
FEBRUARY 2022

Accessible Housing Project Process Review

SUBMITTED BY:
BRUCE BONYHADY, AM
EXECUTIVE CHAIR AND DIRECTOR
MELBOURNE DISABILITY INSTITUTE



Melbourne
Disability
Institute

Accessible Housing Project Process Review

Summary of Recommendations

The Melbourne Disability Institute (MDI) recommends that the ABCB should:

- Ensure that the membership of the ABCB Board includes a member with high level CBA expertise.
- Review the selection criteria used by the ABCB when setting Expressions of Interest for Consultation Regulatory Impact Statements. It is essential that any consultants who are engaged to undertake future CBA work demonstrate that they have an understanding of the setting and content area in which the CBA is being applied, have a track record of incorporating qualitative findings into their quantitative work and that they will take into account broader social justice considerations as part of their analysis.
- Establish an Independent Expert Panel to assist with the selection of the most qualified consultants to undertake future Regulatory Impact Statements and then to meet regularly with the consultants to review and comment on their analysis. This process is necessary given the significant number of technical and value judgements that are built into cost benefit analyses. It is also essential that all assumptions and judgements are transparent.
- In the event that the Consultation RIS receives very significant and high-quality responses, the governance processes should allow for the appointment of new independent consultants to undertake the Final RIS in which they can carefully weigh the Consultation RIS, the submissions and any new information they consider to be important.
- Undertake an external scan to identify the most important external stakeholders and then reach out and engage with them in a transparent process as part of future Regulatory Impact Statement processes.
- Commission new independent and suitably qualified experts to review the work of CIE and MDI, including the qualitative findings from MDI. This should then provide a new basis for the ABCB to work with NSW, SA and WA to provide further evidence for them to adopt the National Construction Code in relation to mandatory accessible housing standards.

Introduction

The Melbourne Disability Institute (MDI) is an interdisciplinary research Institute at the University of Melbourne. The MDI facilitates collaborative, interdisciplinary research to build the evidence-base needed to guide social and disability policy reforms and to advance opportunity and equity for people with disability, their families and carers.

We would like to thank the ABCB for establishing this review. It is very important in our view.

MDI is committed to co-producing collaborative research with people with disability involved not just as participants, but as co-creators of knowledge. Throughout our work, we strive to promote the inclusion and well-being of people with disability, explore issues that are or are likely to become important to people with disability and recognise, foster and communicate the contributions people with disability make to research.

Since the establishment of the MDI in 2018, one of our collaborations has been with the Australian Network of Universal Housing Design (ANUHD), because of the importance of accessible, secure and safe housing for people with disability.

We would therefore suggest that we be classified in the “other” category of stakeholders, given that our role is primarily high-impact research.

The initial research and consultation process

During the initial research and consultation process, MDI’s involvement was through ANUHD. We relied on them to keep us up-to-date and our submission in response to the Accessible Housing Options Paper supported the ANUHD submission, rather than including any original research.

We are therefore not in a position to comment on the process at that time, as we were not directly involved.

The regulatory impact analysis process

MDI’s direct involvement commenced following the publication of the revised Consultation RIS in July 2020, because the conclusions were, simply, implausible based on our knowledge of disability and access.

From this point, we worked closely with both the Summer Foundation and ANUHD to undertake research to inform the regulatory impact analysis process. There were two parts to the research commissioned by MDI:

- First, Mr Andrew Dalton, Director AdHealth Consulting (former Associate Professor, Deakin Health Economics, Deakin University) and Emeritus Professor Rob Carter, Deakin University (former Alfred Deakin Professor and Foundation Director, Deakin Health Economics) examined the CIE report and advised on the extent to which the CIE report accurately presented the economic credentials of the proposed regulation. Dalton and Carter identified four key issues with the CIE analysis that together totally reversed the economic impact of the regulation.
- Second, Dr Ilan Wiesel, Senior Lecturer in Geography at the University of Melbourne, undertook a survey of people with disability and their families that provided important quantitative and qualitative data to support Dalton and Carter’s economic analysis. With over 1,187 survey responses, and 45 in-depth interviews, the report presented some of the most comprehensive data ever collected in Australia about the lived experience of people with a disability living in accessible or inaccessible housing. It brought the voices of hundreds of Australians with disability into the debate around the code changes.

