to the expected release date of that standard.

CHAIR—We can do that too, so thanks for that indication that it is really a matter for us to make an inquiry of Australian Standards as to the processing or progress of that particular standard. You may not be able to answer this, but what statistics do you have available about the number of public buildings that are presently using augmentation systems rather than induction loops?

Ms Lawder—I do not have any firm statistics. Partly that is because even those buildings that do have augmentation equipment in them often have maintenance issues, so whilst the equipment may be installed it is not actually working at the time. Unfortunately, it is usually up to a consumer, an individual, to identify that that is not working and to try to progress it—again because of a lack of standards in this area.

CHAIR—What standards currently apply in relation to hearing augmentation systems in buildings?

Ms Lawder—The Building Code currently provides for about 15 per cent coverage of buildings. That is one of the reasons why we would not like to see any regression in the amount of coverage, as I have referenced in our submission. There are some standards relating to the

manufacture of augmentation devices. But it is quite a mixed bag and in some instances we rely on international standards rather than on an Australian standard.

CHAIR—Thank you.

Mr NEUMANN—You put in your submission this Deafness Forum recommendation:

In premises where people may be expected to sleep (such as hotels/motels), occupants shall be alerted by a ... wave sound ... bed shakers provided (at no extra cost) by the venue for people with severe to profound hearing impairment/deafness.

I am sure many of us have slept in hotels and motels. I have never seen one of these bed shakers. How common are they in Australia? How costly are they?

Ms Lawder—In hotels and motels in Australia they are not common at all. If you are a person who is deaf or has a severe or profound hearing loss, you probably have one, because it is the only thing that will wake you up. An alarm clock will not wake you up. A doorbell or a phone ringing or a smoke detector will not wake you up. You can buy them for probably around \$100 or \$200. Do you know what they are? Would you like me to explain what they are?

Mr NEUMANN—Yes, please explain them to us. I have not seen one.

Ms Lawder—Often it is a pad about the size of an A4 sheet. You can put it under either your mattress or your pillow. It connects with other devices such as a phone or a doorbell or a smoke detector, which is the most important one. If one of those devices goes off, it literally shakes quite violently and wakes you up. Studies have shown that flashing light alarms will not rouse people with a severe to profound hearing loss when they are asleep, although in the USA they are quite widely used. I think they are mandated in hotels and motels in the USA. You might have seen some there. Most hotel rooms have one in the main room and one in the bathroom, in case you are in the bathroom at the time the alarm goes off. It is quite a concern that in hotels and motels, if you are asleep and the smoke alarm or the fire alarm goes off, you are literally at the mercy of someone else to come to your assistance. On the other hand, for OH&S reasons most hotel staff are instructed to clear the building also in the event of an emergency. If you are travelling with another family member, they may be able to assist you if they have hearing. Otherwise, you are completely on your own, perhaps waiting for the fire brigade, or probably you might not even be aware that there is an emergency of any sort.

Mr NEUMANN—That is a great illustration of what a bed shaker is. You mentioned the lights that we see when the division bells ring. Can you give some other practical examples of how your forum would like to see building changes in terms of signals and signs for deaf people? Can you give practical examples as to those?

Ms Lawder—Yes. When you try to organise a conference that may be attended by people with a hearing loss—and remember that one in six people may have a hearing loss—consider if those people have a hearing aid. A hearing aid has what is called a T switch or a telecoil. If I am listening to you now with my hearing aid, I am hearing you, I am hearing the bells and I am hearing anyone speaking or whispering behind me. When I switch the T switch I am only hearing what is coming directly through the hearing loop and the PA system—it is like a

Bluetooth receiver in my ear—and I am not getting the reverberations throughout the room and I am not hearing all the other background noise. For people at a conference or at a concert or at the theatre it can be difficult for them to follow what is going on because of other noise that is going on in the area. That is especially so at conferences where people are talking and papers are rustling et cetera. When they switch the T switch where there is a hearing loop, they get that signal directly and clearly into their ear without any distortion.

Mr PERRETT—Do most buildings have it? Can you tell me the spread of it? I assume modern-day convention centres have it, but where does it cut out? Is it in the hotel that has a reception room? Can you give me the sweep of where it is and isn't?

Ms Lawder—Yes. Some hotels do have it but it is actually quite limited, as we have found. When buildings undergo refurbishment of over a certain percentage, they are supposed to have one put in. That does not appear to happen. I can tell you, for example, that the convention centre in Canberra underwent a refurbishment recently. We contacted them, probably two years ago, before they started the refurbishment and reminded them of their obligation to install a hearing loop. It was not done.

