



Australian
Human Rights
Commission
everyone, everywhere, everyday

Submission No 57

RECEIVEDSM
13 MAR 2009
BY: LACA

Inquiry into the draft Disability (Access to Premises - Buildings) Standards

.....

Australian Human Rights Commission Submission
to the House of Representatives Standing
Committee on Legal and Constitutional Affairs

[March 2009]

Table of Contents

1	Introduction	4
2	Summary	4
3	Recommendations.....	4
4	Background.....	7
4.1	<i>Operation of the Disability Discrimination Act (DDA) in relation to building access</i>	7
4.2	<i>Activities of the Commission to promote understanding and compliance with the DDA by the building industry.....</i>	9
4.3	<i>The Building Code of Australia.....</i>	10
4.4	<i>Inconsistencies between the DDA and the BCA.....</i>	11
5	Premises Standards	11
5.1	<i>Power to develop a Disability Standard in the area of access to premises.....</i>	11
5.2	<i>Effect of a Disability Standard.....</i>	12
5.3	<i>Scope of the Premises Standards</i>	12
5.4	<i>Consistency between the Premises Standards and the BCA access provisions</i>	13
5.5	<i>Benefits of Premises Standards</i>	13
5.6	<i>Commission's role in the development of the draft Premises Standards</i>	14
5.7	<i>Committee negotiations.....</i>	14
5.8	<i>Premises Standards and consistency with existing rights under the DDA</i>	15
5.9	<i>Regulation Impact Statement (RIS) and benefits of the Premises Standards.....</i>	17
(a)	<i>Unquantifiable benefits</i>	19
(b)	<i>Codification of existing requirements and overstatement of attributable costs</i>	21
(c)	<i>Cost reduction arising from Alternative Solutions and good design.....</i>	23
6	Comments on the content of the draft Premises Standards.....	24
6.1	<i>Issues requiring further consideration.....</i>	24
(a)	<i>Access features on stairways caught by concessions and exemptions aimed at access for people using wheelchairs.....</i>	24
(b)	<i>Use of stairway platform lifts and independent operability of lifts.....</i>	25
(c)	<i>Concessions in relation to swimming pool access.....</i>	26
(d)	<i>Class 1b buildings.....</i>	26
(e)	<i>Concession for lessees as building applicants.....</i>	28
(f)	<i>Concession in relation to unisex accessible toilets on levels where there is more than one block of toilets.....</i>	28
(g)	<i>Australian Standards</i>	29
(h)	<i>Review of Premises Standards.....</i>	30
6.2	<i>Issues requiring inclusion in the Premises Standards</i>	32
(a)	<i>Class 2 buildings.....</i>	32
(i)	<i>Application of DDA to common areas.....</i>	33
(ii)	<i>Current initiatives that involve common area access</i>	35

(b)	Visual emergency egress alarms.....	37
6.3	Questions of interpretation	38
(a)	Wayfinding.....	38
(b)	Effect of concessions and exemptions in the Premises Standards on complaints in relation to existing buildings.....	40
6.4	Issues not addressed in the draft Premises Standards but which require ongoing work.....	41
(a)	Emergency egress.....	41
(b)	Fitout of buildings.....	41
7	The Administrative Protocol	41
8	Appendix	43
8.1	The Good, the bad and the ugly http://humanrights.gov.au/disability_rights/buildings/good.htm.....	43
8.2	Photo essay	43

1 Introduction

1. The Australian Human Rights Commission (the Commission) makes this submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs on its Inquiry into the draft Disability (Access to Premises - Buildings) Standards.

2 Summary

2. The draft Premises Standards provide Australia with an important opportunity to address the systematic exclusion of people with a disability from equal participation in the social, cultural, economic and political life of our community.
3. In addressing the longstanding responsibilities of the building industry under the DDA (and State and Territory discrimination laws) to not act unlawfully we will also ensure the built environment is more accessible for families, employees, tourists and our growing older population.
4. Adoption of the Premises Standards will enhance Australia's commitment to the progressive realisation of its responsibilities under the recently ratified UN Convention on the Rights of People with Disabilities.
5. Its adoption, and subsequent changes to the access provisions of the BCA, will also address current inconsistencies and regulatory duplication in the area of building design and construction and put Australia in a unique international position as a country acting to harmonise regulatory demands on industry.
6. While this submission identifies some areas where improvements in the draft need to be considered overall the Commission believes that the benefits associated with the Premises Standards warrant a speedy conclusion of this project.

3 Recommendations

7. The Commission recommends the following:
8. Recommendation 1: That the Premises Standards should be finalised and proceed through the Parliamentary process at the next available opportunity.
9. Recommendation 2: That the Committee take into account that, like the Building Code of Australia and its referenced Australian Standards, the Premises Standards will be an evolving document. As questions of interpretation and effectiveness arise during its application, opportunities will exist for review of its content at the required review after 5 years.
10. Recommendation 3: Issues raised by any submission during the inquiry that the Committee believes require further development should be referred to appropriate bodies for further consideration. If these issues, however, cannot be easily and quickly resolved within a defined timeline they should be noted and addressed as part of the required 5 year review.

11. Recommendation 4: That the Committee take into account
 - that the RIS has an important, but limited role to play in assessing whether or not the proposed Premises Standards is the most effective way of codifying current obligations under the DDA and assuring no sectoral imbalance in its application.
 - that the RIS acknowledged the existence of significant non-quantifiable benefits arising from the adoption of the Premises Standards and that there would be opportunities for improvements to the Premises Standards without such improvements resulting in a negative cost/benefit.
 - that other factors such as Australia's commitment to international human rights instruments and in particular the UN Convention on the Rights of People with Disabilities should be considered as part of the decision making process.
12. Recommendation 5: That access features (such as tactile ground surface indicators (tgsi), luminance contrast on stair nosings or handrails) be required on stairways in areas where concessions exist in relation to requirements for wheelchair access.
13. Recommendation 6: That further independent expert advice be sought on the need for constant pressure devices on Part 7 lifts and any conflicts with safety requirements that might affect the independent operability of stairway platform lifts.
14. Recommendation 7: That further independent expert advice be sought on the practice of 'locking off' Part 7 lifts and that the Premises Standards and Guidelines be revised to clarify liability of managers and operators taking that action.
15. Recommendation 8: That the concession that access is not required in swimming pools with a perimeter less than 40 metres be reviewed.
16. Recommendation 9: That the issue of access to Class 1b holiday accommodation be reviewed to provide greater certainty.
17. Recommendation 10: That a distinction be made between Class 1b accommodation within existing buildings and purpose built new accommodation in terms of the concession provided.
18. Recommendation 11: That in the case of Class 1b accommodation provided in new, purpose built buildings such as cabins in caravan parks or Eco-retreat type accommodation the requirement for access be on a scale similar to that required in relation to SOU's in Class 3 buildings.
19. Recommendation 12: That in the case of Class 1b accommodation such as Bed and Breakfast or Farmstay operating out of existing buildings the trigger for access requirements be 3 or more rooms.

20. Recommendation 13: That concessions provided in relation to lessees making applications for building work on existing buildings be specifically identified as an area for assessment at the 5 year review of the Premises Standards.
21. Recommendation 14: That a 50 metre distance travelled limit be included in the concession in relation to the availability of unisex accessible toilets on levels where there is more than one set of toilet blocks.
22. Recommendation 15: That criteria for the review of the Premises Standards be established prior to the adoption of the Premises Standards.
23. Recommendation 16: That data relevant to measuring the effectiveness of implementation of the Premises Standards and of the recommendations of Access Panels be collected throughout the first five-year period so that the review can be fully informed and consider what changes to access have occurred in the five-year period.
24. Recommendation 17: That the review of the Premises Standard be completed by the fifth anniversary of its adoption.
25. Recommendation 18: That the original proposals in the 2004 draft Premises Standards in relation to access to the common areas of Class 2 buildings (apartment blocks) be included in the final Premises Standards.
26. Recommendation 19: That the issue of classification of Class 2 buildings being used primarily as short term serviced apartments be referred to the ABCB for consideration.
27. Recommendation 20: That a requirement for visual emergency egress alarms be included in the final Premises Standards.
28. Recommendation 21: That complaints in relation to wayfinding issues (other than those covered by the Signage provisions of the draft Premises Standards) should continue to be covered by the normal complaints provisions of the DDA subject to unjustifiable hardship defences.
29. Recommendation 22: That a suitable mechanism be established, involving representatives from all major stakeholders, to review the wayfinding research and develop recommendations on the most appropriate way of achieving improvements in this area.
30. Recommendation 23: That complaints in relation to existing buildings not undergoing any new work, and therefore not triggering the application of the Premises Standards, should continue to be subject to the current complaints provisions of the DDA and be dealt with on merit, rather than with reference to the concessions within the Premises Standards.
31. Recommendation 24: That a suitable mechanism be established, involving representatives from all major stakeholders, to review emergency egress requirements for people with a disability with a view to introducing appropriate deemed-to-satisfy provisions in a revised Premises Standards as soon as possible.

32. Recommendation 25: That a suitable mechanism be established, involving representatives from all major stakeholders, to develop recommendations in relation to fitout issues including recommendations on the most appropriate way of achieving improvements in this area.

