

Submission No 41 SM

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Dear Members of the House Standing Committee on Legal and Constitutional Affairs  
Committee - Inquiry into the draft Disability (Access to Premises - Buildings) Standards

As a statewide network of, for, and with people with disability, Queenslanders with Disability Network members believe that access to premise is an integral part of an inclusive society. Everyday members experience segregation and exclusion when they cannot access specific parts of the built environment. QDN calls on the inquiry to take steps to address this by adopting Disability (Access to Premises - Buildings) Standards. The adoption and re-enforcement of these standards, see comment on 1.3 Compliance, will be a positive step in reducing further exclusion.

Attached is Queenslanders with Disability Network's submission to the Inquiry into the draft Disability (Access to Premises - Buildings) Standards. Please contact me if you have any questions regarding this.

Regards

Fran

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Fran Vicary  
Network Coordinator  
Queenslanders with Disability Network

*Mission - People with disability connecting for collective and affirmative action*

*Motto - Nothing about us without us*



QUEENSLANDERS WITH  
DISABILITY NETWORK INC

NOTHING ABOUT US.....WITHOUT US

Suite 11, 7 O'Connell Tce, Bowen Hills 4006

ph/tty 07 3252 8566 fax 07 3252 8477

email qdnbrisbane@qdn.org.au

website www.qdn.org.au

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## Queenslanders with Disability Network Comments on Disability (Access to Premises–Buildings) Standards 2009

Below are responses from the Queenslanders with Disability Network answering the questions raised by the House Standing Committee on Legal and Constitutional Affairs in the Terms of Reference for the Inquiry into the draft Disability (Access to Premises- Buildings) Standards as detailed at the Parliament of Australia (House of Representatives) web site:

<http://www.aph.gov.au/house/committee/laca/disabilitystandards/tor.htm>

- the appropriateness and effectiveness of the proposed Premises Standards in achieving their objects;
- the interaction between the Premises Standards and existing regulatory schemes operating in state and territory jurisdictions, including the appropriateness and effectiveness of the proposed Model Process to Administer Building Access for People with Disability;
- whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector; and
- any related matters.

### **The appropriateness and effectiveness of the proposed Premises Standards in achieving their objects.**

#### *Part 1.3 Objects*

1.3 (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.

1.3 (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.

### 1.3 (a):

Defining the minimum acceptable standard of access for people with disabilities to buildings and the facilities and services within buildings will improve a component of the built environment and provide certainty for all parties in the areas covered by the Standards. The Access to Premises Standard 2009 draft has its shortcomings however.

#### *Housing*

No provision is made for private or rental housing. Classes 1a, 2 and 4 are very often private or rented dwellings. As such, they are the most critical buildings in an individual or family's life, their home. These classes must be included in the Access to Premises Standards in their entirety. Interiors of Class 1a and the sole occupancy units of Classes 2 and 4 must be constructed to nationally agreed, universal housing design specifications and regulated as part of the Access to Premises Standards. If the current *Disability (Access to Premises–Buildings) Standards* do not have the capacity to incorporate residences, then a *Disability (Access to Premises–Housing) Standards* is required as a matter of urgency.

#### *Lighting*

No requirements for 'accessible' lighting exist except in Part H2.12. This is a serious omission. Many people with vision impairments require strong, even lighting to follow an access path and locate signs. People who are deaf require correct illumination to lip read when interacting with staff at service counters and similar. Lighting of public space, based on Part H2.12 must be introduced into the entire Access to Premises Standard.

#### *Part H Class 9b public transport premises*

Considerable inconsistencies exist between Part H and the other Parts of the 2009 draft. Particularly in terms of specifications for accessways, way-finding and lighting, Part H seems superior from the perspective of a person who has a disability. The Access to Premises Standard must undergo five year reviews. At these reviews the various Parts of the Standard should be harmonised without loss of access or amenity for people who have disabilities.

#### *Paths of Travel between buildings*

The Access to Premises Standards will unfortunately only regulate Premises that currently fall under the purview of the Building Code of Australia and the Disability Standards for Accessible Public Transport.

In its Section 4 *Interpretation*, the Disability Discrimination Act defines 'premises'.

premises includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

Clearly, the bulk of premises, including the accessways connecting the premises regulated by these draft Access to Premises Standards, will remain outside the scope of this draft document and remain subject to the arbitrary regulation of their public or private owners, tenants or managers. While subject to the Disability Discrimination Act, breaches of the Act can only be determined by complaint followed by court decision. In such actions neither complainant nor respondent have any nationally accepted point of reference to which appeal for compliance or not might be made. As a matter of priority, disability access standards covering all types of premises must be developed and either amended to the Access to Premises Standard or allowed to stand alone as per the *Disability Standards for Accessible Public Transport*.

