



SUBMISSION BY THE
Housing Industry Association

to the
Housing and Building Policy
Department of Planning and Community Development
on the
**Regulatory Impact Statement into Viable
and Adaptable Housing**

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Executive Summary

The Victorian Government's commitment to ensure that people with a disability or limited mobility are not excluded from participating in social life and work is strongly endorsed by HIA.

The policy commitment is based on the principal of equity and recognises that "*the whole community benefits socially and economically*" through improved social and economic inclusion of all people.

Having regard for the breadth of the policy commitment, it deserves and requires a 'whole-of-government' approach and a clearly articulated and formulated strategy. This strategy must encompass the work-place, support services, transport, health care, and neighbourhood, in combination with considering both existing and new housing supply.

An inclusive neighbourhood is at least as important to an individual's well-being and social inclusion as accessible housing. The policy commitment set out in the Regulatory Impact Statement (RIS) however, has been narrowly focused into mandating elements of universal housing design principles for all new dwellings and a percentage of residential apartments in the pursuit of visitable and adaptable housing. By mandating accessibility features in all new dwellings in an effort to achieve the broader policy commitment, only a small segment of the population, namely new home buyers, will bear the cost.

HIA understands and accepts that the housing sector can and ought to play a part in the implementation of a coherent and coordinated strategy to achieve the policy commitment. At issue is the manner in which the housing sector's participation should proceed.

Good policy outcomes rely on sound policy evidence and process; neither requirement has been met.

HIA recognises that universal housing design principles can make a difference in the manner in which a homeowner lives in their home. HIA is actively involved with the National Dialogue on Universal Housing which is working to develop a national approach to the promotion of universal housing. However, the mechanism of regulating four mandatory requirements into all new housing is not considered an appropriate response, particularly where no market failure has been proven, and where limited Government effort has been given to both building industry and community education.

HIA recommends the Victoria Government establish an advisory group to develop a 'whole of government' strategy for Accessible Homes, Accessible Neighbourhoods, drawing on representatives from the non-profit voluntary and community sector, public sector agencies and private sector organisations.

In developing the strategy there is a need for research that can identify the baseline number of accessible dwellings in the existing housing stock and secondly, assess the likely future actual requirement for accessible and adaptable dwellings.

The advisory group should report to the Premier and to the Minister for Planning and Community Development.

HIA submits that the case for introducing mandatory, prescribed building regulations for all new dwellings and a percentage of new residential apartments to achieve visitable and adaptable housing standards has not been substantiated in the RIS.

The proposal to add another state-based variation to the Building Code of Australia (BCA) is contrary to the conditions of an Inter-Governmental Agreement signed by the Victorian Government. Furthermore, the proposal contains a number of technical, administrative and planning anomalies that have been overlooked by the RIS.

The cost-benefit analysis lacks quantitative rigour and relies on subjective assessment of a range of nominated policy instruments. HIA takes issue with the RIS on the grounds that:

- The net costs exceed by four-fold the net benefits to the community an amount identified in the RIS to be in excess of \$200 million (NPV) over the assessment period;
- The direct costs of the proposed accessibility measures have been severely underestimated;
- The net benefits of the regulations are inflated because of an artificially low rate of discount adopted in the RIS;
- The net benefits of the regulations include a number of unquantified presumptions regarding the value that the whole community places on the changes;
- Alternative policy options to building regulation have been dismissed too readily.

HIA estimates that the accessibility regulations would increase the cost of a standard 180 square metre house by \$4,700 as against \$870 as claimed in the RIS. Maintaining the original design integrity of the standard house would see construction costs increase by up to \$18,000.

HIA recommends that discussions should take place between the consultants responsible for the costing estimates in the RIS and housing industry representatives with a view to clarifying why such a wide divergence in the cost estimates of the accessibility regulations has occurred. The outcomes of these discussions should be reported in the Final RIS.

An unpublished report on accessible housing was prepared jointly by the Victorian Building Commission and the Australian Building Codes Board in 2006. The report should be made public so that the findings of that research can be compared with the current RIS findings on the same issue.

The vast majority of people with mobility impairments are not seeking to purchase a new dwelling. Established dwellings, which are near substitutes for new dwellings, will not be covered by the additional regulations on new dwellings. Because the proposed regulations will have a much larger effect on new housing costs than allowed for in the RIS, there is the potential that some prospective new home buyers will switch from buying higher-cost new dwellings to the less expensive existing dwellings, defeating the purpose of the regulations.

The RIS does not consider how the proposed accessibility requirements will interact with other regulations, such as the requirement for 6-star energy efficiency requirements into new dwellings. Each regulation is adopted independently without regard for the layering effect, including their cumulative impact on new housing costs and affordability.

HIA is firmly of the view that a number of policy options mentioned in the RIS, as well as other proposals not identified in the statement, are worthy of much closer evaluation. These could include:

- Providing reliable information and guidance identifying specific design features and facilities appropriate to specific occupant needs;
- Increasing relevant information on consumer awareness and attitudes to accessible and adaptable housing;
- Creating closer co-ordination between and across existing funding programs and agencies;
- Providing seed capital to encourage leading-edge builders to sign up to the implementation of accessible housing design features;
- Undertaking a feasibility study on the introduction of a government-supported Accessible Homes Listing and advisory service to increase the matching of people with impairment to accessible dwellings for rent and for sale;
- Working with community and private sector organisations to examine the viability of a home renovation and repair service of accredited providers for the aged and impaired.

These (and other) proposals could form part of the work program of the advisory group developing the Accessible Homes, Accessible Neighbourhoods strategy.

1. The Policy Context

1.1 Policy Commitment versus Outcome

The RIS contends that the Victorian Government is committed to “ensuring that people with a disability or limited mobility will not be excluded from participating in social life and work”. A supplementary and sweeping goal is that “all types of housing will be visitable and adaptable”. However, there is a lack of clarity and structure surrounding the policy objectives because there is no clear ‘whole of government’ strategy.

If the policy objective is for people with mobility disabilities to have access to appropriate and affordable housing, then the proposal to mandate accessibility features in all new dwellings does not align with the policy objective, is poorly targeted, and will have unintended consequences.

The RIS alludes to ‘ageing in place’ whereby elderly people would not be required to move to a hospital or nursing home due to the ‘un-liveability’ of their current dwelling. Ageing in place is not just about accessible housing; it is also about accessible neighbourhoods. Neighbourhood is vitally important to the quality of day-to-day living and social inclusion for the whole community.

Access to community facilities, local services, amenities and shops as well as convenient and affordable transport services are crucial to encouraging participation by the aged and the impaired in the community. Inclusive neighbourhoods are about making access better for people, improving public services, transport and facilities.

Ageing in place would appear to mirror the preferences of most senior households and should be given the priority it deserves by way of a ‘whole of government’ approach to accessible homes *and* accessible neighbourhoods.

HIA recommends the Victoria Government establish an advisory group to develop a ‘whole of government’ strategy for Accessible Homes, Accessible Neighbourhoods, drawing on representatives from the non-profit voluntary and community sector, public sector agencies and private sector organisations.

The advisory group should comprise representatives of non-profit community organisations, public sector agencies and private sector groups and report to the Premier and the Minister for Planning and Community Development.

1.2 Easing the Strain on Victoria’s Public Health System

Based on the cost-benefit analysis contained in the RIS, it would be disappointing if the policy imperative is to curb demands on government expenditure for health and personal care services, particularly relating to injuries in the home by shifting costs to private households, in this instance, only purchasers of new homes and apartments.

It is not in question that demands for hospital, medical and aged care services have been expanding at a rapid rate. Nor is the profile of demographic projections that indicate a marked shift in the ageing of the population. It is misplaced to assume that the mandating of accessibility regulations in all new dwellings will have any appreciable impact on either:

- reducing future public sector costs of health services and aged care services; or
- increasing housing accessibility for the people the regulations are intended to assist.

There are several inter-governmental programs that are designed to support the disabled, including the Commonwealth-State Disability Agreement, the Home and Community Care Program and the Commonwealth-State Housing Agreement. There is an onus on governments to evaluate the effectiveness of existing programs and where appropriate to re-align spending priorities.

