

Submission No 97

Australian Institute of Building Surveyors

Friday, 13 March 2009

Committee Secretary
House of Representatives
Standing Committee on Legal and Constitutional Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600
Email: laca.reps@aph.gov.au

RECEIVED SM
13 MAR 2009
BY:.....LACA.....

Dear Sir/Madam

RE: Inquiry into the draft Disability (Access to Premises – Buildings) Standard

The Australian Institute of Building Surveyors (AIBS) has noted that the Committee has released the draft Premises Standards and offers the following assessment of the documents.

In accordance to the terms of reference offered by the Committee, relating specifically to the interaction between the Premises Standard and existing regulatory schemes operating in State and Territory jurisdictions, The Australian Institute of Building Surveyors has received feedback from our State representatives in Tasmania, Victoria, South Australia and New South Wales which we submit as attachment A, B, C & D.

The consensus of our State representatives concurs with the draft proposed by the Committee, that the Model Process to Administer Building Access for People with Disability is both appropriate and effective.

We have also consulted with RICS who overall, considers that the draft is excellent in explaining the way forward and minimising risks associated with the interpretation and this will certainly make design more black and white. The following comments view were expressed by RICS and after due consideration the AIBS is in agreement.

The alignment of the DDA with the BCA is a great way forward as designers are regulated by the BCA and given the fact that for most are reliant on a third party providing certification (Council/Private Certifier), the amendments and considerations given to the DDA will therefore become more apparent. We agree that for a long time, designers have been reluctant to include potential cost increases into designs if they are not forced to do so, certainly building owners don't want to spend money on the non essential items - "if you don't have to why bother" attitude is still apparent. The inclusion of such standards will provide more clarity over the dos and don't surrounding the act and remove potential risk from projects.

There is some concern that where a building is undergoing a substantial refurbishment and must comply with the current BCA provisions, that many buildings which are simply unable to be accessible without extensive expense or works that we will see a greater volume of obsolete buildings with a reduction in value - certainly from a due diligence perspective, access standards will play a large part in negotiation of a sale price. A greater volume of new buildings may become apparent as it is clearly easier to integrate the DDA into a new design than refurbish existing building stock. We therefore face not only obsolescence of some existing building stock but a conflict with sustainability.

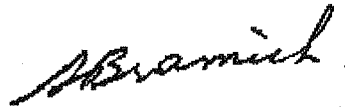
The report covers the "unjustifiable hardship" provisions but this will be open to interpretation when assessing claims and once again brings uncertainty to the owner as to what is applicable to them, not to mention the time an application will take to be assessed - causing protraction to an already lengthy council approval process and increasing workloads to already stretch Building Surveyors. RICS suspects that there may be a huge volume of claims under this heading, and we'll really only understand the parameters once precedence are set - which brings us back to why the standards aren't working now!

A relatively minor consideration is the loss of real estate in compliance of circulation space and sanitary facilities. This could have a great impact in rental levels to compensate for the loss of NLA as well as asset values and it will certainly be interesting to hear what the valuers make of this.

Yours sincerely

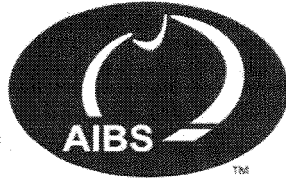


KEVIN SKAUGE
CEO



STEVE BRAMICH
NATIONAL PRESIDENT

- Attachment A : TAS Comments Access Premises 2009
- Attachment B : VIC Comments Access Premises 2009
- Attachment C : SA Comments Access Premises 2009
- Attachment D : NSW Comments Access Premises 2009



Australian Institute of Building Surveyors

Attachment A

INTERNAL MEMO

FROM: Ross Murphy – Tasmanian Chapter President
TO: Kevin Skauge - CEO
DATE: 03 Feb 2009

RE: Draft Disability (Access to Premises – Buildings) Standards 2009

In accordance with the Media Release from the House of Representatives Legal and Constitutional Affairs Committee (the Committee) of 12 December 2008, this submission responds to each of the Terms of Reference required to be considered by the Committee.

As an industry group directly involved with, and often responsible for, compliance and enforcement of Government policy with respect to buildings and structures the Australian Institute of Building Surveyors (AIBS) are ideally placed to provide a matter-of-fact approach to the proposed Access to Premises Standard. Rather than comment on the narrower issue of how the Standard will be administered through local State and Territory jurisdictions, AIBS Tasmania Chapter has considered the more fundamental nature of the changes and the need for the draft Standard more generally.

