

**Submission to House of Representatives
Standing Committee on Legal and Constitutional Affairs
Inquiry into the draft Disability Access Standards 2009 by:
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I note the Inquiry's Terms of Reference and offer the following comments on the documents released on 12 December 2008.

1 GENERAL COMMENTS

The draft Disability Access to Premises Standards 2009 lacks reference to some critical issues, which means that it does not meet the intent of this exercise, to define with reliable certainty the access provisions of the DDA. It will reduce the opportunity for complaint but it will not achieve the degree of "certainty" to all that it is expected to provide. The main issues are:

- 1.1 The current draft Standard refers to AS1428.1 2001, which has a minimum 1000mm-wide accessway. This has been clearly indicated as applicable for the 80th percentile wheelchair size (A80 wheelchair) and discriminates against a significant number of people. The premise of the DDA is to reduce discrimination and the 90th percentile wheelchair size (A90 wheelchair) is considered the minimum appropriate model, which requires a minimum 1200mm-wide path of travel. Even so, it excludes 10% of users of wheeled mobility devices.

This enhanced provision has been widely accepted by the industry, both public and private, since the release of the draft documents in 2004, and is a fundamental requirement for a disability standard. Accessways in Public Transport Buildings are required to have a minimum unobstructed width of 1.2m.

Increasing incidence of obesity in the community has driven the need for larger wheelchairs. Without an increase in the width of path of travel it is effectively reducing the accessibility for a greater number of people, including parents with prams for twins, which is contrary to the intent of the DDA.
- 1.2 Lack of consideration of egress and evacuation from high buildings and any possible solutions, such as safe havens for people with mobility impairment and visible emergency warning indicators for people with hearing impairment.
- 1.3 The omission of access to and through the public areas and the front door of sole occupancy units in Class 2 buildings will open up potential disability discrimination claims. Many City Councils already define housing accessibility and adaptability requirements which have been accepted by the industry. These could have been included to ensure consistency, less discrimination, and to support "ageing in place".
- 1.4 Lack of adequate reference to or incorporation of wayfinding provisions for people with vision impairment.

2 DETAILED COMMENTS

Notations used :

- Quotes from the draft documents are shown in *italics*.
- Proposed changes and additions are shown in **bold red font**.

Document/Part	Clause/Table/Figure	Comment
Disability (Access to Premises – Buildings) Standards 2009		
General:		It is understood that any proposal to amend those BCA clauses derived from the Access Code, including the referenced Australian Standards, cannot be effected without a review by Parliament. This indicates the importance of achieving both accuracy and adequacy in the proposed Premises Standard.
Part 1 Preliminary		No comment.
Part 2 Scope of Standard	Clause 2.1(3)(a)	The meaning of <i>(a) it is not a part of a building</i> ; is unclear. <u>Proposed amendment</u> <i>(a) it is not a part of an existing building; and</i>
Part 2 Scope of Standard	Clause 2.1(5)(b)(ii)	It needs to be clarified that " <i>the entrance</i> " means the Principal Pedestrian Entrance .
Part 2 Scope of Standard	Clause 2.2(1)	This clause contains a qualification " <i>to the extent that they are responsible for, or have control over, matters in the Access Code for a relevant building</i> ". This is a most unusual clause and qualification and likely to create a real difficulty in implementation. For example, if the owners accept an architect's drawings, do they then have responsibility for and have control over the building for matters in the Access Code? The qualification should be removed totally; it is the intent of the DDA that it is the responsibility of all to comply.
Part 3 Requirements of Standards		No comment.
Part 4 Exceptions and Concessions	Clause 4.3 Lessees	With the owner's consent, the affected part of the building can be required to comply. For internal work, the Building Certifier is the approving authority. Who then ensures compliance?
Part 4 Exceptions and Concessions	Clause 4.4	This is less than the A90 dimensions which was considered to be the objective of the DDA.