There is a case for closer integration of strategic and forward planning across departments that could create a more cohesive approach to the provision of accessible housing and support services.

The joint responsibility of the Commonwealth and States in the area of disability underlines the importance of a coherent and co-operative approach that examines not just housing options but also the workplace, transition to employment, health and social services, access to transport and the liveability of cities and regional centres.

The Victorian Government has been a leading advocate for co-operative federalism at the Council of Australian Governments. The strategy, 'Accessible Homes, Accessible Neighbourhoods' would be a welcome contribution by the Victorian Government to helping place 'ageing in place' as a central element of national policy.

1.3 Is there Housing Market Failure?

The case for regulation usually hinges on the demonstration of market failures. A market failure exists where individuals make economic choices and decisions on the basis of individual costs and benefits that do not reflect the full costs or benefits from a community-wide perspective.

Market failures are often associated with non-competitive markets, which do not apply to the highly-competitive and low-margin residential building sector. Other types of market failure can be caused by information gaps and disconnects between buyers and sellers that lead to the undersupply (oversupply) of a good or service deemed valuable (damaging) by society.

Regulation is not without risks and costs; it can be impossible to reverse. Where the case for regulation has been established it should be well targeted, cost-effective and proportional to the severity of the market failure to be addressed.

The RIS acknowledges the lack of information both on the extent to which people with disability can access and maintain appropriate housing and secondly, satisfaction with current accommodation.

The last survey undertaken on disability and carers in Australia was in 2003 but housing issues were not an important component of the survey. HIA is not aware of any householder surveys that identify consumer attitudes to accessible housing.

HIA recommends that a study be undertaken to establish the baseline number of accessible dwellings in the housing stock and the potential number of dwellings that could be adapted readily to accommodate people with significant core-activity impairments. The study should be accompanied by an assessment of the likely requirement for accessible housing.

One of the principal arguments usually offered to support building regulation for accessibility is an assumed market failure arising from ‘split incentives’ whereby builders will not include accessibility features because they are unable to recover from new home buyers the additional costs of accessibility features deemed desirable from a community perspective.

The RIS claims that the estimated additional cost of accessibility features is ‘less than a third of one per cent of the estimated cost of a new home (page 6 of the RIS). On the basis of the allegedly modest cost of including accessibility options in new dwellings, regulation would be justified. If the cost of accessibility features is such a modest component of new dwelling costs and the benefits are so substantial, it begs the question as to why the take-up rate is extremely low and whether such a split incentive exists that warrants regulation.

The RIS contends that the vast majority of new dwellings do not incorporate accessibility features because most dwellings constructed in Victoria are by project home builders. This contention is incorrect. Firstly, it is not apparent why the lack of accessibility features in new dwellings would constitute a market failure, and secondly, major project home builders in Victoria account for only about 40 per cent of new dwellings constructed in the state; the majority of new dwellings are built by smaller-volume builders and especially so in regional Victoria.

Individually designed homes are aligned to smaller-size builders and reflect a client brief. Typically, small builders will work with the client and a building designer in developing a floor plan. In any event, major project home builders will customise their dwellings to accommodate the wishes of their client.

Most new single dwellings built in Victoria are constructed under a building contract; few dwellings are built ‘for sale’ (spec building). Under these circumstances, there is a much closer alignment of buyer preferences and the specification of stand-alone dwellings. Moreover, changeover-buyers account for the majority of new single dwellings and usually have specific requirements.

First home buyers are much less likely to nominate accessibility features that might not be required until a much later stage in their lifecycle. Since the average duration of a mortgage is in the vicinity of seven years, many first home buyers will experience a number of housing moves throughout their lifetime. Most prospective first home buyers face affordability hurdles. Features that are not in demand, but add to the deposit required to enter first home ownership, are likely to be heavily marked down in perceived value.

New home buyers might be acting quite rationally in deciding not to include accessibility features in preference to other inclusions or due to affordability constraints they have to curtail the amount of borrowings. There is a possibility that there is consumer resistance to home adaptations and inclusive interiors for accessibility due to concerns about re-sale value.

Accessibility inclusions that are deemed to devalue the aesthetic quality and appearance of new dwellings will have a negative effect on the acceptance of accessibility features in new homes. By way of example, the imposition on new dwellings of ramps not exceeding a 1 in 20 gradient could diminish significantly the market acceptance and value of many new dwellings, especially those on small and narrow residential blocks.

The decision to install ramps in new dwellings should not be compulsory because they are independent of the structure of the dwelling. The cost of installing a ramp to an established single dwelling ought not to be significantly greater than the cost to include it when the house is originally built. The prescriptive approach to only permitting a ramp solution also needs to be reconsidered.

New dwelling completions make a modest contribution annually to the total stock of dwellings. By 2021, about 85 per cent of dwellings will have already been built. Even by 2051, more than 60 per cent of dwellings on foot will have been constructed before May 2011, the proposed date for the mandating of the new regulations.

In Victoria, the proposed regulations would capture approximately 85% of all newly constructed dwellings. Conservatively 40,000 dwellings would be affected annually based on current projected rates of construction. At a cost of \$4,700 per dwelling which does not include any redesign of the homes – just installation of the basic four required features, this equates to cost of nearly \$200 million annually to the Victorian home buying community.

The overwhelming majority of people with disabilities and limited mobility will not be acquiring new dwellings. Most of those households will be in the established housing market, about which the RIS is almost silent. The new regulations will do nothing to address the housing requirements of people with disabilities and impairments who are in established housing.

It cannot be assumed that increasing the number of new dwellings with accessibility features through building regulation will match with people who have profound or severe core-motion limitations even with emphasis on the visitation aspect of the strategy. In terms of reaching the relevant members of the population, applying the regulations to new dwellings represents very poor targeting. The regulations will have a negligible effect on the housing arrangements of people with impairment but will increase significantly the costs of new dwellings.

Instead of targeting all new dwellings, the policy should be directed towards assisting the people for whom the policy is intended. The relevant groups are already in private dwellings and other accommodation.

Builders are experiencing very little demand for new dwellings that incorporate accessible features because the population most affected by disabilities typically are not purchasers of new homes. Where there is an active demand for accessible housing then it is in the commercial interest of builders to respond to the requirements of their clients.

The allegation contained in the RIS suggesting that builders are responsible for the lack of accessible dwellings ignores a market reality. **Builders do not build for themselves; they build for clients.** Home buyers do not want homes that incorporate these features in every instance. In fact, there is ample evidence that aesthetically, some of the proposed mandated features will actually make new homes less marketable, when compared to existing homes.

If there is a lack of awareness among home buyers and builders of accessible housing features then the appropriate way to address an information gap is to provide a community-awareness program. Greater awareness of the benefits of accessibility will drive acceptance and popularity.

To this end, HIA has introduced the concepts of universal housing into the HIA GreenSmart program and we are actively participating in the current National Dialogue on Universal Housing with a view to working in partnership with Government and the disability sector to increase awareness of the opportunities to voluntarily consider and include design principles that can improve a home design.

There is an active market for the retro-fitting of dwellings for the inclusion of accessibility features. Indeed, some builders specialise in the remodelling market for seniors and the disabled.

Most people with a profound or severe core activity limitation are owner-occupiers. Since owner-occupiers make up about 70 per cent of all households, most householders undertaking modifications to increase accessibility in the home are existing owner-occupiers.

1.4 Opportunities for Retro-Fitting

The RIS seeks to justify the mandating of accessible housing features in new dwellings on the grounds that building-in features at the outset avoids much higher costs of re-modelling and retro-fitting. The RIS does not explain why rational owner-occupiers would not be prepared to include accessibility features in new dwellings if it was cost-effective for them to do so.

According to the ABS, about 40 per cent of owner-occupiers with a severe or profound impairment own their dwelling outright. HIA estimates in aggregate that owner-occupiers aged 55 years and over have more than \$1.1 trillion of equity in their dwellings.

