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**SUPPLEMENTARY SUBMISSION
TO THE
LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE
INQUIRY**

**RE: DRAFT *DISABILITY (ACCESS TO PREMISES –
BUILDINGS) STANDARD***

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INTRODUCTION

This document is to provide supplementary information to the submission provided to the Legal and Constitutional Affairs Committee as part of its Inquiry into the *Draft Disability (Access to Premises – Buildings) Standard* (to be known as the ‘Standard’).

The focus of this supplementary submission is to provide more information about some of the potential impacts of the Standard, for local government authorities.

The authors make this submission as private individuals and the views expressed are not made on behalf of any local government authority.

It is the position of the authors that the draft Standard offers lowered access requirements for people with disabilities and it is recommended that the Standard and its associated Australian Standards reflect the Australian Human Rights Commission’s *Advisory Notes on Access to Premises*.

PUBLIC BUILDINGS

A Standard which offers access to public buildings is of great importance to local government authorities given they are providers of a significant range and number of buildings for the general public such as:

- public toilets
- libraries
- community centres/hubs
- arts centres
- meeting halls
- tourist park facilities
- swimming pools.

A strong Standard will assist local government authorities to provide equitable access to public buildings for their communities, across Australia.

BENEFITS OF EQUITABLE ACCESS

Local government authorities play an important role in the social and economic development of communities. An inaccessible public realm results in the following impacts and costs for community:

- increased social isolation
- increased mental health issues
- decreased physical health
- decreased mobility
- decreased independence
- increased reliance on support services.

An accessible public realm will assist people with disabilities and an ageing population to remain active, healthy and independent. It will also assist with the retention of older workers in the workforce. This will assist local government authorities to facilitate the development of socially and economically resilient communities.

DEVELOPMENT APPROVALS AND PLANNING SCHEMES

Disability Discrimination Act

One of the key roles of local government authorities is approving development applications. *Ian Cooper on behalf of North Coast Dial Inc v Coffs Harbour City Council* has established the liability of local governments under section 122 of the *Disability Discrimination Act* if they permit a development that subsequently turns out to be unlawful discrimination.¹

State and Territory Jurisdictions – Planning and Building Legislation

However, in the various State and Territory jurisdictions local government powers to force developers under State and Territory planning laws to provide equitable access in their development, in compliance with the *Disability Discrimination Act*, are not so clear cut.

Maureen Jackson identified in her article 'Access all Areas' the case of *Pruszinski Architects P/L v City of Adelaide*.²

Ms Jackson noted in that case the Environment Resource and Development Court of South Australia found it not legally appropriate to uphold the *Disability Discrimination Act* by the imposition of conditions under the building provisions of the *Development Act*.³

The Disability Discrimination Commissioner provided comment on *Pruszinski* and reiterated local government's potential liability under section 122 of the *Disability Discrimination Act* for a development that is later subject to a complaint under the *Disability Discrimination Act*.⁴

In *Wellington Street P/L v Monash City Council* [2004] the Victorian Civil and Administrative Tribunal stated that the proper forum for the limited type of condition (provision of access to the first floor of a two storey building) should be the responsibility of the building surveyor exercising his (or her) discretion under the Building Act 1993 and the building regulations and the BCA.⁵

The Disability Discrimination Commissioner noted in his opinion on *Wellington Street P/L v Monash City Council* there is a continuing dilemma faced by local government authorities in having their development decisions challenged in the courts at State level but still being liable at the Commonwealth level under s122 of the *Disability*

¹ *Ian Cooper on behalf of North Coast Dial Inc v Coffs Harbour City Council*. Matter: 97/232. Date of Decision: 12 May 2000

² M. Jackson, 'Access All Areas', 01 August 2007
<http://www.propertyoz.com.au/Article/NewsDetail.aspx?id=&mid=182> (date accessed: 17.04.09)

³ *Ibid*

⁴ Dr Sev Ozdowski, *Local Government Liability For Permitting Inaccessible Development*. 10 July 2007. Link to article: http://www.hreoc.gov.au/disability_rights/buildings/permit.htm (date accessed: 17.04.09)

⁵ *Wellington Street P/L v Monash City Council* [2004] VCAT 295 (20 February 2004)

Discrimination Act, if local government permit a development that later is subject to a successful *Disability Discrimination Act* complaint.⁶

Planning Schemes

One option to prevent developers wishing to challenge conditions requiring compliance with *Disability Discrimination Act* in State and Territory planning and environment courts is to have equitable access as a component of Planning Schemes.

Depending on the local government authorities' awareness and willingness to address access through Planning Schemes this option can be costly and ad hoc.

A Standard that offers strong access requirements will offer national consistency and will eliminate the dilemma experienced by local governments authorities in cases such as *Pruszinski* and *Wellington Street*.

SUMMARY

A Standard which reflects the *Advisory Notes on Access to Premises* and harmonises the *Disability Discrimination Act* and the *Building Code of Australia* will assist local government authorities with the following:

- provision of equitable access to a significant number and range of public buildings such as public toilets, libraries and community centres etc;
- provision of an accessible public realm will assist with the development of socially and economically resilient communities;
- eliminate the dilemma for local government authorities trying to enforce development approval conditions based on compliance with *Disability Discrimination Act*, through State and Territory planning and environment legislation and courts; and
- provide clarity and national consistency for local government authorities, building certifiers and the development industry regarding what is required to meet legislative obligations and ensure equitable access.

⁶ Acting Disability Discrimination Commissioner, *Note on Recent VCAT Decision*, Australian Human Rights Commission website:
http://www.hreoc.gov.au/disability_rights/buildings/vcat.htm (date accessed 17.04.09)