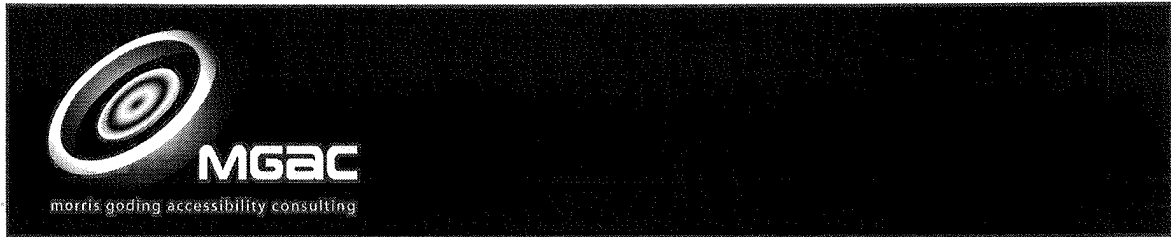


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submission to

House of Representatives Legal and Constitutional Committee

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

February 2009

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BY: LACA

Introduction

Morris Goding Accessibility Consulting (MGAC) has been applying the requirements of the Australian Standards (AS1428 series), the Building Codes of Australia (BCA) and the Disability Discrimination Act (DDA) for over 10 years.

Nick Morris Founding Director is an award-winning consultant (Rushman's International Event Management Awards 2008), who is a member of the International Paralympic Committees (IPC) Accessibility Advisory panel, and is a Paralympic Gold Medallist. Nick is an expert in Major event accessibility, in particular working for ORTA, OCA and SOCOG for the 2000 Olympic and Paralympic Games, the 2006 Commonwealth Games and the 2008 Beijing Olympics and Paralympics.

His expertise in providing DDA complaint accessible transport, training, operations and community liaison is second to none.

Bernie Clifford B.Sc. (Nursing, Biology), B.A. Hons (Media Arts) G. Cert (Arts & Entertainment Management) — Lead Training & Accessibility Consultant

Bernie Clifford: provides invaluable insight and a practical, function-orientated approach into science and healthcare facilities due to his experiences in laboratories as a BSc in Biology and in health care as a Nurse. Bernie also is an international award winning media production professional, and provides cinema, design and event management expertise. Bernie recently researched and developed the Access Awareness Training package for the Arts industry of Victoria's peak body — Arts Access; he currently sits on the City of Greater Geelong's and the Victorian Equal Opportunity and Human Rights Commissions' Disability Advisory Committees.

Bernie brings cost effective expertise in event & buildings' Access Design, policy and Disability Action Plan development and workplace training and assessment.

The following details the recommendations MGAC wish to have incorporated into the Draft Disability (Access to Premises – Buildings) Standards 2009. It should be strongly noted that most of the recommendations in the guidelines impact not only on people with disabilities but also parents with children, the elderly, service and emergency personnel. As such the recommendations of this paper should be seen as applying to all these people.

Nick Morris

Bernie Clifford

MGAC recommendations in summary they include:

1 Consultation period

The timing and consultation period is very short and does not allow thorough investigation of the Standards, BCA and Draft Access Guidelines.

2 Australian Standards

AS 1428 series requires upgrading to ensure consistent application of the Standard. It should also be noted that AS 1428 200X has still not been finalised. Therefore it is unclear about which standard to appropriately comply. These Standard need a consultative review on their own and should be updated before the guidelines are endorsed.

3 Access consultants

In the draft guidelines there is only mention of Building Surveyors being able to sign off on the Guidelines. As a minimum any accredited Access consultant should also be able to provide endorsement and be highlighted within the Standard as an appropriate person to do this

4 Exclusions from the Draft DDA guidelines

Class 2 buildings – residential buildings

There is no explanation as to why these are excluded from the Draft DDA guidelines. Often residential apartments have lounges, cinema's, recreation and aquatic centres, relaxation gardens. As a minimum the main entrance all public spaces listed should be accessible as family, friends and visitors should be able to enjoy all public spaces. Once again the concept of "universal accessibility" is lost

Swimming pool

There is no reference in AS 1428 and therefore the Draft DDA guidelines to access to swimming pools, however these are becoming increasingly more important for the elderly and disabled as a form of therapy. Pool hoists, ramps and slings should be specified as part of this inclusion

5 Wayfinding and signage

Although signage is detailed briefly in AS 1428 there is no specific reference to this in the Draft DDA guidelines. This is always integral to provide appropriate accessibility

6 Emergency egress

There is currently little in the BCA, Draft DDA Access guidelines or AS 1428 regarding specific evacuation from buildings. This is an essential component given that most evacuations by people with disabilities are under controlled conditions by the fire brigade, There is no provision for a refuge in a fire stairwell or other dedicated areas. The accessible emergency evacuation is detailed on a case by case basis.