If there is informational failure then there is a case for having industry and consumer awareness campaigns. The information campaign should be supported by the training of builders and designers in universal housing design principles. These initiatives can be conducted in tandem with industry organisations, and build on existing programs such as HIA GreenSmart, so that building professionals are in a better position to advise prospective clients of the options to increase accessibility in the dwelling.

Many owner-occupier households are in a position financially to utilise part of the equity in their dwelling to fund modifications incorporating accessibility features. The increased availability of equity release financial products at standard mortgage rates of interest has made it possible for existing owner-occupiers to access accrued equity in the home without having to incur the costs of re-locating to another dwelling.

While the number of owner-occupiers tapping into equity release appears to be small, the proportion has increased in recent years. It is not clear how many of those households have utilised equity release financing to meet the cost of renovations for accessible housing purposes. A special survey would need to be undertaken of aged home owners in conjunction with home lenders.

1.5 Public Housing Issues

About 40 per cent of renters with severe disabilities are in public housing. At present, the Victorian Office of Housing only requires housing that is being purchased or constructed for a specific tenant who requires accessible housing to meet their own guidelines for 'modified housing'.

It is also unclear whether going forward all public housing will incorporate the proposed mandatory requirements under the RIS. HIA believes that the Government should take a leadership position in relation to public housing and require all new public housing constructed in Victoria to meet the proposed BCA requirements. This is considered an appropriate response given the cost of public dwellings is spread across the whole tax-paying community and the responsibility to house those most in need is shared by the whole community.

The Government should commit to constructing all new public housing to meet the proposed adaptable and visitable housing standards.

The experience of clients in public housing and the costs incurred in achieving accessible housing features in new public housing could inform this policy debate. In addition, it should be possible to identify the savings in health and aged care services achieved as a consequence of the current stock of public housing in Victoria meeting certain accessibility standards.

HIA is not aware if this information has been either collected or analysed. It was not included in the RIS. The analysis of cost data from *new* public and social housing would provide a much more reliable basis for establishing the likely additional costs for including accessibility features in new dwellings than theoretical, desk-top calculations.

A direct comparison of the building costs of public dwellings that include universal design principles against comparable dwellings without the special features would provide an objective basis for ascertaining the true costs of including accessibility requirements within new dwellings.

1.6 Renters

The group more likely to face difficulties in securing accessible accommodation is low-income private renters. HIA acknowledges the possibility that private rental owners might be reluctant to incur the cost of including accessible features in a rented dwelling if there is limited scope for cost recovery through higher rents and re-negotiated leases.

The possible under-provision of accessible housing for low-income tenants in the private sector will not be addressed by mandating regulation over all new dwellings. Very few new dwellings are provided for the rental market and less so for low-income tenants because of the high cost of land and the effect of building controls on building costs relative to the rents achievable.

For tenants with severe core-activity limitations in the private rental sector, the issues are more likely to surround lack of household income and lack of available public and social housing. Neither of these issues will be addressed by accessibility regulation of new dwellings as currently proposed.

A number of people have become disabled as a result of road and workplace accidents. Compensation payments, usually involving a partial lump-sum can provide the financial resources for dwellings to be modified to accommodate severe impairment.

Increasing the stock of accessible housing through building regulation of new dwellings offers no guarantee of matching with people who are disabled. Moreover, the inclusion of accessible features in new dwellings does not alter or improve the accessibility of neighbourhoods that are deficient in relation to public transport and proximate support and community services.

A comprehensive approach to accessible housing and ageing in place would recognise the role of accessible neighbourhoods, upon which the RIS is mute.

1.7 Topography

The RIS states that Victoria is most able to cope with the new requirements as:

“The flat topography of inner Melbourne and the majority of Melbourne’s growth areas make it more cost efficient to provide access to homes in Melbourne, in comparison to other large Australian cities like Sydney or Brisbane, which typically have steeper topography. (p 32)

This is a gross generalisation and the RIS provides no real justification for the proposed variations. The converse would be stating we should ignore access requirements in areas where the topography doesn’t suit. It is not a relevant point.

The United Kingdom’s Building Regulation recognises that a stepped entrance path may be an appropriate solution in sites where the slope is an issue. If the policy objective is to deliver adaptable and visitable homes, the inclusion of steps is not a significant impediment for the majority of the community, where they are designed to be a practical height, location and include a hand rail. Similarly access can be provided at a later date in a number of ways including either a ramp, stair lift or other solutions that suits the home owner’s needs and budget.

2. Cost-Benefit Assessment

Cost-benefit analysis attempts to convert the dollar value of future costs and benefits onto a common time-footing. Because a dollar tomorrow is worth less than a dollar today, the future value of benefits and costs are converted to a 'present value' by the use of a rate of discount.

A high rate of discount would indicate that consumers would be reluctant to trade-off current consumption for higher levels of consumption in the future. A low rate of discount would mean that consumers were somewhat indifferent about the choices of current versus future consumption.

The reliability of a cost-benefit analysis depends critically first, on the selection of the particular discount rate and secondly, on the reliability of the estimates of costs and benefits.

2.1 The Rate of Discount

The selection of a 3.5 discount rate adopted in the RIS to convert future benefits and costs into current dollars is half the rate of discount recommended by the Commonwealth Office of Best Practice Regulation. The effect of a 3.5 per cent discount rate is to inflate the estimate of 'net' benefits arising from the accessibility regulations on new dwellings.

According to the RIS, the Net Present Value of the benefits was approximately \$45 million and the Net Present Value of the costs was about \$260 million, over ten years. A benefit-cost ratio of 1 would equate to the discounted private and community benefits just equalling the discounted private and community costs of the new regulations. In this case, the Benefit-Cost Ratio is 0.17:1. Put another way, for every dollar of expenditure incurred by new home buyers on accessible housing, the Victorian community would be nearly \$6 worse off. Had a discount rate of 7 per cent been used, the benefit cost ratio would be even lower than 0.17.

The RIS provides no explanation for the selection of such a low rate of discount. Presumably, there is an argument implicitly that individual costs should be discounted at a very low rate to reflect the benefits to society. But that would not explain the reason for the RIS not following the recommendation of the Commonwealth Office of Best Practice Regulation guidelines.

The Office of Best Practice Regulation recommends the adoption in cost-benefit studies of a discount rate that balances private costs and benefits with those of society. The recommended discount rate of 7 per cent represents a weighting of both private and social discount rates. To depart from the recommended practice is inappropriate and casts a doubt over the credibility of the RIS.

2.2 Compliance Costs

The principal cost impact of the new regulations relates to the increase in construction costs. In addition to the front-end capital costs (the build costs) administrative and transitional costs must be considered.

The new accessibility regulations can be expected to lead to additional costs of building due to:

- the need for new and amended home designs, especially to accommodate a larger toilet area and ramps;
- the requirement for construction of some building elements and the purchase of building products to meet a higher level of specification;
- increased costs of supervision to ensure dwellings are built as designed.

Builders and designers will face costs of developing and acquiring knowledge and capability in the new requirements. A May 2011 commencement date will overlap with the adoption of 6-star energy efficiency requirements placing additional burden on the housing industry and home buyers to understand the scope of all new requirements and the costs associated.

In the time allocated for industry responses HIA has not been able to undertake an industry-wide survey of the impact of the new regulations on building costs. The cost estimates have relied on a simulation of the regulations utilising the HIA Standard House model for a single-storey house of 180 square metres. The resultant cost estimates have been checked for plausibility with a number of HIA members. In addition, advice on cost implications of the regulations was sought from HIA builder members that undertake the construction of both social housing and unsubsidised private housing to ascertain potential cost variations.

HIA estimates that the inclusion of the accessibility requirements would increase the cost of a standard single-storey dwelling by about \$4,700 compared with the cost estimate of \$870 contained in the RIS, which presumes a flat site and no ramping access is required. The HIA estimate implies an increase in the base cost of a new house of about 2.6 per cent.

