

Introduction

- 1.1 An estimated one in five Australians has a disability.¹ People with a disability can experience a range of economic and social disadvantages. At a particularly fundamental and tangible level, people with a disability have difficulties in accessing many buildings in the community. Inadequate access to buildings has repercussions for employment, participation and social inclusion. In contrast, ensuring equitable access to people with a disability will help create a more inclusive society and increase employment opportunities and social participation.
- 1.2 The *Disability Discrimination Act 1992 (Cth)* prohibits discrimination against people with a disability in the provision of access to premises.² However, the Act does not provide detailed guidance as to what a building owner, designer or manager must do to ensure that their buildings are accessible to all members of the community. As a consequence, each building must be assessed individually to determine whether it provides appropriate levels of access. The Act is enforced primarily through a complaints mechanism, which allows individuals who believe that they have experienced unlawful discrimination to seek a conciliated outcome through the Australian Human Rights Commission and, if that is not successful, to bring an action in the Federal Magistrates Court or the Federal Court of Australia.³
- 1.3 The Building Code of Australia is developed and maintained by the Australian Building Codes Board to provide a uniform system of building

1 This is approximately 3.96 million people, a number that is expected to increase as the population ages. Australian Bureau of Statistics, *Disability, Ageing and Carers: Summary of Findings*, 2003, 4430.0.

2 Section 23, *Disability Discrimination Act 1992 (Cth)*. Hereafter 'Disability Discrimination Act'.

3 Human Rights and Equal Opportunity Commission, *Federal Discrimination Law* (2008), pp. 259–260.

standards for Australia. The Building Code provides detailed guidance as to how buildings should be designed and built in order to comply with appropriate standards. The Building Code is implemented through building regulation laws in each of the States and Territories to provide a uniform building code for Australia. The Building Code contains a number of requirements in relation to access to premises for people with a disability.

- 1.4 Since the introduction of the Disability Discrimination Act, it has become clear that compliance with the Building Code may not be sufficient to meet the requirements of the Disability Discrimination Act. Lack of certainty surrounding the exact requirements of the Disability Discrimination Act has discouraged builders and building owners from taking measures to comply with the Act. However, this approach creates a significant risk that a complaint of unlawful discrimination may be made.
- 1.5 The Disability Discrimination Act empowers the Attorney-General to formulate standards codifying the requirements of the Act in a number of areas of potential discrimination.⁴ The Australian Government has stated that it intends to use this power to introduce Premises Standards codifying certain aspects of the access to premises requirements of the Disability Discrimination Act.
- 1.6 Premises Standards would harmonise the requirements of the Building Code and the Disability Discrimination Act in relation to access to buildings through incorporation of the Access Code into the Building Code. The Access Code forms Schedule 1 of the Premises Standards and contains its technical requirements.
- 1.7 The Premises Standards would provide greater access to buildings for people with a disability and would also provide certainty to the building industry by establishing building standards which comply with the Disability Discrimination Act.
- 1.8 More than 16 years after the introduction of the Disability Discrimination Act, it is clear that the complaints-based approach has not significantly improved building accessibility. As a regulatory device, Premises Standards are an instrument of general application and would result in immediate improvement of most types of new buildings and some existing buildings as they are upgraded in every State and Territory in Australia. The changes would be widespread and the improvements tangible. As such, the Committee supports the introduction of draft

4 Section 31, Disability Discrimination Act.

Premises Standards.⁵ The Committee will consider how effectively the *provisions* of the Premises Standards achieve their objects in the following chapters. In particular, the Committee is concerned to ensure that the Premises Standards provide transparency, certainty and workability for all parties.

Referral of the inquiry

- 1.9 On Wednesday 3 December 2008 the Attorney-General, the Hon. Robert McClelland MP, on behalf of the Minister for Innovation, Industry, Science and Research, Senator the Hon. Kim Carr, referred the Draft Disability (Access to Premises – Buildings) Standards (Premises Standards) to the House of Representatives Standing Committee on Legal and Constitutional Affairs.
- 1.10 The Committee was asked to inquire into and report on:
- the appropriateness and effectiveness of the proposed Premises Standards in achieving their objects;
 - 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 a Disability;
 - whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector; and
 - any related matters.
- 1.11 The Committee sought submissions from government agencies and advisory groups, non-government organisations (such as disability support and advocacy groups and business groups) and from individuals. A total of 146 submissions and 12 supplementary submissions have been received. The list of submissions is at Appendix A.
- 1.12 The Committee conducted public hearings in Canberra, Sydney, Melbourne and Brisbane and held an additional roundtable in Melbourne. Public hearings are listed at Appendix C.
- 1.13 The Committee was committed to providing accessible public hearing venues. This meant venues with features such as wheelchair access,

5 For simplicity, the draft Premises Standards will be referred to as the Premises Standards in this report.

accessible toilets and a hearing loop. The Committee is grateful to the Australian Human Rights Commission for providing a meeting room for the Sydney public hearing. In this case, the Committee could be confident that the venue was fully accessible. Unfortunately, it was not as simple to locate accessible public hearing venues in central locations in Melbourne and in Brisbane. This experience, although anecdotal, highlights the need for change to improve general access to buildings for people with a disability.