Terms of Reference

1. The appropriateness and effectiveness of the proposed Premises Standards in achieving their objectives

The objective of the Premises Standard appears to be to radically increase the level of accessibility to all Australian buildings other than dwellings and outbuildings. The justification for this additional regulatory burden is based on the number of complaints per year in relation to existing buildings. The statistic (annual average of 54) appears to be disproportionately small by comparison to the number of existing commercial buildings accessed by all demographics Australia wide.

In fact we have not seen the full benefit of the access provisions currently provided in the Building Code of Australia (BCA) given that it takes many years for all buildings to be refurbished and brought up to that standard. The complaints referred to may in fact be about buildings that have not been brought into compliance with the current BCA requirements. These buildings are likely to be required to be brought into compliance with that standard eventually as the market

requires refurbishment and new fit-outs to these buildings. One could therefore surmise that there is no justification for the increased standard and the draft standard is inappropriate thus rendering the effectiveness similarly flawed.

Further it seems that the financial analysis provided in the Regulatory Impact Statement (RIS) appears to be overly simplistic in terms of its application, and does not account for many of the complexities regarding upgrading disabled access to existing buildings. The onerous nature of the reform is likely to lead to resistance by property managers to 'change the use' or upgrade existing buildings simply due to the sheer expense associated with upgrading/improving access arrangements. This again appears to conflict with the intended objective and in fact could have the opposite effect (i.e. resistance to refurbish existing buildings) which could delay the refurbishment and improvement of other health and safety systems in the existing building.

Whilst not wishing to undermine the principles guiding accessibility of commercial property it is our belief that the current provisions contained in the BCA are an effective means with which to regulate new buildings and building to which a "change of use" is proposed. We have seen no evidence that the standard currently provided in the BCA is inappropriate

2. 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.

The RIS and the ABCB Model Process appear to be largely based around the Victorian legislative model. The RIS mistakenly assumes that a substantial refurbishment of an existing building provides a trigger for the upgrading of the entire building to comply with the BCA. For example, in Tasmania there is no requirement to upgrade the existing part of the building if an alteration or extension occurs irrespective of the extent of that work. In Victoria the building regulations work on the concept of a substantial alteration within a three-year period. This scheme requires an entire building to be upgraded to contemporary standards if building work, including any permitted works carried out within the previous three years, represents more than 50% of the original volume of the building. It is our understanding that this element of the Victorian building regulations is not followed in any other jurisdiction. For this reason we believe that much of the financial impact analysis relating to existing buildings will be incorrect, and that in order to achieve the outcome anticipated in the RIS, substantial building regulatory reform would be necessary in each jurisdiction with the exception of Victoria.

The Chair and spokesperson of the Committee, Mark Dreyfus QC, states in the associated press release that:

“...Current legislative obligations to provide non-discriminatory access to public buildings are enforced on an ad hoc basis driven by individual complaints...”

The AIBS disagrees with this statement. Mr Dreyfus has not attributed any benefit from the obligations arising from building regulations which are not 'ad hoc' or 'driven by individual complaints'. Ensuring a compliant level of disabled access is provided to commercial buildings is mandatory for all new buildings and, under Tasmanian and other State and Territory legislation, those to which a 'change of use' applies.

The RIS also distinguishes between a proposal for building work lodged by an owner and a tenant. It should be noted that under Tasmanian legislation such a distinction does not exist and therefore to achieve the outcomes as detailed in the Standard (i.e. to impose a higher standard on an owner compared to a tenant) would require an amendment to the Tasmanian building regulations.

3. Whether the Premises Standard will have an unjustifiable impact on a particular sector or group within a sector.

In considering the information presented here it seems that reform such as that proposed may lead to a widespread reluctance to undertake refurbishment of existing buildings due to increased costs. The RIS appears to present case studies which seem to be rather one dimensional in terms of the requirements to achieve compliant levels of accessibility. There is a high degree of uncertainty in the actual cost implications of the reform due to the diversity of the Australia commercial building stock. If there is a resistance to refurbish existing buildings it is foreseeable that the health and safety of building occupants may be compromised by these competing interests.

Further to the above, the idea that is promoted in the RIS that there is no new cost as the requirement to upgrade access is existing under the DDA. We believe that this argument should be discontinued as justification of the new Standard as the new Standard introduces a higher level of accessibility enforced through building regulations. This enforcement will result in a substantial cost increase in building works and may see ongoing penalties imposed on an owner or tenant for failure to comply with the building regulations.