1 Consultation period

The consultation period and process for submissions in relation to the Draft Disability (Access to Premises – Buildings) Standards is very limited and may restrict some people from participating in the consultation process. Given that the revised and updated draft **Australian Standards AS1428.1, AS1428.4.1 and AS 2890.6** have only just been released for comment in the past two weeks, additional time is required for review, digestion and reflection as well as submission preparation.

2 Australian Standards

MGAC welcomes the introduction of the Standards. We consider the finalisation of the Standards as a long overdue and significant step in the realization of human rights of people with disability.

We note that the Standards will alleviate the current inconsistency between the Building Code of Australia (BCA) and the DDA, with subsequent inconsistencies flowing to Australia's obligations under the *UN Convention on the Rights of Persons with Disabilities*.

Resolving this inconsistency and achieving congruence in the regulatory environment across all states and territories illustrates how our legal system can simultaneously promote inclusion whilst cutting red tape and transaction costs. Through providing more certain legal environment in which developers, the building industry and decision makers operate the Standards provide an excellent example of how human rights makes good business sense.

Further, the Standards will address access issues at a systemic level for all new and renovated buildings.¹ This will reduce the need for individuals to pursue their rights through complaints mechanisms and the courts.

MGAC particularly welcomes improvements in access requirements around issues such as circulation space, signage, facilities, hearing assistance and access to upper levels of new and renovated buildings.²

While the standards have the capacity to significantly enhance the inclusion of people with disability in the community MGAC notes that as the Standards apply to public buildings only, they do not deal with the equally significant issue of universal design in residential housing.³ This is an area where urgent action is required at both a Federal and state/territory level if our housing stock is to meet the needs of the community now, and into the future.

MGAC further notes that while the definition of 'premises' in the DDA includes more than just buildings the Government has requested the Standards be limited, at this stage, to improving those access issues already addressed in the BCA.

¹ MGAC notes that for buildings where the standards are not 'triggered' a person with disability may still bring a claim under the general provisions of the DDA.

² Noting that 'unjustifiable hardship' is still available as a defence to a DDA claim and that certain exceptions and concessions also apply within the Standards.

³ Including social housing.

This includes, for example, access to shops, offices, theatres, restaurants, schools, swimming pools, sports facilities, hotels, car-parks, hospitals and aged care facilities. It does not include public footpaths, road crossings, parks, and playgrounds.

Further, within those buildings the BCA covers features such as accessible toilets, lifts, entrances, ramps, stairway features, door circulation space, signage, hearing augmentation and handrails. It does not cover features such as reception counter heights, change rooms in retail shops, information on building tenants or the accessibility of customer queuing systems. These issues will continue to be subject to the current DDA complaints mechanism.

MGAC recognises that ultimately the Standards, the BCA and Australian Standards must all be aligned to ensure consistency. We note that as decisions have been made about the content of the Standards the committees responsible for developing the referenced Australian Standards have been asked to update the technical information to reflect the content of the [DDA] Standards.

MGAC welcomes this effort, however we note the concerns of the disability sector regarding transparency around the process of developing the Australian Standards to provide technical detail on how to meet deemed-to-satisfy solutions under the BCA and DDA standards. In particular, we note their concerns that timeframes for the finalisation of the premises standards, BCA and Australian Standards are congruent.

3 Access consultants

MGAC notes there is a necessity to change the terms for 2.2 Persons to whom the Standards apply, to include Accessibility Consultants. This also relates to Part 3, 3.1 Building certifiers, developers and managers to ensure buildings comply with the Access Code to include Accessibility Consultants.

4 Exclusions from the Draft DDA guidelines

Class 2 Buildings

MGAC notes that apartment buildings (Class 2 buildings) appear to be omitted from the standards.

MGAC is of the view that Class 2 buildings form such a significant and growing feature of the built environment that they should be included in the standards.

We note that in some jurisdictions, local government planning powers facilitate Class 2 inclusion in accessible planning requirements. However, In Victoria, no such local planning power exists. This means that access to apartment living for people with disability in Victoria compares less favourably than other jurisdictions. As time passes and new Class 2 developments are built, this inequity grows.

Further we note that Class 2 buildings were included in the 2004 draft standards. We cannot identify any strong business case for their exclusion.

We consider that the recovery of costs associated with building an accessible apartment building would be likely offset by demand for such housing, particular in metropolitan Victoria where urban consolidation is encouraged.

Rather, there are significant benefits that arise from the inclusion of Class 2 buildings. These include: certainty for developers and any Body Corporate regarding potential liability under the DDA (which arguably could still arise if Class 2 premises are not included); the removal of existing incongruities in requirements between local council areas; and the progressive improvement in housing stock to better meet the needs of people with a disability and our ageing population.

