

Overview of the Standards

2.1 The Premises Standards are intended to provide certainty to building certifiers, designers, builders, owners and managers, as well as to people with a disability that new and upgraded buildings provide non-discriminatory access. This chapter provides a broad overview of how the Premises Standards will operate. A flowchart and diagram are included as Appendix D and E which provide a visual explanation of the context that the Premises Standards operate in, and the structure of the Standards.

Scope, objects and structure

2.2 The purpose of the Premises Standards is:

- (a) To ensure that reasonably achievable, equitable and cost effective access to buildings, and facilities and services within buildings, is provided for people with disabilities; and
- (b) To give certainty to building certifiers, building developers and building managers that, if access to buildings is provided in accordance with the Premises Standards, to the extent covered by the Standards, it will not be unlawful under the *Disability Discrimination Act 1992*.¹

2.3 Compliance with the Disability Discrimination Act is to be achieved by prescribing performance requirements for new buildings and new building work in existing buildings. Performance requirements are mandatory and can be satisfied by complying with the deemed-to-satisfy

¹ Section 1.3, Disability (Access to Premises – Buildings) Standards 2009, hereafter ‘Premises Standards’.

provisions which provide detailed technical specifications. An approval authority may still issue an approval if it differs in whole or in part from deemed-to-satisfy provisions described in the Building Code if it can be demonstrated that the design complies with the relevant performance requirement. This is known as an alternative solution.

- 2.4 As noted above, the Premises Standards would apply to new buildings and new work, such as a renovations or extensions, on existing buildings. There is no automatic trigger for upgrade of existing buildings; the Premises Standards would apply to existing buildings only when an application for building approval for construction of new work is submitted.
- 2.5 The Premises Standards are principally limited in scope by the access provisions covered by the current Building Code. The Building Code contains technical provisions for the design and construction of buildings. In general, it does not cover fit-out issues such as the height of reception desks, and features such as public footpaths, parks and road crossings.² As it is intended that the Premises Standards will be implemented by inserting the Access Code into the Building Code, there are practical limitations to what the Premises Standards can prescribe. The Premises Standards would only apply to certain categories of buildings and not to all buildings covered by the Building Code.³ Discussion relating to the scope of the Premises Standards can be found in Chapter 3 of this report.
- 2.6 The Premises Standards contain a number of exemptions, concessions and exceptions. Arguably one of the most significant is the unjustifiable hardship exception which would be available to building certifiers, developers and managers where strict compliance with the Premises Standards would impose an unreasonable burden.⁴ The Premises Standards also contain an exemption for the upper storeys of small buildings and concessions for lessees, and certain lifts and toilets in existing buildings.⁵ Discussion relating to the exemptions, exceptions and concessions can be found in Chapter 4 of this report.
- 2.7 The Premises Standards require building certifiers, building developers, building managers to ensure compliance with the Standards, to the extent

2 The scope of the Disability Discrimination Act, including its definition of 'premises' in section 4 and the reference to 'use' in section 23, is considerably broader than the scope of the Premises Standards.

3 See 'Buildings to which Standards apply': subsection 2.1, Premises Standards.

4 Subsection 4.1, Premises Standards.

5 Subsections 4.3, 4.4 and 4.5 Premises Standards respectively.

that they have responsibility for, or control over, the building approval process for a building.⁶

- 2.8 The Premises Standards includes the Access Code which is Schedule 1 to the Premises Standards. The Access Code contains the performance requirements and technical provisions and it is designed so that its provisions can be incorporated directly into the Building Code to replace the existing access provisions. The Building Code is produced and maintained by the Australian Building Codes Board on behalf of the Australian Government and State and Territory Governments. The Building Code provides a uniform approach to technical building requirements for each State and Territory. In order to achieve a nationally consistent approach, the Building Code is relied on by building regulations in all States and Territories.
- 2.9 Broadly speaking, the Access Code of the Premises Standards contains the technical requirements for access to premises. This includes adoption of the 90th percentile circulation space dimensions for certain building features such as accessways at the location of a turn greater than 60 degrees, accessible toilets and lifts, and doorways.⁷ The Premises Standards provide accessibility requirements for:
- access and egress;
 - accessible car parking;
 - Signage;
 - hearing augmentation;
 - tactile indicators;
 - wheelchair seating spaces in Class 9b assembly buildings;
 - ramps;
 - glazing on an access way;
 - Braille and tactile signs;
 - accessible water entry/exit for swimming pools;
 - lifts; and

6 Subsection 2.2(1), Premises Standards.

7 References to the 80th and 90th percentiles relate to research conducted in 1983 by John Bails for the Australian Uniform Building Regulations Co-ordinating Council. The 80th percentile dimensions refer to the dimensions of building features required to allow adequate manoeuvring of 80 per cent of wheelchairs. See Chapter 5 for further discussion of the 80th and 90th percentile.