#### *UN Convention on the Rights of Persons with Disabilities*

The Convention on the Rights of Persons with Disabilities, ratified by Australia 17 July 17, 2008 and entering into force for Australia: 16 August 16, 2008 states:

##### Article 9 Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) Buildings, **roads**, transportation and other indoor and **outdoor facilities**, including schools, **housing**, medical facilities and workplaces;

The Access to Premises Standard will fall far short of meeting even the principles of Article Nine. In the omitted areas listed above and those omissions articulated in Article Nine, Government must both legislate and regulate to ensure a non-discriminatory built environment. The onus is upon Government to now honour the Convention that it has ratified and allowed to take effect.

Further comments relevant to object 1.3(a) are listed in the 'Any related matters' section of this submission.

#### **1.3 (b):**

The Standards will clearly define what constitutes compliance, but will give little assistance, beyond what currently exists, in defining non compliance due to unjustifiable hardship. Part 4.1 offers guidance on non compliance and unjustifiable hardship, but this Part introduces no new material or information. It is urgently needed if the proposed Model Process to Administer Building Access for People with Disability becomes reality.

Further, few new buildings comply 100% with the current Building Code, and this is unlikely to change with the introduction of the Access to Premises Standard. Certifiers will still be obliged to estimate whether the non compliant sections of buildings are justifiable or unjustifiable. It would be useful to add more detail to the

Guidelines and perhaps a model report-form or check-sheet that allows a Certifier to document reasons for non compliance against significant prompts.

**The interaction between the Premises Standards and existing regulatory schemes operating in state and territory jurisdictions, including the appropriateness and effectiveness of the proposed Model Process to Administer Building Access for People with Disability.**

Following Cooper versus Coffs Harbour City Council it is quite clear that Local Authorities have a responsibility under the Disability Discrimination Act to ensure that any building or development approved by them complies with the Act. However, many Local Authorities do not have Building Certifiers on their staff, having devolved this responsibility to Private Certifiers. Approvals granted by Local Authorities under this circumstance will be granted by Town Planners.

It is unclear if a Town Planner would count as a Building Certifier under this draft Standard as Certifiers and Planners belong to separate academic disciplines and perform quite separate roles in the development and building process. From Part 4.3 (2) of the Access to Premises Guidelines it is suspected that Planners will have no authority to require compliance.

The Premises Standards will only apply to a person mentioned above to the extent that the person has responsibility for, or control of, the matters covered by the Premises Standards.

Certifiers derive their authority from State Building Acts, which reference the Building Code of Australia in which these Standards will be placed. By contrast, Town Planners derive their authority from State Planning Acts and have no authority on Building Code issues. A Planner who notes a breach of the Access to Premises Code would probably only have the power to advise the applicant, and yet would, as per Coffs Harbour City Council, be named as a co-respondent if a private Certifier ignored the issue and the matter attracted complaint.

Clearly, for those Local Authorities who have only Town Planners, responsibility under the Disability Discrimination Act will not have diminished but the responsibility comes without authority to compel compliance. For maximum effectiveness and least diminution of compliance due to fundamental and unrectifiable error, Local Authorities require certainty that their Town Planners may refuse applications due to non compliance with the Access to Premises Standard, rather than Planners only being empowered by Planning Instruments and forced into an advisory position.

The principle of a Model Process to Administer Building Access for People with Disability has some merit. However, the Access Panel that it proposes may in practice offer little more than services currently provided by professional Disability Access Consultants. Recourse to the Access Panel will be entirely voluntary, as is engagement of an Access Consultant currently. It is unlikely that a State's Access Panel will cooperate with interstate Access Panels to any degree greater than is current for interstate Public Service cooperation unless they are answerable to a national coordinating body. Access Consultants currently have a national peak body

that moderates practice and communicates information to its members. The incentive for State Governments to provide a service at public expense that is currently provided at private expense would therefore be minimal.

**Whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector.**

The Access to Premises Standards are unlikely to significantly disadvantage the building and development industries. Since 2004 many architects have used the 2004 draft of the Access to Premises Standard as a guide when designing new premises and refurbishing existing. This informal adoption of what was deemed to be Disability Discrimination Act compliance has not added to the cost of development nor proven onerous to meet in a competitive industry.