4 Background

4.1 Operation of the Disability Discrimination Act (DDA) in relation to building access

33. The *Disability Discrimination Act 1992* (DDA) is a Federal law which makes discrimination against a person with a disability because of their disability unlawful.
34. The objectives of the DDA include eliminating, as far as possible, discrimination against people with a disability because of their disability,¹ and promoting recognition and acceptance within the community that people with a disability have the same fundamental rights as the rest of the community.²
35. The DDA sets out the specific areas in which it prohibits a person being discriminated against on the ground of their disability. This includes the areas of employment,³ access to goods and services, education, clubs and associations and sport.⁴
36. In each of these areas access to and use of a building could feature as a cause of possible discrimination. Additionally, s 23 of the DDA also provides specific protection from discrimination in the area of 'access to premises'.
37. The scope of s 23 of the DDA extends to access to or use of "any premises that the public, or a section of the public, is entitled or allowed to enter or use".
38. The definition of 'premises' in s 4 of the DDA is very broad and includes:
- existing buildings, including heritage buildings;
 - proposed or new buildings;
 - car parks;
 - open air sports venues; and
 - footpaths, public gardens and parks.
39. In fact, any part of the built environment that the public is entitled, or allowed, to enter or use falls within the definition.
40. In addition, because the DDA refers to the 'use' of premises, it also covers issues such as fitout design (for example, the height of service counters or the accessibility of features such as drinking water fountains) and the way

¹ DDA, s3(a).

² DDA, s3(c).

³ DDA, Part 2, Division 1.

⁴ DDA, Part 2, Division 2.

premises are maintained and managed (for example, ensuring accessible toilets are not used as storage spaces and ensuring overhanging branches do not result in a barrier on a path of travel).

41. The DDA includes a general defence where it can be shown that providing equitable access for people with a disability causes 'unjustifiable hardship' for an owner or operator of premises.⁵ The DDA does not require access to be provided to the premises if it would impose an 'unjustifiable hardship' on the person who would have to provide the access. It does, however, require access to be provided as much as possible up to the point of unjustifiable hardship.
42. When a person with a disability, or their associate, believes they have been discriminated against as a result of experiencing barriers to accessing or using premises they can lodge a complaint with the Australian Human Rights Commission (the Commission).⁶
43. The Commission's Director, Complaint Handling assesses the complaint to ensure the person and the subject matter of the complaint are covered by the DDA. If they are covered, staff will then seek a response to the complaint from the person or organisation named in the complaint (the respondent). If all parties are willing to try to resolve the issues the Commission's staff will try to conciliate an agreement between them.
44. A conciliation agreement could result in barriers being removed, agreement to deliver services in an alternative accessible venue, changes in policy and practice or commitments to future action. Financial compensation could also be part of a conciliation agreement.
45. If for whatever reason, a conciliation agreement cannot be reached, the President of the Commission would terminate the complaint and advise the complainant of their right to lodge their complaint with the Federal Court or the Federal Magistrates Court.⁷
46. The Commission has no authority to make formal findings about a complaint and no authority to determine whether a respondent may successfully rely upon the unjustifiable hardship defence.
47. It is only the Federal Court or Federal Magistrates Court that can determine what constitutes 'unjustifiable hardship'. In making that determination, s11 of the DDA states that all relevant circumstances of the particular case are to be taken into account. This includes the nature of any benefit or detriment likely to be experienced, technical limitations, the estimated costs of the work and the financial circumstances of the person claiming the hardship.

⁵ See ss 15,16,17,18,22,23,24,25 and 27 of the DDA.

⁶ *Human Rights and Equal Opportunity Commission Act 1986*, s 46P.

⁷ *Human Rights and Equal Opportunity Commission Act 1986*, s46PO.

48. Therefore, the only way of enforcing rights under the DDA at present is through a complaints process brought by aggrieved persons⁸ and ultimate determination by a court.
49. Accordingly, one of the primary advantages of the proposed Premises Standards is that it will address access issues at a systemic level for all new and renovated buildings. This will reduce the need for individuals to pursue their rights through the complaints mechanism and the courts.

4.2 *Activities of the Commission to promote understanding and compliance with the DDA by the building industry*

50. Since 1995 the Commission has worked with the design and building industry, developers, the disability community, building regulators and Government at all levels to improve knowledge of and compliance with the DDA in relation to building access.
51. This has included:
- Contributing to the work of the Australian Building Codes Board prior to 2000 in the development of progressive changes to building regulation
 - Contributing to a number of Standards Australia committees responsible for the development of technical deemed-to-satisfy solutions for access to buildings
 - The development and maintenance of *Frequently asked Questions* resources
 - The development and maintenance of a comprehensive ‘thumbnail’ sketch of complaints outcomes
 - Presenting at Conferences and workshops for professional associations including the Royal Australian Institute of Architects, The Australian Institute of Buildings Surveyors, State and Territory Local Government bodies, Government Advisory bodies, educational institutions and access consultants
 - Developing resources to assist industry including *Advisory Notes of Access to Premises*; *Guidelines on access to buildings and services*; an *Accessible Events Guideline*; a *Missed Business* guide for small business and a CD *The good, the bad and the ugly: Design and construction for access* more than 10,000 of which have been distributed to designers, educational institutions and certifiers throughout Australia. This CD provides pictorial examples of common access problems experienced by people with a disability and a copy is provided as a link to the Commission’s website in Appendix 8.1 to this submission.
 - Contributing to the development of the draft Premises Standards

⁸ *Human Rights and Equal Opportunity Act 1986, s46P.*

4.3 The Building Code of Australia

52. The Building Code of Australia (BCA) is developed and maintained by the Australian Building Codes Board (ABCB) on behalf of the Commonwealth in conjunction with the State and Territory Governments, who each have statutory responsibility for building control and regulation within their jurisdiction.
53. The BCA is a comprehensive statement of the performance and technical requirements relevant to the design and construction of buildings and other related structures. The BCA is therefore a national code, which is administered at a State and Territory level.
54. The BCA is referred to as a 'performance based' code; describing acceptable Performance Requirements that buildings and other structures throughout Australia must meet.
55. Performance Requirements must be satisfied by the design and construction of the building. This may vary depending on the building classification - (for example, there may be different requirements depending on whether the building is a theatre, an office building or a hospital).
56. There are two ways to meet the Performance Requirements. These are referred to as Building Solutions:
 - The *Deemed-to-Satisfy* provisions are detailed prescriptive technical requirements within the BCA of how the building is to be constructed and equipped. They include reference to technical details found in Australian Standards such as AS 1428.1, which is currently the main Australian Standard covering access related issues for people with disabilities.
 - An *Alternative Solution* is one that can be demonstrated to meet the Performance Requirements of the BCA by other means. The purpose of an Alternative Solution is to allow for new ways of achieving the required levels of performance. The onus is on the building applicant to show that the Alternative Solution complies with the Performance Requirements.
57. The BCA is amended each May to reflect changes in building practices, usage and technology. The ABCB, through its Building Codes Committee, drafts a Regulation Document and a Regulatory Impact Statement (RIS) for broad community consultation before recommending changes of a major nature for particular issues.
58. The BCA includes a range of Performance Requirements and Deemed-to-Satisfy provisions in relation to access for people with a disability. This includes requirements for accessible toilets, lifts, ramps, stairway features, entrances, door circulation space, signage, hearing augmentation and handrails.

4.4 Inconsistencies between the DDA and the BCA

59. Even before the DDA became law in 1993, it was clear that there were inconsistencies between the access provisions of building law, as required by the BCA, and the requirements of existing discrimination law.
60. Compliance with the access provisions within the BCA does not necessarily mean that a building provides access at a level consistent with the requirements of the DDA.
61. For example, at the time of the introduction of the DDA it was possible for a developer to build a building with doorway openings of 780mm and comply with the then BCA minimum requirements.
62. However, if a person with a mobility disability needed 800mm doorway openings in order to access a building in their wheelchair, it would be possible for the person with a disability to lodge a complaint against the building owner/operator - even though the building complied with the BCA.
63. Similarly, if a building complied with the BCA requirements for the number and location of unisex accessible toilets (currently one accessible toilet for every 100 toilet pans in a building) the owner/operator could still be open to a DDA complaint from a person with a disability if, for example, that person could not access a toilet with the same degree of amenity as other building users.
64. These inconsistencies are not inconsequential for people with a disability. They can mean the difference between being able to independently participate in the economic, social and cultural life of our community and being excluded from participation.
65. The inconsistencies have also been of concern to the building industry including designers, owners and managers of buildings who have all faced the possibility of discrimination complaints, even if their buildings comply with the BCA.
66. Similarly, those involved in the development approval and building certification processes expressed concerns about what they must do to ensure they are meeting their responsibilities under the DDA.
67. While gradual improvements to the access provisions of the BCA were made by the ABCB during the 1990's, there was no provision in the DDA to allow for the development of a Disability Standard in the area of access to premises.

5 Premises Standards

5.1 Power to develop a Disability Standard in the area of access to premises.

68. In 2000, in response to approaches from the building and development sector, people with a disability, local government and building regulators, the Federal Government began a process to try and resolve these inconsistencies by

introducing changes to the DDA to allow for a Disability Standard in the area of access to premises.

