Ref: response to Question No. SBI-72

REGULATORY IMPACT STATEMENT

Proposal to Formulate Disability Standards for Access to Premises and Amend the Access Provisions of the Building Code of Australia (RIS2004)

February, 2004

This Regulatory Impact Statement has been prepared in accordance with the requirements of the Principles and Guidelines for Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies endorsed by the Council of Australian Governments. Its purpose is to inform interested parties regarding a proposal to make new regulations.

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1. Introduction

The Building Code of Australia (BCA) is a comprehensive statement of the technical requirements for the design of buildings. It sets standards for the performance of buildings in terms of health, safety and amenity. The BCA is referenced in all State and Territory building legislation and applies to building work on new and existing buildings. The BCA also contains specific provisions in relation to the use of buildings by people with a disability, including requirements for access to and within buildings and provision of appropriate sanitary facilities. Amendment 4 to the 1996 edition of the BCA made major changes in this area.

The issue of the accessibility of buildings for people with a disability is also regulated by the Australian Government's *Disability Discrimination Act 1992 (the DDA)*. The DDA proscribes discrimination against people with a disability in a wide range of contexts, including employment, education, access to premises, the provision of transport, goods, service and facilities, and the provision of accommodation. Section 23 of the Act deals specifically with access to premises. It provides that it is unlawful to discriminate against a person with a disability in relation to provision of access to premises other than where providing access would cause "unjustifiable hardship".

To date, these general requirements of the DDA have not been supported by detailed, specific requirements[1], leaving room for considerable uncertainty as to the specific compliance obligations the Act imposes and leading to inadequate levels of overall compliance with the requirements of the Act. Moreover, the existence of two legislative authorities in relation to access to premises clearly gives rise to potential inconsistencies. For example, compliance with the current provisions of the BCA is not necessarily sufficient to ensure compliance with the DDA.

The proposed regulatory changes attempt to address both of these issues. The main mechanism adopted is to ensure that detailed technical requirements for compliance with the access to premises aspects of the DDA are formulated and that these are made consistent with the requirements of the BCA. The proposed Premises Standard, issued under the DDA that is the subject of this RIS contains both these detailed technical requirements and necessary framework provisions

[1] Other than the Advisory Notes, issued by the Human Rights and Equal Opportunity Commission, which are intended to provide guidance, rather than forming part of the regulatory structure, *per se*.

setting out their status under the Act and specifying their application in practice. The BCA will be amended to adopt identical technical standards.

This co-operative approach to reforming the existing legislative requirements therefore aims to achieve improved transparency and predictability in relation to legislative requirements for providing access to premises. It also aims to substantially improve the current level of compliance with the general duties in relation to access to premises currently imposed under the DDA and to ensure that compliance with building legislation will provide a high level of confidence that DDA requirements are also met.

It should be noted that the DDA is currently being reviewed by the Productivity Commission[2]. This review is required under the legislative review provisions of the National Competition Policy, although the terms of reference for the review range substantially more widely than competition policy issues *per se*. The proposed Premises Standard, and this RIS which analyses and assesses the proposed standard, are necessarily based on the existing DDA. However, the possibility must be noted that the Australian Government's response to the DDA review could entail legislative change and that any such change would potentially affect the proposed Premises Standard.

The Productivity Commission is required to report to the Government on the DDA by 30 April, 2004, while the Government is required to table responses to all Productivity Commission inquiries in Parliament within 25 sitting days of its receipt of the report.

2. Objectives

The proposed Premises Standard would be made under the authority of the DDA, as noted above. The objectives of the DDA are to:

a) eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:

(i) work, accommodation, education, public transport, access to premises, clubs and sport; and

(ii) the provision of goods, facilities, services and land; and

(iii) existing laws; and

(iv) the administration of Australian laws and programs; and

[2] For further information on this review, see http://www.pc.gov.au/inquiry/dda/index.html

(b) ensure, as far as practicable, that persons with a disability have the same rights to equality before the law as the rest of the community; and

(c) promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

Within this general context, the specific objectives of the proposed Premises Standard are to:

(a) identify ways of providing, for people with a disability, access to buildings, and to facilities and services provided within buildings, that are reasonably achievable, equitable and cost-effective; and

(b) provide certainty to building developers and building managers that the provision of access to buildings, to the extent covered by these Standards and in accordance with these Standards, is not an act that is unlawful under the DDA.

Recognising the relationship between the DDA and the BCA, the following additional objective can be identified:

- Enhancing the consistency and transparency of legislation by aligning DDA and BCA requirements.

Given that the technical provisions of the Premises Standard and the BCA would be identical, the identified objective of Section D of the BCA should also be noted. This is:

(a) provide people with safe, equitable and dignified access to-

  (i) a building; and

  (ii) the services and facilities within a building; and

(b) safeguard occupants from illness or injury while evacuating in an emergency.

3. Background

The DDA came into effect in March 1993. As noted, it proscribes discrimination against persons with disabilities in a wide range of contexts, subject to the proviso that the duty not to discriminate should not cause "unjustifiable hardship" in practice. However, no detailed legislative or regulatory guidance exists as to the specific steps that must be taken to ensure compliance with these general duties. Instead, the main source of guidance as to the practical import of the

DDA requirements has been a series of "Advisory Notes" published by the Human Rights and Equal Opportunity Commission (HREOC). In the case of access to premises, the Advisory Notes refer to the BCA, to proposed changes to the BCA and to various relevant Australian Standards. However, as their name suggests, they are intended to be "advisory" in nature, rather than regulatory.

Concern as to the lack of certainty regarding practical compliance obligations under the DDA led to amendments to the legislation, which came into effect in April 2000, to allow the Australian Governments Attorney-General to formulate Disability Standards[3]. Compliance with such standards is made compulsory under Section 32 of the DDA. Section 34 of the DDA effectively provides that compliance with a relevant Disability Standard is sufficient to satisfy the DDA duty not to discriminate.

This RIS assesses the draft *Disability Standards for Access to Premises* ("the Premises Standard"). The passage of this Disability Standard would have the effect of specifying and codifying the duty to avoid discrimination, imposed under the DDA, to the extent that it relates to access to premises. This will make the legislation more transparent in practice and thus improve certainty for stakeholders. It is thereby expected to improve effective compliance with the DDA in relation to access to premises. It should be noted that similar Disability Standards have been developed or are under development in relation to other major areas of application of the DDA, with the same underlying purpose.

As noted previously, it is proposed to amend the BCA to ensure that the BCA technical provisions mirror those contained in the Premises Standard. This is intended to ensure, as far as possible, that compliance with the BCA will also satisfy DDA obligations. Although complaints with respect to building standards may still be lodged under the DDA, the expectation is that the BCA, as amended, will present a specification of the legal requirements sufficient to forestall any such complaints proceeding to a finding for the complainant. In this respect, the Premises Standard is also intended to provide greater confidence to builders, developers and property owners that they will not face lawsuits that may entail them in additional expenditures. The current proposals are the result of a request from the Australian Government to the ABCB to develop proposals to change the BCA[4] to enable it to form the basis of the proposed Premises Standard.

As a result of this request, the ABCB's Building Access Policy Committee is required to:

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[3] See Disability Discrimination Act 1992, Section 31.

[4] In 1995 the ABCB established the Building Access Policy Committee (BAPC). The BAPC was formed to recommend changes to the BCA, to consult widely with industry and community, and to provide advice to the ABCB on access-related issues.

- assist industry, regulators and service providers to achieve equitable, cost effective access to buildings, for people with disabilities;
- make recommendations to the ABCB of amendments to the BCA which will ensure that it is consistent with the objectives of the DDA and is sufficient to be adopted as part of a Premises Standard; and
- pursue this objective in consultation with industry, the community, the Australian, State, Territory and Local governments.

Because of the structure of the BCA, substantial questions of interpretation may arise in applying the access provisions to specific cases. As with all BCA requirements, enforcement occurs through State and Territory legislation which references the BCA as the relevant technical standard. To ensure a consistent approach to the implementation of the access requirements, in particular in areas where expert interpretation and judgement is required, a Protocol for Administering Building Access has also been developed. The purpose of the Protocol is to establish a process for determining access requirements at the level of specific buildings. That is, it would guide the practical implementation of the access related requirements of the BCA.

The Protocol covers any access-related matter where:

- An *alternative solution*[5] is proposed to be adopted to meet the BCA performance requirements;
- Modifications or exceptions are sought, with regard to building work on existing buildings; or
- The Building Control Authority is vested with discretion to require the upgrading of a building – for example where there is a change of use or classification, upgrade orders, or where significant or extensive building work is being carried out warranting the upgrading of access to areas beyond that proposed for the new work.

The Protocol is the subject of a separate impact assessment process and will not be discussed further in this RIS. For present purposes, it should simply be noted that specific implementation arrangements have been agreed in relation to these provisions to ensure their consistent and appropriate application in all circumstances.

[5] i.e. a means of compliance other than the prescriptive Deemed-to-Satisfy provisions contained in the BCA.

4. Nature and extent of the problem

The proposed changes will address three key problems. These are:

- the current potential for substantial inconsistencies between compliance obligations under the BCA and the DDA,
- the current uncertainty and lack of transparency as to the specific requirements of the DDA in particular cases; and
- the likely negative impact of these problems on practical compliance with existing DDA obligations.

The need to ensure that access provisions are clearly specified, consistent and widely understood is substantial. Access requirements apply in essence to all building types other than individual private dwellings. Australian Bureau of Statistics and Victorian Building Commission data show that the value of all new non-residential building approved during 2002 was around $15 billion[6] with a further $8 billion in alterations and extensions. This provides a general indication of the value of the economic activity that is potentially affected by the access requirements. More specifically, the cost estimates contained in this RIS indicate that the specific expenditures required to implement existing access requirements are themselves often substantial. Thus, it is essential to ensure that there is a clear understanding of legislative obligations so that these costs are not unnecessarily increased.

From the viewpoint of disability groups, the potential costs due to a relatively low level of compliance with DDA requirements is clearly at least equally substantial. Large numbers of people are affected by access to premises issues: for example, 1997 estimates indicate that 10.5% of the population has a mobility disability, while 2.9% use a mobility aid[7]. The access requirements also relate to other groups of people with a disability, such as those with hearing or vision disabilities.

Poor compliance is an almost inevitable result of poorly specified legislative requirements and requirements that rely on a mechanism based on individual complaints in order to identify and address issues of non-compliance. In addition, it can be noted that the intent of the DDA requirements is to address the problems faced by groups that are often significantly disadvantaged in society. Thus, non-compliance has important distributional consequences.

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[6] ABS Cat 8731.0 Building Approvals.

[7] Regulatory Impact Statement for the amendment of the Building Code of Australia (BCA 96) provisions for access and facilities for people with a disability.

Given the above, the extent of the problem is clearly substantial and sufficient to justify a significant regulatory response.

5. Description of the proposed regulation

This section provides a general description of the Premises Standard and, in relation to the technical provisions themselves, highlights the main differences between the proposed provisions and the existing BCA access requirements. This is the basis for the analysis of incremental benefits and costs conducted in the following sections, since the BCA is currently the only legislative source of detailed technical requirements in relation to building accessibility. Thus, comparison with the existing BCA requirements provides the best basis for assessing the likely incremental costs and benefits of the proposed Premises Standard[8]. In this context, it should be noted that the BCA is a performance based document which specifies regulatory obligations in a four part hierarchy of:

- Objectives;
- Functional Statements;
- Performance Requirements; and
- Deemed to Satisfy (DTS) provisions.

The following identification of changes is essentially focused on the DTS provisions, for two reasons. First, this enables the clearest understanding of the likely practical impact of the changes. Second, experience suggests that the DTS provisions are extremely widely taken up in practice. Thus, they constitute the most reliable means of interpreting the Performance Requirements set out in the BCA. The identification of changes effectively compares the existing BCA requirements with the proposed Premises Standard/revised BCA requirements.

5.1. Inclusion of Class 1b buildings

Access requirements are to apply for the first time to Class 1b buildings used for short term holiday accommodation. Class 1b buildings are smaller boarding houses, guest houses, hostels and the like. Access will be required where 3 or more dwellings are provided for the purposes of short-term holiday accommodation. Access will also be required to Class 1b buildings that provide 3 or more bedrooms for commercial accommodation purposes. (Clause A3(b)(ii)).

[8] Further discussion of the conceptual basis for the analysis of benefits and costs contained in this RIS is included in the following sections.

5.2. Class 2 buildings

Access requirements will be introduced for Class 2 buildings for the first time. A Class 2 building is a building containing 2 or more sole-occupancy units each being a separate dwelling. Access will be required to the entrance level and any other levels to which access is provided by a lift or ramp. (Table D3.1). Access will also be required to at least one of each type of common area provided for use by all occupants.

5.3. Class 3 buildings

The ratio of rooms to be made accessible for people with a disability will be increased in Class 3 buildings. Class 3 buildings are residential buildings including backpackers' accommodation, hotels/motels, aged care facilities etc. .

The effects of the change would be slight in most cases, but different "breakpoints" in the table setting out the requirements mean that there will be a substantial impact in some cases. For example, a 15 unit facility would require two accessible units, rather than one at present, but a 40 unit facility would continue to require two accessible units as at present. (Table D3.1.).

5.4. Class 5, 6, 7b, and 8 buildings

These classes include shops, offices, premises in which goods or services are offered for sale (including dining facilities and the like) or in which goods are stored. Access requirements are to be extended to include all levels within each of these classes of buildings. The current accessibility requirements for these classes of buildings are limited to those levels to which a lift or ramp is provided. (Table D3.1.)

5.5 Threshold ramps

There are two separate proposals to be considered at the public consultation period for threshold ramps, as the committee developing the access provisions could not reach a consensus on a single option. These proposals are:

Option 1. That threshold ramps not be permitted as a means to provide access.

Option 2. That thresholds ramps only be allowed at external entrances with dimensions and gradients reduced from those currently allowed.

By comparison, threshold ramps can currently be used at all external entrances. The intention in limiting or eliminating the use of threshold ramps is to minimize or eliminate the dangers that can be associated with their use by requiring that better accessibility solutions be adopted instead. (Clause D3.11 & AS1428.1).

Further discussion on these options is located in Section 9.

5.6. Number of accessible entrances

Access is to be provided to and within all entrances other than those entrances serving areas not required to be accessible (Clause 3.2.). In buildings with small floor areas a concession for only 50% of entrances to be accessible is included. By contrast, existing requirements are limited to providing effective access for common areas on the storey providing the principal entry and for any facility required to be accessible and any unique service provided.

5.7. Passing and Turning spaces

The provision of passing and turning spaces for wheelchairs in buildings is a new inclusion. This requirement will apply to all buildings to which access is required. (Clause D3.3 & AS 1428.1). The draft Premises Standard includes two alternative requirements, since the Committee developing the Premises Standard was unable to reach a consensus on the appropriate requirement. The two requirements are:

Option 1 that passing and turning space be provided every 9 metres; or

Option 2 that such space be provided every 20 metres of corridor length.

Further discussion on these options is located in Section 9.

5.8. Exemptions

Clause D3.4., specifying exemptions, has the effect (vis-à-vis the current Clause D3.4. "concessions") of specifying in detail those areas to which provision of access would be "inappropriate because of the particular purpose for which the area is used" (current Clause D3.4.). It also effectively deletes the existing concession that only 30 per cent of a restaurant, bar etc. is required to be accessible.

5.9. Car parking

The number of accessible car parking spaces to be provided in clinics and day surgeries will be doubled from current requirements. (Clause D3.5.)

5.10. Hearing Augmentation

The requirements for hearing augmentation have been extended to cover more areas within buildings and the provisions are more prescriptive in terms of which forms of hearing augmentation may be used. (Clause D3.7.)

5.11. Wheelchair seating spaces in auditoria

The number of accessible wheelchair spaces to be provided is to be increased. Minimum requirements for the grouping of wheelchairs is also to be provided. Current provisions do not require grouped seating to be provided or wheelchair access to a range of positions within an auditorium. (Clause D3.9.)

5.12. Ramps

A height limitation (3.5m) will be introduced on the use of ramps for access in buildings. The minimum landing length of ramps will also be increased to 1500mm. (Clause D3.11 & AS1428.1).

5.13. Glazing

Specific safety requirements for glazing installed on an access way are to be implemented for the first time. (Clause D3.12.)

5.14. Lifts

Substantial additional prescription is included on the uses (and limits to use of) different lifting devices. In particular, specifications on swimming pool lifts are

added, since swimming pools are required to be accessible for the first time. (Clause E3.6.)

5.15. Sanitary facilities

Several changes to requirements for the provision of accessible facilities are proposed. These are:

- Sanitary facilities for people with ambulant disabilities for each sex are proposed to be required at each bank of toilets where two or more toilets are provided. The current requirement for ambulant provisions apply only to Class 10a buildings and the required ratios are less stringent. (Table F2.4(a)).
- In Class 2 buildings, it is proposed that where a sanitary facility is provided in a common area it must be an accessible unisex facility. There is no current accessibility provision in this respect. (Table F2.4.)
- In Class 3, 5, 6, 7, 8 and 9 buildings, it is proposed that all sanitary facilities for people with a disability be required to be unisex and that they be provided in all locations that banks of male and female facilities are provided. The proposed requirement will effectively increase the number of accessible sanitary facilities that need to be provided. (Table F2.4.)

5.16. Swimming pools

Access requirements for entry into swimming pools for people with a disability will be introduced for the first time. Various options for pool entry are provided, depending on the size of the swimming pool. (Clause D3.10.)

5.17. Accessible links between buildings

The requirement for provision of accessible links between buildings is extended to include buildings on different allotments that are linked for the purposes of associating those buildings. (Clause D3.2.)

5.18. AS 1428.1 "Design for Access and Mobility"

It is proposed to adopt a new edition of this Standard, incorporating the following key changes:

- Step ramps will only be permitted at the entrances to buildings and the gradient will be reduced from that which is currently permitted. Exceptions will be provided for certain areas within buildings to allow the provision of step ramps.
- The ability to use bench tops in lieu of shelves in accessible sanitary facilities is to be added.
- The required dimensions of rocker action, toggle or push pad switches are to be increased and the areas to which they are to be provided extended.
- The 90th percentile spatial dimensions will be adopted in relation to wheelchair access, rather than the current 80th percentile dimensions.

5.19. AS1428.4 – Tactile Ground Surface Indicators

It is also proposed that a new edition of AS 1428.4 be adopted. There are no significant changes proposed to this standard but the location of information has been rearranged to enable a single section to be referenced.

5.20. AS 2890 – Part 1 – Off Street Car Parking

It is proposed to adopt a new edition of this Australian Standard that has the effect of allowing for alternative configurations for car parks, as well as requiring the provision of larger accessible car parking spaces.

6. Identification of feasible alternatives

The objectives of the proposed Premises Standard, as outlined above, are to provide access to buildings for people with a disability in a reasonably achievable, equitable and cost-effective way and to provide certainty to building developers and managers that compliance with building regulations will achieve compliance with the DDA. The identification of feasible alternative means of achieving the objectives, other than the proposed Premises Standard, can be conducted at three levels, as follows:

- The possible alternatives in terms of specific technical requirements for inclusion in the Premises Standard. There is evidently a potentially infinite number of possible combinations of specific provisions. It is evidently not feasible to assess and compare the benefits and costs of each such combination individually. Thus, consideration of alternatives at this level must be based on review of the policy approach adopted in order to clarify the basis on which the specific proposals contained in the proposed Premises Standard were arrived at, in preference to alternative combinations of provisions. The approach taken is to demonstrate the comparative policy approach taken to developing the Premises Standard, and to highlight the areas of most substantial benefits and costs.
- Consideration of specific alternative formulations of the Premises Standard. Two feasible alternatives identified during the course of policy development in connection with the proposed Premises Standard are to adopt the Standard without moving to the new variant of AS 1428 Part 1 (Design for Access and Mobility) – thus avoiding the costs and benefits of moving to larger spatial dimensions – and adoption of the Premises Standard without harmonisation with the Building Code of Australia.
- Consideration of the broader range of policy measures that might achieve the underlying goal of improving the position in society of people with disabilities. Here, the key alternatives considered are market based. It should be noted, however, that such an approach is largely rendered infeasible by the current context of the existence of the DDA and its general access to premises provisions and the need to harmonise the DDA with the building law as far as possible. However, it is considered necessary to include discussion of market based approaches in order to allow a broader appreciation of the general policy context within which the DDA and the proposed Premises Standard operate.

The following sections of the RIS analyse the proposed Premises Standard and the range of alternatives identified at each of the three levels noted above. The analysis considers the ability of each option to achieve the identified objectives.

Sections 7 and 8 analyse the benefits and the costs successively of the proposed Premises Standard. Section 9 analyses the benefits and costs of the above range of alternatives. Section 10 compares the benefits and costs of each alternative and discusses the reasons for preferring the proposed Premises Standard to the identified alternatives.

7. Expected benefits

The analysis of the expected benefits of the proposed Premises Standard contained in this RIS is, to a substantial degree, qualitative. This is an inevitable result of the specific nature of the matters included in the Premises Standard and the substantial data difficulties involved in estimating the value placed by various people with a disability on the gains they are expected to receive, in a range of different contexts. Review of other available RIS type documents[9] in relation to access to premises confirms that very little substantial progress has been made in developing quantified estimates of the benefits associated with improved access to premises.

However, problems with the quantification of benefits do not suggest that those benefits are small or unimportant. Quantitative material on the costs of disability – and, by implication, the benefits available by reducing those costs and disadvantages – is therefore included in the second part of this benefits section. The purpose of this material is to provide an indication of the potential benefits in this area and thereby provide the reader with a basis for "scaling" the benefits likely to be obtained from the Premises Standard.

