

Submission No 121

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SUBMISSION

DRAFT *DISABILITY*
(*ACCESS TO PREMISES –*
BUILDINGS*) *STANDARDS
2009

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Daniel Bedwell has a Bachelor of Arts in Interior Design (Honours - UK) and is a qualified draftsman. Daniel is an Access Consultant with experience in the United Kingdom and Australia and is a member of the Association of Access Consultants Australia.

Rita Struthers has approximately 20 years working in the disability field and has a Bachelor of Arts, Bachelor of Social Work and a Bachelor of Laws.

Daniel and Rita currently work as Social Planners (Disability and Seniors) with Gold Coast City Council. However, this submission has been prepared by Daniel and Rita as private individuals and has not been prepared on behalf of Gold Coast City Council.

Friday 27 March 2009.

POSITION ON THE DRAFT STANDARDS

Daniel Bedwell and Rita Struthers believe the Draft *Disability (Access to Premises – Buildings) Standards 2009* (the 'Draft Standards') do not fulfil its stated objects.

Significant compromises in the provision of access to buildings may give rise to 'reasonably achieved' access but will not result in 'equitable' and genuine 'cost-effective' access for people with disabilities and an ageing population.

We have concerns that the Draft Standard will result in the weakening of the intent and integrity of the *Disability Discrimination Act*. For example, some people with disabilities will not be able to use pressure activated controls on lifts and as a result will be treated less favourably than other members of the community.

Of particular concern is Part 2, section 2.1 (2) of the *Draft Disability (Access to Premises – Buildings) Standards Guidelines 2009* which will result in the loss of an avenue of complaint under Section 23 Access to Premises of the *Disability Discrimination Act* if a building is constructed to be compliant under the Draft Standard.

Additionally, given goods and services are provided out of buildings the Draft Standard will reduce the effectiveness of Section 24 – Goods, Services and Facilities of the *Disability Discrimination Act*.

One of the objects of the *Disability Discrimination Act* is to eliminate discrimination, as far possible, in the area of access to premises, it would be important to ensure that the Draft Standard does not result in the 'reading down' of this object.

Given the lowered access requirements in the Draft Standard compared to the Australian Human Rights and Equal Opportunity Commission's *Advisory Notes on Access to Premises* and the increased likelihood that a person with a disability may not be able to access some parts of a building, the loss of an avenue of complaint under Section 23 and the impact of the Draft Standard on Section 24 of the *Disability Discrimination Act* will be significant loss of human rights for people with disabilities.

BACKGROUND

Gold Coast City Council is the second largest local government authority, in Australia. The estimated resident population of Gold Coast City at 30 June 2007 was 483,213 persons. Additionally it is a region of high annual population growth with the growth of Gold Coast City being 2.1% compared with the growth of Brisbane City at 0.8% and South East Queensland at 1.8%.¹

It is our personal belief that local government authorities play a pivotal role in building development and the built environment and as the level of government with very strong links with the community also play a pivotal role ensuring buildings and the built environment are safe and accessible for communities.

Gold Coast City Council utilises the *Advisory Notes on Access to Premises* for minimum compliance under the *Disability Discrimination Act*. Where minimum standards do not deliver access for people with disabilities, Council strives to work to best practice.

¹ 2008 Report prepared by the Planning Information and Forecasting Unit, Department of Infrastructure and Planning.

For example, the *Advisory Notes on Access to Premises* requires ramps to be built at a gradient of 1:14. Feedback from people with disabilities and access consultants is that ramps with these gradients are too steep for safe and independent use. Council officers have replaced ramps with walkways which provide gentler gradients at 1:20 and where there are site constraints provide ramps at 1:16, as a minimum.

Commitment to equitable access is evidenced at a corporate level with best practice in the built environment being a component of Council's Access and Equity policy (2009).

TERMS OF REFERENCE: Appropriateness and effectiveness of the proposed Premises Standards in achieving their objects

If the Draft Standards are adopted as is, it will not provide an appropriate and effective response to the objects of the Standard and will result in an unjustifiable impact on people with disabilities.

Our response to the objects are as follows:

(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

Equitable Access

Of concern is the technical requirements for some access elements in the Draft Standards have been weakened in comparison with the technical requirements under the *Advisory Notes on Access to Premises*.

Local government authorities such as Gold Coast City Council have utilised the *Advisory Notes* for design and construction of *Disability Discrimination Act* compliant buildings.

From our experience in advocating compliance with the *Advisory Notes* which offers a higher standard of access it can be argued public buildings of the future that are designed and constructed to the Draft Standards will result in access difficulties, for people with disabilities.