History of the Premises Standards

- 1.14 The Building Access Policy Committee (BAPC) was established by the Australian Building Codes Board in 1995. The BAPC was to be made up of representatives from the building industry, disability groups and the Australian Government.⁶ It was established to recommend changes to the Building Code, to consult widely with industry and the community, and to provide advice to the Australian Building Codes Board on access-related issues.
- 1.15 Following amendments to the Disability Discrimination Act in 2000, which allowed the Attorney-General to make standards in relation to access to premises, the BAPC was asked to identify changes to the Building Code which would ensure its consistency with the objectives of the Disability Discrimination Act.
- 1.16 In 2004, the BAPC released for public comment draft Access to Premises Standards and a Regulation Impact Statement. Following considerable input from the community, the disability sector and industry groups, the BAPC reported to the Australian Building Codes Board. In 2005, the Australian Building Codes Board provided advice to the Minister for Industry and the Attorney-General on proposed standards for access to premises, including identifying certain issues where no agreement was reached as a result of consultation.

6 BAPC Membership consists of: a member of the Australian Building Codes Board (Chair), two representatives of the Australian Building Codes Board, one of whom shall be the Executive Director of the Board, three representatives of the DDA Standards Project, a representative of the Property Council of Australia, one representative of public sector property management, a representative of the Australian Local Government Association, the Disability Discrimination Commissioner, a representative of the Attorney-General's Department, a representative of the Department of Industry, Science and Resources, a representative from the design professions. *Australian Building Codes Board, Building Access Policy Committee: Terms of Reference*, Available from the ABCB website, accessed 17 May 2009 <www.abcb.gov.au>.

- 1.17 After the Federal election in November 2007, the Disability Access Reference Group (DARG) was established and tasked with resolving a number of outstanding issues from the 2004 consultation.⁷ The Disability Access Reference Group delivered its report in June 2008. The Premises Standards were tabled by the Attorney-General in Parliament on 2 December 2008 and the Committee received this reference on the following day, the International Day of Persons with a Disability.
- 1.18 Given this protracted and complex history, the Committee is of the view that the finalisation of the Premises Standards should be a priority. Where the Committee has recommended changes to the Premises Standards, it urges the Government to draft these amendments promptly. There are also some additional aspects of the Premises Standards which require more research and, as such, should be considered as part of the review process in five years. However, the Committee urges the Government to commence this research promptly.
- 1.19 In calling for a speedy conclusion to this process, the Committee notes that most submitters have also requested that the Premises Standards be introduced without further delay:⁸

The standards are long overdue. The [Disability Discrimination Act] and the Victorian Equal Opportunity Act have been in place for 17 and 13 years, respectively. The industry has had 17 years to regulate itself and to progressively and cost-effectively implement changes that would meet their obligations under the Acts. Had they done so, many of the cost arguments mounted today would be irrelevant. Industry has in fact been cost-saving for 17 years at the expense of a large percentage of the population. It is now time to restore that balance.⁹

7 Disability Access Reference Group membership included the Attorney-General's Department, the Department of Innovation, Industry, Science and Research, the Australian Building Codes Board, the Australian Human Rights Commission and representatives from industry and the disability community.

8 See for instance: Australian Human Rights Commission, *Submission 57*; Victorian Disability Advisory Council, *Submission 80*; Ms Rhonda Galbally, Victorian Disability Advisory Council, *Transcript of Evidence*, 30 March 2009.

9 Rhonda Galbally, Victorian Disability Advisory Council, *Transcript of Evidence*, 30 March 2009, p. 59; See also Minister for Planning (ACT), *Submission 46*, p. 10; Australian Human Rights Commission, *Submission 57*; Office of the Anti-Discrimination Commissioner (Tas), *Submission 62*, p. 1; Public Interest Advocacy Centre, *Submission 91*, p. 10; Australian Institute of Building Surveyors, *Submission 97*, p. 11.

