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COMMENTS IN RESPECT OF

DRAFT DISABILITY (ACCESS TO PREMISES-BUILDINGS) STANDARDS SUBMISSION TO HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL MATTERS

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FEBRUARY 7 2009

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DRAFT DISABILITY (ACCESS TO PREMISES-BUILDINGS) STANDARDS SUBMISSION TO HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL MATTERS

ABOUT THE AUTHOR

I am a private building certifier, registered and practicing in the Northern Territory as an Unrestricted Building Certifier. I am also a registered architect though I effectively restrict my practice to the delivery of building certification and related services.

My whole working life (over 35 years) has been in the field of building design and construction – as variously architectural draftsman, architect (in design, construction and project management) and now as a building certifier. In those roles I have worked in Western Australia, South Australia and the Northern Territory.

In the course of my building certifier career I have worked for three private certifier companies, mainly in Darwin, but also in Alice Springs, and have worked for a short time in Adelaide.

As a building certifier it falls to me to evaluate building works proposals (and constructed works) for building rules compliance in the course of *'standing in the shoes of government'* for the issuing of Building Permits and Occupancy Permits pursuant to the NT Building Act and Regulations.

To that end I am required to assess such works for compliance with the Building Code of Australia including BCA deemed-to-satisfy provisions in respect of (disability) access to premises.

I could also be called upon to consider **unjustifiable hardship** and/or **performance based alternative solutions** when considering DDA/BCA compliance of building works proposals, but for reasons which will become clear in my submission, consideration of such alternative or concessional treatments continues to be impractical.

Though my comments are far from exhaustive or comprehensive, I trust the Committee will treat them as given in good faith and worthy of taking into account when you consider whether and to what extent the **DRAFT DISABILITY (ACCESS TO PREMISES-BUILDINGS) STANDARDS** be recommended for adoption.

Graham Lockerbie
Darwin 7 February 2009

PREAMBLE

Many of the comments which follow are given as **devil's advocate** observations but may give the impression that I am against providing '**equitable**[1]' access – that is not the case – I support '**equitable**' access but not necessarily '**equal**[2]' access.

I am concerned that this proposed disability standard will if adopted unduly place upon the shoulders (and pockets) of premises owners and operators an increased burden of providing for equitable access.

No obligation seems to be placed upon the 'access industry' (especially chair manufacturers, suppliers and users) to develop a wider range of more compact, better powered and better controlled wheelchairs able to comfortably operate within the existing AS1428.1 80%ile mobility footprint.

No practical consideration seems to have been given to allowing for facilities/building management practices as a means of providing for **equitable** access to and within premises **to the degree necessary**[3] - as is for example currently allowed for for BCA compliance of schools (provide access to the full range of services and facility types, rather than requiring that access be provided to the whole of the premises).

No consideration appears to have been given to differentiating between premises and facilities where 80%ile wheelchair access could be **reasonable** versus premises and facilities (or parts thereof) where provision for 90%ile wheelchair access is justified.

Instead we are to require the property community to increase accessway widths, provide lifts and/or ramps to upper (and lower) floors where before none were required, provide toilet facilities on **all floors** (where presently no such requirement exists, either for the able population or the mobility impaired population).

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[1] **Equitable:** impartial or reasonable; fair; just. ... (Collins Australian Dictionary, 9th ed 2007, p554)

[2] **Equal:** identical in size, quality, degree, intensity etc; the same as; having identical privileges, rites, status, etc; having uniform effect or application ... (Collins Australian Dictionary, 9th ed 2007 p553)

[3] **To the degree necessary** is a key descriptor used throughout the Building Code of Australia as a qualifier to be used with 'common sense' and appropriate expert judgement in determining the extent to which particular BCA objectives apply and are addressed in the building solution under consideration.

DOUBLE JEOPARDY PERPETUATED / INOVATION STIFLED

By providing no **pre-approval mechanism** for **confidently validating** an alternative solution approach to satisfying the BCA objectives in respect of disabled persons' access, the proposal to align the deemed to satisfy provisions of the BCA with the proposed Disability (Access to Premises - Buildings) Standards, the proposed enactment stifles innovation.

The BCA allows for *performance based alternative solutions* to be adopted to satisfy the BCA *performance objectives.*

For example, a duly considered, documented and justified *performance based alternative solution* **may confidently be adopted** as satisfying the BCA objectives in respect of occupant and fire-fighter safety subject to pre-endorsement by affected Fire Departments and other affected agencies.