It is noted that the RIS does provide alternative cost estimates for compliance which go up to \$1,527 again for a flat site, however this is considered to be an unrealistic approach to the cost benefit analysis. **It is recommended that the Final RIS analysis be reviewed to consider the range of costs that may apply for flat sites and sloping sites, providing an average or median costing, rather than a minimum costing.**

The principal sources of the cost difference relate to the specification of a concrete ramp and the additional cost attaching to the design of an accessible toilet area.

The Department of Planning and Community Development contends that the 'total impact on dwelling size would be no more than half a square metre' (page 70). HIA estimates the net additional impact of the accessible toilet provisions would increase the space requirement on the standard single storey house by 1.5 square metre.

HIA contends that the official cost estimates do not allow for the additional floor area required to maintain the integrity of an existing design of the standard single storey dwelling.

The effect of the requirements for the accessible toilet area would increase the floor area by about 10-12 square metres to preserve the fundamental design layout of what is essentially a standard entry-level dwelling. On this basis, the additional direct building costs to meet the accessibility requirements would be in the vicinity of \$16,000 to \$18,000 representing an increase in the cost base of a 180 square metre house of between 9 and 10 per cent.

One of the principal reasons for the discrepancy between the cost estimate contained in the RIS and the HIA estimate on the standard dwelling is that individual requirements cannot be neatly segmented and treated in isolation. The wide divergence between the different cost estimates demands that far more careful consideration of the regulations is undertaken.

The HIA cost estimate includes an allowance for a builder's margin of 20 per cent and the GST. Taxes (and subsidies) are meant to be excluded from a cost-benefit assessment on the grounds that taxes (and subsidies) net out. However, it should be recognised that in practice the GST has to be charged on new dwellings but does not apply to existing dwellings. The price of established dwellings is an important influence on what consumers will be prepared to pay for new dwellings, especially as the number of transactions of established dwellings exceeds the number of new dwellings by a factor of about 6 to 1.

HIA recommends that discussions should take place between the consultants responsible for the costing estimates in the RIS and housing industry representatives with a view to clarifying why such a wide divergence in the cost estimates of the accessibility regulations has occurred. The outcomes of these discussions should be reported in the Final RIS.

2.3 Housing affordability

In these circumstances, changes to building regulations can increase the cost wedge of new dwellings against the price of established dwellings. Since new dwellings 'compete' against established dwellings for purchasers, a widening cost differential can lead some home buyer to select against new housing. The existence of a substitution effect between new and established dwellings is not recognised in the RIS.

Because the housing industry is marked by very competitive supply conditions, prices for new dwellings reflect a normal return on costs. The potential for builders to absorb cost increases is strictly limited which means that if builders cannot pass through higher costs into prices received, the number of new homes built is likely to bear the brunt of adjustment to the new regulatory conditions. A smaller number of dwellings will be built at the higher cost regime.

There has been a tendency for official regulatory impact assessments to under-estimate the financial effects of new regulations. At the same time it is asserted that industry estimates over-state the cost impact of regulation. Unfortunately, official post-regulation surveys of building costs have not been undertaken. It is incumbent on the supporters of additional regulation to make a genuine effort to reconcile the wide variation in cost estimates.

It is strongly recommended that industry practitioners have the opportunity of meeting the consultants responsible for the preparation of the RIS with a view to reconciling the different cost estimates. The results of the consultation should be included in the Final RIS to be presented to the Government.

It also appears that the RIS paper presents the best possible cost scenario. With regard to the provision of a clear path of entry from the street to a level entry, in many cases the provision of a ramp will be required. The RIS does not factor in requirements such as suspended slabs, concrete footings, brickwork to support it, handrails if the fall is over a metre. All these variables will be individual to a particular site and will vary the cost – in actual fact it could double the cost from one site to the next.

Over the next 12-18 months the housing industry in Victoria will be required to meet 6-star energy efficiency ratings, incorporate the costs associated with the roll-out of mandatory broadband network to all new estates, and potentially take account of the affects on land prices through the application of the Growth Areas Infrastructure Contribution. The net impact of these additional regulatory requirements, excluding the yet to be resolved infrastructure contribution, could see the cost of a standard new dwelling increase by around \$24,000 to \$26,000. The implications for the affordability of new dwellings pose a substantial risk and the Final RIS should make reference to the combined affects of all regulations proposed to take effect in 2011.

The frequent revision of building regulations, particularly when introduced in state variations, places the industry in a perpetual state of uncertainty, makes reliable cost estimation and quoting much more problematic and increases the risks of consumers switching away from new house-building when there is an imperative to increase the supply of new dwellings. The rapidity of regulatory change intensifies the possibility of regulatory fatigue setting in on an industry that has been expected to meet a range of additional obligations.

2.4 Variation to the Building Code of Australia (BCA)

The RIS contends that the introduction of these regulations through the BCA as a Victorian variation is the appropriate path as it would place the changes into the currently accepted building design, approval and enforcement process.

The RIS does not acknowledge that using this option is contrary to the Victorian Government's commitment under the 2005 Intergovernmental Agreement (IGA) with the Commonwealth Government and all other States and Territories, which underpins the Australian Building Codes Board and the adoption of the BCA nationally.

In particular Recital C(iv) and (vii) of the IGA are set out below.

- “iv. restricting any New Variations from the BCA by State and Territory governments by, as far as practicable:*
- A. limiting variations to those arising from particular geographical, geological or climatic factors, as defined in the BCA;*
 - B. requiring that any variations be subject to a Regulatory Impact Assessment; and*
 - C. requiring that any variation be approved by the State or Territory Minister;*
- vii. the consistent application of the BCA across and within each State and Territory;”*

The IGA calls on signatories to only adopt variations to the BCA based on particular geographical, geological or climatic factors.

The Building Commission has also recently publicly reiterated its support for a nationally consistent building code to provide certainty to industry and the home buying public.

The Building Commissioner, who is the Victorian member of the Australian Building Codes Board, appearing before the 2009 Victorian Bushfires Royal Commission stated in response to a question as to whether state and territory governments had committed to reducing the number of variations to the BCA:

“The Australian Building Codes Board has had a variation reduction strategy in place for some years now, and each state and territory is endeavouring to reduce the number of state variations that they have in order to absolutely get to a point of national consistency”

It is difficult to reconcile a commitment to reduce the number of state variations with an intention to introduce a new variation, particularly when the variation does not arise because of a particular geographical, geological or climatic factor.

HIA contends that the Victorian Government should in the first instance propose the changes being considered in the RIS through the ABCB's work program, and provide adequately information to justify the changes should apply nationally and that there would be a positive cost benefit. If this process is not successful or is considered inappropriate, then it would seem to support the view that the changes do not provide the whole community with a positive cost benefit and therefore should be reconsidered.

HIA recommends that the Victorian Government meet its obligation and commitment under the Inter-Governmental Agreement for the establishment of the Australian Building Codes Board, to only introduce state variations to the BCA that arise due to “geographical, geological or climatic” conditions.

3. Technical & Administrative Issues

In addition to the policy and costing issues addressed in this submission, it is important that the Government reviews the technical and administrative issues associated with compliance with the Exposure Draft Building Code of Australia (BCA) Volume 2 Victorian Variations and Additions Vic 1.1. HIA has identified a number of areas of conflict where questions as to the correct interpretation and application of competing BCA clauses are likely to arise.

HIA has members across Australia who construct homes for State and Territory public housing agencies. The experiences of these members have been incorporated in the responses set out below in relation to the technical difficulties faced in the construction of certain aspects to meet both the current BCA provisions and the proposed adaptability requirements.

3.1 Level Entry/Provision of Pathway or Ramp

3.1.1 Administrative Issues

The construction of a ramp at the front of a dwelling is not a currently accepted and 'normal' part of home construction. Typically, builders contract to construct a new home excluding items such as landscaping, driveways, paths, retaining walls and the like. These are generally a component of home construction that is organized by the home owner.

Should these changes proceed, it is unclear how builders will be required to carry out building work beyond the physical building envelope such as constructing the front entry path, if the owner does not contract them to do this work as part of a domestic building contract.