7.1. General – conceptual issues

Codification vs existing DDA duties

As with the cost section below, a conceptual issue arises in relation to the benefits, given the current legislative context. This is that the proposed changes, while substantially amending the relevant parts of the BCA, arguably do not create any new compliance obligations that do not already exist under the DDA's general duties provisions. Indeed, it has been argued that by codifying a particular set of requirements and establishing that compliance with them will be taken as compliance with both DDA and BCA obligations, the current exercise could even reduce the "reach" of the currently provided general duties under the DDA, rather than imposing new obligations. This would be so to the extent that the technical provisions to be contained in the Premises Standard (and the amended BCA) were less extensive than might be found to exist as a result of

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[9] See, for example, Regulatory Impact Statement for the amendment of the Building Code of Australia (BCA 96) provisions for access and facilities for people with a disability (ABCB, Canberra, 1998) and *Access to Goods, Services and Facilities: Regulatory Impact Statement – the Government's assessment of the costs and benefits of introducing the later rights in Part III of the Disability Discrimination Act 1995.* Department for Education and Employment, London. Also *The Building Regulations 2000: Proposals for Amending Part M Access to and use of buildings – Regulatory Impact Statement..* (Office of the Deputy Prime Minister, London, 2002).

the existing general duties by the Australian court system in proceedings under the DDA.

However, while this is a theoretical possibility, it must be weighed against the practical impact of the proposed codification on effective compliance rates. While it is clearly not possible to collect objective data, substantial anecdotal evidence indicates that, in practice, the degree of compliance with the general duties of the DDA in relation to premises is relatively low. While HREOC has published Advisory Notes on Access to Premises, they do not have any legal status. Thus, they are not written in terms that establish specific requirements and, for the most part, lack even specific recommendations at the level of different building uses. Moreover, the extent of complaints activity in this area has been low (see below), indicating that there may have been limited direct incentives, to date, for building owners and designers to ensure they are in compliance.

Given these factors, it can be predicted that the establishment of a detailed codification of the DDA's general duty of non-discrimination in the premises context will have an important impact in improving compliance. To the extent that this is so, there are likely to be important effective benefits for people with a disability, vis-à-vis the present situation.

7.2. Transactions cost reductions

Following from the above, a fundamental benefit likely to arise from codification of the DDA duties as they relate to premises is a reduction in the transactions costs associated with ensuring and enforcing compliance. Two major considerations must be weighed in this regard.

First, the establishment of the practical extent of the DDA duties currently relies largely on the complaints mechanisms that are established under the Act. That is, an individual must bring a complaint that a case of discrimination has occurred. Alternatively, a "representative" complaint may be made by an organisation or individual on behalf of a "class" of persons with particular disabilities. This is an inherently slow and costly way of determining the nature and extent of the general duties established in the DDA as they apply to premises and, indeed, to particular types of premises.

In fact there have been relatively few such complaints that have passed through the processes set out under the Act to date, despite the fact that the Act has now been in operation for more than a decade. Data from HREOC indicate that an average of 45 complaints per annum have been received in relation to access to premises issues in each of the last four years, with no obvious trend toward increased use of the complaints mechanism being visible over this time.

Thus, this mechanism has apparently had little impact in terms of defining and establishing the effective requirements under the DDA. Advice from a number of sources suggests that the fact that a Premises Standard is under development may itself have had an impact in reducing the incidents of complaints regarding access to premises. That is, some potential complainants may have delayed taking action due to the expectation that detailed requirements on access will be legislated in the near future. This suggests that complaints activity would be somewhat higher if the development of the Premises Standard was not proceeding. The extent to which this would be the case is necessarily difficult to assess. However, it should be noted that the continuation of the existing complaints based system would probably involve a higher level of complaints activity than has been observed to date.

Despite the relatively flexible approaches taken to resolving complaints under the DDA, the costs involved in resolving complaints are necessarily substantial. For example, advice to HREOC from specialist legal firms operating in this area suggests that costs for one party alone are likely to be of the order of:

- $5,000 - $10,000 for a HREOC conciliation process; and
- $30,000 - $40,000 for a Federal Magistrates Court hearing, typically lasting two days[10].

Moreover, if existing processes were to continue, it is likely that a relatively high level of complaints activity would be maintained over time, since experience suggests that relatively few complaints have substantial "precedent setting" or flow-on effects, even where successfully resolved. Thus, the transactions costs involved in maintaining the existing complaints based approach to the DDA requirements would be likely to persist at a high level over the medium to longer term.

7.3. Effectiveness of the complaints mechanism

In addition to the considerable transactions costs involved in the current DDA processes for establishing specific access requirements, a number of features of the process restrict its effectiveness in establishing clearly what are the specific requirements on building owners in relation to providing access, and in ensuring that such access is provided. In the first place, complaints settled under the HREOC conciliation process, which is the first step in the process specified under the DDA may often be subject to confidentiality requirements. To the extent that this occurs there is little possibility of a "precedent setting" effect

[10] Consultations with HREOC officials, 10 July, 2003.

operating in practice with respect to these cases[11]. Thus, the resolution of what access requirements effectively exist in a particular case may have no larger impact on ensuring that access is provided in other, similar circumstances. A related point is that the generally limited resources of complainants mean that relatively few complaints will be carried through from the HREOC conciliation processes to the court system, due to economic constraints on the complainants.

Second, the DDA specifically states that non-compliance with its provisions does not constitute an offence, except in certain limited cases that are set out specifically in the Act. This means that there are very limited compliance incentives under the Act.

Third, the above features of the DDA processes have the effect of generating substantial uncertainty for both people with a disability and building owners and building operators. The limited effectiveness of the complaints based process in establishing consistent access standards means that people with a disability have little certainty as to the type and standard of access-related facilities they will find in buildings, while building owners and operators face uncertainty in relation to their compliance obligations and the possibility of complaints being lodged against them.

Fourth, an individual complaints based mechanism for establishing and enforcing access standards is systemically likely to be under-used and, consequently, to be inefficient. This is because the expected costs to individual complainants are very often likely to be substantially in excess of the expected benefits derived as a result of a complaint being made. Thus, in many cases, people with a disability will not launch complaints in response to an experience of discrimination in relation to access to premises. This systemic factor is likely to mean that the DDA's existing complaints mechanism will always represent an ineffective mechanism for ensuring access to premises[12].

The proposed Premises Standard would address all of these effectiveness issues. The fundamental benefit of the Premises Standard will be that a very high level of compliance with the DDA requirements will be ensured. Non-compliance with BCA access provisions is effectively prevented through the operation of the building approvals process. Thus, the result of mirroring the technical requirements of the Premises Standard in the BCA can be expected to be virtually 100 per cent compliance with its standards as they apply to both new buildings and to substantial upgrades of existing buildings.

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[11] Precedent setting can occur to a minor extent due to the fact that HREOC routinely publishes summaries of the facts of conciliated outcomes for public awareness purposes.

[12] For more on this issue, see Interim Submission of Dr Jack Frisch: Productivity Commission inquiry into the Disability Discrimination Act. www.pc.gov.au

As a consequence, there will be substantially increased certainty for people with a disability, building owners and occupiers. For people with a disability, the benefit of full compliance with BCA requirements is that they can be certain that new and upgraded buildings will meet the specific access and facilities standards that are mandated in the Premises Standard/revised BCA. Moreover, because specific standards are mandated, they will have increased certainty about the degree of access that will be provided.

For building owners, the benefit is that compliance with the Premises Standard/revised BCA will provide them with a high level of assurance that they will not be the subject of a successful complaint under the DDA and that they will therefore not risk being required to retro-fit changes to their buildings. By extension, a potential source of dispute between clients and various building professionals (designers, builders, etc) is also substantially reduced.

7.4. Overview of the benefits

This section identifies and discusses the specific benefits that would arise from the adoption of the Premises Standard. That is, it considers the specific proposed changes in access requirements and analyses the nature and extent of the benefits that are likely to be derived as a result. The requirements of the Premises Standard are assessed against the background of the existing BCA access requirements, since the BCA is currently the only source of specific access requirements – and of requirements that are fully enforced through the building approvals process.

The benefits identified can be divided into three broad categories. These are:

- extensions to the coverage of access requirements;
- quantitative increases in access requirements; and
- qualitative increases in access requirements.

The main changes are discussed in turn in this section.

7.4.1. Extensions to the coverage of access requirements

The coverage of access requirements under the BCA will be extended in three main areas. These are Class 1b buildings used for short-term holiday accommodation, Class 2 buildings (i.e. apartments and flats) and swimming pools. In addition, accessible links between related buildings on different allotments will be required. The expected benefits of each are:

Class 1b buildings used for short-term holiday accommodation.

A Class 1b building is defined (in part) as *"a boarding house, guest house, hostel or the like with a total floor area not exceeding 300 m^2 and in which not more than 12 persons would ordinarily be resident"*. Thus, the effect is to extend access requirements to small scale holiday accommodation facilities. Access would need to be provided to at least one bedroom, plus facilities that are used in common by guests.

The extension of the access requirement can be expected to increase significantly the range of holiday accommodation (and, by extension, accommodation available during other forms of travel) available to persons with disabilities. The impact of this change may be quite substantial, since a substantial proportion of holiday accommodation in many areas would fit the above definition of a Class 1b building. Moreover, since many such accommodation options would tend to be relatively modestly priced, the improved access to this sector may be particularly important, given the low average levels of income found among people with a disability (discussed further in section 7.5.2). That is, the effect of the change may be particularly important in expanding low-priced accommodation options for people with a disability.

Class 2 buildings

A Class 2 building is defined in the BCA as "a building containing 2 or more sole-occupancy units each being a separate dwelling". In practice, the majority of Class 2 buildings currently being constructed are multi-storey apartment blocks. However, this category also includes smaller, often 2 and 3 storey blocks of "walk up" units.

The proposed access requirements for Class 2 buildings would be that there be access to the main entrance and that there be access to each type of common area provided for use by all residents. The expected benefits of these requirements are twofold. First, it is likely to widen the choice of accommodation options available to people with a disability. Second, it will improve the ability of people with a disability to visit friends and associates who may live in Class 2 buildings.

Again, given the low income status of many people with a disability, improved accommodation options in the area of flats and apartments may have important benefits in terms of improved affordability of accommodation and reduced housing-related poverty.

Swimming pools

A requirement of Table D3.1 is that access be provided to and into all swimming pools for use by the public. The means of access into swimming pools can vary,

with different options being specified. The options are intended to allow appropriate solutions for a range of different types of pools. For example, ramps are expected to be used in most cases in larger pools, while lifts are likely to be used in smaller pools.

The provision of access to public swimming pools clearly opens a potentially very substantial additional leisure option for people with a disability. In addition, the access provisions may indirectly tend to broaden the availability of more structured exercise and/or rehabilitation programs to people with a disability. Thus, this extension of access requirements is likely to yield quite substantial benefits.

Accessible links between related buildings on different allotments

Clause D3.2(a)(ii) requires that access must be provided where two buildings on different allotments are linked "for the purposes of associating those buildings". This contrasts with the existing requirements which relate only to links between buildings on the same allotment and reflects an increasing trend for the provision of links between buildings on different allotments – for example in relation to city department stores. This provision would have potentially major benefits in terms of convenience for people with a disability, given that the consequence of any such link not being accessible would be that they would need to exit the building and then enter the related building.

7.4.2. Quantitative extensions of access requirements

Considered under this heading are changes to the BCA in which an existing access requirement is increased in quantitative extent only. The main provisions of this kind are increases in the proportion of rooms to be accessible in Class 3 buildings, increases in the number of accessible building entrances (all classes), increases in the number of accessible parking spaces in clinics and day surgeries, increased numbers of wheelchair seating spaces in auditoria, increased provision of ambulant sanitary facilities and increased provision of accessible sanitary facilities generally.

Increased proportion of accessible rooms – Class 3 buildings

As pointed out in Section 5.4., the effective changes proposed for Class 3 buildings are limited in most cases, in terms of their impact on individual premises. On the other hand, the changes will be applicable to a substantial number of premises of various types. Thus, the changes will provide small improvements in the availability of a wide range of both permanent and holiday accommodation to people with a disability.

The expected benefits of these changes are considered to be moderate in size.

Increased accessible building entrances

As noted in Section 5.6., the proposal will mean that access is to be provided to and within all entrances other than those entrances serving areas not required to be accessible. In buildings with small floor areas a concession for only 50% of entrances to be accessible is included. By contrast, existing BCA requirements are for access to be provided through the principal public entrance only.

In practice, the effect of the change is likely to increase the convenience of access to buildings for people with a disability, rather than improving access *per se*. This is because the existing requirement provides effective access to all areas required to be accessible. In some cases, the effect of the change may be substantial in terms of providing access with *dignity* – a specified objective of the DDA provisions. This is because a requirement for all entrances to be accessible will remove the possibility that people with a disability will not be able to use the same entrance as friends and associates.

The benefit associated with this change can therefore be expected to be moderate in size.

Increases in the number of accessible parking spaces in clinics and day surgeries

The effect of this change will be to approximately double the number of accessible (wide bay) parking spaces required in clinics and day surgeries, to a ratio of around 1:50. This will mean that the requirements for these facilities are made consistent with those applying to outpatient areas of hospitals and reflects the view of disability groups that such clinics are used in practice as generic outpatient treatment facilities.

The expected benefit of this change is that users of wheelchairs and large mobility aids will enjoy easier access to these facilities. While the proposed ratio of wide bay spaces, at 2%, substantially exceeds the proportion of users of wide bay spaces (estimated at 0.6% in the 1998 RIS), the proposed change is based on anecdotal evidence of a lack of effective access. This may reflect a higher rate of usage of these facilities by people with a disability than the general population.

The benefit associated with this proposed change can be expected to be minor in size.

Increased numbers of wheelchair seating spaces in auditoria

The number of accessible wheelchair spaces to be provided is to be increased. Minimum requirements for the grouping of wheelchairs would also be provided. Current provisions do not require grouped seating to be provided or wheelchair access to a range of positions within an auditorium.

The change in the required number of wheelchair spaces is substantial in effect. For small auditoria (fewer than 800 seats) wheelchair spaces would be required to comprise 2 per cent of the total. For medium sized auditoria (800 – 10,000 seats) this would be approximately 1 per cent of the total, while for large auditoria (over 10,000 seats) it would be ½ per cent of the total (for capacity exceeding 10,000 seats). This compares with a general requirement that ½ per cent of seating be wheelchair spaces at present. Thus, substantial increases in numbers of wheelchair spaces will result in small and medium sized auditoria in particular.

These changes appear to provide substantially increased opportunities for wheelchair users to attend events at auditoria (e.g. concerts, seminars, etc). However, it must be noted that the existing requirement for ½ per cent of seating to comprise wheelchair spaces is consistent with the estimated proportion of wheelchair users in society (estimated at 0.49% in 1997 – see 1998 ABCB RIS), whereas the proposed provision at rates of 1 – 2% substantially exceeds this proportion. Moreover, it is probable that other access problems, such as transport access difficulties and the low average income levels of people with a disability, may mean that effective demand for auditorium seating is lower among wheelchair users than the population-wide average.

This is likely to mean that the effective benefit of the proposed increase in wheelchair spaces will be small in practice, and may be felt largely in circumstances where there is excess demand for particular events (i.e. "sellouts"). However, the issue of wheelchair numbers must also be considered in the context of the "grouping" requirements that are proposed to be adopted for the first time.

The proposed changes include requirements, especially in regard to medium and larger auditoria, that a combination of single spaces, groups of two spaces and groups of larger numbers (but not more than five) spaces be provided, with their distribution throughout the auditorium being representative of the seating types that are generally available (including pricing). These requirements are intended to ensure that wheelchair users' needs for access in different contexts (i.e. alone, in groups with other wheelchair users, in company with non-wheelchair using companions, etc) are met and that they have access to a range of seating options and prices.

These are important benefits that are not assured by the present requirements. However, provision of this range of wheelchair accessible options is only feasible if there is a sufficiently large number of wheelchair spaces in total. Thus, an increase in the proportion of wheelchair spaces is likely to be necessary to allow these additional benefits of greater variety of seating options to be attained in practice.

The benefits associated with these changes are considered to be moderate in size.

Increased provision of ambulant sanitary facilities

Sanitary facilities for people with ambulant disabilities for each sex are proposed to be required at each bank of toilets where two or more toilets are provided. The current requirements for ambulant provisions apply only to Class 10a buildings – essentially, to stand-alone toilet blocks, such as in public parks, caravan parks of camping grounds. Moreover, the ratios are not as stringent as those proposed.

Toilets for people with ambulant disabilities differ from wheelchair accessible toilets in areas such as circulation space, seat pan height and handrail requirements. It is expected that the provision of suitable toilets for this group may have significant benefits since the size of the affected group is extremely large – indeed much larger than the number of wheelchair users. According to Census data (ABS 1991), 10.54 per cent of people have a mobility handicap, while only 0.49 per cent use a wheelchair. Thus, provision of facilities specifically designed for the needs of this very large group would have potentially large benefits.

It should be noted that this element has been included in the proposed changes specifically for public comment purposes. Comments are particularly sought on the likely benefits of this proposal, and the associated costs.

Increased provision of accessible sanitary facilities

In Class 3, 5, 6, 7, 8 and 9 buildings, it is proposed that all sanitary facilities for people with a disability be required to be unisex and that they be provided in all locations that banks of male and female facilities are provided. This can be expected to increase substantially the provision of such facilities, as current requirements are simply that facilities be provided at a ratio of not less than 1 for each 100 required standard facilities.

This change is likely to have substantial convenience benefits for wheelchair users, particularly in relation to the ability to locate and have access to toilet facilities. An important implication of this change is that wheelchair users are lest likely to face the current likelihood of having to travel some distance, perhaps from one floor to another distant floor of a building, to find accessible sanitary facilities. Instead they will find facilities as near as will the able-bodied population.

Providing unisex facilities at all banks will have the added benefit of convenience for all users where either male or female dedicated facilties are already occupied.

The benefits associated with this change are therefore considered to be substantial.

7.4.3. Qualitative extensions of access requirements

Considered under this heading are changes to the BCA in which an existing access requirement is increased in qualitative terms. That is, they are cases in which the proposals would enhance the *type* of access provided, rather than the quantity of an accessible facility. The main provisions under this heading are limitations on the use of threshold ramps, extension of access within class 5, 6, 7b and 8 buildings, provision of passing and turning spaces for wheelchairs, hearing augmentation, limitations on use of ramps, glazing requirements, lifting devices, some sanitary facilities provisions and changes to relevant Australian Standards.

Limitations on the use of threshold ramps

There are two separate proposals to be considered at the public consultation period for threshold ramps, as the committee developing the new BCA access provisions could not reach consensus on a single option.

Option 1. That threshold ramps not be permitted as a means to provide access.

Option 2. That threshold ramps only be allowed at external entrances with dimensions reduced from those currently allowed.

By comparison, threshold ramps can currently be used at all external entrances.

The intention in limiting or eliminating the use of threshold ramps is to minimise or eliminate the dangers that can be associated with their use by requiring that better accessibility solutions be adopted instead. Dangers can be associated with falls when using threshold ramps.

The benefit associated with this change can be expected to be moderate in size.

Extension of access within Class 5, 6, 7b and 8 buildings

Access requirements are proposed to be extended to include all levels within each of these classes of building (these are offices, shops restaurants, bars, cafes, wholesale premises and factories). The current accessibility requirements for these classes of buildings are limited to those levels served by lifts or ramps.

This change would have the effect of substantially expanding the extent of access to buildings within these classes. Key areas in which this would yield important benefits are:

- Increased leisure opportunities by making a wider range of restaurants, bars, cafes etc accessible; and
- Improved employment opportunities, by making office spaces more accessible.

The major areas in which the proposed changes would have an effect would be in relation to smaller (usually two or three storey) "walk up" buildings that would not, for the most part, currently be designed with lifts or ramps. It is likely that a substantial number of buildings would be affected: ABS building statistics for calendar 2002 indicate that building work valued at $737 million was approved in respect of two storey offices, while a substantial proportion of the total of $2.6 billion of work approved in respect of shops would also relate to smaller two storey shops that are currently inaccessible on their upper levels. Thus, the size of the benefits associated with this provision is considered to be moderate to substantial.

Provision of passing and turning spaces for wheelchairs

The provision of passing and turning spaces for wheelchairs in buildings is a new inclusion in the BCA. This requirement will apply to all buildings to which access is required. (see Clause D3.3 & AS 1428.1). Two alternatives have been put forward in the draft Premises Standard. The first of these would require passing and turning spaces to be provided every 9m of unbroken corridor, while the second provides a less stringent requirement that passing spaces be provided every 20m. Passing/turning spaces would need to be provided whenever a corridor was less than 1800mm wide.

The provision of passing spaces provides important benefits of convenience and dignity by ensuring that wheelchair users are not required to reverse for substantial distances in the event of meeting another wheelchair user or else

another vehicle (trolley etc) in a corridor. Within this context, the difference between the two alternatives put forward lies in the extent to which they would achieve this goal: in the former case the maximum distance of reversing required would be 4.5 metres (i.e. half the distance between passing spaces), while under the latter option it would be 10 metres.

Review of this issue by the Technical Working Group responsible for recommending technical proposals to BAPC indicated a high probability that the need for such passing spaces would be met in practice as a result of other BCA requirements, as well as general "good design" criteria – for example, long unbroken corridors are generally avoided as being wastes of space. Thus, there was some question as to whether a specific regulatory requirement was needed in this respect.