69. Once those changes had occurred the Attorney-General asked the ABCB to develop the draft Disability (Access to Premises - Buildings) Standards (Premises Standards) that would clarify existing rights and responsibilities under the DDA in relation to access to buildings.

5.2 Effect of a Disability Standard

70. Once a Disability Standard is operational, a person who complied with the requirements of the standard is deemed to comply with the requirements of the DDA on those matters covered by the standard.
71. This would mean that those who comply with the standard could have confidence that they could not be subject to a successful complaint of discrimination in relation to those matters covered by the standard.
72. So in the context of building access, for example, if a Disability Standard required a ramp with a gradient of no more than 1 in 14 and a developer complied with that requirement, the developer could not be subject to a successful complaint from someone who later found they could not independently get up such a ramp.

5.3 Scope of the Premises Standards

73. While the definition of 'premises' in the DDA includes more than just buildings the Government at the time requested the draft Premises Standards be limited, at this stage, to improving those access issues already addressed in the BCA.
74. This includes, for example, access to shops, offices, theatres, restaurants, schools, swimming pools, sports facilities, hotels, carparks, hospitals and aged care facilities.
75. Within those types of buildings the BCA covers the location and design of features such as accessible toilets, lifts, entrances, ramps, stairway features, door circulation space, signage, hearing augmentation and handrails.
76. The BCA, however, does not cover features such as public footpaths, road crossings, parks, playgrounds or many building fit-out issues such as reception counter heights, water drinking fountains, change rooms in retail shops, information on building tenants or the accessibility of customer queuing systems. These issues will continue to be subject to the current DDA complaints mechanism.

5.4 Consistency between the Premises Standards and the BCA access provisions

77. As the Premises Standards will only address the access issues covered in the BCA, the intention is that the access provisions of the BCA will be changed to reflect the completed Premises Standards so that the two mirror each other.
78. The effect of doing this would be that when finalised, compliance with the new access provisions in the BCA would ensure compliance with the Premises Standards and therefore with the requirements of the DDA in relation to those matters covered by the Premises Standards.
79. The great advantage of this approach would be that designers, builders, owners and operators could continue to rely on the regulatory framework they are familiar with, the BCA, without the need to refer to a separate and different law (the DDA), which is the case at the moment.
80. Similarly those involved in building certification could continue to rely on the BCA as the primary benchmark against which to assess developments confident that if they ensure the building complies with the new access provisions in the BCA they will be meeting their responsibilities to ensure the building complies with the Premises Standards.
81. The Commission has worked closely with the building industry, and in particular those responsible for building certification, over the past 10 years and it is clear that from their perspective the outcome of regulatory harmonisation will be a significant achievement.

5.5 Benefits of Premises Standards

82. Ensuring consistency between the BCA and DDA through the adoption of Premises Standards will provide benefits for all concerned:
 - People with a disability will have much better access to buildings and increased opportunities to participate in employment and all aspects of the community. There will also be the benefit of a high degree of certainty that access to new and renovated buildings will be consistent throughout Australia. The benefits associated with people with a disability not having to pursue rights, building by building and street by street through the individual complaints mechanism cannot be underestimated.
 - Property owners and operators will have the certainty of knowing that compliance with the new access provisions of the BCA will also result in compliance with the Premises Standards and relevant parts of the DDA. If a building complies with the revised BCA, and by definition the Premises Standard, complaints of discrimination under the DDA will not be successful.⁹

⁹ Section 34 of the DDA provides that if a person acts in accordance with a disability standard, Part 2 of the DDA does not apply to the person's act. Part 2 of the DDA makes discrimination unlawful in

- The service industry and small business community will have the same benefits associated with certainty and opportunities to access a broader market.
 - Local Governments, designers, builders and those responsible for approvals and certification of buildings will be much clearer about what is required to fulfil responsibilities under both building and anti-discrimination law.
83. Adoption of the Premises Standards and subsequent changes to the access provisions of the BCA will be of significant value to the building industry at a time when Government is seeking to reduce regulatory duplication and increase regulatory harmonisation.

5.6 Commission's role in the development of the draft Premises Standards

84. Between 2000 and 2005 the Commission participated in all of the meetings of the Building Access Policy Committee (BAPC) which was the committee established by the Australian Building Codes Board to develop the draft Premises Standards.
85. The BAPC included representatives from a broad range of stakeholders including the disability sector, design professionals, property developers and the building industry, Local Government, State/Territory Government regulators, building certifiers, the Federal Attorney General's Department and the Commission.
86. The Commission's primary role on the committee was to provide advice on the application of the DDA in the area of access to buildings and offer its views on questions relating to whether or not proposals being put forward were broadly consistent with existing rights under the DDA.
87. The Commission also played a significant role in facilitating discussions between stakeholders to try to find consensus or negotiate compromises.

5.7 Committee negotiations

88. Under the current individual complaints mechanism formally determining what level of access is consistent with the DDA can only be achieved building by building, street by street as a result of someone actually making a complaint which proceed to court for determination.
89. Throughout the development of the draft Premises Standards members of the BAPC were involved in negotiations to try to determine levels of access consistent with the objectives of the DDA at a systemic level.

90. This necessarily involved an attempt to identify some concessions and exemptions that would reflect the limits of the DDA arising from the unjustifiable hardship defence.
91. While the Committee tried to achieve consensus on this balance between rights and defences by drawing on research and evidence, in many instances proposals reflected a compromise between opposing positions based on majority views.
92. The fact that there are concessions and exemptions within the draft inevitably means that some developers, who would not normally benefit from the unjustifiable hardship defence, will benefit from the concession or exemption, resulting possibly in reduced access for people with a disability.
93. For example, the current draft provides for a small building exemption from the need to provide upper level access in small 2 or 3 storey buildings where the upper floors are each less than 200 square meters. The exemption has been proposed on the basis that it is arguable that most developers building such a small building would be able to put forward an unjustifiable hardship defence relating to the cost of providing a lift to the upper floor.¹⁰
94. However, there will be some developers who would not have access to such a defence, as their resources would be sufficient to cover the cost of a lift.
95. While this is true the Commission's approach to the concessions and exemptions debate has been to try and balance the benefits of having consistent, mandatory, nationally applied improved access against the inevitable limiting of access in some situations.
96. Where consensus could not be achieved the Commission took the view that compromises should be considered in the context of the overall benefits of the full package of proposals.
97. On some issues, however, the opposing views of participants were so far apart that compromise was not possible and relevant Government Ministers were left to determine final proposals concerning the content of some parts of the draft.

5.8 Premises Standards and consistency with existing rights under the DDA

98. While the Commission wishes to raise concerns about a number of aspects of the draft later in this submission, our view is that on most issues the consensus achieved and compromises proposed have resulted in draft Premises Standards that are consistent with the objectives of the DDA.

¹⁰ The Australian Human Rights Commission produced a photographic description of how this concession would affect a typical sub-urban or regional shopping strip in Appendix 8.2

99. The Commission's support for many of the compromises proposed, however, is based on the evidence and arguments put forward by members of the BAPC over 5 years ago. This current inquiry will provide an opportunity for new evidence to be submitted and a broader input from people with expertise not available to the BAPC at the time.
100. Submissions from interested parties may identify some issues where it would be appropriate to reconsider some of the proposals to improve the Premises Standards, where it can be shown the draft does not deliver the level of access envisaged.
101. However, the Commission's view is that any changes to be made should not delay progress in the adoption of the Premises Standards.
102. It has been 9 years since negotiations on this draft commenced and in that time thousands of buildings have been built or renovated without the improved access provided for in the draft Premises Standards.
103. Unless improvements can be clearly identified by the Committee and quickly addressed by Government, the Commission's view is that outstanding issues should be noted as matters requiring further work, referred to appropriate bodies such as the ABCB or Standards Australia for further discussion within a clearly defined timeline and, if they cannot be consensually resolved within that timeline, re-considered as part of the five-year review of the Premises Standards.
104. The Commission is strongly of the view that there is no room for further concessions or exemptions. Any changes that reduced the level of access required by the current draft Premises Standards would run the risk of seriously undermining the existing rights of people with a disability under the DDA.

Recommendation 1: That the Premises Standards should be finalised and proceed through the Parliamentary process at the next available opportunity.

Recommendation 2: That the Committee take into account that, like the Building Code of Australia and its referenced Australian Standards, the Premises Standards will be an evolving document. As questions of interpretation and effectiveness arise during its application, opportunities will exist for review of its content at the required review after 5 years.

Recommendation 3: Issues raised by any submission during the inquiry that the Committee believes require further development should be referred to appropriate bodies for further consideration. If these issues, however, cannot be easily and quickly resolved within a defined timeline they should be noted and addressed as part of the required 5 year review.