Examples of weakened access requirements in the Draft Standards are illustrated in the table attached. The table identifies: issues from the *Regulatory Impact Statement on the Draft Access to Premises Standard*; issues of concern; recommendations and an authority for the recommendations.

The table identifies the following issues to be amended:

- Upgrading of existing buildings
- Sanitary facilities
- Lifts
- Threshold ramps
- Qualitative extensions of access requirements
- Corridors, passing spaces and turning spaces.

The table suggests that the objects of the Draft Standards i.e. reasonably achieved, equitable and cost-effective access to buildings may not be achieved through some of the clauses of the *Regulatory Impact Statement*.

The table crystallizes examples of the technical or access requirements identified in the Draft Standards resulting in people with disabilities possibly not being able to use a facility within a building. This will result in people being treated less favourably than other members of the community and therefore discriminatory.

Additionally, Part 2, section 2.1 (2) of the *Draft Disability (Access to Premises – Buildings) Standards Guidelines 2009* states:

Under section 32 of the Disability Discrimination Act, it is unlawful to contravene the Premises Standards. If a person complies with the Premises Standards, then the unlawful discrimination provisions of the Disability Discrimination Act do not apply (see section 34 of the Disability Discrimination Act). In other words if a person complies with the Premises Standards they know they are complying with the Disability Discrimination Act on those matters covered by the Premises Standards.

The concern about the impact of section 2.1 (2) is - if a building is constructed in compliance with the Draft Standards and a person with a disability is discriminated against in accessing that building the person will lose the right of complaint under Section 23 Access to Premises in the *Disability Discrimination Act*.

The removal of this opportunity for a person with a legitimate need to access a public building removes the right for a person to have their individual/particular needs considered, in context.

Cost-Effective Access

The Draft Standards appears not to have considered a long term approach to a cost-effective benefit for people with disabilities. In particular, the following factors need to be considered when proactively planning access to buildings:

- an ageing population;
- ageing and reducing working age population; and
- Increasing costs of material and labour.

Australian Bureau of Statistics states in 2007 people aged 65 years and over made up 13% of Australia's population. This proportion is projected to increase to between 23% and 25% in 2056 and to between 25% and 28% in 2101. (ABS Catalogue number 3222.0: Population Projections, Australia, 2006 to 2101)

The Productivity Commission report *Population Ageing and The Economy* (2001) states that the working age population grew by 170,000 people a year in 2001. The report states trends indicate that the working age population will grow by just 125,000 for the entire decade of 2020s.

Accessible buildings would facilitate the retention of older workers alleviating problems resulting from a decreasing working population and a shrinking taxation base.

Due to the increasing costs of materials and labour, progressive and proactive provision of equitable access to buildings will assist with spreading this cost over time rather than leaving the provision of access to the pressures of an ageing population.

Lack of access to premises can result in the following:

- Loss of independence
- Poor health outcomes
- Social isolation
- Increased support needs.

The above can lead to increased cost to government and other agencies in compensating for an inaccessible public realm.

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

The Draft Standards will not provide certainty to local government authorities in its roles as regulator, building developer, building manager and building certifier.

The reasons for this are:

- Impact of the Draft Standard with its lowered access requirements on Section 24 - Goods, Services and Facilities of the *Disability Discrimination Act* (given many services are within buildings);
- Local government authorities will need to ensure that they meet compliance with the broad definition of premises under the *Disability Discrimination Act* yet work to specifications identified in the Draft Standards;
- Some access issues not identified in the Draft Standards but will still need to be addressed under the *Disability Discrimination Act* such as counter heights.

The above will add another tier of complexity to a discrimination compliance regime which is already complex and confusing for designers, planners, architects, building certifiers and builders.

TERMS OF REFERENCE: Interaction between the Premises Standards and existing regulatory schemes operating in state and territory jurisdictions

If the Draft Standard is adopted with lowered access requirements this will place pressure on local government regulatory schemes such as Planning Schemes which regulate development and land use within a local government authority boundary.

Planning Schemes may have to address access in an inconsistent and piecemeal fashion whereas a strong and equitable Standard would provide a consistent national approach to access and offer the most cost effective benefit in proactive planning for an ageing population.

TERMS OF REFERENCE: Other Related Matters

It is strongly recommended that the Draft Standard address egress to buildings, as part of the review process.

Independent and dignified forms of egress are essential and needs to be provided in new buildings and addressed in existing building which may be subject to a change in use and classification etc.