Mr PERRETT—So even at a convention centre?

Ms Lawder—Yes. We struggle to find hotel conference facilities that have a hearing loop. What that means is that we then pay additionally to install a hearing loop for the particular conference.

Mr PERRETT—So it goes in and out and you bear the cost?

Ms Lawder—Yes. If you are in a wheelchair you do not have to pay to put a ramp in for you to get in and out of a conference. It is completely unreasonable, in my opinion.

Mr PERRETT—You said that it is one in six currently—is that the data?

Ms Lawder—Yes.

Mr PERRETT—And it is up to one in four by 2050?

Ms Lawder—Yes.

Mr PERRETT—I am 43 and I have hearing loss. Obviously, the nature of all humans is that the range of sounds that we hear deteriorates. What is your definition of hearing loss or of being hearing impaired for that one in six? Am I one of those one in six?

Ms Lawder—Yes, you are. As you get a little bit older you may find that you wish to get a hearing aid. The one in six is anyone with any degree of hearing loss, whether it is mild, moderate, severe or profound and whether you have done anything about it or not.

Mr PERRETT—No, I thought all people as they age lose some of the fine hairs that let us hear the higher sounds.

Ms Lawder—There is a clinical definition of hearing loss. There is a threshold of about 20 DbA, which is normal hearing. If you have lost more than that you start becoming to have mild or moderate hearing loss. There is certainly a clinical definition of what constitutes hearing loss. You are correct in saying that you start to lose your hearing at particular frequencies, and for most people it is at the higher frequencies that they first start losing their hearing. Unfortunately, those frequencies are often the ones that things like fire alarms and smoke detectors are set at—so that brings you back to that safety risk for people.

Mr PERRETT—I read a report the other day that the era of iPods might mean that in 20, 30 or 40 years time there will be even more people with hearing loss because people tend to have their iPods up a bit too loud. I am not sure if you saw that data. Perhaps that one in four would be even more so.

Ms Lawder—We tend to use ‘personal stereo players’ rather than a proprietary name. There is absolutely a concern that our young people’s ears are ageing at a far more rapid rate because of the inappropriately high volume levels that they set their personal stereo players at.

CHAIR—Ms Lawder, I want to try not to get lost in the thickets of the law if I can. As I understand the submission that has been put forward here on behalf of the Deafness Forum, you have concerns about the way in which the premises standard is drawn. You have a particular concern that at present draft standard AS 1428.5, relating to communication for people who are deaf or hearing impaired, is not incorporated in the premises standard. Is that point 1?

Ms Lawder—That is right.

CHAIR—I take it also that the Deafness Forum and your community have a concern that current standards generally are not adequate for the deaf and hearing impaired.

Ms Lawder—Yes. We certainly feel it is an under-recognised and unacknowledged issue. That is partly because, when you look at someone with hearing loss, it is not apparent that they may need additional assistance. It is often referred to as a hidden disability but it is actually the most prevalent disability of all. There are far more hearing impaired people than blind or mobility impaired. I am not saying the numbers indicate what should be provided, but it is certainly under-recognised in terms of the access which could quite feasibly be provided.

CHAIR—Presumably the point you are making is a bit along the lines of ‘providing greater convenience for a greater number of people’.

Ms Lawder—That is right.

CHAIR—Are there, other than AS 1428.5, which is formally still in draft, other standards to which you would point or which can be voluntarily complied with at the moment?

Ms Lawder—There is nothing in addition to what is currently referenced in the standard.

CHAIR—Again, I am not trying to unpick the technicality here. We have the standard that has gone to ballot, AS 1428.5, which you are suggesting should be incorporated in the premises

standard. Are there other parts of the existing Building Code of Australia that should be improved, in the opinion of the forum?

Ms Lawder—In an ideal world—and this does happen in some other countries—there would be closer to 100 per cent coverage in some buildings. Whilst I would like to see that happen, it is not something that I expect would be the case. It would have a very long lead time in terms of catching up existing buildings. Up to about 50 per cent coverage would be a really helpful thing for Australians, given the future prevalence of hearing loss. In some ways, if you went to 100 per cent coverage that would be done just as easily as 50 per cent coverage. Rather than setting out a particular area of a room to be covered by a hearing loop, you could just cover an entire room. The cost is not going to be anything particularly different for covering an entire room as opposed to saying, ‘Only these four chairs at the end are covered by a hearing loop.’

CHAIR—Going through the various recommendations that are in your submission, some of them are related to the inclusion of AS 1428.5. Others address actual text in the premises standards that already deals with issues for the deaf and hearing impaired, in respect of which you are suggesting improvements.

