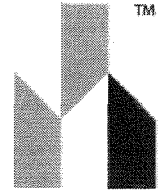


RECEIVED
11 MAR 2009

SM
MASTER BUILDERS
AUSTRALIA



BY: LACA

11 March 2009

The Hon Mark Dreyfus QC MP
Chair, Standing Committee on Legal & Constitutional Affairs
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear the Hon Mark Dreyfus

The Appropriateness and Effectiveness of the Australian Government's draft *Disability (Access to Premises – Buildings) Standards 2009*

Master Builders is pleased to have the opportunity to make this submission on The Appropriateness and Effectiveness of the Australian Government's draft *Disability (Access to Premises – Buildings) Standards 2009* to the House of Representatives Legal and Constitutional Affairs Standing Committee.

Master Builders supports the policy of improving access to and facilities in buildings for people with disabilities and also supports the objectives of the Disability Standards. However, we would ask the Committee to look carefully at the Standards holistically to ensure they are equitable and cost-effective throughout and to ensure that they will not cause unjustifiable hardship to industry and/or the affected individual businesses.

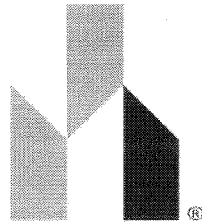
Master Builders strongly supports the need for nationally consistent building codes, standards and regulatory systems. We would be very concerned should the introduction of the Disability Standards lead to another set of State and Territory jurisdiction and Local Government variations to the Building Code of Australia.

For the introduction of these Standards to be successful, it will be crucial that time and funding is allowed for the education of the industry and for the State and Territory jurisdictions to set up their appeals process systems before any new Standards are implemented.

If you have any questions concerning this submission, please contact Mr Bob Appleton, National Director, Technical and Regulatory Policy. We would be happy to provide oral evidence to the Committee.

Yours sincerely

Wilhelm Harnisch
Chief Executive Officer



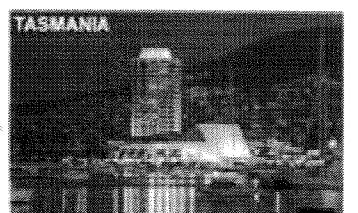
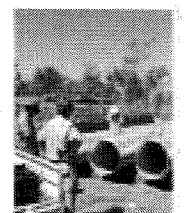
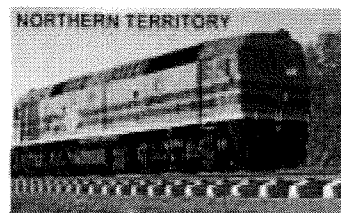
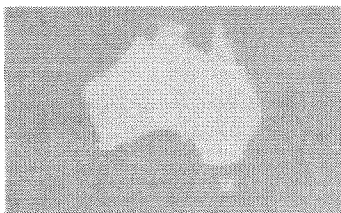
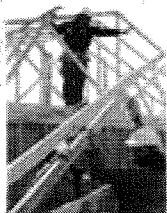
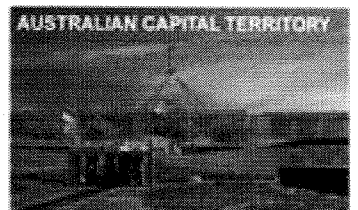
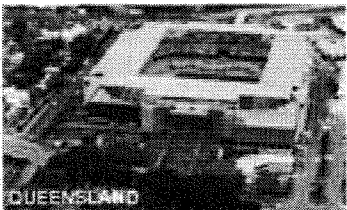
**MASTER BUILDERS
AUSTRALIA**

**Submission to
House of Representatives'
Legal & Constitutional Affairs Committee
on
The Appropriateness and Effectiveness of the
Australian Government's Draft
*Disability (Access to Premises – Buildings) Standards
2009***

March 2009

Master Builders Australia Inc ABN 701 134 221 001

building australia



© Master Builders Australia Inc, 2009

This publication is copyright and all rights are reserved. No part of it may be reproduced, stored, transmitted or otherwise distributed, in any form or by any means without the prior written permission of the copyright holder.

