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National Disability Services Submission on Draft Disability (Access to Premises – Buildings) Standards

Introduction

NDS welcomes the release of the Draft Disability (Access to Premises – Buildings) Standards (Premises Standards) as improved access to the built environment by people with disability is essential if the Australian Government’s commitment to social inclusion is to become a reality. The benefits of increased access to premises for people with disability include greater opportunities to attend training courses; take on a job or run a small business; more options about where to buy or rent accommodation; expanded options for study; and wider choice in travel and leisure destinations.

Around 20 per cent of the Australian population identify as having a disability. Of these 520,000 have a mobility disability; nearly 500,000 are blind or vision impaired; and 1 million are deaf or hearing impaired.¹

This submission reflects the concerns of NDS member organisations that provide supports to people with disability and focuses broadly on areas that need more attention or clarification.

Access for All: The First Consideration

The number of people who will benefit from increased access to premises will increase dramatically with the age composition of Australia’s population projected to change considerably as a result of population ageing. By 2056 there will be a greater proportion of people aged 65 years and over than at 30 June 2007 (and a lower proportion of people aged under 15 years). For example, while there were 344,100 people aged 85 years and over in Australia at 30 June 2007, making up 1.6% of the population, this group is projected to grow rapidly to between 4.9% and 7.3% by 2056.²

¹ Australian Bureau of Statistics, 2003

² Australian Bureau of Statistics <http://www.abs.gov.au/Ausstats/abs@.nsf/mf/3222.0>

Australia's ratification of the UN Convention on the Rights of Persons with Disabilities must lead to increased access to premises if real social inclusion for Australians with disability is to be achieved. The General Principles at Article 3 of the Convention calls for 'full and effective participation and inclusion in society' and 'accessibility'. Article 9 Accessibility calls for the 'elimination of obstacles and barriers to buildings, roads, transportation and other and outdoor facilities, including schools, housing, medical facilities and workplaces'.

NDS asks the Committee to give due recognition to the intent of the UN Convention when considering the provisions in the Premises Standards.

The term 'safe, equitable and dignified access', as used in the Disability Discrimination Act 1992 (DDA) and in the performance requirements of the current Building Code of Australia (BCA), is missing from the Premises Standards.

NDS asks that the term 'safe, equitable and dignified access' be included in the Premises Standards so that they correctly reflect the DDA.

NDS does not accept the view that the Premises Standards provide for more access than required or that such access could not be afforded by the building industry. Construction costs have not increased in line with real estate values. The argument that accessibility adds significantly to cost is steadily weakening as the construction cost component of a development's overall costs continues to diminish. To the contrary, the Regulation Impact Statement recorded a net benefit (see further comments below).

Developers, owners and operators of successfully accessible buildings report it was noticeable in early design stages that some architects/designers did not take accessibility to heart but relegated it to an 'add-on' role. Where an owner/developer was aiming for a high level of accessibility and had expressed that in the design brief, those architects/designers effectively eliminated themselves from winning the project.

In addition to having a clear philosophy and positive attitude to accessibility, planners, architects/designers, developers and builders need to instigate processes from the outset that take full account of access issues, not just the requirement to meet the Premises Standards. These should include:

- Clearly defining the aspiration for maximum accessibility in the brief so that the building will follow universal design principles and be accessible to as many people as possible;
- Working with an access consultant where possible; and
- Listening to representatives of disability consumer groups and taking into account their accumulated experience of what has not worked.

NDS welcomes the principle articulated in the Premises Standards Guidelines (Part 5 (8)) that 'where a person responsible for a building does not provide full and equitable access in an existing building (including heritage buildings) because they believe this would involve unjustifiable hardship, providing no access at all would not be appropriate'.

Other Comments

PART 1.3 OBJECTS

Object 1.3(a) to ensure that reasonably achievable, equitable and cost-effective access to buildings, and facilities and services within buildings, is provided for people with disabilities.

Object 1.3(b) to give certainty to building certifiers, building developers and building managers that, if access to buildings is to be provided in accordance with these Standards, the provision of access, to the extent covered by these Standards, will not be lawful under the Act.

NDS, while supporting these objects, is concerned that both cannot be met when shortcomings exist in the following areas.

Lighting

No requirements for 'accessible' lighting exist except in Part H2.12 (which relates only to public transport buildings).

NDS asks that requirements for accessible lighting be introduced into the entire Premises Standards.

Public Transport Premises

There are inconsistencies between Part H and other parts of the Premises Standards.

Paths of Travel between Buildings

The Premises Standards will only regulate premises that currently fall under the BCA and the Disability Standards for Accessible Public Transport, leaving the accessways between premises outside their scope.

