Submission No 131

Submission by the Tasmanian Government

House of Representatives Standing Committee on Legal and Constitutional Affairs

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

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

The Tasmanian Government's Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs

April 2009

1 Introduction

The Tasmanian Government makes this submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs on its Inquiry into the Draft Disability (Access to Premises – Buildings) Standards.

The Tasmanian Government supports the Federal Government's intention, with these draft standards, to align the Building Code of Australia (BCA) with the *Disability Discrimination Act 1992* (DDA). The clarity and certainty that can be expected to flow from this is welcomed on behalf of Tasmanians living with disability and the Tasmanian building industry.

The Tasmanian Government's Disability Framework for Action 2005-2010 (DFA) articulates the Government's commitment to a comprehensive social justice approach to disability.[1]

The DFA recognises that people living with disability experience barriers to participation in the social, economic, cultural and political environment. Inaccessible spaces, buildings and other venues limit the possibilities for people with physical and sensory impairments to reach their maximum potential as included and contributing citizens. Therefore, a major commitment of the DFA is improved physical accessibility.

The DFA acknowledges the work, over many years, to develop a Premises Standards consistent with the DDA and anticipates that development of such Standards "will improve transparency and predictability in relation to legislative requirements for providing access to new buildings and/or existing buildings that are being renovated or extended".[2]

The Tasmanian Government, through the DFA, is committed to:

- ensuring that, once amended, the Building Code of Australia and relevant standards are effectively applied; and
- promoting awareness and monitor progress of the implementation of national standards. [3]

[1] DFA, pg 3
[2] DFA, pg 9
[3] DFA pg. 9

2 Background

The DDA is a Federal law which makes discrimination against a person with a disability because of their disability unlawful.

The objectives of the DDA include eliminating, as far as possible, discrimination against people with a disability because of their disability,[4] and promoting recognition and acceptance within the community that people with a disability have the same fundamental rights as the rest of the community.[5]

The DDA sets out the specific areas in which it prohibits a person being discriminated against on the grounds of their disability. This includes the areas of employment,[6] access to goods and services, education, clubs and associations and sport.[7]

In each of these areas access to, and use, of a building could feature as a cause of possible discrimination. Additionally, s23 of the DDA provides specific protection from discrimination in the area of 'access to premises'.

However the DDA legislation, which has been law for the past fifteen years, does not align with the BCA. This has created uncertainly for people living with disability and the building industry.

When a person with a disability, or their associate, believes they have been discriminated against as a result of experiencing barriers to accessing or using premises they can lodge a complaint with the Australian Human Rights Commission or with the Anti-Discrimination Commission in Tasmania.

Currently, the only way of enforcing rights under the DDA is through a complaints process brought by the aggrieved person. If a conciliated agreement cannot be reached then the complaint may be lodged with a court for ultimate determination.

Accordingly, one of the primary advantages of the proposed Premises Standards is that it will address access issues at a systemic level for all new and renovated buildings. This will reduce the need for individuals to pursue their rights through the complaints mechanism and the courts.

[4] DDA, s3(a).
[5] DDA, s3(c).
[6] DDA, Part 2, Division 1.
[7] DDA, Part 2, Division 2.

3 Inquiry into the Draft Disability (Access to Premises – Buildings) Standards

The Standing Committee on Legal and Constitutional Affairs is to consider and report on the draft Disability (Access to Premises - Buildings) Standards covering:

(i) the appropriateness and effectiveness of the proposed Premises Standards in achieving their objects;

(ii) the interaction between the Premises Standards and existing regulatory schemes operating in state and territory jurisdictions, including the appropriateness and effectiveness of the proposed Model Process to Administer Building Access for People with Disability;

(iii) whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector; and

(iv) any related matters.

The remainder of this submission addresses the terms of reference.

3.1 "The appropriateness and effectiveness of the proposed Premises Standards in achieving their objects"

Clause 1.3 of the Standards states that –

The objects of these Standards are:

(a) *to ensure that reasonably achievable, equitable and cost-effective access to buildings, and facilities and services within buildings, is provided for people with disability; and*

(b) *to give certainty to building certifiers, building developers and building managers that, if access to buildings is provided in accordance with these Standards, the provision of access, to the extent covered by these Standards, will not be unlawful under the Act.*

Class 1b buildings

The Standards includes a new specified Class (1b) building classification for a group of dwellings that will, in addition to the disability provisions – because of this revised classification, require additional fire and evacuation lighting provisions. It appears that these requirements have not been properly considered or justified, and the cost of these additional provisions have not been included in the Regulatory Impact Statement (RIS) calculations and case

studies. The change which results from these additional provisions is not a cost effective solution.

