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Accessing quality in the design and construction of buildings in NSW

Submission by
The Physical Disability Council of NSW

To

Parliamentary Select Committee on the Quality of Buildings

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1. Introduction

The Physical Disability Council of NSW (PDCN) welcomes the opportunity to comment on the quality of building in New South Wales. PDCN believes that all people with physical disability should be able to participate in society as equal citizens to the same extent as the rest of the community. This requires an effectively operating social contract between individuals and society. The contract has two elements:

- People with physical disability must be entitled to the rights and accept the responsibilities that attach to the power available to the population generally to exercise choice and personal autonomy;
- Society must accept and promote its essential role in creating an accessible social, cultural, political and economic infrastructure, including the built environment through which we move and in which we live and work alongside others.

In summary the view of PDCN is simply this:

We believe that accessibility is a fundamental component of quality in relation to building design. It is crucial that buildings are safe and efficient for users. It is critical that they perform the roles intended for them in ways that fulfill their objectives. Buildings must be user-friendly, safe, well designed, environmentally sustainable and comfortable.

If, however, a building is not accessible at all or offers limited access or access only by less dignified means for people with disability than for the community of users as a whole, we assert that such buildings lack quality. Such buildings are fundamentally flawed in conception, design, construction and functional capability.

At PDCN we believe the challenge must be taken up by all stakeholders to better integrate “accessibility” into society’s understanding of what we mean when people talk about “quality” in relation to the built environment in general and buildings in particular.

At PDCN we believe that accessibility, as a component of quality, must be applied to all buildings: old and new, public and private. We believe, therefore that a crucial outcome of this Parliamentary inquiry and debate (in committee and in the preparation of reforming legislation) must be to map

out a strategy for moving forward to a more accessible public and private built environment.

We understand that Rome was not built in a day. We do not expect, therefore, that the buildings of NSW will be transformed and made accessible overnight. We earnestly believe, however, that the Inquiry into the Quality of Buildings has an unique opportunity to signal the way ahead for everyone, which must mean designing and constructing buildings of quality that are accessible to all.

2. People with Physical Disability In NSW

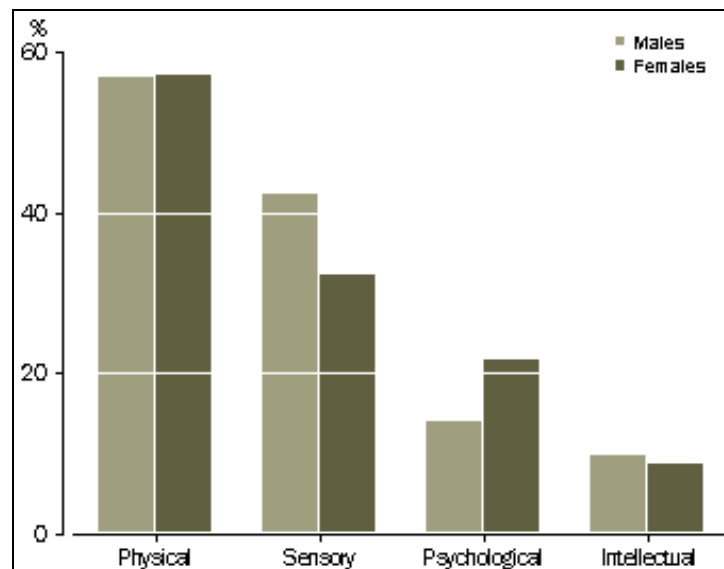
According to the Australian Bureau of Statistics (ABS), people with disability in New South Wales make up 19.3% of the total population, the same as in the whole of Australia. The majority are people with physical disability.

PDCN, therefore, represents and advocates on behalf of the largest group of people with disability by “impairment type” in NSW and Australia.