In this context, the key benefit that is expected to derive from this provision is that it provides certainty that appropriate facilities will be provided in all cases. However, given that the provision will apply to a wide range of buildings, the probable impact can be assessed as moderate in size.

Hearing augmentation

The current requirements for hearing augmentation are to be extended to cover more areas within buildings and to prescribe more precisely what forms of hearing augmentation may be used.

The proposed expansions in minimum requirements – in terms of areas covered – are relatively modest in scope. In particular, they have the effect of removing an existing exemption for small auditoria and other meeting rooms (having an area of less than $100m^2$) and of requiring that all parts of an auditorium (and associated rooms in a Class 9b building) to be so equipped, whereas only 15% of the floor area of such auditoria are currently required to be equipped with augmentation systems.

In relation to the additional prescription, the key addition is prescription of the number of receivers that must be made available in respect of systems requiring them.

The benefit of the increased scope of the hearing augmentation requirement will be that persons with hearing disabilities will be certain of being able to use all parts of the relevant buildings, with smaller buildings, in particular, becoming accessible, as well as smaller spaces within larger structures. The additional prescription of the number of receivers should ensure that there is adequate provision made for all who require hearing augmentation in all reasonably foreseeable circumstances.

Approximately 4 per cent of the population has a hearing impairment, with 1.5 per cent wearing a hearing aid. Thus, the proportion of people affected by this change is considerable. Given the incremental nature of the changes proposed, the estimated benefits are considered likely to be moderate in size.

Limitations on use of ramps

It is proposed to limit the use of ramps to a maximum height (i.e. rise) of 3.5m. There are currently no height limitations in relation to the use of ramps. The change has been made as a result of concerns voiced by the disability sector in relation to the ability for people in wheelchairs to travel a ramp that serves a height greater than 3.5m due to fatigue problems. The height limit of 3.5m was chosen as a reasonable compromise that would still allow a ramp to serve one floor within a building, while addressing the issue of practicability in relation to fatigue.

The expected benefit of this change is that wheelchair users and other people with restricted mobility are less likely to find their effective access to buildings restricted due to the use of ramps in infeasible circumstances. Instead, where ramps may currently be used for rises of more than 3.5m, lift devices would now need to be employed.

Glazing requirements

Visual safety requirements for glazing installed on accessways are to be implemented for the first time. Glazing must comply with AS1288 and frameless or fully glazed doors etc. must be marked in order to make them clearly visible.

These changes can be expected to improve safety in the use of access paths by reducing the risk of accidents and reducing the probability of injury should an accident occur. No data are currently available on the extent of such accidents that would provide a basis for considering the likely benefits of this change quantitatively.

A second benefit relates to the requirements that the presence of glass doors be made more apparent, particularly to people with vision impairments. This may result in important benefits in terms of dignity and convenience, as well as having safety implications.

Lifting devices

Substantial additional prescription is proposed in relation to the uses, and limits to use of, different lifting devices (Clause E3.6, Tables E3.6(a) and (b)). For

example, limitations on stairway lifts include requirements that they must not be used:

- In a building accommodating more than 100 persons;
- In "high traffic public use areas" (e.g. cinema, auditorium); or
- To connect more than two floors.

The benefit of this prescription must be seen in terms of the purpose of the "Deemed to Satisfy" (DTS) elements of the BCA, of which they form part. The DTS provisions are intended to provide direction and certainty to those who must comply with the BCA. Thus, the inclusion of additional prescription helps to achieve this underlying purpose of the DTS requirements more effectively. That is, the additional prescription will help achieve a higher level of effective compliance with the Performance Requirements of the Premises Standard/ revised BCA. At the same time, by specifying contexts in which lower cost solutions *can* be employed, this prescription may lower costs by providing designers with certainty that certain lower cost solutions are in conformity with the Performance Requirements.

The size of this benefit is considered to be moderate in size.

Sanitary facilities – Class 2 buildings

In Class 2 buildings (i.e. apartments and flats), it is proposed that where a sanitary facility is provided in a common area it must be an accessible unisex facility. There is no current accessibility provision in this respect. Indeed, Class 2 buildings are not currently covered by access requirements at all. In developing the current regulatory proposal, the principle adopted in respect of Class 2 buildings was that at least one of each area used in common by all the residents should be accessible. The proposal in respect of common area sanitary facilities clearly reflects this principle. The importance of access to common areas is that these are, by definition, public spaces.

The provision of accessible sanitary facilities in this context therefore represents an important element in the overall strategy of ensuring that Class 2 buildings are made reasonably accessible. It is not proposed, however, that the internal parts of sole occupancy units be required to be accessible.

The size of this benefit is considered to be moderate in size.

Changes to relevant Australian Standards

It is proposed to adopt updated editions of AS 1428.1 (General Requirements for Access – New Building Work), AS 1428.4 (Tactile Indicators) and AS2890.1 (Off Street Car Parking) in the Premises Standard. The key changes that would thereby be made, and the expected benefits associated with them, are as follows:

AS 1428.1

- The new edition would adopt 90th percentile spatial dimensions. That is, dimensional requirements would be based on the 90th percentile wheelchair dimensions, rather than the current 80th percentile. This will have the benefit of ensuring that a larger proportion of wheelchair users are effectively accommodated by spatial design requirements implemented via AS 1428.1. It will also mean that many users of smaller wheelchairs will experience greater ease of access due to the additional space that will be provided in various contexts.
- The gradient of step ramps will be reduced from that which is currently permitted. The Premises Standard will limit the provision of step ramps to external entrances only. Exceptions will be provided for certain areas within buildings to allow the provision of step ramps.
- It will be possible to use bench tops in lieu of shelves in accessible sanitary facilities, thus providing greater design flexibility.
- Larger rocker action, toggle or push pad switches will be required in a range of contexts and requirements for the provision of these types of switches will be extended.

AS 1428.4

- AS 1428.4 will be reformatted so that all Premises Standard matters are covered in a single section.
- Further information will be provided on how to conduct luminance testing.

AS 2890.1

- The new Standard will increase the required dimensions for accessible parking spaces, thus improving the ease of use associated with them.
- Changes to the Standard will allow for alternative configurations of parking spaces, increasing design flexibility.

The benefits from these changes are expected to be moderate in scope.

7.5. *The benefits in context*

7.5.1. Size of the affected group

Section 6.4. has discussed the benefits expected to result from each of the main specific requirements to be adopted as part of the Premises Standard, comparing them to existing BCA provisions to provide a meaningful incremental analysis. This section considers the benefits of the proposed Premises Standard in more aggregative terms and places these in the context of the current position of people with a disability within society.

As noted previously, the number of potential beneficiaries of the proposed Premises Standard is both large and rising. The proportion of the population reporting some form of disability reached 18.8 per cent in 1998[13] (ABS – see Table 1), while the ageing of the general population is expected to mean that this proportion will continue to rise slowly over the next ten to fifteen years, before possibly stabilizing. Table 1, below, shows the trend in the proportion of the population with disabilities (of all types) in recent years.

Table 1: Numbers and proportion of the population living with disabilities

	1981	**1988**	**1993**	**1998**
Numbers (000s)	1,942	2,543	2,921	3,504
Per cent	13.2	15.5	16.6	18.8

Source: ABS 4430 (April 1999)

Sections 5 and 6 of this RIS indicate that the majority of the Premises Standard is concerned with achieving improved access for persons with a mobility disability, while a smaller number of provisions are also concerned with improving access for people with vision or hearing impairment. Thus, the main

[13] This data is self reported. That is, people are asked to indicate whether they have a disability. It is possible that some of the observed increase in the proportion of the population with a disability reflects an increased willingness to self-identify as being disabled in recent years, perhaps due to social attitudes having become less negative. However, a more widely cited view is that the bulk of the change relates to the aging of the population.

beneficiaries of the Standard will be a subset of the overall number of people with a disability, albeit a large one.

According to Census data[14], the proportion of people reporting mobility disabilities is currently around 10.5 per cent of the population. In addition, 4 per cent of people have a hearing impairment, while 1.6 per cent have a vision impairment. This suggests that up to 16 per cent of the population –almost one person in six, or 3.2 million people – may reap some benefit from the proposed Premises Standard. Moreover, this group is, to some extent, a "floating" population. That is, since not all disabilities are permanent in nature, it is necessarily the case that a larger proportion of the population than this will suffer from one of these types of disability at some time in their lives. Thus, the proportion of people that may benefit from the proposed Premises Standard *at some stage in their lives* may be larger than the 16 per cent indicated above.

While the numbers of people likely to gain some benefit from the Premises Standard are large, it is clear that the primary beneficiaries will constitute smaller groups. For example, with regard to measures aimed at those with mobility disabilities, it is clear that those who use mobility aids – including wheelchairs, walking frames, walking sticks, crutches etc – will be most affected. This group constitutes only 2.8 per cent of the population, or less than one third of those reporting a mobility disability. In addition, a further 2.0 per cent of the population use hearing aids. The numbers of people in each major disability group likely to benefit substantially from the Premises Standard are set out in Table 2, below.

[14] Census disability data relates to people who state that they have a disability with an actual or expected duration of six months or longer at the time of the Census. It should be noted, also, that categories of disability are not necessarily mutually exclusive.

Table 2: Disability types – major groups affected by the Premises Standard

	000s	Per cent
Crutches/walking stick	265	1.4
Walking frame	103	0.6
Wheelchair	143	0.8
Hearing aids	369	2.0
Reading or writing aids	62	0.3
Total	942	5.1

Source: ABS 4430 (April 1999)

Table 2 indicates that almost one million people – more than 5 per cent of the population, or one in twenty, will benefit significantly from the implementation of the proposed Premises Standard. Of these, almost 600,000, or 2.8 per cent of the population, are users of mobility aids who can be expected to be those who will benefit most substantially. As noted elsewhere, the size of this group may increase significantly in future years due to continuing increases in the proportion of the population living with a disability.

A further group that can also be expected to benefit substantially is that of primary carers to people with a disability. The implementation of the Premises Standard can be expected to reduce demands on this group, in some cases significantly. It is also possible that these reduced demands would have benefits in terms of enhancements in their ability to participate in the labour force. This issue is discussed further in Section 7.6.1., below.

7.5.2. Economic and social situation of the affected group – distributional benefits of the proposed Premises Standard

A second important context issue is that of the current economic circumstances of the group of people with a disability that are likely to benefit from the proposed Premises Standard. There is substantial data to indicate the current level of

disadvantage experienced by people with a disability. Some important considerations are:

- The employment rate among people with a disability is substantially lower than that of the population as a whole. For example, Frisch[15] points out that the 80,000 wheelchair users in the community between 15 and 65 years old have a workforce participation rate of only 38 per cent compared with a rate of 76.9 per cent for those without disabilities.
- As a result of both this lower employment rate and the difficulties faced by people with a disability in the workforce, the average income of people with a disability is also substantially below the average for the general population.
- The lower average income of people with a disability is compounded by their experience of substantially higher living costs. For example, Frisch[16] reports data estimating the additional living costs incurred by people with substantial musculo-skeletal disabilities at up to $25,000 annually.

These factors indicate that there is a substantial distributional argument in favour of measures to enhance the accessibility of buildings. That is, regardless of whether there is a net benefit in strict economic terms associated with the proposed improvements to access to buildings, the Premises Standard would amount to a significant transfer toward a significantly disadvantaged group in society.

Recognition of the desirability of policy action to improve the integration of people with a disability into society is reflected in a wide range of legislative actions taken in industrialized countries during the 1980s and 1990s in particular. Moves to improve building accessibility have been central to this policy and legislative response and such measures are now widespread in Western countries, as discussed in Section 9, below. The concepts of integration, or "inclusion" are multi-faceted and include participation in employment, leisure activities, cultural and sporting activities. Improving building accessibility is a policy measure that is likely to achieve benefits across the full range of these dimensions of integration, or inclusion.

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[15] *The Benefits of Accessible Buildings and Transport: An Economist's Approach*, Dr Jack Frisch.
[16] *Towards a Disability Alowance*. Dr Jack Frisch. Disability Council of Australia, June 2001, see especially pp 17-21.

7.6. *Economic benefits of more accessible buildings*

7.6.1. Increased employment participation

As noted above, the benefits of greater social inclusion that are expected to flow from improved building accessibility span several dimensions. However, to the extent that these benefits accrue in the employment context, they will have a direct market value that is, at least theoretically, measurable in practice. As indicated in the previous section, the rate of employment for people with a disability is substantially below that of people without disabilities. Further indicators of the disadvantage experienced by people with a disability are contained in the *Commonwealth Disability Services Census 2001*[17]. The Census shows that:

- The Commonwealth Disability Services Pension was the primary source of income of 61% of people with a disability who are users of Department of Family and Community Services (FACS) employment services. For a further 7% of this group, the Newstart or Youth Allowance was the primary source of income.
- By contrast, paid employment was the main source of income for only 22% of this group.
- Of the employed members of this group, only 11.3% earned more than $400 per week, while more than 50% earned less than $100 per week.

These data indicate that there are substantial potential gains from policies that can increase the participation of people with a disability in the workforce, both in terms of increasing the *rate* of participation and in terms of increasing the *effective ability to participate* of those who are in employment.

Building access issues constitute an extremely important barrier to access to employment for people with a disability, although other substantial problems also exist. According to Frisch[18] these include discrimination, limited accessibility of transport options and factors associated with the disability that may reduce a person's productivity in some or all occupations. The means by which building access issues can lead to reduced income are in some cases immediately obvious, but are in other cases less apparent. In the former category is the possibility that the inaccessibility of a building will mean that a person is physically unable to carry out the tasks of the job and will either not apply for it or

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[17] *Commonwealth Disability Services Census 2001*. Department of Family and Community Services, Canberra, 2001.

[18] Op Cit., p 11.

not be given it. Some of the less apparent factors have been identified by Frisch[19] as including

> *...fewer seamless networking and communication opportunities with work colleagues and clients and a consequently lower likelihood of promotion because of inaccessible building design...it means wasting time negotiating and planning access...etc*

Thus, improving building access may lead to both increased employment opportunities and increased opportunities for advancement within the workplace context that is consistent with a person's underlying talents. The existence of other causes for the observed lower employment rates and income among people with a disability – noted above – means that even achieving "fully accessible" buildings would not be able to fully address this issue. However, it is apparent that building access issues are significant factors explaining these employment and income gaps, while the substantial size of the gaps in question between the experience of people with a disability and those of the general population mean that there is room for substantial gains to be made by addressing the underlying factors.

The likely gains from increased workforce participation due to the implementation of the Premises Standard are inevitably extremely difficult to estimate, given the high degree of uncertainty as to the effectiveness of the Premises Standard in achieving this impact. Frisch has derived an indicative estimate of the potential benefits of increasing the participation of wheelchair users in the workforce. He shows that if the number of wheelchair users participating in the workforce were to rise by 12,000 to 53 per cent (i.e. still considerably below the non-wheelchair user levels), then even on highly conservative assumptions about remuneration levels, this would mean an increase of $300 million per annum in income levels[20]. The effects of such a shift can be considered from a number of viewpoints, as follows:

- From the viewpoint of society as a whole, the benefit is equal to $300 million, which is the amount by which national GDP would be increased annually.
- From the viewpoint of the individual wheelchair user, the income gain would be equal to the difference between their net wage income (plus any benefits that remained payable) and their current benefit income.

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[19] Ibid.

[20] *The Benefits of Accessible Buildings and Transport: An Economist's Approach*, Dr Jack Frisch, p2. The $300 million figure assumes average productivity for the additional wheelchair using workers of $25,000 per annum, approximately $10,000 per annum below that of the workforce as a whole.

- From the government's perspective, the budget would reap expenditure savings equal to the reduced allowances payable to the 12,000 newly employed persons, while there would also be revenue gains equal to the tax payable on the wage incomes of this group.

Frisch also cites a number of potential additional benefits associated with improved building accessibility. People with vision and hearing impairments and people with ambulant disabilities also have lower than average workforce participation rates and are also likely to benefit from improved access to buildings, as provided under the proposed Premises Standard. This further increases the number of potential beneficiaries and, consequently, the likely economic benefits of improved access. Moreover, family members and voluntary carers of people with a disability also experience lost productivity and lower workforce participation. Thus, benefits may also be expected to accrue to this group from improved building access.

Empirical evidence

There are clearly sound theoretical reasons for predicting that improved building accessibility would enhance the employment participation of people with a disability. However, it must be acknowledged that analyses undertaken of previous legislative attempts to improve access to employment do not provide strong empirical backing for this proposition. A number of analyses have been undertaken of the Americans with Disabilities Act (ADA), which was passed in 1990 and was fundamentally geared to redressing the discrimination that people with a disability experience with regard to their employment opportunities – an area that can also be said to be the main focus of interest – at least with regard to complaints to HREOC – of the Australian Disability Discrimination Act, under which the Premises Standard is to be made.

Unfortunately, a rigorous review of the outcomes by Schwochau and Blanck[21] indicates that the ADA appears to have failed in its aims to increase employment levels among people with a disability. Deleire, writing in the Cato Institute journal, *Regulation*, compared the employment rates of men with and without disabilities in the periods 1985-90 and 1991-1995 and estimated that the employment rate of men with disabilities had dropped by 7.8 per cent, relative to that of men without disabilities, between these two periods. This relative fall was observed in all age groups, employment categories and disability classes, though

[21] Scwochau S and Blanck P. D., *The economics of the Americans with Disabilities Act. Part III: does the ADA disable the disabled?*, Berkley Journal of Employment and Labor Law vol 21 2000 p. 271-313

it was found to be least pronounced among those with more education, those with a physical disability and older age groups[22].

The most authoritative estimate, that of the National Organization on Disability/Harris[23] indicated that 29 per cent of individuals with disabilities were employed in the survey of 1998 compared with 31 per cent in 1994 and 34 per cent in 1986. However, disaggregation of the data showed substantial variability within sub-groups, with some age groups – especially older women – showing increased employment levels relative to their able-bodied counterparts.

The above data implies that the ADA has had little or no effect in improving employment levels among people with a disability and has even been associated with apparent declines in such employment. It is difficult to explain the mechanism by which the ADA might result in lower levels of employment among people with a disability. The requirement for more accessible new buildings means, even without retro-fitting, the stock of more convenient accommodation increases year by year, so that the potential benefits of the legislation should also be rising on a continuing basis.

It is possible that the ADA may have had limited effect due to its inability to address on-going reluctance on the part of employers to hire people who, once hired, may require special and costly facilities in workplaces that would not otherwise be required. Such an effect could exist even if employers were only subjectively of the view that such economic disincentives existed.

Equally, it is possible that the observed outcome is purely driven by supply of people with a disability seeking work. There is some evidence that a large number of US working age people with a disability do not seek work because their options were only low paying jobs. 80% of those without jobs cited this as the reason in one study[24]. The fact that the minimum wage in Australia is high relative to average wages would diminish that disincentive in this country and so might mean that the observed effect of improvements in access would be greater than shown in these US studies. On the other hand, Australia's relatively high minimum wage would result in fewer jobs being made available for the more marginal person interested in becoming employed. This effect might also be intensified for those with disabilities where employment carries additional costs to the employer.

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[22] Thomas DeLeire, *The Unintended Consequences of the Americans with Disabilities Act,* Regulation, Vol. 23 N. 1 http://www.cato.org/pubs/regulation/regv23n1/deleire.pdf. In 1997, DeLaire was awarded a PhD from Stanford for his thesis on Wage and Employment Effects of the Americans with Disabilities Act.

[23] Chartbook on Work and Disability, National Institute on Disability and Rehabilitation, http://www.infouse.com/disabilitydata/workdisability_2_9.html

[24] See Schwochau and Blanck, op cit., p. 284.

In sum, this section has argued that people with a disability experience substantially lower employment and income levels than the general population and that improving building accessibility has the potential to yield substantial economic gains by addressing these employment and income gaps. Available empirical data does not provide substantial evidence of equivalent legislation having achieved these effects in the United States. However, there may be a number of reasons that are specific to the US context that could account for these observations. It seems clear that a carefully integrated policy environment is a necessary condition for maximizing the potential benefits, in terms of improved employment participation, of improved accessibility of buildings.

In light of the US data discussed above, the Frisch suggestion of a doubling in employment rates for users of wheelchairs would seem to be unduly optimistic. For the purposes of a "base case" scenario, an increase of 50% over the existing participation rate is assumed. Using Frisch's remaining assumptions, this implies benefits to the economy of $150 million per annum. The Frisch estimate of a 100% increase in participation is used as an upper bound scenario, while the lower bound scenario is based on a zero increase, as seen in the United States.

Employment participation of primary carers

Improved accessibility of buildings can also be expected to improve the employment participation of primary carers of people with a disability, albeit indirectly, In this context, the expectation is that demands on such carers will be reduced because of the improved access to buildings enjoyed by people with a disability. This may then increase the time that carers have available to engage in other paid employment.

The Productivity Commission, in its recent Draft Report on the Disability Discrimination Act argued that:

> *"...greater employment of people with disabilities might be accompanied by greater workforce participation by primary carers. In 1998, the labour force participation rate of primary carers was 59.2 percent, compared with 80.1 percent for people without a disability (ABS 1999b). This difference also suggests that carers also face significant barriers in employment due to the constraints on their time from caring for persons with disabilities and possibly to discrimination. To the extent that the DDA allows greater employment of people with disabilities, that effect might be compounded by increased employment of carers as well".*

Thus, it can be anticipated that any substantial impact on employment participation by people with a disability as a result of the Premises Standard, as suggested above, will be accompanied by other positive impacts on employment.

It is beyond the scope of the current analysis, however, to attempt to quantify any such impacts.

