

Specific provisions of the Premises Standards

- 5.1 The Premises Standards would require a broad range of access features to be incorporated in buildings. Submitters to the inquiry identified possible issues with a number of provisions in the Premises Standards and also provisions of the Australian Standards which are referenced by the Premises Standards for many technical details.
- 5.2 This chapter considers the most commonly raised issues with the substantive requirements of the Standards. These include issues relating to the objects of the Premises Standards, the appropriate dimensions for building features, sanitary facilities, lifts, requirements for Class 3 buildings, accessible water entry for swimming pools, hearing augmentation, wheelchair seating in Class 9b assembly buildings, signage, car parking, and requirements for public transport buildings.

Additional technical matters

- 5.3 The Committee received a number of very detailed submissions on the technical details of the Premises Standards, particularly in relation to provisions of the revised Australian Standards. These issues included matters such as the design of circulation spaces, ramp gradients, lift design, and a variety of drafting issues with the Australian Standards. The Committee does not have the expertise to consider these matters fully. However, these issues should be considered before the Premises Standards are finalised. The Committee encourages the Government to refer these issues to an appropriate body for consideration as soon as possible. This should not be allowed to delay the introduction of the Premises Standards.

Recommendation 11

- 5.4 **The Committee recommends that technical matters raised by submissions to this inquiry which relate to Australian Standards be referred to Standards Australia for urgent consideration.**

Objects of the Premises Standards

- 5.5 The objects of the Premises Standards are:
- (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 these Standards, the provision of access, to the extent covered by these Standards, will not be unlawful under the Act.¹
- 5.6 The objects seek to balance the rights of people with a disability to access to premises against the cost of providing access imposed on building owners.
- 5.7 A number of submitters argued that the objects of the Standards should include a reference to dignity.² Ms Joe Manton from the Victorian Access Consultants Network told the Committee that:
- Dignity is fundamental to all people in using buildings, facilities and services. The [Disability Discrimination Act] is based on the principles of equity and dignity. However, the access to premises standards do not reflect this.³
- 5.8 There are no references to dignity in the current draft of the Premises Standard or the Access Code. However, the 2004 draft Access Code provided that 'safe, equitable and dignified access' was an objective of the

1 Section 1.3, Disability (Access to Premises - Buildings) Standards 2009, hereafter 'Premises Standards'.

2 Blythe-Sanderson Group, *Submission 47*, p. 3; the Cairns Community Legal Centre submitted that this should be part of Performance Requirement DP1: *Submission 93*, p. 14.

3 Ms Joe Manton, Victorian Access Consultants Network, *Transcript of Evidence*, 30 March 2009, p. 80.

Code.⁴ This objective is currently contained in Objective D01 of the Building Code, and would not be removed as a consequence of the adoption of the Access Code.⁵

- 5.9 While dignity and dignified access are not concepts which appear explicitly in the Disability Discrimination Act, all anti-discrimination legislation could be said to protect dignity. As Brennan J remarked in *Waters v Public Transport Corporation*:

a measure of the civilization of a society is the extent to which it provides for the needs of the disabled (and of other minorities) and protects them from adverse and unjust discrimination which offends their human dignity.⁶

- 5.10 A reference to dignity would also be consistent with the objects of the United Nations Convention on the Rights of Persons with Disabilities.⁷ Article 1 of the Convention describes the purpose of the Convention as follows:

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, *and to promote respect for their inherent dignity.*⁸

- 5.11 Representatives of the Attorney-General's Department agreed that dignity of access had been an important motivating factor for the development of the Premises Standards.⁹

Committee comment

- 5.12 The Committee believes that including a reference to dignity in the objects of the Standards would provide useful guidance to readers of the Standard and would provide greater symbolic recognition of the importance of dignity of access. It is important for the implementation of

4 Clause D01, Premises Standards Draft Access Code for Buildings 2004. Hereafter 'Premises Standards 2004'.

5 Mr Kevin Newhouse, Australian Building Codes Board, *Transcript of Evidence*, 7 April 2009, p. 44.

6 *Waters v Public Transport Corporation* (1992) 173 CLR 349 at 372 per Brennan J.

7 *Convention on the Rights of Persons with Disabilities* opened for signature 30 March 2007 [2008] ATS 12 (entered into force 3 May 2008), Article 1. Australia ratified the Convention on 17 July 2008; it entered into force for Australia on 16 August 2008.

8 Article 1, United Nations Convention on the Rights of Persons with Disabilities (emphasis added).

9 Mr Stephen Fox, Commonwealth Attorney-General's Department, *Transcript of Evidence*, 26 February 2009, p. 5.

the Premises Standards that the objects explicitly articulate that dignity of access is a central principle informing its requirements. The Committee also notes the significance of promoting consistency with the objects of the United Nations Convention on the Rights of Persons with Disabilities.

Recommendation 12

- 5.13 The Committee recommends that the objects of the Premises Standards be amended to include a reference to dignified access for people with a disability.**

Dimensions of building features

- 5.14 Many submissions to the inquiry argued that the dimensions for passageways and other building features required by the Premises Standards are inadequate. Evidence focussed on whether it was more appropriate to adopt dimensions which would accommodate the 80th percentile or the 90th percentile wheelchair dimensions.
- 5.15 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. That research was aimed at determining the size of wheelchairs then in use. The 80th percentile refers to the occupied dimensions of 80 per cent of wheelchairs, while the 90th percentile refers to the occupied dimensions of 90 per cent of wheelchairs.¹⁰ Having determined these dimensions, Bails was able to determine the dimensions of various building features which would be required in order to allow wheelchairs to be manoeuvred. Thus, the 80th percentile dimensions refer to the dimensions of building features required to allow adequate manoeuvring of 80 per cent of wheelchairs.
- 5.16 The present accessibility provisions of the Building Code refer for technical details, including dimensions, to AS 1428.1 – 2001: *General Requirements for Access – New Building Work*. That Standard adopts the 80th percentile dimensions.¹¹ As noted by a number of submitters, the Australian Human Rights Commission’s current Advisory Note on Access

10 The 80th percentile dimensions are 740 mm wide and 1250 mm long, while the 90th percentile dimensions are 800 mm wide, and 1300 mm long: draft AS 1428.1 – 200X, p. 6.

11 Specification A1.3, Building Code of Australia.

to Premises generally refers to AS 1428.2 – 1992: *Enhanced and Additional Requirements – Buildings and Facilities*, which adopts the 90th percentile dimensions. The 2004 draft Premises Standards also adopted the 90th percentile dimensions.¹² Evidence provided to this inquiry indicated that neither the Building Access Policy Committee nor the Disability Access Reference Group was able to reach final agreement on adoption of the 90th percentile dimensions.¹³

5.17 The Premises Standards would not fully adopt the 90th percentile dimensions. Areas where 90th percentile dimensions would be required are:

- on an accessway, at the location of a turn greater than 60 degrees;
- at accessible toilets;
- at doorways, including door width and circulation space;¹⁴ and
- in lifts.

5.18 However, in all buildings except for public transport buildings, passageways would only be required to meet the 80th percentile dimensions (1000 mm) rather than the 90th percentile dimensions (1200 mm).¹⁵ In addition, concessions are provided for existing buildings in respect of toilets and lifts which are compliant with the 80th percentile dimensions (as discussed in Chapter 4).¹⁶

5.19 Submissions from the property sector expressed concern at the potential cost of implementing 90th percentile dimensions, particularly in existing buildings. The Master Builders Australia submitted that introducing 90th percentile dimensions would significantly increase the cost and difficulty of construction in existing buildings, potentially including changes to the structural elements of a building.¹⁷

12 *Regulation Impact Statement: Proposal to Formulate Disability (Access to Premises – Building) Standards and Amend the Access Provisions of the Building Code of Australia*, 2008, p. 24. Hereafter ‘Regulation Impact Statement 2008’.

13 Master Builders Australia, *Submission 50*, p. 13; Property Council of Australia, *Submission 84*, p. 6.

14 Draft AS 1428.1 – 200X, p. 5.

15 Draft AS 1428.1 – 200X: paragraph 7.3; Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 35. Accessways in public transport buildings are required to have a minimum width of 1200 mm: subclause H2.2(3), Premises Standards Schedule 1 Access Code for Buildings (hereafter ‘Access Code’).

16 See sections 4.3 and 4.4, Premises Standards.

17 Master Builders Australia, *Submission 50*, p. 13.

- 5.20 Master Builders Australia submitted that the 80th percentile dimensions should be retained instead.¹⁸ The Property Council of Australia agreed, and submitted that the 80th percentile dimensions should be retained until empirical evidence demonstrated the need for larger dimensions.¹⁹
- 5.21 However, the Property Council told the Committee that their reservations with the provisions of the Premises Standards related primarily to existing buildings, and that '[f]or new premises, our view is that most of [the costs] can be worked through in the design process.'²⁰
- 5.22 In relation to new buildings, the primary costs of 90th percentile dimensions flow from loss of net lettable area arising from the need to dedicate space to larger sanitary facilities, circulation spaces and other building features.²¹ The RIS notes that losses of net lettable area from increased dimensions are less in new buildings than in existing buildings because:
- changes can more easily and efficiently be accommodated where an entirely new design is being undertaken than where alterations to an existing building are proposed.²²
- 5.23 The 2004 RIS estimated that losses of net lettable area from requirements such as additional sanitary facilities and 90th percentile dimensions would be 4 per cent for existing buildings and 1.7 per cent for new buildings.²³ Unfortunately, the 2008 RIS does not appear to provide a new estimate of loss of net lettable area for its revised provisions in relation to new buildings. However, the combined effect of the modifications such as concessions for existing lifts and toilets, reduction in the numbers of toilets required, and 80th percentile passageways in the 2008 draft led to a reduction in the loss of net lettable space for existing buildings to two per cent, a 50 per cent saving.²⁴
- 5.24 Master Builders also argued that 90th percentile dimensions were more generous than building requirements in other countries.²⁵ This assertion was contested by evidence from other submitters to the inquiry. The NSW
-

18 Master Builders Australia, *Submission 50*, p. 14; see also Australian Hotels Association, *Submission 53*, p. 4.

19 Property Council of Australia, *Submission 84*, p. 6.

20 Mr Peter Verwer, Property Council of Australia, *Transcript of Evidence*, 25 March 2009, p. 60.

21 Regulation Impact Statement 2008, p. 73.

22 Regulation Impact Statement 2008, p. 73.

23 Regulation Impact Statement 2008, pp. 73–74.

24 Regulation Impact Statement 2008, p. 74.

25 Master Builders Australia, *Submission 50*, p. 14; see also Australian Hotels Association, *Submission 53*, p. 3.

Disability Discrimination Legal Centre submitted that ‘Sweden, Ireland, Singapore, Mexico and some particular areas of Canada have moved, or are moving, to adopting the 90th percentile.’²⁶ Mr Mark Relf indicated that 90th percentile dimensions were being considered for incorporation into a forthcoming International Standards Organisation standard on accessibility.²⁷

- 5.25 In contrast to the submissions of the property sector, many submissions argued that 90th percentile dimensions should be fully adopted throughout the Premises Standards, particularly to provide for 1200 mm passageways.²⁸ Dr Max Murray submitted that:

Since release of the Disability Discrimination Act, it has been the expectation of Australian society that access to buildings would be provided for 90% of wheelchair users. Because such access is also required by most sectors of society, it is unlikely that informed members of the community will accept such discrimination.²⁹

- 5.26 A number of potential problems were identified with the requirement for 1000 mm wide passageways. These included difficulties for people passing 90th percentile chairs in passageways and difficulties in accessing accessible doors at the end of such passageways.³⁰ Submitters also suggested that 1200 mm passageways would better accommodate the needs of blind or vision-impaired people with guide dogs, or who are accompanied by a sighted escort,³¹ as well as two-way traffic.³² In addition, the Australasian Railway Association argued that the adoption of both 80th and 90th percentile dimensions in the Standards was potentially confusing.³³

26 NSW Disability Discrimination Legal Centre, *Submission 51a*, p. 2.

27 Mr Mark Relf, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 22; The Australian Human Rights Commission also indicated that they believed that the move to the 90th percentile dimensions was in line with international trends: Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 25 March 2009, p. 34.