A similar scenario currently exists in Victoria where pool builders are not required to construct pool safety barriers and generally only contract for the construction of the pool, with the barrier to be completed by the owner or others.

To require this extra function by house builders in relation to the construction of a level pathway or ramp whilst not requiring pool builders to construct safety barriers would be an inconsistent application of current building laws particularly when weighing up the relative safety imperative of each element.

3.1.2 Technical issues

The proposed BCA performance requirements appear to be too prescriptive and in respect to access to the home, lock in the two 'deemed to satisfy' alternatives of providing a path of travel to the home (VP1). This is not considered appropriate as the performance provision should articulate the intention to allow access for people with a range of abilities.

The proposed variation should be worded to ensure there is adequate scope for a building owner to determine an alternative approach, via the normal alternative solution mechanisms under the BCA, to deliver safe and effective access. For example a person buying a home who is already in a wheelchair or who is elderly may elect to provide a stair lift to the front door or some other alternative doorway. The building certifier should have scope to endorse such a proposal as being equivalent access.

It is also noted that under the Office of Housing's requirement for access to the home, there is no specific limitation on the use of steps where required, so long as they comply with AS 1428.2. This approach should be available for new homes as an alternative means of compliance.

The wording of the exemption provision in relation to sloping sites requires further explanation. HIA believes that the Relevant Building Surveyor (RBS) will be required in the first instance to consider whether access could be provided from the parking area as an alternative, where the site slope exceeds 1 in 14 as per the exemption. This will substantially reduce the number of sites that are entitled to rely on the proposed exemption. This alternative access approach would need to be assessed during the design phase and such analysis would also add substantial cost to the design process as a variety of options are explored.

The method of measuring 'site slope' is unclear as to whether this should be interpreted as the slope from the front to the rear of the site, from the property boundary to the front setback, or from the side boundary to the side boundary, and so on.

While it would be of benefit for the Department to publish specific advice on how to interpret and assess the proposed exemption to ensure consistent application, it is unlikely that such advice would alleviate any confusion over this issue. The Department should be well aware of the current confusion that has existed for many years as to the identification of how 'natural ground level' is interpreted when assessing wall heights on boundaries.

Any advice should also address the approach that the RBS should take when considering the alternative access via the parking space.

3.2 Certificate of Occupancy

A home without one or all of the proposed accessibility features would still satisfy the requirements of the *Building Act* 1993 in terms of its suitability for occupation under section 44. Therefore an occupancy permit would be able to be issued and the owner could move into the premises without these new requirements being completed.

History shows that it has been difficult to enforce additional construction items, such as pool barriers after completion noting that this process does have the benefit of requiring a certificate of final inspection. In the accessibility case, there would be no further certificate required and no inspection regime or check by building surveyors carried out after an occupancy permit had been issued. HIA has met with the Building Commission and discussed this scenario and it was agreed that substantial difficulties exist around this

issue. It was also agreed that the Building Commission's current audit programs could not identify incomplete work associated with the access provisions, if introduced.

The RIS offers two solutions to this issue (pg 50), both of which have been the subject of discussions with the Department, and both of which were agreed to be inappropriate. HIA contends it is beyond the power of the RBS to issue an occupancy permit with conditions where those conditions do not relate to the suitability or otherwise of the dwelling.

Furthermore, HIA also contends the approach that would effectively cause enforcement notices to be served on owners arising from these mandated regulations would not be palatable to government. HIA is concerned that these two solutions have remained in the published RIS despite agreement by the Department of their unsuitability. **Any reference to these solutions should be removed from the Final RIS.**

HIA would not support linking the occupancy permit to the construction of these pathways as this would greatly disadvantage HIA members who may be placed in a situation of not being able to claim final payment from the consumer until such time as the path was completed and an occupancy permit issued (as per section 42 of the *Domestic Building Contracts Act 1995*). It would force builders to handover the property to the owners at the completion of the contract but with 15% of the contract price not being able to be claimed until a later date when the owner at their discretion completes the necessary pathway.

The only alternative would be for builders to develop their own progress payment schedule as per subsection 40(4) of the *Domestic Building Contracts Act 1995* a situation that regulators have sought to discourage for some years. Even this solution is not practicable in the circumstances and would likely lead to an increase in the cost of housing as builders sought to indemnify against the failure of the owner to both construct the pathway and to make the final payment.

The Department has confirmed in writing that the issuing of the occupancy permit would not be contingent upon the completion of work associated with these proposed provisions and this has been reiterated in the RIS.

3.3 Damp and Weatherproofing/Surface drainage

3.3.1 Slab-on-ground – finished ground level adjacent to buildings

The BCA requires a Class 1 building to achieve a certain level of performance in relation to damp and weatherproofing. The proposed adaptable housing requirements create issues around compliance with existing BCA requirement which are not addressed in the RIS.

BCA 2009 Volume 2 Part 3.1.2.3 '*Surface water drainage*' requires surface water to be diverted away from a Class 1 building by grading the external finished surfaces within 1 metre to fall at least 25mm in low rainfall intensity areas and at least 50mm for all other areas.

In many situations the path of travel to an entry level will need to be provided parallel to the building due to site and design constraints and compliance with the current BCA provision for surface water drainage would still need to be achieved.

The proposed provisions require a maximum crossfall for the accessible path of travel of not more than 1 in 40 which equates to a fall of 25mm over a 1 metre. Therefore only homes located in low rainfall intensity areas will be able to meet this requirement whilst providing a level pathway.

The definition of a low rain fall area in the BCA is 'an area with 5 minute rainfall intensity for an average recurrence interval of 20 years of not more than 125mm/hour.'

As per BCA 2009 Volume 2 Table 3.5.2.1 – *Rainfall intensities*, the majority of areas in Victoria exceed this criteria and would not be able to comply with the current BCA provisions in combination with the new provisions.

The RIS does not indicate how this inconsistency will be addressed.

3.3.2 Slab-on-ground - finished slab heights

BCA 2009 Volume 2 Part 3.1.2.3(b) also specifies finished slab-on-ground heights above external finished surfaces which must be achieved.

The requirement indicates that the finished slab height must be not less than:

- (i) 100mm above the finished ground level in *low rainfall intensity areas* or sand, well-drained areas; or
- (ii) 50mm above impermeable (paved or concreted areas) that slope away from the building in accordance with (i); or
- (iii) 150mm in any other case.

Compliance with proposed accessibility provisions will create compliance issues with this requirement in a large number of cases. However again, the RIS does not indicate how this inconsistency will be addressed.

3.4 Provision of damp-proof course

BCA 2009 Volume 2 Part 3.3.4.5 '*Damp-proof courses– installation*' requires a continuous damp-proof barrier around buildings above the finished surface of adjacent paved concreted or landscaped areas to prevent moisture ingress from ground moisture.

The height of the damp-proof-course must be a minimum 75mm above the finished surface of adjacent paved, concreted or landscaped areas unless the area is protected from the direct effects of weather by a carport, verandah or the like where the height can be reduced to 50mm.

The only situation where this height can be reduced is in low rainfall intensity areas for certain site soil classifications. In these cases the height above paved, concreted or landscaped areas can be reduced to 15mm or 0mm if the area is protected as previously noted.

Compliance with the proposed BCA provisions would only be possible in areas of low rainfall intensity where the area is protected from the direct effects of weather by a carport, verandah or the like. This may not be the case in the majority houses constructed in Victoria under the proposed draft provisions.

The RIS does not indicate how this inconsistency will be addressed.

3.5 Termite Risk Management

The BCA requires Class 1a buildings to achieve a certain level of performance in relation to the installation of termite risk management systems.

BCA 2009 Volume 2 Part 3.1.3 provides for termite risk management to reduce the opportunity for concealed entry of termites into a building.

There are a number of compliance options around providing a barrier to reduce the risk of concealed entry, which include chemical and physical barriers and also the ability to provide an exposed edge to a concrete slab of a Class 1 building to allow inspection to ensure the area has not been 'bridged' by termites.

The BCA also makes provision for attachments to buildings for structures such as steps, verandahs and porches etc where, if the structure is not provided with a barrier a physical separation to the Class 1 building, can be achieved to allow clear and uninterrupted visual inspection.