The gloomy cost predictions of the 2004 Regulatory Impact Statement have been demonstrated as illusory. It is encouraging to note that the 2009 Regulation Impact Statement estimates that benefits exceed costs by \$2.1 billion over 30 years. This involved reducing the cost estimate by \$17 billion over 30 years, purportedly by introducing exemptions for small buildings. These exemptions chiefly involved floor area triggers for lifts. Unfortunately this 'saving' comes at the expense of the considerable and increasing number people not able to climb stairs.

In all, even if the dubious figures of the 2004 Regulatory Impact Statement are accurate, its now invalidated estimated costs of \$26.3 billion over 30 years to bring the nation's building stock to Disability Discrimination Act compliance are less than trivial when measured against expected government and industry spending over the same period. The author of the 2009 Regulatory Impact Statement correctly stated:

As noted, standards formulated under the DDA can be regarded as simply codifying existing requirements not to discriminate. Thus, in a conceptual sense, neither the standard nor the equivalent amendment to the BCA can be regarded as creating new legal obligations beyond those currently imposed. In this sense, it can be argued that no additional compliance costs can be attributed to the Premises Standard.

Queenslanders with Disability Network wonders how government has ignored the rights of its citizens by allowing private companies to flout the Disability Discrimination Act since 1992? Unlawfully acquired profits and savings accrued during these 16 years of neglect can be put towards paying for the rectification of injustices served.

These questions must be asked:

- **What is the value of Australian citizenship and do all citizens have equal value and, by implication, equal access to premises?**
- **What is the reasonable cost and lawful responsibility associated with doing business in Australia?**

Doubtless the Committee will be pondering these and other questions, and Queenslanders with Disability Network wishes them well in their deliberations.

**Any related matters.**

The 2009 draft is somewhat of a diminution of the 2004 draft. This is unfortunate. The 2009 draft was considered barely adequate by most commentators from the Disability sector. Diminishing the rights of people with disabilities yet further is hardly welcome.

A comparison of the 2009 and 2004 drafts with pertinent comments is laid out below.

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<b>2009 Clauses</b>	<b>2004 Clauses</b>
2.1 Buildings to which Standards apply Not applicable to Classes 1a, 2 and 4 or Class 10 associated with these Classes.	Clause DF1 Functional Statements <u>Limitation:</u> DF1(b) Not applicable to Classes 1a and 4 or Class 10 associated with these Classes.

QDN Response: The 2009 draft no longer includes Class 2 buildings. These must be included in the 2009 draft in order to give Disability Discrimination Act certainty to building owners and access to housing for people with disabilities.

Of particular concern is the increasingly common operation of Class 2 buildings as though they were Class 3 buildings. People with disabilities have no access to these improperly used premises. While this occurs post certification and is thus beyond the scope of the draft Access to Premises Standard, clear access provisions for Class 2 buildings would prevent this misuse.

DP9 Performance requirement An inbuilt communication system for entry, information, entertainment, or for the provision of a service, must be suitable for occupants who are deaf or hearing impaired. Limitation Clause DP9 does not apply to: (a) a Class 4 part of a building; or (b) an inbuilt communication system used only for emergency warning purposes.	Identical
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QDN Response: Flashing light systems associated with audible emergency warning systems are commonly used to alert people who are deaf of emergencies. These must be included in the draft Disability (Access to Premises- Buildings) Standards.

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2009 Clauses		2004 Clauses
Table D3.1 Class 1b (a) Dwellings located on one allotment and used for short-term holiday accommodation consisting of- and within- (i) 4 to 10 dwellings 1 dwelling.	To	Table D3.1 Class 1b (a) Dwellings located on one allotment and used for short-term holiday accommodation consisting of- and within- (i) 3 to 10 dwellings 1 dwelling.
(b) A boarding house, bed and breakfast, guest house, hostel or the like containing 4 or more bedrooms used for rental accommodation, other than those described in (a)		(b) A boarding house, bed and breakfast, guest house, hostel or the like containing 3 or more bedrooms used for rental accommodation, other than those described in (a)

QDN Response: In a retrograde step the trigger for accessibility has been raised from three dwellings or bedrooms in the 2004 draft to four in the 2009 draft. However, in its comments on the 2004 draft QDN made the point that all accommodation should be accessible. If only one dwelling or bedroom is available for short term use it must be accessible.