Master Builders Australia
PO Box 7170
YARRALUMLA ACT 2600
Ph: (02) 6202 8888
Fax: (02) 6202 8877
www.masterbuilders.com.au

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
Note.....	4
1. Introduction	5
2. The Objectives of the proposed Disability (Access to Premises – Buildings) Standards.....	8
3. The appropriateness and effectiveness of the proposed Premises Standards in achieving their objectives.....	8
Building Stock	8
80 th and 90 th Percentile	10
Accessible Sanitary Facilities.....	13
Lifts.....	13
Passing and Turning Spaces	13
Small Buildings.....	14
Classes of Buildings.....	14
Evacuation	15
4. 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	17
5. Whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector.....	20
Small Business.....	20
Class 1b Building Owners and/or Businesses	20
6. Any related matters.....	21
7. Conclusion	21

EXECUTIVE SUMMARY

Master Builders is pleased to have the opportunity to make this submission on “The Appropriateness and Effectiveness of the Australian Government’s draft *Disability (Access to Premises – Buildings) Standards 2009*” to the House of Representatives’ Legal and Constitutional Affairs Committee.

Master Builders supports the policy of improving access to and facilities in buildings for people with disabilities and also supports the objective of the Disability Standards to ensure that practical, equitable and cost-effective access to and facilities in buildings are provided for people with disabilities. When implementing the Disability Standards, however, it is important that clarity and certainty are provided for building owners, designers, developers and builders. Master Builders therefore supports codifying the appropriate obligations in the *Disability Discrimination Act 1992 (C’wth)* so as to link them with the Building Code of Australia (BCA).

That said, Master Builders would ask the Committee to examine the Disability Standards holistically to verify that they are equitable and to ensure that they will not cause unjustifiable hardship to industry or individual businesses, nor unreasonably inflate construction costs. Causes for appeal need to be minimised.

The Regulatory Impact Statement (RIS) identified access to smaller buildings as having the largest impact on costs. Building owners and small businesses will therefore bear the largest impact and will need recourse to a cost-effective, non-adversarial and fast appeals process in cases where they believe they face unjustifiable hardship in complying with the provisions of the Disability Standards. The impact on rural communities will be most evident. Master Builders notes that the RIS raises this issue but is silent on the policy implications and does not consider the possibility of large associated costs.

Master Builders is concerned that the administrative apparatus associated with the proposed Model Administration Protocol Access Panels could lead to many applications to the Access Panels, thus leading to costly delays in the building approvals process and constituting a severe compliance burden on the industry, businesses and building owners.

Master Builders recommends the establishment of a nationally uniform appeals process to ensure that the establishment of these provisions work in a streamlined and cost-effective manner. It is still uncertain that all States and Territories will adopt the Access Panel approach recommended in the Model Administration Protocol. If these provisions are to work, Master Builders believes it is imperative that the Protocol be adopted in all States, on the basis of consistency, transparency, cost-effectiveness and timeliness, before the Disability Standards are formalised.

Master Builders submits that it is crucial that the Government provide time and funding to educate the industry about these changes and the State and Territory jurisdictions must have their appeals systems in place before the reforms come into effect. Failure to do so could easily lead to major disruptions within the industry and have a significant negative impact on an economy that is already struggling.

Note

Building Code of Australia

Master Builders notes that the Building Code of Australia is produced and maintained by the Australian Building Codes Board (ABCB) on behalf of the Australian Government and each State and Territory Government. The ABCB's charter is to address issues relating to health, safety, amenity and sustainability by promoting efficiency in the design, construction and performance of buildings through the BCA and the development of effective regulatory systems.

The BCA is a uniform set of technical provisions for the design and construction of buildings throughout Australia. The goal of the BCA is to enable the achievement of nationally consistent, cost-effective, minimum necessary standards of health, safety, amenity and sustainability objectives in buildings.

1. Introduction

- 1.1 This submission is made by Master Builders Australia Inc (Master Builders).
- 1.2 Master Builders represents the interests of all sectors of the building and construction industry. The association consists of nine State and Territory builders' associations with over 31,000 members. The building and construction industry contributed \$77.7 billion of economic activity to the Australian economy in the year to the September quarter 2008, or 7.1 per cent of GDP, according to ABS statistics.¹
- 1.3 Master Builders supports the policy of improving access to and facilities in buildings for people with disabilities, but this policy needs to be carried out in an equitable and cost-effective way, without causing unjustifiable hardship to industry or the businesses concerned. Master Builders supports codifying of the appropriate obligations in the *Disability Discrimination Act 1992 (Cth) (the Act)* in that context so as to link them with the Building Code of Australia (BCA) and thus provide clarity and certainty for building owners, designers, developers and builders.
- 1.4 Minimum standards and cost-effectiveness are not inconsistent with best practice. Best practice can work in conjunction with the BCA. Throughout the industry, stakeholders make every effort to meet special needs of clients and consistently produce products and deliver services superior to the minimum prescribed in the BCA. But this is not a justification for continually "lifting the bar" with building requirements contained in the BCA and thereby increasing costs to the industry and the community.
- 1.5 Master Builders supports the concept of codifying the Act and setting minimum acceptable levels for disabled access and facilities in the BCA. This should ensure the delivery of cost-effective requirements. The draft Disability Standards, however, set overly ambitious new benchmarks for what is considered fair and equitable. They would appear to go beyond normal