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Part 4 Exceptions and Concessions	4.5 toilet concession	This is less than the A90 dimensions which was considered to be the objective of the DDA.
Schedule 1 Access Code Part A3	Table 1	References to AS 1428 Part 2 1992 and AS 1428 Part 4 1992 will need to be amended to the revised standards. AS1735.12 may need amendment to meet the new requirements.
Schedule 1 Access Code Part D	Clause DP1 (a)(ii)	This Clause could be interpreted as excluding a tearoom. <u>Proposed amendment</u> Add Areas normally used by the occupants.
Schedule 1 Access Code Part D	Clause DP4	Appropriate means for evacuation of people with disabilities from multi-storey buildings must be provided, including for example the provision of safe havens.
Schedule 1 Access Code Part D	Clause DP8 Limitation	Alternative arrangement must be provided for vehicles that do not allow valet parking due to the absence of a conventional driver's seat. Some people with disabilities drive while seated in their wheelchair. <u>Proposed amendment</u> Add (c) in the case of (a) and (b) allow use of controlled spaces, accessible from the Principal Pedestrian Entrance, for parking of specially fitted vehicles not suitable for valet parking.
Schedule 1 Access Code Part D	Clause DP9	<u>Proposed amendment</u> Add Such communication system includes AV and TV systems in schools; PA systems in airports, ferry terminals, bus stops and the like.
Schedule 1 Access Code Part D3	Table D3.1 Class 7b, 8, 9a & 9b	The understanding is that "occupants" includes staff.
Schedule 1 Access Code Part D3	Table D3.1 Class 9c Common Areas Para 1	<i>"From a pedestrian entrance..... and to the entrance doorway of each sole-occupancy unit located on that level"</i> <u>Proposed amendment</u> Add <i>"From a pedestrian entrance..... and to and through the entrance doorway of each sole-occupancy unit located on that level"</i>
Schedule 1 Access Code	Table D3.1 Class 9c Common Areas Para 3	<i>"Where a ramp complying with AS 1428.1 or a passenger lift is installed:</i>

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Part D3		<p>(a) to the entrance doorway of each sole-occupancy unit; and</p> <p><u>Proposed amendment</u></p> <p>Add</p> <p>(a) to and through the entrance doorway of each sole-occupancy unit; and.....</p>
Schedule 1 Access Code Part D3	Clause D3.2(2)(b)	<p>This Clause may result in a distance of 100m between accessible entrances.</p> <p><u>Proposed amendment</u></p> <p>Change</p> <p>(b) in a building with a total floor area more than 500 m², a pedestrian entrance which is not accessible must not be located more than 25 m from an accessible pedestrian entrance;</p>
Schedule 1 Access Code Part D3	Clause D3.3(b)	<p>Fire stairs used for general access must not be excluded.</p> <p><u>Proposed amendment</u></p> <p>Add</p> <p>(b) every ramp and stairway, except for ramps and stairways in areas exempted by clause D3.4, fire-isolated ramps and fire-isolated stairways used for emergency evacuation only, must comply with:</p>
Schedule 1 Access Code Part D3	Clause D3.3(d)(i)	<p>It is difficult for most wheelchair users to move in reverse.</p> <p><u>Proposed amendment</u></p> <p>Change and Add</p> <p>(i) passing spaces complying with AS 1428.1 at maximum 9 m intervals on those parts of an accessway where a direct line of sight is not available, or at maximum 20m intervals on those parts of an accessway where a direct line of sight is available; and</p>
Schedule 1 Access Code Part D3	Clause D3.4(f)(ii)	<p>This Clause retains a level of discrimination which is not acceptable under DDA.</p> <p><u>Proposed amendment</u></p> <p>Add</p> <p>(iii) where not less than one of each type of common facilities are provided on the entrance storey;</p>
Schedule 1 Access Code	Clause D3.5(d)	<p>Unless marked, there is no way of keeping the space available for those it is intended for.</p>