Class 3 continued  
Sole-occupancy units  
Where more than 2 *accessible sole-occupancy units* are required, they must be representative of the range of rooms available.  
If the building or group of buildings contains: To and within:  
1 to 10 *sole-occupancy units*: 1 *accessible sole-occupancy unit*  
11 to 40 *sole-occupancy units*: 2 *accessible sole-occupancy units*  
41 to 60 *sole-occupancy units*: 3 *accessible sole-occupancy units*

Class 3 continued  
Sole-occupancy units  
Where more than 2 *accessible sole-occupancy units* are required, they must be representative of the range of rooms available.  
If the building or group of buildings contains: To and within:  
1 to 10 *sole-occupancy units*: 1 *accessible sole-occupancy unit*  
11 to 40 *sole-occupancy units*: 2 *accessible sole-occupancy units*  
41 to 60 *sole-occupancy units*: 3 *accessible sole-occupancy units*

QDN Response: Until forty one sole-occupancy units are provided the one or two accessible units may be located in the least desirable location or placed at the top of the price scale. Even though numbers are small, provision should be representative. Where one unit is provided it should be at mean price and amenity. Where two units are provided one should be at 33% and the other at 67% in terms of price and amenity.



2009 Clauses	2004 Clauses
<p>D3.2 Access to buildings</p> <p>(2) In a building required to be accessible, an accessway must be provided through the principal pedestrian entrance, and:</p> <p>(a) through not less than 50% of all pedestrian entrances including the principal pedestrian entrance; and</p> <p>(b) in a building with a total floor area more than 500 m<sup>2</sup>, a pedestrian entrance which is not accessible must not be located more than 50 m from an accessible pedestrian entrance; except for pedestrian entrances serving only areas exempted by clause D3.4.</p>	<p>D3.2 Access to buildings</p> <p>(b) In a building required to be accessible, an accessway must be provided through the principal pedestrian entrance, and –</p> <p>(i) in buildings with a floor area not more than 500 m<sup>2</sup> - through not less than 50% of all pedestrian entrances; and</p> <p>(ii) in buildings with a floor area more than 500 m<sup>2</sup> - through all other pedestrian entrances, except for pedestrian entrances exempted by D3.4.</p>

QDN Response: This requirement has potentially halved the number of accessible entrances required. All pedestrian entrances except for pedestrian entrances only serving areas exempted by clause D3.4 should be accessible unless unjustifiable hardship can be demonstrated.

D3.3 Parts of buildings to be accessible

(d) accessways must have:

(ii) turning spaces complying with AS 1428.1:

QDN Response: Turning spaces are not defined in AS1428.1-200X except at landings on ramps (Figure 14c). Rather, they are defined in AS1428.2-1992 Clause 6.2. Clause D3.3(d)(ii) must be refined to give dimensions to AS1428.2 or a redrafted AS1428.1 gives relevant dimensions.

D3.3 Parts of buildings to be accessible

(e) an intersection of accessways satisfies the spatial requirements for a passing and turning space;

D3.3 (e) was not included.

QDN Response: An intersection of accessways may be as small as 1200 x 1200 mm. Two wheelchairs could never pass or one large wheelchair turn in such a small space. AS1428.1-200x requires passing spaces to be 2000 mm long by 1800 mm wide. Intersections cannot serve as passing or turning spaces until they are 2000 x 2000 mm and this should be set in the Standard as the minimum acceptable dimension for an intersection to serve as a passing space.

2009 Clauses	2004 Clauses
<p>D3.4 Exemptions  (f) in a Class 5, 6, 7b or 8 building:  (i) containing not more than 3 <i>storeys</i>;  and  (ii) with a <i>floor area</i> for each <i>storey</i>, excluding the entrance <i>storey</i>, of not more than 200m<sup>2</sup>;  a <i>storey</i> or level other than the entrance <i>storey</i>, except if the <i>storey</i> or level is served by a ramp complying with AS 1428.1 or a passenger lift;</p>	<p>D3.4 (f) was not included.</p>
<p>QDN Response: This exemption will exclude people with mobility impairments from all but the entrance storey of a significant proportion of commercial buildings in regional and suburban retail centres. Further, it fails to address common two storey developments located on a single block that have a number of tenancies which share walls, but these tenancies are not connected to each other by accessways except at ground level. The upper storey of each tenancy is less than 200 m<sup>2</sup> but the gross floor area for the building's upper storey exceeds 200 m<sup>2</sup>. It is unclear how D3.4(f) would be applied under these circumstances. D3.4(f) must be revisited to clarify the multiple tenancy scenario and the floor area trigger for unjustifiable hardship scaled down to 100 m<sup>2</sup> for each storey.</p>	
<p>D3.8 Tactile Indicators</p>	<p>Identical text.</p>
<p>QDN Response: Commercial driveways crossing footpaths at-grade are not explicitly covered in D3.8. These are usually outside the property boundary but are normally constructed by the developer as part of the building project. Standards Australia should be directed to liaise with the Australian Local Government Association in order to develop appropriate specifications and these referenced in subsequent editions of the Access to Premises Standard.</p>	
<p>Way-finding via directional TGSIs, and the circumstances which require directional TGSIs, are not covered. As per commercial driveways Standards Australia should be directed to liaise with the Australian Building Codes Board in order to develop appropriate 'on site' specifications and these referenced in subsequent editions of the Access to Premises Standard.</p>	
<p>D3.11 Ramps  (a) a series of connected ramps must not have a combined vertical rise of more than 3.6 m;</p>	<p>D3.11 Ramps  a) a ramp or series of connected ramps between one level and the next must not have a vertical rise of more than 3.5 m;</p>