¹ (Cat. No. 5206.0) released 3 December 2008

community expectations of what is fair and cost effective. They also set new benchmarks in meeting the objectives of the BCA and in how requirements for regulations are developed or amended in other sections of the BCA, such as those covering fire, smoke, health and amenity.

- 1.6 Master Builders acknowledges that community and Government expectations for health, safety, amenity and sustainability in the design and construction of buildings are always changing. However, increasing expectations create tensions with other objectives, particularly those relating to the interpretation of “minimum acceptable” and “cost effectiveness”, in other words what the community, business and the economy can afford.
- 1.7 Defining “appropriate access to buildings by people with disabilities” becomes a challenge when we look beyond the fundamental provisions. Good public policy, however, demands that rigorous analysis is applied to socially sensitive issues. The methodology adopted by government is to undertake a Regulatory Impact Statement (RIS). We would draw to the Committee’s attention that in this case the RIS does **not** provide a compelling case on the basis of a cost-benefit analysis. It is understood that many submissions expressed deep concern about the rigour of the cost-benefit analysis. The RIS also states: “there are considerable uncertainties associated with them [estimated benefits] and they appear somewhat compromised by overseas empirical evidence.”
- 1.8 The Committee should also note that the ABCB’s focus is on developing nationally consistent building codes, standards and regulatory systems that are both the minimum acceptable and cost-effective. The recent performance of buildings strongly suggests that there are no major problems in terms of such BCA objectives as health, safety, amenity and sustainability. Master Builders asks the Committee to consider the consequences if the Disability Standards raised the benchmarks of the BCA and the ABCB, thus altering the objectives or the focus of the ABCB.
- 1.9 Master Builders would be very concerned if the introduction of the Disability Standards produced another set of State, Territory and local government variations to the BCA. We strongly support the principle of nationally consistent building codes, standards and regulatory systems. Despite jurisdiction

variations in the BCA, it has proved to be of great utility in producing uniform regulation. We believe that this uniform approach has created significant economies of scale and benefits to both the industry and the community. It has provided certainty to manufacturers, builders, design professions and professional services. A nationally consistent BCA has allowed for building products to be modularised; prefabrication enabled these components to be transported across State boundaries. It has provided nationally consistent design parameters. It has meant that builders can work more easily across State boundaries. It has also assisted in the development of consistent practices in occupational health and safety and training.

1.10 While Master Builders accepts that some variations to the BCA are necessary in various parts of the country, it is concerned about the number of jurisdiction variations that still exist. The first national building code was introduced in 1990 and although the number of variations has fallen since then, there are still too many that are not justified. Master Builders is also concerned that local government may introduce further increased stringency on building regulations without adequate justification or proving cost-benefit to the community and that it may use these Disability Standards to achieve this. The Government should change the current system so as to introduce some controls on local government, so that it no longer has a free hand to add new regulations and conditions that inflate costs and hinder development.

1.11 The Government needs to ensure that the introduction of the Disability Standards does not harm the building industry by inflating costs or setting up a cumbersome administration process to handle unjustifiable hardship claims. The BCA has provided a large degree of certainty for clients and investors and this has brought benefits such as lower insurance cover, reduced investment risks and more affordable buildings. This has resulted in improved productivity, with Australia's building and construction industry judged to be one of the most productive in the world. The industry's productivity has been admired overseas and many countries have sought to copy Australian practices. Master Builders would not like to see this situation changed.

2. The Objectives of the proposed Disability (Access to Premises – Buildings) Standards

2.1 Master Builders asks the Committee to note that the published objectives of these Standards are:

- (a) to ensure that reasonably achievable, equitable and cost-effective access to buildings and facilities and services within buildings is provided for people with disabilities; and
- (b) to give certainty to building certifiers, building developers and building managers that if access to buildings is provided in accordance with these Standards, the provision of access, to the extent covered by these Standards, will not be unlawful under the Act.