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Document/Part	Clause/Table/Figure	Comment
Part D3		This Clause should be removed.
Schedule 1 Access Code Part D3	Table D3.5 Class 3, 9a, 9c	Considering our ageing population, the provision of "1 space for every 100 carparking spaces or part thereof" is inadequate. <u>Proposed amendment</u> Add "1 space for every 50 carparking spaces or part thereof"
Schedule 1 Access Code Part D3	Clause D3.7(4)	Public announcements and emergency warning must be audible and visual. <u>Proposed amendment</u> Add (4) <i>Any screen or scoreboard associated with a Class 9b building and capable of displaying public announcements must be capable of supplementing any public address system, including a public address system used for emergency warning purposes only.</i>
Schedule 1 Access Code Part D3	Clause D3.8(1) (a) and (d)	Fire isolated stairway and fire isolated ramp which are used for general access must not be exempted. <u>Proposed amendment</u> Add (a) <i>a stairway, other than a fire isolated stairway used for emergency evacuation only;</i> (d) <i>a ramp other than a fire isolated ramp used for emergency evacuation only, a step ramp, kerb ramp or a swimming pool ramp; and</i>
Schedule 1 Access Code Part D3	Clause D3.8(1)(e)(ii)	The term adjacent in "a vehicular way adjacent to any pedestrian entrance..." needs to be changed to a more specific dimension. An accessway meeting a vehicular way which is a driveway with low speed restriction, and where the driver's view is unobstructed, should be exempted from this requirement.
Schedule 1 Access Code Part D3	Clause D3.9(iii)	<u>Proposed amendment</u> Add (iii) <i>the location of wheelchair seating is to be representative of the range of seating provided in the various pricing categories.</i>
Schedule 1 Access Code Part D3	Clause D3.10(2)(a)	A movable ramp cannot be used independently and may be unsafe in a wet environment. <u>Proposed amendment</u> Delete "or movable ramp"

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Document/Part	Clause/Table/Figure	Comment
Access Code Part D3	Clause D5.2(a) Clause D5.3(a)	Include reference to an appropriate Standard relevant to slip resistance. <u>Proposed amendment</u> Add <i>(a) have a slip-resistant surface in accordance with CSIRO/SA HB 197; and</i>
Access Code Part D3	Clause D5.5(c) and (d)(iii)	Refer above comment.
Schedule 1 Part F2 Sanitary and other facilities		General comment: Should call bells be specified?
Access Code Part F2		The current BCA 2008 Clause F2.5 <i>Construction of Sanitary Compartments</i> permits doors to swing inward if there is a "clear space of at least 1.2m between the closet pan... and the nearest part of the doorway". The principle here is to enable a person to enter the room if someone collapses in the process of transferring onto the closet pan. The "doorway" is inappropriate and should be "door swing" if it is to be effective and meet the performance requirements.
Access Code Part F2	Clause F2.4	The clause does not recognise that conventional toilets may serve for both genders, that is, that they may be unisex. <u>Proposed amendment</u> add <i>(i) where unisex sanitary facilities are provided, accessible unisex sanitary compartments must be provided.</i>
Access Code Part F2		It is noted that there is no Clause F2.3 in the Access Code and that the present BCA Clause F2.3 will apply. This has no requirements for conventional toilets in Class 1B buildings.
Access Code Part F2	Table F2.4(a) Class 1B	As written, a person who requires accessible facilities must enter a private room to access the toilet if that is where the accessible toilet(s) is/are provided. The person may not be the occupant of that room. All other persons may use a toilet, which is commonly available, if one is provided. This seems to discriminate against those who need accessible facilities. Class 1B buildings are of two types, as defined at Table D3.1. They may consist of dwellings let for short-term holiday accommodation, or a boarding house or the like. The buildings may be of considerable size. It is highly likely that common, conventional toilets will be provided