5.9 Regulation Impact Statement (RIS) and benefits of the Premises Standards

105. As stated the Commission raises a number of issues concerning possible improvements in the draft Premises Standards later in this submission. Before turning to those issues the Commission makes the following comments in relation to the RIS.
106. The Commission believes that the RIS process has an important, but limited, part to play in determining if the proposed Premises Standards are suitable for adoption. That is, in assessing whether the Premises Standards are the most effective way of meeting existing responsibilities under the DDA and ensuring there is no disproportionate sectoral imbalance in their application.
107. An assessment of the benefit/cost ratio is by itself not a sufficient measure from which to determine whether the draft Premises Standards are consistent with the objectives of the DDA.
108. The existing law under the DDA requires that access be provided to the fullest extent possible short of unjustifiable hardship. The Premises Standards seeks to achieve compliance with the existing legal standards on a systemic basis in relation to new and renovated buildings. This is a different test to the one addressed through a RIS process which focuses on assessing the general requirement that benefits out-weigh costs in relation to new or revised regulation.
109. In addition to the findings of the RIS, other factors need to be considered in relation to the decision to adopt the draft Premises Standards including:
 - The DDA represents the recognition in domestic law of the inherent rights of people with a disability to participate in public life in an equitable and dignified way. The fact that there is an existing law that requires non-discrimination, and has done for 15 years, is an important consideration.
 - Australia has ratified a number of International Covenants that recognise the right to non-discrimination for people with a disability¹¹. Under these covenants, Australia is obliged to respect, and ensure persons with a disability enjoy the right to non-discrimination. Australia has a long

¹¹ There is jurisprudential support for the protection of disability as an 'other status' in Article 2 of the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999UNTS 171 (entered into force 23 March 1976 except Article 41 which came into force 28 March 1979). See: Concluding Observations on Ireland, (2000) UN doc.A/55/40, para 422-451, para 29(e). Disability is also recognised as an 'other status' in the *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999UNTS 3 (entered into force 3 January 1976). See: Committee on Economic, Cultural and Social Rights, *General Comment No. 5: Persons with Disabilities* (Eleventh session, 1994), U.N. Doc E/1995/22 at 19 (1995)

history of commitment to the recognition of the rights of people with a disability¹².

- The recently ratified UN Convention on the Rights of People with Disabilities specifically requires Australia in Article 9:
 1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
 - a. Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
 - b. Information, communications and other services, including electronic services and emergency services.
 2. States Parties shall also take appropriate measures to:
 - a. Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
 - b. Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
 - c. Provide training for stakeholders on accessibility issues facing persons with disabilities;
 - d. Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
 - e. Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
 - f. Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
 - g. Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
 - h. Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

110. Providing access to the built environment is essential to the realisation of these commitments and it is in this context that the RIS and the Premises Standards need to be considered.

¹² Australia enacted the DDA in 1992. Before that, Australia supported the *Declaration on the Rights of Disabled Persons*, GA Res 3447(xxx), UNGAOR, 30th sess, UN Doc A/10034(1975) which is scheduled to the *Human Rights and Equal Opportunity Act 1986*.

111. Having said that the Commission believes that overall the RIS was comprehensive and robust given the limited availability of data on which to rely.
112. Considerable effort was made to ensure a full discussion of the benefits and costs associated with the proposals. Where it was not possible to provide substantive dollar estimates of the benefits and costs the RIS clearly notes its limitations and discloses the assumptions made to reach its conclusions.
113. The RIS concluded that the benefit/cost ratio derived from quantifiable data is 1.23:1. In other words the benefit estimated over a 30 year period was determined to be greater than the cost by a factor of almost 25% over that period.
114. The Commission has previously stated that it sees no justification for any further concessions or exemptions as any further reduction in access levels would seriously undermine the existing rights of people with a disability under the DDA.
115. The Commission is concerned, however, that there may be some criticism of the RIS as part of a call for further concessions or exemptions. In order to ensure as full a picture as possible is provided to the Committee the Commission makes a number of observations about some aspects of the RIS where dollar values relating to benefits and cost reductions could not be quantified.
116. In making these comments the Commission would like to draw attention to the fact that even using the RIS as the sole reference point there would be room to improve the Premises Standards without the RIS showing an overall negative impact.

(a) *Unquantifiable benefits*

117. The RIS is particularly careful to identify a range of benefits that could not be quantified and goes to considerable length to make it clear that these dollar unquantifiable benefits are nonetheless significant. In the Summary to the RIS the authors' state:

It should also be recognised that many of the benefits that will be associated with the proposal are intangible in nature and are, therefore, not included among these quantitative estimates (refer discussion of intangibles in chapter 7). Of particular importance in this regard is the expected substantial reduction in the extent of the social exclusion currently experienced by people with a disability because of barriers they face in accessing premises and, more positively, the substantially increased capacity for participation in society of people with a disability. These benefits will be of significance both to people with a disability and to the general population.

Moreover, it is also important to acknowledge the substantial policy linkages that exist between the proposed Premises Standard and other actions being taken to create accessible environments more generally. These include the formulation of a number of other standards under the DDA, covering areas such as education and public transport. They also include other policy

initiatives aimed at enhancing the employment participation of people with a disability and those attempting to reduce the incidence of institutionalisation. (p4)

118. Further, in section 7.6.4 the RIS notes;

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

- Reductions in property damage arising from manoeuvring 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. (p57)

119. The RIS expands on the question of unquantifiable benefits in section 10.2 where it states:

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 transaction 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 were the Premises Standard 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 significantly 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 ambulant 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 Standard. (p100)

120. It has not been possible to allocate dollar values to many of these identified benefits, but if it were possible the benefit/cost ratio could well be significantly improved.

(b) *Codification of existing requirements and overstatement of attributable costs*

121. In addition to the unquantified benefits the RIS identifies a number of cost reduction factors including in section 10.1:

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 the DDA reduces the size of the compliance task consequent on the introduction of the Premises Standard.
- (p99)

122. Irrespective of what the RIS benefit/cost ratio indicates, the Premises Standards legally and conceptually do not impose any additional regulatory obligations on those responsible for buildings, other than those already required by the DDA,

123. The question is whether costs associated with improving access can be attributed to the Premises Standards or whether they should be attributed to the general demands of the DDA that has required the elimination of discrimination for over 15 years.

124. As a society we have decided that there is an overwhelming benefit associated with ensuring equality in our community. The DDA is an expression of that commitment and in adopting the law Parliament acknowledged that realising the objectives of the legislation would involve some cost to overcome barriers.

125. Despite the fact that the DDA has been in place for more than 15 years it is clear that, with some notable exceptions, the market generally has failed to respond to the expectations of Parliament at the time of its adoption.

126. The need for Premises Standards in part arises from this failure of the market to deliver building access consistent with longstanding obligations under the DDA.

127. The Commission notes the comments made by Access Economics in their Peer Review of the earlier RIS dated 17 January 2006 that:

On its own then, it is still the case that technically the Premises Standard is codifying existing obligations under the law under section 31. While the practical impact of this is that the Building Code of Australia (BCA) will also be

amended to reflect the requirements of the Premises Standard, and thus establish a higher set of obligations under the State and Territory building regulations, this is merely a harmonisation exercise. The legal obligations already exist under the DDA, and the Premises Standard codifies those legal obligations. (p2)

128. The Commission agrees with Access Economics and would suggest that the Premises Standards are simply codifying existing regulation and are not imposing new regulation on the building and property sector.
129. The 2004 draft RIS acknowledged this, but contended that because compliance with the general provisions of the DDA is low, the practical effect of the Premises Standards will involve significant compliance demands and associated costs.

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, anecdotal evidence indicates that, in practice, the degree of compliance with the general duties of the DDA in relation to premises is low. (p21 2004 draft RIS)
130. This RIS assessment is now over 5 years old and it is the Commissions experience that a growing number of developments are now providing access at higher levels than the current BCA and more consistent with the requirements of the DDA.
131. For example, the Commission itself has worked with a number of businesses and major developers who have sought our assistance in the design and construction of new and renovated premises in order to achieve “DDA compliance”.
132. Information from professionals in the field and in particular from members of the Association of Consultants in Access Australia (<http://www.access.asn.au/>) also suggests that in the past 5 years Local Government planning tools and developers own actions are resulting in significant improvements in access in many of the areas addressed in the Premises Standards.
133. In that sense the Premises Standards could be seen as merely codifying existing good practice in relation to some aspects of building construction.
134. For example, most buildings that have been constructed in the past decade already provide for better circulation space in public areas than will be required by the Premises Standards as a minimum.
135. Similarly many buildings are already providing doorways wider than the current BCA 820mm minimum; many already provide more than one accessible entrance; many have design features that already provide for passing areas and turning areas in public parts of buildings and many larger buildings already have lift floor sizes greater than the proposed minimum.
136. These circulation space improvements may, in part be in response to the requirements of the DDA, but it is equally likely they are responding to general client demands for better circulation for all building users including those with

children and prams, those delivering goods and those simply wanting to quickly get out of the building at 5 pm.

137. As the Productivity Commission report into the review of the DDA in 2004 reported:

It may be argued that these groups of people without disabilities would also benefit from the greater accessibility of public buildings that might follow the introduction of the access to premises standards. In addition, people without disabilities would benefit from the reduction in staircase accidents that would follow the installation of lifts. (PC Report 30, 2004 p121 Vol 1)

138. In summary the Commission notes that the 'cost' of providing access arises from obligations arising from an act of Parliament which is now 15 years old. The Premises Standards simply codify that obligation and assist in addressing Australia's more recent commitments to international obligations such as the UN Convention on the Rights of People with Disabilities.