As the draft provisions require a 'continuous path of travel with a maximum change in level of 5mm' compliance would remove the more cost effective barrier options of separation or concrete slab-on-ground exposure creating an additional cost impost for the building construction in providing a stand alone barrier for the attached structure.

The RIS does not identify this additional cost or consider alternatives for compliance with both requirements.

3.6 Suspended timber floor construction/waffle pod

The RIS recognises that providing a level path of travel to the entrance on sloping sites will be difficult if not impossible in some circumstances. Therefore a concession is proposed where the average natural slope of the site exceeds 1 in 14. However, the provision does not provide any recognition of situations where the floor level of the home is too great to allow the practical construction of a pathway.

In particular, suspended timber floor construction generally requires a higher floor level than slab-on-ground to accommodate the sub-floor structure and clearances required by current BCA provisions.

A standard sub-floor structure on a reasonably level site would require a floor height of around 350mm to 400mm to the finished floor level, at a fall ratio of 1 in 14 which is the greatest fall ratio allowed along the path of travel to entrance apart from a 'ramped threshold' would require a ramp length of around 5600mm separate of landings if required.

This may create siting issues for smaller allotments that need to take advantage of minimum setback requirements. Equally the prevalence of sloping sites and increasingly stringent cut and fill restrictions across Victoria, means timber floor construction is still a practical building solution in many locations.

The RIS needs to give consideration to the range of reasons that may lead to a home being constructed at a height which makes gaining access of 1:14 or less, impractical and more costly than estimated in the RIS.

3.7 Path of travel to entrance

The RIS requires an accessible path of travel of 1000mm in width to an entrance doorway along a possible path of travel that could include access through an attached garage to a Class 1 building.

Currently Rescode and Part 4 of Building Regulations 2006 require car parking spaces for Class 1 dwellings to be provided. These car parking requirements include minimum dimensions that must be achieved.

A cost effective option in providing an accessible path of travel to an entrance may be achieved via an attached Class 10a building to the Class 1 building where the freeboard between both does not exceed 56mm and a ramped threshold is utilised. A ramped threshold must have a maximum length of 450mm and would have little impact on the internal space of the garage.

However where providing a level entry from a Class 10a building, damp and weatherproofing performance measures may need to be considered as there are no performance measures around Class 10a buildings unless the Class 10a building contributes to the weatherproofing of the Class 1 building.

For higher freeboards, a ramp would need to be installed that complies with the gradients provided under the proposed provisions which is likely to mean additional space is required within the garage to maintain the minimum regulations for car parking spaces.

In this circumstance, the RIS is unclear whether additional space is required in the garage above and beyond the minimum required car parking space to accommodate the path of travel into the home.

In assessing a design for compliance for the purpose of issuing a building permit the RBS would need to consider both of these building regulation requirements and determine if compliance for both are being met. The RIS does not address this issue in terms of compliance or costs associated with the potential design adjustments.

Other issues with regard to the path of travel to the entrance which may not have been considered include the following:

- a) Security/Flyscreen Doors – an entrance area with an outward opening security door will require additional space in the event that a wheelchair user is required to manoeuvre backwards. The additional length required will depend on the size of the wheelchair. The height of the handle on the security door may also need to be considered.
- b) Any ramp installed with more than a metre drop will require handrails.
- c) If the entranceway is to be established from the side or rear of a property, there will be a need to install a hard surfaced pathway along the side of a house. Any opening windows onto the pathway would need to be restricted.
- d) In coastal areas where the ground is often soft or indeed sand – it is impractical and dangerous to construct concrete pathways.
- e) Also in coastal areas, much of the construction is based around two storey homes with a double garage located on the ground floor, and the living areas all located on the first floor. This will make compliance with the requirements almost impossible without the installation of lift facilities which are costly and impractical for those who do not require it. These sites are likely to be sloping to some extent and may be eligible under the exemption provision. However it is unclear at this stage how the RBS will handle granting an exemption for a sloping site.

3.8 Accessible Toilet

The cost impact of providing an accessible sanitary compartment has been based on a 900mm minimum width being provided between walls to achieve a minimum 900mm x 1200mm circulation space within the sanitary compartment.

The sanitary compartment is required to provide an 820mm minimum clear doorway and this in most cases can be achieved using an 870mm wide door.

To provide an 870mm doorway and retain consistent design integrity for finishes and to meet consumer expectation (i.e. provision of architrave/trims around door) an allowance of around 140mm beyond the 870mm door must be allowed.

Therefore the cost estimates for an accessible toilet need to be based around a minimum width of 1000mm to accommodate the door and trims. The RIS does not identify the additional cost of floor area to achieve compliance with this aspect of the requirement.

With regard to the layout of the bathroom it is noted that the RIS does allow for a sliding door as a space saving measure but in the experience of industry they have little appeal in the marketplace and would not be adopted as an entry to a main bathroom.

3.9 Doorways and internal floor levels

Under the proposed provisions for entrance doorways, a change in level of no more than 3mm (5mm where the edge is rounded or bevelled) and no change of level within a storey between the entrance doorway and doorways to rooms on entry level is required to be provided.

This maximum deviation from level does not take into account standard building elements such as rebated door sills where a door opens outwards or door seals that to provide adequate seal may need to incorporate a base seal that generally exceed the minimum change in level requirement.

The RIS also requires that access into most rooms on an entry level does not involve a change in level but fails to recognise current building practices and standard elements that may make this requirement difficult to achieve. The wide variety of floor coverings and finishes and varying thickness of materials would also create issues around compliance within this tight parameter.

The proposed requirements also state there will not be a change of level between rooms on the entry level storey. This effectively makes split level homes, or designs with features such as sunken lounge room prohibited. If this is not the intended consequence of the provisions, then clarification should be provided in the RIS.

3.10 Existing Homes

The inclusion of the proposed provisions into the BCA could place an obligation on building certifiers to consider these changes in their assessment of building application for existing homes.

All of the proposed requirements would be considered to entail deconstruction of some level if they were required to be incorporated into an existing home during a renovation.

The draft BCA variation indicates that only 'new' Class 1 buildings will be subject of the requirements. Whilst this is a practical approach, this type of variation for a new BCA requirement will establish a significant precedent in respect to the BCA's application to existing buildings in the future.

It is also noted that it is highly impractical to include the majority of the proposed provisions into an existing home renovation. However, the removal of existing homes from sharing the burden of meeting the needs of all Victorian further highlights the inequity of the proposed amendments.

4. Planning Issues

The proposed accessibility requirements will make it more difficult for new housing to satisfy the State Government's policy for urban consolidation and other planning scheme requirements. The dimensions of dwellings and garages will need to increase in some cases to incorporate the proposed accessibility requirements. Increasing the footprint of built form is inconsistent with State Planning Policies for a more compact city as it will have a negative impact on the scale of multi-unit development in existing urban areas.

The Government has not clearly outlined whether the proposed accessibility features will need to be incorporated into planning requirements for new dwellings where development approval is required. The RIS fails to take these issues into consideration and the possible unintended consequences arising from the proposal.

HIA has identified the following Statutory Planning implications if the proposed accessibility requirements are introduced.

4.1 ResCode Standards

The proposed accessibility requirements will have implications for Clause 54 and Clause 55 (ResCode) requirements of the Victorian Planning Provisions. The minimum requirements for accessible toilets, doorways and corridors and access path into the home will need to be taken into account when assessing a proposed development against ResCode Objectives and Standards. HIA identifies implications for the following ResCode Standards if the proposed accessibility requirements were mandated for all new dwellings.

- **A1 and B6 for Street setback, A5 and B8 for Site Coverage, A10 and B17 side and rear setbacks, A17 and B28 for private open space**

The proposed requirements for toilets, doorways and corridors will increase the floor area requirements for a new dwelling. Increasing site coverage will make it more difficult for new infill development on small lots to comply with the site coverage, private open space, and side, rear and street setback requirements of ResCode. Unless ResCode is varied or some exemptions are provided, it will be more difficult for new residential development to comply with ResCode once the accessibility requirements are introduced.

