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The Parliament of the Commonwealth of Australia

# Access All Areas

**Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards**

House of Representatives  
Standing Committee on Legal and Constitutional Affairs

June 2009  
Canberra

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## Foreword

*Our vision is a fairer Australia where people with disabilities are regarded as equals, with the same rights as all other citizens, with recourse to systems that redress any infringements of their rights; where people with disabilities can participate in the life of the community in which they live, to the degree that they wish; where people with disabilities can gain and hold meaningful employment that provides wages and career opportunities that reflect performance; where control by people with disabilities over their own bodies, lives and future is assumed and ensured; where difference is accepted, and where public instrumentalities, communities and individuals act to ensure that society accommodates such difference. Only then will we be able to say that justice has been achieved.<sup>1</sup>*

The Disability Discrimination Act was passed by Parliament in 1992 with the promise of producing a radical shift in the way society included people with a disability. After 16 years of operation, the Act has produced substantial benefits for people with a disability and has contributed to attitudinal change in many areas of Australian society. However, in some areas it is clear that much more work remains to be done. Access to premises is one of those areas.

Equal access to premises is crucial to justice and social inclusion for people with a disability because it has a pervasive impact on the interaction of people with a disability with the Australian community. Without access to premises, people with a disability cannot access goods, services and facilities which other Australians take for granted, in areas as simple as the ability to enjoy the cinema with their family, go to the dentist, or to visit their Member of Parliament. Without access, people with a disability face many hurdles to full participation in community life. Failure to provide access may even affect the ability of people

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<sup>1</sup> The Hon Brian Howe MP, Minister for Health, Housing and Community Services, Second Reading Speech for the Disability Discrimination Bill 1992, 26 May 1992.

with a disability to find work – something which contributes to dignity and self-esteem, and which represents a sad loss of human potential.

The Disability Discrimination Act recognises the importance of access to premises, by making it unlawful to discriminate in the provision of access to premises. Despite this, it is clear that many public buildings still fail to provide access to people with a disability on an equal or dignified basis. This is partly because the Act places the burden of enforcing its requirements on the individuals who are disadvantaged by an act of discrimination. Perhaps not surprisingly, few individuals are willing to pay the emotional and financial price of taking building owners to court to force them to comply with their obligations under the Act.

The Draft Disability (Access to Premises – Buildings) Standards (Premises Standards) take a fresh approach to access to premises by harmonising the requirements of the Disability Discrimination Act and those of the Building Code of Australia. The result will be that access requirements will be applied consistently to new buildings and new building work throughout Australia, and will be enforced through existing and effective State and Territory building approval processes.

This seems likely to produce a fundamental shift in the way Australian buildings are designed and constructed, which will revolutionise access to premises for people with a disability.

The Committee's inquiry into the Premises Standards is the latest stage in an extensive negotiation and consultation process which began in 2001. A number of recommendations have been made in this report to strengthen the requirements of the Premises Standards and make them more consistent. But the most important recommendation of the Committee is that the Premises Standards should be finalised quickly and implemented. People with a disability have waited more than long enough for better access to premises.

Mr Mark Dreyfus QC MP  
Chair



## Membership of the Committee

Chair            Mr Mark Dreyfus QC MP

Deputy  
Chairman        The Hon. Peter Slipper MP

Members	The Hon. Kevin Andrews MP	Mrs Sophie Mirabella MP
	Mr Mark Butler MP	Ms Belinda Neal MP
	Mr Petro Georgiou MP	Mr Shayne Neumann MP
	Mr Daryl Melham MP	Mr Graham Perrett MP

## Committee Secretariat

Secretary	Dr Anna Dacre Ms Sharon Bryant
Inquiry Secretary	Ms Serica Mackay
Research Officer	Mr Stephen Still
Administrative Officers	Ms Claire Young Ms Emma Martin



## Terms of reference

The Committee is to consider and report on the draft Disability (Access to Premises - Buildings) Standards covering:

- the appropriateness and effectiveness of the proposed Premises Standards in achieving their objects;
- the interaction between the Premises Standards and existing regulatory schemes operating in state and territory jurisdictions, including the appropriateness and effectiveness of the proposed Model Process to Administer Building Access for People with Disability;
- whether the Premises Standards will have an unjustifiable impact on any particular sector or group within a sector; and
- any related matters.





## List of abbreviations

ABCB	Australian Building Codes Board
ACT	Australian Capital Territory
AS	Australian Standard
BAPC	Building Access Policy Committee
BCA	Building Code of Australia
Building Code	Building Code of Australia
CBD	Central Business District
Cth	Commonwealth
DARG	Disability Access Reference Group
DDA	<i>Disability Discrimination Act 1992 (Cth)</i>
MCS	Multiple Chemical Sensitivity
NIST	National Institute for Standards and Technology
NSW	New South Wales
Qld	Queensland
RIS	Regulation Impact Statement
SOU	Sole Occupancy Unit

UN	United Nations
Vic	Victoria
WA	Western Australia





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The Committee recommends that:

- the Premises Standards provide commencement and completion dates for the review process;
- the completion date for the review be within five years of the commencement of the Premises Standards;
- the Premises Standards set out the issues to be considered by the review and that these issues include:
  - ⇒ the small building exemption;
  - ⇒ the lessee concession;
  - ⇒ 80<sup>th</sup> and 90<sup>th</sup> percentile wheelchair dimensions;
  - ⇒ locking off lifts;
  - ⇒ accessible toilets;
  - ⇒ swimming pools;
  - ⇒ accessible car parking;
  - ⇒ Class 1b buildings;
  - ⇒ wayfinding;
  - ⇒ emergency egress; and,
  - ⇒ public transport buildings.

- the Premises Standards set out the criteria by which effectiveness of the Standards is to be assessed;
- the Australian Government identify what data will be collected and how it will be collected in each jurisdiction during the first four years;
- baseline data be collected; and
- funding be provided for the review.



## Introduction

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

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

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

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

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

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

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4 Section 31, Disability Discrimination Act.



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

## Referral of the inquiry

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

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

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

## History of the Premises Standards

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

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

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

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

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

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

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

## **Recommendation 1**

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

## **Scope and structure of this report**

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

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

## Tabled documents

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

- the Premises Standards Guidelines;
- a summary of main Australian Standards referenced in the Access Code;
- the Protocol;<sup>10</sup>
- the amendment to the Transport Standards;<sup>11</sup>
- the Regulation Impact Statement and appendices; and
- three draft Australian Standards – AS 1428.1, AS128.4.1 and AS2890.6.<sup>12</sup>

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

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

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

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

## Transport and Education Standards

- 1.27 The Transport Standards were made under section 31 of the *Disability Discrimination Act 1992* and took effect in October 2002.<sup>13</sup> Similar to the Premises Standards, the Transport Standards seek to provide certainty to transport operators and providers about their obligations under the Disability Discrimination Act by establishing minimum accessibility requirements to be met by public transport operators and providers.
- 1.28 Given the similar nature of the Transport Standards, they were mentioned and discussed throughout the Committee's inquiry, particularly in relation to the review process. The Transport Standards are currently under review and provide a valuable basis for comparison. This is discussed in more detail in Chapter 7. In addition, certain premises-related provisions of the Transport Standards would be moved from the Transport Standards to the Premises Standards.<sup>14</sup> This is discussed in more detail in Chapter 5.
- 1.29 Disability Standards for Education were also made under the standards power of the Disability Discrimination Act.<sup>15</sup> The Education Standards clarify the obligations of education and training service providers, and the rights of people with a disability, under the Disability Discrimination Act.<sup>16</sup> Standards for Employment were drafted between 1994 and 1998 but were not finalised.<sup>17</sup>

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13 *Disability Standards for Accessible Public Transport 2002*.

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

15 *Disability Standards for Education 2005*.

16 See Attorney-General's website for more information:  
<[www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination\\_DisabilityStandardsforEducation](http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_DisabilityStandardsforEducation)>.

17 See Australian Human Rights Commission website for more information:  
<[www.hreoc.gov.au/disability\\_rights/standards/Employment\\_draft/employment\\_draft.html](http://www.hreoc.gov.au/disability_rights/standards/Employment_draft/employment_draft.html)>.

## Overview of the Standards

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

### Scope, objects and structure

2.2 The purpose of the Premises Standards is:

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

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

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

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

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

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

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

4 Subsection 4.1, Premises Standards.

5 Subsections 4.3, 4.4 and 4.5 Premises Standards respectively.



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

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

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6 Subsection 2.2(1), Premises Standards.

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

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

## **Relationship with State and Territory law**

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

## **Effect of Compliance with the Premises Standards**

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

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

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

## Regulation Impact Statement

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

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

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

10 These are discussed in Chapter 4 of this report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Committee comment

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

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

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

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

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

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





## Scope of the Premises Standards

### Introduction

- 3.1 As discussed in Chapter 2, one of the goals of the Premises Standards is to harmonise the requirements of the Disability Discrimination Act with those of the Building Code. However, the Premises Standards would not apply to all types of buildings regulated by the Building Code. The Standards would not impose any requirements on Class 1a, Class 2 and Class 4 buildings.<sup>1</sup> In addition, the Premises Standards would not apply to Class 1b buildings with fewer than four rooms or dwellings,<sup>2</sup> places other than buildings, and fit out issues related to premises. In each of these cases, the general antidiscrimination provisions of the Disability Discrimination Act would continue to be available to the extent to which they are relevant.<sup>3</sup>
- 3.2 A number of submitters to the inquiry argued that the scope of the Premises Standards should be broadened to cover a greater range of buildings and aspects of the built environment. Particular focus was given to Class 1a (residential), Class 1b (bed and breakfast or holiday cottage), Class 2 (apartment) buildings, and to fit out issues.
- 3.3 Some submitters argued that the Premises Standards should impose obligations on a larger class of persons. In particular, a number of

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1 See subsection 2.1(1), Disability (Access to Premises – Buildings) Standards 2009, hereafter ‘Premises Standards’.

2 See the definition of ‘specified Class 1b building’, subsection 1.4(1), Premise Standards, and Premise Standards Schedule 1 Access Code for buildings (hereafter ‘Access Code’), Table D3.1.

3 This is because section 34 of the Disability Discrimination Act only provides that Part 2 of the Act does not apply to a person’s act if a person acted in accordance with a disability standard.

submitters argued that access consultants should be explicitly included in the list of persons with responsibilities under the Standards.

- 3.4 Finally, a number of submitters argued that the Premises Standards should differentiate further between new and existing buildings.

## **Class 1a buildings**

- 3.5 Class 1a buildings are detached and semidetached residential buildings, such as houses, townhouses, and terrace housing.<sup>4</sup> Most residential housing in Australia falls into this classification. The Premises Standards would not apply to Class 1a buildings at all. This is because private homes are not open to the public and thus do not come within the access to premises provisions of the Disability Discrimination Act.<sup>5</sup>

- 3.6 Some submissions to the inquiry stated that access to suitable and affordable housing is a significant problem for people with a disability. For example, the Victorian Disability Advisory Council submitted that:

Housing is lagging behind the access we now expect in public buildings...Anecdotal evidence indicates that people with a disability often experience problems accessing housing, particularly in the private rental sector, due to the lack of appropriate housing and/or rejection by landlords.<sup>6</sup>

- 3.7 The Victorian Equal Opportunity and Human Rights Commission submitted that 'urgent action' was required at a State and Territory level to address the availability of universally accessible housing.<sup>7</sup> As a consequence, some submitters argued that the lack of residential housing provisions was an important limitation of the Premises Standards.<sup>8</sup> However, many submitters accepted that standards for residential

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4 Clause A4.1, Access Code.

5 See paragraph 23(1)(a), Disability Discrimination Act; Mr Peter Arnaudo, Commonwealth Attorney-General's Department, *Transcript of Evidence*, 26 February 2009, p. 7.

6 Victorian Disability Advisory Council, *Submission 80*, p. 6.

7 Victorian Equal Opportunity and Human Rights Commission, *Submission 22*, p. 3.

8 Mr David Brant, *Submission 128*, p. 5; Australian Network for Universal Housing Design, *Submission 95*, p. 11; Queensland Disability Network, *Submission 41*, p. 2; HC Harrison Consulting, *Submission 42*, p. 5 (arguing that inclusion of provisions should be part of the five year review); Cerebral Palsy League (Qld), *Submission 70*, p. 7; Morris Goding Accessibility Consulting, *Submission 123*, p. 4.

housing could be achieved through a separate instrument.<sup>9</sup> The Australian Network for Universal Housing Design suggested the United Kingdom's Lifetime Homes Standards as a model which could be adopted by Australia.<sup>10</sup>

- 3.8 The Australian Network for Universal Housing Design emphasised that improving access to residential accommodation need not be onerous. They argued that traditional building design could easily be altered to accommodate access,<sup>11</sup> and that universally designed homes may incorporate a range of low cost access measures to make the house more accessible.<sup>12</sup> The Victorian Council of Social Services suggested a minimum list of features to provide access to housing for most people which they argued 'are low or no cost, largely unobtrusive, and could easily be incorporated into most common housing designs...'<sup>13</sup>
- 3.9 Unfortunately, because Class 1a buildings were not included in either of the drafts of the Premises Standards, the Regulation Impact Statements do not provide any estimates of the costs of providing accessibility or adaptability in these buildings.
- 3.10 Evidence provided to the Committee demonstrated that significant initiatives have already been taken at all levels of government to improve the provision of accessible housing. The Queensland Government has developed a Smart and Sustainable Homes Program,<sup>14</sup> and the Victorian Government has launched a Build for Life awareness campaign.<sup>15</sup> The Commonwealth Department of Health and Ageing has produced guidelines and educational material in relation to accessible and adaptable housing,<sup>16</sup> and one of the criteria the Australian Government will apply in assessment of social housing proposals for the Economic Stimulus Plan

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9 Victorian Disability Advisory Council, *Submission 80*, p. 6; Australian Network for Universal Housing Design, *Submission 95*, p. 5; Disability Council of NSW, *Submission 58*, p. 21; Public Interest Advocacy Centre, *Submission 91*, pp. 8-9; Queensland Disability Network, *Submission 41*, p. 2; Australian Federation of Disability Organisations, *Submission 83*, p. 8.

10 Australian Network for Universal Housing Design, *Submission 95*, p. 13.

11 Australian Network for Universal Housing Design, *Submission 95*, p. 4; see also Victorian Disability Advisory Council, *Submission 95*, p. 6.

12 Australian Network for Universal Housing Design, *Submission 95*, p. 10.

13 Victorian Council of Social Service, *Submission 96*, p. 20.

14 Australian Network for Universal Housing Design, *Submission 95*, p. 11; Disability Council of NSW, *Submission 58*, p. 19.

15 Australian Network for Universal Housing Design, *Submission 95*, p. 11; Disability Council of NSW, *Submission 58*, p. 20.

16 Australian Network for Universal Housing Design, *Submission 95*, p. 10.

will be the adherence of the proposal to 'universal design principles to facilitate better access for persons with disability and older persons'.<sup>17</sup>

- 3.11 In addition, evidence to the Committee suggested that the private sector has also displayed some interest in promoting greater accessibility for residential housing.<sup>18</sup>
- 3.12 The Australian Human Rights Commission acknowledged that access to housing was an important issue which needed to be addressed, but told the Committee that access to Class 1a buildings had never been part of the Premises Standards project, and that in their view the Premises Standards were not the appropriate instrument to address the problem.<sup>19</sup> The Attorney-General's Department agreed, and told the Committee that the Australian Government's current focus was on providing access to accommodation provided as a service, rather than residential accommodation.<sup>20</sup>

### Committee comment

- 3.13 The Committee considers the adequate provision of accessible and adaptable Class 1a housing to be of vital importance to the well being, lifestyle, and dignity of people with a disability in Australia. However, the Committee accepts that the Premises Standards are not the most appropriate instrument for improving the provision of accessible housing.
- 3.14 The Committee notes that there may be a number of low cost or no cost measures which can be taken in new housing to greatly improve the suitability of housing for people of all ages and abilities. These measures would also greatly reduce the cost of adapting a house for full accessibility. Provision of such housing is likely to provide increasing benefits as Australia's population ages.
- 3.15 All levels of Government should continue to work towards greater provision of accessible, adaptable and visitable housing. The Committee urges the Australian Government to continue working with the States and Territories, as well as with the private sector to develop planning policies

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17 Department of Families, Housing, Community Services and Indigenous Affairs, 'Social Housing Initiative', <[www.fahcsia.gov.au/sa/housing/progserv/affordability/socialhousing/Pages/default.aspx](http://www.fahcsia.gov.au/sa/housing/progserv/affordability/socialhousing/Pages/default.aspx)>, accessed 18 May 2009.