The Guideline states that the Standards does not apply to Class (1a) buildings which typically are detached houses, town houses, and terrace houses.

The Standards however, propose to classify dwellings that are currently Class (1a) detached housing as a new type of Class (1b) building if they are used for short-term tourist accommodation. As a result of this change it will require all individual Class (1b) buildings on an allotment to have additional smoke alarms and evacuation lighting over and above what a current Class (1a) building is required to provide.

It is considered inappropriate for a DDA standard to amend the building classification system that has been part of the BCA for over 15 years.

To avoid these additional costs and the externalities of other BCA changes an alternative option would be to simply remove the requirement (relating to single detached dwellings used for short-term holiday accommodation) from the Class (1b) classification and relocate it in the Class (1a) classification. This would result in the Standards applying to four or more Class (1a) dwellings where they are used for short-term holiday accommodation. (These buildings are normally classified as Class (1a) buildings.)

The RIS further states that even where a Class (1b) building is below the thresholds, it will remain subject to the general complaints provisions of the DDA. This seems at odds with the purpose and objective of the Premises Standards to give certainty to the building industry of the requirements for compliance.

To provide certainty to the Industry, the Standards should clearly state that if a building is under the threshold requirements then there is no requirement for compliance with the DDA and therefore it will not be unlawful.

Class 2 buildings

The Standards requires disability provisions where four or more single dwellings are used for short-term holiday accommodation and for Bed & Breakfasts containing four or more bedrooms (Class (1b) buildings) yet requires no disability requirements for short-term holiday apartments in a Class 2 building[8].

[8] Class 2 buildings are typically apartment blocks for residential use as dwellings, for a more complete definition refer to Clause A3.2 of the Building Code of Australia.

It is inappropriate that the sector of the holiday accommodation industry that provides low cost accommodation is required to provide access for people with disability while the high cost accommodation sector is not. To ensure that all sectors of the accommodation industry are treated fairly and equitably, the Standards should also apply to Class 2 buildings used for holiday accommodation.

It is further noted that Class 2 buildings 'will continue to be subject to the general provisions of the DDA to the extent that it applies to Class 2 buildings'. It therefore seems logical to include those provisions explicitly in the Standards. Not to do so seems at odds with the purpose and object of the Premises Standards to provide certainty to the building industry of the requirements for compliance.

If the general provisions of the DDA affect the design and construction of Class 2 buildings then they should be included in the Standards. For example, access to public areas should be provided.

3.2 "The interaction between the Premises Standards and existing regulatory schemes operating in state and territory jurisdictions, including the appropriateness and effectiveness of the proposed Model Process to Administer Building Access for People with Disability"

Definitions

'Approval' is referred to generally throughout the document. As some states and territories do not issue 'approvals' but issue 'building permits', 'building licences' or 'building consents', it would be appropriate that a common definition for 'approval' be included and that it is broad enough to include all these descriptors. Tasmanian legislation uses the term 'building permit'.

The 'Protocol' includes a definition for 'building approval' and includes all the descriptors used in the states and territories. This definition could be included in the interpretations clause of the Standards. As a consequence, it would require the addition of the word 'building' in front of 'approval' where it is used throughout the document.

Repeated definitions

Throughout the Standards, some BCA definitions have been repeated word for word while others refer to having the 'same meaning as in the BCA'.

Repeating a BCA definition could cause problems in the future when a BCA definition may need to be changed for clarity, but has nothing to do with the Access Code. The BCA and Access Code will then be different as the Access Code cannot be changed for five years. This problem could be avoided by listing all definitions in the Standards as having 'the same meaning as in the BCA'.

Some examples of the problem already exist in the Standards.

For instance the definition of 'assembly building' has already been changed for BCA 2009 from what is currently in the Standards. The classification definition of a Class 6 building has also been changed for BCA 2009 from what is currently in the Standards.

