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Submission No 145

BY: LACA

**Commonwealth Government's  
Draft  
Disability (Access to Premises – Buildings) Standards**

**Western Australian Government Comments**

**Introduction**

The Government of Western Australia broadly supports the implementation of an appropriate national standard that will align the objectives of the *Disability Discrimination Act 1992* (DDA) and the Building Code of Australia (BCA) that can be applied to all new buildings and additions to existing buildings with confidence.

Western Australia provides the following consolidated submission on the Committee's Terms of Reference:

1. *the appropriateness and effectiveness of the proposed Premises Standards in achieving their objects;*

**Comment**

Western Australia notes that these provisions are the outcome of a long process of consultation that has taken place over several years. The Western Australian government supports the implementation of an appropriate standard.

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;*

**Comment**

Western Australia requests that the following issues in relation to this term of reference be noted by the Commonwealth:

- Under the proposal to include the Disability (Access to Premises-Buildings) Standard in the Building Code of Australia (BCA), the dual legislative and regulatory process of the DDA and the State's Building Regulations would still remain. Western Australia is of the view that this may have the potential to cause uncertainty in the industry.

For example, a refusal by an approval authority to issue a building permit could give rise to an appeal to the Western Australian State Administrative Tribunal. The decision of the Tribunal may be contrary to a subsequent decision by the Australian Human Rights Commission under the DDA. This could create a situation where two processes may result in two different outcomes.

- In regard to the timing of any review of the Premises Standard, Western Australia is of the view that to ensure greater consistency, it should be aligned with the process for amending the BCA. In circumstances where the Commonwealth Attorney General decides to amend the Premises Standard before a scheduled review, the Australian Building Codes Board should be advised of any changes so they can consider them as part of the annual BCA review process.
- Western Australia notes that the BCA allows for Alternative Solutions that meet the Performance Requirements. This can potentially lead to uncertainty as the approval process is administered through the Building Regulations.

An acceptable building solution under the building regulations may not be a Deemed-to-Satisfy solution under the DDA as there is no guarantee that an Alternative Solution will be protected against a complaint under the DDA to the Australian Human Rights Commission.

- Western Australia notes that the Building Regulations do not provide for “unjustifiable hardship” where as the DDA does.

It is not possible for an approval authority to consider unjustifiable hardship under the building regulations. Even if the building regulations are modified to give an approval authority discretion to consider unjustifiable hardship, the potential risk to the approval authority would be too great to exercise the discretion. Or alternatively, Western Australia is concerned that it may open a loop hole for less conscientious approving authorities to abuse the discretion.

- The Building Regulations allow a certain degree of flexibility when approving additions and alterations to existing buildings.

For example, a minor addition or alteration need not comply with certain current BCA requirements. Such discretion could be inconsistent with the DDA.

- The WA Health Department have highlighted the need for the Committee to be aware of the existence of the Australasian Health Facility Guidelines. Currently, new hospitals are assessed for compliance against these Guidelines throughout Australia and New Zealand.
- Western Australia is seeking clarification as to whether it will be the approving authority under State building regulations or the Australian Human Rights commission, or both, who will have responsibility for enforcing compliance with the Australasian Health Facility Guidelines. Western Australia is also seeking clarification as to which legislation will be used to enforce compliance.

- Under Part 2.1(3), it states that buildings constructed on behalf of the Crown are deemed new buildings if the construction commences on or after the commencement date.

Currently in WA, buildings constructed on behalf of the Crown are exempt from statutory building approvals. The design of some of these projects can take several years before the commencement of construction and it could be costly to amend the design after tenders have been received and accepted.

For example, currently there are several new building proposals where the design stage of these projects has been completed and they are currently out for tender. It is envisaged that some of these projects may not commence for 12 – 18 months due to budgetary controls put in place by the new WA State Government.

Western Australia is therefore of the view that provisions should be made in the standard to allow adequate transitional arrangements for Crown buildings.