- sanitary facilities.
- 2.10 Finally, the Premises Standards include requirements for access to certain transport-related premises. The Australian Government proposes to amend the Transport Standards to reflect these changes. Further discussion on this issue and the key issues listed above can be found in Chapter 5 of this report.
- 2.11 Submitters identified some notable gaps in the Premises Standards where provision of accessibility requirements has not been included. These gaps include an absence of deemed-to-satisfy provisions for emergency egress, wayfinding and multiple chemical sensitivity. Further discussion on these issues can be found in Chapter 6 of this report.
- 2.12 Enforcement of the Premises Standards would occur primarily through the building approvals process in the states and territories. The complaints process of the Disability Discrimination Act would continue to be available where a building has not complied with the Premises Standards.

Relationship with State and Territory law

- 2.13 A number of State and Territory laws intersect with the access to premises requirements of the Disability Discrimination Act. These include:
- the Building Code of Australia and the building control legislation which implements it in each jurisdiction
 - the provisions of State and Territory anti-discrimination legislation in relation to access to premises, and
 - other laws regulating buildings and modifications to buildings, such as planning legislation, heritage protection legislation and occupational health and safety legislation.

Effect of Compliance with the Premises Standards

- 2.14 Compliance with the requirements of the Premises Standards would provide certainty to building developers, owners and managers that they

would not be subject to a successful discrimination complaint in relation to the matters covered by the Premises Standards.⁸

- 2.15 Complaints under the general provisions of the Disability Discrimination Act would still be possible with respect to matters not covered by the Premises Standards. The general provisions of the Disability Discrimination Act would continue to apply to, for instance, furniture and fit out of buildings, and other aspects of buildings, such as discriminatory behaviour of building management.⁹ Complaints in relation to existing buildings not undergoing new work would also continue to be subject to the Disability Discrimination Act.

Regulation Impact Statement

- 2.16 The object and purpose of the Premises Standards is to provide equitable access to buildings for people with a disability and to provide certainty to building owners that they comply with their obligations under the Disability Discrimination Act. Although the obligation to provide equitable access has existed since the introduction of the Disability Discrimination Act in 1992, compliance with these obligations has been minimal. Given the low levels of current compliance, it is clear that the introduction of the Premises Standards would have cost implications for new buildings and existing buildings going through a significant upgrade. In recognition of these cost implications, the Premises Standards provide a number of concessions, exemptions and exceptions.¹⁰ Where a building is not eligible for a concession, exemption or exception, the cost of compliance with the Premises Standards would mean, in general, that buildings or renovations would be more expensive.
- 2.17 The Regulation Impact Statement (RIS) provides an assessment of the expected costs and benefits of the Premises Standards. The RIS notes that:

8 Section 34 of the Disability Discrimination Act provides that if a person acts in compliance with a disability standard the unlawful discrimination provisions of the Disability Discrimination Act do not apply.

9 Disability (Access to Premises – Buildings) Standards Guidelines 2009, p. 4. The Guidelines are *Exhibit 3* to the Committee’s inquiry.

10 These are discussed in Chapter 4 of this report.

Both the anticipated benefits and the expected costs associated with the proposed Premises Standards are expected to be substantial.¹¹

2.18 With respect to costs, compliance with the Premises Standards varies depending on the accessibility requirement to be complied with and the type of building, in particular whether the building is new or existing. The RIS estimates that for new buildings, the major individual cost items required for compliance with the Premises Standards relate to:

- the installation of additional or improved lifts and ramps;
- more accessible entrances;
- additional space requirements in several contexts (e.g. passing and turning space in corridors; and
- additional or modified sanitary facilities.¹²

2.19 However, the cost of compliance as a proportion of the overall building costs is, in general, low for new buildings. The RIS estimates that the proportionate cost increases were:

- less than 1 per cent in 8 case studies;
- between 1 per cent and 3 per cent in 8 case studies;
- between 3 per cent and 5 per cent in 4 case studies; and
- more than 5 per cent in 1 case study.¹³

2.20 The RIS estimates that the cost of compliance as a proportion of the overall building costs would be higher for existing buildings. The RIS notes that this is unsurprising and consistent with findings in other countries that, in general, 'it is less expensive to undertake construction work on a new building than it is to retrofit an existing building.'¹⁴ The RIS estimates that the proportionate cost increases for existing buildings were:

- less than 2 per cent in eight case studies;
- between 2 per cent and 5 per cent in 5 case studies;
- between 5 per cent and 10 per cent in 5 case studies;
- between 10 per cent and 20 per cent in four case studies; and
- more than 20 per cent in two case studies.¹⁵

11 *Regulation Impact Statement: Proposal to Formulate Disability (Access to Premises – Buildings) Standards and Amend the Access Provisions of the Building Code of Australia (RIS2008-02)*, October 2008, p. 4. Hereafter 'Regulation Impact Statement 2008'. The Regulation Impact Statement 2008 is also *Exhibit 4* to the Committee's inquiry.