(c) *Cost reduction arising from Alternative Solutions and good design*

139. Finally the Commission would like to comment on the potential for the use of an Alternative Solution and good design to have an effect on the cost of implementing the Premises Standards.
140. While these two factors were discussed at the BAPC there was little attempt in the RIS to factor their potential value into the benefit/cost assessment.
141. While it is true to say that most designers and developers will use the deemed-to-satisfy solutions to meeting the requirements of the Premises Standards, where cost effective alternatives do exist developers are sure to use them.
142. More important, however, are the potential cost reduction strategies that might be used by designers to minimise costs associated with features such as ramps, toilets and circulation space.
143. The RIS was developed using a number of case studies each of which made a number of assumptions about the need for and cost of access features. These case study costs were then extrapolated up to give a national cost of implementation of the Premises Standards. One of the assumptions not made in these calculations was the effect of good design.
144. After many years of discussion with design professionals the Commission believes that once the requirements of the Premises Standards are clear designers will use their skills to minimise the need for additional expenditure and overcome costs associated with loss of rentable space due to the requirements of the Premises Standards.
145. For example, good design could overcome the potential loss of rentable area arising from the slight increase in circulation space in accessible toilets. Good design could ensure that a 'green field' design could eliminate any additional expenditure associated with the increase in accessing entrances required.

Good design can ensure that features such as turning spaces can be incorporated into features such as reception areas.

146. In summary this combination of unquantifiable benefits and cost reducing factors must be considered alongside the quantifiable benefit/cost ratio estimates of 1.23:1 identified in the RIS.
147. While not quantifiable in terms of identified dollar values their combined effect must have a significant positive effect on the benefit/cost ratio.
148. The Commission's view is that there is no justification for any further concessions based even on a RIS assessment (which we have argued constitutes only part of an overall assessment of the draft) and indeed there may well be room for further consideration of some aspects of the Premises Standards while still retaining a positive benefit/cost ratio.

Recommendation 4: That the Committee take into account

- that the RIS has an important but limited role to play in assessing whether or not the proposed Premises Standards is the most effective way of codifying current obligations under the DDA and assuring no sectoral imbalance in its application.
- that the RIS acknowledged the existence of significant non-quantifiable benefits arising from the adoption of the Premises Standards and that there would be opportunities for improvements to the Premises Standards without such improvements resulting in a negative cost/benefit.
- that other factors such as Australia's commitment to international human rights instruments and in particular the UN Convention on the Rights of People with Disabilities should be considered as part of the decision making process.

6 Comments on the content of the draft Premises Standards

6.1 Issues requiring further consideration

149. As previously stated the Commission believes it is appropriate to reconsider some of the provisions in the Premises Standards where there is evidence to show the draft does not deliver the level of access envisaged.
150. This includes matters in relation to the provisions of the Premises Standards and in some instances the technical specifications referenced in Australian Standards.
 - (a) *Access features on stairways caught by concessions and exemptions aimed at access for people using wheelchairs*
151. The draft Premises Standards contain a number of concessions and exemptions whereby access is not required for certain buildings or parts of

buildings. For example, in D3.4 (Exemptions) small 2 storey buildings with an upper floor of less than 200 square meters are not required to provide access to the upper floor. Similarly some small 2 storey Motels with no common use facilities on the upper floor or mezzanines used for storage may also not be required to provide access.

152. The Commission believes these concessions and exemptions were primarily proposed to respond to concerns that the cost of providing access for people who use a wheelchair to such areas would constitute an unjustifiable hardship in most instances. The consequence of the drafting of this part, however, is that no access features will be required in those areas covered by the concessions and exemptions.
153. This means, for example, that on stairways in small buildings there would be no requirements for access features such as tactile ground surface indicators (tgsi), luminance contrast on stair nosings or handrails. All of these features provide access for people who are blind or who have a vision impairment or those with an ambulant disability who can use stairs.
154. The Commission's view is that these provisions need to be re-drafted to ensure access features are required on stairways servicing areas not required to provide for wheelchair access where appropriate.
155. The Commission would also support further consideration of the concessions relating to access features on fire isolated stairways. These concessions effectively exempt fire isolated stairways, which may be used by employees or visiting public who have a vision impairment or ambulant mobility disability, from having to provide access features such as tgsi and luminance contrast on step nosings.

<p>Recommendation 5: That access features (such as tactile ground surface indicators (tgsi), luminance contrast on stair nosings or handrails) be required on stairways in areas where concessions exist in relation to requirements for wheelchair access.</p>

(b) *Use of stairway platform lifts and independent operability of lifts*

156. As part of the negotiations to improve access to small buildings, the BAPC proposed the use of stairway platform lifts (AS 1735.7) in limited specified situations. This type of lift is generally unenclosed and follows a stairway up to another level.
157. Industry experts were asked to comment on the independent operability of this type of lift as the disability sector was concerned about:
 - the need for constant pressure devices to operate them, and
 - the possible conflict with State/Territory safety requirements which often resulted in lifts being 'locked off' and only accessible when the building manager or security staff could be located.

158. At the time of the development of the original draft Premises Standards in 2004 the Commission understands industry experts suggested that for safety reasons both these restrictions were necessary.
159. The consequence of the 'locked off' lift is that often buildings that are required to be accessible become inaccessible as those responsible for their operation are missing or have lost the key.
160. This issue was last addressed at the BAPC over 5 years ago and the Commission would support further consideration of the independent operability of these lifts.

Recommendation 6: That further independent expert advice be sought on the need for constant pressure devices on Part 7 lifts and any conflicts with safety requirements that might affect the independent operability of stairway platform lifts.

Recommendation 7: That further independent expert advice be sought on the practice of 'locking off' Part 7 lifts and that the Premises Standards and Guidelines be revised to clarify liability of managers and operators taking that action.

(c) *Concessions in relation to swimming pool access*

161. The draft Premises Standards require access into a swimming pool but only when the perimeter of the pool is greater than 40 metres. The Commission is not aware of any research or justification for choosing 40 metres as the trigger (a 2 lane lap pool of 17 meters long could be caught by this concession).
162. While the Commission acknowledges the validity of a concession in some situations where there is a very small pool such as a Jacuzzi, the size of this concession seems disproportionate to the cost of providing access (for swimming pools less than 70 metres perimeter the Commission understands the cost is estimated to be around \$12000).
163. The Commission's concern is that this concession is likely to include a significant number of pool operators who would not have access to an unjustifiable hardship defence under the current complaints mechanism. For example, a number of large 4 or 5 star hotels have guest pools that will be under 40 meters perimeter.

Recommendation 8: That the concession that access is not required in swimming pools with a perimeter less than 40 metres be reviewed.

(d) *Class 1b buildings*

164. The draft Premises Standards includes a provision for access to be provided to Class 1b buildings, which is holiday accommodation such as B&B, Farmstay, holiday cabins and Eco-retreats.

165. The draft contains a 'trigger' which states that where there are 4 or more bedrooms or cabins at least one must be accessible with associated accessible sanitary facilities.
166. The draft, however, does not provide a concession or exemption from providing access to those accommodations where there is 1, 2 or 3 bedrooms or cabins. For these situations the current DDA complaints mechanism applies.
167. This is unique in the draft Premises Standards. In all other areas where concessions or exemptions exist those owners of buildings benefiting from the concession or exemption would not be vulnerable to successful DDA complaints.
168. This situation is not inconsistent with existing rights under the DDA, but is inconsistent with one of the primary aims of the Premises Standards which is to provide as much certainty as possible.
169. However, if this issue is to be addressed to provide greater surety the Commission would be concerned that an across the board concession to all Class 1b facilities with 1, 2 or 3 bedrooms or cabins would be inconsistent with existing rights under the DDA.
170. While the situation may have changed in recent years earlier discussions with organisations representing B&B operators suggested that a concession for 1, 2 and 3 bedroom B&B's (i.e. making the trigger 4 bedrooms) would effectively exclude more than 60% of the industry from the need to provide any access. Conversely a concession for 1 and 2 bedroom B&B's (i.e. a trigger of three bedrooms) would result in protection for about 40% of the industry.
171. The Commission notes that a number of Local Government Authorities have planning or disability access policies in place which require greater levels of access than the proposal in the draft Premises Standards.
172. The Commission acknowledges the appropriateness of a concession for the smallest of facilities such as those with 1 or 2 bedrooms operating out of existing private homes and notes that those with 3 or more bedrooms would continue to be able to put forward an unjustifiable hardship defence in specific circumstances.
173. For new purpose built cabins and Eco-retreat type facilities the Commission is less convinced of the need for any concessions as access could be addressed in the design phase of the development.
174. Separating out Class 1b developments in existing buildings from new developments could be addressed by developing an existing building concession similar to those in Part 4 of the draft Premises Standards.

Recommendation 9: That the issue of access to Class 1b holiday accommodation be reviewed to provide greater certainty.

Recommendation 10: That a distinction be made between Class 1b accommodation within existing buildings and purpose built new accommodation in terms of the concession provided.

Recommendation 11: That in the case of Class 1b accommodation provided in new, purpose built buildings such as cabins in caravan parks or Eco-retreat type accommodation the requirement for access be on a scale similar to that required in relation to SOU's in Class 3 buildings.

