



Physical Disability Council
New South Wales

Physical Disability Council of NSW Inc

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24th September 1998

Mr M. Balch
Associate Executive Director
Australian Building Codes Board
GPO Box 9839
Canberra ACT 2601

Dear Mr Balch

RESPONSE TO BUILDING ACCESS OUTCOMES REPORT and REGULATORY IMPACT STATEMENT

The Physical Disability Council of NSW (PDCN) is the major peak organisation in NSW representing people with physical disabilities. PDCN provides the communication link between people with a physical disability and decision makers in government, business and the local community.

The development of a new Building Code is of great interest to PDCN and its members due to the direct impact of the code on the ability of people with physical disabilities to participate fully in and as equal members of their communities.

PDCN is disappointed to learn of the Australian Building Codes Board's decision to delay once again the release of an Australian Building Code that reflects the needs of the community and the requirements of the Disability Discrimination Act.

PDCN is also disappointed that critical methodological issues which were raised by us and by others in the disability sector in comments on the draft Regulatory Impact Statement were noted but largely ignored.

We understand that the building industry will not support an amended BCA unless it is declared as a DDA Standard. We believe that the BCA cannot become a DDA Standard on its own as its scope is limited to providing access only to new and refurbished buildings. The current Disability Discrimination Act provides for a much broader definition of access. A national DDA Standard ought to contain several sections that might include:

- the Building Code of Australia and referenced Australian Standards;
- Furniture and Fixtures (AS1428.2)
- Outdoor and Open Space Facilities
- Heritage Buildings and Facilities
- Management and Operational Procedures and
- Adaptable Housing Standard (AS4299)

PDCN's response to the Building Access Outcomes Report and the revised Regulatory Impact Statement follows. The response is based on extensive consultations in rural and metropolitan NSW over the last two years with people with a wide range of physical disabilities. The results of the consultations have been summarised in *Position Paper '99* - enclosed. The loud clear message from these consultations is that barriers in the built environment create one of the greatest obstacles to the meaningful participation by people with physical disabilities in the community.

The section on measuring the benefits of an accessible environment has been written in consultation with Dr. Jack Frisch, a consultant economist with a Ph.D. from Princeton University, and the father of a 14-year-old girl with a physical disability.

In general the PDCN supports the proposals articulated in the Access Outcomes Report, conditional on satisfactory resolution of

- the outstanding issues of car parking,
- visitability to public and common areas of Class 2 and 1b buildings,
- access to schools and swimming pools,
- independent access controls and consistent size of speciality lifts
- access in two and three storey buildings

and hopes for an unconditional decision from ABCB to adopt BCA Amendment 4 in full on January 1st 1999, irrespective of the progress and status of amending the DDA to allow for the making of a DDA Access Standard.

Should you wish to discuss any aspect of this response please feel free to call me on (02) 9629 9110 or 0412 539 100.

Yours sincerely,

John Moxon

RESPONSE TO

ABCB BUILDING ACCESS
OUTCOMES
REPORT

and

REGULATORY IMPACT
STATEMENT FOR AMENDMENT
OF THE BUILDING CODE OF
AUSTRALIA

Physical Disability Council of New South Wales
September 1998

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A: *REGULATORY IMPACT STATEMENT – August 1998*

1. Misleading Conclusions

The Physical Disability Council rejects the RIS and will intend to appeal the assessment along the lines of the appeal mechanism referred to on page 1. We believe that the methodology and conclusions of the RIS continue to be flawed, and we furthermore believe that the RIS shows a strong bias against the disability sector.

We note that the benefits to people other than people with disabilities have been recognised but believe that mere noting is not good enough and that some attempt should have been made to measure these benefits. We note that the NPV costs and nominal costs have been revised downwards to \$3.4 billion and \$6.6 billion respectively (page 9) as a result of the exclusion of costs associated with places of refuge and the higher discount rate used to allow for technological change, but wonder why a 0.7-1.5% increase in costs continue to be described as significant while a

perceived improvement by 53% of a survey group continues to be described as moderate (see A.2.d below).

We reject the conclusion (which is the only part that most people read) that the “*amendment will impose significant costs on building owners and building based business*” while “*the users of buildings will benefit from the increased access and amenity to a moderate extent*” (p.9). This description is wrong in terms of the RIS itself and wrong because of the inadequate methodology of the RIS (notwithstanding the endorsement of the Industry Commission).