4. Any related matters

The discussion presented in this submission does not seek to undermine provision of disabled access to commercial building stock. Providing safe and equitable access to commercial space is a critical component of any building assessment and approval however, it appears to be adequately addressed through the BCA, particularly given the low annual number of complaints. The AIBS would question the level of reform proposed under this new Standard and the inevitable cost to industry, particularly in the current economical climate. We have concerns that reform such as this may lead to increased levels of illegal building work and/or owners deferring

essential refurbishments to the detriment of those in occupation of premises.

Alternative Solution

The Tasmanian Chapter of the AIBS would like to suggest that the draft standard should be implemented in stages. Initially the standard should be adopted on a voluntary basis by all levels of Government and rolled out after a period of say five years once Government have a clearer appreciation of the cost on the refurbishment of existing buildings. This would lead to better industry understanding of the implications and requirements of the Standard and also better public perception and acceptance of the reform.

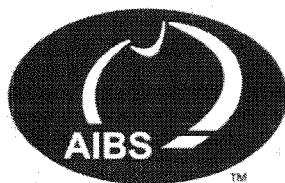
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Australian Institute of Building Surveyors

Attachment B

INTERNAL MEMO

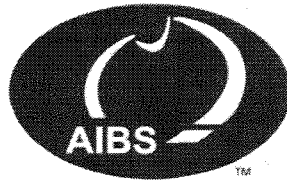
FROM: Bernie Steer – Chapter President SA
TO: Kevin Skauge - CEO
DATE: 12 January 2009

RE: Inquiry into the draft Disability
 (Access to Premises – Buildings) Standard

Disability (Access to Premises- Buildings) Standards 2009		
Clause Number	Clause details	Comment
Part 3 Requirements of Standards 3.1 Target Dates and Levels of compliance	The Note to the table states that 'the level of compliance is expressed as a percentage of existing public transport buildings provided by the building certifier, building developer or building manager for use as part of that type of public transport that are still in use on the target date.'	A building manager by access code definition includes the building owner. Is the private certifier when acting for the building owner required to verify the building owners estimate and how are they supposed to do this?
Part 4 Exceptions and concessions cl 4.1(4)	The additional factors to be considered after it is determined that there is a case for unjustifiable hardship are (a) the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with these Standards; (b) any measures undertaken, or to be undertaken by, on behalf of, or in association with, a person or organisation to ensure substantially equal access. This clause must make it clear that the decision of a State or Territory Access Panel that is constituted under the relevant State and Territory legislation is acceptable under the provisions of the Federal legislation - Disability (Access to premises - Buildings) Standards 2009. Reliance on 4.1 (3) (p) which only requires the decision of	This appears to be almost a performance statement. Where is the definitive here and who has jurisdiction to decide? If a building surveyor is required to make a determination are they indemnified against further action under the DDA by other parties that disagree with the determination?

	an Access Panel be 'taken into account' is not strong enough in providing surety to a person who relies upon a State or Territory Access Panel decision.	
Part 4.3 Lessees	(1) If the lessee of a new part of a building submits an application for approval for the building work, the following people do not have to ensure that the affected part of the building complies with these Standards: (a) the building developer; (b) the building certifier; (c) the building manager. (2) Subsection (1) does not apply if a building with a new part is leased to only 1 person.	Would it be possible to have an interpretation or to have a rewrite in plain English? Does this mean a lessee who leases a floor of a multistorey building and changes the use of the building (as a new part) is exempt from the requirements? In these instances the owner is not involved except to agree or disagree with the lease proposal..
Part 4.4 Lift concession	The requirement in Table E3.6 (b) of the Access Code that a lift is to have a floor dimension of not less than 1 400 mm x 1 600 mm does not apply to an existing passenger lift that is in a new part, or an affected part, of a building, if the lift: (a) travels more than 12 m; and (b) has a lift floor that is not less than 1 100 mm by 1 400 mm.	In a new part or affected part (by access code definition a path of travel through an existing building to a new part) all lifts that travel more than 12m (4 floors approximately) will be exempt from the requirement to have a lift with a floor dimension of 1400mm x 1600mm. This then means that there will be a large number of lifts that will require upgrading or an undue hardship claim and the Building Surveyor will be back to asking the same questions as in 4(1)(4)
Schedule 1 A1.1 Definitions	<i>atrium</i> has the same meaning as in the <i>BCA</i> . <i>exit</i> has the same meaning as in the <i>BCA</i> . <i>storey</i> has the same meaning as in the <i>BCA</i> .	All the definitions apart from the new one 'luminance contrast' are exact matches to the <i>BCA</i> . Include the full wording as per the rest of the definitions
Schedule 1 Part A4 Classifications	(b) <i>Class 1b</i> : ...; or (ii) 4 or more single dwellings located on one allotment and used for short-term holiday accommodation;	Class 1b (ii) differs from the <i>BCA</i> . Will the <i>BCA</i> follow suit or are we to have two rules for Class 1b?