18 Australian Network for Universal Housing Design, *Submission 95*, p. 11.

19 Commissioner Graeme Innes, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 3.

20 Mr Stephen Fox, Commonwealth Attorney-General's Department, *Transcript of Evidence*, 7 April 2009, p. 3.

and guidelines to encourage provision of adaptable or universally accessible housing.

## Class 2 buildings

- 3.16 Class 2 buildings are buildings containing two or more 'sole-occupancy units'. In general, this applies to blocks of residential apartments and flats but not hotels, motels or the like. The Premises Standards would not apply to any part of Class 2 buildings. However, the Disability Discrimination Act will arguably apply in some circumstances, and developers, owners and managers of Class 2 buildings may be potentially subject to complaints of unlawful discrimination.<sup>21</sup>
- 3.17 By contrast, the 2004 draft Premises Standards imposed accessibility requirements on Class 2 buildings, including access to and through a pedestrian entrance, to units on at least one floor, to certain common areas, and on any other floors served by an accessible ramp or lift.<sup>22</sup> The 2004 Regulation Impact Statement estimated the cost of these requirements at \$33 million per annum for new buildings (a 0.6 per cent cost increase over the costs of construction which would otherwise apply) and \$25 million per annum for existing buildings (a 2.3 per cent cost increase).<sup>23</sup> This represented around 2.9–3.2 per cent of the total cost of the 2004 draft. The 2008 Regulation Impact Statement estimates the total annual cost of the Premises Standards requirements at \$620 million. If the 2004 costings for Class 2 buildings continue to be valid, reinstatement of the 2004 proposal for Class 2 would therefore increase the total cost of the 2008 draft by 9.5 per cent. The increase in the proportionate impact of Class 2 accessibility requirements on the overall costings is a result of the substantial reduction in costs made by other changes in the 2008 draft.<sup>24</sup> To offset these increased costs, it can be expected that there would be some additional benefits. However, it is not possible to quantify the

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21 Mr Peter Arnaudo, Commonwealth Attorney-General's Department, *Transcript of Evidence*, 26 February 2009, p. 7.

22 Table D3.1, *Premises Standards, Draft Access Code for Buildings*, 2004.

23 *Regulatory Impact Statement: Proposal to Formulate Disability Standards for Access to Premises and Amend the Access Provisions of the Building Code of Australia*, 2004, p. 59. Hereafter 'Regulation Impact Statement 2004'.

24 The most important of these include more limited application of 90<sup>th</sup> percentile dimensions, concessions for existing 80<sup>th</sup> percentile lifts and toilets, and the 'small building' concession. Some of these changes could be expected to reduce the estimated cost of compliance in Class 2 buildings from that estimated by the 2004 Regulation Impact Statement.

benefits of the provision of access to Class 2 buildings from the information provided in the 2004 Regulation Impact Statement.

- 3.18 At least 63 submitters to the inquiry covering a broad cross-section of interest groups argued that the decision to not apply the Premises Standards to Class 2 buildings should be reversed; most of these submitters considered that access to at least the common areas should be required.<sup>25</sup> Further, 16 submitters also recommended that a proportion of units in Class 2 buildings should be required to be universally accessible, adaptable or visitable.<sup>26</sup> The Property Council of Australia submitted that they supported the exclusion of Class 2 buildings from the scope of the Standards.<sup>27</sup>
- 3.19 Evidence to the inquiry indicated that some developers have developed or are developing initiatives to provide accessibility in Class 2 buildings (including Lend Lease, Meriton and Stockland)<sup>28</sup> as have some industry bodies (including Smarta Housing, Landcom, the Housing Industry Association and the Property Council of Australia).<sup>29</sup> Despite these initiatives few Class 2 buildings provide adequate accessibility. The ACT Government submitted that this was because of market failures in the building design and construction industries.<sup>30</sup>

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25 These include the governments of the ACT, Victoria and Tasmania, human rights bodies such as the Australian Human Rights Commission and equivalent bodies in Queensland, Victoria and Tasmania, peak disability organisations such as the Australian Federation of Disability Organisations and Physical Disability Australia, community legal centres, local councils, professional bodies such as the Association of Consultants in Access Australia and business groups such as the Australian Hotels Association. Vision Australia submitted that at the very least Braille and tactile signage, and tactile ground surface indicators, should be required: Vision Australia, *Submission 55*, p. 10; see also Australian Braille Authority, *Submission 112*, p. 3.

26 Including the Public Interest Advocacy Centre, *Submission 91*, p. 8; Tasmanian Government, *Submission 131*, p. 7 (in respect of units used for holiday accommodation); Disability Alliance, *Submission 77*, p. 4; NSW Disability Discrimination Legal Centre, *Submission 51*, pp. 8–9; Blythe-Sanderson Group, *Submission 47*, p. 5; and the Municipal Association of Victoria, *Submission 137*, p. 2 (suggesting further consideration be given to requiring a percentage of dwellings to be accessible). The Victorian Council of Social Service submitted that inclusion of Class 2 buildings in the Premises Standards ‘is an important step towards increasing stock of universal housing in Australia’: *Submission 96*, p. 3.

27 Property Council of Australia, *Submission 84*, p. 12.

28 Australian Network for Universal Housing Design, *Submission 95*, pp. 4, 9; Disability Council of NSW, *Submission 58*, p. 19.

29 Australian Human Rights Commission, *Submission 57*, pp. 35–36.

30 ACT Government, *Submission 46*, p. 3.

3.20 Submitters argued that omission of Class 2 buildings would have a negative impact on housing options for people with a disability,<sup>31</sup> was not appropriate in the context of Australia's ageing population,<sup>32</sup> would not provide certainty for developers and bodies corporate,<sup>33</sup> would continue inconsistencies in requirements between local council areas,<sup>34</sup> and would exacerbate the trend towards use of Class 2 buildings for short-term accommodation rather than Class 3 buildings.<sup>35</sup> Some also expressed a concern that it might lead to Councils amending their planning policies to remove access requirements.<sup>36</sup> Submissions argued that the need for accessibility in these buildings has been made more urgent by the growing popularity of medium and high density housing, encouraged by State and Territory planning strategies.<sup>37</sup> Submitters also noted that it was

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- 31 Australian Network for Universal Housing Design, *Submission 95*, p. 4; Australian Federation of Disability Organisations, *Submission 83*, p. 13; Dr Max Murray, *Submission 39*, p. 2; Cerebral Palsy League (Qld), *Submission 70*, p. 9; Disability Alliance, *Submission 77*, p. 4; NSW Disability Discrimination Legal Centre, *Submission 51*, pp. 8–9; Physical Disability Council of NSW, *Submission 117*, pp. 8–9; Action for More Independence and Dignity in Accommodation, *Submission 67*, p. 3; Association of Consultants in Access Australia, *Submission 107*, p. 2; Mr John Moxon, *Submission 37*, p. 1; Ministerial Advisory Council on Disability Western Australia, *Submission 119*, p. 1; Physical Disability Australia, *Submission 45*, p. 2.
- 32 Council on the Ageing (NSW), *Submission 21*, p. 2; Australian Network for Universal Housing Design, *Submission 95*, p. 4; Mr Mark Relf, *Submission 90*, p. 9; Ministerial Advisory Council on Disability Western Australia, *Submission 119*, p. 1; The Hon. John Brumby MP, Premier of Victoria, *Submission 139*, p. 1; HMInfo Clearinghouse, *Submission 29*, p. 2.
- 33 ACT Government, *Submission 46*, p. 6; Morris Goding Accessibility Consulting, *Submission 123*, p. 6; Victorian Equal Opportunity and Human Rights Commission, *Submission 22*, p. 4; Tasmanian Government, *Submission 131*, p. 7; Anti-Discrimination Commission Queensland, *Submission 86*, p. 6; Dr Max Murray, *Submission 32*, pp. 3, 33; Spinal Injuries Association (Qld), *Submission 122*, p. 4; Australian Human Rights Commission, *Submission 57*, p. 36.
- 34 Victorian Equal Opportunity and Human Rights Commission, *Submission 22*, p. 4; Morris Goding Accessibility Consulting, *Submission 123*, p. 6; PSE Access Consulting, *Submission 94*, p. 5; Mr Robert Knott, *Submission 25*, p. 1; Eric Martin & Associates, *Submission 35*, p. 1.
- 35 Tourism and Transport Forum, *Submission 52*, p. 3; Anti-Discrimination Board of Queensland, *Submission 86*, p. 7.
- 36 NSW Disability Discrimination Legal Centre, *Submission 51*, p. 9; Disability Alliance, *Submission 77*, p. 5; Cerebral Palsy League (Qld), *Submission 70*, p. 9; Mr Mark Relf, *Submission 90*, p. 6; People with Disabilities ACT, *Submission 72*, p. 1; Australian Federation of Disability Organisation, *Submission 83*, p. 13; Independent Living Centre NSW, *Submission 87*, p. 2; Ministerial Advisory Council on Disability Western Australia, *Submission 119*, p. 1; People with Disability, *Submission 120*, Attachment A, p. 1. Armidale-Dumaresq Council, by contrast, submitted that it would be desirable for individual Councils to have the ability to provide for access requirements beyond those required by the Premises Standards in their local planning policies: *Submission 15*, p. 5.
- 37 Mr Peter Conroy, *Submission 56*, pp. 3–4, 6; Victorian Equal Opportunity and Human Rights Commission, *Submission 22*, p. 4.

inconsistent with the UN Convention on the Rights of Persons with Disabilities and the objects of the Disability Discrimination Act.<sup>38</sup>

3.21 Submitters noted the benefits of the provision of accessible Class 2 accommodation. The ACT Government argued that:

Failure to provide for reasonable disability access to class 2 buildings will deny people with disabilities the benefits derived from living in apartments, including –

- the benefits of proximity to community facilities and CBDs in many cities;
- lower purchase costs or rental costs than houses;
- not having to maintain grounds such as lawns, gardens and backyards;
- close integration with neighbours in adjacent apartments rather than the social isolation that living in a house can cause.<sup>39</sup>

3.22 Submitters also argued that advantages from accessible design would flow to other members of the community, including parents with prams, removalists, maintenance staff who are required to lift heavy loads, and residents using shopping trolley and wheelie bags.<sup>40</sup>

3.23 Submitters argued that some State, Territory and local governments already impose significant accessibility and adaptability requirements on Class 2 buildings.<sup>41</sup> Local councils frequently lead the way.<sup>42</sup> The Australian Network for Universal Housing Design submitted that:

In NSW, for example, access requirements for Class 2 buildings are often enforced via inclusion in a Local Government Development Control Plan's or Local Environment Plan. In addition to access to the common areas, it is common that a certain percentage of units/apartments (between 10–25%) are also required to be 'adaptable' and comply with the requirements of AS4299 Adaptable housing.<sup>43</sup>

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38 Vision Australia, *Submission 55*, p. 10.

39 ACT Government, *Submission 46*, p. 5.

40 Mr Peter Conroy, *Submission 56*, p. 6.

41 These include the Australian Capital Territory and South Australia: Australian Human Rights Commission, *Submission 57*, p. 35; ACT Government, *Submission 46*, p. 4; Australian Network for Universal Housing Design, *Submission 95*, pp. 9–10; Disability Council of NSW, *Submission 58*, pp. 18–19. Evidence indicated that the NSW Government has also developed guidelines and planning policy in this area: Mr Mark Relf, *Submission 90*, p. 5.

42 Australian Human Rights Commission, *Submission 57*, p. 35.

43 Australian Network for Universal Housing Design, *Submission 95*, p. 8; see also Mr John Moxon, *Physical Disability Australia, Transcript of Evidence*, 25 March 2009, p. 17 and *Submission 90*, p. 9; Mr Mark Relf, *Submission 90*, p. 5.



3.24 However, reliance on local councils to take the lead on accessibility is not a complete solution. Victorian local councils do not have the power to impose accessibility requirements unilaterally.<sup>44</sup> The Australian Network for Universal Housing Design also submitted that the existence of multiple regimes has led to undesirable consequences, including:

- 1) Significant variations in the level of access achieved between Class 2 buildings limiting the predictability of the access features for people with a disability and older people.
- 2) Poor design outcomes, as design, development and certifying professionals are required to continually investigate which access features apply in each situation rather than being able to rely on codified requirements.<sup>45</sup>

3.25 Submitters noted that there are international examples of accessibility requirements being imposed on Class 2 buildings, including Canada, the United Kingdom, United States, and Norway.<sup>46</sup>

3.26 There are a number of reasons to believe that the accessibility requirements of the 2004 draft would not have imposed an unreasonable burden on the developers of Class 2 buildings and bodies corporate. As noted by the Australian Human Rights Commission, the requirement that access only be provided on floors with an accessible ramp or lift meant that there was:

a built in concession for small 2 and 3 storey blocks of 'walk-up' flats if there were no common use facilities on the upper floor. In this situation access would not be required to the upper floors.<sup>47</sup>

3.27 In addition, the availability of the unjustifiable hardship exemption allowed for further concessions to be assessed on a case-by-case basis.<sup>48</sup> This would be particularly important in reducing the cost impact of requirements in existing Class 2 buildings. Finally, equivalent requirements are already imposed by a number of jurisdictions around Australia without apparent negative effects on the building sector.

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44 Victorian Equal Opportunity and Human Rights Commission, *Submission 22*, p. 4; Morris Goding Accessibility Consulting, *Submission 123*, p. 5.

45 Australian Network for Universal Housing Design, *Submission 95*, p. 10; see also Disability Council of NSW, *Submission 58*, p. 19.

46 Australian Network for Universal Housing Design, *Submission 95*, p. 8; Disability Council of NSW, *Submission 58*, p. 18.

47 Australian Human Rights Commission, *Submission 57*, p. 32.

48 Disability Council of NSW, *Submission 58*, pp. 16-17.

## Use of Class 2 buildings for commercial short stay accommodation

- 3.28 An issue which was frequently raised in relation to Class 2 buildings was the increasing use of these buildings as ‘serviced apartments’, that is, as short-term accommodation.<sup>49</sup> Unfortunately, the Building Code definition of Class 2 buildings does not distinguish between buildings used solely for private residential accommodation, those used for commercial serviced apartments, and those containing a mixture of the two.<sup>50</sup> Under the current proposal, no accessibility requirements would apply to these buildings even if used for commercial purposes. If the Premises Standards were amended to require access to common areas of Class 2 buildings as proposed by many submitters, this would still not impose a requirement for the provision of accessible rooms (unlike in Class 3 buildings).<sup>51</sup>
- 3.29 Submissions from the hotel sector argued that investment in new hotel accommodation would be discouraged in favour of new investment in serviced apartments if access requirements for Class 2 buildings are not codified in the Premises Standards.<sup>52</sup> In contrast, the Queensland Tourism Industry Council submitted that imposition of requirements on Class 2 buildings used for short stay accommodation would ‘seriously threaten the economic viability’ of tourism operators offering accommodation in this class of buildings.<sup>53</sup>
- 3.30 Submitters suggested that the Building Code of Australia definition of Class 2 buildings should be clarified to address the use of Class 2 buildings for short-term accommodation.<sup>54</sup> Representatives of the Australian Building Codes Board explained that this issue has been considered, but it has not been possible to reach agreement on a definition of ‘serviced apartment’.<sup>55</sup> They argued that the current system would not

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49 Mr David Parsons, Australian Capital Territory Planning and Land Authority, *Transcript of Evidence*, 12 March 2009, p. 19; Mr Peter Conroy, *Submission 56*, p. 6; Australian Human Rights Commission, *Submission 57*, p. 36; Queensland Disability Network, *Submission 41*, p. 6; Anti-Discrimination Commission Queensland, *Submission 86*, p. 7.

50 Mr Peter Arnaudo, Commonwealth Attorney-General’s Department, *Transcript of Evidence*, 26 February 2009, p. 7.

51 Australian Human Rights Commission, *Submission 57*, p. 36.

52 Tourism and Transport Forum, *Submission 52*, p. 3.

53 Queensland Tourism Industry Council, *Submission 101*, pp.1–2.

54 Mr Peter Conroy, *Submission 56*, p. 7; Australian Human Rights Commission, *Submission 57*, p. 36; Australian Institute of Architects, *Submission 135*, p. 2; National Seniors Australia, *Submission 108*, p. 1.