Alternatively, home owners will be forced to offset some level of amenity to incorporate these new provisions, through a reduced living area within the home.

If this issue is not addressed it is also likely to lead to an increase in the number of housing applications which require both planning and building approval. The consequent time delays in gaining planning approval for single detached housing applications needs to be carefully considered. This will also allow other matters not otherwise required to be addressed in a building permit to be taken into consideration by the local authority, further complicating the approval process.

- **Standard A6 and B9 for Permeability**

Depending on the characteristics of a particular site, it will be a challenge for residential development to comply with permeability standards of ResCode if a ramp or other access features require an increase in the hard surfaces that surround a new development.

- **Standard A9 and B16 for Parking Provision**

The accessibility requirements will present challenges in terms of providing safe movements where the access can only be provide from the car parking space to the entry of a dwelling, and in some cases, via an internal accessway shared by other dwellings, for example medium density developments.

The minimum dimensions for ResCode will need to be increased to include space for the 1 metre wide access path from the garage, when the access path requirements can only be satisfied from the car parking space.

If the path of travel to entry is to be provided from the car parking area, there will be additional challenges for multi unit developments in terms of allowing safe and efficient movement of vehicles and people along internal accessways. Standards B14 and B15 would also need to be amended to allow for satisfaction of accessibility requirements within multi unit developments.

4.2 Heritage and Neighbourhood Character Provisions

For residential development affected by the requirements of a heritage overlay, exemptions will need to apply for the provision of an access path, and in some cases a ramp, into the home. The access requirements for new dwellings are likely to have an impact on the significance of heritage places. Exemptions will need to apply for neighbourhood character provisions.

For existing homes, there also needs to be careful consideration when renovations are being proposed, as to what level of compliance will be required for a heritage building.

4.3 Flooding Controls

The regulatory impact statement has not accounted for the costs associated with providing an access path to entry when land is affected by flooding requiring a dwelling or enclosed car parking to have an elevated floor level. Access requirements will need to be considered when local councils set minimum floor heights and clearance requirements for new developments.

4.4 Building permit and planning permit consistency

Where a landscape plan has been required as part of a planning permit application, the landscape plan will need to have regard to the proposed accessibility requirements.

If accessibility requirements are not adequately addressed in planning applications there will be problems later in the approval process if a new development does not satisfy the accessibility requirements of the BCA. The planning and building requirements need to be consistent to avoid the delays and cost associated with applicants having to amend permits and endorsed plans when inconsistencies arise.

HIA recommends that no further action with the proposed regulation occurs without a solution being found to the technical and planning issues arising from the proposal. The Government should establish a technical working group to allow industry and regulators to more closely consider the practical issues associated with the introduction of these requirements.

5. Transitional Issues

The proposed changes need to be considered in light of the transitional and administrative issues that may arise beyond the scope of the BCA and planning legislation. These issues have not been addressed in the RIS.

5.1 Display Homes and Compliance with the Domestic Building Contracts Act

Display homes generally have a life of about 3-5 years. It is clear that those display homes nearing completion or those completed within the last 2 years will not have been built to the new requirements.

HIA members have raised the difficulty of marketing products which do not feature the mandated features. Clients are unable to view the new features and will have trouble envisaging an end result.

In particular, the introduction of the proposed regulations will make it difficult for builders to comply with Section 43 of the Domestic Building Contracts Act, ('the DBCA') and increase the risk of a dispute with owners.

Many builders have invested large amounts of money to build and establish display homes. In addition to construction, display home costs also include the purchase of suitable land, land for car parking and advertising.

The proposed regulations will introduce mandatory features of a home that are not reflected in the current display homes. This creates three major problems:

Firstly, Section 43(3)(b) of the DBCA requires that the builder must "use the same plans and specifications ... used for the construction of the display home". Compliance with Section 43 will require specific amendment to the contract to allow use of a different plan and will result in increased costs for the consumer when compared to previously advertised prices.

Secondly, regardless of contractual amendment and agreed cost changes, the owner's initial visual impression of the display home (without the required features) will form the basis of their expectations. Although the owner may have read the contract terms and been made specifically aware of the changes, some owners will remain dissatisfied with the appearance of their home at the time of handover, in particular for sloping sites. This is likely to lead to disputation between owners and builders. Variations between display homes and newly constructed homes already form the basis for many domestic building disputes.

Thirdly, although builders will seek to modify display homes to reflect current building requirements, significant commercial costs will be incurred. In some cases, changes to the display home may not be possible, due to existing features, slope of the land, site positioning and other factors.

There are concerns regarding other legislation and potential contractual claims. The Trade Practices Act and the Fair Trading Act contain provisions prohibiting misrepresentation and/or misleading and deceptive conduct. Regardless of compliance with the DBCA and express contractual provisions for the changes, builders may still be exposed to Trade Practice and Fair Trading Act claims.

HIA seeks a specific amendment to the Domestic Building Contracts Act to ensure that builders will not be liable for a breach of legislation where all reasonable steps have been taken to implement the changes in contractual documentation

To minimise the risk of further disputes builders should be able to display a disclaimer to clarify that the home was built prior to the introduction of visitable and accessible requirements and that physical elements of the new regulation are not able to be displayed. It could also be clarified that there will be additional costs involved in meeting the requirements.

HIA also recommends a transitional period of at least 5 years be allowed to cater for redesign and rebuilding of display homes with the mandated features included.

6. Alternatives to Regulation of New Dwellings

The RIS considers a number of alternatives to the regulation of new dwellings through building control. The alternatives include: community and industry awareness and education; industry self-regulation; and government incentives to promote the take-up of accessible features in new dwellings.

The cost-benefit assessment ought to be concerned with the efficiency of each policy proposal, in particular how well each proposal assists relevant groups and the related costs. The policy instrument that best reaches its target audience at the lowest possible cost would be deemed the most efficient.

All of the options in the RIS are 'evaluated' utilising a system that assigns scores to each option on the basis of effectiveness and cost. The allocation of individual scores to the different options lacks rigour and appears to be influenced by an unusual amount of subjectivity.

There principal consideration in favour of regulation would appear to be its coverage through 'widespread adoption' (page 115). The reality that the regulatory measures fail on the criterion of alleviating or improving the housing circumstances of the existing population with severe impairment is not recognised anywhere in the RIS.

Relying on regulation of new dwellings to achieve greater access to accessible housing represents very poor targeting.

No attempt has been made to estimate the take-up of accessible housing emanating from the non-regulatory options. Consequently, the quantification of benefits and costs attaching to these alternatives is not provided. The failure to quantify the benefits and costs of the options makes it difficult to substantiate the statement that the accessibility regulations deliver the highest net benefits.

HIA recommends that voluntary and non-regulatory approaches to visitable and adaptable housing outcomes be pursued and program initiatives such as the incorporation of standard in all public housing, be thoroughly reviewed prior to regulation proceed which requires all homes to include a minimum set of features.

Turning to some of the non-regulatory proposals, under industry and consumer education, the RIS raises the possibility of a web-directory 'to assist people to find homes and apartments which meet their accessibility needs.' (page 58). However, the RIS goes on to state that the web-directory 'would improve the information available to consumers regarding accessibility features in existing homes, but would not be expected to increase the adoption of accessibility features in new homes.' (page 108).

HIA sees considerable merit in the web-directory precisely because it would increase the likelihood of a closer matching of the available housing stock for sale and for rent with the current population that is seeking more accessible housing. In relation to targeting measures to address the needs of the relevant client groups, the web-directory deserves close consideration. This approach would also go some way towards addressing the existing housing stock in Victoria and providing a more equitable approach to the introduction of any mandatory requirements for new homes.

HIA recommends that an investigation be undertaken jointly with community organisations and industry on the feasibility of an Accessible Homes Listing and advisory service for households requiring dwellings for rent and for sale that include adaptable and accessible features.