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Australian Institute of Building Surveyors

Attachment C

INTERNAL MEMO

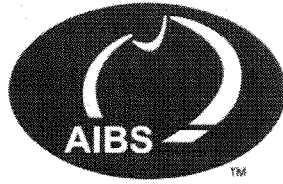
FROM: Steve Young – Executive Officer Victorian Chapter
TO: Kevin Skauge - CEO
DATE: 31 Jan 2009

RE: Inquiry into the draft Disability
 (Access to Premises – Buildings) Standard

Page No.	Clause No.	ITEM	Comments
18	Table 1 Part 1 Supp 1 1993	Reference Documents Query the reference to the standard given it is currently not available from Standards Australia	Standard to be updated to be consistent with the requirements of AS1428.1: 200X (90 th percentile).
	AS1735 Part 8 1996	This standard is outdated and the platform size does not reflect 90 th percentile.	Standard to be updated to be consistent with the requirements of AS1428.1:200X (90 th percentile).
24	Table D3.1	Access for people with a disability is not required for Class 2 buildings.	Previous draft of the Access Code required parts of a Class 2 building to be accessible. Query what the justification for this clause to be removed is.
28	D3.3(b)	This clause permits fire-isolated ramps and fire-isolated stairways to be exempt from complying with the requirements of AS1428.1 clause 11 and clause 12 respectively however if fire-isolated ramps and stairways are used for communication purposes there maybe an issue for some users.	Consider adding addition clarification for when the fire-isolated ramps and stairways can be exempt; <i>“fire-isolated ramps and fire-isolated stairways not used for communication purposes...”</i>
29	D3.3(d)(ii) (B)	Previous draft of the Access Code stated turning spaces to be provided every 9m or 20m.	Query why 20m interval was adopted in lieu of 9m.

29	D3.4(a)	Exemptions <i>"The following areas are not required to be accessible: (a) a cleaners' store room, a commercial kitchen, a staff serving area in a bar, a foundry floor, a cool room, a fire lookout, a lighthouse, a rigging loft or the like."</i>	Guideline should provide further definition of these areas nominated for exemption and/or leaving in words similar to the existing concession under BCA D3.4 of use not being appropriate for people with a disability to assist with the interpretation where the area is not specifically covered.
44	F2.4(c)	Ambulant toilets to be provided at every bank of toilets in addition to an accessible sanitary compartment.	This appears to be an excessive requirement and query the justification particularly where it relates to a small building such as a typical 100m ² retail strip shop. Suggest ambulant toilet be provided based on number of closet pans similar to when accessible sanitary compartments. For example where there are over 10 or more pans, a sanitary compartment suitable for a person with an ambulant disability must be provided.
45	F2.4(g)	Where two or more accessible sanitary compartments are provided, the number of left and right hand mirror image facilities must be provided as evenly as possible.	Although this clause is a current requirement under the BCA it is often queried as to the necessity of it, especially if the facility is within a multi-storey building and access is not permitted to the floor such as a multi tenanted office building.

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Australian Institute of Building Surveyors

Attachment D

INTERNAL MEMO

FROM: Bill Burns – NSW Executive Officer
TO: Kevin Skauge – CEO National Office
DATE: 03 March 2009

RE: Inquiry into the draft Disability
(Access to Premises – Buildings) Standard

NSW Chapter is of the view that due to:

- a) The draft is a major step forward that addresses long sought changes, particularly unjustifiable hardships provisions.
- b) Changes are likely to incur added costs; however this is an issue for others for comment.
- c) It should be remembered that benefits from these provisions are likely to flow to all at some time.
- d) We would recommend a review of the provisions; say 12 months after its adoption takes place for any necessary adjustments.
- e) The slow and difficult development of the premises standard has taken to date; we seek expedition of its adoption. Further delays are not in the public interest.

Recommendation:

- 1. The response on the draft be in terms of (a) to (e) above.
- 2. Any draft submission representing the AIBS position should carry the President's concurrence.

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