Key findings from the Dalton/Carter economic analysis included:

1. The CIE “problem reduction” approach overcounted the cost side and did not adequately capture the benefits of accessible universal design. The principle of ‘symmetry’ in defining costs and benefits was not adequately followed. It is fundamental to CBA that if only a portion of the benefits are included, then costs must be apportioned in a symmetrical way, with apportionment criteria clearly specified.
2. At the same time the CIE “willingness to pay” (WTP) approach undercounted the benefits of accessible design. Costs were detailed but the breadth and depth of benefits were not. To illustrate our concerns, the CIE acknowledged that there are significant benefits flowing to the general population from more accessible housing – but actioned this important benefit only as a qualitative comment in their preferred results – even though they quantified them in their Consultation Report at over \$1 billion.

Exclusion of a major class of beneficiary is not consistent with a societal perspective. Further, they acknowledged the importance of likely production impacts in the general economy, stating that these benefits could involve “hundreds of millions of dollars”, but again preferred not to quantify them. Calculation of production gains/losses for the paid workforce is common in economic analysis and their exclusion is concerning in a social cost benefit analysis. There is also merit in the inclusion of domestic production impacts (i.e., housekeeping, caring roles et.al.), particularly for this decision context, but this calculation is less common.

3. Further the CIE cost-benefit analysis also assumed that the additional space per dwelling was a sunk cost for the sole benefit of people with mobility impairments that had no lasting value or benefit. However, the analysis showed that added space in any well-designed home did in fact add value. Importantly, the value of the space resulted from both the enhanced functionality from improved accessibility (as estimated from the CIE WTP exercises) as well as the enhanced capital value. Put simply – everyone benefits from universal design.
4. The “discount rate” used in the CIE report was, in the researchers’ analysis, set too high. In the CIE study, the discount rate assumption had a substantive impact on the estimated benefit cost ratios because most of the costs were upfront and the benefits remained in the future. Dalton and Carter were aware of the Office of Best Practice Regulation (OBPR) recommendation here, but cited clear commentary from the US Office of Management and Budget that the discount rate should have been at least half of that used by CIE. This issue should at least have been an important matter for discussion in the findings/recommendations as it significantly impacted the CIE findings.
5. These problems arose in addition to a range of technical issues. Unfortunately, the CIE choices of parameter value for each of these technical matters systematically worked against adoption of the building code reform. When considered in isolation, amendment of these parameter values does not impact the results substantially, but their cumulative impact does substantially alter the results. The inherent bias is compounded by the failure to present a succinct summary of all the qualitative evidence, aspects of which are fundamental to a balanced presentation to guide decision-makers.

Key findings from the survey and interviews by Dr Wiesel included:

1. Those on low incomes and renters are more likely to live in inaccessible homes.
2. More than 80 per cent of respondents agreed with the statement “I can’t visit friends and family whose homes are inaccessible”.

3. Almost one-third of respondents reported that a lack of accessible housing had reduced their ability to work or their productivity.
4. Lack of accessible housing resulted in significant additional NDIS spending and reliance on informal supports.
5. More than 70 per cent of people with high support needs reported adverse mental health impacts as a result of inaccessible housing, with 50 per cent of people with low support needs also reporting poor mental health and wellbeing.
6. Respondents suggested individual accessibility needs change over the life course, highlighting the need for houses which are as adaptable as possible.

Both the economic research and the survey results were submitted in response to the RIS consultations conducted by the Australian Building Codes Board (ABCB).