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Document/Part	Clause/Table/Figure	Comment
		<p><u>Proposed amendment</u></p> <p>delete text in second column and add</p> <p>(a) In every <i>accessible</i> dwelling described at Table D3.1(a), not less than 1; and</p> <p>(b) at each bank of <i>sanitary compartments</i> in common areas, not less than 1; and</p> <p>(c) where bedrooms are provided with private sanitary compartments, not less than 1 private <i>accessible</i> unisex sanitary compartment at each accessible bedroom</p>
<p>Access Code Part F2</p>	<p>Table F2.4(a) Class 5, 6, 7, 8 and 9</p>	<p>The provision of 1 accessible unisex sanitary compartment on every storey is inadequate where the storey has a large floor area – shopping centres, hospitals warehouse/showrooms and the like. The UK Building regulations manage this by establishing a maximum distance between accessible facilities on the same floor, which seems to work satisfactorily.</p> <p><u>Proposed amendment</u></p> <p>change (a) to read</p> <p>(a) 1 on every storey containing sanitary compartments provided that the distance between <i>accessible</i> unisex <i>sanitary compartments</i> on any storey shall not exceed 40 metres</p>
<p>Access Code Part F2</p>	<p>Table F2.4(a) Class 5, 6, 7, 8 and 9</p>	<p>The exception for Class 9a ward areas discriminates against those who require accessible facilities where bathrooms are provided en suite with wards. Other patients may use the adjacent en suite bathroom but those with disabilities must leave the ward and go to a bathroom in a common area.</p> <p><u>Proposed amendment</u></p> <p>delete the exception in Column 1</p> <p>add, in Column 2</p> <p>(c) where sanitary compartments are provided en suite with wards in a Class 9a health-care building, 1 for every 20 en-suite compartments or part thereof.</p>
<p>Access Code</p>	<p>Table F2.4(b)</p>	<p>The exception for Class 9a ward areas discriminates against those who require accessible showers where showers are provided en suite with wards. Other patients may use the adjacent en suite shower, those with disabilities must leave the ward and go to a shower in a common area.</p>

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Part F2 cont	Table F2.4(b) cont	<u>Proposed amendment</u> delete the exception in Column 1 add , in Column 2 (c) where showers are provided en suite with wards in a Class 9a health-care building, 1 shower at every en suite accessible unisex sanitary compartment
Access Code Part H2 Public transport building	Clause H2.2 – H2.5, H2.7, H2.10 – H2.14	<u>General Comment</u> : All references to AS1428.2 should be replaced, as it will no longer exist in its current form.
Disability Standard for Accessible Public Transport Amendment 2009		
		No Comment
Disability (Access to Premises – Buildings) Standards Guidelines 2009		
Part 2.3 What buildings do the Premises Standards apply to?	Clause (4)	Discrimination remains
Part 3 Relationship to the Building Code of Australia	Clause (4)	How to manage amendments to BCA that are incorporated in later years without amending the ACT every year.
Part 4.1 Building access matters not dealt with by the Premises Standards	Clause (1)	Tearooms, most commonly provided in Class 5 buildings, must be included in the requirements of the Access Code.
Part 4.6 Innovation beyond the Premises Standards	Clause (2)	<i>“... While the Premises Standards will only require compliance in the specific editions of the Australian Standards referenced in the Access Code...”</i> This is inadequate if standards are amended.
	Clause (2)	<i>“...if it would satisfy the Performance Requirements of the Access Code.”</i> There must be a way of referring to the current standard for future reference when refinements occur.
Part 5.1 Unjustifiable Hardship	Clause (4)	Yet it may be to an outdated standard.
Part 5.3 Lessees	(3)	This is messy and retains discrimination. Or will discrimination not exist, as compliance is exempt under this clause?
Part 6, 1.3	(1)	This needs to be current version of standard

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Document/Part	Clause/Table/Figure	Comment
Updated Australian Standards		
Access Code for Buildings Part A General Provisions	Class 1 buildings (3)	Why not? It should if discrimination is to be removed.
Access Code for Buildings, Clause D3.8 Tactile Indicators	(3)	Provided a handrail is continuous.
A Model Process to Administer Building Access for People with a Disability. 'The Protocol' 2009		
Article 7	Clause 2	This could be interpreted as the administration, requiring the Panel member to have their own insurance and indemnity which could have implications under Part 3 of the Act.
Regulation Impact Statement		
RIS	Summary	The RIS assesses the draft Premises Standard, in part, by the formulation of considerations of "Cost benefits". Whilst these may be of some interest to property owners and occupiers they are not relevant to the legal requirement for compliance with an existing Act of Parliament, with the possible exception of considerations of a "negative cost benefit" which may, in certain circumstances, provide grounds for consideration of "unjustifiable hardship" as described in DDA '92 Section.11.
RIS	Summary	The RIS is heavily qualified and does not include among its quantitative estimates any intangible benefits. Since the creation of any Disability Standard under the DDA is intended to define the DDA in its particular aspect, and the DDA deals in part with intangible concepts, the usefulness of any RIS in the project is more of political, not practical, value. The RIS admits that it cannot value the impact of the proposed Standard. The DDA is social legislation, not building legislation. To assess a Standard made under its auspices by estimating dollar costs alone misunderstands the nature of the legislation.
RIS	Summary	The process is flawed. The calculations do not take into account those many buildings, which already whose owner's/occupiers did their best to meet the DDA intent in accessibility. Known examples exist in hospitals, schools, universities, shopping centres, office buildings, residential premises, hotels, carparks, laboratories, theatres, and stadia, as well as government buildings of