7.6.2. Willingness to pay approach

A second perspective on the potential economic benefits of the Premises Standard relies on the economic concept of community "willingness to pay". This is a widely used evaluation technique of welfare economics which asks how much people would be willing to pay to avoid a particular problem – in this case accessible buildings – if they were fully informed of both the probability of their requiring an accessible environment and the costs of an inaccessible environment.

Box: Willingness to pay – methodological considerations

Substantial criticisms of "willingness to pay" approaches to economic valuation have been made. These are largely based on the construction of many "willingness to pay" studies, in which respondents are asked their willingness to pay in hypothetical circumstances that are often highly artificial in their construction. The criticisms generally emphasise that respondents have little or no incentive in such circumstances to report accurately their willingness to pay. As a result, highly artificial and often inflated estimates can result.

The material included in this section of the RIS is not based on this form of "willingness to pay" valuation. Instead, the potential benefit estimates calculated are derived on a probabilistic basis and represent the sums that a rational, fully informed individual *ought* to be willing to pay in the particular context. Thus, they are not prone to the subjectivity and potential distortions noted above.

Frisch[25] postulates a "willingness to pay" based valuation that is built on the notion of people "insuring" against the hardships of an accessible environment, if they were to acquire a disability. This is based on the formula for a risk neutral individual of:

Willingness to pay = probability of loss x value of the loss.

Given the observation that 0.5 per cent of the population currently uses wheelchairs, this is taken as the probability of an individual requiring an accessible environment at some stage of their lives. The average value of the loss experienced due to a disability is estimated at 40% of income, with half of

[25] *The Benefits of Accessible Buildings and Transport.* Dr Jack Frisch, pp 1-2.

this loss being due to inaccessible environments. Thus, the loss due to an inaccessible environment is estimated at 20% of income.

This implies that the average person should be willing to pay 0.1% of their income annually to ensure an accessible environment. Frisch estimates a population of 17 million and an average income of $30,000 and thus derives an aggregate "willingness to pay" for an accessible environment of $510 million per year.

An alternative estimate could be derived by applying the 0.1 per cent "willingness to pay" figure to annual GDP for Australia as a whole. This yields an annual aggregate "willingness to pay" of approximately $720 million[26].

Frisch also identifies two factors which suggest the actual "willingness to pay" would be somewhat higher than these figures suggest. These are that:

- The probability adopted of needing an accessible environment (of 0.5%) is very conservative, given that, for example, 4% of the population cannot use public transport because of their disability. The 0.5% figure, being based on wheelchair users, does not take account of access issues for people with ambulant disabilities or hearing or vision impairments.
- The calculation ignores any amounts people would be willing to pay for altruistic reasons – i.e. to prevent friends, family and others experiencing an inaccessible environment.

In constructing a base case scenario, two substantial changes are made to the Frisch estimates above. First, it is considered that the extent to which building access issues contribute to the incremental cost of living with a disability is likely to be substantially less than 50% of the total. Thus, a figure of 25% is substituted in respect of wheelchair users.

Second, it is considered that basing the estimated benefits only on wheelchair users is too restrictive, as Frisch himself suggests. The figure of 4% of persons who cannot use public transport as a result of their disability is considered a better estimate of the number of people likely to experience these cost reductions. However, as has been indicated elsewhere in this RIS, wheelchair users are likely to obtain substantially larger benefits than other groups from the implementation of the Premises Standard. In recognition of this, it is estimated that the reduction in the costs of living with a disability experienced by the remaining 3.5% of the population will be equal to 10% of the average total cost figure cited by Frisch.

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[26] Based on extrapolation of March quarter 2003 GDP total of $179.4 billion. See ABS Cat. 5206.0

Thus, in the base case, each wheelchair user would obtain cost reductions of 10% of assumed income, or $3,000 per annum, while the remaining affected group would obtain cost reductions of 4% of assumed income, or $1,200 per annum. The total benefits in this base case are thus equal to $969 million per annum.

Frisch characterizes these figures as "willingness to pay" figures, but they might better be understood as being cost savings experienced by people with a disability due to better access standards. Thus, they are additional to the benefits discussed in the previous section, which are based on increased income.

A true "willingness to pay" figure would need to account both for the fact that people are generally risk averse and for the probability that people would be willing to pay additional amounts for altruistic reasons, as noted by Frisch. These additional elements are estimated to increase the value of the benefits by 20% - giving a total benefit of $1,163 million, and are adopted as the "upper bound" scenario. The lower bound scenario is given by Frisch's original estimate of $510 million per annum.

7.6.3. Other economic benefits

An additional source of benefits identified by several access experts is a reduction in accidents and, therefore, in associated health care costs and costs in terms of lost production. For example, Ratzka states:

> *The reasoning is that accessible environments are also safe environments (see Wrightson and Pope). Examples are ramps rather than steps, lifts instead of staircases. According to the World Health Organization "accidents cause more deaths than any single illness except cancer and cardiovascular disease" (quoted in Ratzka 1984). The number of accidents due to stairs and the associated costs to society can be and has been estimated (see for example Ratzka 1984)*[27].

These safety-related benefits would accrue both to people with a disability and to the able bodied population. Generally usable quantitative estimates of these benefits have not been identified in the course of preparing this RIS. However, an indicative sense of their potential importance can be obtained from the Ratzka

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[27] *A brief survey of studies on costs and benefits of non-handicapping environments.* Adolf Ratzka. Presentation at the International Congress on Accessibility, Rio de Janeiro, Brazil, June 1994

paper cited above[28]. Ratzka considers the potential costs and benefits associated with installing lifts in low rise (3 or 4 storey) apartment buildings in Stockholm, Sweden. He converts his total benefit estimates into equivalent rental values. That is, a given annual benefit is expressed in terms of the equivalent impact on the notional rental value (per square metre) of an apartment. Implicitly, this adopts the same "willingness to pay" logic as that of Frisch, cited previously. Ratzka has calculated how much additional rent a rational tenant should be willing to pay annually in exchange for the additional values conferred by the presence of a lift.

On this basis, he identifies benefits based on the potential for reducing or eliminating the costs contained in Table 3, below:

Table 3: Costs incurred due to the absence of lifts[29].

Cost item	**Size of cost**
Staircase accidents	1.40 to 2.40 SEK/m^2 /yr
Nursing home and old age home care Accessible housing and community-based services (whose costs are included here) such as 24-hour emergency call system, personal assistance for 7 to 35 hours/week, periodic visits by district nurse enable many elderly and disabled to avoid the move to institutional care.	15.60 to 32.40 SEK/m^2 /yr
Personal assistance (home help etc.) The need for these services is decreased by accessible housing.	4.50 to 6.90 SEK/m^2 /yr
In addition, lifts are an amenity valued also by non-disabled tenants:	4.80 to 7.70 SEK/m^2 /yr
Total	26.90 to

[28] The Cost of Disabling Environments: A Cost Revenue Analysis of Installing Lifts in Old Houses. Report of the International Expert Seminar: Building Concept for the Handicapped Stockholm, Sweden, April 10-12, 1984. Ratzka, A. 1984.

[29] The estimates are based on the present and future population mix in multi-family tenant housing in Stockholm's older suburbs, and on the assumption that lifts are installed in each building upon renovation - regardless of whether people with a disability live there or not.

	49.40 SEK/m^2/yr

These costs incurred due to the absence of lifts are equivalent to about one half of the annual amortized costs that would be incurred by installing lifts. While the residential context in Australia is clearly very different from that in Sweden, where three and four floor walk-up apartments are quite common, the above provides a general indication of some of the broader benefits that can be derived from improving building accessibility.

As well as the benefits in terms of accidents and injuries avoided by all members of society, noted above, HREOC argues that additional gains due to the Premises Standard's adoption would be likely to include the following:

- Reductions in property damage arising from maneuvering heavy items up stairs;
- Convenience benefits for families with small children (e.g. in relation to use of prams etc);
- Potential increases in economic activity due to wider availability of accessible services such as restaurants and shops; and
- Potential increases in tourism activity due to wider availability of accessible facilities and attractions.

The quantification of such benefits is clearly not feasible within the current context. However, all of these factors constitute plausible sources of additional benefits deriving from the adoption of the Premises Standard.

8. Expected Costs

8.1. Methodology

The issue of whether the proposed Premises Standard can be said to create new legislative obligations – beyond those already contained in the DDA – was considered in Section 7, above. It was concluded that, while there may be no *formal* increase in legislative obligations, the actual extent of compliance can be expected to increase substantially as a result of the adoption of the proposed Premises Standard and, in particular, the integration of its technical elements into the BCA. Given this, the assessment of costs has been carried out on the basis of a comparison of the requirements contained in the proposed Premises Standard with the current BCA requirements. Where there are no specific access related provisions in the current BCA, standard building practice (as estimated by an expert quantity surveyor who formed part of the RIS project team) was taken as the base-line for incremental cost estimation.

A detailed discussion of the costing methodology employed is included as Appendix A. In broad terms, costs have been estimated by applying the requirements of the Premises Standard to a set of 46 case study buildings, developed by the RIS Steering Committee. The cost implications of each individual provision were estimated by an expert quantity surveyor. The total costs for each case study building were then mapped against ABS and Victorian building activity data to obtain estimates of aggregate annual cost impacts. This methodology therefore allows both the cost impacts on individual building types and cost impacts on the economy as a whole to be determined.

8.2. Estimated costs: New buildings

Appendix B sets out the basic estimates made of the cost of each of the main specific building upgrade items required to implement the Premises Standard, and is accompanied by methodological notes explaining the approach taken to using these cost items. Appendix C also sets out the disaggregated estimates of the total incremental costs generated for each building "case study", consistent with the methodology described above.

Appendix B shows that the major individual cost items that would be required for compliance with the Premises Standard relate to the installation of additional or improved lifts and ramps, more accessible entrances, additional space requirements in several contexts (e.g. passing and turning space in corridors) and additional or modified sanitary facilities.

Appendix C shows what combinations of these individual items would be needed in order to ensure that each of the 20 case studies of indicative new building types would comply with the Premises Standard. That is, Appendix C indicates the additional construction costs that would be incurred in building each of these representative building types to the provisions of the Premises Standard, rather than to existing BCA requirements. Appendix C also includes an estimated "generic construction cost" for each of the case study buildings included. This is an estimate of the current average construction cost for a building of the type represented by the case study. Using this generic construction cost estimate, the incremental cost calculations contained in the matrix are converted into proportionate cost increases.

Table 4, below, summarises the results contained in Appendix C in relation to new buildings. Table 4 shows that there is a wide variation in the relative costs of compliance with the Premises Standard (i.e. the cost of compliance as a proportion of overall building costs). The incremental costs for new buildings range from a relatively trivial 0.1 per cent in the case of large horizontal shopping centres, to 63 per cent for small two storey offices.

A more detailed review of the results for the 20 case studies shows that the proportionate cost increases are:

- Less than 1% in 7 case studies;
- Between 1 – 2% in 5 case studies;
- Between 2% and 4% in 3 case studies;
- Between 5% and 7% in 3 case studies; and
- Between 40% and 65% in 2 case studies.

In general the larger the building and the fewer storeys, the lower are the proportionate costs of compliance with the Premises Standard. The two case study buildings in respect of which the construction cost increase was between 40 and 65% are similar, being a small two storey office building and a two storey restaurant respectively. The only other case studies in respect of which incremental building costs exceed 3.2% are single storey holiday accommodation, a two storey warehouse/storage building and a two storey school building.

The main cost driver in respect of both the two storey office building and the two storey restaurant is the installation of a lift. In the case of the two storey office, the incremental cost of applying the Premises Standard totals $188,800, with the cost of installing a lift being equal to $160,000, or 84 per cent of this total. In the case of the two storey restaurant, the lift cost of $160,000 represents three quarters of the total incremental cost of $207,500.

In both of these cases, there is a substantial degree of uncertainty attached to the costing of the lift requirement. This uncertainty results from the construction of the relevant provisions of the Premises Standard and is discussed in Box 1, below. Given this uncertainty, our costings have been based on a conservative assessment of the likely cost implications. That is, it has been assumed that the provision of a lift in both *new* two storey restaurants and two storey office buildings would be via the adoption of the unrestricted use electrical or electro-hydraulic lift type. By contrast, as the following section indicates, the costings assume the provision of stairway lifts in the equivalent buildings in respect of renovated buildings.

Box 1: Limitations on use of types of passenger lifts

Part E of the Premises Standard relates to services and equipment. It includes Table E3.6(a): Limitations on use of types of passenger lifts. Electric or electro-hydraulic lifts conforming to AS1735.2 or AS1735.3 are able to be used without limitation and are expected to be the main type of passenger lift adopted to provide access between floors of a building. However, two other lift types are able to be used in limited circumstances. These are "stairway lifts" conforming to AS1735.7 and "lifts for people with limited mobility", conforming to AS1735.15.

Stairway lifts must be used to connect no more than two floors and must not be used in buildings that accommodate more than 100 persons. In addition, they must not be used in "high traffic public use areas", such as theatres, cinemas, auditoria, transport interchanges or shopping centres. Lifts conforming to AS1735.15 must not be used to connect more than 3 storeys and must not be used in high traffic public use areas.

Given these limitations, it is not expected that either of these types of lift would be able to be used in two storey restaurants. However, it is likely that they would be usable in at least a proportion of two storey office buildings. The extent to which they will be usable is necessarily difficult to estimate and in practice will depend, in part, on the attitudes taken by building designers, building certifiers and building owners. In particular, judgements about what proportion of such small offices can be considered to be "high traffic public use area" will be important in determining the outcome.

Varying these assumptions in relation to two storey offices would have a substantial impact on the cost implications of the Premises Standard in relation to this building type. The cost of a stairway lift is estimated at $45,000, by comparison with the $160,000 estimated for an unrestricted lift type. Thus, the total cost impact for this building type would be $74,000, rather than $189,000

and the percentage cost increase would be 25%, rather than 63%. Clearly, however, there remains a substantial cost impact on this building type, even adopting this alternative assumption.

More generally, it must be noted that the largest proportionate impacts of the proposed Premises Standard would fall on the owners and users of smaller buildings. This reflects the fact that the extent of many of the requirements in the proposed Premises Standard increases less than proportionately with the size and cost of the building. However, an important implication of these observations is that the compliance cost impact of the proposed Premises Standard is likely to fall disproportionately on the small business sector, who will be the predominant users of these smaller buildings. This, in turn, has potentially significant implications in terms of the capacity of the sector to meet the compliance costs involved and, as a result, the expected size of the direct and indirect effects on the small business sector.

Table 4: Estimated costs of implementing Premises Standard in new buildings: 20 case study buildings

	Single storey – holiday accomm.	3 storey accomm. . – no lift	7 storey accomm. – with lift	2 storey – hotel/motel – no lift	3+ storey 200 room – hotel – with lift	3+ storey 350 room – hotel – with lifts	2 storey – office – dwelling size	7 storey – office	20 storey – office (av. floor plate of 900m2)
Class:	1b	2	2	3	3	3	5	5	5
Generic Building Cost (000s)	$150	$4,500	$13,200	$3,500	$24,000	$105,000	$300	$15,000	$45,000
Regulations' Costs (000s)'	$9.4	$70.3	$121.1	$37.3	$119.9	$332.6	$188.8	$280.1	$652.2
Proportional Increase	**6.3%**	**1.6%**	**0.9%**	**1.1%**	**0.5%**	**0.3%**	**62.9%**	**1.9%**	**1.4%**

	Large horizontal spread – shopping centre	2 storey - restaurant(s)	7 storey - carpark	2 storey – storage / warehouse	Single storey – lab/factory – 500m2	3 storey – hospital building	500 seat – theatre	1200 seat – theatre	2 storey – school building	Single storey – community hall	10 000-15 000 seat – stadium
Class:	6	6	7a	7b	8	9a	9b	9b	9b	9b	9b
Generic Building Cost (000)	$85,000	$500	$6,000	$4,000	$1,800	$6,000	$4,500	$14,000	$3,200	$1,200	$150,000
Regulations' Costs (000s)'	$118	$207.51	$31.8	$217.5	$45.6	$168.4	$53	$116.3	$218.4	$43.7	$499.3
Proportional Increase	**0.1%**	**41.5%**	**0.5%**	**5.4%**	**2.5%**	**2.8%**	**1.2%**	**0.8%**	**6.8%**	**3.6%**	**0.3%**

8.3. *Estimated costs: Existing Buildings*

Appendix C also provides a detailed costing matrix in respect of 26 case studies dealing with the costs of upgrading existing buildings. Tables 5 and 6, below, summarise the results of Appendix C. Unsurprisingly, the proportionate cost impacts of implementing the Premises Standard are, in many cases, substantially greater in relation to upgrades of existing buildings than in relation to new buildings. This is consistent with findings in other countries that have implemented similar requirements.

Analysis of 18 case studies relating to full upgrades of existing buildings indicates that the proportionate cost increases involved in applying the Premises Standard in the course of the upgrade is:

- Less than 5% of the upgrade cost in ten case studies;
- Between 5 – 10% in one case study;
- Between 20% to 50 % in five case studies;
- More than 50% in three case studies.

As with the new building case studies presented in the previous section, the cost implications are generally smaller for larger buildings and for buildings with fewer storeys. The case studies showing the largest proportionate cost increases in relation to full upgrades are lap pools (109%), two storey B&Bs (85%[30]), small two storey offices (60.3%) and small single storey shops (57.3%). The smallest increases are for large shopping centres (0.1%) and medium sized (10 – 15,000 seat) stadiums (0.3%).

A further 8 case studies, presented in Table 6, demonstrate the costs of applying the Premises Standard where buildings undergo partial upgrades. Among this group:

- Less than 5% of the upgrade cost in three case studies;
- Between 5 – 11% in four case studies;
- Over 140% in the one outlying case – that of a two storey office/dwelling

The main cost drivers, in the cases in which the proportionate cost impacts of the Premises Standard are largest, are broadly similar to those identified in relation to new buildings. For two storey offices and restaurants, the installation of a lift is easily the largest single cost item[31]. In relation to single storey holiday accommodation, the

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[30] This percentage increase is based on the assumption that some required accessible facilities are located on the upper level necessitating the need for a lifting device. If all required accessible facilities are located on the lower level, the proportionate cost increase will be reduced accordingly.

[31] This is so, notwithstanding the cost for these case studies has been estimated on the basis of a "stairlift", rather than a lift per se. This reflects a judgement that retro-fitting a lift to such buildings would be infeasible in most cases. As a result, the estimated "lift" cost in relation to upgrades of these

major cost items are accessible sanitary facilities and wider doorways. For small single-storey shops, the main costs are for provision of ramps and wider doorways.

As with new buildings, the impacts of the proposed Premises Standard in relation to alterations and additions fall disproportionately on smaller buildings. Again, this reflects the fact that the extent of most of the requirements of the proposed Premises Standard increases less than proportionately with the size and the cost of the building.

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buildings is $45,000, whereas the estimated cost in respect of newly constructed two-storey offices is $160,000.

Table 5: Incremental costs of applying the Premises Standard to existing buildings: Full upgrades

FULL UPGRADE	Single storey – holiday accommodation	2 storey – B & B	2 storey – hotel/motel – no lift	3+ storey 200 room – hotel – with lift	3+ storey 350 room – hotel – with lifts	2 storey – office – dwelling size	7 storey – office	20 storey – office (av. floor plate of 900m2)	Small single storey – shop
Class:	1b	1b	3	3	3	5	5	5	6
Upgrade Generic Building Cost ($,000)	$40	$70	$1,000	$6,500	$9,000	$100	$6,750	$18,000	$17,200
Cost of Upgrade	$19,275	$59,775	$15,400	$160,200	$193,500	$60,250	$211,700	$501,700	$30
Proportional Increase	*48.2%*	*85.4%*	*1.5%*	*2.5%*	*2.1%*	*60.3%*	*3.1%*	*2.8%*	*59.3%*

	Large horizontal spread – shopping centre	2 storey – restaurant(s)	500 seat – theatre	1200 seat – theatre	2 storey – school building	Single storey – community hall	10 000-15 000 seat – stadium	10 metre lap pool	50m swimming pool - 6 lane	Spa pool
Class:	6	6	9b	9b	9b	9b	9b	10b	10b	10b
Generic Building Cost ($,000)	$30,000	$150	$2,000	$6,000	$1,000	$400	$150,000	$50	$500	$40
Cost of Upgrade	$42,500	$56,950	$16,650	$48,450	$35,250	$29,250	$20,000	$15,000	$45,000	$15,000
Proportional Increase	*0.1%*	*38%*	*0.8%*	*0.8%*	*3.4%*	*7.3%*	*0.3%*	*30%*	*22.5%*	*37.5%*

Table 6: Incremental costs of applying the Premises Standard to existing buildings: Partial upgrades

PARTIAL UPGRADE	3 storey – accommodation – no lift (common areas)	7 storey – accommodation – with lift (common areas)	2 storey – office – dwelling size (half one floor)	7 storey – office (one floor)	20 storey – office (av. floor plate of 900m2) (three floors)	Large horizontal spread – shopping centre (10% floor area)	3 storey – hospital building (10% floor area)	40,000 seat – stadium (10% floor area)
Class:	2	2	5	5	5	6	9a	9b
Generic Building Cost ($,000)	$360	$1.000	$40	$1,000	$2,700	$4,000	$8,000	$20,000
Cost of Upgrade	$23,650	$64,400	$56,250	$100,600	$227,600	$29,500	$43,900	$255,500
Proportional Increase	*6.6%*	*6.4%*	*140.6%*	*10.1%*	*8.5%*	*0.7%*	0.5%	1.3%

8.4. *Estimated costs: Aggregate estimates of direct costs*

The preceding sections have estimated the incremental costs of the Premises Standard at the level of individual new buildings and upgrades to existing buildings. This has been done on the basis of a set of 46 "case study" buildings, chosen as being representative of the range of buildings being constructed and upgraded across Australia. This has allowed the specific effects of the Premises Standard to be identified in a range of particular contexts. However, it is also necessary to estimate the aggregate impact of the Premises Standard on national building costs.