The ABS noted that:

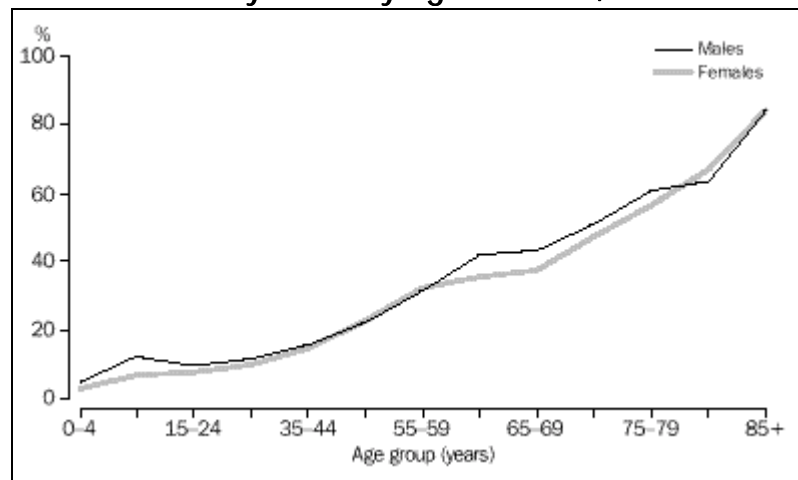
“Over half of all people with a disability had a physical impairment, (PDCN emphasis) either alone (30%) or in combination with another impairment (27%). More than one-third (37%) had a sensory impairment, around half of these (18%) having a sensory impairment only. Other types of impairment were less common, 18% with psychological and 9% with intellectual impairment.”

PERSONS WITH A DISABILITY: IMPAIRMENT TYPES



Age and disability are clearly related.

Disability rates by age and sex, 1998



The significance of these statistics when considered in relation to questions of quality and accessibility of buildings cannot be over-stated.

- People with disability of all types account for one-fifth of the entire population.
- People with physical disability represent over half of all people with disability.
- Disability and ageing are directly co-related. Demographic predictions of population trends indicate that our ageing population (driven by the baby-boomer generations) will live longer with higher expectations of experiencing a 'quality life'. The ageing population profile of people living in NSW must necessarily result in an increased proportion of the population living with physical disability. Our buildings must be able to accommodate and welcome this demographic sea change.
- People with physical disability live and work in every community and location of NSW. Any and every public building (office, shop, place of entertainment, government facility, museum, art gallery, public toilet, etc. etc, etc) must become accessible to the whole community, including people with physical disability, in their roles as workers, customers, clients, visitors, patients, etc, etc, etc.
- Currently, almost 95% of people with disability live in the community. About 5% live in long-stay institutions. It is critical, therefore, that concepts such as visitability, adaptability and accessibility be

incorporated within definitions of quality as they are applied to private dwellings.

- Given that a significant proportion of the population in any community in NSW must be people with physical disability we must move forward to find solutions to barriers that make it impossible to live in accessible homes of quality in the location of people's choice.
- If a person acquires a physical disability and can no longer occupy their current home, they either need to modify it or sell it and move. Both of these options are more expensive than the cost of the home being built to an accessible standard at the time of construction.
- Estimates vary, but an additional 1 to 2% at the time of construction will ensure adaptability. The additional cost to modify at a later stage can be as high as 30%.
- Homes made accessible at the construction stage contribute to intergenerational sustainability.
- We must not restrict our view, however, only to private dwellings in which people with physical disability might want to live now or in the future. People with physical disability do not live in isolation. We are the sons and daughters of our parents. Some of us are brothers, sisters, aunts, uncles, cousins, nephews or nieces to other family members. Many people with physical disability are parents and grandparents. In short, we live as members of families. We have friends, work colleagues and neighbours.

We must move more quickly, therefore, to remove barriers of inaccessibility which prevent people with physical disability contributing to and benefiting from the full range of family contacts – birthday parties, Sunday lunches, baby-sitting, etc, etc. – because visitability, accessibility and adaptability have been ignored as components design and construction of new private dwellings.