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2009 Clauses	2004 Clauses
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QDN Response: This clause increases the ceiling on ramps and may even be interpreted as removing the ceiling on single ramps. A series of connected ramps must not have a combined vertical rise of more than 3.6 m but a single ramp may exceed 3.6 m? AS1428.1-200X includes landings as parts of a single ramp rather than being separators of ramps, so that an ambiguity is introduced with this wording. The wording of the 2004 draft is clearer and should be used.

D3.11 Ramps

No regulation of threshold ramps.

D3.11 Ramps

e) a threshold ramp

OPTION 1. must only be provided at an external doorway in accordance with AS 1428.1;

OPTION 2. is not permitted

QDN Response: Thresholds extending up to 280 mm from a door make close approach to door controls difficult for a wheelchair user. They should only be permitted in refurbishment of existing buildings at external doors.

D4.2 Location of Braille and tactile signs  
Way-finding sign location deleted from 2009 draft.

Specification D3.6 Braille and tactile signs

2.1 Location of Braille and tactile signs  
(d) Signs identifying paths of travel must be placed so they are located directly ahead in the direction of travel. Where one wall continues in the direction of travel and the other forms a corner, the sign must be placed on the continuing wall.

QDN Response: Loss of a technical specification for way-finding signage will make standardised placement difficult, with resulting disorientation. Especially for people with vision impairment, consistent placement of signs is vital to locating the sign, enabling its information to be of use in way-finding. This specification should be replaced.

D4.3 Braille and tactile sign specification  
(2) Sentence case (upper case for the first letter of each main word and lower case for all other letters) must be used for all tactile characters;

D4.3 (2) was not included.

QDN Response: Sentence case is required but the Clause's description of sign text is closer to Title case. An apparent conflict of definition between Sentence case (first letter of initial word and first letter of all proper nouns in upper case) and Title case (first letter of initial word and first letter of nouns, verbs, adverbs and adjectives in upper case) occurs. Clarify precisely which case is meant.

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<b>2009 Clauses</b>	<b>2004 Clauses</b>
<p><b>E3.6 Passenger lifts</b>            In an accessible building, every passenger lift must:            (c) not rely on a constant pressure device for its operation if the lift car is fully enclosed.</p>	<p><b>Clause E3.6 Passenger Lifts</b>            In an accessible building, every passenger lift must –            c) not rely on a constant pressure device for its operation.</p>

QDN Response: Constant pressure devices are difficult or impossible for many people with poor or no arm function to use. This will render premises or parts of premises served by unenclosed lifts not accessible to many people with mobility impairments who are unaccompanied by able-bodied companions. Revert to the requirements of the 2004 draft.

E3.6 Passenger lifts Some of the lift types listed in Table E3.6 may or do require key operation. Lifts complying with AS1735.7, 14, 15 and 16 may all have key lockable controls.	Identical.
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QDN Response: As these lifts' controls will customarily be in the locked position, independent use is not possible. Where installed, building management or a designated tenant must be on standby to immediately unlock the controls on request. A communication device that allows for a call for the controls to be unlocked must be located at each lift landing.

Table E3.6 (b) Application of features to passenger lifts Lift floor dimensions of not less than 810 mm x 1200 mm: A stairway platform lift complying with AS 1735.7.	Identical.
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QDN Response: The 1200 mm minimum length required for floor dimensions will not accommodate mobility aids whose length is in the 1200 - 1300 mm range. The Disability Standards for Accessible Public Transport permit carriage of mobility aids up to 1300 mm long. If AS1735.7 lifts are to be legitimately included in a DDA standard, they must offer a floor area consistent with, and not less than, the allocated spaces required by the Disability Standards for Accessible Public Transport. That a Transport Standard 'compliant' wheelchair cannot fit on an Access to Premises Standard 'compliant' lift is an unacceptable inconsistency between Disability Discrimination Act Standards.