28 Dr Max Murray, *Submission 39*, p. 21; Mr Robert Knott, *Submission 25*, p. 1; Spinal Injuries Association (Qld), *Submission 122*, p. 9; Eric Martin and Associates, *Submission 35*, p. 1; Australian Institute of Architects, *Submission 135*, p. 2; Disability Council of NSW, *Submission 58*, p. 32; Mr John Moxon, *Submission 37*, p. 1; City of Melbourne, *Submission 64*, p. 1; People with Disabilities ACT, *Submission 72*, p. 7.

29 Dr Max Murray, *Submission 39*, p. 20.

30 Dr Max Murray, *Submission 39*, pp. 20–22.

31 Health Science Planning Consultancy, *Submission 92*, p. 7.

32 Mr John Moxon, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 19.

33 Australasian Railway Association, *Submission 116*, p. 8.

5.27 The Association submitted that there needs to be 'clear statement of the required performance criteria and the basis for trying to achieve it'.³⁴

5.28 A number of submitters argued that wheelchair dimensions have increased since Bails' research was conducted because of increasing height, obesity and greater use of larger wheelchairs and electric scooters.³⁵ Ms Francesca Davenport told the Committee that:

The data from [Hunarch consulting research] shows that what used to be the A80 dimension in 1983 is now like A73, because there are bigger wheelchairs. So the percentage of that size wheelchair is now decreasing; there are more bigger ones.³⁶

5.29 However, Ron Lochert submitted that methodological issues with Bails' research meant that the 80th percentile dimensions 'actually allowed for almost all people'. He therefore submitted that it was not necessary to increase dimensions to the 90th percentile.³⁷ Mr Graham Lockerbie submitted that it would be more cost effective to require wheelchair suppliers to design wheelchairs that could provide 90th percentile chair capabilities within 80th percentile dimensions.³⁸ Mr Greg Killeen suggested that a labelling system for wheelchairs which indicated their occupied dimensions might be an effective strategy to provide choice to wheelchair users.³⁹

5.30 The Australian Human Rights Commission told the Committee that regardless of whether the 80th percentile dimensions were correct, provision of 90th percentile dimensions was an important advance. Commissioner Innes told the Committee that:

To say that there is a low number of people who use mobility devices who need the 90th percentile is, in my view, an unacceptable argument as to why we should not progress to it ...Moving to the 90th percentile provides safety and amenity for people using mobility devices, not just the larger mobility devices but also the smaller ones. But the other thing that it does is this: it

34 Australasian Railway Association, *Submission 116*, p. 8.

35 Dr Max Murray, *Submission 39*, p. 21; Association of Consultants in Access, *Submission 107*, p. 3; Mr Robert Knott, *Submission 25*, p. 1; Eric Martin and Associates, *Submission 35*, p. 1; Mrs Francesca Davenport, Health Science Planning Consultants, *Transcript of Evidence*, 30 March 2009, p. 24.

36 Mrs Francesca Davenport, Health Science Planning Consultants, *Transcript of Evidence*, 30 March 2009, p. 24.

37 Mr Ron Lochert, *Submission 100*, p. 1.

38 Mr Graham Lockerbie, *Submission 8*, p. 6.

39 Mr Greg Killeen, Spinal Cord Injuries Australia, *Transcript of Evidence*, 25 March 2009, p. 43.

provides amenity for a whole lot of other users of the building by allowing for larger space requirements. In fact, building designers know that, because most buildings are built bigger than the building law requires them to be because they know users of the building want that amenity.⁴⁰

- 5.31 It would appear that no new research on wheelchair dimensions has been completed since Bails' 1983 study, 26 years ago. A number of submitters to the inquiry noted that new research into wheelchair dimensions had been commissioned from Hunarch Consulting during the development of the Premises Standards, but had not been completed.⁴¹ The HMInfo Clearinghouse submitted that:

[I]t is critical that a program of ongoing research be commissioned and that the legislation once implemented be reviewed to reflect evidence-based outcomes based on sound research. This is critical, as the new legislation will effectively exclude some individuals with disabilities, who could previously have asked for reasonable accommodation based on an individual complaint.⁴²

- 5.32 Some submitters argued that there has been significant voluntary adoption by industry of 90th percentile dimensions, including 1200 mm passageways, since the release of the 2004 draft Premises Standards.⁴³ For example, Mr John Moxon told the Committee that:

Since 2004 architects, designers, developers, local councils and access advisers have... in my experience in general been using the 2004 draft expecting it to be implemented without delay...So in effect we have had five years of experience with the 2004 draft. As far as I can tell, this does not appear to have caused any noticeable negative effect to the building industry.⁴⁴

Committee comment

- 5.33 The dimension of passageways and other building features is crucial to building accessibility. However, a compromise must be sought between

40 Commissioner Graeme Innes, Australian Human Rights Commission, *Transcript of Evidence*, 25 March 2009, p. 34.

41 Mrs Francesca Davenport, Health Science Planning Consultants, *Transcript of Evidence*, 30 March 2009, p. 24; Mr Bob Appleton, Master Builders Australia, *Transcript of Evidence*, 19 March 2008, p. 29.

42 HMInfo Clearinghouse, *Submission 29*, p. 2.

43 Australian Association of Consultants in Access, *Submission 107*, p. 3; Mr Robert Knott, *Submission 25*, p. 1; Eric Martin and Associates, *Submission 35*, p. 1.

44 Mr John Moxon, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 17.

the cost of implementing such features and the benefits which might be derived from them. It is therefore very unfortunate that no new research has been completed on the dimensions required to accommodate wheelchair users in over a quarter of a century.

- 5.34 The provisions of the Premises Standards in relation to building dimensions are a considerable improvement on the existing provisions of the Building Code of Australia. On the limited data available, the Committee considers that the proposed provisions of the Premises Standards are a reasonable compromise in both new and existing buildings. Ninetieth percentile dimensions would be provided for the most important building features in both new and existing buildings, with the sole major exception of passageways.
- 5.35 In existing buildings, concessions for existing 80th percentile lifts, accessible toilets and small buildings, the unjustifiable hardship exemption, and the provision for a minimum standard of 1000 mm passageways would keep costs within reasonable limits while ensuring an acceptable standard of accessibility. Imposing any additional spatial dimensions would be likely to require very expensive or technically difficult modifications to the internal structures of buildings which are unlikely to be justified by the benefits they provide.
- 5.36 The Committee recognises that some submitters argued that full 90th percentile dimensions should be provided, including in particular 1200 mm passageways. However, there is no data available to indicate how many people are disadvantaged by the provision of 80th percentile (1000 mm) passageways.
- 5.37 Furthermore, provision of full 90th percentile dimensions is likely to be extremely expensive or structurally difficult in existing buildings. However, imposing 90th percentile dimensions on only new buildings is likely to introduce considerable complexity into the technical standards which support the Premises Standards. It would also upset the delicate compromise between the interests of the building and disabilities sectors which has been struck in the Premises Standards. It would be unfortunate if reopening the debate over 90th percentile dimensions were to jeopardise community support for the adoption of the Premises Standards.
- 5.38 Evidence to the Committee suggested that the majority of new buildings provide wider passageways voluntarily because of the increased amenity that they provide to all building users. Building developers should be encouraged to continue this trend.

- 5.39 Requirements for 90th percentile dimensions should be re-examined at the five year review of the Premises Standards. The review should examine whether these requirements have imposed any unexpected or unreasonable costs on the property sector, and should consider whether further improvement is necessary to provide access to people with a disability.

Recommendation 13

- 5.40 **The Committee recommends that the Australian Government provide funding for new research, to be completed within 12 months of the tabling of this report, into wheelchair sizes and the dimensions of building features necessary to accommodate them. The results and the issue of 90th percentile dimensions should be returned to this Committee for reconsideration at that time.**

Sanitary facilities

- 5.41 In Class 5, 6, 7, 8 and 9 buildings, the Premises Standards require a unisex accessible toilet on every floor containing a bank of toilets, and where a storey has more than one bank of toilets, a unisex accessible toilet at not less than 50 per cent of those banks.⁴⁵ This is a substantial improvement on the current Building Code provisions, which require one accessible toilet for each 100 closet pans and urinals, and do not require each storey with a bank of toilets to have an accessible facility.⁴⁶ However, it is less generous than the 2004 proposal, which would have required an accessible toilet at every bank of toilets containing male and female facilities.⁴⁷ The Premises Standards would also introduce 90th percentile dimensions for accessible toilets, subject to a concession for existing 80th percentile lifts and toilets.

45 Table F2.4(a), Access Code,

46 Table F2.4, Building Code of Australia.

47 Table F2.4, Premises Standards 2004.

5.42 The Government of South Australia submitted that these requirements were too onerous. They submitted that:

The proposed change in requirements for accessible toilet facilities is not in proportion to actual wheel chair number users. This has the potential of imposing unreasonably high costs to building owners/developers and reduces functional space in providing accessible facilities. It also reduces the nett lettable areas, therefore reducing the building owner's returns on investment.⁴⁸

5.43 They recommended that the current Building Code requirements should be reinstated, but with new provisions for school buildings.⁴⁹ Master Builders Australia submitted that there should be an exemption in relation to toilet numbers and locations in existing buildings.⁵⁰

5.44 By contrast, many submitters to the inquiry were concerned at the fact that only 50 per cent of facilities on each floor would be required to be accessible. Some were concerned that this might mean that a person with a disability might need to travel a considerable distance to access a facility.⁵¹ Others questioned how this provision would operate where a storey was divided into multiple tenancies, and whether an accessible toilet might in some situations be restricted to the use of only one of the tenants.⁵² One submitter noted that the requirement might mean that where separate facilities are reserved for certain classes of persons (such as staff and patient), the 50 per cent requirement might mean that a person would be required to use the wrong facility – for example, a doctor might be required to use the patient toilet.⁵³ Finally, some submitters were

48 Government of South Australia, *Submission 33*, p. 3.

49 Government of South Australia, *Submission 33*, p. 4.

50 Master Builders Australia, *Submission 50*, p. 12.

51 Independent Living Centre Tasmania, *Submission 114*, p. 5; Action for More Independence and Dignity in Accommodation, *Submission 67*, p. 10; Australian Federation of Disability Organisations, *Submission 83*, p. 26; Welfare Rights Centre, *Submission 102*, p. 12; Mr Mark Relf, *Submission 90*, p. 22; Disability Alliance, *Submission 77*, p. 40; People with Disabilities ACT, *Submission 72*, p. 67; Cerebral Palsy League (Qld), *Submission 70*, p. 36; Mr Daniel Bedwell and Ms Rita Struthers, *Submission 121*, p. 11; Coffs Harbour City Council Access Advisory Committee, *Submission 36*, p. 2.

52 Independent Living Centre NSW, *Submission 87*, p. 8; Dr Max Murray, *Submission 39*, pp. 18-19; Independent Living Centre Tasmania, *Submission 114*, p. 5; Action for More Independence and Dignity in Accommodation, *Submission 67*, p. 10; Disability Council of NSW, *Submission 58*, p. 43; Australian Federation of Disability Organisations, *Submission 83*, p. 26; Mr Mark Relf, *Submission 90*, p. 22; Disability Alliance, *Submission 77*, p. 40; People with Disabilities ACT, *Submission 72*, p. 67; Cerebral Palsy League (Qld), *Submission 70*, p. 36.