55 Mr Ivan Donaldson, Australian Building Codes Board, *Transcript of Evidence*, 7 April 2009, p. 5; the Queensland Tourism Industry Council noted that the Queensland Government has developed draft guidelines on the meaning of ‘Class 2’ to deal with the issue of short stay accommodation: *Submission 101*, p. 1.

be capable of policing changes of use to serviced apartments, because ‘we just do not have people on the ground that walk about knocking on people’s doors and asking them whether they own specific premises’.<sup>56</sup>

## Application of the Disability Discrimination Act to Class 2 buildings

3.31 A number of submitters noted that there is some dispute over the application of the Disability Discrimination Act to Class 2 buildings. This is because the access to premises provisions of the Act only apply in areas ‘that the public or a section of the public is entitled or allowed to enter or use’.<sup>57</sup> The Attorney-General’s Department told the Committee that:

There is a question about the extent to which premises that are privately owned and occupied or rented long term are in fact accessible to the public in the relevant meaning of that term.<sup>58</sup>

3.32 However, the Australian Human Rights Commission and other submitters argued that the common areas of Class 2 buildings come within the scope of the Disability Discrimination Act. First, submitters argued that where a Class 2 building contains serviced apartments, both the apartment and the common areas of the building would be covered because members of the public renting units would be entitled to access those areas.<sup>59</sup> Secondly, in some circumstances the protection against discrimination in accommodation might require a landlord and indirectly a Body Corporate to give permission for work providing access to a Class 2 building.<sup>60</sup> Thirdly, submitters argued that the prohibition of discrimination in the provision of goods, services and facilities may apply to the provision of access to common areas and services of a building to members of the Body Corporate.<sup>61</sup> This argument is supported by case law under Queensland antidiscrimination legislation.<sup>62</sup> Finally, submitters argued that a body

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56 Mr Ivan Donaldson, Australian Building Codes Board, *Transcript of Evidence*, 7 April 2009, p. 5; see also Tourism and Transport Forum, *Submission 52a*, p. 3.

57 Disability Discrimination Act, paragraph 23(1)(a).

58 Mr Stephen Fox, Commonwealth Attorney-General’s Department, *Transcript of Evidence*, 7 April 2009, p. 4.

59 Australian Human Rights Commission, *Submission 57*, p. 33; Australian Network for Universal Housing Design, *Submission 95*, p. 7; Disability Council of NSW, *Submission 58*, p. 17.

60 Australian Human Rights Commission, *Submission 57*, p. 33; see also Welfare Rights Centre, *Submission 102*, p. 7.

61 Australian Human Rights Commission, *Submission 57*, pp. 34–35; Disability Discrimination Act, section 24; Disability Council of NSW, *Submission 58*, p. 17; Australian Network for Universal Housing Design, *Submission 95*, p. 8; Welfare Rights Centre, *Submission 102*, p. 7.

62 *C v A* [2005] QADT 14; Australian Network for Universal Housing Design, *Submission 95*, p. 8; Anti-Discrimination Commission Queensland, *Submission 86*, p. 7; Cairns Community Legal Centre, *Submission 93*, p. 7.

corporate may fall within the prohibition of discrimination by clubs and unincorporated associations in some circumstances.<sup>63</sup>

- 3.33 The Australian Human Rights Commission told the Committee that the 2004 draft had dealt with this uncertainty by providing that the Premises Standards requirements for Class 2 buildings only applied in buildings where one or more sole-occupancy units are made available for short term rent. However, the requirements incorporated into the Building Code would have applied to all Class 2 buildings.<sup>64</sup>

### Committee comment

- 3.34 The Committee agrees that there are good reasons for the Premises Standards to provide access to the common areas of Class 2 buildings. First, despite some developer-led initiatives, the market has not responded appropriately to the needs of people with a disability or to the requirements of the Disability Discrimination Act, even where Class 2 buildings are primarily used for short-term accommodation. As a consequence, people with a disability are excluded from an affordable accommodation option which might otherwise be well suited for their needs. The complaints mechanism for the Disability Discrimination Act has clearly failed to promote cultural change in this area.
- 3.35 Secondly, evidence presented to the Committee demonstrated that equivalent (or stronger) access requirements are already required in a large and growing number of areas throughout Australia, without apparent negative consequences for the property sector. It would be desirable to build on these initiatives with a more consistent and generally applicable set of requirements.
- 3.36 Thirdly, inclusion of requirements for Class 2 buildings would promote certainty for building developers that they would discharge their responsibilities under the Disability Discrimination Act if they comply with the Building Code.
- 3.37 Finally, and most importantly, the Committee believes that the social and economic benefits of provision of access would be substantial for both people with a disability and other members of the community, and the costs (as estimated by the 2004 Regulation Impact Statement) relatively

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63 Australian Human Rights Commission, *Submission 57*, p. 34; Australian Network for Universal Housing Design, *Submission 95*, p. 7; Disability Council of NSW, *Submission 58*, p. 17.

64 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, pp. 6-7; 2004 draft Access Code, Table 3.1.

modest. This is particularly the case given Australia's rapidly ageing population.

- 3.38 The Committee acknowledges that there may be some uncertainty as to the exact scope of the protection provided by the Disability Discrimination Act in Class 2 buildings. Given the infrequency of access to premises complaints coming before the federal courts, it is most unlikely that this uncertainty will be resolved by the courts in the near future. However, on the evidence before the Committee, there is reason to believe that at least the common areas of Class 2 buildings come within the protections of the Act for access to premises and provision of goods, services and facilities.

## Recommendation 2

- 3.39 **The Committee recommends that the requirement for access to be provided to the common areas of Class 2 buildings, which was contained in the 2004 draft Premises Standards be included in the Premises Standards.**

## Class 1b buildings

- 3.40 Class 1b buildings are, by-and-large, smaller buildings used for short-term accommodation, such as boarding or guest houses, bed-and-breakfasts and 'eco lodges'. Class 1b buildings can be either a single small building, or a number of dwellings situated on the one allotment.<sup>65</sup> The Premises Standards would impose accessibility requirements on Class 1b buildings with four or more bedrooms or dwellings. These requirements would include access to and within at least one bedroom and to common areas, or where the Class 1b consists of four or more free-standing dwellings, to a specified ratio of those dwellings.<sup>66</sup>
- 3.41 The 2004 draft Premises Standards differed from the Premises Standards by requiring access within Class 1b buildings with three or more rooms or dwellings.<sup>67</sup> The Regulation Impact Statement also explains that Class 1b buildings of less than three rooms would have been protected from a complaint under the Disability Discrimination Act, while under the 2008

65 Clause A4.1, Access Code.

66 Table D3.1, Access Code.

67 Clause A3.2 and Table D3.1, Access Code 2004.

Premises Standards, Class 1b buildings of less than four rooms are not protected.<sup>68</sup>

- 3.42 Representatives of the Attorney-General's Department told the Committee that the decision to move from a threshold of three rooms to one of four rooms for access to Class 1b buildings was the result of a compromise between cost and benefits, in the context of a failure of the disability and property sectors to agree on an appropriate threshold.<sup>69</sup>
- 3.43 The 2004 and 2008 Regulation Impact Statements provide a number of case studies on the impact of the Premises Standards on the cost of construction and upgrade of Class 1b buildings. A comparison of the estimates of the two Regulation Impact Statements is set out below. As can be seen, the amendments made to the 2008 draft and changes in the Regulation Impact Statement methodology considerably reduce the costs imposed by the Premises Standards on both new and existing Class 1b buildings.<sup>70</sup> More importantly, it is clear that provision of access in new Class 1b buildings is significantly more cost-effective than upgrades to existing buildings. Upgrades to existing Class 1b buildings would have some of the highest proportionate costs imposed by the Premises Standards on any building class.

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68 *Regulation Impact Statement: Proposal to Formulate Disability (Access to Premises – Buildings) Standards and Amend the Access Provisions of the Building Code of Australia (RIS2008-02)*, October 2008, p. 19. Hereafter 'Regulation Impact Statement 2008'. The Regulation Impact Statement 2008 is also *Exhibit 4* to the Committee's inquiry.

69 Mr Stephen Fox, Commonwealth Attorney-General's Department, *Transcript of Evidence*, 7 April 2009, p. 9.

70 Estimates of costs were also reduced by revisions to the case studies, which adopted different assumptions as to the means of compliance: Regulation Impact Statement 2008, p. 114.

Table 1 Comparison of 2004 and 2008 estimates of cost increases to upgrade and construction of Class 1b buildings as a consequence of the Premises Standards

Type of building		2004 estimate of cost increases	2008 estimate of cost increases
Single storey Class 1b — new building	Generic Building cost (\$)	\$150,000	\$165,000
	Regulatory cost (\$)	\$9,400	\$7,600
	Proportional increase	6.3%	4.6%
Single storey Class 1b — existing building	Upgrade Generic Building cost (\$)	\$40,000	\$45,000
	Regulatory cost (\$)	\$19,275	\$14,800
	Proportional increase	48.2%	32.9%
Two storey Class 1b — existing building	Upgrade Generic Building cost	\$70,000	\$75,000
	Regulatory cost (\$)	\$59,775	\$13,000
	Proportional increase	85.4%	17.3%

Source 2004 Regulation Impact Statement pp. 54, 57 and 2008 Regulation Impact Statement pp.61, 64

3.44 Many submitters argued that significant problems would be caused by the higher threshold of four bedrooms or dwellings adopted in the revised Premises Standards. Submitters argued that the four bedroom threshold would mean that very few Class 1b buildings would be required to be accessible, and that this would perpetuate an undersupply of affordable holiday accommodation for people with a disability.<sup>71</sup>

3.45 The Australian Human Rights Commission submitted that:

earlier discussions with organisations representing B&B operators suggested that a concession for 1, 2 and 3 bedroom B&B's (i.e. making the trigger 4 bedrooms) would effectively exclude more than 60% of the industry from the need to provide any access. Conversely a concession for 1 and 2 bedroom B&B's (i.e. a trigger of three bedrooms) would result in protection for about 40% of the industry.<sup>72</sup>

3.46 Submitters noted that the threshold would perpetuate uncertainty, as Class 1b buildings below the threshold would continue to have obligations under the general provisions of the Disability Discrimination Act.<sup>73</sup> In addition, the City of Sydney argued that provision of access

71 Disability Council of NSW, *Submission 58*, p. 33; Australian Federation of Disability Organisations, *Submission 83*, p. 13.

72 Australian Human Rights Commission, *Submission 57*, p. 27.

73 Australian Human Rights Commission, *Submission 57*, p. 27; Disability Council of NSW, *Submission 58*, p. 33; Victorian Disability Advisory Council, *Submission 80*, p. 8.

would promote social inclusion, provide benefits to other sectors of the community, help to meet the goals of the UN Convention on the Rights of Persons with Disabilities, and promote tourism.<sup>74</sup>

- 3.47 Mr John Moxon told the Committee of his personal difficulties in finding accessible accommodation in regional NSW:

Two weeks ago, I travelled through western New South Wales with my wife. We went to Kelso, Orange, Molong, Dubbo, Cobar, Lake Cargelligo and Forbes... I did not find one accessible bed and breakfast in any of those centres. I am not saying that there are not any, but I found none... So please do not try to convince me that we do not need more accessible accommodation – we do.<sup>75</sup>

- 3.48 Many submitters accordingly argued that the Premises Standards should apply to a greater proportion of Class 1b buildings. A small number of submitters argued that the Premises Standards should apply to all Class 1b buildings.<sup>76</sup> For example, the Spinal Injuries Association (Qld) argued that:

Class 1B cabins are commonly used for variously priced accommodation or unique natural settings accommodation. They tend to offer a service no different to a Class 3 building so should not be treated differently to a Class 3...In many regional and remote areas, these are often the ONLY form of accommodation.<sup>77</sup>

- 3.49 A larger number of submitters argued that the threshold for compliance should be reduced to three rooms.<sup>78</sup> The Australian Human Rights Commission told the Committee:

...once you get above three bedrooms, you start to miss out on the commercial interests building eco-lodges, cabins et cetera for the tourist industry. It seems to the Commission that people with

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74 City of Sydney, *Submission 134*, p. 5.

75 Mr John Moxon, *Physical Disability Australia, Transcript of Evidence*, 25 March 2009, pp. 18–19.

76 Dr Max Murray, *Submission 39*, pp. 6, 10; Spinal Injuries Association (Qld), *Submission 122*, p. 2; Health Science Planning Consultants, *Submission 92*, p. 4; Queensland Disability Network, *Submission 41*, p. 7

77 Spinal Injuries Association (Qld), *Submission 122*, p. 2, 3.

78 Disability Council of NSW, *Submission 58*, p. 34; Physical Disability Council of NSW, *Submission 117*, p. 14; Cerebral Palsy League of Queensland, *Submission 70*, p. 9; Victorian Disability Advisory Council, *Submission 80*, p. 8; Australian Human Rights Commission, *Submission 57*, p. 27; Australian Federation of Disability Organisation, *Submission 83*, p. 7; Latrobe City Council, *Submission 79*, p. 2; Hobsons Bay City Council, *Submission 11*, p. 1; Independent Living Centre NSW, *Submission 87*, p. 5.



disabilities should not be excluded from utilising more than half of those facilities.<sup>79</sup>

3.50 In addition, a number of submitters argued that while a concession should be maintained for existing small Class 1b buildings, all new and purpose-built Class 1bs should be required to be accessible.<sup>80</sup> For example, the Disability Council of NSW submitted that the same requirements for accessibility as imposed on Class 3 buildings should apply to new, purpose-built Class 1b buildings.<sup>81</sup> The Australian Human Rights Commission submitted that there was less need for a concession for new buildings because 'access could be addressed in the design phase of the development',<sup>82</sup> while the Australian Federation of Disability Organisations argued that new facilities 'can more readily absorb the costs of providing accessibility'.<sup>83</sup>

3.51 By contrast, the building industry raised significant concerns about the costs of extending accessibility requirements to Class 1b buildings, particularly existing buildings. They argued that most bed and breakfasts are very small commercial operations,<sup>84</sup> and that:

To modify existing Class 1a buildings to comply with the new proposals for Class 1b would be out of the question for most of these people. ...It is not too much to say that the imposition of the Disability Standards would drive most B&Bs and small guest houses out of business.<sup>85</sup>

3.52 The Property Council told the Committee that they are 'quite open to the argument that high standards of universal access should apply' to bed and breakfasts, but that the issue 'was never looked at in terms of the RISs'.<sup>86</sup> A number of submitters from the disability sector accepted that the imposition of accessibility requirements on all existing Class 1b buildings

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79 Commissioner Graeme Innes, Australian Human Rights Commission, *Transcript of Evidence*, 25 March 2009, p. 32.

80 Disability Council of NSW, *Submission 58*, p. 34; Physical Disability Council of NSW, *Submission 117*, p. 14; Cerebral Palsy League of Queensland, *Submission 70*, pp. 9–10; Disability Alliance, *Submission 77*, p. 5; People with Disabilities ACT, *Submission 72*, p. 1; Australian Human Rights Commission, *Submission 57*, p. 27–28; Independent Living Centre NSW, *Submission 87*, p. 5; City of Sydney, *Submission 134*, p. 5; Mr John Moxon, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 21.

81 Disability Council of NSW, *Submission 58*, pp. 33–34.

82 Australian Human Rights Commission, *Submission 57*, p. 27.

83 Australian Federation of Disability Organisations, *Submission 83*, p. 14.

84 Master Builders Australia, *Submission 50*, p. 20.

85 Master Builders Australia, *Submission 50*, p. 15.

86 Mr Peter Verwer, Property Council of Australia, *Transcript of Evidence*, 25 March 2009, p. 63.

would have a harsh impact on very small Class 1b buildings.<sup>87</sup> However, these submitters generally argued that it would still be appropriate to impose accessibility obligations on larger operations.<sup>88</sup> The Australian Human Rights Commission noted that the unjustifiable hardship concession would continue to be available in respect of larger Class 1b buildings if the specific circumstances of the building made compliance difficult.<sup>89</sup>

## Committee comment

- 3.53 Bed and breakfasts, eco lodges and similar small accommodation providers are an affordable, popular and growing segment of the tourism sector. It is therefore important that accessibility should be required in the greatest number of Class 1b buildings as possible. However, the Committee recognises that many Class 1b buildings are run by small businesses with very limited resources. It is clear that the proportional cost increases imposed by the Premises Standards are very substantial in existing buildings. It is likely that in a large number of Class 1b buildings with fewer than four rooms that these costs would be substantial enough to justify a claim of unjustifiable hardship. The Committee therefore considers that the current threshold of four bedrooms or dwellings for accessibility in existing buildings is appropriate.
- 3.54 However, the Regulation Impact Statements demonstrate that the increases in costs flowing from accessibility requirements in new Class 1b buildings are much more modest. Furthermore, evidence to the Committee suggested that the current threshold may exclude 60 per cent of existing bed and breakfasts from the application of the Premises Standards. The Committee considers that it is important to ensure that the proportion of accessible Class 1b accommodation increases from this rather low level into the future. Moreover, it is not obvious why small Class 3 hotels of 1 to 3 rooms are required to be accessible, when newly built Class 1b bed and breakfast accommodation is not. The Committee therefore concludes that it would be desirable to impose accessibility requirements on all new purpose-built Class 1b buildings, regardless of

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87 Disability Council of NSW, *Submission 58*, p. 33; Cerebral Palsy League of Queensland, *Submission 70*, p. 9; Disability Alliance, *Submission 77*, p. 5; People with Disabilities ACT, *Submission 72*, p. 1; Australian Human Rights Commission, *Submission 57*, p. 27; Independent Living Centre NSW, *Submission 87*, p. 5.