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RIS cont	Summary cont	<p>many types. The most numerous building types by far which lag behind current best practice – and by definition, conformity with the DDA – are the two-storey retail/office building and the public areas of residential buildings. The narrow commercial needs of these particular building types should not drive the broader process. Extension of the application of the Building Cost exercise to all proposed buildings is misleading in the extreme. There are building owners and developers in Australia whose building costs under the proposed Access Standard will not increase one cent – in fact, in some cases, they will diminish. The statement nominated at p.112 that <i>"industry focuses on the unjustifiable hardship exemptions provided under the DDA to argue that the current proposals risk going further than the DDA, to the substantial disadvantage of industry and consumers more generally"</i> is untrue if "industry" includes all building owners and managers, not simply those whose interests are commercial.</p> <p>It is acknowledged that buildings that are lawful under the DDA already contribute to the benefits, both tangible and intangible, of that conformity.</p>
RIS	Summary, page 4	<p><i>"However, it is widely accepted that current compliance with existing obligations under the DDA is at low levels, both due to uncertainty as to the specific nature of compliance obligations and due to the complaints-based nature of the enforcement arrangements under the DDA."</i></p> <p>Most aggrieved persons do not enter the complaints process because it is emotionally taxing, very time consuming - which may result in loss of earnings - and there may be significant legal costs involved.</p> <p><u>Proposed amendment to the Disability Discrimination Act 1992</u></p> <p>Changing the 'Complaints based nature of the legislation's enforcement arrangements' to an alternative comparable with, for example, the enforcement provisions for Standards relating to Workplace Health and Safety legislation would go a long way towards remedying this problem.</p>
RIS	Table S2	<p>Table S2 at p.6 ignores both their costs and their benefits. Because they reflect current practice, their additional costs resulting from application of the premises Standard are nil, whereas their benefits, even the tangible ones, are considerable.</p> <p>The RIS does not take into account the cost of rectifying buildings constructed to an incomplete Premises Standard, which are still found to</p>

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RIS cont	Table S2 cont	discriminate against people with disabilities. When this is added as a "cost risk" the figure for the 2009 Standards would approach more nearly those for the 2004 version.
RIS	Conclusion	The RIS makes much of the comparison with the RIS derived from the 2004 Draft Premises Standard. The inference is that because there is a more advantageous financial outcome, the present Premises Standard is superior. This is most misleading and the Committee should not be swayed by it. The opposite is more likely to be the case.
RIS	Consultation	The account at pp 111-121 illustrates the unresolved dilemma and " <i>polarisation of stakeholder views</i> " remains. The RIS is a valuable document, because it illustrates that polarisation.

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Proposed BCA Amendments Associated Building Cost Matrix - Upgrade		
		No comment.
Proposed BCA Amendments Associated Building Cost Matrix - New		
		No comment.
Summary of main Australian Standards referenced in the Access Code.		
		Note: Detailed comments on each of the draft standards will be submitted separately by mid March 2009.
Specifications for continuous accessible paths of travel	Para 1 "...1200mm..."	1200 refer to in DSAPT and parts of proposed Schedule 1.
Walkways ramps (including kerb and step ramps) and landings	Comment "...1.8..."	This is a messy mix. One design must apply to both kerb ramps and step ramps.