A copy of our initial submission is here:

https://disability.unimelb.edu.au/_data/assets/pdf_file/0007/3969151/Accessible-Housing-The-Way-Forward-Submission-to-the-Consultation-RIS-31-Aug-2021.pdf

Observations

Our observations on the process in response to **Questions 3-7** in the Discussion Paper are outlined below:

- We were concerned by the nature of some of the assumptions built into the CIE analysis, such as the assumption that “functional space” has no ongoing value, which seemed extreme. We were also concerned that given our research reached the opposite conclusion to CIE, our research would not be given due consideration. These concerns proved to be well-founded. The current regulatory impact process carries the risk of “methodological lock-in”; of the initial assessor being resistant to change.

Where valid criticisms are raised on a CBA assessment, there needs to be provision for independent assessment of the merits of each side of the argument. This is particularly the case where complex economic methods are involved, where methods are connected to underlying normative foundations (often unstated), and where the decision context can be fundamental to the choice of methods and their application.

- We were also concerned that CIE had not included qualitative analysis as part of its CBA; despite the fact that ‘mixed methods’ is commonplace in the health sector/disability sector setting. The CIE approach may be contrasted with the CBA undertaken on behalf of the ABCB by Ernst & Young in support of Changing Places. Given that Ernst & Young had built qualitative findings into its CBA, there was no reason why CIE could not have also built qualitative analysis into its CBA on mandatory accessible standards for housing.

Given the precedent set by Ernst & Young, which was not followed by CIE, we were therefore concerned that they would not place adequate weight on our very significant qualitative findings. Again, these concerns were well-founded. This raises another important risk in the current process for selection of the regulatory impact assessor. Careful consideration should be given to adding a criterion to the selection process, whereby demonstrated knowledge of the content area and associated methodologies is an “essential” or at least “highly desirable” criterion.

- Given the very significant research that we identified needed to be undertaken, the period in which the Consultation RIS was open for - only seven weeks - was in our view too short. We also note that very few groups would have been in a position to initiate and resource such significant research. This underscores the importance of the ABCB commissioning

balanced and high-quality consultation processes that have due regard for the timetable necessary for key stakeholders to respond. This should recognise the need to consult constituents, gather evidence and engage expert advice, particularly where complex CBAs have been conducted as the centrepiece of the Impact Statement.

- In our view, the most important lesson to be learnt from the Accessible Housing Regulatory Impact process is that the Consultation RIS is the critical foundation. It must be of the highest quality and must include qualitative analysis as well as quantitative analysis (as was undertaken by Ernst & Young as part of Changing Places) and must include social justice arguments.

As stated in our submission (Accessible Housing The Way Forward: Response to the Australian Building Codes Board Consultation RIS, August 2020):

“Dalton and Carter also identify important social justice arguments to support the regulation of accessible housing. They note that it is only in the world of perfect competition – which rarely if ever exists and certainly does not exist in the housing market in Australia - that societal welfare is maximised by summing individual welfare. This goes to the normative foundations of economics and associated elements included in the social welfare function.

They conclude that the full extent of broader social justice considerations, including the obligations of governments to create the kind of society that citizens want, would not have been captured in the CIE WTP survey that assessed the altruism benefit. Once social justice is added in, Dalton and Carter conclude that the economic credentials for all options considered by the CIE are considerably stronger than those presented in their report. While the CIE favoured continuation of a voluntary code, Dalton and Carter concluded that a social benefit code analysis based on their advice would underpin the case for adding a regulation to the National Building Code.”

CONFIDENTIAL

The consultation process on the draft standard

Following MDI's submission, we were provided with an opportunity to meet with CIE. However, it seemed that CIE had formed a clear and unshakeable view that the costs of mandatory accessible housing standards significantly exceeded the benefits.

It also appeared that they were committed to the view that even the most minimum standards would be highly costly. For example, they claimed during the meeting that the introduction of minimum accessible standards would prevent showers being located above baths, ignoring the obvious risks to people without disabilities.

We were concerned about the response from CIE and the ABCB officials who attended this meeting, and also concerned that the meeting was not sufficiently long to allow a proper consideration of all of the issues we had raised. We therefore decided that it was necessary to provide supplementary information to both the ABCB and CIE.