This aggregate cost has been estimated by combining the cost data for individual "case study" buildings, discussed above, with building activity statistics obtained from both the Australian Bureau of Statistics (ABS) and the VBC. The VBC data is used in combination with that of ABS because it is more detailed and comprehensive than that of either ABS or other jurisdictions. Of necessity, it is implicitly assumed that the breakdown of building activity found in the Victorian data is typical of the rest of Australia. Adopting this assumption allows detailed estimates of costs to be made than would be achievable solely using published ABS data.

Table 7, below, is based on ABS data that shows that new building approvals (excluding houses) totaled nearly $23 billion in calendar 2002[32]. Using the VBC data noted above, this total is broken down into categories that are consistent with the above set of case studies.

[32] The data is taken from building approvals and not the value of buildings completed in the year. More precise figures covering the value of completed work could be developed if reliable data was available for a number of years. This would involve apportioning each year's approvals into the same and successive years' work. However, unless there was a consistent trend of increasing value of building approvals banked up for work, (and this would mean a steady increase in the value of building work in progress) using a single year snapshot is an adequate indicator of aggregate value.

Table 7: Value of new building approvals in Australia – Calendar 2002 ($ m)

Building Type	Total	Sub-totals	New building	Alterations & Additions	Regulation Costs		Regulation Cost Increase	
					New building	Alterations & Additions	New	Alterations & Additions
Flats units and Apts	$6,800.9				$33	$25	0.6%	2.3%
* 1/2 stories		$378.4	$318	$61				
* 3 stories		$729.6	$613	$117				
* 4+ stories		$5,692.9	$4,782	$911				
Hotels and Motels	$594.0				$2	$2	0.6%	0.9%
* single storey		$422.0	$232	$190				
* double storey		$113.0	$62	$51				
* multi storey		$59.0	$33	$27				
Shops	$2,643.0		$1,454	$1,189	$1	$341	0.1%	28.7%
* single storey		$2,009.0	$1,105	$904				
* two storey		$211.0	$116	$95				
* multi-story		$423.0	$233	$190				
Factories	$828.0		$596	$232	$15	$17	2.5%	7.3%
Offices	$4,095.0				$549	$245	19.2%	19.9%
* single storey ground floor		$2,211.3	$1548	$663				
* ground plus first floor		$737.1	$516	$221				
* medium rise (7 stories)		$491.0	$344	$147				
* high rise		$655.0	$459	$197				
Other businesses	$2,077.0		$1,059	$1,018	$26	$56	2.5%	5.5%
Education	$1,959.0		$999	$960	$20	$21	2.0%	2.2%
Religious	$101.0		$52	$49				
Health	$1,405.0		$749	$646	$22	$4	2.9	0.6%
Entertainment/recreation	$965.0		$492	$473	$7	$32	1.5%	6.7%
Misc	$1,312.0		$669	$643	$17	$35	2.5%	5.5%
Total	**$22,780.0**		**$14986**	**$7794**	**$694**	**$955**	**4.6%**	**12.3%**

Sources: ABS 8731.0
Victorian Building Commission

Table 7 shows that the total value of building approvals, of $22.8 billion is comprised of approximately $15 billion in approvals for new buildings and $7.8 billion of approvals for alterations and additions to existing buildings. Thus, the total value of building work comprises approximately two thirds new building and one third refurbishments, alterations and additions. This break-down of the value of building approvals into estimates of new building and extensions and alterations is needed in order to determine the aggregate cost impact of the Premises Standard since the proportionate cost impacts of the Premises Standard are, in many cases, substantially different for new buildings vs alterations and additions. In general, the design constraints imposed by the need to work within an existing building structure mean that the costs of upgrading a building to comply with the Premises Standard are usually higher than the incremental costs of incorporating the Premises Standard's requirements in a new building design.

8.4.1. New buildings

The estimates of the aggregate increase in the costs of new buildings that are offered in Table 7 were developed by assigning the 20 case studies to an available break down of commercial buildings. The procedure is imperfect but gives a reasonably accurate picture of the aggregate costs of particular categories of building just as the case studies give reasonably accurate cost estimates of individual building types.

For new buildings as a whole, additional building costs of $694 million per annum were estimated with the vast majority of these costs being incurred in respect of offices, especially low rise offices. Overall costs of new building were estimated to increase by 4.6 per cent.

As Table 5 showed, by far the largest proportionate cost increases were for smaller buildings where the costs of lifts and space modifications could not be spread across a large building area. Two storey offices (and combinations - office/shop, office showroom etc.), would be extremely costly to build to the Premises Standard, but some similar types of building (single storey holiday accommodation, two storey restaurants and schools) also incur high costs.

As noted in Section 7.2., above, these aggregate cost results are highly sensitive to the assumptions made in relation to lift types used in two storey office buildings. If the alternative assumption indicated in Section 7.2. (i.e. adoption of stair lifts rather than conventional lifts) is adopted, the aggregate cost figure is reduced by approximately $320 million to $374 million. Thus, the average percentage cost increase would be reduced from 4.6 per cent to 2.5 per cent. Clearly, the true cost figure will be found somewhere between these two bounds, although it is not possible to give a clear indication of whether it will be nearer the high or the low figure[33].

[33] The same uncertainty in relation to costing of lift requirements also exists with regard to two-storey storage/warehouse buildings. However, the aggregate cost impact of assuming the use of stairlifts in this case is minimal (estimated at less than $10 million), since relatively few of these buildings are constructed.

8.4.2. Alterations and additions

The estimates of the aggregate increase in the costs of renovations and additions to existing buildings were developed by assigning the 28 case studies relating to partial and full refurbishments to an available break down of commercial buildings. The procedure is equivalent to that followed with regard to new buildings (see previous section). The estimated incremental cost of applying the Premises Standard to building upgrades is $955 million. This is equivalent to an average 12.3 per cent increase in costs, proportionately almost three times as high as the 4.6% increase for new buildings. The estimated increase in the costs of office and shop refurbishments represents more than half of this total. Construction costs for offices would rise $245 million (19.9%) and costs for shops would rise $341 million (28.7%). These large cost increases are due to substantial effects on smaller buildings.

8.4.3. The impact of "unjustifiable hardship" provisions

In considering the costs in relation to upgrades of existing buildings, it is important to weigh the effect of Section 23(b) of the DDA, which provides an exemption from the general duty not to discriminate in providing access to premises to the extent that providing access would cause "unjustifiable hardship". The "unjustifiable hardship" exemption is designed to prevent the DDA requirements having the effect of imposing costs that are out of all proportion to the gains likely and would cause substantial hardship to those required to comply. This exemption applies to existing buildings only. That is, it does not apply to new buildings.

The term "unjustifiable hardship" is not defined in the DDA, although Section 11 sets out a range of matters to be taken into account in determining whether unjustifiable hardship would result in a particular case. Similarly, in giving expression to the DDA requirements within the BCA, Part 4, 4.1(4)(a) provides that in determining whether compliance .. would impose unjustifiable hardship ... all relevant circumstances are to be taken into account including:

(i) any loss of occupiable or rentable area that is reasonably likely to result from compliance with the requirement;

(ii) the cost that would be incurred in upgrading ancillary features in relation to the overall cost of developing the new part; and

(iii) the resources reasonably available to the person

Also to be taken into account are the extent to which the building is intended to be used by the public, whether it serves significant cultural, religious, artistic, sporting and educational needs of the community and the extent to which alternative access is available to people with a disability. The "unjustifiable hardship" provision is also relevant to the degree that there is a heritage value that might be compromised or that there are topographical restrictions[34]. The extent to which building work involves

[34] This would allay fears of a repetition of a notorious US case concerning an eating establishment where the difficult access was an attraction

the use of public funds is also a relevant consideration, although this is, by definition, not a concern for regulation of business and private individuals.

The application of the "unjustifiable hardship" provisions is to be undertaken on a case by case basis, taking account of individual circumstances. As well, it must be noted that the decisions made will be taken by a variety of individuals and bodies. A building certifier would be able to make judgements regarding unjustifiable hardship exemptions. However, where a certifier does not wish to do so, a judgement can be made by the building administration in the relevant State or Territory. It is anticipated that each State and Territory will adopt a Protocol – under development by ABCB – to guide the application of the unjustifiable hardship provisions. This Protocol provides a framework for each administration to constitute an expert Access Panel to provide assistance in making judgements on request[35].

Given these factors, and the fact that there is relatively little experience to date with the application of the "unjustifiable hardship" provisions of the DDA in the access to premises context, their practical impact in reducing the effective costs of the Premises Standard in relation to existing buildings is difficult to estimate. However, it is apparent from the discussion of the cost impacts in relation to individual case study buildings that the cost impacts are substantially higher for two storey office buildings and single storey shops than for most other categories, while the extent of building activity in relation to these building types is also high.

It is likely that the unjustifiable hardship provisions would be used extensively with regard to these building types. One relevant point of context is that the proportionate cost increases estimated for these types are of the order of 60 per cent in each case[36], while court decisions applying similar hardship provisions in the United States context have tended to regard any increase in costs greater than about 20 per cent as being unjustifiable.

In considering the practical impact of the "unjustifiable hardship" provisions, the fact that the main costs involved in relation to the most severely affected building types derive from a few, very large cost items is particularly important. Thus, an exemption from one of these items alone would have a very substantial impact in reducing the overall cost of compliance. In relation to two-storey offices, for example, more than three quarters of the incremental cost of the Premises Standard in relation to a full upgrade is accounted for by the need to install a lift. Thus, an exemption from this requirement alone would substantially reduce the total cost. As the costs in relation to these two building types (i.e. two storey offices and single storey shops) alone account for the majority of the estimated $1.0 billion of incremental costs for existing buildings, the application of the unjustifiable hardship provisions has the potential to reduce these costs substantially. On the other hand, it is likely that the impact of the provisions would be relatively smaller in relation to extensions than renovations, since such activity will in many cases be comparable to new building work.

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[35] The Access Protocol has been the subject of a separate impact analysis process. For detail, please contact ABCB.

[36] For full upgrades.

For the purposes of the "base case" scenario, the impact of the exemptions provisions is estimated to be a reduction of approximately 20% in the above cost estimate for existing buildings, yielding an estimated cost of $800 million per annum. The upper bound scenario is based on no reduction to the $955 million figure cited above.

8.4.4. Other direct costs – loss of usable space

The preceding sections have estimated the additional building costs that would result from the adoption of the Premises Standard. Additional costs would also be incurred as a result of the loss of useable space that arises from the need to devote additional space to wider corridors, larger numbers of accessible sanitary facilities and the like. These costs of lost usable space have been estimated to average around 1.7 per cent for new buildings and 4 per cent in existing buildings. The differential impact is, as with other cost items discussed, a result of the fact that changes can more easily and efficiently be accommodated where an entirely new design is being undertaken than where alterations to an existing building are proposed.

The costs of the additional space requirements for new buildings have been included in the previously stated estimate of $694 million per annum in additional construction costs. This reflects a methodological approach in which it is effectively assumed that additional building area is added to offset the space using impacts of the Premises Standard and yield an outcome in which a given "target" of lettable space is provided. However, the costs in relation to existing buildings are not included in the above calculations. This asymmetric treatment of these costs is made inevitable by the fact that is likely to be impractical, in most cases, to add to the size of an existing building in order to offset the lost usable space.

Consequently, the costs of lost usable space in renovated buildings must be added to the above cost figures. As indicated, it is estimated that the loss of usable space will average 4 per cent in respect of existing buildings, although the actual loss of space will vary quite substantially between different building types[37]. The ABS building data indicate that the value of renovations and alterations activity during calendar 2002 was approximately $7.8 billion. Thus, a loss of 4 per cent in the capital value of the resulting buildings is equal to a cost of $312 million per annum.

8.4.5. Summary of direct cost impacts

The preceding sections have identified probable building cost increases due to the implementation of the Premises Standard of around $1.5 billion annually. This

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[37] This variability necessarily means that there is considerable imprecision attached to the estimated costs of lost space, as applied to existing buildings. The 4 per cent figure represents a professional quantity surveyor's judgement as to the likely average impact, taking into account the profile of renovation and alteration activity.

comprises $694 million in cost increases in relation to new buildings and $800 million of cost increases in relation to alterations and upgrades to existing buildings – 4.6 per cent and 10.3 per cent of existing costs respectively. This latter figure includes consideration of the likely effect in practice of the "unjustifiable hardship" exemptions proposed to operate with the Premises Standard. Costs in relation to new buildings would be reduced to the extent that current practice is to provide a greater degree of access than the existing BCA requirements – whether because of concern to ensure compliance with the DDA or for other reasons. In addition, costs of $312 million per annum are attributable to the loss of usable space in renovated and upgraded buildings.

A number of important qualifications must be borne in mind in relation to these estimates. In particular, the problems encountered in translating the categories used in building data collections to the case study structure mean that some approximations have been made and introduce elements of uncertainty.

An additional direct cost is that related to the maintenance of lifts and other machinery required to be installed. These costs have not been able to be estimated in this analysis, but can be expected to be somewhat significant in the aggregate sense and to be quite substantial in relation to certain types of building.

8.5. Indirect cost impacts

The above discussion of costs relates only to the direct costs of applying the Premises Standard. It effectively assumes that the cost increases that flow from the adoption of the Premises Standard would have no effect on people's behaviour – that is, that people would continue to make the same choices that they currently make about the type, size and number of buildings to be erected, altered, extended and upgraded. However, this will clearly not be the case, in particular in those areas in which substantial cost impacts are felt. These changes in behaviour give rise to a range of indirect cost impacts, which are discussed in this section.

8.5.1. Substitution effects

Substitution effects would be of a number of types, as follows:

- There would be changes in the types of buildings constructed. For example, there would be declines in construction of small office and shop buildings, (since these would become more expensive), perhaps in favour of larger office buildings and mall-type shopping and retail facilities, as well as other building options[38].

[38] As with the aggregate effect on building activity, discussd below, this impact of the Premises Standard may not be directly observable – both because numerous factors affect building activity and because there are longer-term market trends and other government policies at work which affect the trends in demand in these areas over time.

- Changes in the balance of building expenditures between new building and renovation activity. New building will be favoured, since renovation/upgrading of existing buildings will be relatively more expensive in most cases.
- There would be an overall reduction in building activity, since the cost of building, relative to other expenditures, has risen. Such an impact is unlikely to be directly observable in practice, given the range of factors that affect overall building activity and the observed volatility of building activity levels over time. It would, however, remain real.

The existence of these impacts is considered as certain, in terms of the laws of economics, requiring only that the demand for a product tends to decline as its price rises (i.e. that it is a "normal" good). However, the size of the impact in practice depends on the elasticity of demand – i.e. on how sensitive demand for a product is to price changes. As noted below, estimates of the elasticity of demand for commercial buildings have not been found in the course of preparing this RIS. Hence, there must be considerable uncertainty as to the size of these effects. Nonetheless, Section 8.5.3., below, argues that even small reductions in demand would have important flow through effects on the economy as a whole.

The following section discusses the mechanisms by which these impacts occur.

8.5.2. Effects of Increased Costs of Buildings

In order to clarify the economic dynamics that will determine the longer-term impact of the regulations, the following section is presented in two parts. The first focuses specifically on the effects on new buildings versus existing (unrenovated) stock and shows the basic effects of changes in relative prices. The second section takes a further step by adding consideration of the different price impacts of the Premises Standard on new buildings and renovations/alterations.

1. *If the regulations were only to affect new buildings*

New buildings are only a small proportion of the total stock of buildings in any one year; hence their increased costs will have only a minor initial effect on overall prices.

The new buildings themselves, other than those in the pipeline at the time of the decision that increased their costs, will be priced to recover their costs. However, the more abundant existing stock of buildings necessarily limits the prices that can be charged successfully for new buildings. This inevitably means that some new buildings will not be built.

Existing buildings will see a reduced level of competition and their rental values will rise over a period (to the benefit of the owners and to the cost of renters). As the rental rise approaches the pre-regulation "steady state" new building will resume a level of activity similar to that previously experienced (albeit somewhat lower as the increased costs will have led to a small permanent reduction in commercial building demand).

All rents are likely to rise proportionately with the cost impact on new replacement buildings. For older premises that are, by definition less suitable than the newest buildings, this will incorporate a normal rental discount. Nonetheless, owners of existing buildings will benefit from a windfall gain as rentals reflect the higher costs of new buildings. For their part, building users will have permanently increased rental costs reflecting the increased building costs.

Because there are different impacts on different types of building, the pattern of outcomes will vary. If there is a substantial price-induced reduction in demand for smaller buildings incorporating lifts and other high cost modifications this could be offset somewhat by increased demand for larger buildings in which the cost of these features can be spread more widely, resulting in lower proportionate cost increases.

In addition, some required changes could considerably reduce the usefulness of certain types of buildings. For example,

- re-designing and relocating lifts will mean that the integrated marketing value of certain buildings, like department stores, is likely to be diminished;
- the requirement to re-engineer pools in hotels in order to provide access may cause some hotels to abandon these facilities with adverse impacts upon the hotels' ability to meet consumer demand; and
- construction of buildings on undulating land would make the required provision of accessible entrances difficult or even impossible in some cases. This is likely to bring costs to the building owners and result in the likely outcome of fewer entrances in general, especially in hilly areas like Sydney, which would have major impacts on the general use of streets..

Due to the prevalence of certain types of buildings, e.g. two storey offices/shops with offices, substantially raising their costs through the regulations will have a marked affect on urban geography. In turn, this will bring implications for land values, public transport and service delivery that require further analysis.

2. *Where the regulations affect existing, as well as new buildings*

The Premises Standard's requirement for access to be provided where buildings are upgraded will lead to an accelerated rate of scrapping of the building stock, since the relative price of renovated buildings will rise in relation to the price of new buildings. At the same time, existing buildings are likely to remain in use in an unrenovated state for longer. There are clearly important welfare losses involved in having buildings used in ways that are less than optimal because changing their use would trigger a need to undertake costly or space reducing renovations that bring in inadequate revenues to justify the expenditure incurred. Similarly, there are welfare losses involved in maintaining use of existing premises rather than building new, more suitable premises, the costs of which have been boosted by regulatory requirements beyond a point at which the savings are not commensurate with the additional costs.

Particularly over the medium to longer term, the higher costs of buildings (resulting from the fact that costs for both new and renovated buildings have increased) is likely to reduce the demand for building space, thus offsetting some of the rental price increases identified above and reducing the demand for new buildings. In essence, requiring new and existing buildings to meet the new regulatory requirements simultaneously will compress the timing of the cost effects that would be felt if the regulations applied only to new buildings.

8.5.3. Summarizing Economic Costs

Combining the direct and indirect costs of the proposed Premises Standard brings increased economy wide costs estimated at between $1.8 billion and $2.0 billion per annum, with the former estimate constituting the "base case" scenario and the latter the upper bound. As noted above, in the base case, the total of $1.8 billion in annual costs is comprised of $694 million in additional construction costs for new buildings, $800 in additional construction costs for buildings being renovated and extended and $312 million as the annual value of lost lettable area in renovated/extended buildings.

These matters aside, the true costs of regulatory distortions involve two facets:

- a transfer between parties, in this case revenues dedicated to specific uses that are transferred from the community in general to people with a disability; and
- distortions that the cost impost brings in terms of loss of "welfare" stemming from expenditure being diverted away from the goods and services that are taxed.

It is the second facet that is the true economic cost of a regulatory intervention. However measuring this is difficult because elasticities of demand (the response of users to higher prices) are difficult to estimate. Estimates of demand elasticities for commercial buildings could not be found, possibly because such measures are more commonly applied to consumer goods.

The economy-wide effects are often measured by general equilibrium models of the economy such as those of Monash University, Access Economics and that originally developed by the Australian Treasury (the Murphy Model). One application of such models was commissioned by the Property Council of Australia to assess the case for removing stamp duty on property transfers[39]. The report, undertaken by Access Economics found the economy-wide costs of stamp duty on conveyancing (which it modeled as a gain from reducing stamp duty) was greater than any other imposts it measured. The cost – resulting from distortions in demand and supply, and hence

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[39] Access Economics, *The Economic Case For Removing Stamp Duty on Commercial Property Transfers: A Quantitative Analysis for New South Wales and Australia*, February 2003, http://www.propertyoz.com.au/nsw/advoc/subs/Access%20Economics%20Stamp%20Duty%20Report.pdf

economic activity - of a tax on non-residential property was estimated to be twice that of a tax raising the same revenue from residential property or from gambling.

This large economy-wide effect of property taxes is due to the fact that property is fundamental to a wide range of income-generation activity. The taxes tend to bring distortions to almost all goods and services and, even when set at seemingly low levels, can have important impacts. The adverse effects of such property and investment taxes are the main reason why governments try to avoid property taxes and were a major motivation behind the GST, accompanying which was a phasing out of certain property taxes and taxes on property transactions.

This implies that the costs of the economic distortions resulting from the implementation of the Premises Standard are likely to be relatively high. It may be that these distortions will be greater in relation to private expenditures than in relation to Government expenditures, since Governments can be considered to be less cost-sensitive in some respects. However, it is apparent that governments are increasingly using buildings that are rented from the private sector, rather than commissioning purpose built buildings themselves. This suggests that the distorting effects discussed above may be substantial in both areas.