12 Regulation Impact Statement 2008, see note 11 above, p. 59.

13 Regulation Impact Statement 2008, see note 11 above, p. 60.

14 Regulation Impact Statement 2008, see note 11 above, p. 62.

15 Regulation Impact Statement 2008, see note 11 above, p. 60.

2.21 In contrast, it is difficult to calculate a dollar figure that adequately reflects the *benefits* of the Premises Standards as many of the benefits are unquantifiable.¹⁶ The RIS acknowledges this limitation and points out that the unquantifiable benefits are not included in this analysis. These benefits include:

The expected substantial reduction in the extent of the social exclusion currently experienced by people with a disability because of barriers they face in accessing premises, and more positively, the substantially increased capacity for participation in society of people with a disability.¹⁷

2.22 Two submissions raised concerns with both the methodology used in the RIS to calculate the costs of complying with the Premises Standards and the cost of compliance itself.¹⁸ The submission from the New South Wales Government suggests that:

It would appear that the costs of the proposed Premises Standards have been significantly understated and the benefits overstated.¹⁹

2.23 The submission from the New South Wales Government goes on to identify the areas where it considers the methodology of the RIS to be flawed.²⁰

2.24 In contrast, the submission from the Australian Human Rights Commission argues that the cost-benefit analysis provided by the RIS should be given appropriate consideration but should not be the deciding factor:

The Commission believes that the RIS process has an important, but limited, part to play in determining if the proposed Premises Standards are suitable for adoption. That is, in assessing whether the Premises Standards are the most effective way of meeting existing responsibilities under the DDA and ensuring there is no disproportionate sectoral imbalance in their application.²¹

2.25 Both the RIS and the submission from the Australian Human Rights Commission point out that the Premises Standards should be considered in a broader context. The RIS notes that the general shift towards greater

16 Regulation Impact Statement 2008, see note 11 above, p. 28.

17 Regulation Impact Statement 2008, see note 11 above, p. 4. See also the discussion at section 10.2 'Benefit Summary' which lists a range of other unquantifiable benefits.

18 See for instance the evidence from the Property Council of Australia, *Transcript of Evidence*, 25 March 2009, p. 59; New South Wales Government, *Submission 141*, p. 9.

19 New South Wales Government, *Submission 141, Appendix F*, p. 58.

20 New South Wales Government, *Submission 141, Appendix F*, pp. 58–59.

21 Australian Human Rights Commission, *Submission 57*, p. 17.

accessibility for everyone in the community and the ‘substantial policy linkages that exist between the proposed Premises Standards’ and other regulatory changes, such as the Transport Standards and the Education Standards are further evidence of this change.²² The Australian Human Rights Commission notes the commitment given by the Australian Government in both domestic and international law to provide non-discriminatory access.²³

Committee comment

- 2.26 The Committee recognises that the cost of complying with the Premises Standards is an important factor to consider, particularly in the current economic climate. It would also seem that compromises regarding cost are already reflected in the Premises Standards. The Committee notes that the Premises Standards include a number of exceptions, exemptions and concessions to assist in reducing costs. The Committee further notes that over a thirty year period, the benefits of the Premises Standards are expected to be far greater than the costs.²⁴
- 2.27 While the costs of the Premises Standards should be given due consideration, so too should the benefits. It is important to keep in mind that the RIS could only include tangible benefits in its calculations. The Committee appreciates the difficulty of giving a dollar value to dignity, social participation and other intangible benefits.
- 2.28 The Committee acknowledges that assessing the costs and benefits of the Premises Standards is a difficult exercise and considers that the RIS has provided a sound assessment. The Committee notes that any calculation of the costs, and particularly the benefits, of an instrument like the Premises Standards will involve rough approximation.
- 2.29 The Committee is aware that some of its recommendations may result in an increase in cost. The Committee notes that further consideration in the RIS costings could be given to the cost reduction which would result from

22 See Regulation Impact Statement 2008, see note 11 above, p. 4.

23 This commitment is expressed in the *Disability Discrimination Act 1992* (Cth) and Australia’s ratification of the United Nations Convention on the Rights of Persons with Disabilities.

24 Regulation Impact Statement 2008, see note 11 above, p. 5, The cost benefit analysis in the Regulation Impact Statement 2008 estimates that the proposal will cost society \$6.9 billion over 30 years and generate \$7.3 billion of benefit to society over the same period. These estimates use a seven per cent discount rate recommended by the Department of Finance and Deregulation for estimating the impact of regulations.

the use of alternative solutions and good design, as identified by the Australian Human Rights Commission.²⁵

25 Australian Human Rights Commission, *Submission 57*, p. 23–24.