No practical provision is made in the DDA nor in the DD(ATP-B) Standard for BCA pre-approval performance based validation of access provisions – now or following adoption of the proposed D(ATP-B) Standards.

The local (NT) Anti-Discrimination Commissioner will not comment upon or become involved in pre-judging the appropriateness of any access proposal (citing his/her duty as an arbiter only after a complaint is made).

This situation appears substantially unchanged by the proposed changes to the BCA concurrent with adoption of the Disability (Access to Premises - Buildings) Standards. The ABCB Model Process to Administer Building Access for People with a Disability (The Protocol) provides for the setting up of an Access Panel, but even consultation with and agreement by the Access Panel does not prevent complaints to the Anti-Discrimination Commissioner or to the Courts.

So long as building certifiers, building designers, building owners, building managers, and building occupants are individually or severally open to complaints-driven DDA based administrative or civil action for a perceived non-compliance with the Act, any innovative solution to providing for access will remain imprudent or impractical, to the potential financial detriment of the building proponent and the potential disadvantage of the mobility impaired.

Past experience is that professional indemnity insurance providers abhor non-quantifiable risk and will likely exclude challenged *performance based 'access' alternative solutions* from the risks they will underwrite – and so long as a certifier cannot insure against a risk he cannot take that risk – the NT Building Act effectively precludes it, and professional prudence mitigates against it.

UNJUSTIFIABLE HARDSHIP PROVISIONS

Not to put too fine a point on it, the Unjustifiable Hardship provisions of the DDA are unworkable and will continue unworkable.

They provide no certainty to any party involved in judging whether or not a particular claim of hardship can be justified – a Disability Discrimination Commissioner will not make a judgement or even voice an opinion until and unless a discrimination claim is first made.

Any attempt by a certifier to consider unjustifiable hardship as grounds for a relaxed or innovative approach to cost-effectively providing for a measured degree of **access compliance** falls foul of the same barriers as adoption of performance based solutions.

This situation appears unchanged by the proposed changes to the BCA concurrent with adoption of the Disability (Access to Premises - Buildings) Standards.

So long as building certifiers, building designers, building owners, building managers, and building occupants are individually or severally open to complaints-driven DDA based administrative or civil action for a perceived non-compliance with the Act, any consideration of unjustifiable hardship in providing for access will remain imprudent or impractical, to the potential financial detriment of the building proponent and the potential disadvantage of the mobility impaired.

Past experience is that professional indemnity insurance providers abhor non-quantifiable risk and will likely exclude challenged hardship or hardship-related *performance based 'access' alternative solutions* from the risks they will underwrite – and so long as a certifier cannot insure against a risk he cannot take that risk – the NT Building Act effectively precludes it, and professional prudence mitigates against it.

COMMERCIAL DISADVANTAGE

Increased premises costs associated with more stringent access provisions seem to me to be yet another reason for a local supplier/manufacturer to take his operation off shore. How much is it worth to the nation to provide access throughout all areas of all premises for the 80~90%ile wheelchair user if the net effect is to drive more industry off shore.

By all means provide for targeted access for the 80~90%ile group (to hospitals, nursing homes, medical facilities, government agency service areas), but for the rest surely premises management practices could be invoked to facilitate access to the full range of services and employment opportunities without requiring unimpeded access throughout the premises.

80 PERCENTILE VERSUS 90 PERCENTILE WHEELCHAIR ACCESS

The thrust of the requirement to provide for circulation spaces, door openings, and sanitary facilties sized to accommodate 90%ile chairs appears to be placing upon property owners/occupiers the whole cost of providing for access by users of larger chairs.

What consideration if any has been given to **requiring** the wheelchair supply industry to develop wheelchairs of improved capability and with better manoeuvring control such that the current 80%ile footprint can be satisfy current 90%ile chair capabilities?

Such a development could reduce building owning community compliance costs by:

- Reducing the reduction of useful floor space in new buildings, and
- Reduce the loss of useful floor space in existing premises undergoing refurbishment or reclassification.