2. Benefits Understated

We note that a number of our comments about the benefits to other users were noted in the revised RIS but were puzzled as to why there was still no attempt to measure these benefits in the same terms as the costs - i.e. in terms of dollars. We note that the Industry Commission has endorsed the methodology of the RIS, but this merely calls into question the Industry Commission as well as the RIS. We present some of our own benefit estimates below.

a. Insurance Value of an Accessible Environment

We note that the RIS has made no mention of the “insurance” benefit of an accessible environment viz. that people who do not currently have a disability or a family member or friend with a disability would draw comfort and therefore benefit from having an accessible environment in the event that they or a family member or friend acquire a disability. There is of course market failure for insuring against the loss of socio-economic participation because of disability, but PDCN believes that application of a “shadow” insurance premium of 0.1% across the population is a conservative estimate of a “fair value risk-neutral” premium given that the odds of acquiring a disability are less than 1,000 to 1. Applying a conservative 0.1% premium to National Income implies a benefit across the population of at least **\$420 million per year**, or \$8.4 billion over 20 years. (The actual “shadow” premium which should be applied is an empirical question which the RIS should have but did not attempt to estimate).

b. Lost Productivity Due to an Inaccessible Environment

We believe that the RIS should have made some attempt to estimate the lost productivity due to an inaccessible built environment. While the built environment is only one part of the environment, PDCN believes that some apportionment of the benefits should have been made.

The participation rate in the workforce of the 80,000 wheelchair users in the community is 38% as compared to 63% for the population as a whole. If 12,000 currently unemployed wheelchair users were made employable as a result of an accessible social and built environment, and they had an average productivity of \$25,000 per annum, then National Income would increase by **\$300 million per year**, or \$6 billion over 20 years. This is an underestimate of an accessible environment because it includes only wheelchair users and therefore excludes people with vision and hearing impairments, and the large number of people with ambulant disabilities.

c. Other Beneficiaries of an Accessible Environment

There are of course difficulties in attempting to estimate the value of an accessible environment to carers, friends, and family and to people with prams and trolleys. It is difficult to estimate the value of a safer built environment to workers and children or of the amenity value of larger spaces. And it is difficult to measure the value of an accessible environment to people with disabilities.

But it is also difficult to measure the cost of providing access to a building. The latter was attempted, and PDCN believes that there should also have been an attempt to measure the benefits in dollar terms or to look at the overseas evidence, and to examine the literature on benefits.

If the RIS was able to accept the Property Council’s estimate of a \$20 per square meter cost of access, then we feel it is appropriate to suggest that the value of an accessible built environment to wheelchair users is approximately \$4,000 per year. Given the 80,000 wheelchair users in Australia, this comes a value of **\$320 million per annum**, or \$6.4 billion over 20 years. It is an underestimate because it only accounts for the small number of people with disabilities who use wheelchairs, and excludes people with ambulant disabilities, and people with hearing and vision impairments. It also excludes the value of an accessible environment to carers, friends and relatives of people with disabilities.

d. Qualitative Conclusions from RIS survey: Beyond Comprehension

By what stretch of the imagination can a policy which increases the percentage of ambulant and wheelchair groups not needing assistance from 59% to 90% and where 77% of the surveyed group believe their participation in socio-economic activities will improve be described as “moderate to major” rather than major? (p. 71)

By what stretch of the imagination can a policy which increases the percentage of the hearing group not needing assistance from 33% to 86% and which 48% of the surveyed group believe will improve their participation in socio-economic activities be described as “moderate” rather than major? (p.71)

The Table below summarises PDCN’s understanding of pages 71-72. We believe that the descriptors defy comprehension.

Consumer Group	Percent Not needing Assistance			% Who Believe RD97/01 Will Increase Participation	Qualitative Descriptor of Importance
	Before RD97/01	After RD97/01	Increase in Independence		
Ambulant and Wheelchair	59%	90%	31%	77%	Moderate to major
Hearing	33%	86%	53%	48%	Moderate
Vision	70%	93%	23%	52%	Moderate
All	54%	89%	35%	59%	Moderate to Major

If the issue was merely one of semantics, there would be little to be concerned about. But the descriptors are highlighted besides the conclusions in the summary on page 9, and placed beside a description of the costs to building owners as significant.

But because page 9 may be the only page that busy decision-makers will read, and because it is the page that most advisors to decision-makers will summarise, the misleading description of the value of the benefits is critical. **It is difficult to overstate PDCN's frustration with these misleading conclusions.**

3. Costs Overstated

a. Overseas Estimates Suggest Lower Costs

We are at a loss to explain the discrepancy between the cost estimates of the RIS and overseas cost estimates. Thus, "A brief survey of studies on costs and benefits of non-handicapping environments" by Dr. Adolf Ratzka at the International Congress on Accessibility in Brazil 1994 suggests the costs of providing barrier-free access to be more like 0.13% than 0.7% for new public buildings and more like 0.5% than 3.5% for existing public buildings. Furthermore, the survey reports that access legislation would raise the cost of multi-family housing and single floor single family housing by only 3%.