The existence of these distortions means that the adoption of the Premises Standard would have potentially important impacts on the non-disabled population. For example, while Section 7, above, has indicated that employment benefits for people with a disability would be expected to flow from the adoption of the Premises Standard, it can also be expected that there would be some offsetting employment losses among the population in general. These losses would be the result of the increase in the cost of buildings, combined with the role of buildings as a substantial productive input in a wide range of industries and the limited ability of businesses to substitute away from the use of buildings. As with any increase in the price of a productive input, one result will be a reduction in the demand for complementary inputs. To the extent that labour is a complement to buildings in productive processes, negative impacts on employment can be expected to result. As well, the increase in the price of buildings reduces real income and, as a result, reduces demand generally.

The size of these negative impacts on employment may be increased by the fact that, as noted elsewhere, the cost impacts of the proposed Premises Standard are proportionately largest in relation to smaller buildings. This suggests that small businesses will be most affected, while small businesses are generally more labour intensive than the economy wide average.

An additional likely effect of this disproportionate impact on smaller buildings is that the pattern of building is likely to change in ways that may have broader significance in a number of areas. An area of apparently large significance relates to the major incremental cost impacts identified in relation to small shops and offices. These large cost increases can be contrasted with the much smaller impacts estimated in relation to large shopping centres and office blocks. The conjunction of these observations suggests that the proposed Premises Standard could significantly reinforce the long-term shift away from local, "strip" shopping centres and toward large shopping and office mall complexes.

Such a shift could be expected to have a variety of social and economic impacts, analysis of which is beyond the scope of this RIS. However, one important potential impact of such a shift is that people with a disability would be likely to be disadvantaged by it, to the extent that such malls were less accessible to them from the point of view of transport availability. This is a potentially important area for further analysis and review.

9. Analysis of alternatives

This section considers the identification and analysis of alternatives to the proposed Premises Standard from three separate perspectives. First, it considers the question of alternatives at the micro-level. That is, it considers the issues surrounding the development of the specific provisions contained in the Premises Standard and the process of arriving at these outcomes in a comparative policy context. Second, it considers macro-level alternatives to the general policy approach of adopting a Premises Standard that is harmonised between DDA and BCA. Third, it considers the nature and likely impacts of market based means of achieving improved access to premises for people with a disability. This three part approach is necessary in order to document fully the comparative policy analysis undertaken as part of the development of the current proposal and to place the proposed Premises Standard within the broader context of possible policy initiatives to achieve its underlying objectives.

9.1. Alternatives to specific Premises Standard provisions

It is apparent that, considered at the micro-level, there is an infinite number of potential alternative formulations of the proposed Premises Standard. It is clearly not feasible to identify and assess each such combination of detailed provisions separately. Consequently, this section describes the process by which the specific technical provisions of the proposed Premises Standard were developed, in order to highlight the robust nature of this process and the fact that it was founded on comparative policy analysis of the kind that underlies the RIS process.

The development of the specific requirements for access to premises that are to be adopted in the BCA and, under the DDA as the Premises Standard, is the responsibility of an ABCB committee called the Building Access Policy Committee (BAPC). The BAPC was formed specifically to recommend changes to the BCA, to consult widely with industry and the community, and to provide advice to the ABCB on access-related issues.

The membership of the BAPC includes broad representation from the property, industry, government and disability sectors. The Committee's members are:

- A representative of the Board (Chair)
- The Executive Director of the Board
- Three representatives of the DDA Standards Project
- A representative of the Property Council of Australia
- One representative of public sector property management
- A representative of the Australian Local Government Association
- The Disability Discrimination Commissioner
- A representative of the Attorney-General's Department

- A representative of the Department of Industry, Tourism and Resources
- A representative from the design professions
- A representative of the Australian Construction Industry Forum
- A representative of the Australian Institute of Building Surveyors
- A representative of Standards Australia (observer status)

An expert Technical Working Group (TWG) was appointed by BAPC to undertake the detailed development of the technical provisions of the Premises Standard. The TWG has a membership that broadly reflects that of the BAPC. The process by which the TWG has arrived at the proposed technical provisions has been extensive and has included the identification and evaluation of options in respect of each area of regulation covered in the Premises Standard. The technical recommendations of the TWG were put to BAPC for their consideration for inclusion in the Premises Standard.

In each case, discussion has centred on issues including the nature of the evidence as to the access problem being addressed, the identification of different means of addressing these issues and the costs of so doing. Clearly, the TWG has not been in a position to conduct formal benefit/cost analysis at the level of individual access provisions. Even if resource constraints were not to have prevented such a course, the interdependence of the different access issues addressed in the Premises Standard militate against the practicality of a "clause by clause" approach to such an analysis. However, the operating methods of the TWG have been based around an appreciation of the need for a comparative policy approach and the need to consider trade-offs in an attempt to maximise efficiency and practicality.

Thus, the specific form of the currently proposed Premises Standard has been determined by the application of a comparative policy approach which seeks to weigh benefits and costs and identify the most appropriate regulatory solution, as is required by the logic of the RIS process generally. In this context, it should be noted that an RIS Steering Committee was also formed under the auspices of BAPC. Thus, the development of the Premises Standard has been integrated with the RIS development process, ensuring as far as possible that the process of developing the specific standards has been cognisant of the requirements of the RIS process as established via the CoAG *Principles and Guidelines.*

In addition to the above, the policy development process has included consideration of a broader perspective on policy alternatives. The two most feasible alternatives identified in this context are identified and discussed in the following section.

9.2. *Alternatives to adoption of a Premises Standard harmonised with the BCA*

This section identifies and assesses two specific alternatives to the proposed Premises Standard, within the context of using a codification of the DDA to achieve improved access to premises for people with a disability. These two alternatives are

to adopt the Premises Standard under the DDA without modification of the BCA to achieve harmonisation and adoption of the Premises Standard as proposed, but without the proposed changes to the referencing of AS1428 – Part 1: Design for Access and Mobility.

9.2.1. Adoption of the Premises Standard without modification of the BCA

The current regulatory proposal involves an explicit harmonisation of the requirements of the Building Code of Australia and the Disability Discrimination Act in respect of access to premises. A feasible alternative for consideration is that of adopting the proposed Premises Standard under the DDA without amending the BCA to achieve this harmonisation between the DDA and the building legislative requirements. The expected benefits and costs of this alternative are as follows:

Expected benefits of the alternative

The harmonisation process involves a number of complexities and difficulties that would be avoided under this alternative. Firstly, the DDA is Australian Government legislation, while the BCA is, in practice, State/Territory based regulation. That is, responsibility for building control rests with State and Territory Governments, which have agreed to harmonise building regulatory requirements. Specifically, they have jointly agreed to adopt the BCA in State and Territory legislation as the basic document containing technical requirements for buildings. Thus, uniformity of technical requirements for buildings is achieved, subject only to limited state-based variations.

Changes to the BCA must therefore be agreed by the Building Codes Committee, which includes representatives of the eight States and Territories. This means that any future changes to the Premises Standard would also need to be agreed by the eight States and Territories through the Committee process. Failure to obtain this agreement would imply that the harmonisation that is to be achieved between the BCA and the Premises Standard would be lost otherwise, proposed changes to the Premises Standard would not be able to proceed.

Following from this, it can be expected that the proposed harmonisation would somewhat reduce the potential degree of responsiveness of the Premises Standard over time as circumstances change and the need to make amendments arises. This is a generic cost of regulatory harmonisation processes.

Thus, the alternative of developing and maintaining the Premises Standard in isolation from the BCA can be expected to yield greater regulatory flexibility and responsiveness and thus enhance the effectiveness of the Premises Standard in ensuring access to premises over time. As well, there would necessarily be resource savings, flowing from the fact that there would be no need to negotiate and agree on harmonised technical provisions and implementation and enforcement processes under this alternative. The size of this benefit in practice is necessarily difficult to

estimate. It is likely that the Premises Standard would be amended relatively infrequently, although it is envisaged that it is to be reviewed at least five-yearly (see below). To the extent that this is so, any benefits from avoiding the need to revisit the harmonisation process will also occur infrequently. Thus, they may not loom particularly large in the longer-term sense.

A second substantive benefit associated with this alternative relates to the scope of the Premises Standard. The BCA deals only with matters relating to building "fabric", whereas the matters that could potentially be included in the Premises Standard are broader in scope. By implication, the effort to harmonise the BCA and the Premises Standard tends to work against the inclusion of these broader provisions in the Premises Standard. Thus, adoption of the alternative, with no harmonisation of the Premises Standard and the BCA, may provide greater scope for the inclusion of additional material in the Premises Standard that would more effectively codify the DDA's general duties in relation to the provision of access and so improve the effective degree of access provided. There could also be efficiency gains in this regard, since there may be instances in which a "non-building solution" would constitute the most efficient and effective means of dealing with an access issue.

It is not possible in the current context to provide any quantification of these expected benefits of the alternative. In general terms, it can be noted that the size of the resource savings and potential efficiency gains via enhanced dynamic efficiency due to non-harmonisation will be proportionate to the extent and frequency with which it is expected changes to the Premises Standard would be required over time. As noted above, there is some reason to believe that these changes would be relatively infrequent, and so this benefit of the alternative would be relatively small.

Similarly, the potential gain from the adoption of non-building solutions in the Premises Standard must rest on judgements as to the scope for their use in practice and their desirability relative to possible building solutions.

Expected costs of the alternative

The main expected costs of the alternative relate to the potential loss of certainty involved in having different requirements under the BCA and the DDA Premises Standard. The BCA is intended to constitute a single, comprehensive source of the technical requirements in relation to buildings. This role would be compromised substantially to the extent that it differed from the requirements established in the Premises Standard. Thus, building owners and building designers could not be sure of being in full compliance with the law simply by ensuring that their designs and building conformed with the BCA. Instead, they would need to be cognisant of two separately developed pieces of legislation and would, potentially, have to reconcile quite different and possibly contradictory requirements.

To this extent, the alternative could be judged as failing to address a major objective of the Premises Standard, which is to provide certainty and consistency for affected parties regarding compliance with the requirements of the DDA.

The lack of certainty and of co-ordination implied by this alternative would be likely to have the effect that the actual level of compliance achieved with the underlying DDA

duties would be lower under this alternative than would be achieved under the proposed approach.

The problems of uncertainty do not relate only to building owners and building designers. People with a disability would also be less certain as to the standards of access they would encounter in buildings as a result of the above factors.

9.2.2. Adopting the Premises Standard with equivalent BCA amendment, but without changing the referencing of AS1428-Part 1 2001.

A second potential alternative would involve adopting the proposed approach to harmonising the Premises Standard and BCA, but doing so without changing the current referencing of AS1428.1.

The current BCA references Part 1 of the 2001 edition of Australian Standard AS1428 "Design for Access and Mobility". The Australian Standard is based on 80th percentile dimensions for wheelchairs. That is, its sets out accessibility provisions based on ensuring that users of wheelchairs no larger than the 80th percentile wheelchair dimensions can navigate building elements constructed in accordance with the Australian Standard.

By contrast, the proposed Premises Standard and amended BCA would adopt the 2003 edition of the same Australian Standard. The key difference between the two editions of the standard is that the 2003 edition is based on 90th percentile wheelchair dimensions. The second feasible alternative to the proposed Premises Standard differs from the proposal only in that it would retain reference to the 2001 edition of the Australian Standard, rather than adopting the 2003 edition, with its 90th percentile dimensions.

Expected benefits and costs of the alternative

The main benefit of the alternative is that the costs that would be involved in adopting the 90th percentile dimensions in relation to new buildings and alterations to existing buildings would be avoided. By contrast, the main cost of the alternative is that users of larger wheelchairs (i.e. those with dimensions between the 80th and 90th percentiles) would not achieve the degree of enhanced access to premises that adoption of the 90th percentile dimensions would allow.

The only substantive cost item identified in respect of the adoption of the 2003 edition of the Australian Standard was the additional space requirement involved in adopting the 90th percentile dimensions. Thus, the benefit of not adopting this edition of the Australian Standard arises from cost savings in this area.

Review of the costings of the case study buildings (see matrix at Appendix C) indicates that the expected cost of implementing the 2003 edition of AS1428.1 in respect of new buildings varies from a minimum of $1,500, in respect of a 500 seat theatre, a single storey community hall or single storey holiday accommodation, to a maximum of $45,000 for a 350 room hotel. In percentage terms, this is equal to a

maximum of 1.0% of costs for the single storey holiday accommodation, and a minimum of 0.04% for a 350 room hotel. No equivalent calculations have been possible in respect of building upgrades.

No detailed estimation of the aggregate costs of the adoption of AS 1428.1 (2003) has been undertaken. However, review of the above indicative costs in relation to the total costs of implementing the Premises Standard suggests that, overall, continuing to use AS 1428.1 (2001) would reduce the costs associated with the proposed Premises Standard/revised BCA changes by around 3 – 4 per cent. Given the uncertainties noted in relation to overall costings, it may be that this is in the vicinity of $40 – 60 million per annum.

The costs of not adopting the 2003 edition are extremely difficult to calculate, due to the lack of available data on the size distribution of wheelchairs. That is, references to the 80th and 90th percentile wheelchair in this context do not relate to the number of wheelchairs in use. Rather, they relate to wheelchair designs. The consequence of this is that it is not possible to say how many wheelchair users employ wheelchairs that are larger than the 80th percentile wheelchair design. In turn, this means that it is impossible to estimate how many wheelchair users would derive significant benefits from the move from 80th to 90th percentile dimensions.

Intuitively, it seems likely that wheelchair users would be aware of this dimensional issue and that the great majority would therefore respond by choosing wheelchairs that were within the 80th percentile design dimensions. However, it is also likely that people with more severe disabilities may need to use larger wheelchairs and have no real opportunity to substitute smaller ones. If this is true, then it is people with the most severe disability who would reap the most benefit from the shift to the 90th percentile dimensions. Thus, if this option were adopted and the 90th percentile dimensions not employed, the benefits would be foregone by this group.

In addition, the 90th percentile dimensions would bring lesser benefits to wheelchair users who are currently able to navigate buildings constructed in accordance with the 80th percentile Australian Standard. For this group, the benefits foregone are those of easier and more convenient access than is currently possible, due to the increased space dimensions. A subset of this group – those whose wheelchairs are near the 80th percentile limit – may forego a substantial benefit.

Other users of mobility aids would also forego benefits if the 2003 Australian Standard were not adopted, since this group can also be expected to obtain easier access to buildings given the larger dimensions contained in the 2003 Australian Standard.

Finally, there is a substantial practical impediment to continuing to refer to the 2001 edition of AS 1428.1. This edition will shortly become a superseded version of AS1428.1 and will therefore cease to be widely available to affected parties. This implies that the ability of affected parties to inform themselves of their obligations would be compromised, as would the enforceability of the Australian Standard. Moreover, there would also be substantial potential for confusion as to the applicable standard, as many affected parties may presume that the current edition of the Australian Standard constituted the relevant requirement.

9.3. *Market based alternatives*

The two alternatives discussed above both constitute variants on the regulatory proposal of using a Premises Standard to further codify the general duties set out under the DDA. A third alternative can also be identified, which differs substantially in approach, being based on a more market based approach to ensuring access for people with a disability. It should be noted at the outset that such an approach is largely rendered infeasible by the current context of the existence of the DDA and its general access to premises provision and the need to harmonise the DDA with the building law as far as possible. For this reason, the following analysis of market based alternatives contains less detailed than that undertaken in relation to the proposed Premises Standard. However, it is considered necessary to include discussion of market based approaches in order to allow a broader appreciation of the general policy context within which the DDA and the proposed Premises Standard operate.

The argument for a market based approach was put strongly in the context of the adoption of the US Americans with Disabilities Act (ADA) which, as was noted previously, addresses many of the same issues as the DDA. An early critic of the ADA was the eminent legal scholar, Richard Epstein[40]. Epstein took the view that regulatory intervention in favour of people with a disability was misplaced and costly. He argued for:

- Allowing a true market to operate under which disabled persons would underbid the true value of their employment services as a way of offsetting their accommodation costs.
- Provision of state supplied incentives like vouchers for spreading the costs through general taxation.
- Allowing specific handicapped centres to be developed which would reduce costs.

This approach has understandably attracted considerable criticism. However, Epstein was pointing to the efficiency losses society incurs as a result of regulatory interventions and applying what has become a conventional approach to cost minimization. Many[41] have criticized Epstein because he adopts an approach which might be labelled "economic rationalist".

Epstein was however pursuing the logic of the behaviour exhibited by "economic man", whereby a cost increment forced on an employer will result in the employer taking countervailing actions to avoid the imposition of the costs. Such activities are central to business operations and the pursuit of efficiency. The need to undertake

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[40] Richard A Epstein, Forbidden ground: the case against employment discrimination laws 59 (1992)
[41] see for example Stein MA, *Labor markets, rationality and workers with disabilities*, Berkley Journal of Employment and Labor Law, Vol 21, No. 1 (2000) p314-334

profitable activities (or even to remain in business) motivates employers to seek to defray or avoid cost impositions.

Moreover, unless the costs are distributed evenly, selectively imposing a cost on some employers only will cause those employers to suffer their own discrimination. Epstein's premise is that the costs cannot be evenly spread except by the use of general taxation, since not everything can be captured within the regulatory net, and certainly not captured in a way that avoids uneven costs across different activities.

The proponents of regulatory activity point to several countervailing factors:

- Prejudice against people with a disability far exceeds any additional costs that their employment might bring and positive discrimination will reduce that prejudice to the benefit of those with disabilities and the community in general.
- There are major benefits in ensuring a comprehensive assimilation of all people within general society and avoiding ghetto-isation.
- Surveys show overwhelming support for measures that positively discriminate in favour of people with a disability. Indeed, the US ADA was passed with one of the largest majorities any such bill has achieved and passed by a Republican dominated legislature.

These arguments reflect those more generally put earlier in this RIS in discussing the objectives of the regulations. They encapsulate the tensions between the additional costs inherent in a regulatory measure and the benefits the regulation may bring.

It may reasonably be argued, in the current context, that the existence of the DDA means that the broad legislative direction for addressing these issues has already been set down. To this extent, the adoption of a more market based approach, such as that advocated by Epstein, can be considered to be outside the range of feasible alternatives to the adoption of a Premises Standard as a specific instrument under the DDA. However, the above discussion serves to indicate the broader context of policy choice within which the adoption of the Premises Standard, as well as other Access Standards under DDA must take place.

10. Conclusion; Comparing expected benefits and costs

As has been made apparent throughout this RIS, the task of comparing the benefits and costs associated with the proposed adoption of the Premises Standard and determining whether, and to what extent, there would be a net benefit associated with its adoption is a difficult one. These difficulties arise from:

- The fact that a number of important benefits cannot readily be quantified, much less expressed in dollar terms;
- The fact that there are substantial uncertainties in relation to the quantification of a number of the major cost items;
- The legislative context, which poses conceptual questions as to the extent to which the requirements of the Premises Standard create new regulatory burdens, rather than simply constituting a codification of existing legislative obligations contained in the DDA; and
- The need to give appropriate weighting to distributional considerations and the associated intangible benefits associated with the Premises Standard.

In light of these difficulties, the approach taken in this section is to draw together the discussion of benefits and costs, indicate the relative magnitude of these where possible and draw conclusions as to the likely overall impact of the proposed Premises Standard where possible. In addition, the merits of the two specific alternatives identified and analysed in Section 8.2. are discussed relative to those of the Premises Standard.

10.1. Costs summary

The costs associated with the proposed Premises Standard have clearly been shown to be substantial. They are estimated, in the base case, to add around $700 million per annum to the cost of new buildings constructed in Australia. This is a substantial impost in relative terms, amounting to around 4.6 per cent of the total construction cost of new buildings. As noted, however, these costs are highly sensitive to assumptions made in relation to lifts installed in small, two-storey office buildings. Varying the assumptions used, to allow for the adoption of stair lifts in all such offices would reduce the aggregate costs to around $370 million and the average cost increase to 2.5 per cent.

The costs in relation to alterations and additions to existing buildings may be even greater, though the uncertainties involved are still greater than with regard to new buildings. These costs are estimated in the base case to amount to $800 million, representing a 10.3 per cent increase in construction costs. In the upper bound scenario, which does not attribute any effect of the "unjustifiable hardship" exemption provisions in reducing incremental costs, this cost increase is almost $1 billion, representing a 12.3 per cent increase in the costs of alterations and additions to existing buildings. In addition, the costs associated with reductions in lettable, or

usable space in relation to renovated and upgraded buildings must be added to the above. These costs are estimated at $312 million per annum.

The above figures represent best quantitative estimates of these costs, although the methodological summary, presented in Appendix A below, indicates that a number of factors will tend to reduce the actual costs to some degree. These factors are:

- The extent to which Alternative Solutions can meet the Premises Standard requirements at lower cost than the DTS solutions used in the above estimations;
- The extent to which offsetting benefits, in terms of improved building quality for users other than the target group exist; and
- The extent to which current compliance with DDA requirements reduces the size of the compliance task consequent on the introduction of the Premises Standard[42].

In sum, the aggregate costs of the proposed Premises Standard are substantial in relation to new buildings and very substantial in relation to alterations and additions to existing buildings. Costs of this order of magnitude will only be justified if significant benefits can be identified.