88 Disability Council of NSW, *Submission 58*, p. 34; Cerebral Palsy League of Queensland, *Submission 70*, p. 9; Disability Alliance, *Submission 77*, p. 5; People with Disabilities ACT, *Submission 72*, p. 1; Independent Living Centre NSW, *Submission 87*, p. 5.

89 Australian Human Rights Commission, *Submission 57*, p. 27.

the number of rooms or dwellings they provide. Such a provision should be consistent with the requirements which the Premises Standards would impose on all Class 3 buildings, including very small hotels.

- 3.55 The Committee notes that one difficulty in this area is the lack of concrete information on the numbers of Class 1b buildings which would be exempted by thresholds of three or four rooms. It is therefore important that the five year review consider: (1) how many Class 1b buildings were exempted from compliance by the four room threshold, and how many were not; and, (2) whether the imposition of access requirements has had an effect on the conversion of existing buildings to Class 1b buildings or on the construction of new Class 1b accommodation.

### Recommendation 3

- 3.56 **The Committee recommends that requirements for accessibility be imposed on all new and purpose-built Class 1b buildings regardless of the number of bedrooms or dwellings they contain, but that the proposed four bedroom threshold be maintained for existing buildings. The general provisions of the Disability Discrimination Act continue to be available for existing buildings with one to three bedrooms.**

## Fitout and premises other than buildings

- 3.57 The Disability Discrimination Act adopts a very broad definition of premises. Section 4 of the Act defines 'premises' to include:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of a premises (including premises of a kind referred to in paragraph (a) or (b)).

- 3.58 This definition is a 'broad and inclusive' one,<sup>90</sup> and may extend to all aspects of a building (including the fitout, furnishings and maintenance), other aspects of the built environment such as footpaths, and even to areas such as parklands. All such premises have access requirements imposed

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90 *Access for All Alliance v Hervey Bay City Council* [2004] FMCA 915 at paragraph 6 per Baumann FM.

on them by the Disability Discrimination Act if they are publicly available.<sup>91</sup>

3.59 The Building Code of Australia is intended to regulate the conditions under which an approval will be given for the construction or renovation of a building. As a consequence, the Building Code applies to a much narrower set of circumstances than contemplated by the Premises Standards. It does not apply to post-construction features of a building such as fitout or furnishing, or to the ongoing maintenance of the building. It also does not apply to places other than buildings.

3.60 A number of submitters argued that fitout was an important area of discrimination which needs to be addressed. Dr Max Murray submitted that by failing to provide requirements in respect of fitout, the Premises Standards would not provide complete certainty to building owners and managers as to their compliance with disability discrimination obligations.<sup>92</sup> The Australian Human Rights Commission submitted that:

People with a disability... regularly experience discrimination in relation to access to and use of premises arising from the fitout of buildings.

This might include accessing reception areas, using facilities such as drinking water fountains, information booths, queuing systems, retail change rooms and circulation space around products.<sup>93</sup>

3.61 The Commission accepted that fitout was not within the scope of the current project, but recommended that the issue be progressed through an appropriate process following the finalisation of the Premises Standards.<sup>94</sup>

3.62 Other submitters argued that the Premises Standards should impose obligations on places other than buildings, such as footpaths and parkland.<sup>95</sup>

3.63 Commissioner Graeme Innes told the Committee that there were two main reasons why fitout and places other than buildings were not included in the Premises Standards:

The first is that this piece of work was done to achieve uniformity with the Building Code of Australia. So where the standards

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91 Section 23, *Disability Discrimination Act 1992* (Cth).

92 Dr Max Murray, *Submission 39*, p. 3.

93 Australian Human Rights Commission, *Submission 57*, p. 41.

94 Australian Human Rights Commission, *Submission 57*, p. 41.

95 Dr John Macpherson, Spinal Injuries Association (Qld), *Transcript of Evidence*, 3 April 2009, p. 50.

would go was prescribed by the narrower piece of regulation, which was the building code which applied to buildings in that stricter sense. We have all been aware that the broader fit-out within premises and outside, in parklands, is an area that the DDA [Disability Discrimination Act] covers and where there may well be a need for future regulation. The second reason was that the aim was to bite off a piece of work that could be chewed, and it has taken us 10 years to chew it.<sup>96</sup>

- 3.64 Representatives of the Australian Building Codes Board agreed, and noted in addition that building fitout does not necessarily require building approval, and is likely to change throughout the life of the building.<sup>97</sup>

### Committee comment

- 3.65 Evidence presented to the Committee clearly demonstrates that full access to the built environment requires fitout to be accessible in addition to the building structure. However, there are a number of challenges in regulating fitout through an instrument such as the Building Code of Australia. In particular, compliance with the Building Code is primarily assessed before and at the end of the building process. Fitout may not have been completed by the time of final building approval. In addition, fitout may change over the life of a building without the need for a building approval. The Committee therefore accepts that the Building Code of Australia and the proposed Premises Standards are not the best instrument for regulation of building fitout. The Committee notes that it would remain possible to bring a complaint under the Disability Discrimination Act in relation to discriminatory aspects of building fitout.
- 3.66 The Committee believes that it would be appropriate to regulate building fitout through further disability standards under the Disability Discrimination Act. Such standards should regulate critical aspects of fitout such as the design of service counters and other furniture, staff areas (such as tea rooms and kitchens), car park boom gates and ticket machines, and the design of any signage such as tenant's boards which is not regulated by the Building Code.
- 3.67 Places other than buildings are an important aspect of the everyday environment. They provide the pedestrian infrastructure which connects

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96 Commissioner Graeme Innes, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 12.

97 Mr Kevin Newhouse, Australian Building Codes Board, *Transcript of Evidence*, 7 April 2009, p. 13.

other elements of the built environment, as well as important cultural and natural features such as memorials, gardens and parkland. The Disability Discrimination Act requires non-discriminatory access to be provided to all places which the public are entitled or allowed to enter or use. Development of disability standards in relation to places other than buildings would provide certainty for owners and managers. It would also promote the provision of dignified and cost-effective access for people with a disability and provide improved safety and amenity for many others, including children, people with prams, and the elderly. The Committee therefore believes that it would be appropriate for disability standards to be developed to regulate access to places other than buildings.

#### **Recommendation 4**

- 3.68 The Committee recommends that consideration be given to the development of disability standards in relation to building fit out and places other than buildings.**

## **Existing buildings**

### **Trigger for accessibility requirements in existing buildings**

- 3.69 The Premises Standards would require all new buildings to provide accessibility at the time of construction. However, existing buildings would only be required to provide access at the time of building upgrades. The Premises Standards would impose access requirements on the new parts and affected parts of existing buildings, at the time of an application for a building approval.<sup>98</sup> This 'owner upgrade trigger' means that the Premises Standards would not apply to any part of an existing building until a renovation or extension significant enough to require a building approval is conducted. Instead, the general access to premises and complaints provisions of the Disability Discrimination Act would continue to apply to any aspect of an existing building which has not been the

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<sup>98</sup> See paragraph 2.1(1)(b), Premises Standards.

subject of a building application under the Premises Standards.<sup>99</sup> Because the Premises Standards impose requirements only on the new or renovated area of a building and an accessible path of travel to that area, it may be many years until all aspects of existing buildings are required to be upgraded.

- 3.70 Evidence from submitters indicated that concerns were raised by the disability sector about the owner upgrade trigger during negotiations on the Premises Standards. Submitters argued that the disability sector only agreed to this provision on assurances from industry that within five to seven years the:

natural building upgrade cycle would trigger the full application of the Premises Standards and thus the upgrade of the entrance and path of travel, toilets, lifts etc within an existing building by the building owner.<sup>100</sup>

- 3.71 A number of submitters were concerned that these arguments might not be borne out in practice, and urged that the application of the trigger should be considered by the review of the Standards.<sup>101</sup>
- 3.72 Some submitters suggested that more should be done to ensure that existing buildings must be upgraded to provide access. One suggestion was that an additional trigger could apply access requirements 'to the whole of the existing building if the extent of the new refurbishment equates to 50 per cent of the volume of the building over a three-year period.'<sup>102</sup> This was the proposed trigger under the 2004 draft of the Premises Standards.<sup>103</sup> However, in general, submitters accepted that the owner upgrade trigger should be adopted subject to examination at the five year review.<sup>104</sup>
- 3.73 The Housing Industry Association also submitted that more could be done to provide certainty in relation to existing buildings that have not been the subject of a building approval. They recommended:

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99 Australian Human Rights Commission, *Submission 57*, p. 40.

100 Disability Council of NSW, *Submission 58*, p. 24.

101 Disability Council of NSW, *Submission 58*, p. 25; People with Disabilities ACT, *Submission 72*, p. 5; Physical Disability Australia, *Submission 45*, p. 3; Mr John Moxon, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 19.

102 Ms Rita Struthers and Mr Daniel Bedwell, *Submission 121*, p. 9; Armidale-Dumaresq Council, *Submission 15*, p. 4.

103 Australian Building Codes Boards, *Submission 133*, pp. 3-4.

104 People with Disabilities ACT, *Submission 72*, p. 5; People with Disabilities Australia, *Submission 45*, p. 3; Disability Council of NSW, *Submission 58*, p. 25.

that the Government commit to developing further Guidelines for existing buildings and the potential options for voluntary upgrading, situations which may give rise to mandatory upgrading and the ongoing liability of building owners for existing buildings that pre-date the Premises Standard.<sup>105</sup>

## Committee comment

- 3.74 Application of access requirements to the vast stock of existing buildings in Australia, most of which are owned privately, is a significant policy challenge. Ideally, access to all buildings should be provided as soon as possible. However, mandated access upgrades might impose significant costs on building owners, particularly if they are not contemplating any other building activity. The Committee therefore believes that the 'owner upgrade' trigger for compliance with the Premises Standards is an appropriate one. This is particularly so if it is indeed the case that the natural building upgrade cycle would mean that access requirements are applied to the majority of existing buildings within a reasonable time period. Access to existing buildings which have not been upgraded should continue to be open to complaint under the Disability Discrimination Act.
- 3.75 Given the reservations of the disability sector as to whether the trigger would require rapid adoption of accessibility, the Committee considers that it would be appropriate for the five year review of the Premises Standards to consider what proportion of the existing building stock has been upgraded for access during the first five years of the operation of the Premises Standards. The owner upgrade trigger should be reconsidered at the time of the five year review if it can be shown that it has not resulted in a significant proportion of existing buildings providing access.
- 3.76 The Committee also believes that it would be useful for guidelines and explanatory materials to be developed by the Attorney-General's Department to provide guidance for the property sector on the obligations of owners of existing buildings which have not yet been upgraded.

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105 Housing Industry Association, *Submission 48*, p. 13.



## Should different requirements be imposed on new and existing buildings?

- 3.77 The Premises Standards would apply somewhat differently to new and existing buildings. The most important difference is that existing buildings would not be required to comply with the Premises Standards until a building approval is sought in respect of that building. By contrast, all new buildings would be required to comply from the time of construction. In addition, concessions are provided for certain lifts and accessible toilets in existing buildings, and in relation to the affected part of an existing building where the application for building approval is submitted by a lessee.<sup>106</sup>
- 3.78 A number of submitters noted that provision of access is more difficult or expensive in existing buildings.<sup>107</sup> These arguments are supported by the Regulation Impact Statement, which estimates the proportional increases in costs caused by the Premises Standards as much greater for existing buildings than for new buildings.<sup>108</sup> The Regulation Impact Statement also makes it clear that the ratio of benefits to costs is much higher for new buildings because of the lower costs of construction.<sup>109</sup>
- 3.79 Some submitters argued that weaker standards might be necessary for existing buildings. Some noted that refinements to some technical requirements might be necessary to recognise the difficulty of providing access in existing buildings,<sup>110</sup> or that certain less appropriate access features should only be allowed in existing buildings.<sup>111</sup> Master Builders Australia argued that extensive exemptions should be provided to existing

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106 Sections 4.3, 4.4 and 4.5, Premises Standards. These concessions are addressed in Chapter 4.

107 Australian Institute of Building Surveyors (Tasmanian Chapter), *Submission 97*, Attachment A, p. 2; Mr Peter Conroy, *Submission 56*, p. 19; Dr Max Murray, *Submission 39*, p. 8; Mr Peter Verwer, Property Council of Australia, *Transcript of Evidence*, 25 March 2009, pp. 60–61; Mr Bill Healey, Australian Hotels Association, *Transcript of Evidence*, 25 March 2009, p. 83; Master Builders Australia, *Submission 50*, p. 9.

108 Regulation Impact Statement 2008, pp. 61, 64.

109 Regulation Impact Statement 2008, p. 110.

110 Mr Daniel Bedwell and Ms Rita Struthers, *Submission 121*, p. 13 (in relation to threshold ramp gradients).

111 Mr Daniel Bedwell and Ms Rita Struthers, *Submission 121*, p. 13 (in relation to step ramps); Dr Max Murray, *Submission 39*, p. 8 (in relation to 80th percentile dimensions) and p. 18 (in relation to stairway platform lifts).

buildings.<sup>112</sup> Representatives of the NSW Government suggested that the Premises Standards should initially apply only to new buildings.<sup>113</sup>

- 3.80 By contrast, some submitters argued that greater requirements could be imposed on new buildings than on existing buildings. For example, the Australian Human Rights Commission recommended that all new or purpose-built Class 1b buildings should be required to be accessible, regardless of the number of dwellings they contain.<sup>114</sup>
- 3.81 Representatives of the Attorney-General's Department told the Committee that it would be technically possible to further differentiate between new and existing buildings in the Premises Standards. However, they explained that the current provisions were a negotiated compromise between concerns at the cost of the 2004 draft Premises Standards and provision of adequate levels of access. They argued that the Committee should give weight to the outcome of those negotiations.<sup>115</sup>

### Committee comment

- 3.82 On balance, the Committee believes that the compromise which was struck in the formulation of the Premises Standards between providing the best possible access for people with a disability, controlling costs for upgrades of existing buildings, and ensuring consistency of regulation across all buildings is an appropriate one.
- 3.83 The provision of access in new buildings is considerably less expensive than in existing buildings, because building design can address accessibility from the inception of the project. Provision of access in new buildings would not require any adjustments to existing structural elements, and topographical difficulties can be designed around.

### Maintenance and management of buildings after construction

- 3.84 The primary focus of the Premises Standards is on the construction and physical fabric of a building. Requirements for accessibility are assessed
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112 Master Builders Australia, *Submission 50*, p. 14.

113 Mr Christopher Johnson, Department of Planning, NSW, *Transcript of Evidence*, 25 March 2009, p. 87.

114 Australian Human Rights Commission, *Submission 57*, pp. 27-28.

115 Mr Stephen Fox, Commonwealth Attorney-General's Department, *Transcript of Evidence*, 7 April 2009, pp. 15-16.

when building approval is given and at the completion of construction. The Standards do not explicitly address any management practices or maintenance of the building which may occur after construction. However, there may be scope under State and Territory planning laws for planning authorities to impose obligations in these areas after construction.

