



13 March 2009

Submission No 87

The Chairperson
House of Representatives Standing Committee on
Legal and Constitutional Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

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Dear Chair

Submission - Draft Disability (Access to Premises- Building) Standards 2009

The Independent Living Centre NSW (ILC NSW) is a State-wide service providing information, advice, consultation and education on assistive technologies and access for older people, people with disabilities, their carers and health professionals, to enhance their independence, quality of life, and connectedness with their environment. Information provided relates to building and housing developments, public transport infrastructure and the public domain.

ILC NSW works in collaboration with State and Local Governments, consumers, carers and health care organisations, both government and non-government. We also provide an access consultancy (ILC Access) that works with the private and public sectors to ensure compliance with Australian building and access Standards.

ILC Access has been operating for more than 10 years and staff members have been actively involved in the ME 64 committee.

Our staff includes consultants with backgrounds in occupational therapy, physiotherapy, civil engineering and event management. Our service encompasses the access needs of people with a disability and older people. We concur with the Australian Human Rights Commission that people with a disability have the right to independent, equitable, dignified and amenable access to and within premises and the amenities and services therein.

We have based our submission on the Issues Paper 8 February 2009, created by the Australian Federation of Disability Organisations (AFDO), with additional comments made after our organisation's review of the content of the Draft Disability (Access to Premises – Buildings) Standard 2009.

Comments are based on our knowledge of the current AS1428 suite of Standards; BCA2008; the draft AS1428.1; AS1428.4; AS2890.6; Disability Standards for Accessible Public Transport 2002, and the Disability Discrimination Act 1992.

We have used for guidance into our submission the following documents:

- Disability (Access to Premises – Buildings) Standards Guidelines 2009,
- A Model Process to Administer Building Access for People with a Disability. Australian Human rights Commission Draft Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs on the Inquiry into the draft Disability (Access to Premises – Buildings) Standards.

Submission:

Part 2.1: Premises Standards make under the Disability Discrimination Act 1992

There has been a failure to cover Class 2 buildings (Unit Blocks) in this document.

At present, local government authorities are able to ask for a percentage (say 10%) of units to be constructed to AS4299 1995, Adaptable Housing, in their Development Control Plans.

To continue to exclude Class 2 buildings from coverage in the Access to Premises Standard may see Councils amend their DCP's to remove the access requirements for these buildings.

Recommended position:

Class 2 buildings (multi-unit blocks of home units) must be covered either by the Access to Premises Standard or by the "Access to Accommodation" provisions of the DDA.

Part 2.2 Persons to whom the Premises Standards apply?

2.2 (1) This section does not specifically state that "building owners" are responsible for ensuring compliance with the provisions of the Premises Standard.

Recommended position:

'Building owners' should be included in 2.2(1) to avoid any possibility of confusion.

Part 2.2 Definitions of "building certifier", "building developer" and "building manager" each have lists of who "could be" included.

Recommended position:

Part 2.2 (2, 3 and 4) should all be amended to clarify that the list "includes but is not limited to ..." those who might be a "building certifier", "building developer" and "building manager".

Part 2.2 (2) This section only gives examples of building certifiers as private certifiers, building surveyors and local councils. There are other bodies that give approvals such as special authorities like the Sydney Harbour Foreshore Authority, and the broader State, Territory and Commonwealth Governments Authorities.

Recommended position:

This would be clearer if Part 2.2 (2) referred to 'any consent authority'.

Part 4 Exceptions and Concessions

Recommended position:

In our opinion it is very disappointing to see this list of exceptions and concessions included in this document. It was our understanding that this new document was going to clarify issues so that people in the building industry would have clear, concise and unambiguous guidelines regarding the processes on how to comply with the intent of Disability Discrimination Act. These concessions will now allow people in the building industry and building owners to use these concessions to their own advantage as reasons for non-compliance with the code.

We also support the recommendations made in the AFDO submission.

Part 4.1(f) This section refers to "regional and remote" locations.

Recommended position:

Section 4.1(f) must make it clear that simply by a building being in a regional or remote location does not, of itself, indicate that a claim of unjustifiable hardship is made out.