3. The appropriateness and effectiveness of the proposed Premises Standards in achieving their objectives

3.1 Master Builders supports the policy of improving access to and facilities in buildings for people with disabilities. This is a noble objective, but it should be achieved in an **equitable and cost-effective** way, without causing unjustifiable hardship to industry or businesses, or unreasonably inflating costs that are ultimately met by the whole community. This is also an objective of the Premises Standards, but Master Builders is concerned that this does not appear to be the case with some of the provisions of the Standards.

Building Stock

3.2 Master Builders is concerned that the proposed disability provisions fail to take into account the age of the building stock across Australia. The economic impact of the proposed provisions can vary significantly, depending on the age and location of buildings. Rural areas are likely to be particularly hard-hit.

3.3 Master Builders believes that in order to meet equity and cost-effectiveness criteria, the disability access provisions need to take into account three broad categories of buildings:

- buildings built pre-1990s under various State and Territory building regulations;

- buildings built between the early 1990s and the present under the BCA; and
- future buildings.

3.4 Master Builders point out that applying these disability access provisions to existing buildings may have a major impact on costs and may lead to loss of rentable space. This impact will be felt most severely in smaller buildings and rural areas.

3.5 Master Builders argues that buildings built before the early 1990s should have a significant list of exemptions because they were not built with the 80th percentile spatial criteria in mind. Buildings constructed after the early 1990s should also be subject to exemptions, though not as extensive as pre-1990 buildings.

3.6 **Pre 1990 Buildings:** These buildings were constructed under different State and Territory building regulations which specified varying levels of disability access and facilities before the introduction of the BCA. Because of the considerable variations across Australia, these buildings will require statutory exemptions to be incorporated into the BCA. The purpose of this is to allow timely development and building approvals without the need to apply for exemption to the Access Panels in each State or Territory. Master Builders recommends that the following be included as a minimum in the statutory exemptions:

- heritage buildings (buildings classified by Federal, State, and Territory Governments)
- buildings listed by local government that also have heritage significance
- small buildings
- lift sizes
- toilet numbers and locations
- door widths
- number of accessible entrances
- walls or other internal structural/load bearing elements forming parts of hallways, corridors and the like.

The above list is not a complete list of exemptions. It aims only to illustrate the range of technical aspects that need to be considered for inclusion as exemptions. The full list should be determined in consultation with the industry.

3.7 Buildings circa 1990 to current: Buildings constructed between the early 1990s and the present day were constructed under the BCA provisions which referenced Australian Standard 1428.1 and were based on an 80th percentile spatial criteria. With the consequent improvements to access and facilities, buildings constructed in this period substantially comply with the proposed provisions. However, a limited list of statutory exemptions should be included in the BCA, as follows:

- small buildings
- lift sizes
- toilet numbers and locations
- door widths
- number of accessible entrances
- walls or other internal structural/load bearing elements forming parts of corridors, hallways and the like.

The above is not a complete list of exemptions. It aims only to illustrate the range of technical aspects that need to be considered for inclusion as exemptions. The full list should be determined in consultation with the industry.

3.8 Future Buildings: Master Builders proposes that future buildings should, in general, comply with the new disability regime based on the 80th percentile spatial dimension only. This will provide significantly improved access and better facilities than currently exist. Although most new buildings should be capable of complying with the proposed Disability Standards, there may be isolated exemptions.

80th and 90th Percentile

3.9 The 80th and 90th percentile dimensions discussed in this document refer to those in Australian Standard AS 1428.1 (Design for access and mobility, Part 1: General requirements for access – new building work). This covers the use

of wheelchairs and relates specifically to the 80th/90th percentile wheelchair size and user. The 80th percentile dimensions are 1250mm x 740mm and the 90th percentile dimensions are 1300mm x 800mm. Obviously, the larger the wheelchair the more space they require and the larger corridors, lifts, toilets, etc. must be, all of which increase building costs and dramatically so if old buildings have to be modified.