This submission entitled ABCB - Supplementary Information – Submission by MDI and the Summer Foundation, 6 October, 2020 is here: [ABCB-Supplementary-Information-MDI-and-Summer-Foundation-6-October-2020.pdf \(unimelb.edu.au\)](https://unimelb.edu.au/abcbsupplementaryinformationmdiandsummerfoundation6october2020.pdf)

Governance structures and functions

As noted above, it is recommended that the ABCB Board review its processes for commissioning Regulatory Impact Statements. In addition, it is recommended that:

- First, the ABCB Board should establish an Independent Expert Panel to assist with the selection of the most qualified consultants to undertake future Regulatory Impact Statements and then to meet regularly with the consultants to review and comment on their analysis. This process is necessary given the significant number of technical and value judgements that are built into CBAs.

It is also essential that all assumptions and judgements are transparent, including normative foundations of the methods being applied. CBA, for example, can be applied under an Orthodox or Neoclassical approach; under a Decision-Making School approach; and possibly under an Extra-Welfarist approach. These different normative foundations flow through into how the detailed CBA methods are conceptualised and applied. This Panel therefore should include high level expertise in CBA analysis, including a member expert in the application of CBA to the sector in which the Regulation might be implemented. This Panel would also be in the position to consider how any major issues of disagreement or due process might be resolved. This raises a further point.

- Second, in the event that the Consultation RIS receives very significant and high-quality responses that fundamentally disagree with the findings in the Consultation RIS, the ABCB governance processes should allow for the appointment of a new independent and highly experienced expert (person or entity) to adjudicate the Final RIS in which they can carefully weigh the Consultation RIS, the submissions and any new information they consider to be important.

We are not aware of how the Accessible Housing Project was reported to the ABCB Board but clearly this needs to be transparent. For example, we note that with the Accessible Housing Project, CIE was not really open to properly considering the submission from MDI. However, we are not aware of whether or not this was visible to the ABCB Board. We were left with the feeling of having put a considerable amount of work into our submissions but having no sense of what went forward to Ministers.

The engagement of external experts

As noted above, given the highly technical nature of CBAs and Regulatory Impact Statements, we would recommend that the ABCB Board should appoint an Independent Expert Panel to oversight its external experts. Further, the Chair of the Independent Expert Panel should report directly to the ABCB Board, rather than to management and should meet with the Board. There are examples in the health sector where the ABCB Board itself would have high level expertise in economic assessment – for example, the Pharmaceutical Benefits Advisory Committee (PBAC) and the Medical Services Advisory Committee (MSAC) both have expert advisory committees to assist them with their decision-making processes, as well as expert economists as members of the main committee. Given the centrality of CBA to the Regulatory Impact decision process, upgrading the level and nature of CBA expertise in the ABCB decision processes would seem highly desirable.

Our understanding is that the report from CIE met the standards set by the Office of Best Practice Regulation (OBPR). At the same time, however, the research findings from Mr Andrew Dalton, Professor Rob Carter and Dr Ilan Wiesel were diametrically opposed to the conclusions from CIE. Mr Dalton, Professor Carter and Dr Wiesel are all highly credentialed researchers who are widely regarded as experts in their fields. This highlights that professional differences can emerge and these are best resolved through advice from an independent expert panel having the resources to commission expert advice when required.

Further, consistent with the Vision and Mission of MDI, it is essential that the voices of lived experience are heard. This was provided through qualitative research undertaken by Dr Wiesel and through ANUHD, but our impression is that this feedback was not given the weight it deserved.

The relationship between the Board and the ABCB Office

The relationship between the ABCB Board and the Office was not visible to MDI and so we have no comments on this matter, other than any implications from what we have suggested above.

Stakeholder relationships

The primary and ongoing relationships of the ABCB are with the building industry. However, depending on the building code issue under consideration, other excellent stakeholder relationships are essential.

In the case of the Accessible Housing Project there was a need for excellent relationships with the disability community, older Australians and those interested in universal design. Therefore, in addition to the core relationships with the building industry, there is a need for the ABCB to have other excellent relationships depending on the regulatory matter that is being considered. Further, in these situations, it may not be obvious who to consult with within these other sectors and the representative organisations may have other pressing issues. The latter was a particularly challenging issue during the Accessible Housing Project as the Aged Care and Disability Royal Commissions were both very active.