53 Health Science Planning Consultants, *Submission 92*, p. 16.

concerned that in very large or busy venues, the requirement might not be sufficient to cope with demand.⁵⁴

- 5.45 To overcome these possible issues, many submitters suggested that an accessible facility should be provided at every bank of toilets.⁵⁵ The Spinal Injuries Association (Qld) submitted that:

Our members experience tells us [that the 50 per cent rule] would severely limit their ability to participate within their community. Let's be real – we are talking about going to the toilet. This is a basic health and hygiene issue. Currently in Queensland, we are finding that developers of the said classes of building are putting in accessible unisex toilets at each bank of toilets without undue hardship.⁵⁶

- 5.46 Other submitters suggested that a maximum distance requirement could be imposed. This might take the form of a rule that if a bank of toilets is separated from the nearest accessible toilet on the same storey by more than 50 metres, that it should be required to be accessible.⁵⁷ For example, the Disability Council of NSW submitted that:

Appreciating that building tenancy's are unknown at the point of building approval, Council believe consideration should be given to limiting the concession by requiring that unisex accessible toilet amenities be located within 50 metre of an inaccessible toilet block. In this way the concession is limited and people with a disability can be assured that a unisex accessible toilet amenity is not more than 50 metres from an inaccessible toilet amenity.⁵⁸

- 5.47 The Australian Human Rights Commission noted that such a rule would be consistent with the rule that in buildings with a total floor area of greater than 500 m² accessible entrances should not be more than

54 Australian Federation of Disability Organisations, *Submission 83*, p. 27.

55 Independent Living Centre NSW, *Submission 87*, p. 8; Action for More Independence and Dignity in Accommodation, *Submission 67*, p. 10; Australian Federation of Disability Organisations, *Submission 83*, pp. 8, 27; Mr Mark Relf, *Submission 90*, p. 22; Spinal Injuries Association, *Submission 122*, p. 7; Anti-Discrimination Commission Queensland, *Submission 86*, pp. 8-10; Disability Alliance, *Submission 77*, p. 40; Dr Max Murray, *Submission 39*, p. 19; People with Disabilities ACT, *Submission 72*, p. 67; Cerebral Palsy League (Qld), *Submission 70*, p. 36; Mr Daniel Bedwell and Ms Rita Struthers, *Submission 121*, p. 11; Coffs Harbour City Council Access Advisory Committee, *Submission 36*, p. 2.

56 Spinal Injuries Association, *Submission 122*, p. 7.

57 NSW Disability Discrimination Legal Centre, *Submission 51*, p. 15; Disability Council of NSW, *Submission 58*, p. 43; Welfare Rights Centre, *Submission 102*, p. 12; Australian Human Rights Commission, *Submission 57*, pp. 28-29.

58 Disability Council of NSW, *Submission 58*, p. 43.

50 metres apart.⁵⁹ The Commission explained that the rationale for this concession is that:

having to travel significant distances in order to find an accessible entrance to the building could cause fatigue resulting, in effect, in a barrier to access.⁶⁰

5.48 A third option was provided by the Independent Living Centre Tasmania, which suggested that a requirement could be imposed that:

an accessible unisex toilet should be provided each side of a security door or in each tenanted area unless there are common accessible toilets available for all tenants.⁶¹

5.49 In addition to these concerns, some submitters questioned the concession in Class 1b buildings that a common accessible toilet need not be provided where an accessible toilet was provided in association with an accessible room.⁶² Mr Robert Knott submitted that:

As written, a person who requires accessible facilities must enter a private room to access the toilet if that is where the accessible toilet(s) is/are provided. The person may not be the occupant of that room. All other persons may use a toilet, which is commonly available, if one is provided. This seems to discriminate against those who need accessible facilities.⁶³

5.50 Dr Max Murray's submission notes that this provision may not require *every* accessible bedroom to have an accessible toilet to trigger the concession in relation to common accessible toilets.⁶⁴

5.51 Ms Anne Fitzpatrick and Ms Pauline Fox submitted that the Standards should include a requirement for a 'Changing Place' in large buildings. They explained that Changing Places are

designed for use by people with complex and multiple disabilities who require the assistance of up to two carers...

[Changing Places] toilet facilities provide extended space to accommodate disabled people who often use large complex

59 Paragraph D3.2(2)(b), Access Code; Australian Human Rights Commission, *Submission 57*, pp. 28–29.

60 Australian Human Rights Commission, *Submission 57*, p. 29.

61 Independent Living Centre Tasmania, *Submission 114*, p. 5.

62 Spinal Injuries Association, *Submission 122*, p. 7; Mr Robert Knott, *Submission 25*, p. 6; Health Science Planning Consultants, *Submission 92*, p. 10.

63 Mr Robert Knott, *Submission 25*, p. 6.

64 Dr Max Murray, *Submission 39*, p. 19.

wheelchairs with elevated leg rests, a reclining facility and/or integral oxygen cylinders, and space to fit slings for use with a hoist. Within a [Changing Places] facility it is possible also for a wheelchair to be parked within the facility when, not in use without compromising the safe access and use of the facility's equipment.⁶⁵

- 5.52 They submitted that such a facility should be at least 3 metres wide and 4 metres long.⁶⁶ This is considerably larger than the size of accessible toilets required by draft AS1428.1.⁶⁷
- 5.53 Finally, many submitters noted practices of building managers which prevent accessible toilets from being used by people with a disability. The Committee heard that toilets are often locked to prevent public use or are used as storage areas.⁶⁸ The Australian Blindness Forum also noted the increasing use of electronic locking mechanisms on toilets which are not accessible to blind or vision-impaired people.⁶⁹

Committee comment

- 5.54 Access to suitable sanitary facilities within a reasonable distance is a crucial aspect of day to day life which most Australians take for granted. It would justifiably cause great consternation if it were a general practice for toilets to only be provided on one floor of an office building, for example. However, just such a situation is presently allowed in relation to accessible toilets by the Building Code of Australia.
- 5.55 The Committee therefore welcomes the requirement of the Access Code that accessible toilets should be provided on every storey of a multi-storey building that contains toilets. The Committee considers that these provisions are a considerable advance over the existing requirements of the Building Code and are worthy of support. The Committee notes concerns relating to construction costs, distance between facilities and access where there are multiple tenancies on a single storey. These issues should be considered by the five year review of the Standards to determine whether these concerns have been realised.

65 Ms Anne Fitzpatrick and Ms Pauline Fox, *Submission 12*, p. 2; requirements for Changing Places have been adopted in *British Standard 8300:2009 Design of Buildings and their Approaches to Meet the Needs of Disabled People*: Ms Anne FitzPatrick, *Submission 12a*, p. 1.

66 Ms Anne Fitzpatrick and Ms Pauline Fox, *Submission 12*, p. 2.

67 Draft AS 1428.1 – 200X, Figure 45, p. 69.

68 Spinal Cord Injuries Australia, *Submission 74*, p. 7.

69 Australian Blindness Forum, *Submission 65*, p. 18; however, Ability Rights Victoria submitted that electronically controlled doors are desirable: *Submission 126*, pp. 2-3.

- 5.56 Discriminatory post-construction practices would be difficult to regulate through the Building Code. However, the Committee considers that they should continue to be open to complaints under the Disability Discrimination Act. Such discriminatory practices include:
- locking of accessible toilets;
 - inappropriate use of accessible toilets (such as for storage), and inadequate maintenance; and
 - barriers to access to toilets arising for multiple tenancies on a single storey.
- 5.57 The Committee notes that the provision relating to accessible toilets in Class 1b buildings in Table F2.4(a) may be open to misinterpretation. The Committee recommends that this provision be clarified to make it clear that *every* accessible room must have an accessible toilet before a concession is provided in relation to common accessible toilets.

Recommendation 14

- 5.58 **The Committee recommends that Table F2.4(a) be amended to make it clear that *every* accessible room in a Class 1b building must have an accessible toilet before a concession is provided in relation to common accessible toilets.**

Lift installations

- 5.59 Part E3 of the Access Code provides requirements for accessible lifts. The main areas of concern related to smaller lifts, particularly stairway platform lifts, which must be locked off and controlled by constant pressure devices. In addition, submitters stressed that the Australian Standards governing lifts were in urgent need of review. A wide range of technical issues were raised in these submissions. The Committee believes that these technical issues should be considered as soon as possible by the relevant Standards Australia committees.

5.60 A number of submitters strongly criticised the use of AS 1735.7 stairway lifts and argued that their use should be limited by the Access Code as far as possible.⁷⁰ Dr Max Murray submitted that:

These machines are grossly unsatisfactory pieces of equipment, they are extremely difficult to access, they are not always safe, they are never dignified, they are supposed to be keyed off when not in use (although management may chose to leave them switched on during opening hours) and they are grossly unreliable often failing mid-travel when occupied.⁷¹

5.61 Dr Murray recommended that stairway platform lifts not be allowed in new buildings, or extensions to existing buildings.⁷² The Spinal Injuries Association (Qld) submitted that they 'should be removed without further debate'.⁷³

5.62 Submitters noted that constant pressure controls, which are required for stairway platform lifts as well as some other kinds of lifts allowed by the Standards, are a particular problem because they are difficult for some people with a disability to operate.⁷⁴ The Victorian Disability Advisory Council submitted that such controls are 'difficult or impossible for people with impaired arm or hand function to use.'⁷⁵ The Australian Human Rights Commission therefore recommended:

That further independent expert advice be sought on the need for constant pressure devices on Part 7 lifts and any conflicts with safety requirements that might affect the independent operability of stairway platform lifts.⁷⁶

5.63 Dr Rhonda Galbally told the Committee that it is possible for unenclosed lifts to be controlled automatically, and that this is allowed in some other

70 Dr Max Murray, *Submission 39*, p. 31; Spinal Injuries Association (Qld), *Submission 122*, p. 9; Victorian Disability Advisory Council, *Submission 80*, p. 8; Mr Mark Relf, *Submission 90*, pp. 20–21; Mr Daniel Bedwell and Ms Rita Struthers, *Submission 121*, p. 11; People with Disabilities ACT, *Submission 72*, p. 21.

71 Dr Max Murray, *Submission 39*, p. 31; see also Spinal Injuries Association (Qld), *Submission 122*, p. 9.

72 Dr Max Murray, *Submission 39*, p. 18; People with Disabilities ACT, *Submission 72*, p. 21; Mr Mark Relf, *Submission 90*, pp. 20–21.

73 Spinal Injuries Association (Qld), *Submission 122*, p. 9.

74 Disability Council of NSW, *Submission 58*, p. 44; Victorian Disability Advisory Council, *Submission 80*, p. 8.

75 Victorian Disability Advisory Council, *Submission 80*, p. 8; see Coffs Harbour City Council Access Advisory Committee, *Submission 36*, p. 2; Mr Daniel Bedwell and Ms Rita Struthers, *Submission 121*, p. 11.

76 Australian Human Rights Commission, *Submission 57*, p. 26.

countries.⁷⁷ Further clarification is clearly needed as to whether these lifts can be safely operated automatically.

- 5.64 Submitters also noted that a number of types of lift allowed by the Standards (such as stairway platform lifts) may be, or are required to be, key lockable.⁷⁸ The result is that the lift may not be independently operated by a person needing to use the lift.⁷⁹ Other evidence indicated that during the development of the Standards it was decided that locking off requirements had to be maintained for safety reasons.⁸⁰ The Queenslanders with Disability Network submitted that:

Where installed, building management or a designated tenant must be on standby to immediately unlock the controls on request. A communication device that allows for a call for the controls to be unlocked must be located at each lift landing.⁸¹

- 5.65 A number of submitters argued that the necessity for lifts to be locked should be investigated as a matter of urgency to determine whether there are any alternative solutions which strike a better balance between safety and independent operation.⁸² The Australian Human Rights Commission recommended:

That further independent expert advice be sought on the practice of 'locking off' Part 7 lifts and that the Premises Standards and Guidelines be revised to clarify liability of managers and operators taking that action.⁸³

- 5.66 Others recommended that lift regulations should be amended to require guards or other equipment to protect children and prevent injuries if these kinds of lifts are used.⁸⁴

Committee comment

- 5.67 The Committee accepts that stairway platform lifts have significant issues relating to dignity, reliability, useability for people with a disability, and
-

77 Dr Rhonda Galbally, Victorian Disability Advisory Council, *Transcript of Evidence*, 30 March 2009, p. 64–65.

78 Queenslanders with Disability Network, *Submission 41*, p. 11.

79 Queenslanders with Disability Network, *Submission 41*, p. 11.

80 Australian Human Rights Commission, *Submission 57*, p. 26.

81 Queenslanders with Disability Network, *Submission 41*, p. 11; see also Australian Blindness Forum, *Submission 65*, p. 17.