- 3.10 Master Builders notes that the 90th percentile spatial dimensions were not officially adopted by the Building Access Policy Committee (BAPC). Because of the varying views of members, the Committee's recommendation was to put the 90th percentile concept forward and conduct further research while seeking public comment on the proposal to move from an 80th percentile to a 90th percentile dimension. If the 90th percentile is to be adopted, it should only occur after research and an independent cost-benefit analysis, particularly for the upgrade of existing buildings. The RIS advises that the number of affected people in moving from the 80th to the 90th percentile is unknown.
- 3.11 Master Builders submits that introducing a 90th percentile measurement requirement will significantly increase the difficulties and costs involved in construction in existing buildings. Master Builders asks the Committee to look very carefully at the rationale and justification for applying the proposed 90th percentile measurement, which requires extended or expanded sanitary facilities, doorways, lift sizes, and many other costly features likely to be needed by only very few building users. This requirement will very be difficult' and in some cases impossible' to comply with the BCA for work in existing buildings, where structural alterations will be required to make difficult and expensive modifications. Master Builders points out that the 90th percentile measurement was calculated for people with severe disabilities in an institutionalised environment who require additional space to assist their mobility. This is appropriate for those buildings, but on balance it would not appear necessary for ordinary commercial buildings.
- 3.12 Although such people are fully entitled to the rights of all Australian citizens, it does not follow that every structure must be modified to allow them self-propelled access. Such a policy would mean the expenditure of significant sums for each individual; a subsidy that could be justified on neither equity nor

economic grounds. The RIS estimates the proportion of the community using wheelchairs at only 0.5 per cent; a figure that needs to be kept in mind when addressing these issues. Master Builders believes that these proposals are on balance over-weighted to assist a very small number of people with ambulant disabilities. In comparison, it appears that little is being done to assist people with other disabilities in accessing buildings.

- 3.13 In comparing the proposed spatial dimensions with international standards, it emerges that Australia is proposing spatial dimensions considerably more generous than in the USA and UK. Master Builders recommends the 90th percentile benchmark not be adopted. Adopting the 80th percentile benchmark throughout represents a significant advance in provisions that will improve life for the disabled without imposing unreasonable costs on the rest of the community. It also aligns more closely with overseas practice.
- 3.14 The proposal to move to the 90th percentile for parts of all general public buildings in Australia must be scrutinised by the Committee. Based on the spatial dimensions of door widths, corridor widths and lifts, Australia is currently up to world standards with the 80th percentile dimensions. If we were lagging behind other countries such as the UK and USA, there would be a stronger argument to move to the 90th percentile figure (Australian Standard 1428, Part 2). Master Builders believes that the proposal to adopt a mixture of 80th and 90th percentile provisions will only complicate matters.
- 3.15 Master Builders understands that many submissions on earlier documents suggested that the 90th percentile proposal would be prohibitively expensive. The majority of respondents did not support adopting larger spatial dimensions. The costs would fall disproportionately on work that involves additions and renovations to existing buildings, particularly small buildings, throughout Australia.
- 3.16 There is a strong argument for the 80th percentile to be retained because renovations undertaken as part of the normal lifecycle will be simpler and less expensive. This is because the building elements have the correct base dimensions, but allow for the inclusion of better access and more facilities throughout. Moving to the 90th percentile would create new spatial dimensions

that would make all the recently constructed buildings non-compliant. This would mean that building owners, after spending considerable sums to make their existing buildings compliant with the BCA, would then have to make further outlays to refurbish them again.

Accessible Sanitary Facilities

3.17 Master Builders supports the increase in accessible sanitary facilities for the disabled. While these provisions can easily be provided in new buildings, it will create issues in existing buildings that need to be upgraded. Including these provisions may require extensive and costly building modifications, particularly if they require structural modifications; or it may simply be impossible. Fire-rated service ducts may not be accessible or large enough, while the distances and falls required for sewerage pipes may make it impossible to provide extra toilets. The principle should be distribution **as far as is practicable** throughout the building.

Lifts

3.18 Master Builders supports the upgrade of lifts to require more functions and options for people with disabilities. Master Builders supports the intent of these Standards to provide safe, equitable and dignified access to buildings and welcomes the concessions made after earlier consultation.

3.19 Nonetheless, Master Builders brings to the attention of the Committee the substantial cost impact of the proposed lift provisions. The RIS acknowledges the cost impact, particularly in existing and smaller buildings and the allowances have been noted. Furthermore, the substantial cost of increasing the size of lift shafts was not included in the cost-benefit analysis.