- 3.85 A number of submitters argued that building managers do not always maintain facilities in a usable state, and that the Premises Standards should impose obligations for maintenance on building owners.<sup>116</sup> Maintenance issues which were noted in submissions included:
- use of accessible toilets as storage areas, or permanent locking of facilities;<sup>117</sup>
  - poor maintenance of hearing loops;<sup>118</sup>
  - inadequate policing of accessible car parking spaces;<sup>119</sup>
  - theatres not reserving accessible seating for people with a disability;<sup>120</sup> and
  - objects such as pot plants and rubbish bins obstructing access in lifts.<sup>121</sup>
- 3.86 Submitters to the inquiry told the Committee that it was not enough to ensure that a building provides access at the time of its construction. Requirements for maintenance and management of the facilities are also required.<sup>122</sup> Mr Placido Belardo told the Committee that many minor modifications over the life of a building might combine to prevent access, and that:
- if you are solely focused on the time at which the building permit is issued, without a corresponding check to see whether subsequent issues would be addressed, then you could have a problem.<sup>123</sup>

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116 Armidale Dumaresq Council, *Submission 15*, p. 6; Deafness Forum of Australia, *Submission 18*, pp. 7,9; Spinal Cord Injuries Australia, *Submission 74*, pp. 4–9.

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

118 Deafness Forum of Australia, *Submission 18*, pp. 7, 9; Disability Alliance, *Submission 83*, p. 24.

119 Spinal Cord Injuries Australia, *Submission 74*, pp. 4–5.

120 Spinal Cord Injuries Australia, *Submission 74*, p. 6.

121 Spinal Cord Injuries Australia, *Submission 74*, p. 8.

122 Disability Discrimination Legal Service, *Submission 78*, p. 2.

123 Mr Placido Belardo, Disability Discrimination Legal Service, *Transcript of Evidence*, 30 March 2009, p. 49.

- 3.87 Ms Nicole Lawder of the Deafness Forum of Australia told the Committee that a lack of standards in the area of maintenance mean that 'it is usually up to a consumer, an individual, to identify that that is not working and to try to progress it'.<sup>124</sup>
- 3.88 Submissions differed in their suggestions as to how maintenance requirements might be enforced. The Deafness Forum of Australia suggested that requirements for maintenance might be linked to inspection of fire systems.<sup>125</sup> Spinal Cord Injuries Australia suggested that a guideline document for building managers could be developed and distributed at the time of building completion.<sup>126</sup> Mr Sean Lomas from that organisation also suggested that:

maybe there could be a change in the standards to recognise that, once a building is deemed compliant with the standards, that is recognised to be an ongoing commitment, and any failure to commit to that leaves you open to individual cases of discrimination.<sup>127</sup>

### Committee comment

- 3.89 Maintenance and management of accessible facilities is an important issue. It would undermine the object and purpose of the Premises Standards to impose accessibility obligations on buildings at the time of their construction if building owners and managers did not maintain that accessibility throughout the life of the building.
- 3.90 The Committee notes that there is not currently a comprehensive regime for monitoring ongoing compliance with the Building Code apart from certain safety provisions, and in particular the fire safety provisions.<sup>128</sup> Evidence presented to the Committee did not identify a mechanism capable of ensuring the comprehensive inspection of buildings needed to ensure that all of the accessible features of a building are maintained and managed adequately.
- 3.91 However, the Committee considers that it would be open for a person affected by poor management or maintenance practices to bring a complaint of unlawful discrimination under the Disability Discrimination

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124 Ms Nicole Lawder, Deafness Forum of Australia, *Transcript of Evidence*, 19 March 2009, p. 13.

125 Deafness Forum of Australia, *Submission 18*, p. 9; see also Mr Sean Lomas, Spinal Cord Injuries Australia, *Transcript of Evidence*, 25 March 2009, p. 44.

126 Mr Greg Killeen, Spinal Cord Injuries Australia, *Transcript of Evidence*, 25 March 2009, p. 44.

127 Mr Sean Lomas, Spinal Cord Injuries Australia, *Transcript of Evidence*, 25 March 2009, p. 44.

128 See Building Code of Australia, section I2.

Act. The certainty provided by the Premises Standards increases the likelihood that such a complaint would be successful without the need to go to court because in most cases it would be clear that the access envisaged by the Premises Standards was not in fact being provided.

- 3.92 The Committee therefore considers that no provision in relation to ongoing management or maintenance of access needs to be included in the Premises Standards. However, this should be reconsidered at the time of the five year review if widespread problems are evident.

## Persons with responsibilities under the Standards

- 3.93 The Premises Standards define three categories of person who would bear responsibilities under the Standards. These are 'building certifiers', 'building developers', and 'building managers'. These terms are defined to capture those people with responsibility for or control over the building certification, the design and construction of the building, and the ongoing management of the building.<sup>129</sup>

- 3.94 A number of submitters suggested that the Premises Standards should explicitly impose requirements on access consultants, as a category of professionals with a significant interest and expertise in the design of access to buildings. For example, the Victorian Access Consultants Network argued that access consultants do not come within the scope of section 2.2 of the Standards, and that :

Given the important nature of Access Consultants professional expertise in access related to the built environment, and the increasing reliance on Access Consultants to provide this specialist professional advice, it is imperative that Access Consultants are included.<sup>130</sup>

- 3.95 Some submitters also suggested that Access Panels set up under the Model Protocol should include an Association of Consultants in Access Australia accredited consultant as the 'person skilled in access'.<sup>131</sup>
- 3.96 Access consultancy is a relatively new profession which has rapidly attained significant importance in providing access advice to developers and building approval authorities. The profession has made considerable

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129 See section 2.2, Premises Standards.

130 Victorian Access Consultants Network, *Submission 28*, p. 5.

131 Victorian Access Consultants Network, *Submission 28*, p. 5.

progress towards organising and self-regulating in an Association of Consultants in Access Australia.<sup>132</sup>

- 3.97 Representatives of the Department of Innovation, Industry, Science and Research indicated that the examples of persons currently provided in the Standards were chosen because:

there is a degree of accreditation of professional bodies, and some degree of responsibility, in that the people who are signing off on these things will be the ones that, if there is a complaint lodged, will have to respond to those particular issues.<sup>133</sup>

- 3.98 Furthermore, representatives of the Attorney-General's Department explained that:

Firstly, it is possible perhaps that an access consultant is included within 2.2(3) already, if they are indeed a person with responsibility for, or control over, the design or construction. The examples are only examples; they are not a list. Secondly, a person who is a building developer must be 'a person with responsibility for, or control over, its design or construction'. I think it is an open question whether or not an access consultant would have that level of power within the arrangements for the construction of a building.<sup>134</sup>

## Committee comment

- 3.99 The Committee acknowledges that access consultants play an important and increasing role in advising on accessibility requirements for the built environment. As a result, it is likely that some access consultants would have obligations under the Premises Standards because of the degree of responsibility or control that they exercise over building projects.
- 3.100 The Committee does not believe that it would be appropriate for the Standards to impose any requirements on access consultants in situations where they do not have responsibility or control. In cases where the Standards have been breached, it is quite appropriate that liability should primarily fall on those most centrally involved in the commission of the breach.

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132 Disabled Access Consultancy, *Submission 16a*, p. 1.

133 Mr Detlef Jumpertz, Commonwealth Department of Innovation, Industry, Science and Research, *Transcript of Evidence*, 7 April 2009, p. 14.

134 Mr Stephen Fox, Commonwealth Attorney-General's Department, *Transcript of Evidence*, 7 April 2009, p. 15.

3.101 The Committee therefore does not believe any change is necessary to further recognise access consultants in the Premises Standards.





## Concessions, exemptions and exceptions

- 4.1 The Premises Standards contain a number of exemptions and concessions. Concessions are provided in relation to certain existing lifts, accessible sanitary compartments and to lessees. The Premises Standards also provide an 'unjustifiable hardship' concession which is available to building certifiers, developers and managers where strict compliance with the Premises Standards would impose an unreasonable burden. In addition, the Premises Standards preserve the exception which the Disability Discrimination Act provides in cases where a discriminatory act is done in direct compliance with certain other laws.<sup>1</sup>
- 4.2 The exemptions and concessions in the Premises Standards are limited to matters regulated by the Premises Standards. They do not apply to general discrimination claims under the Disability Discrimination Act.
- 4.3 This chapter considers the key concessions, exemptions and exceptions raised during the inquiry.

### Small buildings

#### Small building threshold for compliance

- 4.4 Paragraph D3.4(f) of the Access Code provides that accessibility requirements do not apply to the upper storeys of Class 5, 6, 7b or 8 buildings with no more than 3 storeys, where the floor area of each upper storey is not more than 200m<sup>2</sup>, except where an accessible ramp or lift is provided. This exemption only applies to the upper storeys of these

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<sup>1</sup> Section 4.2, Disability (Access to Premises – Buildings) Standards 2009, hereafter 'Premises Standards'.

buildings; the accessibility requirements of the Premises Standards still apply to the ground floor, regardless of its size.

- 4.5 This exemption was not part of the 2004 draft Premises Standards.<sup>2</sup> The basis for its inclusion appears to be the significant proportionate cost of requiring a small building to provide access to its upper storeys.<sup>3</sup> The exemption also anticipates that most buildings of this size would be able to make an unjustifiable hardship claim.<sup>4</sup> Access to the upper storeys would require the installation of a lift or ramp and would also result in the loss of viable space as a proportion of floor space.<sup>5</sup> The Regulation Impact Statement estimates that the cost of installing a lift in a two storey building where it is not currently provided for is \$100,000.<sup>6</sup>
- 4.6 A number of submissions commented on the threshold for the exemption. There was some acknowledgement that the threshold of 200m<sup>2</sup> is appropriate given the expense of installing a lift.<sup>7</sup> However, Master Builders Australia recommended that the threshold be increased to 300m<sup>2</sup> for consistency with certain other Building Code requirements for small buildings.<sup>8</sup> Conversely, two submissions from the disability sector recommended that the Committee consider reducing the threshold to 150m<sup>2</sup> for all buildings covered by the provision<sup>9</sup> or to 100m<sup>2</sup> for Class 6 buildings only.<sup>10</sup>

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2 See Regulation Impact Statement, p. 20.

3 See Regulation Impact Statement, pp. 118, 136.

4 See Australian Human Rights Commission, *Submission 57*, p. 15. However, the Australian Human Rights Commission goes on to point out that while this may be generally true, some building developers would have sufficient resources to install a lift and would not have been able to claim unjustifiable hardship.

5 *Regulation Impact Statement: Proposal to Formulate Disability (Access to Premises – Buildings) Standards and Amend the Access Provisions of the Building Code of Australia (RIS2008-02)*, October 2008, p. 38. Hereafter ‘Regulation Impact Statement 2008’. The Regulation Impact Statement 2008 is also *Exhibit 4* to the Committee’s inquiry.

6 Regulation Impact Statement 2008, ‘Standard Rates Adopted for Case Studies’, p. 136, which uses the figure of \$100,000 for a lift in a two storey building, where one is not currently provided. However, there is some evidence that the cost may now be less. See the discussion later in this chapter from paragraph 4.17.

7 See for instance Cairns Community Legal Centre, *Submission 93*, p. 17.

8 Master Builders Australia, *Submission 50*, p. 14; see also Master Builders Australia, *Attachment A* which states that 300m<sup>2</sup> is used as a part of a definitional threshold for Class 1b buildings, theatres and public halls and buildings which require the installation of emergency lighting.

9 Victorian Disability Advisory Council, *Submission 80*, p. 7; see also Mr Peter Conroy, *Submission 56*, p. 7.

10 Mr Peter Conroy, *Submission 56*, p. 7.

4.7 The Committee was informed that the threshold of 200m<sup>2</sup> is a result of compromise between cost and accessibility.<sup>11</sup>

A line had to be drawn somewhere and a decision was taken that the 200 square metre threshold was appropriate. Obviously, there were a range of views either side of that particular threshold, with some in industry wanting a significantly larger threshold and others from the disability sector wanting a smaller threshold, but in the end 200 square metres was the threshold that was determined.<sup>12</sup>

4.8 There was some concern that this exemption would have a disproportionate impact on regional towns where small buildings of this kind are common.<sup>13</sup> This would limit employment opportunities for people with a disability in these towns as well as access to services or facilities located on upper storeys.<sup>14</sup>

4.9 Some of these submissions asked whether the exemption should be based on size at all. The key issue, they contended, is what the small buildings are being *used* for and, they argued, when government agencies, doctors, dentists, banks and other essential services are located in these buildings, the buildings should be accessible regardless of the size of the upper storeys:<sup>15</sup>

Consideration should be given to the Standards requiring access to upper and lower floors of class 5, 6, 7b and 8 buildings in which the following services are provided:

- the reception area of a company offering services to the public;
- offices or facilities for a Commonwealth, State, Territory, or local government department or a government agency;
- the professional office of a health care provider, medical consulting rooms, or dental surgery;
- a retail financial institution;
- a retail shopping outlet; and
- a restaurant/café.<sup>16</sup>

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11 See for instance the comments from Mr Peter Verwer, Property Council of Australia, *Transcript of Evidence*, 25 March 2009, p. 61.

12 Mr Detlef Jumpertz, Department of Innovation, Industry, Science and Research, *Transcript of Evidence*, 7 April 2009, p. 16.

13 See, for instance, Anti-Discrimination Commission Qld, *Submission 86*, p. 8.

14 Arts Alliance Victoria, *Submission 34*, p. 2; Welfare Rights Centre, *Submission 102*, p. 9.

15 Victorian Disability Advisory Council, *Submission 80*, p. 7; City of Yarra, *Submission 75*, pp. 3–4; Welfare Rights Centre Qld, *Submission 102*, p. 8.

16 Victorian Disability Advisory Council, *Submission 80*, p. 7.

- 4.10 New Zealand, for example, has a higher ‘small building’ threshold<sup>17</sup> but also requires access to the upper floors of such buildings where they are intended for use as banks, government offices or agencies, hospitals or healthcare services and public libraries.<sup>18</sup>
- 4.11 Although there is a clear need for these services to be accessible, at least one submitter had reservations with this approach because building use changes regularly:

...Unfortunately businesses do not stay in one space for very long. Once you build a building – and we have talked about adaptability – it is hard to adapt. So I think we have got to look at the building itself rather than the organisation that is going into it.<sup>19</sup>

### Committee comment

- 4.12 The Committee shares these reservations and is not convinced that providing access based on building use is the most effective means of codifying building access obligations. The Committee also accepts that, without further research, the impact of different types of threshold is unknown. It is unclear how many buildings, or what type, would be exempt under a 150m<sup>2</sup> threshold compared with a 200m<sup>2</sup> or 300m<sup>2</sup> threshold. For this reason, the Committee accepts the approach set out in the Premises Standards but has recommended, in Chapter 7, that this exemption be reconsidered as part of the five year review. The Committee considers that further research should be conducted before the review.

### Narrowing the small building exemption

- 4.13 In addition to commenting on the size threshold, a number of submissions suggested that the content of the exemption is too broad as the upper storeys of small buildings are exempt from *all* accessibility requirements under the Premises Standards.<sup>20</sup> In practice, this means:

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17 Lifts are not required in buildings that are two storeys where the upper floor area is less than 400m<sup>2</sup>, or three storeys where the combined area of the upper floors is less than 500m<sup>2</sup>: Regulation Impact Statement 2008, p. 115.

18 Regulation Impact Statement 2008, p. 115.

19 Mr Andrew Sanderson, Blythe-Sanderson Group, *Transcript of Evidence*, 30 March 2009, p. 34. The Blythe-Sanderson submission proposed general accessibility for all buildings, regardless of size and use.

20 See for instance: Disability Council NSW, *Submission 58*, p. 38; Mr Max Murray, *Submission 39*, p. 13; City of Yarra, *Submission 75*, pp. 3–4; Cairns Community Legal Centre, *Submission 93*,

Small buildings would not be required to incorporate features such as handrails on ramps and stairways, slip resistant luminance strips on the nosing of steps, tactile ground surface indicators and Braille and tactile signage, unisex accessible toilet amenities and ambulant toilet amenities on floors other than the entrance level. All of these elements are vital to supporting the safe access and egress of people who have an ambulant disability and those who are blind or vision impaired.<sup>21</sup>

### Committee comment

- 4.14 One of the key purposes of the Premises Standards is to ensure that reasonably achievable, equitable and cost effective access to buildings, and facilities and services within buildings, is provided for people with a disability. Accordingly, there is considerable merit to the suggestion that the upper storeys of small buildings should not be exempt from *all* accessibility measures. This is particularly so where the accessibility measures do not impose a significant cost burden.
- 4.15 The Committee considers that the upper storeys of small buildings should not be exempt from all accessibility requirements. Consideration should be given to imposing low cost accessibility requirements on the upper floors of buildings regardless of size. However, the cost implications of provision of lift access may be unreasonably high compared to the total building cost for small buildings.