Ms Lawder—That is right.

CHAIR—Forgive me for the slightly ponderous nature of those questions, but the way in which the submission proceeds they are to an extent intermingled. I am just trying to get straight the two different strands of the submission that the forum is making.

Ms Lawder—Yes, I see.

CHAIR—Thank you.

Mr PERRETT—In terms of costs, how easy is it to do an old building? What does it involve—going into the electrical ducts?

Ms Lawder—It is very similar to installing a PA system. It can be done at the same time as installing a PA system.

Mr PERRETT—So, if there are hanging tiles, it is just a loop around them.

Ms Lawder—Yes. It is usually done at the ceiling or the floor level for the best coverage, so any time there are—

Mr PERRETT—Under a carpet?

Ms Lawder—Yes, under a carpet—absolutely. Any time there is any type of refurbishment is the ideal time to do that; otherwise, it does become more costly if you are ripping up the carpet simply to put a hearing loop in.

Mr PERRETT—So retrofitting is not that complicated, depending on the type of building?

Ms Lawder—That is right. You may think of it like installing other internet type access, computer access. In some buildings it may be really difficult and in other buildings it would be quite simple.

Mr PERRETT—But that hung ceiling, convention centre type of thing is not complicated?

Ms Lawder—Absolutely. They are doing that kind of cabling all the time.

Mr PERRETT—And it can go down computer ducts? Most modern buildings have access ducts for IT.

Ms Lawder—Yes. It is usually around the perimeter of the room.

CHAIR—Thanks very much, Ms Lawder, for attending the hearing today. It has been most helpful to have that elaboration of matters that were in the written submission. The secretariat will send you a copy of the transcript of the hearing today. Thanks very much.

Ms Lawder—Thank you.

CHAIR—I am now going to pass the chair to Mr Neumann because I have to attend another hearing.

[10.01 am]

APPLETON, Mr Robert George, National Director, Technical and Regulatory Policy, Master Builders Australia

HARNISCH, Mr Wilhelm, Chief Executive Officer, Master Builders Australia

ACTING CHAIR (Mr Neumann)—Gentlemen, although the committee does not require you to speak under oath, you should understand that these hearings are formal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would either or both of you like to give an introductory statement before we proceed to questions?

Mr Harnisch—Thank you, Mr Neumann. We have just a very short statement. Master Builders certainly welcomes the opportunity to appear before the inquiry into the draft building standards for disability access to premises. Master Builders supports the policy of improving access in buildings for people with disabilities; in fact, it has been actively involved in the drafting of these for quite a considerable number of years. The record will show that.

However, there are a number of matters that Master Builders would bring to the attention of the standing committee for their consideration in examining proposed standards. In particular, and not exclusively, we believe the disability standards should be examined holistically and the committee should be satisfied that they are equitable, perhaps examining those cases which we have identified where they may cause unjustifiable economic hardship.

We also ask the committee to recognise the age of the building stock across Australia—that is, buildings built pre-1990, then buildings built between 1993 and the present under the Building Code of Australia and, of course, future buildings. We also ask the committee to closely examine the rationale for adopting the 90th percentile spatial dimensions in the context of increased costs and in the context of the lower benchmarks adopted in the USA and the UK, where our research would suggest that they have not caused any particular problems.

The other important thing that we would like to bring to your attention is the important role of access panels. There was some agreement about this issue between the parties that were examining this in great detail, but we are just concerned that there needs to be clarity about that and the need for a national approach. In this exercise, in this case, we do not need to have eight different jurisdictional approaches to it. I think we need to recognise that Australia is now essentially—in Communist terms—a country without borders. We do not have eight borders. That is to ensure, of course, that there are no costly delays to building approvals processes in that sense.

So Master Builders, in supporting the improved disability access standards and provisions, notes that it will increase costs, particularly to existing buildings, and that the standing committee should be aware of this in its consideration of proposed standards and what it might mean to business and to the community generally.

ACTING CHAIR—Thank you, Mr Harnisch. You see before you a couple of lawyers from Queensland. We realise the dingo fence has gone down a long time ago. In terms of the clarification of the approach re access panels, would you like to explain what obstacles there may be?