We are not equipped to comment on the quality of the reviewed research, but these estimates call into question the costs estimates of the RIS and suggest that a review of overseas experience ought to be part of a sound impact statement.

b. Some Methodological Biases

We wonder why the developers' cost estimates which were presented to Councils were taken at face value rather than adjusted when it is well known that these estimates are always lower than the actual building costs. This is of concern because the downward bias of base estimates leads to an upward bias in the percentage impact of access requirements.

We wonder why the RIS accepted at face value the estimates of \$20/square meter supplied by the Property Council, when the Property Council wants as little "intervention" in the activities of builders as possible. This is like the referee asking one of the teams in a match to interpret the rules!

We wonder to what purpose the RIS made three supposedly "independent" estimates of the costs when the three estimates are not independent - i.e. national accounts and the capital account are intimately related, and these in turn are both logically related to the real output extrapolations. We believe the three estimates give **a false and spurious sense of consistency** when consistency is in fact guaranteed by the logic of the relationship between National Accounts, output, and the Capital account.

c. Cost Overestimated Because Lack of Enforcement

We believe that the RIS costs estimates overstate likely future costs because there is no means of enforcement except through the DDA complaints mechanism. It is inevitable that parts of the Amendment will be ignored, with a consequent decrease in the cost and a longer than 20-year time frame for implementation of an accessible built environment.

B: PROCESS ISSUES

1. The BCA as a DDA Standard

PDCN welcomes the recognition in the Building Access Outcomes Report “*that there are many aspects of the built environment not within the scope of the BCA that are within the scope of the DDA and for which a separate standard... standard may be needed*” (p. 4). We are however disappointed that the Report did not go further in describing the symbiotic relationship between the “base building” and the other “aspects of the building’s environment and use”.. (We are also puzzled as to the meaning of “part of a standard” which has been excluded from the sentence quoted above.)

Because it is impossible from a functional point of view to separate the base building from the furniture and fixtures, from the outdoor and open space facilities, from the management and operational procedures, and from adaptability issues, PDCN believes it is impossible to adopt one part of the what would make up an Access Standard from the other parts (i.e. the BCA from the Furniture and Fixture Standard etc.).

While we support the need for a DDA Standard to cover “access” for people with disabilities in the built environment, and we support the proposals of the Building Access Outcomes Report subject to resolution of a number of issues outlined below and look forward to speedy passage of an amended BCA, we believe that BCA and the making of DDA Standard are at this stage separate issues.

PDCN rejects both the notion that the DDA must be amended before the BCA Amendment can be adopted and the notion that the BCA would constitute an entire Access Standard.

2. Decision Making and Review Process

People with disabilities in general and PDCN in particular participated in good faith and with good will towards the ABCB in the development of RD97/01, providing advice on how best to meet their needs within the built environment.

The Outcomes report does not inform the stakeholders on the process undertaken by the ABCB when reviewing the access requirements as set out in RD97/01. In order to make an informed response, people with disabilities need to know the reasons for the reduction in some of the proposals contained within RD97/01 e.g. the reduction in designated parking spaces, the exclusion of schools and swimming pools, the backdown on visitability to Class 1b and Class 2 buildings, and the increase in the threshold for two and three-storey buildings,

PDCN calls on the ABCB and stakeholders to evaluate the methods of review and the reasoning behind the alterations to RD97/01 given that these alterations will continue to exclude a significant number of people with disabilities from society.

C. TECHNICAL ISSUES FOR PEOPLE WHO USE WHEELCHAIRS

1. Door Widths, Lift Openings etc. - the Wheelchair footprint

The suggested 800 mm minimum clear opening of a doorway (p. 38) appears to be an arbitrary decision between AS 1428.1 (with a A80 1250mm by 740mm wheelchair footprint which suggests a 760mm door width) and AS1428.2 (with a A90 1300mm by 800mm wheelchair footprint which suggests an 850mm door width).

This 800mm door width proposal clearly discriminates against 10% of wheelchair users and 15% of people who use scooters.

PDCN calls on the ABCB to accept the wheelchair footprint size of A90(300mm by 800mm) as the minimum standard for all components of access including door widths and lifts. Accepting this as the wheelchair footprint size will create consistency throughout the built environment and minimise discrimination.

2. Second and Third Floors of Two and Three Storey Buildings - (pp 7, 22)

The current proposal is to require general access throughout a building except in two and three storey buildings with a total area less than 500 Metres² on the upper floor(s) and where no unique facility exists on the upper levels.