### Recommendation 5

- 4.16 **The Committee recommends that the small building exemption for Class 5, 6, 7b or 8 buildings be limited to the provision of lift or ramp access between floors.**

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p. 18; Australian Human Rights Commission, *Submission 57*; Anti-Discrimination Commission Qld, *Submission 86*, p. 8.

21 Disability Council NSW, *Submission 58*, p. 38.

## The cost justification of the small building exemption

4.17 The justification for this exemption relies largely on the cost of providing access to upper floors of small buildings. However, there was some debate as to whether installing a lift is now less expensive. At the public hearing in Melbourne, the Committee was informed that:

From our understanding, this exemption is a result of the costs that might be borne by a building of a smaller size, like this one. However, in considering this, we now have AS1735 part 16 lifts, which means that lifts can be half their installation cost. We think that that particular concession should also be revisited.<sup>22</sup>

4.18 The Australian Human Rights Commission added that the cost of providing access to a small building,<sup>23</sup> as a proportion of the upgrade, is less than previously estimated as a consequence of increased construction costs. The result is that the proportionate costs for access to the upper floor of a two storey 400m<sup>2</sup> Class 5 or 6 building has dropped from 10 per cent to six or seven per cent.<sup>24</sup>

4.19 A number of submitters pointed out that a blanket exemption for small buildings assumed that all small buildings would suffer the same financial hardship.<sup>25</sup> A better approach, they suggested, would be to remove the exemption and allow the unjustifiable hardship provision to be used:

The [Office of the Anti-Discrimination Commissioner] strongly supports a 5-year review of the Premises Standards, and that it specifically consider amending the small buildings concession to make it applicable only if unjustifiable hardship can also be established, or removing the small buildings concession so that only the unjustifiable hardship concession is available.<sup>26</sup>

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22 Mr George Xinos, Blythe-Sanderson Group, *Transcript of Evidence*, 30 March 2009, p. 28.

23 Based on a small building with two storeys and each storey being 200m<sup>2</sup>.

24 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 17.

25 Australian Human Rights Commission, *Submission 57*, p. 15; See also Anti-Discrimination Commission Queensland, *Submission 86*, p. 8.

26 The Office of the Anti-Discrimination Commissioner, Tasmania, *Submission 62*, p. 2; see also Anti-Discrimination Commission Queensland, *Submission 86*, p. 8.

## Committee comment

4.20 The Committee has considered the issues raised by the submissions in relation to the cost of providing access to upper floors of small buildings in light of the unjustifiable hardship provision. Given the information currently available and the significant cost identified by the Regulation Impact Statement for installing a lift, an exemption for lift access in small buildings seems appropriate. However, the Committee has recommended in Chapter 7, that this exemption should be revisited as part of the five year review to determine whether it is appropriate to exclude lift access on the basis of cost. The review should specifically consider whether it would be more appropriate to remove the blanket exemption and instead rely on the unjustifiable hardship provision.

## Other exemptions in clause D3.4

- 4.21 In addition to the small building exemption, clause D3.4 of the Access Code provides a list of other areas not required to be accessible. These areas, listed in paragraphs D3.4(a), (b), (c) and (e), include:
- cleaners store rooms, commercial kitchens, staff serving areas in a bar, foundry rooms, cool rooms, fire lookouts, lighthouses, rigging lofts;<sup>27</sup>
  - areas only used for building services and maintenance;<sup>28</sup>
  - areas containing raw or hazardous materials;<sup>29</sup> and
  - upper floors of warehouses used wholly for wholesale and/or logistic distribution purposes.<sup>30</sup>
- 4.22 Many submissions indicated that these exemptions are too broad and potentially exclude people with a disability from areas in which they can safely work. A number of submissions commented specifically on paragraph D3.4(d) which excludes 'the upper floors of warehouses used

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27 These areas are not required to be accessible under paragraph D3.4(a).

28 Paragraph D3.4(b) refers to areas such as a cooling tower and power plant, an equipment or lift motor room, a bunded area, a fire control area, a loading dock, an access route for maintenance or the like.

29 Paragraph D3.4(c) refers to areas such as a waste containment area, silo, grain bin, chemical store, storage racks or the like.

30 Paragraph D3.4(d).

solely for wholesale and or logistic/ distribution purposes which are not accessible to the public':<sup>31</sup>

There is absolutely no reason why the upper floors of warehouses should not be accessible. People with disabilities are quite capable of performing many duties associated with logistics and distribution of goods.<sup>32</sup>

4.23 Indeed, Blythe-Sanderson Group pointed out that the areas excluded by this provision 'constitute the main areas within which a person with a disability would be... likely to work in these types of buildings.'<sup>33</sup>

4.24 The list of exempt areas in clause D3.4(a), (b), (c) and (e) was also the focus of criticism. Submissions suggested that this clause, in general, assumes people with a disability have limited abilities:

There seemed to be an underlying assumption about the sorts of jobs that people with a disability could and could not do in relation to parts of the buildings that did not need to be accessible.<sup>34</sup>

4.25 The primary concern is that this clause reduces employment opportunities for people with a disability.<sup>35</sup> This concern is not limited to the list of exempt areas in paragraphs D3.4(a), (b), (c) and (e); it was also raised in relation to the small building exemption.<sup>36</sup>

4.26 The Australian Building Codes Board informed the Committee that the intention of clause D3.4 was to provide more certainty:

In the [Building Code of Australia], the current provision states that access is not required to an area if access would be inappropriate because of the particular purpose for which the area is used. It is basically a subjective performance type statement. Through the process of reviewing those provisions, practitioners identified that it was very difficult to actually identify when that occurred, so they were looking for more certainty, and the list that

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31 Physical Disability Australia, *Submission 45, Attachment A*, p. 12; NSW Disability Discrimination Legal Centre, *Submission 51*, p. 10; Disability Council NSW, *Submission 58*, p. 38; Welfare Rights Centre Qld, *Submission 102*, p. 9; Mr Max Murray, *Submission 39*, p. 13; Blythe-Sanderson Group, *Submission 47*, p. 6.

32 Mr Max Murray, *Submission 39*, p. 13.

33 Blythe-Sanderson Group, *Submission 47*, p. 6.

34 Mr William Lawler, Latrobe City Council, *Transcript of Evidence*, 30 March 2009, p. 71. See also Mr Max Murray, *Submission 39*, p. 13.

35 Physical Disability Australia, *Submission 45, Attachment A*, p. 12.

36 Arts Alliance Victoria, *Submission 34*, p. 2; Welfare Rights Centre, *Submission 102*, p. 9.



we now have under D3.4 was a negotiated set of areas worked on through [Building Access Policy Committee] to identify those areas that were thought to be inappropriate, as the previous intent of the clause stated. Whether we have got them right or not is another matter, of course, but that was the outcome of those negotiations.<sup>37</sup>

- 4.27 The Committee was also advised that clause D3.4 attempted to identify areas likely to be subjects of successful unjustifiable hardship claims. Representatives from the Attorney-General's Department explained that clause D3.4 attempts:

... to pre-chart what might be the basis of an unjustifiable hardship claim. To the extent that you could argue that some of these areas could not be the subject of a successful claim or might be defended on the basis of unjustifiable hardship, the list provides, if you like, a pre-determination of that issue.<sup>38</sup>

### Committee comment

- 4.28 The Committee understands the desire for certainty. In most instances, the Premises Standards have effectively codified 'dignified access' by providing exact measurements, size and dimensions to be incorporated into building design. With regard to paragraphs D3.4(a), (b), (c) and (e), however, the same clarity was not achieved.
- 4.29 The Committee realises that certain areas, by their nature, cannot be made accessible for people with a disability. However, the Committee considers that in the attempt to achieve certainty, the net of exemptions in clause D3.4 (a), (b), (c), (d) and (e) has been cast too widely.
- 4.30 Indeed, it is arguable that the list of areas exempt by paragraphs D3.4 (a), (b), (c) and (e) does not provide certainty because the list itself is not exhaustive. The use of the phrase 'or the like' where there is no common class in the list of disconnected examples does not provide certainty and invites litigation.
- 4.31 It is difficult to accept paragraphs D3.4(a), (b), (c), (d) and (e) in their current form when they are likely to reduce employment opportunities for people with a disability. This is contrary to the Australian Government's

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37 Mr Kevin Newhouse, Australian Building Codes Board, *Transcript of Evidence*, Tuesday 7 April 2009, p. 20.

38 Mr Stephen Fox, Commonwealth Attorney-General's Department, *Transcript of Evidence*, Tuesday 7 April 2009, p. 22.

Social Inclusion Agenda which includes a commitment to constructively address barriers that exclude Australians from community life.<sup>39</sup> As a part of the Social Inclusion Agenda, the Federal Government is developing a National Mental Health and Disability Employment Strategy. This strategy will form a key part of the Government's response to increasing employment opportunities for people with a disability.<sup>40</sup>

- 4.32 While recognising that some spaces cannot safely be made accessible, the Committee concludes that a more effective way to provide access to a range of buildings is to remove paragraphs D3.4(a), (b), (c), (d) and (e) and replace them with an exemption for areas which pose a clear health and safety risk for people with a disability. The unjustifiable hardship provision of the Premises Standards should continue to be available.

### Recommendation 6

- 4.33 **The Committee recommends that the exemptions in paragraphs D3.4 (a)–(e) be replaced with a general exemption for areas which pose a clear health and safety risk for people with a disability.**

## Unjustifiable hardship

- 4.34 Perhaps the most important limitation on the application of the Premises Standards is the 'unjustifiable hardship' exception.<sup>41</sup> This exception reflects an existing exception for unjustifiable hardship in the Disability Discrimination Act.<sup>42</sup>
- 4.35 The Premises Standards provide that it is not unlawful to fail to comply with a requirement of the Standards to the extent that compliance would impose unjustifiable hardship on a person or organisation.<sup>43</sup> Unjustifiable

39 Australian Government, *National Mental Health and Disability Employment Strategy Discussion Paper*, 2008, p. 1.  
<[www.workplace.gov.au/workplace/Publications/PolicyReviews/EmploymentStrategy/](http://www.workplace.gov.au/workplace/Publications/PolicyReviews/EmploymentStrategy/)>.

40 Australian Government, *National Mental Health and Disability Employment Strategy Discussion Paper*, 2008, p. 1.  
<[www.workplace.gov.au/workplace/Publications/PolicyReviews/EmploymentStrategy/](http://www.workplace.gov.au/workplace/Publications/PolicyReviews/EmploymentStrategy/)>.

41 Section 4.1, Premises Standards.

42 Section 11, *Disability Discrimination Act 1992* (Cth).

43 Subsection 4.1(1), Premises Standards.

hardship can only be assessed on a case-by-case basis and even where unjustifiable hardship is proven, compliance is still required to the maximum extent not involving unjustifiable hardship.<sup>44</sup>

- 4.36 All relevant circumstances of the particular case must be taken into account in determining whether there is unjustifiable hardship. The Premises Standards sets out 16 factors which may be taken into account in making such a determination.<sup>45</sup>
- 4.37 Submissions focused mainly on three of the sixteen factors: the cost involved in compliance in paragraph 4.1(3)(a); the reference to 'regional or remote location' in paragraph 4.1(3)(f) and the heritage provision in paragraph 4.1(3)(k).

### Unjustifiable hardship based on cost

- 4.38 In making a determination of unjustifiable hardship, paragraph 4.1(3)(a) allows 'any additional capital, operating or other costs, or loss of revenue, that would be directly incurred by, or reasonably likely to result from, compliance with the requirement' to be taken into account.
- 4.39 The Property Council of Australia, although not directly addressing this paragraph, noted that unjustifiable hardship is decided without an exact formula on a case-by-case basis. For this reason, the Property Council proposed a financial benchmark:
- Where the cost of access increases the cost of the retrofit or construction by 15 percent or more (including losses of rentable space), a project should automatically qualify for unjustifiable hardship.<sup>46</sup>
- 4.40 The Australian Human Rights Commission responded to this proposal with concern, pointing out that the 15 per cent benchmark 'would seriously oversimplify the way that unjustifiable hardship is assessed and the balancing that needs to be taken into account in order to achieve that assessment by a tribunal.'<sup>47</sup>

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44 Subsection 4.1(2), Premises Standards.

45 Subsection 4.1(3), Premises Standards.

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

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

## Committee comment

- 4.41 The Committee understands the concern that there are no clear rules for determining unjustifiable hardship. However, it does not support the proposal for a benchmark which would automatically determine claims for unjustifiable hardship. This would undermine the intent of the unjustifiable hardship provision which is to only exempt compliance where it would be unjustifiable in the circumstances of the person concerned.

## Unjustifiable hardship based on regional or remote location

- 4.42 Subsection 4.1(3) provides that in determining whether compliance with a requirement of the Premises Standards would involve unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including, in paragraph (f):

Any exceptional technical factors (such as the effect of load bearing elements on the structural integrity of the building) or geographic factors (such as gradient, topography or regional or remote location), affecting a person or organisation's ability to comply with the requirement.

- 4.43 The submissions indicated a concern that a claim of unjustifiable hardship could be made simply because a building was located in a regional or remote area. As well, submissions pointed out that the need for access is not any less in regional or remote areas:<sup>48</sup>

Many older people and people with a disability live and reside in areas which would be deemed regional and/or remote. The necessity for access is therefore not reduced and could be seen to be more important in smaller towns and villages. Our concern is that this reference infers that a 'blanket exemption' applies to buildings and businesses in regional and remote areas.<sup>49</sup>

- 4.44 At the roundtable in Melbourne, the Committee was told that the phrase 'regional or remote location' was not intended to provide a lower standard of accessibility in regional and remote Australia but rather, was intended to capture geographically specific problems, such as snow and ice:

For example, a ski lodge may have three entrances, but for seven months of the year two of them are only usable if you are coming

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48 Disability Alliance, *Submission 77*, p. 8.

49 Disability Council of NSW, *Submission 58*, p. 30.

in on skis. There were some questions about the number of entrances there needed to be on an accessible path of travel.<sup>50</sup>

- 4.45 There was acknowledgement that this intention may not be adequately represented in paragraph 4.1(3)(f).<sup>51</sup>

### Committee comment

- 4.46 The Committee considers that the intention of the provision is not clearly reflected in the use of the phrase 'regional or remote location'. The conditions envisaged could be taken into account under 'geographic factors' without a specific reference to regional or remote areas. The Committee therefore recommends that the phrase 'regional or remote location' be removed from paragraph 4.1(3)(f).

### Recommendation 7

- 4.47 **The Committee recommends that the words 'regional or remote location' be deleted from paragraph 4.1(3)(f) of the Premises Standards.**

### Unjustifiable hardship based on loss of heritage value

- 4.48 In making a determination of unjustifiable hardship the Premises Standards provides that the heritage value of a building can be taken into account:

If detriment under paragraph (j) involves loss of heritage values – the extent to which relevant heritage value or features of the building are essential, and to what extent incidental, to the building.<sup>52</sup>

- 4.49 Where submissions addressed this provision, they generally accepted that heritage value was an appropriate consideration in determining unjustifiable hardship, although there was some concern that heritage

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50 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, Tuesday 7 April 2009, p. 22.

51 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, Tuesday 7 April 2009, p. 22.

52 Paragraph 4.1(3)(k), Premises Standards.

value may be inappropriately used as the justification for not complying with the provisions of the Premises Standards.<sup>53</sup>

4.50 In general, submitters questioned the perceived assumption that increasing access must necessarily result in a decrease in heritage value.<sup>54</sup> In response to this perceived assumption, Arts Access Australia referred the Committee to research which found that ‘heritage and disability legislation can co-exist such that physical access is provided for people with a disability while not impacting significantly on the heritage value of the venue.’<sup>55</sup>

4.51 The Victorian Equal Opportunity and Human Rights Commission provided examples where a greater level of accessibility has been achieved in cities with heritage buildings much older than in Australia:

The one that springs to mind for me is London, where there are buildings which are much older than our heritage buildings and they have been made accessible in a dignified way without taking too much away from the actual physical appearance of heritage buildings.<sup>56</sup>

4.52 There was concern that the heritage value provision of the unjustifiable hardship provision is too vague and requires clarification. The submission from Eric Martin and Associates asks who attributes ‘heritage value’:

Is a listing on a National, State/Territory or local statutory list required? Are non-statutory lists such as the National Trust of Australia or Professional Institutions considered acceptable?<sup>57</sup>

4.53 There was a suggestion that to provide clarity, the provision should adopt the language used by the heritage sector itself:

Council would encourage the Committee to consider re-wording this clause to reflect the practice and terminology used by the Heritage sector in determining the appropriateness of alterations to heritage buildings. i.e. ‘whether the application of the Premises

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53 Disability Alliance, *Submission 77*, p. 8; Older Women’s Network New South Wales, *Submission 9*, p. 3; Mr William Lawler, Latrobe City Council, *Transcript of Evidence*, 30 March 2009, p. 71.