NDS asks that disability access standards covering all types of premises must be developed and either added to the Premises Standards or allowed to stand alone as occurs in the Disability Standards for Accessible Public Transport.

Non-compliance

The Premises Standards will clearly define what constitutes compliance, but will give little assistance, beyond what currently exists, in defining non-compliance due to unjustifiable hardship. Part 4.1 offers guidance on non-compliance and unjustifiable hardship, but this part introduces no new material or information.

NDS believes that guidance on non-compliance due to unjustifiable hardship is urgently needed if the proposed Model Process to Administer Building Access for People with Disability becomes reality.

Further, few new buildings comply 100 per cent with the current BCA, and this is unlikely to change with the introduction of the Premises Standards. Building certifiers will still be obliged to estimate whether the non-compliant sections of buildings are justifiable or unjustifiable. It would be useful to add more detail to the Guidelines and perhaps a model report form or checklist that allows a certifier to document reasons for non-compliance against significant prompts. Current amendments to the DDA will place the onus of demonstrating unjustifiable hardship on the respondent (Section 11(2)). This must be stated in the Premises Standards and as much assistance as possible given in allowing assessment and documentation of this.

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

Following the case of *Cooper v. Coffs Harbour City Council*³, it is quite clear that local authorities have a responsibility under the DDA to ensure that any building or development approved by them complies with the Act. However, many local authorities do not have building certifiers on their staff, having devolved this responsibility to private certifiers. Approvals granted by local authorities under this circumstance will be granted by town planners.

It is unclear if a town planner would count as a building certifier under draft Premises Standards as certifiers and planners belong to separate academic disciplines and perform quite separate roles in the building and approval process. From Part 4.3 (2) of the Access to Premises Guidelines it is suspected that town planners will have no authority to require compliance.

The Premises Standards will only apply to a person mentioned above to the extent that the person has responsibility for, or control of, the matters they cover.

Certifiers derive their authority from State Building Acts that reference the BCA in which these Standards will be placed. By contrast, town planners derive their authority from State Planning Acts and have no authority on Building Code issues. A town planner who notes a breach of the Access to Premises Code but approves on planning grounds would probably only have the power to advise the applicant, and yet would probably, as per the Coffs Harbour City Council example, be named as a co-respondent if a private certifier ignored the issue and the matter attracted complaint.

Clearly, for those local authorities who have only town planners, responsibility under the DDA will not have diminished but the responsibility comes without authority to compel compliance. For maximum effectiveness and least diminution of compliance

³ http://www.hreoc.gov.au/disability_rights/decisions/comdec/2000/dd000060.htm

due to fundamental and unrectifiable error, local authorities require certainty that their town planners may refuse applications due to non-compliance with the Premises Standards, rather than planners only being empowered by planning instruments and forced into an advisory position.

The principle of a Model Process to Administer Building Access for People with Disability has some merit. However, the Access Panel that it proposes may in practice offer little more than services currently provided by professional disability access consultants. Recourse to the Access Panel will be entirely voluntary, as is the current engagement of an access consultant. It is unlikely that a State's Access Panel will cooperate with interstate Access Panels to any degree greater than is current for interstate public service cooperation unless they are answerable to a national coordinating body. Access consultants currently have a national peak body that moderates practice and communicates information to its members. The incentive for State Governments to provide a service at public expense that is currently provided at private expense would, therefore, be minimal.

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

The Premises Standards are unlikely to significantly disadvantage the building and development industries. Since its release, many architects have used the 2004 draft of the Premises Standards as a guide when designing new premises and refurbishing existing. This informal adoption of what was deemed to be DDA compliance has not added to the cost of development nor proven onerous to meet in a competitive industry.

It is encouraging to note that the 2009 Regulation Impact Statement estimates that benefits exceed costs by \$2.1 billion over 30 years. This involved reducing the cost estimate by \$17 billion over 30 years, purportedly by introducing exemptions for small buildings. These exemptions chiefly involved floor area triggers for lifts. Unfortunately, this 'saving' comes at the expense of the considerable and growing number of people not able to climb stairs.

Exemption

The new exemption in section D3.4 (f) relating to a class 5, 6, 7b or 8 building, will exclude people unable to climb stairs from all but the entrance storey of a significant proportion of commercial buildings in regional and suburban retail centres. Further, it fails to address common two-storey developments located on a single block that have a number of tenancies that share walls, but these tenancies are not connected to each other by accessways, except at ground/entrance level. (The upper storey of each tenancy is less than 200 m² but the gross floor area for the building's upper storey exceeds 200 m².) It is unclear how D3.4 (f) would be applied under these and other circumstances. D3.4 (f) must be revisited to clarify the multiple tenancy scenario and the floor area trigger for unjustifiable hardship scaled down to 100 m² for each storey.