It should also be noted that the proportionate cost impacts on builders and renovators of certain kinds of existing buildings will be substantially greater than these average figures. Section 7.2. identifies only two forms of new buildings that will be affected much more substantially than the average for new buildings. However, these impacts are extremely large: two storey restaurants would face cost increases estimated at 42% and two storey offices would face increases of 63%[43]). This would inevitably mean that there would be reductions in the amount of building activity in respect of these building types, with other building types being substituted. One potential impact would be to favour the construction of more suburban shopping/office "mall" complexes at the expense of traditional strip shopping/commercial centres. Such a shift could have perverse impacts in relation to access for people with a disability to the extent that such malls are more distant and less accessible to people with a disability from the transport perspective.

Section 7.3. identifies five building types in respect of which the incremental cost of the proposed Standard on upgrade activity would exceed 20%, with four cases showing incremental cost increases of more than 50% (These are lap pools (109%), two storey B&Bs (85%), small two storey offices (60% for full upgrades and 140% for partial upgrades) and small single storey shops (57%). Clearly, there would be important impacts on the pattern of building activity in respect of these building types.

Equally clearly, the cost estimates arrived at show considerable sensitivity to particular aspects of the application of the Premises Standard and that relatively

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[42] To the extent that this last factor is relevant, it must be noted that it involves a reduction in the expected benefits of the Premises Standard, as well as a reduction in its costs.
[43] Or 24.8% increase if stairlifts are used in all cases instead of normal passenger lifts.

small changes to the current draft proposals would therefore potentially change the overall cost impact considerably.

In macro-economic terms, the Premises Standard would be expected to have a negative effect on demand for new building activity and a somewhat larger negative effect on demand for renovations. Some switching of demand from building upgrade activity to new building activity could potentially offset the former effect. There would be a negative impact on the overall level of building activity (i.e. incorporating new and renovated buildings). This, in turn, can be expected to lead to indirect negative impacts on employment in the wider economy. This is the result of the fact that the price of a widely used productive input – buildings – will have increased. Such an input price increase will necessarily reduce demand for complementary inputs, which would include labour in many or most industries. Moreover, the increase in the cost of buildings reduces real income overall, thus reducing demand in general.

10.2. Benefit summary

The discussion of expected benefits has documented the specific contexts in which benefits would be expected to be obtained and discussed the importance of these benefits in qualitative terms. It has also established the disadvantage currently experienced by the intended beneficiaries of the Premises Standard, in terms of income levels, access to employment and access to leisure and social activities. Thus, it has been shown that there would be a strong distributional benefit due to the adoption of the proposed Premises Standard.

A range of other unquantifiable benefits have also been identified and discussed. These include benefits for elderly people who are not classified as having a disability but who would gain easier and more convenient access to buildings due to the implementation of the Premises Standard. Important benefits also exist for carers of people with a disability. Carers are likely to be less heavily relied upon by people with a disability due to the proposed improvements in access to premises. This will bring a range of consequent benefits including a likely increase in the currently low employment rates experienced by primary carers. As well, moving to the Premises Standard is likely to reduce substantially the transactions costs involved in using the current DDA complaints mechanism to enforce access requirements. These reductions can be considered both in relation to the existing level of use of these mechanisms and in relation to the expected future use of them if the Premises Standard were not to be adopted.

An additional factor leading the quantified benefit estimates below to tend toward under-estimating the true benefits of the Premises Standard is the continuing trend toward increases in the proportion of people with a disability in the general population. The ageing of the population and other factors means that the number of beneficiaries of the Premises Standard is likely to be substantially larger in future years than the current numbers used as the basis of the quantitative estimates below. As well, there has been no attempt to quantify the potential benefits for non-disabled groups likely to flow from the adoption of the Premises Standard. For all of these reasons, the quantitative benefit estimates should be considered as only one

part – albeit a very important one – of the total benefit that would be associated with the adoption of the Premises Standard.

Two major types of benefit have been estimated in quantitative terms. Firstly, it can be expected that the Premises Standard would have an important impact in increasing the participation in the workplace of people with mobility disabilities in particular, and to a lesser extent people with hearing and vision impairments. No reliable estimates of the size of these impacts can be gained, and limited available *ex post* data from the United States casts some doubt on the efficacy of programs such as the Premises Standard in this regard. However, given the plausible estimates compiled by Frisch, we have estimated that GDP would be increased by $150 million in the base case scenario, while Frisch's figure of $300 million per annum is adopted as the upper bound and a zero figure is used as a lower bound.

Secondly, the expected impact of the Premises Standard in reducing the additional living costs currently experienced by people with a disability has been estimated in quantitative terms. Data derived from Frisch's "willingness to pay" methodology (but using adjusted assumptions, discussed above) suggest that overall benefits of the order of at $969 million per annum may be attainable from the removal of access barriers. An upper bound value of $1,163 million is also derived, taking account of the values ascribed to risk aversion and altruistic notions. The lower bound scenario is given by Frisch's $510 million estimate.

This observation leads toward the need to consider the broader benefits of the Premises Standard – and of the other Disability Standards being developed under the DDA – as representing an integrated or holistic approach to addressing the need to ensure the integration of people with a disability into the community as far as possible. This is clearly an intangible benefit of considerable importance – a fact recognized in the establishment of very broad duties on a range of individuals – including building owners and managers – in the DDA at the time of its drafting and passage in 1992.

The current moves to codify these duties via formulation of a range of Access Standards under the DDA reflects concern that, after over a decade of operation of the Act, more must be done in order to ensure that the benefits that the Act sought to bring are actually achieved in practice.

In addition, Section 6 has indicated that the adoption of the Premises Standard is likely to yield important benefits in terms of reduced transactions costs and increased certainty and consistency for building owners and managers, people with a disability and other stakeholders. In particular, it will largely supplant the existing dispute based system of resolving individual complaints, which places a substantial onus on complainants and very often fails in translating decisions on access in particular cases into wider compliance outcomes.

10.3. Comparison of benefits and costs of the proposed Premises Standard

10.3.1. Overview

The fact that both the estimated benefits and costs of implementing the Premises Standard are extremely substantial reflects the considerable non-compliance with the general duties of the DDA that persists even after a decade of enforcement of its individual complaints mechanism. This is a fundamental piece of context for the consideration of the overall merits of the proposed Premises Standard.

The annual values of the quantifiable benefits in the different scenarios identified, are set out in Table 8 below. The Table shows that the "base case" scenario shows annual benefits of $1.1 billion. As noted above, the unquantified benefits expected to derive from the Premises Standard's adoption are also extremely significant and must be considered in addition to these quantified estimates.

Table 8: Summary of quantified benefit scenarios – annual values

	Base case	Upper bound	Lower bound
Benefits			
Increased income	$150m	$300m	$0
Reduced costs of living	$969m	$1,163m	$510m
Total	$1,119m	$1463m	$510m

Table 9, below, summarises the annual value of the quantified costs associated with the Premises Standard in the different scenarios considered. Table 9 shows that expected annual costs in the base case are equal to $1.8 billion, while in the upper bound they reach $2.0 billion and in the lower bound they are $1.5 billion.

Table 9: Summary of quantified cost scenarios – annual values

Costs	Base case	Upper bound	Lower bound
New Buildings	$694m	$694m	$376m
Renovations	$800m	$955m	$800m
Lost usable space (renovations)	$312m	$312m	$312m
Total	$1,806m	$1,961m	1,488m

However, Tables 8 and 9 compare benefits and costs in a "steady state" and do not acknowledge the fundamental issue of the different timing of the benefits and costs.

The costs identified will be incurred from year one and will remain substantially unaltered until such time as the "renovation cycle" is complete. This is a period of at least fifteen years, and probably somewhat more[44]. By contrast, few benefits will be obtained in the early years of the adoption of the Premises Standard, since only a small proportion of the *stock* of buildings will have been made accessible. Only when the renovation cycle is complete will the stock of buildings have been made substantially accessible.

The implications of this are clearly substantial in terms of the notional Net Present Value of the Premises Standard. For indicative purposes, NPVs have been calculated over a 30 year time horizon. It is assumed that the "renovation cycle" is 15 years. On this assumption, the full value of expenditures on making buildings accessible will be obtained after 15 years. Thus, after 30 years, the full value of accessibility expenditures undertaken on the last buildings to be renovated to this standard (i.e. in year 15) will have been included.

Table 10, below compares the present values of the benefits and the costs in each of the scenarios identified, based on the above assumptions.

Table 10: Present values of estimated benefits and costs – 30 year time horizon

	Base case	Upper bound	Lower bound
Benefits	$13.0bn	$14.6bn	$7.5bn
Costs	$26.3bn	$28.1bn	
Total	-$13.3bn		

The calculations in the Table are based on a real discount rate of 4 per cent – a relatively low value, but one that is consistent with current borrowing costs. The use of a short "renovation cycle" of 15 years has the effect of bringing forward the benefits, but also hastens the disappearance of the costs in relation to existing buildings. Overall, the effect of these two assumptions is probably to increase the net benefits of the Premises Standard slightly, vis-à-vis alternative feasible assumed values.

Table 10 shows that the present value of the benefits of the Premises Standard over 30 years is $13 billion in the base case, while the present value of the costs is $26.3 billion. Thus, there is a negative net present value associated with the Premises Standard of $13.3 billion. The benefit cost ratio is 0.49:1, indicating that for each dollar of costs, there are 49 cents worth of benefits. However, it must be noted that these calculations are based solely on the quantified benefits of the Premises Standard. As discussed above, there are substantial unquantified benefits also

[44] At the end of this "renovation cycle" the total costs will reduce somewhat, since existing buildings being renovated will to a substantial extent have been brought up to the same level as new buildings in terms of accessibility.

associated with the proposed Premises Standard. These benefits, while unquantified, nonetheless constitute a significant part of the overall rationale for the adoption of the Premises Standard.

Thus, the above table cannot be seen as providing a full summary of the impacts of the Premises Standard. Rather, the results presented in Table 10 suggest that, if the Premises Standard is to be regarded as having a net benefit overall, the unquantified benefits identified (in terms of greater social inclusion of people with a disability, benefits for non-disabled people and with the distributional benefits discussed), must be valued at more than $13.3 billion over 30 years, or more than $447 million per annum in current dollar terms on average over this 30 year period..

Consideration of the alternative scenarios shows that the upper bound estimate of the benefits is only marginally greater than the base case, while the lower bound is substantially smaller (i.e. $7.5bn vs $13.0bn, or 42 per cent lower). In relation to the costs, the upper bound cost estimate is $2.0 billion, or 7.6 per cent higher than the base case. This means that a "best case" scenario, combining the upper bound benefit estimate with the base case cost estimate is little different to the base case identified above (NPV of - $11.8bn vs -$13.3bn). By contrast, the "worst case" scenario, in which the lower bound benefits are combined with the upper bound costs indicates an NPV of - $20.9 billion and a benefit/cost ratio of only 0.26:1.

These comparisons of the quantified impacts of the uncertainties indicate that there are substantial risks that the impact of the Premises Standard would be considerably more negative than the base case estimate, while there is little prospect that the impact would be much higher than indicated in the base case. This is an important conclusion from the point of view of policy risk.

10.3.2. Use of discounting vs the "steady state" comparison

The use of discounting is sometimes criticized where very long term policy impacts are being considered. It is likely that some would raise this criticism in relation to the current analysis. The criticism is that the effect of applying discounting is to assign a virtually zero value to otherwise significant benefits that occur far into the future. It is beyond the scope of this RIS to discuss the theoretical issues involved in this debate. However, two points should be made in relation to this criticism. First, a quite low discount rate (of 4% real) has been applied, partly in recognition of this issue.

Second, a "steady state" comparison of quantified benefits and costs shows that there is a very slight excess of benefits over costs ($1.12 bn per annum vs $1.01 bn). Under the assumptions employed above, this situation would arise in Year 16 and thereafter. This result is based on the following assumptions:

- Base case benefits, as discussed above;
- Costs of $696 million per annum in additional construction costs for new buildings;
- No additional costs for renovations, since it is assumed that all existing buildings being renovated have already been made accessible; and

- Reduction in net lettable area for existing buildings of 4%, at an annual cost of $312 million.

The third of these assumptions is vulnerable to challenge, on the basis that the incremental costs of *extensions* to existing buildings (as distinct from renovation activity per se) are effectively being ignored and can be expected to be at least of the order of the 4.6% of costs estimated for new buildings. Thus, if 50% of renovations and extensions activity were assumed to relate to extensions, this would imply annual costs of $7.8bn x 0.5 x 0.046 = $179 million per annum in addition to the above estimate.

Regardless of this point, it can be observed that, in the "steady state" scenario as constructed above, the quantifiable benefits and the costs of the Premises Standard are broadly proportionate.

Moreover, the adoption of legislative amendments to the DDA, in the light of extensive experience with its practical implementation, indicates a clear legislative intent to codify the duties imposed by the DDA in major areas. The Premises Standard substantially represents such a codification of these existing duties.

10.4. Comparison of two specific alternative proposals contained in the Premises Standard

As noted in Section 5, the proposed Premises Standard contains alternative proposals in respect of two specific requirements: wheelchair passing and turning spaces in corridors and the use of threshold ramps. These alternative proposals have been presented in parallel because no consensus as to the preferred option was reached by the Committee responsible for developing the proposed Premises Standard. Comments are particularly sought on the preferred alternative in these two areas. The following information is provided in respect of the relative impacts on benefits and costs of the two alternatives in each case.

10.4.1. Use of threshold ramps

The second area in which two alternatives have been presented in parallel is that of the use of threshold ramps at building entries. The two alternatives presented are the retention of limited use of threshold ramps (subject to stricter limitations than at present) and the complete elimination of such ramps. These alternatives are described more fully in Section 5.3.

The baseline costings provided in this RIS have been calculated on the basis of the second option – i.e. the elimination of the use of threshold ramps. This has been done in large part because it was considered that the cost implications of the main alternative to threshold ramps – i.e. the use of door seals – was more readily quantifiable than the use of threshold ramps, since the latter can vary considerably in form and cost.

Given this, it has not been possible to quantify the implications of adopting the alternative of a continued, albeit further restricted, use of threshold ramps. This is an area in which comment on the RIS analysis, and further data, are particularly sought from stakeholders. In broad terms, it is considered that the cost implications of the two alternatives will differ by only a relatively minor amount. On the other hand, stakeholders have indicated that they believe that the benefits of moving away from the use of threshold ramps would be substantial, both in terms of convenience and safety.

10.4.2. Wheelchair passing and turning spaces

The baseline costings discussed above have been prepared on the basis of an assumption that wheelchair passing and turning spaces would be provided at intervals of 20 metres in building corridors. This is the less costly of the two alternatives put forward, with the more costly alternative being the provision of these spaces every 9 metres. Review of the case study results indicate that the additional costs involved in providing passing spaces every 9 metres would vary from zero in some cases (e.g. single storey holiday accommodation) to a (non-zero) minimum of $5,000 (2 storey school building) and a maximum of $150,000 (10,000 – 15,000 seat stadium). In percentage terms, the incremental impact of adopting the 9 metre requirement varies between 0 and 0.4 per cent in almost all cases, although it rises to as much as 2.2 per cent in respect of small two storey office buildings.

Application of the above incremental cost figures to the building activity data shows that the adoption of the 9 metre standard in preference to the 20 metre standard would result in additional construction costs totaling $33 million per annum in respect of new building activity. The impact on renovations and alterations is not able to be assessed precisely. However, given the above indications that the *proportionate* impact of such space using requirements (See Section 7.4.4.) are at least twice as great for existing buildings as for new construction, it is likely that a further $30 - $40 million of additional costs would be generated[45]. This suggests that the incremental cost of adopting the 9 metre standard in preference to the 20 metre standard could be of the order of $60 - $70 million per annum[46].

The additional benefits derived from adoption of the 9 metre requirement arise in two ways. First, where a corridor is too narrow to allow a wheelchair to turn, a wheelchair user would have a shorter distance to travel before completing a turn. Second, where two wheelchairs pass in a narrow corridor, the distance which one wheelchair user would need to reverse would be reduced from a maximum of 10 metres to a maximum of 4.5 metres. In determining the size of this benefit it should be noted that the number of wheelchair users has been estimated at 80,000, whereas the number of buildings affected by the Premises Standard would amount to some tens of thousands per annum. This suggests that the incidence of wheelchairs meeting and being unable to pass in narrow corridors would be relatively low.

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[45] That is, while the value of renovation activity is only about half that of new building activity, the proportionate increase is likely to be more than double. Therefore, the overall impact on costs in respect of renovations would be broadly similar to that experienced for new buildings.

[46] This impact would largely be felt as an additional construction cost for new buildings and as a loss of usable space for existing buildings.

10.5. *Comparison of the proposed Premises Standard and identified alternatives*

The two alternatives identified and analysed in Section 8.2. are the only discrete alternatives able to be identified that are considered feasible within the above legislative context of the DDA. The analysis of these alternatives is largely qualitative. However, it is clear that the benefits and costs would be of a broadly similar order of magnitude to those implied by the Premises Standard.

Alternative 2 is extremely similar to the current regulatory proposal and varies only in that it would continue to reference the existing (2001) edition of AS 1428.1 – the Access and Mobility standard, rather than the new 2003 edition of that Premises Standard. This would be likely to reduce the costs involved in implementing the Premises Standard by around 3 – 4 per cent, but would substantially reduce accessibility standards for large numbers of wheelchair users and others with mobility disabilities. Moreover, there are substantial practical problems associated with adopting a superseded Australian Standard.

Alternative 1 would involve adopting the proposed Premises Standard under the DDA but not undertaking any efforts to align the building regulatory structure with the DDA through amendment of the BCA. The main advantages of this approach would be that the processes involved in amending and updating the Premises Standard over time would be simpler and more flexible and that the Premises Standard could more easily incorporate matters beyond the ambit of the BCA. However, the costs of this alternative are that considerable room for uncertainty as to compliance with the DDA would persist and it is consequently likely that actual compliance levels would be lower than if the Premises Standard and the BCA were aligned.

On balance, it is considered that the proposed adoption of the Premises Standard, referencing AS 1428.1 (2003) and incorporating equivalent amendments to the BCA has net benefits that are likely to be greater than those of the two alternatives identified and analysed. In this context, it is noted that the proposed Premises Standard is consistent in its essentials with legislative measures being taken in a number of other Western countries in order to achieve greater integration of people with a disability into society generally and ensure better access to employment, cultural, social and leisure opportunities.

As noted in Section 8.1., however, it is possible to conceive of an almost infinite number of specific variations on the technical requirements of the proposed Premises Standard, either in the direction of increasing or reducing its degree of stringency. The RIS analysis necessarily provides little guidance as to the likely costs of increases in stringency. However, it does suggest the major areas in which cost savings would need to be sought if the view were taken that a reduction in stringency were required in order to better balance benefits and costs. That is, consideration of the areas of highest cost (relatively and in aggregate terms) is necessarily the

starting point for the design of variants to the Premises Standard with different stringency levels. As indicated in Section 7.4., the main areas for consideration would be likely to involve:

- A focus on reducing the effects on renovations and alterations, via either partial or total exemption from the requirements;
- Provision of either partial or total exemptions for smaller buildings, particularly focussing in individual high cost items such as lift installation; or
- Differentiation of the requirements for different building use types in order to better balance benefits and costs in specific contexts.

11. Statement of compliance with National Competition Policy

The National Competition Policy Agreements set out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

> *The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:*
>
> *(a) The benefits of the restriction to the community as a whole outweigh the costs; and*
>
> *(b) The objectives of the regulation can only be achieved by restricting competition.*

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

> *Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).*[47]

Therefore, all RIS must include a section providing evidence that the proposed regulatory instrument is consistent with these National Competition Policy obligations.

As noted above, the Productivity Commission is currently undertaking a National Competition Policy review of the DDA as a whole. The competition policy assessment included in the current RIS evidently cannot take the PC work in this area into account. Rather, it focuses specifically on whether the introduction of the proposed Premises Standard would have additional implications for competition, vis-à-vis the situation that currently exists in relation to the DDA.

One arguable impact of the proposed Premises Standard in relation to competition is that, by increasing the construction cost of new buildings, they provide a degree of competitive advantage to existing buildings (which are not captured by the requirements unless they are being upgraded). However, the size of this impact is relatively small, as indicated by the percentage cost estimates provided above, while the objectives of the regulation, insofar as they relate to the need to codify the existing DDA duties and achieve consistency between the DDA and the building law, cannot be achieved in any other manner which does not restrict competition. Moreover, this RIS argues that there is a net public benefit associated with the proposed Premises Standard, provided intangible as well as tangible impacts are properly weighed. Crucially, the proposed Premises Standard would have no

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[47] *Competition Principles Agreement*, Clause 5. 1995. See: www.ncc.gov.au

adverse impact on competition within the building industry as a whole, although it would, necessarily, affect the relative prices of different building types. Therefore, the proposed Premises Standard is considered to be fully compliant with the National Competition Policy.

Appendix A: Description of RIS Costing Methodology

In determining standards, the BCA incorporates a hierarchy of regulatory provisions, commencing with an explicit statement of objectives and then becoming increasingly specific in terms of the implementation of that objective in practice. A set of detailed, prescriptive DTS requirements is provided at the base of this hierarchy, with the purpose of providing certainty that designs that conform to these provisions will conform with the regulatory requirements. This overall approach reflects the fact that widely recognised regulatory best practice is to specify performance standards which allow those who must comply with regulation maximum flexibility in meeting the underlying regulatory standard. A particular benefit of performance based regulation is that it does not lock in a particular means of meeting a standard when technology and accepted practice may offer lower cost or more appropriate approaches in the future.

The use of DTS provisions reflects the need in many regulatory contexts to provide clear guidance as to specific actions that would be held to satisfy the performance standards. Such guidance assists in allowing regulatory certainty to be maintained, by eliminating the need for small business and other groups with relatively limited resources, in particular, to interpret the performance standards in order to determine the specific regulatory compliance requirements that apply to them.