3. Accessible Public Buildings in an Accessible Built Environment

When PDCN speaks of “public buildings” we refer to any building that is not a private dwelling. Any and all public buildings have potential users who are people with physical disability. There is no type of public building that is necessarily more likely than others to be used by people with physical disability. Conversely there is no public building that would never be used by people with physical disability if it were to be made accessible to us.

Traditionally, people with disability (including people with physical disability) have been thought of as ‘out of the mainstream’ of social, cultural and economic life in most communities. A much higher proportion of people with disability lived in residential units, institutions or hospital wards.

This is no longer true. Almost 95% of people with disability live in the communities of New South Wales, sometimes in hostile built environments that have not responded well to the new reality that people with physical disability are ‘out and about’

In the not too distant past, even for people with physical disability living in the community, there were few accessible means by which they could contribute to and benefit from the communities in which they lived.

- Transport was not accessible (this remains substantially true today)
- Almost no buildings were accessible in any way at all.
- Features such as curb cuts were unknown.
- Many fewer people with disability were in employment (figures are still far below employment levels for the population as a whole). The disposable income of people with disability was more limited than for the population generally.
- Public attitudes were patronising (at best) and openly hostile (at worst) to the participation of people with disability in the ‘mainstream’ of community life.

Over the course of the last 20 to 30 years, however, the life experiences of people with physical disability has been changing dramatically, although not as fast or as far as we have wished. Nevertheless, fundamental change has occurred. Public buildings have not always (sometimes not often) kept pace with the changing circumstances of people with physical disability.

We need to understand, accept and welcome the changes that have occurred in the lives of people with disability generally and people with

physical disability in particular. We are much more actively engaged with all aspects of Australian life than we have ever been. People with physical disability and the communities in which we live and work benefit from our greater involvement and engagement.

It is logically clear, however, that buildings, which suited a less inclusive definition of 'society' 20 or 30 years ago, are not of a sufficiently high quality for today's more diverse population. The challenge now is to construct or rehabilitate public buildings that meet the needs of the Australian community whom we can expect to use them over the next 100 years and more rather than the perceived community of the last two centuries.

The NSW Parliament, through the deliberations of the Inquiry in to the Quality of Buildings, must promote and protect the rights of people with physical disability to gain access to and use public buildings.

The Disability Discrimination Act specifies areas in which it prohibits a person being discriminated against on the ground of their disability (or the disability of an associate). These areas include

- accommodation,
- employment,
- goods, services and facilities,
- public transport and
- premises.

They include access to or use of "any premises that the public, or a section of the public, is entitled or allowed to enter or use".

People who design, build, own, lease, operate or manage such premises have responsibilities under section 23 of the DDA (and also under State anti-discrimination laws). Responsibilities include not discriminating against people on the ground of disability in relation to the access to and use of those premises.

The DDA definition of 'premises' includes, but is not limited to:

- existing buildings, including heritage buildings;
- proposed or new buildings;
- car parks;
- open air sports venues; and
- pathways, public gardens and parks.

Any part of the 'built environment' that the public is entitled, or allowed, to enter or use falls within the definition.

In addition, because the DDA refers to the 'use' of premises, section 23 also covers issues such as:

- fit out design (for example, the height of service counters);
- access to some public information in premises (for example, emergency warning information); and
- the way premises are maintained and managed (for example, ensuring accessible toilets are not used as storage spaces or overhanging branches do not result in a barrier on a path of travel).

The DDA recognises that in certain circumstances, providing equitable access for people with disabilities could cause 'unjustifiable hardship' for an owner or operator of premises. The DDA does not require access to be provided to the premises if it would impose such an 'unjustifiable hardship' on the person who would have to provide the access. It is generally agreed however that it is unlikely to ever cause a developer an unjustifiable hardship to design and construct accessible buildings when access is considered at the concept stage.

The fundamental point in law is that buildings, their use and the built environment generally are governed by legislation, which prohibits discrimination on the grounds of disability. The Committee of Inquiry must deliberate on questions of quality within that anti-discriminatory context.

PDCN calls for a re-commitment to developing and implementing principles and policies that require accessibility of public buildings to be no less fundamental and no less important to considerations of quality than safety, comfort, environmental sustainability, efficiency and effectiveness.