We recommend that the following arrangements be included in the Standards as a reasonable balance between the rights of people with disability to access premises and the financial impost upon developers.

RECOMMENDATIONS

It is recommended that:

1. Class 2 buildings and those subject to significant renovation be subject to the Standards.
2. The Standards require an accessible path of travel to the front door of apartments on the same floor as the principal entrance (ground floor), and where common facilities such as a laundry or gymnasium are provided, that an accessible path of travel be available to at least one of such common facilities.

In addition, if the block of flats has a lift or ramp servicing other levels, an accessible path of travel must also be provided to the front door of the units on the levels serviced by the lift or ramp and to any other common use facilities on those other levels.

Concessions:

MGAC notes that the Standards are triggered when a new building is being constructed or when significant renovations (those requiring building approval) are contemplated.

We also note that the Standards contain some specific concessions that apply in relation to existing lifts and existing accessible toilets that meet existing Australian Standards. Some exemptions also apply in regards to lessees and relations to small buildings based on a floor space ratio.

MGAC is concerned that some builders, developers and occupiers may misunderstand the scope of such concessions and exemptions. Clearly, the exemptions and concessions that apply in relation to the Standards do not apply to premises or accessibility issues that are beyond the scope of the Standards. Rather, the DDA continues to apply, including the unjustifiable hardship provisions.

MGAC respectfully submits that the Committee make a clear statement of the law on this point so that all stakeholders are able to understand and fulfil their legal obligations under the DDA.

Recommendation

It is recommended that:

That the Committee report specify that the exemptions and concessions arising from the Standards are not applicable in general discrimination claims under the DDA, that is, for matters relating to premises or access issues for which the Standards do not apply.

5 Wayfinding and signage

Wayfinding design is one of the most important aspects to providing seamless accessibility to any premises. This aspect is not represented in D3.6 Signage of which MGAC recommends signage be removed and replaced with Wayfinding and incorporates all aspects of wayfinding standards and accessible signage.

The existing BCA has quite limited wayfinding requirements, and is largely restricted to signage and wayfaring to accessible facilities rather than wayfinding though-out the premises.

MGAC understands that while some research on technical solutions that could be included as 'deemed to satisfy' provisions in the BCA and Standards has been undertaken, the issue of wayfinding is often closely related to the individual capacity of the person with disability and the environment which they are attempting to navigate.

Given this challenge, MGAC is of the view that if wayfaring in the standards is limited to that associated with accessible facilities (as is the case with the current BCA) then the remainder of wayfaring issues would remain open to a general discrimination claim under either the DDA or EOA. This is consistent with other access issues not covered by the standards, which will remain open to either a general discrimination claim.

To ensure certainty it is important that the Parliament makes it very clear that the limited range of wayfaring included in the Standards does not cover the field. Potentially this could be done by way of the Minister making an explicit statement to this effect during the process of finalising the regulations. Whilst this may not have the interpretive effect of a similar statement during a second reading speech it would none the less be a matter to which a court might refer when considering this issue.

To promote community understanding, particularly amongst the building industry this interpretative information should also be include in any publications, guides or other educational materials associated with the implementation of the Standards.

Recommendation

That the Committee explicitly report that the correct interpretation of Standards that the wayfinding provisions in the Standards do not cover the

field, so that for wayfinding or other matters not covered by the Standards a general discrimination claim may still be made under the *Disability Discrimination Act 1992*.

That this interpretation is included in any Ministerial statements associated with the laying of the regulations before the Parliament, and in any subsequent publications, guides or other educational materials associated with the implementation of the Standards.

6 Emergency egress

MGAC notes that during early stages of the development of the standards it was acknowledged by all stakeholders that significant work was required to identify technical solutions to some of challenges around accessible emergency egress. As a result it was agreed that existing BCA access standards would continue to apply, effectively creating a general reservation around emergency egress standards.

We understand that this agreement was based on an assessment that the technical solutions would have been found by the time the Standards reached the final stages progression into law.

MGAC notes that while technical solutions have not been found for all aspects of emergency egress, some have been resolved.⁴ Therefore, for those areas of emergency egress where technical solutions have been found, the Standards should reflect those as the requirement.

MGAC does not consider it appropriate that a blanket style reservation on emergency egress continue to operate. To continue use the current BCA standards, which no longer reflect technical capacity would be backward looking and undermine the safety of people with disability. In no other area of public life would we allow outdated solutions and standards to apply in regards to public safety and emergency management.

Recommendations

It is recommended that:

Where technical solutions exist, such solutions be included in the Standards regarding emergency egress.

Where technical solutions have not yet been identified, the existing BCA emergency egress standards should continue to apply, subject to the five year review of the Standards.

⁴ For example visual alarms for emergency egress.