3.20 Master Builders is also concerned about the adoption of the 90th percentile in determining lift sizes for travel further than 12m. The need for this has not been adequately demonstrated. Until such, the 80th percentile should be retained.

Passing and Turning Spaces

3.21 The disabled need adequate passing and turning spaces. Master Builders asks the Committee to note that this provision in the Standards came about by being part of enhanced requirements of AS1428 Part 2 to cater for a concentration of

people in wheelchairs or using other mobility aids, visiting or residing in a building that has been purpose-constructed to accommodate them. It does not refer to standard buildings used by the general public.

- 3.22 Master Builders believes that the proposed Standard provisions will impose an unsustainable cost burden on the community, particularly in rural areas, where buildings are often old, and the disabled few and far between.

Small Buildings

- 3.23 The RIS identified access to small buildings as having the largest impact on costs to deliver the proposals in the Access Code. Building owners and small businesses will bear the largest proportionate impact and they will therefore need recourse to a cost-effective, non-adversarial and fast appeals process. The impact on rural communities would be most evident, but the RIS does not address the policy implications of this issue or adequately address the cost imposition of this important sector. Master Builders considers that small buildings should have adequate specific exemptions in Section D3.4 of the BCA. Renovations and alterations to existing buildings should also have exemptions in BCA Section D3.4.

- 3.24 Master Builders proposes that Class 3 to 9 buildings of three storeys or less, with a storey floor area of 300m² or less, apart from the street entry floor, should be exempt from having to provide these proposed provisions. The proposed floor area in the Disability Standards is 200m². Our proposal aligns with USA, UK and New Zealand requirements. The BCA currently recognises that commercial buildings with floor areas 300m² or less are considered to be small buildings; they do not require safety measures to be installed until the floor area or storey is more than 300m². An example of this is the introduction of 'Emergency' and 'Exit' signs and emergency lighting at that point. Master Builders submits that defining small buildings as having a floor area of 300m² as the most logical and cost-effective measurement.

Classes of Buildings

- 3.25 Master Builders asks the Committee to consider whether it is necessary to require disabled access for Class 1b buildings with four or more rooms for rent – typically, joint residential or accommodation premises. Generally, buildings of

this size, type and location are existing private dwellings used to supplement income or generate small business income in regional Australia, such as guest houses and bed and breakfast establishments. Many are hobby farmers or farmers trying to supplement income by using their private home or a second building on the allotment. To modify existing Class 1a buildings to comply with the new proposals for Class 1b would be out of the question for most of these people, as it would basically require the complete rebuild of the Class 1a to meet these Standards and AS 1428 Part 1 of the BCA. The cost of new buildings in this Class would increase dramatically, making the enterprise less competitive and could have a major impact on that sector, particularly in rural areas. It is not too much to say that the imposition of the Disability Standards would drive most B&Bs and small guest houses out of business.

- 3.26 The proposal to increase the number of available rooms in Class 3 buildings – typically, hotels and motels – does not appear commensurate with the small number of the population who would require these types of rooms. It is Master Builders' view that the existing current ratios provide ample opportunity and accommodation to cater for people with disabilities.
- 3.27 Significant changes are proposed for buildings in Classes 5, 6, 7 and 8, particularly with regard to requiring access to all areas. These requirements will create an excessive burden on owners of small-to-medium buildings, who will generally have less financial capacity to meet the obligations of any upgrade. Master Builders considers that there needs to be a more-balanced and critical analysis to develop changes that would not create undue financial strain on building owners in the small-to-medium size capacity.

Evacuation

- 3.28 Master Builders notes that the intent of these Standards is to provide safe, equitable and dignified access to buildings and is fully supportive of that intent. It should be noted that there are issues in the emergency evacuation of the disabled under the proposed provisions.
- 3.29 Master Builders notes that this intent, while aiming to facilitate access by disabled people to more buildings and more areas of buildings, creates an issue for building owners and managers when it comes to evacuating people

with disabilities in the event of an emergency. The Premises Standards does not appear to have addressed this issue adequately. This issue needs to be addressed before the Standards are formalised and provisions provided in the BCA.

