



Office of the Anti-Discrimination Commissioner

Celebrating Difference, Embracing Equality

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10 March 2009

Committee Secretary
Standing Committee on Legal and Constitutional Affairs
House of Representatives

By email: laca.reps@aph.gov.au

Submission No 62

RECEIVED
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BY: LACA

Dear Committee Secretary,

Re: Inquiry into the draft Disability (Access to Premises - Buildings) Standards

Thankyou for the opportunity to provide a submission to the *Inquiry into the draft Disability (Access to Premises - Buildings) Standards* (the Premises Standards).

By way of background, the Office of the Anti-Discrimination Commissioner (OADC) administers the Tasmanian *Anti-Discrimination Act* 1998 (the ADA). The ADA prohibits discrimination (including on the basis of disability), inciting hatred and other specified conduct and provides for the investigation and conciliation of, and inquiry into, complaints in relation to discrimination and prohibited conduct. My other roles and functions as Commissioner include consulting and inquiring into discrimination; disseminating, preparing and publishing guidelines; and undertaking research and educational programs to promote attitudes, acts and practices against discrimination and prohibited conduct.

I have had the advantage of reading the draft submission to the inquiry prepared by the Australian Human Rights Commission (AHRC)¹ and wish to strongly endorse that submission.

In particular, the OADC strongly supports the proposition that suggested changes should not further delay the implementation of the Premises Standards. The implementation of the Premises Standards will immediately address systemic disability discrimination in access to buildings and also provide certainty for the building industry.

The OADC notes that in our view the Premises Standards are not perfect. For example, the small buildings concession applies even if unjustifiable hardship defence could not be established. If a person complies with the Premises Standards they are

¹ Available at:

http://www.humanrights.gov.au/disability_rights/standards/Access_to_premises/ahrc_draft_submission_2009.htm.

also deemed to comply with the *Disability Discrimination Act 1992 (DDA)*. Accordingly, a complaint under the DDA regarding upper level access to a small building will not be successful, even if unjustifiable hardship cannot be made out.

In addition, if the Premises Standards 'cover the field', State based agencies such as the OADC would be in conflict with Commonwealth law should a complaint be made regarding upper level access to a small building. Commonwealth law will prevail to the extent of the inconsistency with the State law. Complaints either under the DDA or State anti-discrimination legislation will therefore not provide a remedy in relation to access to small buildings, regardless of whether providing upper level access would cause an unjustifiable hardship.

The OADC strongly supports a 5-year review of the Premises Standards, and that it specifically consider amending the small buildings concession to make it applicable only if unjustifiable hardship can also be established, or removing the small buildings concession so that only the unjustifiable hardship concession is available.

The OADC also agrees with the AHRC's submission that Class 2 buildings should be included in the final Premises Standards as in the original 2004 draft Premises Standards. Under the ADA, complaints of disability discrimination may currently be made in relation to access to common areas of Class 2 buildings, potentially under both the areas of the provision of facilities, goods and services and accommodation. Including Class 2 buildings in the Premises Standards will provide both consistency and certainty.

Finally, should any changes be made to the draft Premises Standards before finalisation, the OADC is strongly of the view that the concessions should not be broadened, as they already represent a limitation to the rights of people with a disability to access public spaces.

If the Committee has any queries or requires further information, please contact Ms Catherine Edwards, Complaints Manager.

Yours sincerely,

Sarah Bolt
Anti-Discrimination Commissioner