82 Victorian Disability Advisory Council, *Submission 80*, p. 8.

83 Australian Human Rights Commission, *Submission 57*, p. 26.

84 HMinfo Clearinghouse, *Submission 29*, p. 3.

management practices (including locking off). The Committee therefore does not support the use of stairway platform lifts as a primary method for providing access to buildings. The Standards should make it clear these lifts should only be used where installation of another kind of lift is not practical in the circumstances or would result in unjustifiable hardship.

- 5.68 The Committee notes that constant pressure devices should not be a preferred control option for accessible lifts, because many people with a disability may find them difficult or impossible to operate. This is not consistent with the goal of the Standards to provide dignified and independent access to premises. The Committee considers it appropriate to seek expert advice prior to the finalisation of the Standards to determine whether safety considerations continue to make constant pressure devices necessary for lifts such as low-rise platform lifts and stairway platform lifts.
- 5.69 The Committee similarly considers that the practice of locking off lifts should be re-examined. Further investigation should be undertaken as a matter of urgency to determine whether the practice of locking off is still required for safety reasons. If the Premises Standards continue to allow the use of lifts controlled by constant pressure devices and which require locking off, these provisions should be re-examined at the time of the five year review to determine whether they continue to be necessary.

Recommendation 15

- 5.70 **The Committee recommends that:**
- **urgent technical advice be sought as to whether safe alternatives to locking off of lifts and constant pressure devices are available; and**
 - **the Premises Standards provide that stairway platform lifts should only be used in situations in which they are the only practical accessibility option.**

Class 3 buildings

- 5.71 The Access Code imposes a number of accessibility requirements on Class 3 buildings. The most common kinds of Class 3 buildings are hotels and motels.⁸⁵ The Access Code would require access to common areas of a Class 3 building: access must be provided from a front entrance to at least one floor containing sole occupancy units (SOUs),⁸⁶ to the entrance doorway of each SOU on a floor provided with an accessible ramp or lift, and to one of each type of common area provided for use by residents. The Access Code also requires that a certain ratio of SOUs should be accessible, and that where more than one accessible SOU is required, the accessible rooms must be representative of the range of rooms available at the hotel.⁸⁷
- 5.72 The requirements for accessible rooms contained in the Access Code are a refinement of the current requirements of the Building Code in relation to hotels.⁸⁸ In hotels with less than 100 rooms, these changes would impose at most one extra accessible room, and for hotels with between 100 and 600 rooms, at most two extra rooms would be required. Representatives of the Australian Building Codes Board told the Committee that these changes were the result of a review of the adequacy of the existing Building Code provisions during the development of the Standards:

[A]s part of the process of reviewing the provisions, [the Building Code room ratios] were looked at to see whether they were adequate. They were changed slightly and the change is more about the trigger point when you have to require an additional room, rather than a wholesale general increase. That proposal was put out for public comment and through that process we got the same sort of feedback that the Committee is now getting. Some people thought it was not enough. Some people thought it was too much. But, generally, the consensus through the [Building Access

85 However, the classification can extend to sleeping facilities in other types of buildings, including the residential parts of schools and detention centres, residential areas for staff in health-care buildings and accommodation for the aged, children, or people with a disability: Clause A4.1, Access Code.

86 The term 'sole occupancy units' refers to rooms, or a suite of rooms in a Class 3 building which include sleeping facilities: Clause A1.1, Access Code.

87 Table D3.1, Access Code.

88 See Table D3.1, Access Code and Table D3.2, Building Code of Australia.

Policy Committee] process was that we probably got the numbers about right.⁸⁹

- 5.73 Representatives of the tourism and accommodation industry argued that the room ratio required by the Premises Standards was too high and would have negative consequences for the hotel industry. Mr Evan Hall of the Tourism and Transport Forum told the Committee that:

the proposed increase in the room ratio or in fact the current room ratio that is in the Building Code... so far exceeds the demand for disabled access rooms as to be absolutely ludicrous...⁹⁰

- 5.74 However, when pressed, the Tourism and Transport Forum were not able to provide anything other than anecdotal evidence to the Committee to demonstrate the validity of this assertion. Other evidence to the Committee suggested that there may be other reasons for poor utilisation of accessible rooms in certain hotels. Dr Rhonda Galbally told the Committee that marketing is often an issue:

The hotels do not make their disability rooms known and they do not market to the ageing population, who also find those rooms extremely comfortable and accommodating.⁹¹

- 5.75 The Tourism and Transport Forum explained that counter staff in hotels often felt that it would be patronising to offer an accessible room to a person with a disability. The result is that accessible rooms are often not offered.⁹²

- 5.76 To support their concerns about room ratio, the Tourism and Transport Forum also told the Committee that accessible rooms were not popular amongst their general clientele:

The truth is people just do not want them. They feel uncomfortable going to the toilet in rooms that far exceed their sense of personal space and isolation. Generally speaking, they turn a five-star or a four-star room into a three-star room and that takes into account that there is none of the aesthetic appeal that people are paying for once you get past a three-star level. The

89 Mr Kevin Newhouse, Australian Building Codes Board, *Transcript of Evidence*, 7 April 2009, p. 34.

90 Mr Evan Hall, Tourism and Transport Forum, *Transcript of Evidence*, 30 March 2009, p. 3.

91 Dr Rhonda Galbally, Victorian Disability Advisory Council, *Transcript of Evidence*, 30 March 2009, p. 55; see also Mr John Moxon, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 24.

92 Mr Evan Hall, Tourism and Transport Forum, *Transcript of Evidence*, 30 March 2009, p. 8.

short and the tall of it is that they are not let unless the hotel is 100 per cent full.⁹³

- 5.77 The Australian Hotels Association told the Committee that they have found that it is possible to design accessible rooms in ways which are attractive to all potential users.⁹⁴ However, these are not always adopted:

[B]ecause we are seeing this as a compliance issue rather than as a commercial opportunity the room is not as attractive as it should be. It is quite often a room without a view.⁹⁵

- 5.78 Although the Tourism and Transport Forum did not offer any constructive solutions for these concerns, other witnesses to the inquiry argued that there are no fundamental reasons why an accessible room should be unattractive. Ms Francesca Davenport explained that, in her experience, the reason that accessible rooms are unattractive is that:

the fit-out is actually less than the regular rooms. It is the fault of the designers, which is why it is so unattractive. They have not applied good design. You can make a five star hotel with five star accessible rooms.⁹⁶

- 5.79 Similarly, other witnesses suggested that the tourism sector should regard accessible rooms as an economic opportunity rather than a detriment. For example, Dr Rhonda Galbally argued that lack of accessible accommodation has meant that Australia misses out on a considerable amount of tourism from older people and people with a disability.⁹⁷ Indeed, the Australian Hotels Association also told the Committee that they now take the view that 'you have got to sell [accessible rooms] as an opportunity and not an obligation'.⁹⁸

93 Mr Evan Hall, Tourism and Transport Forum, *Transcript of Evidence*, 30 March 2009, pp. 3–4; see also Mr Bill Healey, Australian Hotels Association, *Transcript of Evidence*, 25 March 2009, p. 79.

94 Mr Bill Healey, Australian Hotels Association, *Transcript of Evidence*, 25 March 2009, p. 79.

95 Mr Bill Healey, Australian Hotels Association, *Transcript of Evidence*, 25 March 2009, p. 81.

96 Mrs Francesca Davenport, Health Science Planning Consultants, *Transcript of Evidence*, 30 March 2009, p. 22. See also Mr Michael Fox, Access Australia Planning and Design, *Transcript of Evidence*, 30 March 2009, p. 16.

97 Dr Rhonda Galbally, Victorian Disability Advisory Council, *Transcript of Evidence*, 30 March 2009, p. 55; see also Mr John Moxon, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 24.

98 Mr Bill Healey, Australian Hotels Association, *Transcript of Evidence*, 25 March 2009, p. 82.

Committee comment

- 5.80 Access to suitable accommodation away from home is a crucial element of social inclusion. People with a disability and older people must have confidence that they will be able to find accessible accommodation when they visit other parts of Australia. When this is not the case, it is likely that people will simply not travel. This would be a most unfortunate result.
- 5.81 On balance, the Committee welcomes the modest increases in the numbers of accessible rooms required under the Premises Standards, and considers that they are not excessive or unjustified. It is clear that the hotel sector has not been able to maximise utilisation of existing accessible rooms. The Committee does not believe that this is primarily due to a lack of demand. Rather, on the evidence before the inquiry, it is apparent that many of the issues complained of by the Tourism and Transport Forum could be ameliorated or eliminated through careful design of accessible rooms, better marketing to older people as well as people with a disability, staff education, and through consultation with the disability sector. For example, it is extraordinary that the sector has not developed any guidance for its members on methods for advertising and offering accessible rooms in ways which will not cause offence to the target market. The Committee encourages the hotel industry to collaborate with the disability sector to address these concerns.

Accessible water entry and exit for swimming pools

- 5.82 The Access Code requires accessible water entry and exit for certain swimming pools, including swimming pools with a total perimeter of greater than 40 metres associated with a Class 1b, 3, 5, 6, 7, 8 or 9 building that is required to be accessible. However, the Code does not impose access requirements on swimming pools which are for the exclusive use of occupants of a 1b building or a sole-occupancy unit in a Class 3 building.⁹⁹ There are presently no access requirements imposed by the Building Code in relation to entry into swimming pools.

⁹⁹ Table D3.1 (Class 10b buildings) and clause D3.10, Access Code.

5.83 A number of submitters expressed concern at the 40 metre threshold for swimming pools associated with Class 1b, 3, 5, 6, 7, 8 or 9 buildings which are required to be accessible.¹⁰⁰ The Welfare Rights Centre submitted that

There appears to be no magic in the figure of a 40 meter perimeter for a swimming pool open to the public. Many hotels have swimming pools of over 17 meters long that would be exempted from the standard as it presently reads. We submit that this figure should be looked at in relation to the majority of hotel and unit swimming pool arrangements before a decision is made.¹⁰¹

5.84 The Australian Human Rights Commission submitted that:

The Commission's concern is that this concession is likely to include a significant number of pool operators who would not have access to an unjustifiable hardship defence under the current complaints mechanism. For example, a number of large 4 or 5 star hotels have guest pools that will be under 40 meters perimeter.¹⁰²

5.85 Suggested alternative thresholds included 30 metres¹⁰³ and 20 metres.¹⁰⁴ Other submitters argued that it should be omitted entirely, and accessibility requirements imposed on all swimming pools associated with these buildings regardless of size.¹⁰⁵ For example, Dr Max Murray submitted that:

...there is extensive misinformation being promulgated regarding means for providing access to pools. There are many types of pool lifts available. Many are portable and can provide access to very small pools. These are very inexpensive and therefore there is no justifiable reason for not providing access to all pools.¹⁰⁶

100 Welfare Rights Centre, *Submission 102*, pp. 9-10; Dr Max Murray, *Submission 39*, p. 12; Mr Mark Relf, *Submission 90*, p. 19; Older Women's Network NSW, *Submission 9*, p. 3; NSW Disability Discrimination Legal Centre, *Submission 51*, p. 14; People with Disabilities ACT, *Submission 72*, p. 16; Cerebral Palsy League (Qld), *Submission 70*, p. 13; Disability Alliance, *Submission 77*, p. 17.