Mr Harnisch—Part of it is perhaps a lack of clarity as we see it in the proposed standards. The issue of access panels we very much support because every building is different. Very few buildings in Australia are exactly the same. Even when they look the same on the outside, internally they are totally different. This is relating to existing buildings where there are grounds for unjustifiable economic hardship and there are other technical reasons why some of the proposed provisions, because the design of the buildings originally, would make it in some cases almost impossible to do the modifications to bring them up to proposed disability standards. So the issue of the access panels therefore is very important. What we do not want is the matter to be held up indeterminately. It needs to be a fast process; it needs to be nationally consistent so that an appeal in Queensland has the same set of rules as there would be in Tasmania, in Adelaide or anywhere else. So we are very conscious that there needs to be a seamless system of being able to deal with these matters quickly. It is important that the people on the panels have the technical expertise to be able to make judgments on it. With all due regard to lawyers, I do not think lawyers would be the appropriate people to have on such panels. Because it has some sort of legal standing, we need to be mindful of that, but we really need people with the technical expertise and a broader understanding of what it means in providing disability access at the same time.

ACTING CHAIR—You mentioned buildings built pre-1990 and beyond. In Queensland we have many buildings and challenges in rural and regional areas. The pattern of settlement in Queensland is very different from any other state. How many buildings in rural and regional areas of Australia would be required to comply with the premises standard if the small building exemption was extended, as you guys propose?

Mr Harnisch—I do not have the actual qualitative figures but I think quite a substantial number.

Mr Appleton—The average age of the building stock in Australia is 20 years old, so we are talking pre-BCA period.

Mr PERRETT—You mean the buildings we are talking about.

Mr Appleton—Yes, non-residential buildings. So effectively we are talking about 50 per cent of the building stock, a value of about \$1.3 trillion, of which there is probably about \$5 billion worth of upgrades every year. So we are not talking about a small amount.

Mr PERRETT—Further to Mr Neumann's question, I think in your submission you talk about how the rural areas would be particularly onerous. Would you expand on that? I do not know the age makeup in rural areas in Queensland—

Mr Harnisch—The concern we expressed is in the context of the age of the buildings, and secondly it is the sheer economics of those towns. Unfortunately, a number of towns are

marginal and to simply insist that they need to upgrade their buildings to the new standards we believe just creates an unjustifiable hardship.

Mr PERRETT—We say they would need to upgrade or when they upgraded?

Mr Harnisch—When they do upgrade. It depends on how this is going to go in terms of whether it is going to be mandated and the degree to which it is going to be mandated. Secondly, it also comes down to the size of the footprint that triggers the upgrade. The proposal is for 200 square metres. We are saying that a more equitable approach would be 300 square metres not only because of the cost but also the inconsistency with the Building Code, in which 300 square metres is a known footprint size.

Mr PERRETT—Would that trigger it?

Mr Harnisch—It is the trigger for all sorts of other things. We question the need to introduce a new threshold when a 300-square-metre threshold has been an acceptable threshold for all sorts of other things.

Mr PERRETT—Could you tease out what 300 square metres triggers?

ACTING CHAIR—And how many buildings may be excluded in those circumstances between the 200-square-metre and 300-square-metre threshold? It is a hard question, I know.

Mr PERRETT—And could you name the buildings!

ACTING CHAIR—It is a reasonable question, though, because you recommend it.

Mr Harnisch—In the industry a small building is a building generally classified as less than 300 square metres. A lot of commercial buildings, particularly in smaller towns, are of that size. What we are now doing now is saying that a whole lot more even smaller buildings require an upgrade. Upgrading a 200-square-metre building and being able to get an economic return on it is going to make it even more difficult, in an economic sense—I am not talking about the disability aspects of it. The cost of retrofitting 200-square-metre building is going to be the same as a 300-square-metre building but obviously the rate of return on a 200-square-metre building is going to be considerably less.

Mr PERRETT—Can you give me examples of a 300-square-metre building? What does that mean—two levels, a strip of shops?

Mr Harnisch—It is a bit hard. Maybe we should have taken pictures.

Mr PERRETT—I am just trying to picture the 300 square metre buildings in my electorate.

Mr Harnisch—It would be a typical suburban office block that would contain solicitors and professional offices.

Mr Appleton—The sorts of triggers that you are talking about at 300 square metres are all your fire safety requirements, such as evacuation signs, appropriate exit points, distances of travel—all those things come in at 300 square metres.

ACTING CHAIR—I would like to know about the hardship exemption. What is the difference between the 200 square metres and a 300 square metres? Why was 300 square metres better than 200 square metres? What is the difference? Lawyers do not propose that they are the repository of all wisdom, so we are asking for your expert advice on this. What difference does the extra 100 square metres make?

Mr Harnisch—It comes down to a fundamental question: why don't we apply it to two-storey houses as well? At what point do you say you are going to exempt or include every house in Australia? Let me put that as a proposition.