Recommendation 12: That in the case of Class 1b accommodation such as Bed and Breakfast or Farmstay operating out of existing buildings the trigger for access requirements be 3 or more rooms.

(e) *Concession for lessees as building applicants*

175. Part 4.3 of the draft Premises Standards provides a concession for lessees of a building who undertake new work on the building they lease. Normally the building application would require access be provided in the area subject to the building application, but also from the main public entrance of the building to the area of new work.
176. The concession states that if the lessee is the building applicant an upgrade of the path of travel from the main entrance to the new work is not required. If the owner of the building is the applicant, however, the path of travel would be required to be upgraded.
177. In proposing this concession industry representatives suggested that the natural cycle of owner initiated upgrades of buildings would eventually capture the common area paths of travel.
178. The Commission has some concern that this concession may be used to avoid upgrades of common areas of buildings if owners encouraged lessees to be the building applicants in situations where normally they would be the applicant.
179. One way of addressing this concern may be to particularly highlight this concession as an area for review in Part 5.1 of the draft Premises Standards (Timetable for review).

Recommendation 13: That concessions provided in relation to lessees making applications for building work on existing buildings be specifically identified as an area for assessment at the 5 year review of the Premises Standards.

(f) *Concession in relation to unisex accessible toilets on levels where there is more than one block of toilets*

180. The current draft Premises Standards provide a concession whereby if there are more than one set of male and female toilets on any one level only 50% of those blocks are required to provide a unisex accessible toilet.

181. This concession is particularly relevant for large shopping centres and buildings such as sports or entertainment centres.
182. There is a similar concession within the draft Premises Standards in relation to accessible entrances to a building which states that only 50% of entrances need be accessible.
183. This concession, however, is limited to where an inaccessible entrance is no more than 50 metres from an accessible entrance. The reason for this limit to the concession is that having to travel significant distances in order to find an accessible entrance to the building could cause fatigue resulting, in effect, in a barrier to access.
184. The Commission believes that this principle could also apply to the concession in relation to the availability of unisex accessible toilets on levels where there is more than one set of toilet blocks.

Recommendation 14: That a 50 metre distance travelled limit be included in the concession in relation to the availability of unisex accessible toilets on levels where there is more than one set of toilet blocks.

(g) Australian Standards

185. The Premises Standards (like the BCA) provides information on when and where access provisions apply and generally refer to separate Australian Standards to provide technical detail on how to meet deemed-to-satisfy solutions.
186. As decisions have been made about the content of the Premises Standards the committees responsible for developing the referenced Australian Standards (established by Standards Australia) have been asked to update the technical information to reflect the content of the Premises Standards.
187. For example, the current AS 1428.1 includes technical information about how to design an accessible toilet including circulation space requirements. The draft Premises Standards adopted new requirements concerning circulation space in accessible toilets and asked the Standards Australia committee to prepare new technical specifications to meet the new requirements.
188. The draft AS 1428.1, AS 1428.4.1 and AS 4890 are the Australian Standards that have been prepared to reflect the content of the Premises Standards and they will be referenced in the Premises Standards.
189. Australian Standards such as these, and the AS 1735 suite of standards that deal with lifts, are regularly updated to provide clearer information and take account of changes in technology and approaches. The committees that develop them include representatives from all stakeholder groups.
190. The current inquiry on the draft Premises Standards may raise some issues of critical importance in terms of whether or not the Australian Standards deliver the level of access envisaged in the Premises Standards and it may be

possible to address those without delaying the progress of the Premises Standards.

191. However, the Commission's view is that those matters concerning general clarification and improvements to the Australian Standards, which are not critical to realising the intent of the Premises Standards, should be referred to Standards Australia for them to address.
192. With the co-operation of Standards Australia it should be possible to ensure relevant committees are convened in time to provide further clarity in the referenced Australian Standards without undue delay in the finalisation of the Premises Standards.
193. The Commission notes that in the Guidelines to the Premises Standards (4.6 (2)) there is specific recognition of the fact that Australian Standards are regularly reviewed and updated and that using updated editions is likely to also deliver an appropriate level of access as an Alternative Solution.

4.6 Innovation beyond the Premises Standards

(1) The Premises Standards also allow for and encourage innovative solutions to meet the Performance Requirements through the development of new technologies and through the use of Alternative Solutions, so long as the proposed solution provides equivalent or better access than the Deemed-to-Satisfy Provisions.

(2) The Premises Standards reference specific editions of AS 1428.1 and other technical documents to meet the Deemed-to-Satisfy Provisions of the Access Code. However, these Australian Standards are regularly updated to take account of new technologies and new ways of doing things. While the Premises Standards will only require compliance with the specific editions of Australian Standards referenced in the Access Code, this would not prevent a building owner from complying with a newer Australian Standard if to do so would satisfy the Performance Requirements in the Access Code.

194. This provides an opportunity for using updated Australian Standards as they occur without the need to wait for a full review of the Premises Standards.

(h) *Review of Premises Standards*

195. One of the significant advantages of having consistency between the Premises Standards and the access provisions of the BCA is that compliance with the Premises Standards is effectively achieved through the existing building certification process.
196. Assessing whether or not a new building or new building work on an existing building complies with the Premises Standards requires a detailed understanding of the Premises Standards themselves and the referenced deemed-to-satisfy technical specifications found in various Australian Standards.

197. Regrettably at this point in time the deemed-to-satisfy technical specifications referenced within the Premises Standards and the proposed new BCA are both highly complex and only available at a significant cost to those who are able to purchase them from Standards Australia.
198. It is therefore extremely difficult for anyone other than experienced professionals in the area of compliance auditing to identify where problems may arise in the implementation of the Premises Standards. It is particularly difficult for individuals with a disability to challenge non-compliance.
199. In order to overcome this difficulty it is important that clear review criteria, including data collection requirements, be established prior to the adoption of the Premises Standards, in order to ensure there is sufficient information to undertake a timely and effective review.
200. The data needed to support an effective review might include:
- an analysis of the level of compliance with the Premises Standards and new BCA, including compliance with deemed-to-satisfy technical solutions
 - an analysis of questions of interpretation arising from implementation
 - an analysis of Alternative Solutions proposed to meet the performance requirements of the Premises Standards and BCA
 - an analysis of recommendations of Access Panels where full application of the Premises Standards and BCA has been considered to be too onerous.
201. This data might be collected throughout the first five years of the Premises Standards by sample audits undertaken by building administrations or other appropriate bodies in partnership with professional associations and representatives of the disability community.
202. The data collected will provide information on the implementation of the Premises Standards, but will also assist professional bodies to identify areas for continuing professional development.

Recommendation 15: That criteria for the review of the Premises Standards be established prior to the adoption of the Premises Standards.

Recommendation 16: That data relevant to measuring the effectiveness of implementation of the Premises Standards and of the recommendations of Access Panels be collected throughout the first five-year period so that the review can be fully informed and consider what changes to access have occurred in the five-year period.

Recommendation 17: That the review of the Premises Standard be completed by the fifth anniversary of its adoption.

6.2 Issues requiring inclusion in the Premises Standards

(a) Class 2 buildings

203. The initial draft Premises Standards released for public comment in 2004 included a provision that would require access is provided to the common areas of Class 2 buildings (apartments and blocks of flats).

204. The specific requirement was that access be provided to the:

Common areas [in buildings where one or more sole-occupancy units are made available for short term rent]

From a pedestrian entrance *required* to be *accessible*, to the entrance doorway of each *sole-occupancy unit* located on not less than one level.

To and within not less than 1 of each type of room or space for use in common by the residents, including a cooking facility, sauna, gymnasium, *swimming pool*, common laundry, games room, individual shop, eating area, or the like.

Where a ramp complying with AS 1428.1 or a passenger lift is installed-

- (i) to the entrance doorway of each *sole-occupancy unit*; and
- (ii) to and within rooms or spaces for use in common by the residents

located on the levels served by the lift or ramp.

205. This would have meant all new blocks of flats and existing blocks of flats undergoing substantial renovation would be required to provide an accessible path of travel through the main entrance and to the front door of the units on that entry level and to at least one of each type of facility used in common by all the residents (for example a BBQ area, laundry or pool).

206. In addition if the block of flats has a lift or ramp servicing other levels, the accessible path of travel must also be provided to the front door of the units on the levels serviced by the lift or ramp and to any other common use facilities on those other levels.

207. This requirement had a built in concession for small 2 and 3 storey blocks of 'walk-up' flats if there were no common use facilities on the upper floor. In this situation access would not required to the upper floors.

208. The continuing existence of the unjustifiable hardship provision in the Premises Standards also allowed for concessions, particularly for existing buildings, where topographical or particular features of the block of flats meant that it would be too expensive or technically too difficult to provide access.

209. The Commission strongly supported the original proposal, as did the majority of members of the BAPC, and its removal is of considerable concern.