101 Welfare Rights Centre, *Submission 102*, pp. 9-10.

102 Australian Human Rights Commission, *Submission 57*, p. 26.

103 Spinal Injuries Association (Qld), *Submission 122*, p. 6

104 Disability Council of NSW, *Submission 58*, p. 37.

105 Dr Max Murray, *Submission 39*, p. 12

106 Dr Max Murray, *Submission 39*, pp. 16-17.

- 5.86 Evidence from the Australian Human Rights Commission and Master Lifts indicated that access could be provided to small pools for approximately \$6,000-\$13,000.¹⁰⁷
- 5.87 Some submitters argued that sling-style swimming pool lifts should not be permitted by the Premises Standards.¹⁰⁸ Submissions argued that lifts of this type are undignified.¹⁰⁹ For example, Ms Joe Manton told the Committee that:
- [W]e talk about the 'red light syndrome'. You may as well have a red light on your head, because people are going to stop and stare. And if you are there when the kids are there, they are going to point and call things out at you. The question is: is that dignified?¹¹⁰
- 5.88 Other submitters told the committee the swing lifts cannot be independently operated by the user,¹¹¹ and may be unsafe,¹¹² or painful.¹¹³ Submitters also argued that alternatives were not expensive.¹¹⁴ However, the Blythe-Sanderson Group submitted that swing lifts should be provided to accommodate people with seating needs which cannot be accommodated by aquatic wheelchairs.¹¹⁵ Master Lifts also submitted they they may be used for people with poor upper body mobility, and may have interchangeable attachments (such as seats).¹¹⁶
- 5.89 In addition, some submitters argued that pools with a perimeter of more than 70 metres should be required to provide either a zero-depth entry or a ramp.¹¹⁷
- 5.90 Finally, some submitters criticised the 'exclusive use' exception for swimming pools associated with sole occupancy units in Class 1b and 3

107 Mr William Wakefield, Masterlifts, *Transcript of Evidence*, 3 April 2009, p. 56; Australian Human Rights Commission, *Submission 57*, p. 26.

108 PSE Access Consultants, *Submission 94*, p. 7; Dr Max Murray, *Submission 39*, p. 17; HC Harrison Consultants, *Submission 42*, p. 4.

109 PSE Access Consultants, *Submission 94*, p. 7; HC Harrison Consultants, *Submission 42*, p. 4; Mr Mark Relf, *Submission 90*, p. 20; People with Disabilities ACT, *Submission 72*, p. 18; Victorian Access Consultants Network, *Submission 28*, p. 4.

110 Ms Joe Manton, Victorian Access Consultants Network, *Transcript of Evidence*, 30 March 2009, p. 89.

111 PSE Access Consultants, *Submission 94*, p. 7; HC Harrison Consultants, *Submission 42*, p. 4.

112 PSE Access Consultants, *Submission 94*, p. 7.

113 Dr Max Murray, *Submission 39*, pp. 16-17.

114 Dr Max Murray, *Submission 39*, p. 17.

115 Blythe-Sanderson Group, *Submission 47*, p. 7.

116 Master Lifts, *Submission 85*, p. 6.

117 Dr Max Murray, *Submission 39*, p. 17; Blythe-Sanderson Group, *Submission 47*, p. 7.

buildings.¹¹⁸ This exception is intended only to relate to a swimming pool which is exclusively reserved for the use of one sole-occupancy unit (such as a swimming pool attached to a penthouse suite), not to swimming pools in common areas. The Spinal Injuries Association (Qld) submitted that:

[I]f a person with a disability wants to hire a room or space that offers a pool or spa, they should be able to have access to this amenity that provides a service. That would be equitable. Cost is not an issue for premium priced rooms.¹¹⁹

Committee comment

5.91 The Committee welcomes the introduction of requirements for accessible water entry and exit for swimming pools. The Committee considers that the swimming pool provisions of the Premises Standards should be adopted in their current form. However, the Committee notes significant concerns in the disability sector relating to the threshold for accessibility for swimming pools. Unfortunately, it does not seem that there is any data available to determine whether these concerns are justified or not. The Committee therefore considers it important that the five year review should consider whether the 40 metre threshold for accessibility has exempted an unjustifiably large number of swimming pools. The review should also consider whether providing access to small swimming pools has also become more cost effective with the development of new technologies and economies of scale resulting from the introduction of the Premises Standards.

Hearing augmentation

5.92 The Access Code would require a hearing augmentation system to be provided in an auditorium, conference room, meeting room, or room for judicatory purposes, as well as any room in a Class 9b building in which an inbuilt amplification system (other than one used only for emergency

118 Independent Living Centre NSW, *Submission 87*, p. 5; Mr Mark Relf, *Submission 90*, p. 12; Disability Council of NSW, *Submission 58*, pp. 36–37; Spinal Injuries Association (Qld), *Submission 122*, p. 6; Australian Federation of Disability Organisations, *Submission 83*, p. 19; People with Disabilities ACT, *Submission 72*, p. 16; Cerebral Palsy League (Qld), *Submission 70*, p. 13; Disability Alliance, *Submission 77*, p. 11.

119 Spinal Injuries Association (Qld), *Submission 122*, p. 6.

warnings) is installed.¹²⁰ If induction loops are provided, they must cover 80 per cent of the floor area of a room. If a system requiring the use of receivers is provided, it must be available in 95 per cent of the floor area of the room, and receivers must be provided.¹²¹ A hearing augmentation system must also be provided at any ticket office, teller's booth, reception area or similar where the public is screened from the service provider where an inbuilt amplification system (other than one used only for emergency warnings) is provided.¹²²

5.93 These provisions are similar to those of the 2004 draft of the Premises Standards. However, the number of hearing augmentation receivers required has been approximately doubled over the requirements of that draft. The provisions strengthen the existing provisions of the Building Code by:

- removing the concession for meeting and conference rooms of less than 100 m²; ¹²³
- requiring *all* rooms in Class 9b buildings with inbuilt amplification systems to provide hearing augmentation systems;¹²⁴
- requiring induction loops (if provided) to cover 80 per cent of the floor area of a room;¹²⁵ and
- requiring hearing augmentation systems using receivers (if provided) to be available across 95 per cent of the floor area of a room, and that a minimum numbers of receivers be provided (generally 2.75–4 per cent of the occupancy of the room).

5.94 A number of submissions to the inquiry emphasised that many Australians are affected by hearing impairment, and that these numbers are likely to grow in the future.¹²⁶ As a consequence, these submitters argued that the Premises Standards should impose higher minimum requirements for the provision of hearing augmentation receivers. The

120 Subclause D3.7(1), Access Code.

121 Subclause D3.7(2), Access Code.

122 Paragraph D3.7(1)(b), Access Code.

123 Paragraph D3.7(a)(i), Access Code.

124 Presently, the Building Code only requires hearing augmentation in an auditorium in Class 9b buildings: clause D3.7(a)(iii), Building Code of Australia.

125 The Building Code presently only imposes coverage requirements in an auditorium of a Class 9b building, and in that case only requires 15 per cent coverage: paragraph D3.7(a)(iii), Building Code of Australia.

126 Deafness Forum of Australia, *Submission 18*, p. 3.

Deafness Forum of Australia submitted that the requirements are 'below the current standard of 15 per cent and that:

[I]t is unacceptable to reduce access for people with hearing loss especially given the rate of hearing loss in the community of one in six Australians.¹²⁷

- 5.95 Suggestions for a more appropriate ratio for hearing augmentation were 15 per cent,¹²⁸ 10 per cent,¹²⁹ and 4 per cent.¹³⁰ The Welfare Rights Centre submitted that the requirements in nursing homes should be strengthened, to '[i]ncrease the number of hearing loops or hearing augmentation receivers in nursing homes to 10 per cent'.¹³¹ However, the Committee was not provided with any information on the numbers of Australians who might benefit from the provision of hearing augmentation receivers, or as to whether there is an unmet demand for such facilities at existing buildings.
- 5.96 A number of submitters told the Committee that provision of hearing augmentation was particularly important in aged care facilities due to the higher incidence of hearing impairment amongst older Australians. The Deafness Forum of Australia submitted that hearing augmentation systems should be required in meeting areas, common rooms and television rooms in Class 9c (aged care) buildings.¹³² Other submissions suggested that hearing augmentation should be required in meeting rooms in Class 9c buildings.¹³³ However, the Access Code would require hearing augmentation systems to be provided in meeting rooms and

127 Deafness Forum of Australia, *Submission 18*, p. 6. See also Ms Nicole Lawder, Deafness Forum of Australia, *Transcript of Evidence*, 19 March 2009, pp. 13–14. The Deafness Forum of Australia submission was endorsed by the Deafness Forum of Western Australia, Deaf Australia, and the Independent Living Centre of NSW: see Deafness Forum of Western Australia, *Submission 27*, p. 2; Deaf Australia, *Submission 109*, p. 2; Independent Living Centre NSW, *Submission 87*, p. 7.

128 Victorian Disability Advisory Council, *Submission 80*, p. 9.

129 NSW Disability Discrimination Legal Centre, *Submission 51*, p. 13; Disability Council of NSW, *Submission 58*, p. 42; Cerebral Palsy League (Qld), *Submission 70*, p. 8; People with Disabilities ACT, *Submission 72*, p. 15; Australian Federation of Disability Organisations, *Submission 83*, p. 24; Disability Services Commission, *Submission 63*, p. 2; Physical Disability Australia, *Submission 45*, p. 2; Arts Access, *Submission 34*, p. 2.

130 Mr Frank Nott, *Submission 113*, p. 4.

131 Welfare Rights Centre, *Submission 102*, p. 11.

132 Deafness Forum of Australia, *Submission 18*, p. 5.

133 NSW Disability Discrimination Legal Centre, *Submission 51*, pp. 13–14; Cerebral Palsy League (Qld), *Submission 70*, p. 8; People with Disabilities ACT, *Submission 72*, p. 14; Disability Alliance, *Submission 77*, p. 15; Australian Federation of Disability Organisations, *Submission 83*, p. 23; Disability Services Commission, *Submission 63*, p. 2.

conference rooms in all classes of building where access is required if an inbuilt amplification system is installed.¹³⁴

- 5.97 Some submitters argued that requirements for hearing augmentation should not depend on whether an inbuilt amplification system is installed.¹³⁵ Dr Max Murray submitted that:

Requirements of this nature which depend on a predetermined provision (inbuilt amplifier) before such requirements become mandatory invariably result in people with disabilities being denied adequate access.¹³⁶

- 5.98 Similarly, Mr Mark Relf submitted that hearing augmentation should be required in meeting rooms in Class 9c (aged care) buildings, 'regardless of whether an in-built amplification system is installed'.¹³⁷

- 5.99 In addition, submitters raised some concerns about maintenance of hearing augmentation systems,¹³⁸ technical requirements in relation to screens at counters and the like,¹³⁹ and suggested that draft Australian Standard AS 1428.5 *Design for Access and Mobility - Communication for People who are Deaf or Hearing Impaired* should be referenced for technical details in relation to hearing augmentation.¹⁴⁰

Committee comment

- 5.100 The Committee welcomes the proposed hearing augmentation provisions in the Premises Standards and notes that they would provide a significant improvement over the existing provisions of the Building Code. The Committee notes that some concern was expressed as to whether the numbers of hearing augmentation receivers required are adequate. However, the Committee received little evidence of insufficient provision

134 Paragraph D3.7(1)(a), Access Code.

135 Dr Max Murray, *Submission 39*, p. 2; Mrs Francesca Davenport, Health Science Planning Consultants, *Transcript of Evidence*, 30 March 2009, p. 22.

136 Dr Max Murray, *Submission 39*, p. 2.

137 Mr Mark Relf, *Submission 90*, p. 17.

138 Australian Federation of Disability Organisations, *Submission 24*, p. 24.

139 Deafness Forum of Australia, *Submission 18*, p. 6; Mr Mark Relf, *Submission 90*, pp. 17-18; Disability Council of NSW, *Submission 58*, pp. 41-42; People with Disabilities ACT, *Submission 72*, pp. 14-15; Cerebral Palsy League (Qld), *Submission 70*, p. 15; Disability Alliance, *Submission 77*, p. 15; Australian Federation of Disability Organisations, *Submission 83*, pp. 23-24; Peter Conroy, *Submission 56*, p. 8.