Part 4.1 (k) This section (possible grounds for unjustifiable hardship) appears to allow a successful claim on the basis of "essential" or "incidental" significance of heritage features. There is concern that inconsequential heritage issues may become excuses for not providing access.

Recommended position:

Part 4.1 (k) should read, "if detriment under paragraph Part 4.1 (j) involves loss of heritage values that are of high heritage significance and / or that where new building works to facilitate access for people with disabilities would cause a significantly adverse and irreversible impact on the heritage significance of the place and/or its fabric."

Part 4.1(I) Section 4.1(I) suggests unjustifiable hardship should be considered in the light of, inter alia, achieving compliance by 'less onerous' means.

Recommended position:

This section needs to make it clear that 'less onerous' means (to those required in the Access Code) should be considered **only** when unjustifiable hardship is reached in meeting the Code.

Part 4.3 Lessees

Recommended position:

This clause should identify the people or authorities who **are** responsible for ensuring that the affected part of the building complies with the Standards. By only listing the people who are not responsible it will, in our opinion, cause misunderstanding and confusion regarding who are responsible, such as the building owner and the approving authority (local council).

Part 4.4 Lift concessions

Sub section (b) only states the lift floor dimension of not less than 1100x 1400mm and does not state the door dimension.

Recommended position:

This clause should also state that the clear door opening of the lift car is 900mm as per AS1735.12.

Table D3.1 Requirements for access for people with a disability

Class 1b The trigger of four (4) or more dwellings would mean almost all B&Bs and cabins would continue to have no accessible rooms. This would reduce rights currently contained in the DDA.

Recommended position:

Our opinion is that, newly built B&Bs, new cabins in caravan parks and new eco lodges (specified Class 1b buildings) should be required to be accessible on the same basis as Class 3 buildings (i.e. 1 to 10 cabins, at least one to be accessible, etc.).

We accept that converting existing homes for use as small B&B type buildings (Class 1b) could lead to a claim of unjustifiable hardship. We can accept a threshold of three (3) bedrooms before access is required in these small, existing, converted premises.

Table D3.1 Class 7a

We agree with the AFDO comments on accessible parking and their recommendation for access to all levels of a car park. However, in our opinion, the accessible path of travel can include a ramp.

Table D3.1 Class 9c

We agree with the AFDO comments on numbers of accessible sole occupancy units as in Class 3 buildings.

Recommended position:

However, in our opinion, the number of accessible sole occupancy units in a Class 9c building should be based on a calculation of 10% of the total number of units.

Table D3.1 Class 10b

We agree with the AFDO comments on Class 10b buildings (swimming pools).

Recommended position:

The Table should be amended so that swimming pools over 40m must be accessible in a Class 1b building that is required to have accessible rooms and facilities. Also any sole occupancy unit that is accessible in a Class 3 building.

Part D3.2 (5)

We agree with the AFDO that the wording must be amended to make it clear that the active leaf must be 850mm.

Part D3.3 Parts of buildings to be accessible

We agree with the AFDO that fire isolated stairs should not be exempt from requirements for access features that would assist people to evacuate safely. Fire isolated stairs and ramps must be required to meet AS1428.1.

Part D3.4 Exemptions

We agree with the AFDO that this list of the parts of buildings which are not required to be accessible implies that no person with a disability might need to work in or visit such parts of buildings.

This section sends a message concerning the capacity of people with a disability to work in a variety of areas and possible conflict with the intent and objectives of the DDA and the Disability Services Act.

We are concerned that access is not required for Class 5, 6, 7b or 8 building that contain not more than 3 storeys and with a floor area of each story less than 200 square metres.

This will preclude access into the majority of buildings that provide service direct to the public especially shops, restaurants and professional offices such as a dentist or doctor.

Recommended position:

That access should be provided to all buildings by way of a ramp or lift regardless of the number of storeys.

Part D3.5 Accessible parking

We agree with the AFDO that D3.5 (b) states (in part) that accessible parking need not be provided where a parking (valet) service is provided.

Our concern is that this provision ignores the fact that many of the modifications undertaken to enable vehicles to be independently driven by a person with a disability may prevent other people from driving the vehicle.