We believe that 500 Metres² is a substantial area which covers many non-unique specialty outlets and services. We further believe that exclusion from the wide a range of non-unique outlets and services substantially reduces the choices available to people with physical disabilities, and is therefore both discriminatory and burdensome. We are puzzled as to why the area threshold has been increased from the 400 square metres threshold of RD 97/01.

The “*unique facility or service*” (p. 7) clause is nonsensical because most space is only leased out only after a building is well under way, and because even if none of the initial tenants in a new building are “unique”, there is no reason to expect that none of the subsequent tenants will be “unique”. Were a subsequent “unique” tenant to occupy upper floor premises, the tenant would most likely be able to successfully argue “unjustifiable hardship” were a DDA complaint to be lodged - even though construction or provision for a lift shaft at an early stage could have been economical.

PDCN calls upon the ABCB to investigate options that allow for easy installation of lifts after construction if necessary and halving the exemption threshold from 500 square metres to 250 square metres.

3. Access and Egress – (pp 15-17)

We reject outright the proposal to exclude access provisions for people with a disability to the public and common areas of Class 2 and Class 1b buildings. To continue to prevent access through the front door, to lifts, to car parks, etc. is to continue to treat people with disabilities as second-class citizens. It is keeping people with disabilities separate - i.e. apartheid. Not only can we not live in these premises, but we cannot even visit our friends, nor work as tutors or technicians, etc.

PDCN calls on the ACBC to ensure that full non-discriminatory access is provided to the public and common areas of Class 1b and Class 2 buildings.

4. Pedestrian Ramps at Exits - page 18

PDCN believes that all ramps into and out of any facility should be seen as an accessible ramp, and that there should be no “other case” as suggested in D2.10(b). All ramps for safety reasons should comply with AS1428.1 and provide landings at turns and intermediate rest points according to AS1428.2

PDCN call on the ABCB remove D2.10(b) and require that all ramps comply with AS1428.1 and AS1428.2

5. Access for People With Disabilities - page 20

PDCN completely rejects the proposal to exclude access provisions for people with a disability to the public and common areas of Class 1b, 2 and 4 buildings and Class 10 buildings when part of Classes 2 and 4. As indicated above, PDCN believes that to continue to prevent access to public and common areas is to continue to treat people with disabilities as second-class citizens. It is keeping people with disabilities separate - i.e. apartheid.

PDCN calls on the ABC to remove the exclusion to access Class 1b, Class 2, Class 4 and certain Class 10 buildings.

6. Wheelchair spaces in certain Class 9b Buildings - page 23

Words like *practicable* are signals and messages for developers and Councils to ignore the intention of the Building Code to provide non-discriminatory access. In that sense the inclusion of *practicable* in the wording of D3.3 has reduced the intent of the provision as compared to RD97/01 which required spaces “across the range of viewing positions, prices and amenity available to all persons”..

PDCN calls on the ABCB to return to the wording within RD97/01 with regard to the provision of Wheelchair Spaces in certain Class 9b buildings, and to provide more definition of the specified areas of a grandstands, theatres and auditoria to which wheelchair accessible seating spaces should be provided.

7. Vertical access - page 24

The pre-ambule in the summary of this report articulates the requirement to provide independent usage of speciality lifts at all times. However, sub-paragraphs C and D relating to AS1735.7 and AS1735.14 do not include the same requirement for independent use as articulated in sub-paragraph E for AS1735.16.

PDCN calls on the ABCB to ensure that the requirement for independent usage be applied to all speciality lifts.

8. Car parking - page 25

PDCN believes that the 1% allocation of designated accessible car spaces is totally inadequate in view of the ease with which vouchers for accessible car spaces are distributed, the poor enforcement of spaces, and the proportion of the population with ambulatory disabilities.

PDCN calls on the ABCB to increase the percentage allocation to 3% wide bay spaces as per the proposal in RD97/01.

9. Hearing augmentation - Ticket Booths - Page 26

PDCN notes the ABCB's acknowledgment of the need to provide communication support for people with hearing impairment at ticket booth and windows, and believes there should also be hearing support available at wheelchair accessible windows. There is an assumption that people in wheelchairs do not have hearing impairments and that people with hearing impairments do not use wheelchairs. This is false, and likely to be less valid in future as the incidence of people with multiple disabilities increases.

PDCN calls on the ABCB to ensure that all ticket windows, booths and counters make provision for people with hearing impairment.