140 Deafness Forum of Australia, *Submission 18*, p. 5; Mr Mark Relf, *Submission 90*, p. 25; Physical Disability Council of NSW, *Submission 117*, p. 2; Arts Access, *Submission 34*, p. 2; Blythe-Sanderson Group, *Submission 47*, pp. 6-7.

of such devices even under the current regulatory arrangements. The Committee considers that it would not be appropriate to alter the proposed provisions until it can be determined whether there is a real need for greater requirements.

- 5.101 As in other areas, the Committee considers that complaints should continue to be available under the Disability Discrimination Act where hearing augmentation systems are not properly maintained and in respect of building fitout issues. The Committee also considers that it would be appropriate for future fitout standards to include requirements for hearing augmentation systems as well as passive design features at features such as counters and reception desks.

Accessibility in Class 9b assembly buildings

- 5.102 The Access Code provides that Class 9b assembly buildings (such as theatres and cinemas) must be accessible. This includes general accessibility requirements in all areas of the building normally used by the occupants, as well as specific requirements for wheelchair spaces in seating areas.¹⁴¹ In seating spaces of these buildings, wheelchair spaces are required in a ratio calculated on the maximum occupancy of the seating space. A minimum of three spaces is required in all venues, and in venues of up to 800 seats, one space must be provided for every 50 seats.¹⁴² Wheelchair spaces must not be grouped into a single area regardless of the size of the venue. Instead, discrete groups of wheelchair seating spaces must be provided, and in venues with more than 800 seats and all cinemas the groups of wheelchair spaces must be representative of the range of seating provided.¹⁴³ A strict limitation is imposed on the placement of wheelchair seating spaces in the front rows in cinemas.¹⁴⁴ Finally, a concession is provided in relation to access to tiers or platforms of seating areas that do not provide wheelchair seating spaces.¹⁴⁵
- 5.103 The Building Code presently requires wheelchair seating spaces to be provided in Class 9b buildings. However, the provisions are considerably less generous than those of the Access Code. A minimum of two spaces is

141 Table D3.1, clause D3.9 and Table D3.9,.

142 The ratio tapers off after 800 seats 1 space for every 200 seats in venues with more than 10,000 seats: *Access Code*, Table D3.9.

143 Subparagraph D3.9(b)(ii) and Table D3.9, *Access Code*

144 Paragraph D3.9(b), *Access Code*.

145 Table D3.1, Class 9b, *Access Code*.

required in theatres of up to 200 seats, and one additional space is required for every 200 seats thereafter.¹⁴⁶ Thus, in a 1000 seat theatre, the Building Code requires six wheelchair spaces, while the Access Code would require eighteen. There is no prohibition on seats being grouped together, placed in the front row in cinemas, or requirement that they be representative of the range of seating available. The Access Code provisions are thus a substantial advance over existing building regulations.

- 5.104 Many submissions to the inquiry stressed that it is important that wheelchair seating spaces should be representative of the classes of seating available.¹⁴⁷ A concern was raised by a number of submitters as to whether the wheelchair seating provisions provided adequate guarantees that wheelchair spaces would not be confined to distant, undesirable or cheap areas of a seating area in a theatre.¹⁴⁸ Some submitters argued that similar provisions to those provided for cinemas should be provided for live theatre, to ensure that wheelchair seating spaces are not provided solely at the rear of the seating space or areas with poor sightlines.¹⁴⁹ However, as noted above, the Access Code would not allow all wheelchair spaces to be grouped together in any venue. In addition, draft AS1428.1 requires that wheelchair seating spaces must be located 'to allow lines of sight comparable to those for general viewing areas'.¹⁵⁰
- 5.105 A number of submitters questioned the emphasis of the access requirements for the audience areas of Class 9b assembly buildings on wheelchair access. These submitters noted that by emphasising only access to tiers or platforms of seating in which wheelchair seating is provided, features which would assist ambulant disabled people to access other areas were neglected. Vision Australia submitted that:

146 Table D3.2, Building Code of Australia.

147 For example, PSE Access Consulting, *Submission 94*, p. 94; Blythe-Sanderson Consulting, *Submission 47*, p. 10; Australian Institute of Architects, *Submission 135*, p. 3.

148 Physical Disability Council of NSW, *Submission 117*, p. 19; Mr Robert Knott, *Submission 25*, p. 5; Spinal Cord Injuries Australia, *Submission 74*, p. 5.

149 Dr Max Murray, *Submission 39*, p. 16; Cerebral Palsy League of Queensland, *Submission 70*, p. 16; Disability Alliance, *Submission 77*, p. 16; Australian Federation of Disability Organisations, *Submission 83*, p. 25; Independent Living Centre Tasmania, *Submission 114*, pp. 4-5; Action for More Independence and Dignity in Accommodation, *Submission 67*, p. 7; NSW Disability Discrimination Legal Centre, *Submission 51*, p. 12; Mr Mark Relf, *Submission 90*, p. 18; People with Disabilities ACT, *Submission 72*, p. 15; Disability Council of NSW, *Submission 58*, p. 43; Coffs Harbour City Council Access Advisory Committee, *Submission 36*, p. 2

150 Draft AS1428.1–200X, paragraph 18.1(b).

There is no reason why TGSIs should not be provided in such situations – in fact, without them, such areas will be more hazardous for people who are blind or have low vision.¹⁵¹

5.106 Vision Australia and Blind Citizens Australia also suggested that it would be desirable to provide seats with greater space to accommodate guide dogs.¹⁵²

5.107 Many submitters also complained of discriminatory booking practices adopted by theatres. These submitters noted that some theatres place removable seating in wheelchair seating spaces and then allow them to be booked in a similar manner to normal seating, rather than reserving them until all other seats had been booked.¹⁵³ Some submitters suggested that the Guidelines should make it clearer that such practices are discriminatory.¹⁵⁴

5.108 A joint submission from Blind Citizens Australia, Deaf Australia, the Deafness Forum and Vision Australia raised the issue of access to films shown in cinemas for people who are deaf or blind. They noted that captioning and audio description are necessary to enable access to films, but that:

while there is an abundance of films around the world which are captioned and/or audio described, the absence of infrastructure in Australia in the form of cinemas with the appropriate equipment installed, means that the enjoyment of cinema is only available for people who are Deaf or have a hearing impairment if they can access one of the 11 cinemas around Australia, and for people who are Blind or have a vision impairment, there are NO cinemas they can access.¹⁵⁵

5.109 As noted in their submission, this also affects the ability of people with a disability to go to the cinema with their families and friends. The

151 Vision Australia, *Submission 55*, p. 5.

152 Vision Australia, *Submission 55*, p. 12; Blind Citizens Australia, *Submission 118*, p. 13. Where access to wheelchair seating spaces is provided from the front of the space, space requirements for guide dogs may be satisfied by the requirement of draft AS 1428.1 that 1200 mm of space be provided in front of the seating space: draft AS1428.1 – 200X, figure 56(b), p. 90.

153 Disability Alliance, *Submission 77*, p. 16; Australian Federation of Disability Organisations, *Submission 83*, p. 25; NSW Disability Discrimination Legal Centre, *Submission 51*, pp. 12–13; Mr Mark Relf, *Submission 90*, p. 18; People with Disabilities ACT, *Submission 72*, p. 15; Spinal Cord Injuries Australia, *Submission 74*, p. 5.

154 Disability Alliance, *Submission 77*, p. 16; Australian Federation of Disability Organisations, *Submission 83*, p. 25; NSW Disability Discrimination Legal Centre, *Submission 51*, pp. 12–13; Mr Mark Relf, *Submission 90*, p. 18.

155 Vision Australia, *Submission 142*, p. 1.

Premises Standards would not in their current form impose any requirements for closed captioning or audio description in cinemas.

Committee comment

- 5.110 The Committee welcomes the greatly improved allowance for wheelchair seating required in the Access Code. The Committee believes that it is important that wheelchair seating should be representative, and that wheelchair users should not be segregated into cheap or undesirable parts of a performance venue. This would be clearly contrary to the objective of providing dignified access as well as significantly disadvantaging people with a disability in their enjoyment of performances. The Committee notes that the current provisions of the Access Code provide significant protection against such practices, particularly in cinemas and venues with more than 800 seats where this problem is likely to be the most acute. The Committee considers that these provisions are likely to provide adequate protection against discrimination in the selection of areas for wheelchair spaces.
- 5.111 The Committee also considers that while it might be preferable to provide accessibility features throughout the audience areas of a Class 9b building, the concession that such access should only be provided in tiers which provide wheelchair spaces provides an adequate guarantee of equitable access for all people with a disability.
- 5.112 As noted in other areas, discriminatory post-construction activities such as booking practices would be difficult to regulate in a building code. In particular, failure of venues to make wheelchair spaces available for booking would be a very serious contravention of the spirit of these provisions. The Committee believes that these practices could be the subject of a complaint under the Disability Discrimination Act.
- 5.113 The Committee is concerned by the very small numbers of cinemas providing captioning and audio description in Australia. The announcement on 4 May 2009 by the Minister for Ageing, the Hon. Justine Elliott MP, that twelve independent cinemas would provide both captioning and audio description in addition to the eleven major cinemas already providing captioning is therefore most welcome.¹⁵⁶ Nevertheless, it is clear that much more needs to be done to provide access to these services to people with a disability. However, as with other issues

156 The Hon. Justine Elliott MP, Minister for Ageing, *Media Release: 'Australian Government Expands Cinema Experience for People with Hearing and Vision Impairments: "Accessible Cinemas"'*, 4 May 2009, p. 1.

such as building management and ticketing, this issue may be beyond the scope of the Premises Standards as it does not relate to the physical fabric of a cinema. The Committee encourages the Government to continue work on this issue.

Signage

- 5.114 Clause D3.6 of the Access Code requires Braille and tactile signage to be provided in buildings required to be accessible in relation to sanitary facilities and spaces with hearing augmentation systems. Signage is also required in relation to accessible entrances but Braille and tactile lettering are not required for these signs. Part D4 of the Access Code provides requirements for the design of Braille and tactile signs. These provisions are broadly similar to the existing requirements of the Building Code. The provisions improve on the Building Code by requiring greater information in spaces providing hearing augmentation, signage to identify ambulant accessible toilets, and signage at sanitary facilities not providing an accessible toilet to indicate the location of sanitary facilities that are accessible. However, most signs within a building would not be required by this provision to be accessible. Examples may include signs on shops, tenants' boards, and maps.
- 5.115 While one submission to the inquiry questioned the utility of Braille signage,¹⁵⁷ almost all submitters welcomed requirements for accessible signage. Submissions to the inquiry raised a range of technical matters relating to the kind of Braille used for accessible signs,¹⁵⁸ the usage of tactile (non-Braille) lettering,¹⁵⁹ as well as consistency of placement and design features of such signs.¹⁶⁰ Submitters also argued that signage should be required to provide more information, such as the accessible feature which the sign identifies,¹⁶¹ and distances to accessible facilities,¹⁶²
-

157 Mr Graham Lockerbie, *Submission 8*, p. 11.

158 Australian Braille Authority, *Submission 111*, p. 4.

159 Australian Braille Authority, *Submission 111*, p. 4.

160 Blind Citizens Australia, *Submission 118*, p. 13; Australian Institute of Architects, *Submission 107*, p. 8; Health Science Planning Consultants, *Submission 92*, p. 18; Access Design Solution, *Submission 38*, p. 2; Queensland Disability Network, *Submission 41*, p. 11.

161 NSW Disability Discrimination Legal Centre, *Submission 51*, p. 12; Cerebral Palsy League (Qld), *Submission 70*, p. 15; People with Disabilities ACT, *Submission 72*, p. 14; Mr Mark Relf, *Submission 90*, p. 17; Independent Living Centre Tasmania, *Submission 114*, p. 4; Disability Alliance, *Submission 77*, p. 14; Australian Federation of Disability Organisation, *Submission 83*, p. 23.