- WA is of the view that it is important for States and Territories to retain a degree of flexibility in the administration of building access for people with a disability. However it is essential that as the DDA is Commonwealth legislation, there is a central body where States and Territories are represented, possibly operating out of the Australian Building Codes Board, which can provide clarification on decisions, as well as a degree of national consistency in decision making.

3. *whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector.*

There are no specific matters of concern for Western Australia.

4. *any related matters.*

Western Australia notes the concerns raised by business in the Regulation Impact Statement (RIS) that the costings provided in the RIS are an under-estimation. Western Australia also notes with concern the rationale for not using the Business Cost Calculator (BCC) for calculating the business compliance costs of the proposed Standards. Namely, that these costs would either be low or voluntary and therefore, use of the BCC is not required. Western Australia is of the view that it would have been beneficial to more clearly define the compliance costs to business.

Western Australia also notes with concern the estimated direct and indirect costs of the proposed Standards of \$620 million per annum nationwide, which comprises:

- \$159 million in annual cost increases in respect of new buildings;
- \$305 million in annual cost increases in respect of building upgrades; and
- a further \$156 million in annual costs of the lost Net Lettable Area, again relating to building upgrade works.

Of particular concern are the costs identified in the RIS in respect of building upgrades, which will increase over a 15 year period and will be incurred annually for the length of the “renovation cycle” – estimated as being 15 years in duration.

Western Australia is of the view that these costs, particularly given current the economic environment, may be prohibitive to the private sector, which is typically more affected by cyclical factors in its decision making and more sensitive to cost changes than the public sector.

## Comment

The following comments are directed at various clauses within the standard itself:

- **Part 2.2 – Persons to whom standards apply**

Building certifier examples should include State or Commonwealth Government agencies with the authority to certify compliance.

- **Part A4 – Building Classifications**

This clause refers to the BCA Class 1b buildings and adds a second description to include:

- (ii) *4 or more single dwellings located on one allotment and used for short-term holiday accommodation.*

Western Australia is of the view that this may lead to some discrepancies in applying the new standards.

For example, if somebody obtains approval for four or more Class 1 buildings on one allotment to be sold as individual strata units (which would not require compliance with the standard) and somebody purchases all the dwellings at a later date and rents them out for holiday accommodation. Would the standard apply given that it is only for new construction?

The terms “allotment” and “short-term holiday accommodation” should also be defined in the standard. For example Western Australia is seeking clarification as to whether a group of strata titled units is

classed as one allotment, or is each strata title its own allotment. Additionally, Western Australia is seeking clarification on the definition of "short-term". Is it up to one month, three months, six months etc?

- **Clause D3.1 – General building access requirements**

The WA disability Services Commission has raised concern that Table D3.1 does not cover Class 2 buildings.

- **Table D3.1** requires access to swimming pools with a total perimeter greater than 40m in Class 1b, 3, 4, 5, 6, 7, 8 or 9, but this is not required for pools for the exclusive use of occupants of Class 1b or SOU in a Class 3.

Western Australia is seeking clarification as to why there is a limit on the size of the pool.

Additionally, Western Australia is of the view that if a pool is designated for the exclusive use of the occupant in an accessible Class 1b or SOU in a Class 3, the pool should also be accessible.

- **Clause D3.8 – Tactile indicators**

(2) refers to AS/NZS 1428.4.1 – This standard is still in draft form and Western Australia is seeking confirmation that when published, it will be referenced in the BCA and comply with the ABCB Protocols.

- **Clause D3.12 – Glazing on an accessway**

This clause refers to AS1428.1 for marking of glazing panels. In the Public Consultation Draft of AS1428.1, clause **14.2 Visual indicators at glazed doors and sidelights** states; 'See Clause 6.8'. Western Australia notes that there is no Clause 6.8 in that PCD (or in the current AS1428.1 – 2001). Western Australia is seeking clarification on whether the Commonwealth mean to refer to Clause 7.7 Visual indicators on glazing, which refers to full height glazed doors and sidelights.