Specifically:

1. All new buildings, building works and surrounding areas must be fully accessible at least to the standard specified in the Human Rights and Equal Opportunity Commission's (HREOC) *Advisory Notes on Access to Premises, 1998*.
2. Existing buildings should progressively be made to conform to the same *Advisory Notes*.
3. The case of Cooper Vs Coffs Harbour (1998) established that the DDA has primacy over conflicting State legislation. It has also established that the EP & A Act is not 'exhaustive' in the extent to which it outlines other relevant issues (such as the DDA) that need to be considered by consent authorities.

We regard refusal to improve the quality of buildings by making them more accessible on the grounds of heritage, aesthetics, vernacular or other, discretionary, value-based judgements to be in breach of primary legislation. The State Government should lead in this respect by ensuring that all of its own public buildings and those supported through grant making or contract awarding funding arrangements are not inaccessible.

4. The DDA includes a provision to allow for the development of a DDA Disability Standard. The Australian Building Codes Board (ABCB) is developing a draft DDA Disability Standard on "Access to Premises" (as defined above). The Acting Disability Commissioner of HREOC has observed that:

"A full and complete DDA Disability Standard is likely to consist of a number of parts covering buildings and other aspects of the built environment including, fixtures and fittings, streetscape, open spaces such as parks and matters concerning the management of buildings to ensure access is retained."

In such circumstances, the Inquiry into the Quality of Buildings has a duty to ensure that non-discriminatory assumptions underpin any debate about quality of buildings and/or the built environment.

5. It is vitally important that all planning procedures and building regulations relating to quality and certification of buildings as being ready for public use make explicit an intention to ensure that the needs of people with physical disability are fundamental to the common understanding of the minimum quality required.
6. While the Building Code of Australia (BCA) mandates minimum standards for building access, building access is only a small part of the environment. The Code does not articulate the totality of the relationships between buildings and their surroundings (including landscape, footpaths, transport, recreation use etc.). Nor does it articulate the operational conditions necessary to appropriately maintain accessibility. These relationships (linkages) are an essential part of environmental planning, and an integral part of creating an inclusive and accessible community. The BCA also excludes some buildings and some parts of other buildings from requirement to be accessible to people with disabilities.

7. Quality in buildings requires that NSW operates a State planning policy, which sees universal access as an essential requirement, making best use of relevant current standards and guidelines. Accessibility must be systematically planned and implemented for all new and existing buildings (over a reasonable period for change). It must be provided consistently rather than in a haphazard incremental fashion.
8. A State planning policy on accessibility should:
 - Place accessibility issues at the front end of the planning and design process;
 - Call up relevant standards;
 - Require the application of standards and guidelines to linkage issues- in particular to the interface of development sites with the common domain;
 - Require competent assessment of accessibility issues in Development Applications, construction certificates and occupation certificate stages
 - Require the involvement of people with specific access expertise in planning, design and consent processes.
9. The Olympic Co-Ordination Authority developed a planning model that proved to be world-class and which provides a “best-practice” model for planning, providing and managing access across the built environment from conception through to occupation and operation.

PDCN believes the application of the OCA access planning model and its requirements for access expertise and accountability throughout projects provides a useable, road-tested approach. This approach has, by its nature, been endorsed by the State Government and therefore should not present difficulties in being used as part of an ongoing State approach to creating accessible buildings of high quality.