Recommended position:

Part D3.5(b) must be amended to require accessible car spaces even where there is parking provided by valet service.

Part D3.5 Car Parking (number of spaces)

We agree with the AFDO that the number of accessible spaces required is inadequate given the number of Mobility Parking Authorities (NSW nomenclature) that have been issued.

Recommended position:

Proportion of spaces in all categories should be increased by a factor of 5. I.e. where 1% is required it should be increased to 5%.

Access to car parking:

In our opinion boom gates and pay machines in car parks should be addressed in the BCA and the Draft Access to Premises Standard. Many people with disability have difficulty extracting tickets from an entry boom gate and accessing parking pay machines.

Recommended position:

That boom gates and pay machines must be accessible, and be included in the BCA and the Draft Access to Premises Standard

D3.6 Signage

Part D3.6 (e) requires no more than the international symbol for access and an arrow.

In our opinion Part D3.6 (e) should be amended to require the word "Entry" in Braille and tactile lettering, as well as the international symbol for access and an arrow.

D3.7 Hearing augmentation

We agree with all the recommendations as listed by the Deafness Forum in their submission.

D3.10 Swimming Pools

Part D3.10 (1) expects the reader to refer back to table D3.1 to get information on size of swimming pools to be accessible.

Recommended position:

Amend Part D3.10 (1) to clarify which pools (i.e. the trigger of 40m pool circumference when associated with certain buildings) may use all nominated entry devices.

D3.11 Ramps

This clause is concerned with ramps on accessways and does not mention the potential for an egress ramp, which may have a combined vertical height of more than 3.6m.

Recommended position:

There should be an additional point to cover the potential for an egress ramp to have a combined vertical clearance of more than 3.6m.

D5. Accessible water entry/exit for swimming pools

D5.4 A platform swimming pool lift is not currently readily available for purchase in Australia.

Recommended position:

In our opinion it should not be listed as an option in this standard.

Part D5.6 Aquatic Wheelchair

This Part does not require that an aquatic chair be able to be pushed by the occupant.

Recommended position:

Aquatic chairs should have the potential of being propelled by the occupant.

Part E3 – Lift Installations

Table E3.6 (b) Passenger lifts are only required to comply with AS1735.12 if they travel more than 12m. If ramps can only cover a vertical distance of 3.6m then it is not possible for a person with a mobility disability to access from the ground floor to the 2nd floor of a building.

Recommended position:

That table E3.6 (b) be amended to state that amended lift floor dimensions of not less than 1400mm by 1600mm (AS1735.12) must be applied to all lifts which travel more than 8m.

Part F2 – Sanitary and other facilities

In Class 5, 6, 7, 8 and 9 buildings table F2.4 (a), there is a requirement for a unisex facility at each bank of toilets, unless there are more than one bank on any storey, when only 50% of banks of toilets must have a unisex toilet.

There could be a situation where there are 2 banks of toilets on a storey and only one is required to have a unisex accessible compartment. If the floor is subsequently let to 2 tenants only one of the tenancies will have a unisex accessible compartment.

Recommended position:

This provision must be amended to require an accessible unisex sanitary compartment with every bank of toilets.

Class 10a buildings in tables F2.4 (a) and (b) exempt sanitary compartments dedicated to a single caravan/camping site. It is not indicated in these what facilities are required at these locations. It could be interpreted that no facilities for people with disability are required.

Recommended position:

A clause should be added to indicate that where there are sanitary compartments dedicated to a single caravan/camping sites, at least 20% must be required to be accessible.

Table F2.4 (b)

Omitted from this table in Class 9a health care facility, and Class 10a toilet blocks, especially within a recreational facility such as a swimming pools and gymnasias, is the provision for enhanced shower and toilet facilities to enable use by people with a significant disability. There is a need for extra circulation space to allow the provision of an adult "change table" at each venue.

Recommended position:

The Standard needs to be amended to include the provision of enhanced facilities in Class 9a health care facility, and Class 10a toilet blocks of buildings.

Yours faithfully

Robyn Chapman
Chief Executive Officer