54 See for instance Mr Placido Belardo, Disability Discrimination Legal Service, *Transcript of Evidence*, 30 March 2009, p. 50; Mr William Lawler, Latrobe City Council, *Transcript of Evidence*, 30 March 2009, p. 71.

55 Arts Access Australia, *Submission 61*, p. 2.

56 Dr Helen Szoke, Victorian Equal Opportunity and Human Rights Commission, *Transcript of Evidence*, 30 March 2009, p. 41.

57 Eric Martin and Associates, *Submission 35*, p. 8.

Standards requirements would impact on the elements of the buildings which have significant heritage value'.<sup>58</sup>

4.54 The Heritage Council of New South Wales recommended that the provision be amended so that 'detriment' means:

- the potential loss of cultural significance of a heritage listed place and/or
- the potential loss of fabric of high heritage value, and/or
- An irreversible impact on the cultural significance.<sup>59</sup>

4.55 In its current format, the heritage provision distinguishes between heritage features which are 'essential' and heritage features which are 'incidental'. It is unclear how this distinction would work in practice. The Committee was informed that:

If the building is heritage because somebody lived in it, then it would be incidental. The building would essentially still be there. But if it is a heritage building because of its architectural and aesthetic value, then it is an essential feature of the building.<sup>60</sup>

## Committee comment

4.56 The Committee supports the inclusion of a heritage value provision in determinations of unjustifiable hardship. However, the Committee also agrees with the arguments raised by many submitters that providing access to heritage buildings does not have to diminish the heritage value. The Australian heritage industry could look overseas for examples of how a compromise might be reached.

4.57 The extent to which heritage value or features of the building would be diminished by providing access should be considered when determining whether there is unjustifiable hardship. However, there is evidently some concern with the wording of this provision and it does not seem to capture the intended policy. At the very least, it appears the meaning of 'heritage value' is unclear and that the phrase 'to what extent incidental' adds little meaning.

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58 Disability Council of NSW, *Submission 58*, p. 7; See also Disability Alliance, *Submission 77*, p. 8.

59 Heritage Council of NSW, *Submission 110*, p. 2.

60 Mr Greig Ryan, Commonwealth Department of Innovation, Industry, Science and Research, *Transcript of Evidence*, 7 April 2009, p. 24.

**Recommendation 8**

- 4.58 **The Committee recommends that further consideration be given to clarifying the meaning of ‘heritage value’ in paragraph 4.1(3)(k) of the Premises Standards. Consideration should be given to ensuring consistency with the tests used in State and Territory legislation in relation to heritage. The Committee further recommends that the words ‘and to what extent incidental’ be deleted from paragraph 4.1(3)(k) of the Premises Standards.**

**The benefits of compliance in determinations of unjustifiable hardship**

- 4.59 The unjustifiable hardship provision in the 2004 Premises Standards varies considerably from the current provision. The main difference is the emphasis that the 2004 provision gives to the *benefits of compliance* in making a determination of unjustifiable hardship. Currently, paragraph 4.1(3)(i) provides that ‘benefits reasonably likely to accrue from compliance with these Standards, including benefits to people with a disability, to building users or to other affected persons, or detriment likely to result from non-compliance’ can be taken into account.
- 4.60 However, the 2004 provision for unjustifiable hardship included noticeably more detail, such as:

The extent to which the building work concerned involves public funds, and consequently the extent to which it is expected that the building will be accessible to the public, including people with disabilities;<sup>61</sup>

The extent to which the building is used, or is intended to be used for significant public purposes (such as electoral purposes or for holding public consultation by local government); and<sup>62</sup>

The extent to which the building has a significant community function (including serving the cultural, religious, artistic, sporting or educational needs of the community)...<sup>63</sup>

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61 Paragraph 4.1(4)(b), Draft Premises Standards 2004.

62 Subparagraph 4.1(4)(c)(ii), Draft Premises Standards 2004.

63 Subparagraph 4.1(4)(c)(iii), Draft Premises Standards 2004.



## Committee comment

4.61 The Committee received little comment on this issue but considers it appropriate that the hardship of compliance should be balanced against the benefits of compliance. The Committee recommends that the unjustifiable hardship provision be amended so that consideration of the benefits of compliance includes specific reference to the use of public funds, the use of the building for public purposes and the extent to which the building has a significant community function.

### Recommendation 9

4.62 The Committee recommends:

- that subsection 4.1(3) of the Premises Standards be amended to include consideration of the extent to which the building work concerned involves the use of public funds; and
- that paragraph 4.1(3)(i) be amended to include specific reference to the use of the building for public purposes and the extent to which the building has a significant community function.

## Fire-isolated stairs and ramps

4.63 Clause D3.3 of the Access Code specifies which parts of a building are required to be accessible. Paragraph D3.3(b) provides that every stairway and ramp must be accessible:

Except for ramps and stairways in areas exempted by clause D3.4, *fire-isolated ramps and fire-isolated stairways...*<sup>64</sup>

4.64 The Disability Council NSW explained the effect of this exemption on fire stairs and ramps as follows:

In functional terms this means that the stairs are not required to feature handrails on both sides of the stairs, slip resistant, contrasting strips on the nosing to enhance detectability or feature

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64 Emphasis in original.

tactile ground surface indicators to alert people who are blind or vision impaired to the stairs.<sup>65</sup>

- 4.65 The Committee heard that this paragraph was an attempt to clarify a provision of the Building Code which exempts stairways not used by the public:

The current building code provision talks about stairways that are not used by the public not being subject to the accessibility provisions. Once again, this was an attempt to provide some more certainty around that term because practitioners were unaware of what it meant. How do you determine whether a stairway in a building is used by the public or is there for other purposes? Some people had a view that fire-isolated stairs were not meant to be used by the public except in emergency egress circumstances, whereas a stair connecting two levels in the middle of a floor obviously would be used by the public in moving between those floors.<sup>66</sup>

- 4.66 Many submissions have pointed out that fire-isolated ramps and stairways could still be subject to certain accessibility requirements for ambulant people with a disability.<sup>67</sup> This could include luminance contrast, tactile ground surface indicators and a second handrail.
- 4.67 The Committee is aware of concerns that tactile ground surface indicators could be hazardous in an emergency evacuation.<sup>68</sup> However, the Committee was also told that where tactile ground surface indicators have presented a trip hazard, evidence indicates that this is because they have not been installed according to specifications.<sup>69</sup>
- 4.68 A second hand rail is not currently required in fire-isolated stairs by the Building Code. Imposing such a requirement would require many stairways and landings to be widened.<sup>70</sup>
- 4.69 It seems incongruous that fire-isolated stairs and ramps are exempt from the accessibility features of the Premises Standards. Indeed, the Australian Human Rights Commission pointed out that:

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65 Disability Council of NSW, *Submission 58*, p. 22.

66 Mr Kevin Newhouse, Australian Building Codes Board, *Transcript of Evidence*, 7 April 2009, p. 40.

67 People with Disability NSW, *Submission 120, Attachment A*, p. 2.

68 Mr Kevin Newhouse, Australian Building Codes Board, *Transcript of Evidence*, 7 April 2009, p. 40.

69 Mr Bruce Maguire, Vision Australia, *Transcript of Evidence*, 25 March 2009, p. 4.

70 The Building Code only requires handrails on both sides of a stairway wider than 2 metres.

...emergency egress would probably be a prime time where you would want the access features for ambulant people with disabilities, and perhaps others who are caused more stress or pressure by the need to evacuate promptly.<sup>71</sup>

## Committee comment

- 4.70 There is value in clarifying the obligations of the current Access Code with respect to public use stairways. However, it is questionable whether it can be said that emergency stairs should be excluded from the phrase 'public use' as many people choose to use these stairways as an alternative to the lift or elevator. Indeed, there are campaigns in many buildings encouraging people to take the stairs rather than the lift. There are also buildings where designated fire-isolated stairs are also the most frequently used stairwells in the building. For instance, many of the stairs in Parliament House are designated fire-isolated stairs but are used frequently by building occupants to move between floors.
- 4.71 The Committee recommends that the current exemption for fire-isolated stairs and ramps in paragraph D3.3(b) be amended to provide accessibility as far as practicable.

## Recommendation 10

- 4.72 **The Committee recommends that the current exemption for fire-isolated stairs and ramps in paragraph D3.3(b) be amended to provide accessibility as far as practicable, with particular consideration given to tactile ground surface indicators, luminance contrast stair nosings and second handrails.**

## Lessee concession

- 4.73 The Premises Standards provide that where the applicant for building approval is a lessee and not the owner of a building there is no requirement for an upgrade of the path of travel from the entrance of the

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71 Commissioner Graeme Innes, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 40.

building to the new work.<sup>72</sup> The concession is not available if the lessee occupies the whole building.<sup>73</sup>

4.74 The Premises Standards guidelines state that ‘this concession recognises that, in most instances, the lessee is not responsible for common areas of the building and requiring them to upgrade the path of travel themselves would be unreasonable.’<sup>74</sup> The lessee would still be required to comply with the Premises Standards in relation to the new work which is under their control.

4.75 Although there was support for the concession in principle, there was some concern raised in submissions that building owners might use the lessee concession to avoid their responsibilities under the Premises Standards,

...the lessee concession may be used by some building owners who wish to avoid the Premises Standards ‘new building works’ trigger. Council are concerned that some building owners may seek to encourage lessees to submit applications for new building works on their behalf to avoid having to undertake more extensive access improvements to the building as required by the Premises Standard.<sup>75</sup>

4.76 The Australian Building Codes Board was able to provide the Committee with further information relating to the number of building applications made by lessees rather than building owners. These figures indicate that one of the key assumptions in the analysis provided by the Regulation Impact Statement – that 50 percent of major upgrades on commercial buildings are tenant driven – was unable to be substantiated.<sup>76</sup> However the Australian Building Codes Board went on to note that this would have little impact on the cost-benefit analysis:

While a reduction to costs and benefits has been identified, these are only ‘delayed’, given the assumption that the public area of major commercial buildings will be upgraded over a 15 year cycle. Thus, when considered over this period, there is no net reduction in costs or benefits.<sup>77</sup>

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72 Section 4.3, Premises Standards.

73 Subsection 5.3(6), Disability (Access to Premises – Buildings) Standards Guidelines 2009.

74 Subsection 5.3(5), Disability (Access to Premises – Buildings) Standards Guidelines 2009.

75 Disability Council of NSW, *Submission 58*, p. 24.

76 Australian Building Codes Board, *Submission 133*, p. 5.

77 Australian Building Codes Board, *Submission 133*, p. 5.

## Committee comment

- 4.77 The Committee is of the view that section 4.3 provides an important concession for lessees, who should not be financially responsible for upgrading the path of travel between the entrance and the new work. However, further consideration should be given to whether building owners should take on this responsibility. The lessee concession should remain part of the Premises Standards but the Committee has recommended, in Chapter 7, that this exemption be reconsidered as part of the five year review.

## Lift concession

- 4.78 The Premises Standards require the floor space of a lift that travels more than 12 metres have a minimum dimension of 1400mm by 1600mm.<sup>78</sup> Section 4.4 of the Premises Standards provides that this requirement:

does not apply to an existing passenger lift that is in a new part, or an affected part, of a building, if the lift travels more than 12 metres and has a lift floor that is not less than 1100mm by 1400mm.<sup>79</sup>

- 4.79 As with the toilet concession, discussed in the following section of this chapter, the Premises Standards distinguishes between new and existing buildings. The lift concession applies to existing buildings undergoing new work where there is a lift travelling more than 12 metres. The concession means that there is no need to upgrade the size of the floor dimensions as long as the existing lift is at least 1100mm by 1400mm.<sup>80</sup> These dimensions meet current access requirements for lifts under the Building Code.<sup>81</sup>
- 4.80 The concession recognises that requiring lifts already compliant with the Building Code dimensions to upgrade to the 90<sup>th</sup> percentile dimensions would impose an unreasonable cost relating to increasing the size of the

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78 See Access Code, Table E3.6(b).

79 Premises Standards, section 4.4.

80 Part 5.4, paragraph 2, Disability (Access to Premises – Buildings) Standards Guidelines 2009.

81 Part 5.4, paragraph 3, Disability (Access to Premises – Buildings) Standards Guidelines 2009.

lift shaft.<sup>82</sup> Further discussion on the 80<sup>th</sup> and 90<sup>th</sup> percentile is found in Chapter 5.<sup>83</sup>

- 4.81 Only a small number of submissions commented on the lift concession. The Housing Industry Association and the Property Council of Australia both support the inclusion of the lift concession.<sup>84</sup>

## Committee comment

- 4.82 The Committee considers that where existing lifts travelling more than 12 metres already meet the dimensions 1100mm by 1400mm, it would impose an unreasonable burden to require an upgrade to the 90<sup>th</sup> percentile dimensions as part of the upgrade of an existing building. The Committee supports the inclusion of the lift concession.

## Toilet concession

- 4.83 The Premises Standards adopt the 90<sup>th</sup> percentile dimensions for accessible toilets.<sup>85</sup> However, a concession is provided for existing buildings in respect of toilets which are compliant with the 80<sup>th</sup> percentile dimensions.<sup>86</sup> The Premises Standards Guidelines explain that this concession means:

Where there is an existing accessible toilet in an existing building that meets the layout requirements and floor dimension requirements of the 2001 edition of AS 1428.1 of 1600mm by 2000mm, there would be no need to increase the size of the facility to meet the new requirements.<sup>87</sup>

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82 Part 5.4, paragraph 3, Disability (Access to Premises – Buildings) Standards Guidelines 2009.

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

84 Property Council of Australia, *Submission 84*, p. 11; Housing Industry Association, *Submission 48*, p. 6. However, the Property Council of Australia does not support the use of 90<sup>th</sup> percentile dimensions elsewhere in the Premises Standards; see p. 11 of Submission 84.

85 See Chapter 5 for discussion on 80<sup>th</sup> and 90<sup>th</sup> percentile. The new requirements include floor dimensions of 1900mm by 2300mm.

86 Section 4.3, Premises Standards.

87 Part 5.4, paragraph 3, Disability (Access to Premises – Buildings) Standards Guidelines 2009.

- 4.84 The concession recognises that requiring toilets already compliant with the 80<sup>th</sup> percentile dimensions to upgrade to the 90<sup>th</sup> percentile dimensions would impose an unreasonable cost.<sup>88</sup>
- 4.85 Only a handful of submissions commented on the toilet concession. Similar to the lift concession, both the Housing Industry Association and the Property Council of Australia support the inclusion of the toilet concession.<sup>89</sup> The Property Council of Australia submission goes on to note their opposition to the use of 90<sup>th</sup> percentile dimensions elsewhere in the Premises Standards.<sup>90</sup>
- 4.86 The submission from Mr Robert Knott noted that the provision provided for dimensions less than the 90<sup>th</sup> percentile, which 'was considered to be the objective of the [Disability Discrimination Act].'<sup>91</sup> The Disability Discrimination Legal Service support the concession but recommended the following qualification:

If the new building works would affect an existing toilet facility, then the Standards should apply; and

In any other case, the permit application should be accompanied by a costs estimate to support any claim of unjustifiable hardship (instead of the unreasonable costs of complying with the Premises Standards).<sup>92</sup>

## Committee comment

- 4.87 The Committee considers that where existing toilets already meet the dimension requirements of the 2001 edition of AS 1428.1 of 1600mm by 2000mm, it would impose an unreasonable burden to require an upgrade to the 90<sup>th</sup> percentile dimensions. The Committee supports the inclusion of the toilet concession in its current format.

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88 See Part 5.4, paragraph 4, Disability (Access to Premises - Buildings) Standards Guidelines 2009.