The current BCA by referencing the current version of AS1428.1 makes provision for wheelchair access to and within buildings, nominally for 80% of chair/user combinations, **using the current generation and range of wheelchairs.**

The proposed disability access standard will require provision of access for 90% of chair/user combinations, with seemingly no pressure on wheelchair manufacturers/suppliers/users to pursue technology fixes (powered chairs, better microprocessor movement control, obstruction sensors etc) to target operation within the current 80%ile operating footprint. The whole cost and duty for providing for improved access is shafted home to the building owner/operator.

The proposed Access Standard aims to serving the needs of a broad range of disability groups, but the cost and building space impacts largely result from expanded wheelchair access requirements).

From the numbers and costs forecast in the Regulation Impact Statement, the following has been inferred:

- 2.9% of the population uses a mobility aid (RIS p 16, footnote 7) ~ say about 600,000 out of a population of about 20 million.
- 0.64% of the(2004) population (RIS p 36, footnote 16) uses a wheelchair ~ say about 130,000 out of 20 million.
- 10% of that 130,000 amounts only to 13,000 persons across the nation – say 150,000 persons after considering population growth.

At an annual cost of $620 million (RIS p5 para 1), the unit cost per **target beneficiary** amounts to over $4000 **annually** per person.

Assuming a wheelchair has a service life of (only) 5 years, the effective unit benefit cost amounts to over $20,000 per beneficiary.

Could not that $20,000 per beneficiary be better targeted to wheelchair technology improvements – though at a cost to the public purse rather than an impost on building owners/operators?

The cost of chair replacement to the individual in the 80~90%ile range could be subsidised by government and would in my view be substantially less costly to the community at large.

RAMP OR LIFT ACCESS TO A SECOND STOREY

As the BCA currently stands, there is no **requirement** to provide lift or ramp access to the second storey of all two-storey building (or indeed to many buildings exceeding two storeys[4]). BCA-compliant **access** stairs will satisfy, subject to at least one set of stairs incorporating AS1428.1 compliant handrails and visual acuity measures. (However, where a lift or ramp is provided then it must be access-compliant).

The Draft Disability Standards appear to **require** that lift or ramp access **must be provided to all levels**.[5]

This in my view imposes a significant cost penalty and loss of lettable floor space (say at least 10sqm **per floor** for a lift and associated wheelchair approach space; say at least 50~55sqm **per floor** for a 1:14 ramp with landings and approach spaces).

BCA CLAUSE D3.11 Ramps

Disability (Access to Premises – Buildings) Standards Guidelines 2009 Disability refers
This is a clause new to the BCA.

The provisions of this clause largely reflect previous AS1428.1 requirements invoked by the BCA, though the vertical rise limit of 3.6m rise is a new provision, the implied condition being that for a rise in excess of 3.6m **an accessible lift must be provided** where access is **required** between affected levels.

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[4] BCA Table D3.2 REQUIREMENTS FOR ACCESS FOR PEOPLE WITH DISABILITIES (extract)
Class 5, 6, 7 and 8: To and within – (i) the entrance floor; and (ii) any other floor to which vertical access by way of a ramp, step ramp or kerb ramp complying with AS1428.1 or a passenger lift is provided.

BCA clause D3.3 Parts of buildings to be accessible adds:
(ii) where access is *required* to the entrance floor but not to other levels and a passenger lift is not installed, at least one required *ramp* must have handrails complying with Clause 5.3(e) of AS1428.1 or at least one *required* stairway must comply with Clause 9 of AS1428.1.

[5] I'm somewhat confused here – the document entitled **Disability (Access to Premises – Buildings) Standards Guidelines 2009** indicates that **BCA Clause D3.4 Exemptions** gives conflicting, confusing, and illogical advice in respect of 2 or 3-storey buildings with other than entry level floors each less than 200 sqm in area.

LOSS OF CONCESSION FOR SCHOOL /ASYMETRIC TREATMENT FOR SCHOOLS

In the **current** BCA, schools are treated more leniently than other premises with respect to areas to be accessible.

For schools it is currently acceptable to provide access to the full range of services and facilities (for example, to one only of several science labs, one only of several lecture theatres, etc) and to rely upon facility management practices to allocate facility uses such that disabled staff / students / visitors are provided with access to the full range of services[6].

For other classes of building the current BCA requires access be provided to all areas (with limited exclusions).

The Draft Standard appears to eliminate the concessional treatment for schools – effectively requiring that ramps or lifts be provided to multi-storey / multi-level where few or none were previously required.