210. The Commission would like to comment on a number of issues in support of the inclusion of the common areas of Class 2 buildings in the Premises Standards including:
- The application of the DDA to common areas
 - Current initiatives that require common area access
 - The need for certainty
- (i) Application of DDA to common areas
211. The Commission understands that the view of some sections of the building sector are that because Class 2 buildings are made up of private dwellings and not public places, the Premises Standards should not cover this class of building.
212. There are, however, a number of situations in which common areas of Class 2 buildings could be the subject of DDA complaints.
213. *Firstly*, Section 23 (Access to premises) would apply to the common areas in situations where one or more units within the block are available to the public on short term lease such as holiday lets or serviced apartments. In this situation if a person with a disability could not access the rented unit or common facilities available to all those residing in the block, such as a BBQ area, gym or the entrance area, a complaint of discrimination could be made.
214. There are a growing number of units in Class 2 buildings available as short term rental properties and those responsible, whether it is the owner or Body Corporate, faces a liability for complaint under s 25 of the DDA (Accommodation) if access is not provided.
215. *Secondly*, while s 25 of the DDA (Accommodation) in the main relates to the direct relationship between landlords and tenants there is a situation in which the Commission believes a Body Corporate may have some liability.
216. Section 25(2)(d) of the DDA states that it is unlawful to refuse to permit someone to make alterations to their accommodation to allow for access so long as a number of conditions can be met (subsections (i)(ii)(iii)(iv) and (v)).
217. Under this part if the landlord were willing to allow a tenant (at their own expense) to undertake necessary work, but the Body Corporate refused to allow the landlord to give permission or refused to allow the work to proceed, a complaint of discrimination might be made against the Body Corporate under section 122 of the DDA (liability of persons involved in unlawful acts).
218. There are of course situations in which proposed alterations might cause the owner an unjustifiable hardship or conflict with other regulations or laws such as the Building Code of Australia (BCA) or OH&S requirements.
219. However, a Body Corporate subject to a discrimination complaint would have to justify its refusal by showing exactly how the BCA or OH&S requirements are in conflict with the proposed alterations.

220. While section 25 (2) of the DDA refers to 'accommodation occupied by that person', which some might interpret as referring to the inside of the unit occupied by that person, the Commission's view is that a reasonable interpretation of that part would include the common areas including the path of travel from the entrance to that persons unit.
221. It would of course be up to the Federal Court to interpret the application of sections 25 and 122 in such a circumstance, but the Commission is of the view that it may be possible to pursue such a claim.
222. *Thirdly*, the Commission is of the view that there is clear liability for complaints against a Body Corporate refusing to provide access to the common areas used by an owner/occupier under s 27 of the DDA (Clubs and incorporated associations).
223. Assuming a Body Corporate is covered by the definition of 'club or incorporated association', the Commission believes it would be possible for a person with a disability to pursue a complaint of discrimination against the Body Corporate if it acted in a way that denied the member access to the benefits provided in common to other members.
224. So for example, if Body Corporate members enjoyed benefits such as access to a BBQ area or a swimming pool, but one member, because of their disability, could not get up the steps to enjoy those benefits that member could use this section to pursue a complaint of discrimination.
225. The Commission's view is that this same principle can be applied to the situation where a member of the Body Corporate required access through the entrance to the block of units to the front door of their unit.
226. If such a complaint were successful the Body Corporate may have responsibility to pay for the access and not the individual member. Alternatively the individual member might wish to make a contribution or pay for the alterations themselves.
227. Of course the Body Corporate might well have access to a defense of unjustifiable hardship, particularly if providing access required structural changes or conflicted with other laws, but again it would be for a court to make that determination.
228. *Fourthly*, there are two ways Section 24 of the DDA (Goods, services and facilities) may be used by a complainant. First if the accommodation in question were a service delivered by a Government or non-government organisation and a person eligible for the accommodation had a disability and could not access the service or facility. Secondly, this section might also be used in situations where a Body Corporate or Strata Management body discriminated in the way in which it made a decision in relation to an issue that affects a person with a disability such as the provision of access.
229. While not a complaint under the DDA, the decision of the Queensland Tribunal in C v A is most relevant to this broader question of Body Corporate responsibilities towards its members. (C v A [2005] QADT 14 (8 August 2005))

230. This case involved a woman who lives in an apartment block (Class 2 building) and who because of a disability was not able to independently move around the common areas because the doors were too heavy for her to open.
231. The Tribunal found that the Body Corporate had a responsibility to ensure accessible paths of travel for its member. The Body Corporate was ordered to install automatic doors and pay the complainant \$25,000 in compensation.
232. In summary, the Commission believes a Body Corporate may find itself subject to a complaint of discrimination in relation to common areas of Class 2 buildings in a number of circumstances including:
- where one or more units within the block were available to the public for short term rent and access to the unit and common facilities was not available
 - where it refused to allow an owner to allow a tenant to make alterations at their own expense (subject to certain conditions), or
 - where it failed to ensure that all its members could enjoy all the benefits of membership, including access to common areas.

Further detail of the Commission's views on the issues Body Corporate liability can be found at http://humanrights.gov.au/disability_rights/accommodation/corporate.htm

(ii) Current initiatives that involve common area access

233. Access to the common areas of Class 2 buildings is already required in a number of situations.
234. A number of Local Government Authorities have developed planning tools or access policies which require a percentage of units within Class 2 buildings to be fitted out internally as adaptable housing. Meeting this requirement involves the creation of an accessible path of travel to common areas.
235. The ACT Government has had a similar requirement in place for more than 5 years and the Commission understands SA has a state variation on the BCA requiring certain parts of Class 2 buildings to be accessible.
236. A number of Local Governments in Victoria have sought the authority to develop requirements in relation to medium and high density housing and in response the Commission understands the Victorian Government is currently considering a statewide strategy to address housing accessibility more generally.
237. In addition a number of industry bodies such as Smarta Housing in Queensland, Landcom in NSW and HIA nationally have committed to improving housing accessibility.
238. More recently the Property Council of Australia has adopted the following strategy for improving accessibility in housing:
- develop a voluntary access design code for residential buildings, in conjunction with the HIA and MBA;

- commence some demonstration projects, starting with high profile public buildings;
 - explore the feasibility of developing a standard system for assessing the accessibility of houses;
 - remove contradictory regulation that prevents the delivery of accessible housing; and
 - deliver incentives to speed up the upgrade of residential and commercial premises.
239. While there may be continuing differences of opinion about what design features are appropriate inside flats and apartments it seems clear to the Commission that there is widespread recognition of the need to address housing accessibility.
240. The Commission's view is that there would be clear benefits in addressing the common areas of Class 2 buildings as part of this Premises Standards.
241. These benefits would include first that developers and any Body Corporate could be sure they were addressing their potential liability, secondly the current inconsistencies of requirements throughout Australia could be addressed and thirdly there would be a progressive improvement in sustainable housing stock to better meet the needs of people with a disability and our ageing population.
242. There is another issue, however, that needs to be addressed in relation to the trend of providing short term business or holiday accommodation in what are currently built as Class 2 buildings, but which in reality are being used as short term serviced apartment type accommodation.
243. If this type of building were re-classified as a Class 3 building (hotel) there would be considerable implications for the design and construction of the building including the need for access requirements such as a stepless shower area within a percentage of units within the building.
244. The Commission is aware that this issue is of concern to a number of building administrations throughout Australia and that there has been some discussion about developing a new classification within the Class 2 division to better separate those buildings used for private accommodation and those essentially being built for commercial use as serviced apartments.
245. The Commission's concern here is that it would appear that fewer and fewer hotels and motels are being built in some parts of Australia in favor of serviced apartments and that currently difficulties in determining classification result in these types of building not providing any accessible units within them.
246. The Commission is concerned that there is a need to clarify the Class 2 and/or the Class 3 definitions in the BCA and the Premises Standards. Without this, it is unlikely that any new purpose built serviced apartments available to the public as short term holiday or business rent will provide any accessible units within them.

247. In addressing this problem it may be necessary to develop some practical and cost effective technical standards for existing buildings (or parts of buildings) converting from Class 2 to Class 3.

Recommendation 18: That the original proposals in the 2004 draft Premises Standards in relation to access to the common areas of Class 2 buildings (apartment blocks) be included in the final Premises Standards.

Recommendation 19: That the issue of classification of Class 2 buildings being used primarily as short term serviced apartments without the need for a percentage of accessible SOU's be referred to the ABCB for consideration.

(b) *Visual emergency egress alarms*

248. When the BAPC developed its initial draft between 2000 and 2004 there were a number of questions raised about suitable deemed-to-satisfy technical solutions in relation to emergency egress for people with a disability.
249. At that time some of the most important questions related to the use of so called 'places of refuge' and the possible use of lifts during emergencies.
250. The BAPC supported a proposal for a research project in relation to emergency egress and agreed at that time that the Premises Standards should proceed on the basis that the current BCA requirements for emergency egress would for the time being be sufficient to meet the requirements for emergency egress in the Premises Standards. This agreement included a commitment to reviewing the requirements as soon as possible when suitable deemed-to-satisfy provisions were developed.
251. The Commission understands that the research, while valuable, has not yet delivered practical options suitable for inclusion in the Premises Standards at this stage.
252. In addition to the big questions about use of places of refuge and lifts a number of other emergency egress issues were put to one side while the research progressed.
253. One such issue is that of the use of visual emergency alarm systems. Linked to fire or emergency alarm systems, a visual alarm uses flashing lights to alert a deaf person when an alarm sounds.
254. While there are ongoing questions in relation to emergency egress matters the Commission believes that a requirement for visual emergency alarm systems should be included in the draft Premises Standards now.

