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Mr Mark Dreyfus QC MP  
Chair  
House of Representatives Standing Committee on Legal and  
Constitutional Affairs  
PO Box 6021  
Parliament House  
**CANBERRA ACT 2600**

Dear Mr Dreyfus,

**New Parliamentary Inquiry on Disability Access Standards**

The NSW Heritage Council appreciates the opportunity to comment on the Disability Access Standards.

In principle the Heritage Council supports the intentions of the Standards however the legislation potentially could impact on the heritage values of publicly accessible heritage buildings as, at some stage, all will undergo some work. It should be acknowledged that when proposing improved access to heritage sites, the impacts on heritage fabric must also be considered. The Council is of the beliefs that where there are negative impacts, options for alternative solutions rather than the implementation of the deemed-to-satisfy provisions of the Standard need to be available. The Heritage Council therefore strongly supports a mechanism such as described in the Protocol where balanced expertise in both heritage and access can be available when changes are being proposed.

The NSW Heritage Council has established a Fire Access and Services Advisory Panel (FASAP) to advise it on issues relating to all aspects of the upgrading of heritage buildings since 1984. The provision of access for people with disabilities was included in the Panel's work in 1995. The Disability Access Standards have been referred to this Panel and I attach their comments for your consideration.

Yours sincerely,

**Gabrielle Kibble AO**  
Chair  
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Helping the community to conserve its heritage

**Submission to the Parliamentary Committee: New Parliamentary Inquiry on  
Disability Access Standards**

**ISSUES RELATED TO HERITAGE BUILDINGS**

The NSW Heritage Council notes the alterations to the proposed standard since it was last released for public comment. It notes that the following will reduce negative impacts on heritage fabric in relation to the application of the Standards to heritage buildings:

- Exemption for the upper levels of small class 5, 6, 7b) and 8 buildings,
- the allowance of threshold ramps, and
- The removal of the requirement to upgrade the whole building when 50% of the floor area was upgraded within a 3 year period.

The following comments are offered on the current documents:

**Disability (Access to Premises-Buildings) Standards 2009**

**Unjustifiable Hardship.**

Comment: The existing text of Part 4 Clause 4.1 Unjustifiable Hardship, (3) (k) is open to misinterpretation and should be reworded.

Existing Text:

- (j) *“detriment reasonably likely to be suffered by a building developer, building certifier or building manager, or a person with a disability or other building user, including in relation to means of access, comfort and convenience, if compliance with these Standards is required;*
- (k) *If detriment under paragraph (j) involves loss of heritage values-the extent to which relevant heritage value or features of the building are essential, and to what extent incidental, to the building;”*

Discussion:

The approach and terminology should be amended to reflect terms set out in the appropriate national standard on heritage assessment, which is the *Burra Charter* 1999. See <http://www.icomos.org/australia/> for a copy of the document. In particular, heritage values which “are essential, and to what extent incidental” are assessed using the *Burra Charter* and the associated methodology by James Kerr as being of “cultural significance”.

Recommendations:

1. Reword the following text:

- (k) *If detriment under paragraph (j) involves;*
  - *the potential loss of cultural significance of a heritage listed place and/or*
  - *the potential loss of fabric of high heritage value, and/or*
  - *An irreversible impact on the cultural significance.*

2. This new wording should also appear in Annex 1 of the Protocol because the text is repeated there.

## “Affected Part”-Part 2, 2.1, (5) (b) (ii)

### Comment:

There will a significant potential effect on heritage buildings where new work is occurring by the definition of ‘affected part’. Relatively minor work (e.g. improvements to the structure for conservation reasons) could also trigger upgrades to other parts of the building. Exemptions could assist in both reducing costs, reducing administrative burdens and negative impacts on heritage fabric.

### Discussion

The inclusion of ‘path of travel’ in the definition of ‘affected part’ could have a substantial impact on heritage fabric and will increase the cost of works involving heritage listed buildings. It may also significantly limit the reuse of heritage buildings where new additions may assist in making the original part of the building viable. This clause introduces an aspect of retrospective upgrading of existing/heritage buildings.

