

Submission No 112



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House of Representatives Legal and Constitutional Committee

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

19 March 2009

**Submission by Stepan Kerkyasharian AM
President of the Anti Discrimination Board of NSW**

The Committee Secretary
House of Representatives
Standing Committee on Legal and Constitutional Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Committee Members

As President of the New South Wales Anti-Discrimination Board (the ADB), I welcome the opportunity to make a brief submission to the Inquiry into the Draft Disability (Access to Premises-Buildings) Standards ("the Standards").

The ADB is an independent statutory body that administers the *Anti-Discrimination Act 1977 (NSW)* ("the AD Act"). Part 4A of the Act makes it unlawful to discriminate on the ground of disability, in certain circumstances.

Functions undertaken by the ADB include conciliating individual and representative complaints about disability discrimination; providing education about disability discrimination; undertaking projects and activities aimed at eliminating disability discrimination; and providing legal and policy advice to government and other interested parties.

I address, below, only the first two terms of reference. I make no comment in relation to the third and fourth terms of reference.

My recommendations in relation to the Standards appear at the end of this submission.

1. Appropriateness and effectiveness of the proposed Premises Standards

I note that, at this stage, the Standards only apply to public buildings. I urge the Federal Government to promote the earliest possible extension of the Standards to embrace the concept of universal design in residential housing, including social housing.

In addition, I note with concern two issues raised by the disability sector regarding the development of the Australian Standards. The first issue raised concerns the difficulties related to the determination of technical detail on deemed-to-satisfy solutions under the BCA and DDA standards. The second issue is the need to align timeframes for the finalisation of the premises standards, BCA and Australian Standards.

It is my view that the Standards should apply to apartment buildings (Class 2 buildings) in order to increase the availability of suitable accommodation for those with a disability..

The Standards should also apply to all proposals for significant renovation of all buildings.

The Standards should require an accessible path of travel within buildings subject to the Standards, from the principal entrance to the building, to the front door of all apartments on the same floor as the principal entrance (ground floor), and to any common facilities. Where there is a lift or ramp, there should be an accessible path of travel from all exits from the lift or ramp, to the above places.

In relation to way-finding, I am concerned that the Standards do not appear to cover many possible discrimination claims.. I would urge that the Standards are clearly identified as not being a barrier to claims of discrimination under State and federal law, in cases outside the scope of the Standards.

Similarly, I have concerns in relation to the exemptions and concessions listed in the Standards. . I would urge that these are also clearly identified as not being a barrier to claims of discrimination under State and federal law, in cases outside the scope of the Standards.

2. Interaction between the Standards and *Anti-Discrimination Act 1977 (NSW)*

I note that in NSW, the Standards will not be directly applicable to disability discrimination claims under Part 4A of the AD Act. However, I expect that the Standards may be adduced as relevant evidence in relation to defences of “unjustifiable hardship” under the relevant provisions of Part 4A.

RECOMMENDATIONS

As President of the NSW Anti-Discrimination Board, I make the following recommendations:

Recommendation 1:

That the Standards be extended, at the earliest possible time, to embrace the concept of universal design in residential housing, including social housing.

Recommendation 2:

That there be increased transparency in the process of determining technical detail on deemed-to-satisfy solutions under the BCA and DDA standards.

Recommendation 3:

That the timeframes for the finalisation of the premises standards, the BCA and the Australian Standards, be aligned..

Recommendation 4:

That all Class 2 buildings be subject to the Standards.

Recommendation 5:

That the Standards apply, subject to a right of review, to all proposals for significant renovation of all buildings.

Recommendation 6:

That the Standards require an accessible path of travel within buildings subject to the Standards, from the principal entrance to the building, to the front door of all

apartments on the same floor as the principal entrance (ground floor), and to any common facilities.

Recommendation 7:

That the Standards require an accessible path of travel within buildings subject to the Standards, where there is a lift or ramp, from all exits from the lift or ramp, to the front door of all apartments on the same floor as the exit and to any common facilities.

Recommendation 8:

That the Standards require, in all buildings, the provision of emergency egress suitable for use by people with disabilities, in accordance with the best existing technical solutions, whether or not they are included in the BCA emergency egress standards.

Recommendation 9:

That the BCA emergency egress standards be regularly amended to incorporate existing technical solutions to the issue of emergency egress and notification, suitable for persons with a disability.

Recommendation 10:

That the Standards be clearly identified as not being a barrier to claims of discrimination under State and federal law, in cases outside the scope of the Standards.

Recommendation 11:

That the exemptions and concessions listed in the Standards be clearly identified as not being a barrier to claims of discrimination under State and federal law, in cases outside the scope of the Standards.

Yours sincerely,

Stepan Kerkyasharian AM

President

NSW Anti-Discrimination Board

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