4. 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

- 4.1 The current approach to building control by the States and Territories offers room for improvement. It is necessary to pursue a holistic building control model that creates a regulatory framework and provides the opportunity to deliver a nationally consistent administrative process, including appeals processes and licensing systems for practitioners, education and training. It is Master Builders' view that there should be national consistency with the State/Territory building administrations so as to achieve a national model that provides efficiencies and reduces costs.
- 4.2 Master Builders believes that the Model Administration Protocol is the key to making these Standards work satisfactorily. It is not certain that all States and Territories will adopt the Access Panel approach recommended in the Protocol. Master Builders believes that it is important that it is consistently adopted in all States and Territories before the Disability Standards are formalised.
- 4.3 Master Builders is emphatic that the Administration associated with Access Panels should be determined before the Standards are finalised. In order to be effective, the Access Panel process needs to be simple, accessible, quick, cost-effective, non-adversarial and binding. Poor Administration will lead to many applications to the Access Panels, which in turn will lead to delays in the building approvals process and add unnecessary costs to the industry, businesses and building owners.
- 4.4 The Commonwealth Government must consider setting aside appropriate funding to help establish the Access Panels across Australia as part of the compliance regime for the BCA disability provisions. These panels will need to be in place to hear appeals when the new regulations come into effect, should compliance with the new access requirements be impossible or cause unjustifiable hardship. The dispensation issued by the Access Panels needs to be legally binding, but subject to appeal through a right of review process,

beginning with the simple and local for most cases and the appropriate court system for the few cases where it may be needed.

- 4.5 Once the HREOC and ABCB have developed all the new disability measures for building regulation based on the Disability Standards, government funding will be needed to inform the industry of the changes. The ABCB has an educational program for standard amendments, but these new measures will be a large and complex set of changes that will have to be understood and absorbed by builders, designers and certifiers. It will require significant funding and resources to provide such education. It is also important that significant lead-time is allowed for the education process to take place before the reforms come into effect.
- 4.6 The private certification model adopted by most States/Territories in Australia has been a most progressive and innovative model. It has led to more efficiencies and a framework to help meet the high demands for building approvals. However, we are concerned at the inadequate number of qualified people in the industry. Practitioners are experiencing problems with obtaining professional indemnity insurance. They also have difficulty keeping up with changes to the regulatory framework, which persuades many of them to quit the industry. It is important for the success of these provisions that the private certification sector is further developed and participates in these processes.
- 4.7 For all categories of buildings, Master Builders recommends a well-defined process with clear criteria by which building owners can put their case for exemptions to a relevant Access Panel or authority, in the confidence that they have provided all the information required. To have to re-submit because of minor points is a bane for the industry. All decisions should be published to assist future applicants.
- 4.8 While the protocol allows for a performance approach to be used when alternative solutions are proposed, Master Builders maintains that the performance approach will not be an option for designers and certifiers because of the difficulties with obtaining professional indemnity. Insurance practitioners are expected to insist on compliance with the Deemed-To-Satisfy (DTS) provisions. The only other method to vary the DTS with some form of

protection will be by referring the matter to the proposed Access Panels. This will cause huge delays for people seeking building approvals and the Access Panels could be overwhelmed with huge numbers of applications. Master Builders believes that the additional holding costs associated with waiting for applications to be approved could be substantial.

- 4.9 Master Builders has become increasingly aware of instances of planning schemes and provisions being introduced at a local level which would normally be dealt with under the BCA and we are concerned that this may also occur with these Disability Standards. Building requirements within the BCA are being expanded into planning schemes and being made more stringent and thus more costly to industry and the community. The level of additional documentation, when conceptual plans are used for planning approval, is adding significant costs and delays to the assessment and approval process. It is our view that planning matters should deal only with allotment or land-use issues and environmental and other issues outside the building. Within the building envelope, control of the health, safety amenity and sustainability issues should be the responsibility of the BCA.
- 4.10 Local Government is adding confusion, cost and delay to the building and construction process with building by-laws which in turn raise building costs. Generally, there are no educational or training programs to inform developers, builders and designers on how to comply with these local provisions. Designers and builders are often not aware of particular local government by-laws until they seek development approval.
- 4.11 Master Builders is concerned at the excessive production of local laws and by-laws incorporating building requirements over and above provisions covered by the BCA. We are concerned that this may also apply to the Disability Standards. Of particular concern is the fact that local government does not have to go through any RIS regime. It is Master Builders' view that local government should not be able to override, delete or impose different standards or building laws to those contained in the BCA. Only if there are local issues not covered by the BCA, should local government be entitled to create a by-law or local law to cover particular local issues and then only after

following a transparent consultation process and a cost-benefit analysis, followed by approval by the ABCB.

5. Whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector

Small Business

- 5.1 The owners of smaller buildings and their small business tenants are likely to be the groups who will face the largest cost impact during upgrades. The RIS acknowledged this but did not offer a solution. The impact will be particularly felt when these proposed Standards are applied in rural communities. These businesses often survive on a low cash flow and can be marginal at best. The number and frequency of visitors or clients with disability is likely to be very low – too low to justify a heavy investment in facilities for them.
- 5.2 The Premises Standards may very well require major structural changes to upgrade the existing building stock. Combined with the possible need for lifts and loss of rentable space, their introduction will probably provoke many claims of unjustifiable hardship.
- 5.3 Master Builders believes that the major stumbling block for these Standards will be how the State and Territory jurisdictions institute and process hardship claims. Less than best practice here could well lead to major delays in building approvals.

Class 1b Building Owners and/or Businesses

- 5.4 Class 1b buildings typically are joint residential/accommodation premises and houses such as B&Bs and guest house businesses. Buildings of this class, type and location are usually existing private dwellings (Class 1a) used to supplement income or generate small business income in regional Australia. Many are hobby farmers or farmers trying to supplement income by using their private home or a second building on the allotment. To modify an existing Class 1a building to comply with the new Standards for Class 1b's would be impractical and would basically require the complete rebuild of the Class 1a to meet these Standards and AS 1428 Part 1 of the BCA. The cost penalty would be unjustifiable. The cost of new buildings in this Class would require a major

increase, making the businesses less competitive and could have a major impact on that sector.

6. Any related matters

6.1 Master Builders recommends that appropriate amendments be made to a number of sections of the proposed Disability Standards and associated documents.

6.2 Disability (Access to Premises – Buildings) Standards

Section D3.3(b) – This section of the Standards is confusing. The references to Clauses 11 and 12 in AS1428.1 are incorrect. Perhaps what was intended was reference to Clauses 4.11 and 4.12?

6.3 Disability (Access to Premises – Buildings) Standards Guidelines 2009

Part 5.1 (6) in the Exceptions and Concessions section reads: “The factors a court may consider are listed in the Premises Standards in section 4.1. However, none of the factors should be interpreted as leading automatically to unjustifiable hardship being accepted as applying.”

This is of concern to Master Builders in that it refers only to a court considering the exceptions and considerations. We believe a court process should only be a last resort. Access Panels and other simple, cost-effective means should be available before the parties resort to a court process. It could be interpreted as an indication of the wishes of the Human Rights and Equal Opportunity Commission that a court system is the most appropriate process for handling these issues by the State/Territory Jurisdictions involved. This would be most inappropriate.

7. Conclusion

7.1 Master Builders supports the intention of these Standards, which is to provide safe, equitable, cost-effective and dignified access to buildings for people with disabilities and to give certainty to building certifiers, building developers and building managers about premises compliance with the DDA.

- 7.2 That said, Master Builders recommends that the Committee seriously examine the sections of these Standards that do not appear equitable or which threaten to impose unreasonable costs and to consider the extent which they will cause unjustifiable hardship to industry and/or the businesses concerned. Building upgrades in particular may face huge substantial impacts.
- 7.3 Master Builders recommends that appropriate appeals processes be instituted in the State and Territory jurisdictions because they are the key to making these provisions work satisfactorily. At this stage it is not certain that all States and Territories will adopt the Access Panel approach recommended in the Model Administration Protocol. It is very important, however, that the recommended approach be adopted in all States, on the basis of the principles of consistency, transparency, cost-effectiveness and timeliness, before the Premises Standards are formalised.
- 7.4 Master Builders is concerned that the jurisdiction administration associated with Access Panels may become a problem in practice. In order to be effective, the Access Panel process must be simple, accessible, quick, cost-effective, non-adversarial and binding. Appeal to a court should be allowed as a final remedy only. Master Builders is concerned that there is a real possibility that poor administration could lead to a large number of applications to the Access Panels, thus creating huge delays in the building approvals process and an additional and unnecessary cost to the industry, businesses building owners, and ultimately, the Australian community.
- 7.5 When the new disability measures for building regulation are to be introduced, government funding will be needed to inform the industry of the changes. These new measures will be a large and complex set of changes that will have to be understood and absorbed by builders, designers and certifiers. It will require significant funding and resources to provide such education. It is also important that significant lead-time is allowed for the education process to take place before the reforms come into effect.

.....//.....