Recommendation 20: That a requirement for visual emergency egress alarms be included in the final Premises Standards.

6.3 Questions of interpretation

(a) *Wayfinding*

255. In general terms, wayfinding is the ability to; know where you are, where you are headed, and how best to get there; recognize when you have reached your destination; and find your way out--all accomplished in a safe and independent manner.
256. In 2002 when the BAPC was scoping out its work, it considered how the Premises Standards could meet Performance requirement DP1, which required:
- Access must be provided, to the degree necessary, to enable:
identification of accessways at appropriate locations which are easy to find.
257. Up till then the BCA had limited its coverage in terms of deemed-to-satisfy solutions to a very small number of signage requirements covering facilities such as accessible toilets, hearing augmentation systems and information in lifts.
258. The disability sector was eager to address a broader series of access issues relating to wayfinding which encompasses far more than just signage of accessible facilities. They had in mind the possible development of deemed-to-satisfy features such as tactile maps, use of directional indicators, path identification features, audio information and electronic tracking and locational devices.
259. Following discussions with organisations representing blind people here and overseas the BAPC concluded that there was insufficient information concerning how to address wayfinding issues and proposed that questions related in wayfinding from the allotment boundary, to and within buildings, be subject to further research.
260. The BAPC proposed that until such time as information was available to assist in developing appropriate deemed-to-satisfy provisions the current provisions in the BCA relating to 'signage' would be all that was needed to address wayfinding requirements.
261. While not specified, this could mean, for example, complaints about tenants' boards, directions to particular offices and directions indicating the location of reception desks or exits could not be subject to complaints.
262. The BAPC supported ABCB undertaking research in this area in partnership with CRC Construction Innovation and other stakeholders and made it clear the outcome of this research should be addressed through a revised Premises Standards as soon as possible.
263. Effectively industry would have a 'holiday' from wayfinding related complaints if Premises Standards were enacted before the research was completed until such time as a suitable amendment could be developed to address agreed wayfinding issues.

264. The joint CRC and partners research was undertaken throughout 2003/4 and the final report *'Wayfinding in the Built Environment'* was delivered in July 2004. The report identified a range of passive and technological means by which wayfinding could be improved but concluded:
- 'The extent to which these systems could or should be required to be incorporated into buildings and other venues and how the Building Code of Australia and other related legislation should be amended to take these established systems into account needs further investigation'.
265. In 2006 the ABCB issued a guideline document titled *Wayfinding Design Guidelines to assist People who are Blind or Vision Impaired* and in 2007 the Government of Queensland in conjunction with CRC Construction Innovation issued *Wayfinding design guidelines* and an accompanying audit tool. Both these documents were based on information supplied by the research project.
266. The Commission understands that despite the completion of this research at this point in time there is little prospect of developing consistent, universally applicable deemed-to-satisfy solutions suitable for the Premises Standards or building law.
267. The Commission's view is that as it appears there is little prospect at this point in time of identifying a set of deemed-to-satisfy provisions that can be put into the Premises Standards matters relating to wayfinding (other than Signage) should be treated the same way as other issues not covered by the Premises Standards - such as fitout. The Commission's view is that these matters should continue to be covered by the individual complaint process under the DDA subject to defences of unjustifiable hardship.
268. Should a set of suitable deemed-to-satisfy provisions be developed in the future these should be added to the Premises Standards and taken as benchmarks for compliance.
269. An appropriate process needs to be identified, however, to ensure work on this issue progresses.
270. In the meantime designers and developers could use the material produced by the ABCB and the CRC/Qld Government to guide them in their attempts to address wayfinding issues.

Recommendation 21: That complaints in relation to wayfinding issues (other than those covered by the Signage provisions of the draft Premises Standards) should continue to be covered by the normal complaints provisions of the DDA subject to unjustifiable hardship defences.

Recommendation 22: That a suitable mechanism be established, involving representatives from all major stakeholders, to review the wayfinding research and develop recommendations on the most appropriate way of achieving improvements in this area.

- (b) *Effect of concessions and exemptions in the Premises Standards on complaints in relation to existing buildings*
271. Throughout discussions at the BAPC on the development of the draft Premises Standards the Commission has always understood that the Premises Standards will only apply to those buildings where a building application triggers the need for a building approval – new buildings and existing buildings being renovated.
272. Existing buildings that do not do anything to trigger a building approval would therefore continue to be subject to the current complaints provisions of the DDA.
273. This means that a complaint concerning access to any existing building not undergoing any new work would be processed through the Commission's Complaints Handling section where an attempt to conciliate an agreement between the two parties would be made.
274. If conciliation were not possible the complaint would be terminated and the complainant advised that their complaint could be lodged with the Federal Court.
275. While a court may well consider any document put before it by any party the Commission's expectation is that there would be no automatic application of any concessions or exemptions within the Premises Standards to existing buildings not subject the Premises Standards. The complaint and its outcome would rest on the question of unjustifiable hardship in that individual case.
276. For example, assume an existing building had a second floor of just 180 square metres and a person with a disability lodged a complaint against the owner because they could not access a service provided out of the upper floor.
277. If the building was subject to the Premises Standards (i.e. it was new or undergoing renovation which triggered a building approval) the owner would not be required to provide access to the upper floor because of the 200 square metres exemption within the draft Premises Standards.
278. However, because the building does not trigger the application of the exemptions within the Premises Standards the case would be determined on merit.

Recommendation 23: That complaints in relation to existing buildings not undergoing any new work, and therefore not triggering the application of the Premises Standards, should continue to be subject to the current complaints provisions of the DDA and be dealt with on merit, rather than with reference to the concessions within the Premises Standards.

6.4 Issues not addressed in the draft Premises Standards but which require ongoing work

(a) *Emergency egress*

279. As discussed earlier the BAPC proposed that matters relating to emergency egress required further research and consideration.
280. While the development of suitable deemed-to-satisfy emergency egress requirements is vitally important the Commission is of the view that the Premises Standards should not be delayed while awaiting their development.
281. An appropriate process needs to be identified, however, to ensure the work on this issue progresses.

Recommendation 24: That a suitable mechanism be established, involving representatives from all major stakeholders, to review emergency egress requirements for people with a disability with a view to introducing appropriate deemed-to-satisfy provisions in a revised Premises Standards as soon as possible.

(b) *Fitout of buildings*

282. As previously discussed the Premises Standards at this stage address only those issues currently covered by the access provisions of the BCA.
283. People with a disability, however, regularly experience discrimination in relation to access to and use of premises arising from the fitout of buildings.
284. This might include accessing reception areas, using facilities such as drinking water fountains, information booths, queuing systems, retail change rooms and circulation space around products.
285. Once the Premises Standards are completed the Commission would want to see work begin on addressing these issues and an appropriate process needs to be identified to ensure the work on this issue progresses.

Recommendation 25: That a suitable mechanism be established, involving representatives from all major stakeholders, to develop recommendations in relation to fitout issues including recommendations on the most appropriate way of achieving improvements in this area.

7 The Administrative Protocol

286. This document is not part of the Premises Standards but describes an important mechanism that may be adopted by State and Territory building

Administrations to deal with questions relating to the application of the proposed new access provisions of the BCA.

287. As mentioned earlier once the Premises Standards have been finalised the intention is for the ABCB to propose changes to the BCA to reflect the Premises Standards and for these changes to be adopted by States and Territories in their building laws.
288. When this happens it is likely that some developers or certifiers will seek advice about whether or not a proposed building solution meets the requirements of the BCA and in exceptional circumstances whether or not the full application of the BCA is required.
289. For example, some existing buildings may have been designed and constructed many years ago, and it may be simply impossible technically to meet the requirements of the revised access provisions of the BCA in full.
290. Under the Protocol, each State and Territory building regulation body adopting it would set up a mechanism which would include an Access Panel, made up of people with relevant expertise, to deal with a number of issues including:
 1. Determining whether or not a proposed Alternative Solution meets the *Performance Requirements* of the revised BCA.
 2. Determining whether or not a requirement to fully comply with the revised BCA would be too onerous a demand for a particular development.
291. While Access Panels would be making recommendations in relation to questions on the application of the BCA, adoption of and use of the Protocol aims to deliver recommendations that are likely to be consistent with decisions that could be made by a court should similar issues be raised with it in relation to the full application of the Premises Standards.
292. A number of States and Territories already have mechanisms in place that could be adapted or expanded to take on this role.
293. The Commission strongly supports the Administrative Protocol as a valuable mechanism to provide greater surety in the decision making process for building certifiers. Its adoption by any particular State or Territory, however, has no bearing on the adoption of the Premises Standards.
294. The Commission is aware, however, of the need for further discussion between the ABCB and State and Territory building Administrations to clarify some aspects of the proposal and the views in some sectors that more work needs to be done to provide greater certainty in relation to Access Panel recommendations.

8 Appendix

8.1 *The Good, the bad and the ugly*

http://humanrights.gov.au/disability_rights/buildings/good.htm

8.2 *Photo essay*