162 Disability Council of NSW, *Submission 58*, p. 41.

and 'universal' signage for the benefit of people from non-English speaking backgrounds.¹⁶³

- 5.116 Many submissions made it clear that any way finding provisions included in the Standards would require more comprehensive provisions in relation to signage.¹⁶⁴ For this reason, many submitters argued that the signage provisions should have a much broader scope than simply identifying accessible facilities.¹⁶⁵ The Australian Braille Authority submitted that:

It is a fundamental principle of non-discriminatory, independent and dignified access that people who are blind and who read braille should have access to the same information that is provided to the rest of the community.¹⁶⁶

- 5.117 However, the Authority conceded that certain aspects of signage in a building are part of building fit out and thus not within the scope of the current project.¹⁶⁷
- 5.118 Some submitters identified specific key elements of signage which should be made accessible.¹⁶⁸ The Australian Braille Authority recommended that these would include:

- a) Numbers on the doors of hotel rooms, offices, etc., to allow people who are blind to locate them
- b) Numbers on stair landings to allow the identification of floors in buildings
- c) Numbers within reach of lift openings to allow the identification of floors, especially in situations where lifts are not equipped or required to be equipped with audio announcements (for example, lifts that only service one or two levels in a building).¹⁶⁹

163 Cerebral Palsy League (Qld), *Submission 70*, p. 3.

164 Australian Braille Authority, *Submission 111*, p. 3; Australian Blindness Forum, *Submission 65*, p. 3; Blind Citizens Australia, *Submission 118*, p. 8; Disability Council of NSW, *Submission 58*, p. 41; Royal Society of the Blind, *Submission 98*, pp. 1–2; Association of Consultants in Access Australia, *Submission 107*, p. 3; Blythe–Sanderson Consulting, *Submission 47*, p. 8.

165 Australian Braille Authority, *Submission 111*, p. 1; Australian Blindness Forum, *Submission 65*, p. 13; Dr Max Murray, *Submission 39*, p. 15; Blythe–Sanderson Consulting, *Submission 47*, p. 6.

166 Australian Braille Authority, *Submission 111*, p. 1.

167 Australian Braille Authority, *Submission 111*, p. 3; see also Vision Australia, *Submission 55*, p. 9.

168 Australian Braille Authority, *Submission 111*, pp. 2–3; Australian Blindness Forum, *Submission 65*, p. 13; Blind Citizens Australia, *Submission 118*, p. 10; Vision Australia, *Submission 55*, p. 9.

169 Australian Braille Authority, *Submission 111*, pp. 2–3. See also Vision Australia, *Submission 55*, p. 9; Disability Council of NSW, *Submission 58*, p. 41.

- 5.119 Other suggestions included an accessible building directory, directional signage from an accessway to accessible facilities,¹⁷⁰ and accessible signage for emergency exits.¹⁷¹ However, it would seem that some of the identified items essentially relate to building fit out.
- 5.120 Finally, submitters noted that clause D3.6 does not seem to require Braille and tactile information for all of the signs that it requires. A number of submitters, particularly those representing blind and vision-impaired people, argued that Braille and tactile information should be required on all signs required by clause D3.6.¹⁷²

Committee comment

- 5.121 The Committee considers that enhanced requirements for accessible signage for people with a disability would be a useful improvement to building accessibility, and would greatly enhance the ability of people with a disability to independently access buildings and services. However, many of the most useful forms of signage, such as tenant's boards and maps, are primarily aspects of a building's fit out and may only be able to be developed after the building has been fitted out and occupied. It is therefore doubtful whether they are within the scope of the Premises Standards.
- 5.122 Furthermore, the Committee considers that any way finding provisions which may be developed for future inclusion in the Standards should provide much more extensive requirements for accessible signage, and that any future Standard developed in relation to building fit out must given significant attention to the issue of accessibility of signage.
- 5.123 The Committee considers that the installation of any signage which would not require a building approval should be open to a complaint under the Disability Discrimination Act.

Car parking

- 5.124 The Access Code requires accessible car parking spaces to be provided in association with accessible buildings.¹⁷³ Depending on the class of
-

170 Dr Max Murray, *Submission 39*, p. 15; Association of Consultants in Access Australia, *Submission 107*, p. 8.

171 Blind Citizens Australia, *Submission 118*, p. 15; Vision Australia, *Submission 55*, p. 15.

172 Disability Council of NSW, *Submission 58*, pp. 40–41.

173 Clause D3.5, Access Code.

building with which they are associated, the Standards generally require either one or two per cent of spaces to be accessible. Disabled car parking spaces are not required where a valet parking service is provided. In multi-storey car parks, access need only be provided to levels with accessible car parking spaces.¹⁷⁴ These requirements are in most respects identical to the existing Building Code requirement, except that the ratio of spaces to be provided for a Class 9a clinic or day surgery not forming part of a hospital has been doubled (to 1 in 50 spaces).¹⁷⁵

5.125 Many submitters to the inquiry argued that these provisions fell substantially short of the percentage of registered vehicles with accessible parking permits, and were not sufficient to meet demand.¹⁷⁶ Dr Max Murray explained that:

Research data was gathered on the number of disability parking permits issued in the various states of Australia on two occasions, namely 1996 and 2003. These data were presented to the Building Access Technical Committee in 1996 and again to the Building Access Policy Committee in 2003.

With the exception of NSW, both studies showed the number of parking permits issued was equal to 3% of registered non-commercial vehicles.¹⁷⁷

5.126 Other submissions indicated that 13 per cent of registered vehicles in NSW had been issued with Mobility Parking Authorities,¹⁷⁸ and that the number of Mobility Parking Authorities issued in Queensland is increasing at 9 per cent per annum.¹⁷⁹

174 Table D3.1, Access Code.

175 See Clause D3.5, Building Code of Australia.

176 Action for More Independence and Dignity in Accommodation, *Submission 67*, p. 6; Australian Federation of Disability Organisations, *Submission 83*, p. 17; Dr Max Murray, *Submission 39*, p. 14; PSE Access Consulting, *Submission 94*, p. 11; Physical Disability Council of NSW, *Submission 117*, p. 16; Ms Jan Cocks, *Submission 1*, p. 1; Mr Mark Relf, *Submission 90*, p. 10; People with Disabilities ACT, *Submission 72*, p. 10; Ms Dianne Proctor OAM, *Submission 5*, p. 3; NSW Disability Discrimination Legal Centre, *Submission 51*, p. 11; Cerebral Palsy League of Queensland, *Submission 70*, p. 8; Disability Alliance, *Submission 77*, p. 13; Coffs Harbour City Council Disability Advisory Committee, *Submission 36*, p. 1; Southwest Advocacy Association, *Submission 81*, p. 2; Ministerial Advisory Council on Disability Western Australia, *Submission 119*, p. 4; Disability Council of NSW, *Submission 58*, p. 39.

177 Dr Max Murray, *Submission 39*, p. 14. See also Ms Jan Cocks, *Submission 1*, p. 1.

178 Physical Disability Council of NSW, *Submission 117*, pp. 17–18.

179 Cerebral Palsy League of Queensland, *Submission 70*, p. 15.

- 5.127 Suggestions as to an appropriate ratio varied. Suggested ratios included 20 per cent,¹⁸⁰ 15 per cent,¹⁸¹ 5–10 per cent,¹⁸² 3–6 per cent,¹⁸³ or increases specifically for aged care and health buildings and nursing homes.¹⁸⁴ In addition, some submitters specifically criticised the ratio of car parking spaces required for Class 3 buildings, and argued that one space should be provided for each accessible room.¹⁸⁵
- 5.128 A number of submitters suggested that one strategy for ameliorating systemic under-provision of accessible car parking spaces would be to provide access to all levels of multi-storey car parks (including levels without accessible car parking spaces).¹⁸⁶ This would provide enhanced access for ambulant people with a disability and people with certain kinds of vehicle, such as vans with rear access. By contrast, the Property Council submitted that '[t]hese areas should be exempted, as there is no need for access to be provided to such areas'.¹⁸⁷
- 5.129 Another strategy suggested by submitters was the introduction of a two-tiered system for accessible car parking spaces. These submitters suggested that existing requirements for wide accessible spaces should be retained and supplemented by additional regular width spaces for ambulant people with a disability.¹⁸⁸

180 Physical Disability Council of NSW, *Submission 117*, p. 16.

181 Australian Federation of Disability Organisations, *Submission 83*, p. 22.

182 Cerebral Palsy League of Queensland, *Submission 70*, p. 15; Disability Alliance, *Submission 77*, p. 10; Independent Living Centre NSW, *Submission 87*, pp. 6–7.

183 PSE Access Consulting, *Submission 94*, p. 11; Dr Max Murray, *Submission 39*, p. 15.

184 Latrobe City Council, *Submission 79*, p. 3; Blythe–Sanderson Group, *Submission 47*, p. 6; NSW Disability Discrimination Legal Centre, *Submission 51*, p. 11; Health Science Planning Consultancy, *Submission 92*, p. 13; Mr Robert Knott, *Submission 25*, p. 5; Disability Council of NSW, *Submission 58*, p. 39.

185 People with Disabilities ACT, *Submission 72*, p. 15; Dr Max Murray, *Submission 39*, p. 14; Health Science Planning Consultancy, *Submission 92*, p. 13; Disability Council of NSW, *Submission 58*, p. 39.

186 Physical Disability Council of NSW, *Submission 117*, pp. 15–16; Australian Federation of Disability Organisations, *Submission 83*, p. 17; Action for more Independence and Dignity in Accommodation, *Submission 67*, p. 4; Mr Mark Relf, *Submission 90*, p. 10; People with Disabilities ACT, *Submission 72*, p. 10; Spinal Injuries Association Qld, *Submission 122*, p. 5; Cerebral Palsy League of Queensland, *Submission 70*, p. 8, 12; Disability Alliance, *Submission 77*, p. 10; Coffs Harbour City Council Disability Advisory Committee, *Submission 36*, p. 1; Ministerial Advisory Council on Disability Western Australia, *Submission 119*, p. 3; Disability Council of NSW, *Submission 58*, p. 35.

187 Property Council of Australia, *Submission 84*, p. 13.

188 Mr Mark Relf, *Submission 90*, p. 16; People with Disabilities ACT, *Submission 72*, p. 15; Ms Jan Cocks, *Submission 1*, p. 1; Mr John Moxon, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 19

5.130 Some submitters questioned the practicality of the exemption for accessible parking spaces where a valet parking service is provided.¹⁸⁹ The Australian Federation of Disability Organisations submitted that:

some people with disabilities drive specially modified cars which may not be driven by someone without a disability, such as a car with room in the area where the driver's seat would usually be for a specific kind of wheelchair.¹⁹⁰

5.131 Mr Mark Relf submitted that:

Recent experiences of valet serviced carparks and “secure” carparks means that accessible parking can be readily denied by “managed operations” to override obvious obligations to provide accessible parking.¹⁹¹

5.132 These submitters generally suggested that a dedicated accessible parking space should be provided close to an accessible entrance.¹⁹²

5.133 Some submitters raised concerns with aspects of parking which generally fall outside the scope of the Building Code. One such suggestion was that accessibility requirements should extend to pay-stations and boom-gate controls.¹⁹³ Submitters also raised concerns about the management and policing of accessible parking spaces. Some submitters suggested that the Premises Standards should impose obligations on building managers to police accessible car parking spaces to ensure that are correctly used by

189 See clause D3.5, Access Code. This mirrors the existing provisions of the Building Code of Australia. See Mr Mark Relf, *Submission 90*, p. 15; People with Disabilities ACT, *Submission 72*, pp. 14–15; Cerebral Palsy League of Queensland, *Submission 70*, p. 14; Disability Alliance, *Submission 77*, p. 13; Independent Living Centre NSW, *Submission 87*, p. 6; Health Science Planning Consultancy, *Submission 92*, p. 10; Ministerial Advisory Council on Disability Western Australia, *Submission 119*, p. 4; Mr Robert Knott, *Submission 25*, p. 3; Disability Council of NSW, *Submission 58*, p. 39.