Mr PERRETT—That was my next question!

Mr Harnisch—But you know what I'm saying?

ACTING CHAIR—We have heard that from Mr Perrett a few times.

Mr Harnisch—The point is: do we apply it then to caravans, if we want to take it to the extreme for the sake of the debate. We are saying that 300 square metres is, firstly, in terms of thresholds, sensible; secondly, 300 square metres seems sensible in terms of the footprint of the building. Then there is the economics of buildings. Buildings have to earn a rate of return. The owner has to have the ability to recoup that through increased rents. In some cases the modifications would mean a significant reduction in the area of lettable space. So it is not only the financial cost of installing it; it is the potential loss of lettable space. Of course, in a 200-square-metre building, you could lose quite a significant amount of lettable space due to the modifications.

Mr PERRETT—Could I put an alternative view: with an ageing community, you would actually open up opportunities. There will be more people able to access commercial premises—lawyers' offices and the like—and therefore businesses would be able to engage with more members of the community in an ageing society. There might actually be more business opportunities. You do not have to respond to that. You said that fire safety was one of the triggers. What are some of the other things that 300 square metres triggers?

Mr Appleton—I cannot tell you off the top of my head.

Mr PERRETT—There would not be too many other things, would there?

Mr Appleton—Fire safety is the major one. There are some other minor ones, but I cannot tell you what they are off the top of my head at the moment. I could certainly get back to you on that.

ACTING CHAIR—In terms of older buildings—it is a pity you did not bring a model here to show us—what makes it harder for them to comply with the premises standards? Just give us some ideas.

Mr Harnisch—There have been advances in architectural design. Sanitary facilities, for instance, were put together in older buildings in the back corner or somewhere else. We have a different way of building these days. So it can be the structure itself. The problem is that the older buildings simply have design constraints, without going into great technicalities. The ability to put in left—

Mr PERRETT—Less ducting and things like that?

Mr Harnisch—Sanitary ducting, for instance, may be next to steel beams. So simply to say we need to expand all that might not be viable. You couldn't do it for structural reasons—it would undermine the structural integrity of the building. Other reasons might be the way the floor plates have been designed—the ability to put a lift in a sensible way without losing too much lettable space also becomes a problem. Sure, you might satisfy the standards, but you will end up with a commercially nonviable building.

Mr Appleton—Pre-1990 there was no Building Code of Australia; each state had its own regulations. The requirements for access for the disabled were not very well thought about. So not only do you have a variation but the accessibility was very low. Once the BCA was adopted we moved to the 80th percentile. That was a huge leap forward. But all those old buildings do not come anywhere near that ability. So you are talking about a major change as opposed to a medium to change for a BCA building existing now.

ACTING CHAIR—Just to pick up that point on access, are you aware of any approaches to emergency egress for people with disabilities that we could incorporate in the premises standards? That is to build on the point that you made.

Mr Appleton—It is one of those areas that people have recognised for years is a problem, but nothing really has been done about it. It is a problem in existing buildings. The moment we take people with disabilities further into buildings, the problem is compounded. That is one of the things I pointed out in the submission: these standards have not addressed that issue, and it is something that urgently needs to be addressed.

ACTING CHAIR—Let us wave the magic wand and give you the supreme power to change the standards in that regard. What would you do, Mr Appleton?

Mr Appleton—I am not in favour of refuges. I do not think they are appropriate. I think psychologically a lot of people have problems with refuges.

Mr PERRETT—It is interesting you say that, because this building seems to be designed for refuges—every stairwell is a refuge.

Mr Appleton—In most modern buildings now the stairwell in particular is usually a fire rated stairwell. So the practice is you take people, particularly with ambulant disabilities, to the stairwell, where the fire brigade come and get them and take them out. In much bigger buildings, you are required to have a particular fire rated elevator shaft with special dedicated services that are completely from the others in the building. The fire brigade can use those lifts and take people down them. In terms of smaller buildings, whether or not you can do that and justify the cost—

Mr Harnisch—That is the problem. When you compress it down to size, you come down to the economics. I gave an extreme example about put this in place in caravans. Where do you—

Mr PERRETT—Draw the line.

Mr Harnisch—It is that difficult decision of where you put this threshold.

Mr PERRETT—Could I take you back to your opening remarks. You talked about the US and other nations—

Mr Harnisch—The US and the UK.

Mr PERRETT—You said that they had not gone to the 90th percentile.

Mr Harnisch—They have not. They—

Mr Appleton—And New Zealand.

Mr PERRETT—Where did they go to?

Mr Harnisch—The 80th.