Recommendation 1

- 1.20 **The Committee recommends that the Premises Standards be introduced without delay. Any issues which cannot be finalised without causing delay should be considered at a later date.**

Scope and structure of this report

- 1.21 The role of the Committee in this inquiry was to provide an objective and unbiased review of the Premises Standards. The Committee's inquiry process also provided an opportunity for interested industry and disability sector groups, as well as general members of the public, to comment on the Premises Standards, a document that has not been publicly available since 2004. Finally, the Committee's inquiry ensured that the momentum that developed following the establishment of the Disability Access Reference Group in late 2007 was maintained.
- 1.22 The Committee's inquiry has demonstrated that there is widespread support for the Premises Standards. Although most submissions sought some changes to the Premises Standards, there is also a clear desire to see the Premises Standards finalised as soon as possible. Only a handful of submissions recommended not introducing the Premises Standards as currently drafted, if changes were not made.
- 1.23 With regard to the terms of reference, most submissions focused on the appropriateness and effectiveness of the proposed Premises Standards in achieving their objects. Few submissions considered the interaction between the Premises Standards and existing regulatory schemes operating in state and territory jurisdictions, although many commented on the proposed Model Process to Administer Building Access for People with a Disability. Only a small number of submissions directly considered whether the Premises Standards would have an unjustifiable impact on any particular sector or group within a sector, although this was sometimes addressed indirectly through other comments or arguments.
- 1.24 This report reflects the issues raised in evidence to this inquiry. Chapter 2 provides an overview of the Standards, including the object and structure of the Premises Standards. Chapter 3 considers the scope of the Premises Standards and discusses who and what are excluded from the application of the Premises Standards. Chapter 4 discusses the concessions and

exemptions included in the Premises Standards. Chapter 5 considers the specific provisions of the Standards which were the focus of the majority of comment. Chapter 6 considers the substantive matters which have *not* been included in the Premises Standards. Finally, Chapter 7 discusses transitional arrangements, the review and the Protocol. The Committee also provides some concluding remarks in Chapter 7.

Tabled documents

1.25 In addition to the draft Premises Standards, a number of other documents important to the Committee's inquiry were tabled by the Attorney-General on 2 December 2008. These include:

- the Premises Standards Guidelines;
- a summary of main Australian Standards referenced in the Access Code;
- the Protocol;¹⁰
- the amendment to the Transport Standards;¹¹
- the Regulation Impact Statement and appendices; and
- three draft Australian Standards – AS 1428.1, AS128.4.1 and AS2890.6.¹²

1.26 The Premises Standards provide key technical detail by reference to certain Australian Standards. The Committee is concerned that relevant draft Australian Standards were not publicly available at the beginning of this inquiry. This made it difficult for people to comment on the operation and effect of the Premises Standards in their entirety. The Committee was eventually able to negotiate the release of relevant draft Australian Standards which enabled people to more fully contribute to the inquiry. However, the Committee would like to point out its dissatisfaction with the current arrangements which require people to pay approximately \$100 to a private company to access an Australian Standard when that standard forms the basis of certain technical requirements in Australian Government legislation.

10 Full title: A Model Process to Administer Building Access for People with a Disability.

11 *Disability Standards for Accessible Public Transport Amendment 2009*.

12 These draft Australian Standards were accepted as exhibits to the Committee's inquiry on 12 February 2009.

Transport and Education Standards

- 1.27 The Transport Standards were made under section 31 of the *Disability Discrimination Act 1992* and took effect in October 2002.¹³ Similar to the Premises Standards, the Transport Standards seek to provide certainty to transport operators and providers about their obligations under the Disability Discrimination Act by establishing minimum accessibility requirements to be met by public transport operators and providers.
- 1.28 Given the similar nature of the Transport Standards, they were mentioned and discussed throughout the Committee's inquiry, particularly in relation to the review process. The Transport Standards are currently under review and provide a valuable basis for comparison. This is discussed in more detail in Chapter 7. In addition, certain premises-related provisions of the Transport Standards would be moved from the Transport Standards to the Premises Standards.¹⁴ This is discussed in more detail in Chapter 5.
- 1.29 Disability Standards for Education were also made under the standards power of the Disability Discrimination Act.¹⁵ The Education Standards clarify the obligations of education and training service providers, and the rights of people with a disability, under the Disability Discrimination Act.¹⁶ Standards for Employment were drafted between 1994 and 1998 but were not finalised.¹⁷

13 *Disability Standards for Accessible Public Transport 2002*.

14 See paragraph 1.23 above: Disability Standards for Accessible Public Transport Amendment 2009.

15 *Disability Standards for Education 2005*.

16 See Attorney-General's website for more information:
<www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_DisabilityStandardsforEducation>.

17 See Australian Human Rights Commission website for more information:
<www.hreoc.gov.au/disability_rights/standards/Employment_draft/employment_draft.html>.