The advisory service could involve independent advice to the elderly and the disabled on a wide range of housing issues, covering staying put, relocating, related care, housing and finance options and referrals for repairs and adaptations. The Government could provide a level of direct financial assistance for a period of two-to-three years toward the running of a web-based directory as well as a call centre or helpline. An independent evaluation of the service could be undertaken after the program was up and running.

Related to the web directory of an Accessible Homes Listing could be a Trade Directory of accredited trade professionals who would commit to providing timely and reliable repair, remodelling and adaptation services for the aged and impaired at a fair and reasonable cost. Trade-based industry organisations, including HIA through the HIA GreenSmart program, could be enlisted to accredit trade professionals suitable for inclusion in the Trade Directory.

HIA recommends that an evaluation be undertaken of the viability of a Trade Directory of accredited industry professionals to provide a home ready and repair program for the elderly and the disabled.

Moving entails significant transaction costs both financial and emotional. There might be little a government can do to address the latter but consideration ought to be given to ameliorating the financial costs of moving for eligible households. Lack of income and savings to meet moving costs are likely to be a constraint on the capacity of tenants with disabilities to re-locate in the private rental sector.

Related to community awareness campaigns is the opportunity for industry-based training and education programs on universal housing design for builders and designers. Industry organisations have the professional capacity and distribution channels to disseminate practical and relevant information to building and design professionals. The development of suitable training materials and documentation would be prepared in conjunction with relevant government agencies.

The RIS identifies ‘market-based instruments’ such as subsidies to encourage the take-up of accessible and adaptable housing. While discussed in a general way, the RIS does not consider particular options and their associated benefits and costs.

HIA sees merit in government offering some seed capital to leading-edge builders to sign up for the adoption of universal housing design principles. A joint government-industry program to develop demonstration projects would enable consumers, builders and designers to visit and learn from projects that include accessible and adaptable features.

HIA incorporated a set of universal design principles into the HIA GreenSmart program as a voluntary component in 2009. These requirements will continue to be available to members seeking to differentiate their business by incorporate both environmental and social sustainability principles. However as the program is new and there are currently no targeted training packages, qualifications or skills for the building industry to take up, HIA predicts that member education and promotion will continue to be the focus of our program for the next few years.

HIA has sought support from the Federal Government to promote a series of industry programs which would help to increase the awareness and profile of universal design aspects. However to date there has been no commitment to provide funding.

The Victorian Government should partner with HIA to undertake a comprehensive education and promotion campaign with the housing industry to increase awareness of the options and practical solutions for universal housing access.

One of the main arguments advanced to support the regulation of new dwellings is the assumed savings to government in health, medical and publicly-provided care. Provided there are savings in public sector expenditure, the beneficiaries of the savings will be all taxpayers effectively paid for by a very small segment of the population, namely purchasers of new dwellings. In effect, new home buyers will pay in full for the benefits accruing to the whole taxpaying community.

Providing some financial assistance to home buyers who adopt the accessibility measures would be far more equitable than imposing an implicit tax on new home purchasers. To the extent that the incentives translate to budgetary savings to the State Government over time, the budgetary costs could be largely offset in the longer term.

It is recommended that providing financial assistance to those who adopt accessibility requirements will increase the uptake of features rather than a blanket mandated requirement for all new homes and a proportion of residential apartments.

The move to incorporate accessible and visitable features in housing needs to be lead by the State housing providers. It is clear that the bulk of person seeking support in identifying housing appropriate to their needs are often in rental accommodation or seeking state housing support. Government should consider the appropriateness of targeting affordable and community housing providers with a range of incentives towards who are actively fitting or indeed retro-fitting features that assist mobility impaired individuals.

HIA recommends that State and Community Housing providers should be provided with incentives to fit or retrofit accessible housing requirements into public and community housing stock.

7. HIA's Key Recommendations

Whilst HIA supports in principle the Government's broad policy aim with regard to social inclusion through the provision of visitable and adaptable housing, HIA believes the proposal put forward does not match the desired policy outcome. HIA's primary recommendation is that the Victorian Government does not proceed with the introduction of these regulations.

HIA takes issue with the RIS on the grounds that:

- The net costs exceed by four-fold the net benefits to the community an amount identified in the RIS to be in excess of \$200 million (NPV) over the assessment period;
- The direct costs of the proposed accessibility measures have been severely underestimated;
- The net benefits of the regulations are inflated because of an artificially low rate of discount adopted in the RIS;
- The net benefits of the regulations include a number of unquantified presumptions regarding the value that the whole community places on the changes;
- The proposal introduces a state based variation to the Building Code of Australia contrary to an Inter-Governmental agreement signed by the Victorian Government;
- There are a number of technical and administrative issues that have not been considered or addressed.
- Alternative policy options to building regulation have been dismissed too readily.

The proposal pre-empts work being carried out at a national level and seeks to apply a layer of regulation over housing in Victoria that is not currently proposed for other States and Territories. National consistency in building regulations is and should remain the objective of all governments.

HIA recommends that:

1. The Victoria Government establish an advisory group to develop a strategy for Accessible Homes, Accessible Neighbourhoods drawing on representatives from the non-profit voluntary and community sector, public sector agencies and private sector organisations.
2. A study be undertaken to establish the baseline number of accessible dwellings in the housing stock and the potential number of dwellings that could be adapted readily to accommodate people with severe core-activity impairments.

3. The Government should commit to constructing all new public housing in Victoria to meet the proposed adaptable and visitable housing standards.
4. A direct comparison of the building costs of public dwellings that include universal design principles against comparable dwellings without the special features would provide an objective basis for ascertaining the true costs of including accessibility requirements within new dwellings.
5. It is recommended that the Final RIS analysis be reviewed to consider the range of costs that may apply for flat sites and sloping sites, providing an average or median costing, rather than a minimum costing.
6. Discussions should take place between the consultants responsible for the costing estimates in the RIS and housing industry representatives with a view to clarifying why such a wide divergence in the cost estimates of the accessibility regulations has occurred. The outcomes of these discussions should be reported in the Final RIS.
7. Industry practitioners have the opportunity of meeting the consultants responsible for the preparation of the RIS with a view to reconciling the different cost estimates.
8. That the Victorian Government meet its obligation and commitment under the Inter-Governmental Agreement for the establishment of the Australian Building Codes Board, to only introduce state variations to the BCA that arise due to “geographical, geological or climatic” conditions.
9. No further action with the proposed regulation should occur without a solution being found to the technical and planning issues arising from the proposal – as outlined in this submission. The Government should establish a technical working group to allow the housing industry and regulators to more closely consider the practical issues associated with the introduction of the proposed requirements.
10. Where a display home has been built prior to the new requirements being implemented that a specific amendment to the Domestic Building Contracts Act be passed to ensure that builders will not be liable for a breach of legislation where all reasonable steps have been taken to implement the changes in contractual documentation. Also to minimise the risk of further disputes builders should be able to display a disclaimer to clarify that the home was built prior to the introduction of visitable and accessible requirements and that physical elements of the new regulation are not able to be displayed. It could also be clarified that there will be additional costs involved in meeting the requirements.
11. A transitional period of at least 5 years required to cater for redesign and rebuilding of display homes with the mandated features included.

12. Voluntary and non regulatory approaches to visitable and adaptable housing outcomes be pursued and program initiatives such as the incorporation of standards in all public housing, be thoroughly reviewed prior to regulation proceed which requires all homes to include a minimum set of features.
13. An investigation with community organisations and industry on the feasibility of an Accessible Homes Listing and advisory service for households requiring dwellings for rent and for sale that include adaptable and accessible features and
14. An evaluation be undertaken of the viability of a Trade Directory of accredited industry professionals to provide a home ready and repair program for the elderly and the disabled.
15. The Victorian Government should partner with HIA to undertake a comprehensive education and promotion campaign with the housing industry to increase awareness of the options and practical solutions for universal housing access.
16. Provision of financial assistance to those who adopt accessibility requirements will increase the uptake of features rather than a blanket mandated requirement for all new homes and a proportion of residential apartments.
17. State and Community Housing providers should be provided with incentives to fit or retrofit accessible housing requirements into public and community housing stock.