A further example is in relation to the definition of 'early childhood centres'. Some states and territories (including Tasmania) have amended this definition and include it in their Appendix to the BCA. The change of definition is required to align with their legislative definition of an early childhood centre. Changing this definition in the Standards to have 'the same meaning as in the BCA', will pick up the State and Territory legislation.

Repeated clauses

Some general clauses in the Standards are also repeated BCA clauses similar to the 'definitions' and could cause problems in the future when a BCA clause needs to be changed for clarity but has nothing to do with the Access Code. If a clause is the same as the BCA then the Standards should simply refer to the clause in the BCA rather than repeating the clause.

Clause D3.0

This clause in the Standards is not exactly the same as in the BCA although that appears to be the intent. If the BCA is to mirror the Access Code this clause in the BCA should be amended. The BCA provisions in this area however, have been developed over many years and similar general clauses are used in every other part of the BCA. To be consistent this section in the Standards should mirror the BCA clause.

3.3 The Administrative 'Protocol'

This document is not part of the Premises Standards but describes an important mechanism that may be adopted by State and Territory building administrations to deal with questions relating to the application of the proposed new access provisions of the BCA.

The protocol could be accommodated in Tasmania by the use of Tasmania's current Building Appeal Board with the addition of more access experts to the Board. This Board is set up under the *Building Act 2000*. Some minor changes to the Act would be required to allow the Board to operate as an 'access panel' for the purpose of the protocol. Additional costs would need to be allocated to cover its operation as an 'access panel'.

For consistency in results from these 'access panels' it would be appropriate that there be a national system of accreditation for access experts.

3.4 "Whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector".

Clause D3.4

The exemptions provided in this clause are rather limited. There are a lot of other areas which could be included, such as, food premises which – as well as commercial kitchens – can include bakehouses, farm and dairy premises, meat, fish and vegetable processing and packing premises, ice and ice cream manufacturing premises, breweries and wineries. Other types of buildings that could be exempt – in which high hazard processing and manufacturing of products occur – could include glass, plastic, isocynates, and lead, together with dangerous goods storage premises, electroplating premises and spray painting premises.

It is a difficult task to identify all of the buildings which may be exempted. However, all of these premises are workplaces which, for various reasons (due to the dangerous process that might be undertaken in the workplace), would not be suitable for a person with particular disabilities. Therefore, rather than listing the building uses to be exempted from the Standards, an option would be to have a general clause which would allow a Workplace Authority to determine if a workplace should be exempted from the Standards.

Many of the above mentioned premises would have single floor areas over 200m2 and would not fall within the exemption under subclause (f). This would place an extra cost burden on small businesses.

Clause – 5.2.4 Class 5, 6, 7b and 8 buildings

This provision seems reasonable for a three storey building which could have up to a total floor area of 600m^2. The high cost of vertical access to the upper floors is the reason behind the exemption. However, there are many two storey and one storey buildings built in rural and regional areas over 200m^2 and under 600m^2 in total floor area which will not be subject to exemptions. It would be fairer and more appropriate if the provision provided for exemption where the total floor area (includes all floors) is up to 600m^2 and the building is no more than three storeys high.

4 Any related matters

Clause 3.1 – table

Clarification is required to show that the percentage given in the level of compliance column to the Table applies to all aspects for that item number.

The Note under the Table is unclear in relation to the 'building certifier'. The 'building certifier' does not provide buildings. It is suggested that the proposed reference to 'building certifier' is deleted.

Clause 4.3

The extent of the building approval that this clause applies to is unclear.

Clause A2.4

This clause does not appear to be related to the Access Code and it is suggested that it be deleted.

DP1

This clause does not make sense. It appears there may be missing words.

Table D3.5

The requirements in this Table are unclear due to the combining of the Class (1b) and Class 3 buildings in the Table. The descriptors used appear to relate to a Class 3 building rather than a Class (1b) building. It is suggested that the requirements for Class (1b) and Class 3 be separated in the Table.

Table F2.4(a)

To make it clearer what is required, the requirements should be included separately for the two different Class (1b) buildings similar to the access requirements (Table D3.1).

Table F2.4(b)

To make it clearer what is required, the requirements should be included separately for the two different Class (1b) buildings similar to the access requirements (Table D3.1).