Is it really reasonable to remove that concessional treatment for schools, further would it not be reasonable to extend that ***management*** *option to all classes of affected buildings.*

LOSS OF '30% CONCESSION' FOR RESTAURANTS & BARS

The current BCA requirement that at least 30% of the dining space within a restaurant be accessible seems a reasonable compromise between commercial reality and **equitable** access.

To require 100% access effectively could mean an end to split level / multi-level dining.

The 100% access requirement, coupled with widely spaced tables/seating (to accommodate 90%ile wheelchair movement throughout the premises), with a resultant potential loss of design flexibility/innovation and a crippling limitation of seating capacity – will surely render complying bars and restaurants economically non-viable.

BCA CLAUSE D3.9 Wheelchair seating spaces in Class 9b assembly buildings

Disability (Access to Premises – Buildings) Standards Guidelines 2009 refers.
This is a clause new to the BCA, but is in support of BCA Table D3.2. *No comment.*

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[6] BCA Table D3.2 (extract)

Class of building	Access requirements
Class 9b A *school*	To and within – all areas normally used by the occupants, including staff, students and visitors, **if no alternative similar facilities to those provided in that area are *accessible* elsewhere in the *school*...** (my emphasis in bold)

50% OF ENTRANCES TO BE ACCESSIBLE

The current BCA requires that the **principal entrance** (or principal entrances) to premises be accessible, while the Draft Disability Standard requires that **50% of all entrances** be accessible.

Whilst this may seem reasonable on a genuinely flat and level site, such sites are a practical fiction – the world is not flat, street frontages are rarely flat, sites are required to be shaped to gradients for surface drainage, and building ground floor level is required to be above highest adjacent natural or finished ground for surface runoff exclusion and to comply with plumbing regulations.

To be **required** to provide a ramp (or, god forbid – a lift) at 50% of all entrances to a building or premises seems patently unreasonable. By all means require ramp or lift access at the principal and major access points, but not elsewhere - for secondary entrances it seems reasonable to not require ramp access (even if instead requiring stair access consistent with clause 9 of AS1428.1 where a ramp or lift is not provided).

Judicious co-location of disabled parking spaces and access-enabled principal entrances should be sufficient to satisfy **equity of access**.

THRESHOLD RAMP CONSTRAINT

The current AS1428.1 provision permitting a threshold ramp to rise 55mm over 450mm (at a permitted grade of 1:8) works sensibly at building external entrances as it allows for some construction tolerance and a 50mm (or thereabout) floor level difference between interior floor level and exterior paving – thus facilitating / aiding exclusion of weather driven rain/surface runoff at building entries.

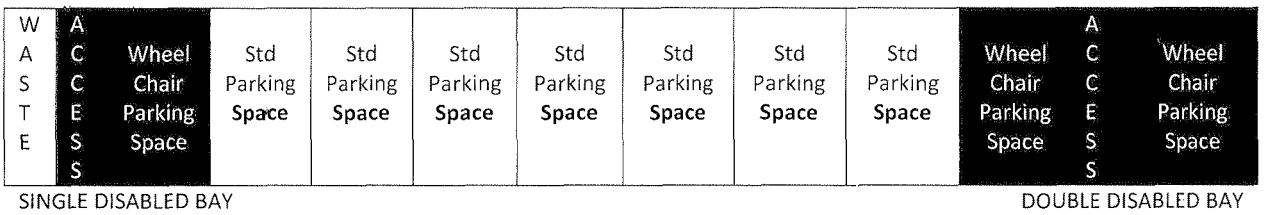
Reducing the permitted rise to 35mm compromises potential surface runoff to the building interior, and implies that the permitted gradient has been reduced to 1:10 or less and/or that the threshold ramp permitted length has been reduced from 450mm to 350mm or less.

CAR PARKING SPACES – AS2890.6 PROPOSED REVISION

The proposed new configuration for disabled parking spaces massively constrains and compromises sensible and practical car parking layout as the greatly expanded footprint for a disabled space does not fit reasonably into many traditional parking bay layouts, nor into typical column spacings used for single level and multi-level car parks.

Where the 'old' configuration fits reasonably within a standard 5.4m deep single line of 2.4m or 2.5m wide 'normal' 90 degree parking spaces, taking up 1 ½ to 2 adjacent 'normal' spaces for a single disabled bay (or 3 adjacent bays for two disabled bays), the new standard effectively commands as much space as a four contiguous standard spaces for a single bay and not less than 6 for a pair of disabled bays.