There is a possibility that heritage buildings will lose significant fabric because of relatively minor non-compliance, e.g. doors being widened because they are slightly less than the standard, though most wheelchairs can pass through.

It is acknowledged that the Access Panels (as proposed by the Protocol) could assist in determining this, but the additional cost and time involved in seeking the Panel’s opinion may be a discouragement to applicants in proposing schemes to reuse heritage buildings. Exemptions could allow for common situations that it would be reasonable to assume a Panel would accept.

Exemptions could be provided for the path of travel to the new part through significant heritage fabric of listed buildings. If a functional minimum level of access can be provided, (i.e. a person in a wheelchair is able to gain access to the new part because there are no barriers to access such as stairs), then the deemed-to-satisfy provisions of the standard should not be applied to the path of travel. The applicant only need demonstrate the functional minimum.

### Recommendation:

1. Add the following text:

**(5) (b) (ii)** *any part of the building that is necessary to provide a continuous accessible path of travel from the entrance to the new part of the building, except for the conditions defined in Part 4 Exceptions and concessions*

(New text underlined)

**Part 4** could then include;

- a) An exception/exemption included for heritage listed buildings where the upgrade for the path of travel can be limited to continuous level access to the new part of the building and a functional minimum width for doorways and corridors. The functional minimum width could be defined as the ability of a wheelchair of an agreed width to pass through.
- b) An exception/exemption for minor works.

## **Disability (Access to Premises-Buildings) Standards Guideline 2009**

Comment: The last sentence of the existing text for Part 5 Exceptions and concessions, 5.1 Unjustifiable Hardship (8) should be reworded to remove potential discriminatory practice. Additionally, the reference to the size of building should be removed because the problem of providing access to heritage buildings through the front door is not necessarily limited by scale.

The existing text:

*"While it may be too difficult to provide access to a small heritage listed building through the front door, it may be possible to design easier access for all visitors through a rear or side door"*

Recommendations:

1. Reword the existing text to:

*"While it may be too difficult to provide access to a heritage listed building through the existing or original door, it may be possible to provide or enhance an alternative entrance so that it becomes the principal public entrance for all patrons".*

2. Include the reworded text in Annex 1 of the Protocol.

3. The Guideline should be expanded to discuss how unjustifiable hardship on heritage buildings will be assessed. The explanation should refer to:

- the Burra Charter and the assessment of culturally significant fabric
- Conservation Management Plans and Heritage Impact Statements to assist in balancing access needs and the retention of significant heritage fabric.

### **A Model Process to Administer Building Access for People with a Disability-"The Protocol"**

The Protocol is contradictory in its statements about determining "unjustifiable hardship". The Preamble states that the determination is to be decided by the court, whilst *Article 5: Scope of Access Panel's Recommendations* says that the Panel is empowered to make decisions about:

*b) a modification or exception from a requirement of the BCA is sought due to unjustifiable hardship.*

Comment:

The Heritage Council believes that the Access Panels have great potential to provide a best outcome for the community rather than retreat to a formal legal process to establish unjustifiable hardship. The Panels could provide balanced expertise on both heritage *and* access expertise.

The NSW Heritage Council has maintained a technical panel to assist it in deciding issues relating to the upgrading of historic buildings since 1984.

Access for people with disabilities was included in the panel's work in 1995. The combination of expertise available at the panel meetings has given the panel's deliberations authority and the resolutions have been well accepted.

The NSW Heritage Council supports the establishment of Access Panels and does not believe that the same function can be adequately fulfilled by individual certifiers with the same authority. It is also imperative that the Access Panels have a member with heritage expertise to hear cases which involve heritage buildings.

Recommendations:

1. That the status of the Access Panels' deliberations be clarified.
2. That all states be encouraged to set up Access Panels.