190 Australian Federation of Disability Organisations, *Submission 83*, p. 21.

191 Mr Mark Relf, *Submission 90*, p. 15.

192 Australian Federation of Disability Organisations, *Submission 83*, p. 22; Mr Mark Relf, *Submission 90*, p. 15; People with Disabilities ACT, *Submission 72*, p. 15; Cerebral Palsy League of Queensland, *Submission 70*, p. 8; Mr Robert Knott, *Submission 25*, p. 3.

193 Dr Max Murray, *Submission 39*, p. 14; Australian Federation of Disability Organisations, *Submission 83*, p. 23; Action for More Independence and Dignity in Accommodation, *Submission 67*, p. 6; Mr Mark Relf, *Submission 90*, p. 16; People with Disabilities ACT, *Submission 72*, p. 15; Cerebral Palsy League of Queensland, *Submission 70*, p. 15; Independent Living Centre NSW, *Submission 87*, p. 7; Independent Living Centre (Tas), *Submission 114*, pp. 3–4; Ministerial Advisory Council on Disability Western Australia, *Submission 119*, p. 4; Disability Council of NSW, *Submission 58*, p. 40.

permit holders,¹⁹⁴ or provide information as to who is responsible for policing spaces.¹⁹⁵

- 5.134 A number of submitters suggested that further work on accessible parking should be progressed in conjunction with the Australian Government's National Disability Strategy.¹⁹⁶ However, the National Disability Strategy's consideration of accessible parking has focussed on the eligibility criteria for parking permits, concessions for permit holders, and permit design. It is not considering the number of car parking spaces.¹⁹⁷

Committee comment

- 5.135 Access to car parking is crucial for the ability for people with a disability to engage in employment, access services and visit friends and families. This is particularly the case given the as yet incomplete provision of accessibility to public transport. The Committee therefore welcomes requirements for accessible car parking in the Premises Standards.
- 5.136 The Committee notes considerable concern as to the adequacy of provisions for accessible parking in the Premises Standards. However, in light of the revision of requirements for accessible parking in the Building Code in 2001, the Committee considers that further consideration of accessible parking should be deferred until the five year review of the Standards.

194 Spinal Cord Injuries Australia, *Submission 74*, p. 4.

195 Spinal Cord Injuries Australia, *Submission 74*, p. 5.

196 *Media Release*, The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs and Bill Shorten MP, Parliamentary Secretary for Disabilities and Children's Service, 'The Way Forward: A National Disability Strategy', 13 May 2008; Action for More Independence and Dignity in Housing, *Submission 67*, p. 6; Cerebral Palsy League (Qld), *Submission 70*, p. 15; People with Disabilities ACT, *Submission 72*, p. 16; Disability Alliance, *Submission 77*, p. 14; Southwest Advocacy Association, *Submission 81*, p. 2; Australian Federation of Disability Organisations, *Submission 83*, p. 23; Mr Mark Relf, *Submission 90*, p. 16; Independent Living Centre (Tas), *Submission 114*, p. 4; Ministerial Advisory Council on Disability Western Australia, *Submission 119*, p. 5.

197 Australian Government, *Harmonisation of Disability Parking Permit Schemes in Australia: Discussion Paper 2009*, <www.fahcsia.gov.au/sa/disability/progserv/people/disability_parking_scheme/parking_scheme_discussion_paper/Documents/disability_parking_scheme/default.htm> accessed 26 May 2009, p. 14.

Public transport buildings

- 5.137 Class 9b public transport buildings would be required by the Access Code to provide accessibility.¹⁹⁸ The existing access requirements of the Building Code in respect of these building have been supplemented since 2002 by the Disability Standards for Accessible Public Transport 2002 (Transport Standards), which impose additional access requirements on the passenger use areas of public transport buildings. In order to preserve the regime established by the Transport Standards, the aspects of those standards which are within the scope of the Building Code have been reproduced in Part H2 of the Access Code. Public transport buildings must comply with the general deemed-to-satisfy provisions of the Access Code expressed in Parts D3, E3, and F2 as well as the deemed-to-satisfy provisions of Part H2.¹⁹⁹ However, the provisions of Part H2 take precedence over the general requirements of the Access Code where there is a difference.²⁰⁰ This arrangement mirrors the current relationship between the general access provisions of the Building Code and the requirements of the Transport Standards.
- 5.138 The NSW Government and the Australasian Railway Association (ARA) raised a number of issues with the transport premises related provisions of the Premises Standards. The most important of these issues included the interaction between the compliance timetable for existing transport premises and the 'building upgrade' trigger which applies to all other premises, the effect that moving access requirements from the Transport Standards to the Premises Standards would have on existing exemptions granted by the Australian Human Rights Commission under the Transport Standards, precedence of the requirements of Part H2 in relation to all parts of public transport buildings, and inconsistency in technical requirements between Part H2 and other parts of the Access Code.
- 5.139 The ARA and the NSW Government expressed significant concern about the potential interaction between the different triggers for building upgrades provided for the passenger-use areas of existing public transport buildings, and the non-passenger use areas of those buildings. This arises because the Transport Standards (and now the Premises Standards) impose a strict timetable for upgrades of existing public transport

198 Table D3.1, Access Code

199 Clauses D3.0, E3.0 and F2.0, Access Code.

200 Subclause H2.1(2), Access Code.

buildings rather than relying on the natural upgrade cycle.²⁰¹ This approach allows upgrades of public transport premises to proceed in an orderly and prioritised fashion, with a guaranteed date for full compliance. However, as noted by the ARA, the building upgrade trigger would apply to all non-passenger use areas of Class 9b buildings, and areas of a public transport premises which are not Class 9b buildings (if any).²⁰² An upgrade to such an area would trigger a requirement for an accessible path of travel from the new work to the principal pedestrian entrance to the building.

- 5.140 Two major areas of concern were identified with this arrangement. Firstly, the application of the building upgrade trigger to non-passenger use areas of a public transport building means that the full Premises Standards would apply to any work in that area, including the requirement for an accessible path of travel to the new work. However, the required path of travel is likely to cross passenger-use areas of a public transport building, which would therefore be required to provide accessibility at the same time as the work. This may challenge the ability of a public transport provider to prioritise stations for accessibility upgrades by forcing upgrades of large areas of a station whenever a staff use area of the station requires significance upgrades or maintenance.²⁰³ Secondly, the ARA and NSW Government argued that the continued application of the building upgrade trigger was inequitable, because it locked 'owners of rail premises... into an upgrade regime not tied to the natural maintenance and refurbishment cycle enjoyed by owners of other types of premises.'²⁰⁴ The NSW Government submitted that the compliance timeframes should be removed, as should the requirement for all public transport premises to provide accessibility.²⁰⁵
- 5.141 The ARA and the NSW Government expressed concern that the transfer for transport premises provisions to the Premises Standards would invalidate existing exemptions granted under the Transport Standards.²⁰⁶ An exemption has been granted under the Transport Standards 'to recognise the unique safety, operational, technical and space configuration

201 See section 3.1, Premises Standards.

202 Australasian Railway Association, *Submission 116*, p. 5.

203 Australasian Railway Association, *Submission 116*, p. 11; NSW Government, *Submission 141*, p. 46.

204 Australasian Railway Association, *Submission 116*, p. 12; NSW Government, *Submission 141*, p. 51.

205 NSW Government, *Submission 141*, p. 51.

206 Australasian Railway Association, *Submission 116*, p. 12; NSW Government, *Submission 141*, p. 53.

constraints of the rail environment'.²⁰⁷ The ARA argued that applying for a new exemption would involve increased administrative cost and raise potential inconsistencies.²⁰⁸ The NSW Government also questioned whether an exemption could be validly granted under section 55 of the Disability Discrimination Act.²⁰⁹ However, Commissioner Innes told the Committee that it would be 'hard to see' why an exemption 'would not just be rolled across into the Premises Standard'.²¹⁰

- 5.142 The NSW Government argued that the precedence of Part H2 of the Premises Standards over other requirements was not clear. They submitted that Part H2 should cover all parts of public transport premises, including areas which are not for passenger use (such as staff areas).²¹¹ They also recommended that application of the other parts of the Premises Standards should be completely excluded.²¹² This would modify the current provisions, which apply the general requirements but provide that Part H2 prevails where there is any difference.
- 5.143 The ARA and NSW Government's submission also note that the technical requirements of Part H2 of the Access Code differ in a number of respects to the requirements contained in other parts of the Code.²¹³ Differences include provisions relating to the design of accessways, width of passageways, frequency of landings on ramps, size of accessible toilets, lighting, lifts, signage, hearing augmentation and other matters.²¹⁴ However, representatives of the Australian Human Rights Commission explained that transport related provisions of the Premises Standards had

207 Australasian Railway Association, *Submission 116*, p. 12; NSW Government, *Submission 141*, p. 53.

208 Australasian Railway Association, *Submission 116a*, pp. 1-2.

209 NSW Government, *Submission 141*, p. 53. Subsection 55(1B) of the Disability Discrimination Act presently provides that an exemption may only be granted from a Disability Standard to the extent that the Standard deals with the provision of public transportation services and facilities covered by paragraph 31(1)(d) of the Act. The Premises Standards will be made under paragraph 31(1)(f). However, Item 78 of Schedule 2 to the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008 will amend section 55 to remove this limitation.

210 Commissioner Graeme Innes, Australian Human Rights Commission, *Transcript of Evidence*, 25 March 2009, p. 33.

211 NSW Government, *Submission 141*, p. 49.

212 NSW Government, *Submission 141*, p. 49.

213 Australasian Railway Association, *Submission 116*, pp. 7-9.

214 Australasian Railway Association, *Submission 116*, pp. 8-9; NSW Government, *Submission 141*, p. 50.

been designed to replicate the existing provisions of the Transport Standard.²¹⁵

Committee comment

- 5.144 The issues raised by the ARA and the NSW Government are essentially technical and drafting issues relating to the application of the general requirements of the Premises Standards to buildings in the rail corridor. It seems that all stakeholders are agreed that provision of accessibility throughout Class 9b public transport standards is a desirable outcome. The disagreement relates essentially to the timetable for compliance, and the exact requirements which must be complied with.
- 5.145 The Committee therefore considers that it would be appropriate for the Government, the Australian Human Rights Commission and the Australian Building Codes Board to consult with the NSW Government and the ARA to resolve any concerns that they may have.
- 5.146 However, the Committee does not believe that the concerns raised are significant enough to delay the introduction of the Standards. For example, differences in technical specifications may introduce some complication for building designers and certifiers but are unlikely to seriously prejudice the success of the Standards. Similarly, any upgrades to passenger use areas which are forced by upgrades to non-passenger use areas would simply bring forward the timetable for compliance for those areas, rather than imposing new obligations. It is worth noting that upgrades to any part of a Class 9 building must presently comply with the access provisions of the Building Code notwithstanding the requirements of the Transport Standards.²¹⁶
- 5.147 The Committee notes that the NSW Government considers that Part H2 should codify all access requirements for public transport premises, including areas not used by passengers. This proposal would modify the policy of the Transport Standards in two respects. First, it would extend the application of the Transport Standards requirements to non-passenger use areas of a public transport building. Secondly, it would exclude the general access requirements of the Building Code of Australia entirely. The Committee considers that this proposal should be treated with caution.

215 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 33.

216 Performance Requirement DP1, Building Code of Australia, which requires equitable and dignified access to buildings, applies *inter alia* to all Class 9 buildings regardless of use.

5.148 The Committee also does not consider that it would be appropriate to depart from the strict timetable for compliance provided by the Transport Standards (and now the Premises Standards) for public transport, or that the requirement that all premises should eventually provide access should be modified.

The Committee considers that if agreement cannot be reached on all of these issues in a timely fashion, that the Standards should be introduced. In that event, it would be appropriate for the five year review of the Standards to assess whether any unintended consequences have arisen.