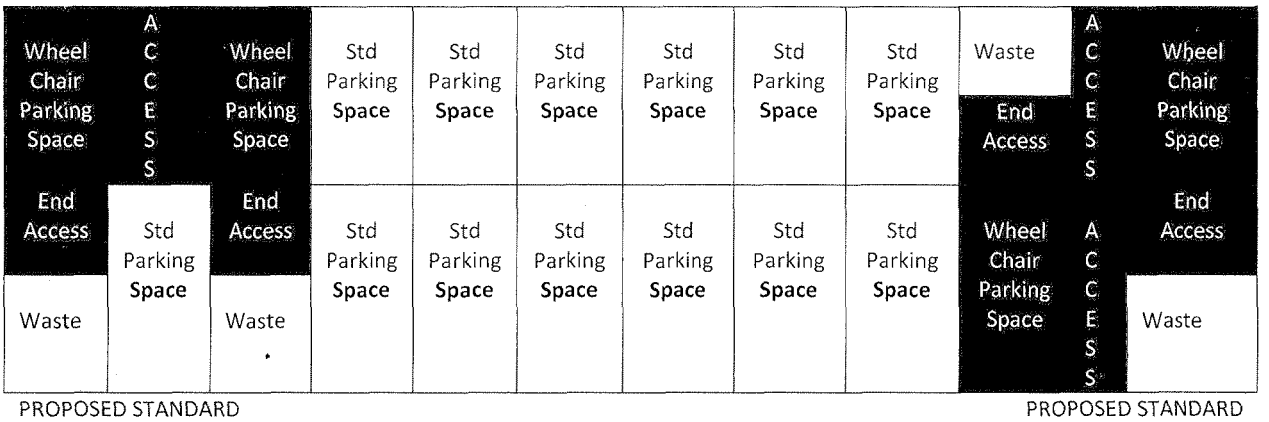
The diagrams below (not to scale) illustrates how current and proposed disability standard parking spaces and associated required access spaces fit into typical car park layouts.



SINGLE DISABLED BAY
CURRENT STANDARD – WILL FIT INTO A TYPICAL SINGLE LINE BANK OF PARKING SPACES

DOUBLE DISABLED BAY
CURRENT STANDARD

DRIVE WAY



PROPOSED STANDARD
SINGLE DISABLED BAY/DOUBLE BAY
Effectively 3 standard bays/5 bays
With poor access to end access
WILL ONLY FIT INTO A TYPICAL DOUBLE LINE BANK OF PARKING SPACES

DRIVE WAY

PROPOSED STANDARD
NESTED DOUBLE DISABLED BAYS
Effectively 6 standard bays
With improved access to end access

The proposed standard has similarly onerous provisions for parallel parking.

By forcing 'truck-bay' sized disabled parking space provisions upon the property owning community (presumably to accommodate large vans with tail-lift wheelchair lifts or similar), sensible and cost-effective / space effective parking layouts may be severely constrained.

BCA PART D4 –Braille and tactile signs

Existing BCA access provisions include a requirement for Braille and Tactile signs – though the proposed BCA changes appear to be editorial rather than practical, the need or otherwise for Braille signs is worthy of consideration.

Disability (Access to Premises – Buildings) Standards Guidelines 2009 Disability refers.

This is a **section** new to the BCA (but see above), but I expect it restates current provisions of BCA Specification D3.6 Braille and Tactile signs

At present I rigorously enforce the provision of Braille and tactile signage as required for BCA compliance, though I am not entirely convinced the Braille component serves any useful purpose.

The logic in providing Braille signage appears on the face of it somewhat perverse and illogical, for the following reasons:

- The numbers of blind persons who can actually read Braille is reportedly only a small portion of the total blind or sight impaired community,
- If a person is so unsighted as to be unable to locate a sign, then the inclusion of Braille text is futile,
- If a sight impaired person is sufficiently sighted to be able to identify and read tactile lettering, then the Braille text again is redundant.
- In the normal course of induction into a workforce or work premises, a sight impaired employee (like any other) would be expected to be given instructions on how to reach and access amenities and other parts of the workplace.

Copied for information to:

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and

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(by hand)