10. School Buildings

We cannot accept any proposal which provides less than 100% access to all classrooms and facilities in new schools, including smaller buildings. To wait for the building access issue to be resolved by the Education Standards Taskforce is to delay unnecessarily and subject another cohort or two of students to marginalisation, isolation, and discrimination.

The proposal to provide less than 100% access restricts the ability of students, teachers and parents who use a wheelchair to undertake dignified education, gain employment in the school, or be a parent who participates in school activities. Restricting the classrooms used by the cohort of the peers of a student with a disability leads to resentment against the student with the disability. The need for teachers to be mindful of the needs of a student with the disability leads to resentment and/or guilt by teachers, and as often leads to a failure to meet the needs of the student with a disability. Timetabling does not allow for spontaneous events or individual need, and inevitably leads to discrimination, isolation and marginalisation.

PDCN cannot countenance another generation of students with disabilities being marginalised and isolated and being kept from performing to their full potential, particularly in view of the negligible cost of providing access at a "greenfields" site.

Furthermore, 100% access needs to be provided because school buildings are an intrinsic part of the community fabric and are often used as Evening Colleges, for community activities, election polling, and entertainment venues, etc.

PDCN call on the ABCB to ensure that the original requirement of RD97/01 that access be provided to 100% of the classrooms and facilities in all new schools.

11. Swimming Pools

It is totally inappropriate to exclude swimming pools from the need to provide access to people with disabilities. Whilst it is accepted that it is not possible to ramp a competition pool, it is possible to provide access by means of a hoist. In pools other than competition pools access should be provided by means of a ramp to enable independent entry. It should be noted that it is now possible to raise the floor of a pool to zero depth, and this is a means of dignified independent access to swimming pools.

PDCN calls on the ABCB to ensure that people with disabilities should have the same choices of recreation as everyone else in the community and should not be excluded from accessing swimming pools. Swimming pools should not be exempt from providing access to people with disabilities.

12. Existing Buildings

We are unaware of any consultation having taken place about access to existing buildings but are pleased that the issue has been raised in the RIS.

In our view the crucial questions relate to:

- when a building or part of a building should be made accessible
- the parts which should be made accessible
- the nature of exemptions
- implementation.

The fundamental principles sought by people with disabilities are that:

1. Whenever a building undergoes:
 - a) any new building works, even 5 % of structural or aesthetic refurbishments, or
 - b) a complaint of discrimination has found to be valid,that the following must apply:
 - access into building entrances becomes a mandatory requirement where a partial upgrade, such as a whole floor in a multi-storey building, is planned.
 - all efforts must be made to establish primary access into a building,
 - all efforts must be made to address the issue of a complaint, and
 - all aspects of any refurbishment must be made accessible.
2. While structural components may prevent full compliance with the BCA in some buildings, these exceptions need to be clearly spelled out after broad consultation in order to ensure that exceptions are not used to avoid the spirit and intent of the DDA.
3. A decision-making body or panel needs to be established to decide when existing buildings should be required to become accessible, with the body to include equal representation of suitably experienced people with a disability.

Generally, we would agree with the view that a 20 year implementation plan for a DDA Access Standard is appropriate for existing buildings.

D. Summary and Conclusions

Rejection of RIS

We totally and completely reject the Regulatory Impact Statement because of its faulty methodology and misleading conclusions. We estimate the benefits of an accessible environment to be at **\$1,040 billion per annum a very minimum**. We consider this of major significance. By contrast we consider the more careful analysis of building costs would find the effect on costs to be moderate.

Process

We reject both the notion that the DDA must be amended before the BCA Amendment can be adopted and the notion that the BCA would constitute an entire Access Standard and we call on the ABCB and stakeholders to evaluate the methods of review and the reasoning behind the alterations to RD97/01 given that these alterations will continue to exclude a significant number of people with disabilities from society.

Technical Issues

We call on the ABCB and the various parties to:

- resolve the issue of the wheelchair footprint size in order to resolve other outstanding issues of door widths, lift sizes, and general circulation;
- restore the 3% quantity and wide bay size of designated accessible car parking,
- establish a consistent size of speciality lifts and ensure independent access to specialty lifts;
- adopt principles of visitability access to public and common areas of Class 2 and 1b buildings, as has recently been announced in the United Kingdom;
- establish 100% access to schools to avoid an additional day of marginalisation, and humiliation for students with physical disabilities;
- develop options for access to swimming pools;
- develop technical dimensions for accessible hotel/motel room designs for ambulant people with a physical disability, and to
- develop fair and equitable mechanisms concerning access to existing buildings when undergoing refurbishments and refits;
- develop option that allow for easy installation of lifts after construction if necessary and halving the exemption threshold from 500 square metres to 250 square metres for two and three storey buildings.