Mr PERRETT—Can you unpack that for me with practical examples? What does that mean in terms of doors and access panels and the like?

Mr Appleton—Currently, modern buildings are designed to the 80th percentile.

Mr PERRETT—Which means?

Mr Appleton—I can tell you the difference in dimensions.

Mr Harnisch—I think that it is covered in paragraph 3.11.

Mr Appleton—Yes. What we are talking about is that as soon as you move to the 90th percentile the base measurement of the building changes, so you have to make structural modifications. As soon as you start making structural modifications to a building, the cost goes up very rapidly. Currently, most modern buildings are set at the 80th percentile. There has not been anywhere that I have seen a demonstration or any sort of research or anything to show why we should move from the 80th to the 90th. The 90th percentile comes from AS1428 part 2, which is for access and movement within institutions where people have major disability problems—places where you have a very high frequency of wheelchairs. It has not been demonstrated that that is needed in an ordinary commercial building. The regulatory impact statement could not tell us, unfortunately, how many people are affected. Are we going to move up to the 90th percentile for just a few people or for a lot of people? We do not know.

Mr PERRETT—Can you unpack that for me in terms of the structural readjustments necessary? Are we talking more trusses? What are you talking about? What is different in an old

person's home in terms of the costs that you seem to be hinting at there in terms of moving from the 80th to the 90th?

Mr Appleton—It can be as simple as a doorway. A doorway has a load-bearing member across the top of it, and the sides are load-bearing members. That means that you have to change that structure. The moment that you start changing structures, it becomes much more complicated, because you have to go back to an engineer and get design calculations to ensure that what you are doing is safe. It also triggers a building approval requirement, so you have to go through all that process as well.

Mr PERRETT—Talk about the millimetres. Are we talking about moving from 800 to 900? Is that we are talking about?

Mr Appleton—Yes. But the simple fact is that as soon as you change it you are changing the structure and you have to do a structural modification.

Mr PERRETT—But it has all been done by the aged care sector.

Mr Harnisch—But we are differentiating what I would call plain vanilla commercial buildings from specialised buildings, like hospitals, where there is a justification for the additional standards. Should we apply the higher standard to all buildings?

Mr PERRETT—But we are not talking about reinventing the wheel here. This was all done 20 years.

Mr Harnisch—But using the 90th percentile will see an increased number of sanitary facilities, wider doorways, wider hallways, increased lift sizes and so on. So there is an increase in all the spatial dimensions.

Mr PERRETT—But we are not talking about flying to the moon here. We are talking about reasonably minor adjustments that are standard design features in a lot of modern Australian buildings.

Mr Harnisch—But we are talking about the 90th percentile now.

Mr PERRETT—That is what I mean. Aren't most aged care facilities built to the 90th percentile? Mr Neumann would have a better understanding of that.

Mr Appleton—In new buildings, it is not a problem, because you design for it. With an existing building, you already have the structure built. Once you start tearing out walls and taking out major beams and things, you are starting to talk about big money.

Mr PERRETT—Okay. But you do not start a journey of 1,000 miles because it is 1,000 miles. You have to start somewhere. We might talk about aspirations; we might talk about future buildings; we might talk about upgrades being done to aspirational levels. There are ways to approach. The way that you were talking about it was fear and trepidation. But it is not a complicated task.

Mr Appleton—We are talking about large sums of money. The regulatory impact statement says that to move to these standards will cost an extra \$500 million a year on building upgrades.

Mr PERRETT—Who provided that information?

Mr Appleton—The regulatory impact statement. What we are talking about is an average increase of—

Mr PERRETT—What percentage?

Mr Appleton—10 per cent.

Mr PERRETT—Ten per cent per annum. That \$500 million represents—

Mr Appleton—Yes, per annum. It is an increase of \$500 million per annum. There are generally \$5 billion worth of upgrades done each year, so we are talking about an average of 10 per cent. For a high rise building, you are only talking about a very small percentage. But for a small building, it leaps dramatically. It is much higher than 10 per cent; it is up to 20 or 30 per cent.

Mr PERRETT—That is with your 300 metre definition of a small building.

Mr Appleton—Yes.

ACTING CHAIR—I want to move on to the access panels in a second. I asked you before why 300 square metres was better and more appropriate than 200 square metres. I asked you a question in relation to the older buildings. I want to nail it down. Why is the unjustifiable hardship exemption not sufficient to address the difficulties in relation to older buildings complying with the premises standards?

Mr Appleton—Our concern is that, unlike what the regulatory impact statement say, my own feeling—after 30 years in this business—is that you are going to have a lot of unjustifiable hardship appeals.