All too often egress from buildings does not meet this criteria. Egress needs to be addressed and used in conjunction with a 'Planning for Emergencies Plan' which is an emergency plan used in existing buildings.

The issue of egress was discussed in the 'Advisory Notes on Access to Premises 1999 amendment' with the intention that egress would be reviewed by the Australia Building Code Board.

RECOMMENDATIONS

This submission recommends that:

- the *Disability (Access to Premises – Buildings) Standards Guidelines 2009* be amended to ensure that people with disabilities retain the right to make a complaint under Section 23 – Access to Premises of the *Disability Discrimination Act* if they cannot access a building constructed in compliance with the Draft Standard;
- the Draft Standard be amended to reflect the building components of the Australian Human Rights Commission's *Advisory Notes on Access to Premises* and *Disability Discrimination Act*;
- amendments to the Draft Standard as per the attached table;
- some of the specifications under the Draft Standard are increased to include best practice in such areas as ramp gradients; and
- the Draft Standard incorporates emergency egress for people with disabilities; and
- consultation with the Australian Local Government Association.

Daniel Bedwell and Rita Struthers believe a Standard which provides safe, equitable and dignified access to and egress from buildings will play a pivotal role in supporting local government authorities to enhance the social, economic and environmental wellbeing of their communities, especially for people with disabilities and an ageing population.

ATTACHMENT

Item Of Regulation Impact Statement 2009 or others issues	Proposal under Premises - Buildings Standard 2009 draft	Issue of Concern	Recommendations	Authority for Recommendation
5.2.0 Upgrading existing buildings - Lessees	<p>Under the <i>Draft Access to Premises Standard</i> the ‘trigger’ for providing access to existing buildings is by means of a Development or Building Application by the owner, although such responsibility would not arise for the owner in instances when a tenant makes an application.</p>	<p>The tenant will need to provide access within the effected tenant’s leased portion of the premises and this <u>may</u> or <u>may not</u> include the path of travel from the front entrance to the building.</p> <p>This would be dependent upon whether the front entrance is part of the development or building application submitted by the tenant.</p> <p>If a principal entrance of a premises is not made accessible, then the service provider(i.e. the tenant) is not meeting compliance with Section 24 <i>Access Goods, Services and Facilities</i> of the <i>Disability Discrimination Act 1992</i> and Section 46 of the <i>Queensland Anti-Discrimination Act 1991 Access to Goods Services and Facilities</i>.</p> <p>For example, if a tenant was upgrading the second floor of a two storey shop then there would be no requirement to</p>	<p>We recommend that tenants should provide a continuous, accessible path of travel to their premises, unless to do so would impose unjustifiable hardship.</p> <p>This would be consistent with a tenant’s responsibilities as a Service Provider under section 24 <i>Goods, Services & Facilities</i> of the <i>Disability Discrimination Act</i>.</p>	Section 24 Goods Services & Facilities of <i>Disability Discrimination Act</i>

		<p>upgrade any communal areas, which are not part of that tenancy i.e. communal canteens and toilet blocks etc.</p> <p>A consequence of this is a person with disability may not be able to enter into a building and access other the parts of the building which have not been upgraded by the tenant in their building or development application.</p>		
<p>5.2.0 Upgrading existing buildings - Owners</p>	<p>A building owner is not required under the <i>Draft Access to Premises Standard</i> to provide access to the existing building and its facilities regardless of the size of the new extension or new work as long as there is a continuous path of travel leading to the new extension or new work.</p>	<p>A consequence of this is a person with disability may not be able to access other parts of the building which have not been upgraded by the owner in their building or development application.</p> <p>Additionally, there may be many existing facilities that are associated with a new extension or new work which would not be required to be accessible because they are not located on the same floor or directly associated with the new work and this may not meet the intent of the <i>Disability Discrimination Act</i> with regard to section 24.</p>	<p>It is recommended that the 50% trigger under the previous Draft Regulatory Impact Statement (RIS) 2004 (for the Disability Standard for Access to Premises (Buildings) 2004) is utilised as a trigger for upgrading existing buildings.</p> <p>The RIS 2004 stipulates that access is provided to the whole of the existing building if the extent of the new refurbishment equates to 50% of the volume of the building over a three-year period.</p> <p>This trigger of 50% volume over a three year period is also found in the Queensland Building Act 1975.</p>	<p><i>Draft Regulatory Impact Statement (RIS) 2004 (for the Disability Standard for Access to Premises (Buildings) 2004)</i></p> <p><i>Queensland Building Act 1975</i></p>