10. PDCN draws the attention of Members of the Committee of Inquiry to advice already given by HREOC with regard to planning, development and building (for accessibility and quality). HREOC has written:

“While awaiting the development of a Disability Standard in this area the Commissioner strongly encourages initiatives by local government throughout Australia to:

- *ensure that applicants for development approval are aware of their DDA responsibilities*

- *develop policies, procedures and guidelines to assist those responsible for approving applications to ensure the requirements of the DDA are taken into account. A number of local government authorities have done this through rigorously applying locally developed Development Control Plans (DCP) or access policies*
- *develop policies, procedures and guidelines to assist decision makers deal with requests from developers for variations or exemption from access requirements, on the grounds that providing full access would be technically too difficult or too costly*
- *establish appropriately resourced access committees or reference groups to assist local government develop decision making procedures*
- *encourage architects, developers and planners to build consideration of access issues into the design process from the outset by actively promoting DCPs or access policies."*

4. Private Dwellings

We have already noted that almost 95% of people with disability live in the community. A very much smaller proportion than 95% of private dwellings, however, has been built to adequate standards of visitability, adaptability or accessibility. Despite past commitments to embrace positive change, there are still too many problems with current housing provision, which result in, often intractable, difficulties for people with physical disability.

- Most existing housing stock is not accessible, limiting the current and future options for people with physical disability.
- The design and construction of new housing have not yet embraced barrier-free principles. Unless and until society commits itself to a new approach - barrier-free design - the problems we highlight will remain unresolved for most people with physical disability.

By **VISITABLE**, we mean that any newly constructed private dwelling would permit a wheelchair user to visit (friends, family members, neighbours) but not necessarily live in that house or unit on a permanent basis. At the minimum level of visitability new private dwellings would have step free approaches to the main entrance. There would be no step at the main entrance to the dwelling. A toilet that could accommodate a wheelchair user with the door closed would be located on the same level as the main entrance. A standard broadly similar to this level of visitability was introduced in the UK for all new-build private dwellings approved for construction from 1st January 2001.

By **ADAPTABLE**, we mean that in addition to meeting the visitable standard for new private dwellings, a house or unit would be designed from the outset with the potential to be adapted at low cost to become the permanent home of a person with physical disability or to allow for the possibility that current occupiers would not be forced to relocate if they were to acquire a disability.

The approach and threshold would have no steps. The toilet would allow for adaptation to become a wheelchair accessible 'wet-floor' shower and toilet area with the potential for the installation of grab rails and handles (only if required). At least one bedroom would be on the same level as the main entry door. The kitchen would be on the same level as the level entrance, shower room and bedroom. Typically, in an adaptable dwelling, kitchen units would be modular, capable of easy and low cost adaptation or replacement to meet particular needs of specific occupants. Light switches and electrical sockets would be positioned within a height range that could be reached by any occupant.

By **ACCESSIBLE**, we mean that a new private dwelling (house or unit) would be ready for immediate occupation by a person with a physical disability, including wheelchair users.

By designing all new private dwellings to one or another of these levels of accessibility many of the problems currently encountered by people with physical disability looking to rent or purchase property or visit friends, family members or neighbours would be removed.

Private dwellings designed from the outset to meet these indicators of access (particularly visitability) are not necessarily more expensive than inaccessible private dwellings. Costs tend to escalate dramatically, however, if access improvements are introduced after initial construction. It is to avoid these unnecessary additional costs that investment in access is required at the design and construction stages.

Evidence from other jurisdictions (Sweden and the UK) indicates that private dwellings built to higher levels of visitability, adaptability or accessibility appreciate in value at a higher rate than inaccessible properties (all other factors being equal). Investing in greater accessibility not only meets social needs and produces homes of higher quality; it also increases the value of the property over its lifetime.

PDCN recognises that there are some locations that will never accommodate visitable, adaptable or accessible private dwellings, except at such prohibitive extra cost as to make the idea economically unviable. We recommend that the State Government adopt the UK model in which the assumption underlying all design and construction must be that any new private dwelling must be at least visitable. Local Councils should be given the discretionary power to allow exceptions to the new standard but that power must be exercised sparingly and only in circumstances of genuinely prohibitive costs.

PDCN asks the committee to note, in addition, that acceptance of a requirement that all new private dwellings must be at least visitable and proportions adaptable and accessible removes the potential for abuse of the highly contentious SEPP 5 decision-making process. If all new private dwelling met varying degrees of access requirements no developer would be able to slip medium density development past Local Councils under the guise of meeting the needs of older people and people with disability. The debate about questions of housing density and its appropriateness in

particular locations would be, as a consequence of investing in greater access generally, brought out into open, transparent and public debate.