ACTING CHAIR—The floodgate argument. Is that what you are saying?

Mr Appleton—Absolutely—particularly with the small buildings and even with some of the bigger existing buildings. There will be an impact on rural communities. My feeling is that this is going to open the floodgates. If the system is not in place to handle it, we will have major problems such delays in approval and holding costs—big problems.

ACTING CHAIR—That leads to my next question, which relates to the front of your letter, which talks about the time and the funding allowed for the education of the industry and the state and jurisdictions to set up their appeal processes and systems before the new standards are implemented. Do you have any suggestion as to what duration we should be talking about and how many dollars and cents we should be talking about?

Mr Appleton—For dollars and cents, off the top of my head, I do not have any suggestions. But I suspect that you would need a 12 month lead time. We are not talking about a few simple changes. We are talking about considerable changes to the building code, and you have a lot of people to educate. You have all the design professions, all the building approvals people, the certifiers—

Mr PERRETT—Manufacturers.

Mr Appleton—Absolutely. There will be impacts in other industries, such as the indemnification of professionals by insurance companies. Changing these standards will impact on that. In some areas, certifiers cannot get indemnity unless they only approve deemed to satisfy solutions, that knocks out alternative solutions and stifles innovation. There is a whole spectrum of things here. They will raise their heads at the same time.

Mr Harnisch—And we need certainty once an approval has been granted that there cannot then be a retrospective appeal to say that this building does not comply and therefore is subject to that. That is the problem that we are grappling with.

Mr Appleton—Part of the problem is the long lead time. To design a 50-storey building involves a two-year, three-year design approval process and another two years to build it. So you are talking about a five-year span. Things can change a lot. You do not want to have to redesign and change your construction because things have changed in the meantime.

Mr Harnisch—And it just gets compounded. Numerically, you are also roping in a whole lot of owners when you go down to 200 square metres. ABS does not have those statistics, but if you want them I am sure you can get the numbers.

Mr PERRETT—You would not have access to the gap between 200 and 300?

Mr Appleton—No.

Mr Harnisch—The Property Council may have, but I think it will be an imperfect. The data is there. It is obviously held in every local council but, having 700 local councils, getting that data will be a huge task. You just have to do a so-called drive-by analysis and you can see that there are hundreds of thousands of these sized buildings that we are talking about, so the visual evidence will give you that feel. Our concern about that is that, even if you go down this route, the access panels then need to provide certainty to the industry, because there are retrospectivity aspects of it. A building owner or an investor could then, unfortunately, be captured or charged with noncompliance.

ACTING CHAIR—That brings me on to the access panels. It is a good point you have raised. Courts are notoriously territorial with respect to their discretions and their decision making. Of course, the recommendations of an access panel are just one factor the court takes into consideration. You are suggesting, are you not, that the recommendations of the access panel be binding on the court? That is in fact what I read.

Mr Harnisch—Yes. Otherwise, you will end up with appeal after appeal. It has to stop somewhere. We do not want the situation of, ‘We’ll now take it to the High Court.’ Where will it

go? You can imagine an owner of a 200-square metre building, thinking that he or she has done the right thing, then having someone appeal against that and being made a test case. It would not be fair. Hence, the whole proposition of our submission is that we will be far better off to make quite clear the exemptions to disability standards, which we believe are reasonable. If you go down to 200 square metres you will just get a whole lot more uncertainty, a whole lot more cases going before the access panels. You will create a whole lot of transaction costs that will be borne by investors and the private sector. When you look at it in that total context you will see that, in the end, lawyers will get involved. That is the reality, as with planning appeals and lodgements now, lawyers get involved for good reason. That is what we do not want. At the same time, that is not to say we do not want improved access for disabled people. So do not read us wrong here. We are talking about the practical reality of what could happen and what, based on experience, is likely to happen.

ACTING CHAIR—What other changes would you make to the system—we will call it the model process or the protocol? What other changes would you like to see made? Obviously, fettering the jurisdiction of the courts, to be bound by access panels. What else would you like to see?

Mr Harnisch—I think it is quite clear from our recommendations that the standards could specify things that are exempt from the disability provisions so that it cuts out a lot of potential debate about whether it is in or out. We really plea for certainty so that you remove this grey area, because that is what happens. As much as possible, remove the grey area.

Mr PERRETT—Can I take you to the ACT where there are accessibility requirements for class 2 buildings. Can you comment on the ACT experience versus the rest of your jurisdictions?