			<p>In addition the previous Draft RIS published in 2004 suggested that <u>significant</u> work not necessarily <u>extensive</u> work (as mentioned above) in existing building is required to have access. This would result in access leading to the new building work and any essential facilities such as toilets, communal facilities associated with the new work.</p> <p>The current building stock will be used for many years and will go through numerous upgrades over time. This process has been the only way people with disabilities have achieved access to many existing buildings.</p> <p>We believe the effected part of a building i.e. the pedestrian entrance and a continuous path of travel should still be provided to the new part of the building as per the proposal of the Access to Premises Standard Draft 2009. However we also recommend that the 50% trigger</p>	
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5.2.15. Sanitary facilities	In Class 3, 5, 6, 7, 8 and 9 buildings, it is proposed that all sanitary facilities for people with a disability be required to be unisex and that they be provided on every storey that contains sanitary compartments, and at not less than 50% of the banks of toilets where more than one bank is provided on a storey.	<p>The impact of this formula may result in a 50% reduction of accessible sanitary facilities and result in people with disabilities and older persons being required to travel large distances to locate accessible sanitary facilities.</p> <p>For example, in a large shopping development with four banks of toilets located on one floor only two out of the four sanitary facilities would be required to be accessible.</p> <p>This formula for provision of sanitary facilities would disadvantage some people with disabilities and an ageing population which will experience increasing levels of incontinence.</p>	<p>It is recommended that provision of an accessible sanitary amenity is required at each bank of class 3,5,6,7,8 and 9 buildings.</p> <p>It is recommended that the <i>Advisory Notes on Access to Premises</i> be used for allocation of toilets. Section 5.9.2 of the <i>Advisory Notes</i> states that:</p> <p><i>“Where there are multiple sanitary facilities at any location at least one should be suitable for use by people with disabilities”.</i></p>	<i>Advisory Notes On Access To Premises</i> section 5.9 Sanitary Facilities
5.2.14. Lifts	Lifts operated by constant pressure devices and key locks will be permitted.	Constant pressures devices and keys locks require good manipulatory skills, manual strength and dexterity. People with conditions such as cerebral palsy, motor neurone disease, multiple sclerosis, spinal cord injury or Parkinson’s Syndrome may have	<p>It is recommended that the <i>Advisory Notes on Access To Premises</i> section 5.7 Lifts be used.</p> <p><i>Advisory Notes</i> states that:</p>	<i>Building Code of Australia</i> E3.6 and <i>Advisory Notes on Access To Premises</i> section 5.7 Lifts

	<p>Lift Standard AS 1735.7 which covers 'Stairway lift provisions will be permitted under the <i>Draft Access to Premises Standard</i> to provide access.</p>	<p>difficulty in operating a lift with these sorts of devices.</p> <p>A Stairway lift is mounted to the stairway handrail and travels along the handrail throughout the flight of the stairs.</p> <p>Stairway lifts are not recommended as the mounting of the platform lift on the handrails prevents access to the stairs by a person who is reliant on handrails for support such as a person who has experienced a stroke and has paralysis down one side of their body.</p>	<p><i>"All passenger lifts and other forms of vertical transport should serve all users and allow for independent operation by the user where operation is within the lift."</i></p> <p>It is also recommend that passenger lifts satisfy the Lift Standard 1735.12 and all aspects of <i>Building Code of Australia</i> E3.6 i.e.</p> <ul style="list-style-type: none"> • 2 x handrails provided • 1400mm x 1100mm internal size at least • (1700mm x 1400mm) preferable • 900mm clear door width • Braille and Tactile Door controls 	
<p>5.2.5 Threshold ramps</p>	<p>A threshold ramp is a ramp built to a gradient of 1:8 which leads to a door entrance.</p> <p>Sometimes external entrances contain a higher internal floor such as a threshold. Threshold ramps can overcome this change of level and provide</p>	<p>For people using mobility devices or who have poor upper body strength operating a door hand/control while remaining balanced and stationary on a threshold ramp can be difficult and dangerous for some people with disabilities.</p>	<p>As an alternative to threshold ramps it is recommended that weather seals under doors are provided in new buildings.</p> <p>Water seals in conjunction with the use of floor grating and canopies can assist with weather protection to door</p>	<p>AS 1428.2-1992 Clause 11.2 Thresholds.</p>