It is therefore recommended that the ABCB Board ensures that it has a strong understanding of the diverse nature of citizen voices and undertakes an external scan to identify the most important external stakeholders, reaches out to them and then engages with them in a transparent process.

We note that as part of the Accessible Housing Project, the ABCB reached out to ANUHD and the Disability Discrimination Commissioner, but apart from a single meeting with CIE, MDI was not engaged directly at any time.

Other process or governance improvement opportunities

In addition to the above recommendations, we would recommend that the ABCB Board now commission a further cost-benefit analysis in relation to the Accessible Housing Project, given that the differences in view between CIE and Dalton/Carter have not been satisfactorily resolved.

This is important because while a majority of jurisdictions have agreed to accept the changes to the National Construction Code (NCC) in relation to mandatory accessible standards, NSW, SA and WA have decided to opt out of these changes to the NCC.

Notwithstanding the analysis by MDI, these jurisdictions cite the CIE Final RIS as justification for their decision. MDI could see the risks of this occurring and so in June 2021, following the decision by the Building Ministers Forum in April 2021, MDI published a Position Statement on the Cost-Benefit Analysis of the Proposed Regulation of Accessible Housing.

A copy is here: [MDI-Position-Paper-on-the-Cost-Benefit-Analysis-of-the-Proposed-Regulation-for-Accessible-Housing-June-2021.pdf \(unimelb.edu.au\)](https://unimelb.edu.au/MDI-Position-Paper-on-the-Cost-Benefit-Analysis-of-the-Proposed-Regulation-for-Accessible-Housing-June-2021.pdf)

Unfortunately, while a majority of jurisdictions have adopted mandatory accessible standards, three jurisdictions have not. As a result, people with disability and older Australians wishing to age in place in NSW, SA and WA are being significantly disadvantaged. There is also a loss of economies of scale in the building industry, with different regulations in different jurisdictions.

We would therefore recommend that the ABCB Board commission new independent and suitably qualified experts with the necessary content understanding and expertise in CBA to review the work of CIE and MDI, including the qualitative findings from MDI. This should then provide a new basis for the ABCB to work with NSW, SA and WA to provide further evidence for them to adopt National Construction Code in relation to mandatory accessible housing standards.

CONFIDENTIAL

Conclusion

In summary, we recommend that the ABCB should:

- Ensure that the membership of the ABCB Board includes a member with high level CBA expertise.
- Review the selection criteria used by the ABCB when setting Expressions of Interest for Consultation Regulatory Impact Statements. It is essential that any consultants who are engaged to undertake future CBA work demonstrate that they have an understanding of the content area in which the CBA is being applied, have a track record of incorporating qualitative findings into their quantitative work and that they will take into account broader social justice considerations as part of their analysis.
- Establish an Independent Expert Panel to assist with the selection of the most qualified consultants to undertake future Regulatory Impact Statements and then to meet regularly with the consultants to review and comment on their analysis. This process is necessary given the significant number of technical and value judgements that are built into cost benefit analyses. It is also essential that all assumptions and judgements are transparent.
- In the event that the Consultation RIS receives very significant and high quality responses, the governance processes should allow for the appointment of new independent consultants to undertake the Final RIS in which they can carefully weigh the Consultation RIS, the submissions and any new information they consider to be important.
- Undertake an external scan to identify the most important external stakeholders and then reaches out to them and engages with them in a transparent process as part of future Regulatory Impact Statement processes.
- Commission new independent and suitably qualified experts to review the work of CIE and MDI, including the qualitative findings from MDI. This should then provide a new basis for the ABCB to work with NSW, SA and WA to provide further evidence for them to adopt National Construction Code in relation to mandatory accessible housing standards.



Professor Bruce Bonyhady AM

Executive Chair and Director
Melbourne Disability Institute

18 February 2022