Mr Appleton—I would not like to comment on the ACT per se. But one issue the industry faces, and it is a major problem, is the number of state variations and then, on top of that, the number of local government variations. Let me give you an example. This document is the Building Code of Australia. This much—50 per cent—is the state variations. It is a major problem. Then from local council to local council the requirements change for a whole host of things, and our concern is that the disability access provisions may go through the same problem. You build a building here, and you cannot build it down the street because all the provisions are different in the next council. That is the last thing you want. That is a major concern.

ACTING CHAIR—Mr Perrett asked about the effect on the building industry of the ACT's provisions. Are you aware of any impact on the building industry?

Mr Harnisch—I do not have any information that I can add.

ACTING CHAIR—Are there any other questions?

Mr PERRETT—I should not take it from your comments, Mr Appleton, that you would like all class 2 buildings across Australia to be consistent with the ACT's requirements?

Mr Appleton—That might be a slight exaggeration.

Mr Harnisch—That just highlights the problem that local councils have.

Mr PERRETT—It is a long way from Canberra to Coolangatta, to Western Australia or wherever. You would like it to be as standard as possible.

ACTING CHAIR—Is that what you mean by holistically, when you say—

Mr Harnisch—Yes, holistically, but also in the sense of looking at in terms of costs. We just emphasised a point: that there is a cost associated with doing all this. The issue is: in your assessment can the community afford it, can the business sector afford it, and can the rural sector afford it? There just needs to be recognition this is not a costless implementation of the standards. Having said that, it does not mean that they should not be implemented, but we certainly believe with respect to the 90th percentile that the research does not show, at least on any economic terms, the justification for doing so.

Mr Appleton—The building access policy group did not recommend moving to the 90th percentile. There was disagreement in the committee. They said, ‘Let the 90th percentile go forward while the research is done to prove the need.’ But the research was never done.

Mr PERRETT—Can I just hear that last comment again.

Mr Appleton—The building access policy group—

Mr PERRETT—That was the gang of—

Mr Appleton—No, it was a smaller group, set up under the department to examine all these things. It did not recommend that the 90th percentile be adopted. It said, ‘Let the 90th percentile go forward while we do the research to prove the need.’ But the research was never done. This was about three years ago, so that in that lead time, when these standards were developed and came out, that research was never done to prove the need to move to the 90th percentile.

Mr PERRETT—We are talking demographic projections. Is that how you do it?

Mr Harnisch—No, it is about costs.

Mr PERRETT—It is about costs, not about need down the track? It is about costs now and current consumers, is it?

Mr Appleton—Yes, cost versus the number of users, I would suspect.

Mr PERRETT—From all the data I see, the need is almost there and will be there in the next 30 or 40 years. But I would like to be convinced otherwise.

Mr Harnisch—We are not saying that there should not be improved access for disabled people, far from it. It is about how far you go. For instance, there was a suggestion put at one stage in the debate where you go for high-rise buildings where evacuation becomes a problem. In the foreseeable future we could have buildings that are 80 storeys or 100 storeys high. Look at Dubai where there are now one-kilometre high buildings. Think about the logistics not only

getting totally able-bodied people down from the building, but then it is complicated by people who are particularly disabled. How do you deal with that? You could have an airlift, so to speak, or you could have special helicopter pads that are there all the time with helicopters to evacuate people. But all these things come at a cost. The argument is: is that justifiable from an economics point of view? Is that what you will do? Airlifts, apparently, are hellishly expensive. I am not disagreeing with you that there is a need for access for disabled people—and there are more disabled people unfortunately—but the issue is where do you go? Do you build the whole building around disabilities or do you make it part of the total access provisions?

Mr Appleton—Part of the problem is you have two awkward bedfellows trying to get together. You have the DDA, which is aspirational legislation, which is fine, but then you have the BCA, which is a set of minimal acceptable standards that are cost effective for the community. You immediately have a bit of a conflict there. In trying to bring these provisions into the BCA you will strike a few problems. We would hate to see the DDA provisions coming in that upset all the benchmarks that exist in the current BCA. I do not know, but maybe one of the answers is that, for the provisions that do not sit in the BCA, there may be a requirement for some DDA provisions that would apply through planning et cetera. You cannot necessarily bring all those provisions into the BCA without destroying the whole focus and objectives of the building code. It is a complicated issue and it needs to be addressed very carefully.

ACTING CHAIR—It is very complicated; that is for sure, gentlemen. Thank you for taking the time to come today. I would be grateful if you could engage with the secretariat about any additional questions the committee may have or about the material that you have undertaken to provide.

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

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Subcommittee adjourned at 10.42 am