	<p>weather protection to the entrance.</p> <p>No restrictions will be placed on the use and location of threshold ramps, beyond those already contained in the current <i>Building Code of Australia</i> and AS 1428.1 (provisions for the construction of threshold ramps).</p>		<p>entrances. Grates must comply with AS4128.2 (1992) Clause 9 (c).</p> <p>In existing buildings or where there are site constraints, it is recommended that a threshold ramp gradient is reduced to 1:12 as opposed to the current and proposed 1:8. This could work in instances when automated entrances are provided.</p>	
<p>7.4.3. Qualitative extensions of access requirements</p> <p>Step Ramps</p>	<p>Step ramps are used to overcome a step leading to an entrance or space. The <i>Draft Access to Premises Standard</i> will reference the draft AS 1428.1 and currently step ramps are 1:10 with ramped sides.</p>		<p>For people with mobility impairments step ramps may be difficult to negotiate and their safety is yet to be proven. We recommend that they be only used in existing buildings with the provisions of handrails.</p>	
<p>Corridors, Passing spaces and Turning Space</p>	<p>The <i>Draft Access to Premises Standard</i> will reference the draft AS 1428.1 which allows for 1 metre path of travel, with passing spaces for wheelchair users every 20 metres. In instances when door circulation is not required.</p>	<p>There is the potential for narrow corridors to exist of up to 20 metres in length if there are no doors located along the corridor. i e. such as service corridors leading to amenities.</p> <p>Corridors of 20 metres long can pose difficulties for people with disabilities</p>	<p>It is recommended that corridor width are a minimum of 1800 mm and ramps and kerb ramps widths are a minimum of 1200mm as per the <i>Advisory Notes on Access to Premises</i>.</p>	<p><i>Advisory Notes on Access To Premises</i> section 5.2 Continuous Accessible Path of Travel</p>

	<p>For example, corridors with doorways located along its length would be given the provision of extra circulation space to access the doors.</p>	<p>with poor motor control and or poor vision.</p> <p>There can be restricted access for people in larger mobility devices such as electric powered wheelchairs or scooters.</p> <p>For some people using a powered mobility devices maintaining a straight path of travel along these pathways can be difficult.</p> <p>Some people using larger mobility devices may be unable to turn around in a 1 metre corridor and therefore will need to reverse back down a corridor,</p> <p>Additionally, a path width 1 metre wide is also not suitable for ramps, kerb ramps and pathways.</p> <p>The narrow width may result in people using mobility devices colliding with kerbs, rails and walls resulting in risk of injury as well as higher maintenance costs.</p>		
<p>Emergency Egress</p>	<p>The Previous Draft Disability Standard for Access to Premises (Buildings) 2004 did not address Egress for</p>	<p>The Draft Standard 2009 Emergency Egress provisions only cover the Fire safety provisions of the BCA. These provisions do not address the</p>	<p>Equal independent egress needs to be provided for all users, these provisions are not provided within the current BCA.</p>	<p><i>Advisory Notes On Access To Premises</i> section 5.21 Egress</p>

	<p>People with disabilities accept for the provision of Emergency Warning Systems.</p>	<p>management practices concerned with the evacuation of people with disability nor safe, independent and dignified egress.</p>	<p>We believe that management policies need to be provided within the current Draft AS 3745 <i>Planning For Emergencies</i>, which address issues such as refuges, communication and stairwell evacuation devices.</p> <p>We also believed that technical references are required within the BCA. Such as the design criteria and fire protection of places of refuges, i.e. lift lobbies and stairways etc.</p> <p>The revised BCA should refer to these issues.</p> <ul style="list-style-type: none"> • <i>Disability Discrimination Act</i> compliant stairway with handrails on both sides • Luminance contrast to stair nosing • Accessible emergency signage • Fire rated, protected refuge spaces located within stair and lift lobbies 	
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			<ul style="list-style-type: none"> • Extra space at stairway landings to accommodate a refuge space for a wheelchair user and extra circulation space for evacuation devices to manoeuvre on the stairway • Provision of Fire Rated Lifts with associated refuges. <p>The revised AS 3745 should refer to these issues:</p> <ul style="list-style-type: none"> • Communication points from the protected refuges • Management of 'Evacuation Devices' such as 'Evacuation chairs' which would not require a person to transfer from their wheelchair to a device <p>We recommend that the Draft Standard when adopted makes reference to the revised BCA and the revised AS 3745.</p>	
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			<p>The issue of egress was discussed in the 'Advisory Notes On Access To Premises 1999 amendment' with the intention that egress was to be reviewed by the Australia Building Code Board.</p> <p>It is recommended that an update is sought on the current status of this review and how the proposals will be addressed under the revised <i>Building Code of Australia</i>.</p>	
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