At PDCN, we believe:

- All new houses must be built to agreed levels of visitability, adaptability and/or accessibility. Barrier-free design is in the interest of everyone.
- Greater commitment must be given by all stakeholders to a coherent programme of re-furbishing the stock of public housing to make it more accessible to more people, particularly people with physical disability. Public housing ought to be a leader in promoting accessibility.

Our views on the need for and benefits of private dwellings that are built to high quality standards of visitability, accessibility and adaptability are set out in greater detail in the PDCN brochure *Housing For Everyone*, which we have attached as an appendix.

5. Certification

Certification processes are critical in ensuring that buildings in New South Wales are planned, designed and constructed to the highest quality achievable. This is as true for accessibility as it is for health and safety, the use of materials and other technical matters.

Architects, building designers and those involved in the construction of buildings must, at all times, take on board their responsibilities to ensure that buildings are genuinely accessible to all. Certifiers have their role as part of a spectrum of professions whose expertise (or not) determines the possibility of achieving quality and accessible outcomes of construction.

PDCN is aware that the knowledge and expertise of certifiers, particularly Private Certification Authorities, varies in consistency. We have direct experience of excellence in certification by private certifiers. We believe, however, that (in general) the certification sector as a whole is neither as mindful nor as aware of obligations under the Disability Discrimination Act as its members need to be.

At their best, some individual certifiers show themselves to be fully aware of the DDA and its requirement not to discriminate on the grounds of disability. Such individuals know what to look for, ask probing questions and are well equipped to make certification processes operate as intended – to result in buildings that are safe, user-friendly, compliant with Law and, therefore, efficient and effective.

When certifiers are not wholly conversant with or ignorant of the DDA and its consequences for design and construction the result can be that buildings, which ought to be accessible, are not accessible or that unnecessarily obtuse and impractical access options are squeezed in to projects to conclude a paper exercise rather than strive to meet the spirit and/or intention of Law, i.e. that people with disability should be treated no less favourably than members of the community as a whole.

PDCN wishes to develop means by which the current best practice of private certification (which can be excellent) becomes standard practice. We believe that such an objective is realisable. It is also, we believe, an objective that is consistent with achieving the highest quality possible for buildings in NSW.

In summary PDCN wishes to make these recommendations.

1. Certification must be staged within an appropriate development path for all new buildings that:

- a. begins with informed and appropriate planning frameworks and policies applied consistently throughout NSW;
 - b. informs and evaluates the design and detailed plans of individual buildings before construction work commences;
 - c. monitors and evaluates construction progress at critical stages before irrevocable work is commenced on later stages; and
 - d. ensures that buildings comply with the non-discriminatory requirements of existing Law and regulations before occupancy is permitted.
2. No occupancy certificate should ever be approved unless and until all certification required at earlier critical stages of the development of a building have been approved.
 3. Simultaneous certification of occupancy and earlier certification stages should not be permitted to the required standard.
 4. Planning NSW should be charged with appointing an appropriate organisations or organisations (independent body, professional association, etc) with the responsibility for the accreditation, performance monitoring, performance evaluation, complaints and disciplinary processes for private certifiers. These components of industry regulation should fully incorporate awareness of and compliance with anti-discrimination legislation such as the Disability Discrimination Act and the NSW Anti-Discrimination Act.

6. Conclusion

PDCN is grateful to the committee of inquiry for the opportunity to submit our views on these crucial matters. We re-iterate our earlier observation that questions of quality are not only about technical matters such as safety, durability, environmental sustainability, energy efficiency, etc, or about aesthetics, vernacular, ambience or the fit of any particular building with its location, purposes and context.

Technical and aesthetic questions are, we agree, critical indicators of the presence or absence of good quality. So too, however, is accessibility. We believe that all buildings must serve the needs of the community as a whole, respecting the diverse and complex realities of the lived experience of all residents of and visitors to New South Wales.