In this context, compliance with the DTS specification represents, by definition, the upper bound limit of the range of possible compliance costs attached to the performance based regulatory standard. This is because those who must comply remain free to offer an alternative approach if this is less expensive in their particular circumstances.

The DTS provisions of the BCA – which are also contained in the Premises Standard – necessarily forms the basis of the cost analysis to be undertaken for this proposal. This is a normal practice in estimating the costs of performance based regulation, since the DTS provisions provide the only detailed basis on which to construct cost estimates. While other options may offer lower costs in particular cases, these different means of complying cannot be inferred in advance of the adoption of the regulations.

Thus, it must be noted at the outset that the cost estimates made, based on the DTS requirements, will necessarily tend to be over-estimates of the true costs that will be incurred, to some degree. The extent of any such over-estimation in practice is determined by the frequency with which alternative, less costly, solutions are developed to reach compliance with the performance requirements.

In employing this approach, the costs are treated as non-compensable. That is, no offsetting (economic) gains are allocated to them. This is a necessary simplifying assumption. Although the gains would not measure up to the builder-customer's estimate of the costs (or regulation would normally be unnecessary) some gains to parties other than people with a disability can be expected to result from implementation of the Premises Standard. These would derive from better design,

improved flow, better facilities for people with children or those with only a slight disability and so on. These gains are not quantified in the RIS.

A third assumption is that buildings are currently built only to the standard required by the BCA. That is, it is assumed that building designers are not varying their designs to take account of the general DDA obligations that already exist in respect of access to premises, other than where the BCA creates specific requirements. Again, this is a necessary simplifying assumption, given that adequate information on the extent to which buildings are already incorporating higher standards of access is not available.

Again, the effect of this simplifying assumption will be to over-estimate the costs of compliance with the Premises Standard to some degree. This will occur to the degree that the standards are simply codifying existing practice. There is an increased likelihood of this to the degree that the industry regards the current non-specific requirements under the DDA as standards to be met[48]. Clearly, some facilities are abiding by a higher standard in some areas, e.g. "wheelchair" friendliness, and promoting themselves as such for commercial and other reasons.

However, discussions with property industry stakeholders have not supported the notion that there is currently a widespread "voluntary" adoption of the higher standards where significant cost penalties are involved. They argue that commercially the case for doing so is weak in view of the small percentage of people with a disability needing the services provided in exchange for these additional costs. If this view accurately represents existing practice, the extent of any over-estimation of the costs of the Premises Standard resulting from this simplifying assumption will be small.

Use of Case Studies to Illuminate Cost Implications

Accurately modelling the specific impacts of the Premises Standard would require an almost infinite number of permutations to be costed. As this is clearly infeasible, the approach taken to cost estimation has been developed based on necessarily stylised "standard buildings", for which the costs of applying the Premises Standard are estimated. The task involved identifying "case studies" in respect of both new and altered/refurbished buildings. The development of case studies was undertaken by the RIS Steering Committee appointed by the Building Access Policy Committee. A total of 46 case studies were developed. These case studies were then reviewed by the RIS consultants and, in particular, the expert quantity surveyors included on the team[49] to ensure that they were appropriate and representative of building activity overall.

For new buildings, twenty different case studies were identified. These were designed to offer insights into the most common types of buildings and also to assess

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[48] Similarly, such existing compliance will tend to reduce the potential benefits associated with the adoption of the Premises Standard.

[49] The Rawlinsons Group: In particular, Mr Steven O'Neill and Mr Ian Jamieson

cost for some buildings that are infrequently erected but which might provide particular problems and thereby enrich the study.

The new buildings included: (BCA Classification in brackets)

- holiday accommodation – single storey (1b)
- accommodation – no lift – 3 storey (2)
- accommodation – with lift – 7 storey (2)
- hotel/motel – no lift – 2 storey (3)
- hotel – with lift – 3+ storey 200 room (3)
- hotel – with lifts – 3+ storey 350 room (3)
- office – dwelling size – 2 storey (5)
- office – 7 storey (5)
- office – (av. floor plate of 900m^2) 20 storey (5)
- shopping centre – large horizontal spread (6)
- restaurant(s) – 2 storey (6)
- carpark – 7 storey (7a)
- storage / warehouse – 2 storey (7b)
- lab / factory – 500m2 – Single storey (8)
- hospital building – 3 storey (9a)
- theatre – 500 seat (9b)
- theatre – 1200 seat (9b)
- school building – 2 storey (9b)
- community hall – Single storey (9b)
- stadium – 10 000-15 000 seat (9b)

For existing buildings the assessment involved estimation of the costs associated with 18 "full" and 8 "partial" upgrades. Where a building is undergoing upgrades involving in excess of 50% of its current total floor area over any three year period, it triggers a requirement under BCA to upgrade the whole building. This is a "full" upgrade. Thus, the case studies used in relation to "partial" upgrades have necessarily been limited to representative upgrades below this regulatory "trigger". By contrast, upgrade activity that would 'typically exceed' the 50% over 3 year rule have been included in the "full upgrade" case studies.

The case studies therefore comprised: (BCA classification in brackets)

- Full Upgrade
  - holiday accommodation – Single storey (1b)
  - Bed and breakfast - 2 storey (1b)

- hotel / motel – no lift – 2 storey (3)
- hotel – with lift – 3+ storey 200 room (3)
- hotel – with lifts – 3+ storey 350 room (3)
- office – dwelling size – 2 storey (5)
- office – 7 storey (5)
- office (av. floor plate of 900m^2) – 20 storey (5)
- shop – small single storey (6)
- shopping centre – large horizontal spread (6)
- restaurant(s) – 2 storey (6)
- theatre – 500 seat (9b)
- theatre – 1200 seat (9b)
- school building – 2 storey (9b)
- community hall – Single storey (9b)
- 10m lap pool (10b)
- 50m swimming pool - 6 lane (10b)
- Spa pool (10b)

- Partial Upgrade
  - accommodation – no lift (common areas) – 3 storey (2)
  - accommodation – with lift (common areas) – 7 storey (2)
  - office – dwelling size (half one floor) – 2 storey (5)
  - office (one floor) – 7 storey (5)
  - office (av. floor plate of 900m2) (three floors) – 20 storey (5)
  - hospital building – 3 storey (10% floor area) (9a)
  - shopping centre – large horizontal spread (10% floor area) (9b)
  - stadium – 40 000 seat (10% floor area) (9b)

Estimating costs for each case study

The analysis of the cost impacts of each case study comprised three steps. First, the requirements of the Premises Standard with respect to the specific building type set out in the case study were determined and compared with the current BCA requirements. Where no specific BCA requirements could be identified, standard industry practice was used as a baseline. Comparison of the Premises Standard and the existing requirements yielded a list of specific additional requirements in each case.

The second step involved determining the cost of each of these additional requirements. This was done with reference to standard construction cost manuals[50] and, where required, was estimated via the expert knowledge of the quantity surveyors involved in the project. Standard construction cost estimates for Melbourne were used as the basis for estimation. The estimated value of each of the major cost items is reproduced in Appendix B.

Third, the cost of each of the individual requirements for each case study was summed to obtain the aggregate cost estimate for that case study. Additional details on the methodology applied in costing the case studies are contained in Appendix B. In particular, it should be noted that the analysis assumes existing buildings being upgraded comply with current BCA requirements.

Finally, an indicative construction cost for each of the case study buildings has been estimated. This allows the cost of applying the Premises Standard to be expressed in proportionate terms in each case. That is, a percentage cost increase associated with applying the Premises Standard is provided for each case study. The purpose of this step is twofold. First, it provides an improved indication of the relative importance of the costs incurred. Second, it provides the basis on which aggregate cost estimates are derived, as discussed below.

Obtaining Data on Economy-Wide Building Costs

Estimation of the economy wide costs of adopting the Premises Standard is rendered difficult by data inadequacies. In particular, the official ABS building activity data includes only broad categories of building type that do not conform closely with the BCA building classifications or the matrix of case studies discussed above. The ABS data divides building activity into the following categories[51]:

- Other non-residential (ie flats and apartments)
- Hotels, Motels,
- Shops,
- Factories
- Offices
- Other business premises
- Educational
- Religious
- Health
- Entertainment and Recreational

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[50] See *Rawlinsons Australian Construction Handbook* - edition 21, 2003

[51] Note – domestic building, which comprises Class 1 buildings (houses) is excluded here.

- Miscellaneous

It is clear that a potentially vast diversity of buildings would be found within each of these categories, particularly with respect to the size and the number of storeys of the buildings.

Given these data issues, the ABS data was supplemented by analysis of equivalent, but more detailed data provided by the Victorian Building Commission (VBC). It is possible to use the VBC data to gain some insights into the relative significance of some of the sub-categories and to assist in providing a more reliable estimate of the economy-wide effect of the regulations. However there were limits to the extent to which ABS data could be assigned to the more analytically useful VBC classes. There was also considerably greater difficulty in developing a concordance between the different sub-classes of buildings developed for costing purposes and the official data on building costs.

Given these factors, there is necessarily a substantial degree of imprecision in the aggregate (economy-wide) estimates contained in the RIS.

Appendix B: Cost estimates – individual building upgrade items

General Notes

(1) The costs are based on an assessment of the impact of moving from the minimum requirements of the existing BCA 1996 to those of the Draft Premises Standard March 2003.

(2) The costs adopted are based on current construction costs for the Melbourne area. Costings are generally drawn from *Rawlinsons Australian Construction Handbook* (Edition 21, 2003).

(3) Costs do not generally allow for cases in which current building design makes allowances for the Disability Discrimination Act. To the extent that such allowance is currently made, this will tend to reduce the incremental costs of adopting the Premises Standard, while also reducing the benefits.

(4) Costs for new buildings include allowance for the cost of net increased building areas to provide required additional floor space for turning and passing spaces, accessible sanitary facilities, wheelchair seating spaces and the like. However, the required space could potentially be provided without additional building area requirements, through adoption of more efficient building design.

(5) For upgrade case studies, it has been assumed that it would generally be impractical to build such additional floor space. The requirements would instead be provided by alterations to internal wall layouts and would incur some loss of lettable area.

(6) Major specific assumptions employed in generating the cost estimates are set out below. Where the use of these necessary assumptions is likely to under- or over-estimate costs systematically, the direction of these biases (and their likely importance) is indicated in parentheses.

Assumptions

- Buildings to be upgraded generally comply with current BCA requirements. *[This assumption will somewhat under-estimate costs, since there will be larger upgrade costs in cases where existing buildings do not comply with current BCA.]*
- The required accessible sole-occupancy units in 2-storey hotel/motel buildings could be provided on the ground level, as representative of the standard unit in the building. *[This is likely to be accurate and will not introduce any clear bias].*
- Large shopping centres would not be affected by lift or circulation requirements, as such features would normally be provided. *[This will slightly under-estimate costs, since the specific requirements may in some cases involve layout changes that would adversely affect marketing and passenger traffic flows and be reflected in less value and consequently lower potential rentals.]*
- New carpark building would not be affected by accessible carspace dimension increases – the building may be the same size but with less spaces. It is assumed that additional parking spaces would not generally be constructed as part of building upgrades - larger accessible spaces would be provided by

linemarking only (the potential loss of total spaces is not addressed). *[This slightly underestimates the costs since there will be some minor aggregate net loss in car parking spaces].*

- Class 10b costs relate to swimming pool only and exclude related buildings or enclosures. *[This could be a considerable underestimate since pools are often located in difficult-to-access areas or levels. One outcome may be the elimination of pools in some hotels with consequent but unquantifiable reductions in the attraction of the hotels, room charges and possibly on the tourist trade].*
- The cost of provision of additional wheelchair seating spaces in Class 9b buildings is based on additional floor area only and that access to such spaces would be able to be provided at no additional cost. *[This is an underestimate since the access is not readily able to be accommodated in all cases].*
- Extension of hearing augmentation to large stadia is based on a simple extension of a radio transmission system. *[This could under-estimate costs, as it could be impractical or prohibitive to implement the requirements in this way if FM licence and similar costs are relevant. However, we did not receive evidence to suggest the costs would be substantial].*

Exclusions

- Impact of extreme site conditions such as level changes. *[Some such changes would be very difficult to accommodate and might entail a significant adverse impact on the whole development and on adjacent property values. Such concerns are especially evident in hilly areas of CBDs where the provision of increased entrances suitable for persons with a disability could be impracticable and the attempt to do so (or the alternative of closing off existing entrances to remove the need to have additional facilities) can adversely effect circulation within the area, thereby reducing its value.]*
- Loss of lettable floor space/rent, carparking spaces, number of tables in restaurants or seats in theatres and the like as noted in point 3 above. *[The costs for the less conventional buildings, especially restaurants could be considerable but are not estimable on an 'average' basis.]*
- Increased lift dimensions for upgraded buildings. *[These are not costed due to the significant variance in costs and impact on the total structure of many buildings. The potential costs could range from $50,000 for a simple lift car replacement and equipment upgrade to several hundred thousand dollars for lift shaft reconstruction. Related structural alteration work may not be possible in some high rise buildings.]*
- Links between buildings (all case studies have been treated as single buildings), *[Clearly, such links where they exist would involve some additional costs and may not be feasible in some circumstances.]*
- Regional costs. *[We have no information to suggest that Australia-wide costs diverge substantially from the Melbourne-based costs used in the estimations contained in the RIS. Nor is there any information to suggest particularly substantial cost variations in any specific regional centre(s).]*
- Design and documentation fees. *[These costs are implicitly included within aggregate costs.]*

- GST. *[This is a transfer, rather than an economic cost.]*

STANDARD RATES ADOPTED FOR CASE STUDIES

Item	*$ / EACH*
Accessway Requirements - Ramps	
Typical Ramps to entries, including landings, kerbs, handrails and tactile paving (Base rates):	
Ramps to Class 1b (new)	$2,000
Ramps to Class 1b (upgrade)	$3,300
Ramps to Class 2 (new)	$10,000
Ramps to Class 2 (upgrade)	$12,000
Ramps to Class 3 (new)	$4,000
Ramps to Class 3 (upgrade)	$12,000
Ramps to Class 5,6,7b,8 (new)	$5,000
Ramps to Class 5,6,7b,8 (upgrade)	$7,500
Note: Ramps are costed at $2,000 per linear metre. Differences between buildings reflect different judgements as to the length of ramps likely to be needed. Class 2 buildings are assumed to require ramps from underground parking facilities.	
Accessway Requirements - General	
Doorway widths - extra over cost of standard door for wider door leaf and frame on accessways (new building)	$100
Doorway widths - remove standard door and replace with wider door leaf and frame on accessways (upgrade - class 1b)	$900
Doorway widths - remove standard door and replace with wider door leaf and frame on accessways (upgrade - class 3)	$1,500
Doorway widths - remove standard door and replace with wider door leaf and frame on accessways (upgrade - class 5,6,7b,8)	$1,250
Provision of door seals for threshold ramps - new build	$400

Provision of door seals for threshold ramps - upgrade existing	$475
Accessible entrances (average)	$4,500
Markings to full height glazing on accessways (per accessway per floor)	$400
Allowance for additional 2 m2 (average) circulation area per passing / turning space	$3,200
Tactile directional signs	$200
Accessible sanitary facilities	
Extra Over Standard bathroom / toilet:	
Accessible sanitary facilities to class 1b - new build (including provision of additional floor space)	$4,500
Accessible sanitary facilities to class 1b - upgrade	$6,500
Accessible sanitary facilities to class 2 common areas and class 3,5,6,7b,8 - new build (including provision of additional floor space)	$5,500
Accessible sanitary facilities to class 3 - upgrade	$8,500
Full cost, including structure, finishes, services, fixtures and fittings	
Additional accessible sanitary facility - new build	$14,000
Additional accessible sanitary facility with shower - new build	$18,500
Full cost, including alterations, finishes, services, fixtures and fittings	
Additional accessible sanitary facility - upgrade	$8,000
Additional accessible sanitary facility with shower - upgrade	$11,500
Extra Over Standard Sanitary Compartment:	
Extra for sanitary compartments suitable for ambulant disabilities - new build (including provision of additional floor space)	$2,500
Extra for sanitary compartments suitable for ambulant disabilities - upgrade (excluding provision of additional floor space)	$1,500

STANDARD RATES ADOPTED FOR CASE STUDIES (Cont'd)

Wheelchair seating spaces in auditoria	
Allowance for additional floor area requirement per seat	$2,000
Lifts	
Extra over standard lift for accessibility features	$12,000
Retrofit accessibility features to existing lift	$16,000
AS 1428.1	
Allowance for additional space requirements (per location)	$1,500

Appendix C: Matrix of Building Case Studies

[Here add the Matrix – which is an Excel Spreadsheet at present]

Appendix D:

PUBLIC COMMENT PROCESS

PUBLIC COMMENT

While not a requirement it is preferred that anyone wishing to provide comments does so using the following response forms.

CLOSING DATE FOR COMMENTS: 30 April, 2004

For further information on the draft RIS Summary, please contact:

Deborah Fleming
Project Manager
Australian Building Codes Board
PO Box 9839
Canberra ACT 2601

Ph: (02) 6213 6346
Fax (02) 6213 7287
Email: Deborah.Fleming@abcb.gov.au

ACCESS RIS
To: Ms Deborah Fleming
Australian Building Codes Board

Name: ..... Date: .....

Organisation: .....

Address: .....

.....

.....

Email:.....

Telephone No: ..... Fax No:.....

Respondents are asked, where possible, to comment on the text proposed for specific elements rather than making general comments on the complete package; general comments can be difficult to assess. Clause or sub-clause numbers should be referred to and comment restricted to whether the proposal is not supported or may be supported with changes, whether some situations are not adequately covered or whether there are unforseen undesirable implications. A "no comment" on a clause will be taken as support. It would be useful if respondents would also substantiate cost-related comments with costing data.

Together with this response sheet, please find attached (on the following pages), a response sheet to insert comments.

Please fax responses to (02) 6213 7287, or e-mail to Deborah.Fleming@abcb.gov.au or mail to the following address.

Regulation Impact Statement
Australian Building Codes Board
GPO Box 9839
CANBERRA ACT 2601

CLOSING DATE FOR COMMENTS: 30 April, 2004

ACCESS RIS

Your response to the following questions will assist the ABCB in its deliberation over the draft access provisions proposed for inclusion in the Premises Standards and revised BCA. Please provide supportive information with your responses where appropriate.

Question 1: Cost Benefit Analysis of Regulatory Impact Statement

(a) Do you believe that the discussion on the expected benefits in Section 7, as an outcome to the proposed Premises Standard and amendments to the BCA Access Provisions, encompasses the full scope of considerations?

(b) Do you believe that the discussion on the expected benefits in Section 7 is accurate?

(c) Do you believe that the discussion on the expected costs in Section 8, as an outcome to the proposed Premises Standard and amendments to the BCA Access Provisions, encompasses the full scope of building considerations?

(d) Do you believe that the cost analysis results for the cost of construction on Section 8 are accurate?

(e) Do you believe that, given the methodology and cost benefit analysis in Section 7 and 8, that the conclusion discussed in Section 10 is reasonable?

Question 2: Provision of accessible sanitary facilities

(a) Do you believe the proposed changes in relation to accessible sanitary facilities provide benefits commensurate with the anticipated costs (Section 7.4)?

Question 3: How substantial are the benefits of providing access to small two-storey buildings?

Section 8.2 shows that the cost of providing access to the upper storey of small two-storey buildings represents the largest single cost of the proposed Premises Standard in relation to new buildings. Section 8.3 shows that the situation is similar in relation the Standard's impact in relation to alterations and additions. In this context,

(a) What do you believe would be the benefits that would be obtained by people with a disability due to the provision of such access?

(b) *Is the provision of access in these contexts, which is at a very high cost that will in many cases be paid by small business, the most effective means of ensuring the maximum feasible level of improvement in access?*

Question 4: Estimating the impacts of the Standard on lettable area

Section 8.4.4 provides estimates of the impact of the proposed Standard on lettable areas for new buildings and alterations to existing buildings.

(a) *Given the caveats noted, do these estimates appear reasonable?*

(b) *To what extent, if at all, are design changes likely to be used to reduce lost lettable area?*

(c) *How successful are such attempts likely to be in practice?*

(d) *Would there be any substantial negative impacts associated with such "design solutions"?*

Question 5: What is the likely impact on demand of the price changes estimated?

Do you believe, as discussed in Section 8.5.1, that the demand for commercial buildings will decrease – either in the aggregate or in particular sectors or relating to particular building types?

Question 6: What would be the likely effect on strip shopping centres?

Section 10.1 discusses the potential impact on strip shopping in this context.

(a) *Do you believe there would be a significant shift away from strip shopping as a result of the application of the proposed Premises Standard?*

(b) *What are the likely implications for people with a disability any shift?*

(c) *Do you believe there will be impacts due to any shift for other groups?*

Question 7: Cost impacts on existing buildings

(a) *Do the overall estimates of the likely cost impacts on existing buildings in Tables 5 and 6 on page 56 appear reasonable?*

(b) *What is the likely effect of the "unjustifiable hardship" provision in practice?*

(c) *Are the benefits achieved in terms of improved access to renovated buildings likely to be commensurate with costs incurred by application of the proposed Premises Standard?*

ACCESS RIS

COMMENTS / PROPOSED CHANGES / RESPONSES TO QUESTIONS

1. Please include a reference to the clause / questions to which the comments apply.
2. If appropriate, indicate whether you agree or disagree with the proposed clause/s.

ACCESS RIS

COMMENTS / PROPOSED CHANGES / RESPONSES TO QUESTIONS