NDS asks for this exemption in D3.4 (f) to be clarified as it effectively precludes people with mobility disability and vision loss from accessing upper storeys.

Class 2 buildings (apartments)

The exclusion of this class of building from the need to be accessible is concerning. This wrongly assumes that people with disability would not want or need to visit family and friends living in such buildings, nor would they wish to rent or purchase a property there. For people with mobility disability, access should be required to all common areas on the ground floor and to all common areas above or below the ground floor where these are serviced by lift or ramp, and to all external common areas associated with the building.

NDS asks that this exclusion be removed.

Small buildings

The building industry has argued for no requirement for lifts in two- and three-storey buildings, but has agreed to a requirement for lift access to upper floors in two and three storey buildings where each upper level has an area of at least 500 sq metres.

The disability sector has argued for access to be mandated to all levels of all buildings either by a general purpose passenger lift or smaller low rise lift, with the issue of uneconomical lift access to be managed by the unjustifiable hardship provisions. However, it is understandable that it may be less economical for some smaller buildings to provide a lift.

NDS believes that a low rise lift costing less than \$75,000 in a new three-storey building with a 350 square metre footprint would not be uneconomical over the life of the building.

Shopping and other centres

Many new shopping or similar centres are only easily accessed through car parks. People receiving the Disability Support Pension (and other pensioners) often travel by public transport and should have easy access to on-street pedestrian entries.

NDS asks that clearly identified pedestrian entries enable people with sensory disability to independently access a centre from the street.

Sanitary and other facilities

The requirements only relate to the compartment of accessible facilities – there is no mention of a requirement to have an accessible locking mechanism.

NDS believes that accessible toilet locking mechanisms must have controls useable by people with disability, particularly those with vision loss.

Wayfinding

Wayfinding refers to techniques used by people who are blind or vision impaired as they move from place to place independently and safely. The Premises Standards has some limited coverage of Braille and tactile signs, luminance contrast, lighting and tactile indicators. However, wayfinding is much more than these – it is about the ease with which a person proceeds and is facilitated through an environment from

one point of interest to another. Effective wayfinding systems include the basic layout of a building and site, interior and exterior landmarks, views to outside, signs, floor and room numbering, spoken directions, maps, directories, logical progression of spaces, colour coding.

NDS asks for the Premises Standards to be rewritten in a manner that allows wayfinding issues to be easily inserted (in the form of deemed-to-satisfy provisions) before the scheduled five-yearly review.

As presently written, it is unclear whether complaints on wayfinding issues will still be possible under the DDA after the Premises Standards are finalised.

NDS asks that the jurisdiction under which complaints about wayfinding issues can be lodged needs to be clarified.

Signage

Good signage benefits the access and safety of all people, not just those with disability. Good access means enabling people with disability to independently access information and facilities about a building that is available to the general public. For example, the lack of requirements for access to general signage on the exterior of public buildings limits the independence of people, particularly those who are blind or vision impaired. Signage to identify rooms within a public building should also be easy to locate by the varying use of large print, tactile and Braille.

NDS asks for accessible signage – such as directional signs for sanitary facilities and signs used to identify rooms, airport gate numbers, numbers on stair landings and near lifts – be available to people with disability, including those with vision loss.

Emergency egress

NDS is concerned that little attention has been given to the emergency egress of people with disability. Given that the BCA does not cover emergency egress, it is in conflict with the Premises Standards and this needs to be rectified.

Evacuation of people with sensory loss

To ensure that people with sensory disability can evacuate safely and as independently as possible in an emergency, information must be available through more than one sense. This means that visual information needs to be audible and audible information needs to be visual. In other areas, this is progressively being reflected in captioning of audio content on television and DVDs for people with hearing loss, in audible information at traffic lights for people with vision loss, as well as the growing awareness of the need for audio description of DVDs, films and television shows.

The safe egress of people with vision loss must include appropriate lighting, accessible signage at exits and tactile indicators leading to or for holding areas after evacuation. Visual smoke/fire alarms (strobe lights) to alert people with hearing loss must be included in all buildings, regardless of the class of building.

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About NATIONAL DISABILITY SERVICES (<http://www.nds.org.au>)

National Disability Services (NDS) is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its membership includes more than 630 not-for-profit organisations, located in all parts of Australia, which collectively support people with all forms of disability.