89 Property Council of Australia, *Submission 84*, p. 11; Housing Industry Association, *Submission 48*, p. 6;

90 Property Council of Australia, *Submission 84*, p. 11.

91 Mr Robert Knott, *Submission 25*, p. 3.

92 Disability Discrimination Legal Service, *Submission 78*, p. 8.

## Effect of concessions, exemptions and exceptions

- 4.88 As discussed in Chapter 2, compliance with the requirements of the Premises Standards would provide certainty to building developers, owners and managers that they would not be subject to a successful discrimination complaint in relation to the matters covered by the Premises Standards.
- 4.89 Section 34 of the Disability Discrimination Act provides that if a person acts in compliance with a disability standard the unlawful discrimination provisions contained in Part 2 of the Disability Discrimination Act do not apply.
- 4.90 This general rule also applies with respect to the concessions, exemptions and exceptions in the sense that these buildings are acting in compliance with the Premises Standards where the Premises Standards explicitly states that there is no requirement to provide access. As a result, successful complaints, where access has not been provided in accordance with the concessions or exemptions provided in the Premises Standards, are unlikely.
- 4.91 There is, however, some question as to how section 24 of the Disability Discrimination Act will interact with the Premises Standards. Section 24 of the Disability Discrimination Act provides that it is unlawful for a person who provides goods or services, or makes facilities available, to discriminate against a person with a disability.<sup>93</sup> The Australian Human Rights Commission suggested that:
- If a dentist, a solicitor or a doctor is providing a service in the upper level of a small building, there will still be a basis for a complaint against the provision of that service, which is not to do with the building; it is to do with the provision of the service. It is not clear how that will play out, but I cannot see that the standard will prevent that section applying.
- 4.92 The Attorney-General's Department reiterated that 'there was some doubt on how all that will play out':
- because the provision in the Disability Discrimination Act that empowers a standard – that makes a standard as forceful as it is –

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93 Section 24(1) of the *Disability Discrimination Act 1992* (Cth) states that:

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's disability or a disability of any of that other person's associates.



provides that, if a particular act is done in direct compliance with a standard, then, insofar as that act is concerned, it is completely immune from any of the operative provisions in part II of the Disability Discrimination Act. So it is not only okay in terms of access to premises but it is okay in terms of any of the requirements under part II of the act. So it will become a question of whether or not the service provision falls within the particular act that we are looking at... So if access is covered in the service provision, and we purport to cover access in this standard, then that will provide complete immunity, even to a complaint made under the service provision part of the DDA.<sup>94</sup>

- 4.93 Finally, as mentioned at the start of this chapter, the exemptions and concessions in the Premises Standards are limited to the application of the Premises Standards and are not applicable in general discrimination claims under the Disability Discrimination Act. Complaints can still be made under section 23 of the Disability Discrimination Act in relation to access to buildings outside the scope of the Premises Standards; buildings within the scope of the Premises Standards but where the application of the Premises Standards has not yet been triggered; and, matters outside the scope of the Premises Standards, such as fitout and places other than buildings.

### Committee comment

- 4.94 The Committee recognises the importance of the exceptions, exemptions and concessions in reducing the cost implications of the Premises Standards. Notwithstanding this, the Committee has recommended that the exemption, exception or concession be narrowed for certain provisions. In recommending changes to these provisions in this chapter, the Committee has been careful to enhance accessibility without creating a significant increase in costs.

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94 Ms Rachel Antone, Commonwealth Attorney-General's Department, *Transcript of Evidence*, 7 April 2009, p. 19.



## 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.<sup>1</sup>
- 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.<sup>2</sup> 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.<sup>3</sup>
- 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

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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.<sup>4</sup> 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.<sup>5</sup>

- 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.<sup>6</sup>

- 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.<sup>7</sup> 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.*<sup>8</sup>

- 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.<sup>9</sup>

## 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

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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 80<sup>th</sup> percentile or the 90<sup>th</sup> percentile wheelchair dimensions.
- 5.15 References to the 80<sup>th</sup> and 90<sup>th</sup> 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 80<sup>th</sup> percentile refers to the occupied dimensions of 80 per cent of wheelchairs, while the 90<sup>th</sup> percentile refers to the occupied dimensions of 90 per cent of wheelchairs.<sup>10</sup> 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 80<sup>th</sup> 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 80<sup>th</sup> percentile dimensions.<sup>11</sup> As noted by a number of submitters, the Australian Human Rights Commission’s current Advisory Note on Access

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10 The 80<sup>th</sup> percentile dimensions are 740 mm wide and 1250 mm long, while the 90<sup>th</sup> 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 90<sup>th</sup> percentile dimensions. The 2004 draft Premises Standards also adopted the 90<sup>th</sup> percentile dimensions.<sup>12</sup> 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 90<sup>th</sup> percentile dimensions.<sup>13</sup>

5.17 The Premises Standards would not fully adopt the 90<sup>th</sup> percentile dimensions. Areas where 90<sup>th</sup> 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;<sup>14</sup> and
- in lifts.

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

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

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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.<sup>18</sup> 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.<sup>19</sup>
- 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.'<sup>20</sup>
- 5.22 In relation to new buildings, the primary costs of 90<sup>th</sup> 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.<sup>21</sup> 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.<sup>22</sup>
- 5.23 The 2004 RIS estimated that losses of net lettable area from requirements such as additional sanitary facilities and 90<sup>th</sup> percentile dimensions would be 4 per cent for existing buildings and 1.7 per cent for new buildings.<sup>23</sup> 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 80<sup>th</sup> 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.<sup>24</sup>
- 5.24 Master Builders also argued that 90<sup>th</sup> percentile dimensions were more generous than building requirements in other countries.<sup>25</sup> This assertion was contested by evidence from other submitters to the inquiry. The NSW
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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.'<sup>26</sup> Mr Mark Relf indicated that 90th percentile dimensions were being considered for incorporation into a forthcoming International Standards Organisation standard on accessibility.<sup>27</sup>

- 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.<sup>28</sup> 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.<sup>29</sup>

- 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.<sup>30</sup> 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,<sup>31</sup> as well as two-way traffic.<sup>32</sup> In addition, the Australasian Railway Association argued that the adoption of both 80th and 90th percentile dimensions in the Standards was potentially confusing.<sup>33</sup>

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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'.<sup>34</sup>

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.<sup>35</sup> 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.<sup>36</sup>

5.29 However, Ron Lochert submitted that methodological issues with Bails' research meant that the 80<sup>th</sup> percentile dimensions 'actually allowed for almost all people'. He therefore submitted that it was not necessary to increase dimensions to the 90<sup>th</sup> percentile.<sup>37</sup> Mr Graham Lockerbie submitted that it would be more cost effective to require wheelchair suppliers to design wheelchairs that could provide 90<sup>th</sup> percentile chair capabilities within 80<sup>th</sup> percentile dimensions.<sup>38</sup> 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.<sup>39</sup>

5.30 The Australian Human Rights Commission told the Committee that regardless of whether the 80<sup>th</sup> percentile dimensions were correct, provision of 90<sup>th</sup> 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

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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.<sup>40</sup>

- 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.<sup>41</sup> 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.<sup>42</sup>

- 5.32 Some submitters argued that there has been significant voluntary adoption by industry of 90<sup>th</sup> percentile dimensions, including 1200 mm passageways, since the release of the 2004 draft Premises Standards.<sup>43</sup> 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.<sup>44</sup>

## Committee comment

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

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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 80<sup>th</sup> 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 90<sup>th</sup> 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 80<sup>th</sup> percentile (1000 mm) passageways.
- 5.37 Furthermore, provision of full 90<sup>th</sup> percentile dimensions is likely to be extremely expensive or structurally difficult in existing buildings. However, imposing 90<sup>th</sup> 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 90<sup>th</sup> 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 90<sup>th</sup> 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 90<sup>th</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> The Premises Standards would also introduce 90<sup>th</sup> percentile dimensions for accessible toilets, subject to a concession for existing 80<sup>th</sup> percentile lifts and toilets.

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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.<sup>48</sup>

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

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.<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup> Finally, some submitters were

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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.<sup>54</sup>

- 5.45 To overcome these possible issues, many submitters suggested that an accessible facility should be provided at every bank of toilets.<sup>55</sup> 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.<sup>56</sup>

- 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.<sup>57</sup> 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.<sup>58</sup>

- 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 m<sup>2</sup> accessible entrances should not be more than

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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.<sup>59</sup> 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.<sup>60</sup>

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.<sup>61</sup>

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.<sup>62</sup> 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.<sup>63</sup>

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.<sup>64</sup>

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

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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.<sup>65</sup>

- 5.52 They submitted that such a facility should be at least 3 metres wide and 4 metres long.<sup>66</sup> This is considerably larger than the size of accessible toilets required by draft AS1428.1.<sup>67</sup>
- 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.<sup>68</sup> 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.<sup>69</sup>

## 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.

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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.<sup>70</sup> 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.<sup>71</sup>

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

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.<sup>74</sup> The Victorian Disability Advisory Council submitted that such controls are 'difficult or impossible for people with impaired arm or hand function to use.'<sup>75</sup> 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.<sup>76</sup>

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

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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.<sup>77</sup> 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.<sup>78</sup> The result is that the lift may not be independently operated by a person needing to use the lift.<sup>79</sup> Other evidence indicated that during the development of the Standards it was decided that locking off requirements had to be maintained for safety reasons.<sup>80</sup> 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.<sup>81</sup>

- 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.<sup>82</sup> 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.<sup>83</sup>

- 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.<sup>84</sup>

## 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
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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.<sup>85</sup> 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),<sup>86</sup> 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.<sup>87</sup>
- 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.<sup>88</sup> 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

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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.<sup>89</sup>

- 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...<sup>90</sup>

- 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.<sup>91</sup>

- 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.<sup>92</sup>

- 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

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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.<sup>93</sup>

- 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.<sup>94</sup> 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.<sup>95</sup>

- 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.<sup>96</sup>

- 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.<sup>97</sup> 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'.<sup>98</sup>

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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.<sup>99</sup> There are presently no access requirements imposed by the Building Code in relation to entry into swimming pools.

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<sup>99</sup> 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.<sup>100</sup> 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.<sup>101</sup>

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.<sup>102</sup>

5.85 Suggested alternative thresholds included 30 metres<sup>103</sup> and 20 metres.<sup>104</sup> Other submitters argued that it should be omitted entirely, and accessibility requirements imposed on all swimming pools associated with these buildings regardless of size.<sup>105</sup> 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.<sup>106</sup>

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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.<sup>107</sup>
- 5.87 Some submitters argued that sling-style swimming pool lifts should not be permitted by the Premises Standards.<sup>108</sup> Submissions argued that lifts of this type are undignified.<sup>109</sup> 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?<sup>110</sup>
- 5.88 Other submitters told the committee the swing lifts cannot be independently operated by the user,<sup>111</sup> and may be unsafe,<sup>112</sup> or painful.<sup>113</sup> Submitters also argued that alternatives were not expensive.<sup>114</sup> 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.<sup>115</sup> Master Lifts also submitted they they may be used for people with poor upper body mobility, and may have interchangeable attachments (such as seats).<sup>116</sup>
- 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.<sup>117</sup>
- 5.90 Finally, some submitters criticised the ‘exclusive use’ exception for swimming pools associated with sole occupancy units in Class 1b and 3

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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.<sup>118</sup> 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.<sup>119</sup>

## 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

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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.<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup>

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 m<sup>2</sup>; <sup>123</sup>
- requiring *all* rooms in Class 9b buildings with inbuilt amplification systems to provide hearing augmentation systems;<sup>124</sup>
- requiring induction loops (if provided) to cover 80 per cent of the floor area of a room;<sup>125</sup> 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.<sup>126</sup> As a consequence, these submitters argued that the Premises Standards should impose higher minimum requirements for the provision of hearing augmentation receivers. The

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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.<sup>127</sup>

- 5.95 Suggestions for a more appropriate ratio for hearing augmentation were 15 per cent,<sup>128</sup> 10 per cent,<sup>129</sup> and 4 per cent.<sup>130</sup> 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'.<sup>131</sup> 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.<sup>132</sup> Other submissions suggested that hearing augmentation should be required in meeting rooms in Class 9c buildings.<sup>133</sup> However, the Access Code would require hearing augmentation systems to be provided in meeting rooms and

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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.<sup>134</sup>

- 5.97 Some submitters argued that requirements for hearing augmentation should not depend on whether an inbuilt amplification system is installed.<sup>135</sup> 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.<sup>136</sup>

- 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'.<sup>137</sup>

- 5.99 In addition, submitters raised some concerns about maintenance of hearing augmentation systems,<sup>138</sup> technical requirements in relation to screens at counters and the like,<sup>139</sup> 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.<sup>140</sup>

## 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

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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.<sup>141</sup> 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.<sup>142</sup> 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.<sup>143</sup> A strict limitation is imposed on the placement of wheelchair seating spaces in the front rows in cinemas.<sup>144</sup> Finally, a concession is provided in relation to access to tiers or platforms of seating areas that do not provide wheelchair seating spaces.<sup>145</sup>
- 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

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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.<sup>146</sup> 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.<sup>147</sup> 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.<sup>148</sup> 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.<sup>149</sup> 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'.<sup>150</sup>
- 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:

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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.<sup>151</sup>

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.<sup>152</sup>

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.<sup>153</sup> Some submitters suggested that the Guidelines should make it clearer that such practices are discriminatory.<sup>154</sup>

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.<sup>155</sup>

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

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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.<sup>156</sup> 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

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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,<sup>157</sup> 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,<sup>158</sup> the usage of tactile (non-Braille) lettering,<sup>159</sup> as well as consistency of placement and design features of such signs.<sup>160</sup> Submitters also argued that signage should be required to provide more information, such as the accessible feature which the sign identifies,<sup>161</sup> and distances to accessible facilities,<sup>162</sup>
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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.<sup>163</sup>

- 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.<sup>164</sup> For this reason, many submitters argued that the signage provisions should have a much broader scope than simply identifying accessible facilities.<sup>165</sup> 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.<sup>166</sup>

- 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.<sup>167</sup>
- 5.118 Some submitters identified specific key elements of signage which should be made accessible.<sup>168</sup> 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).<sup>169</sup>

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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,<sup>170</sup> and accessible signage for emergency exits.<sup>171</sup> 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.<sup>172</sup>

### 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.<sup>173</sup> Depending on the class of
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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.<sup>174</sup> 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).<sup>175</sup>

- 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.<sup>176</sup> 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.<sup>177</sup>

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

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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,<sup>180</sup> 15 per cent,<sup>181</sup> 5–10 per cent,<sup>182</sup> 3–6 per cent,<sup>183</sup> or increases specifically for aged care and health buildings and nursing homes.<sup>184</sup> 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.<sup>185</sup>
- 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).<sup>186</sup> 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'.<sup>187</sup>
- 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.<sup>188</sup>

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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.<sup>189</sup> 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.<sup>190</sup>

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.<sup>191</sup>

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

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.<sup>193</sup> 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

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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,<sup>194</sup> or provide information as to who is responsible for policing spaces.<sup>195</sup>

- 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.<sup>196</sup> 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.<sup>197</sup>

### 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.

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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](http://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.<sup>198</sup> 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.<sup>199</sup> However, the provisions of Part H2 take precedence over the general requirements of the Access Code where there is a difference.<sup>200</sup> 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

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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.<sup>201</sup> 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).<sup>202</sup> 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.<sup>203</sup> 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.'<sup>204</sup> The NSW Government submitted that the compliance timeframes should be removed, as should the requirement for all public transport premises to provide accessibility.<sup>205</sup>
- 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.<sup>206</sup> An exemption has been granted under the Transport Standards 'to recognise the unique safety, operational, technical and space configuration

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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'.<sup>207</sup> The ARA argued that applying for a new exemption would involve increased administrative cost and raise potential inconsistencies.<sup>208</sup> The NSW Government also questioned whether an exemption could be validly granted under section 55 of the Disability Discrimination Act.<sup>209</sup> 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'.<sup>210</sup>

- 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).<sup>211</sup> They also recommended that application of the other parts of the Premises Standards should be completely excluded.<sup>212</sup> 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.<sup>213</sup> 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.<sup>214</sup> However, representatives of the Australian Human Rights Commission explained that transport related provisions of the Premises Standards had

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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.<sup>215</sup>

## 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.<sup>216</sup>
- 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.

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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.





## Matters not addressed by the Standards

### Introduction

- 6.1 In addition to commenting on the provisions which are currently included in the Premises Standards, many submissions raised concerns about issues which are not addressed, or which are considered to not be sufficiently addressed, in the Premises Standards.
- 6.2 This chapter considers a number of the most significant issues identified by submitters that are not addressed by the Standards. These include detailed provisions on emergency egress for people with a disability, provisions on wayfinding, and provisions relating to environmental sensitivity disorders such as Multiple Chemical Sensitivity.

### Emergency egress

- 6.3 The Building Code of Australia presently provides extensive provisions relating to egress from buildings in the event of an emergency. The Access Code simply refers to these provisions.<sup>1</sup> Therefore, compliance with the existing Building Code emergency egress provisions would be sufficient for compliance with the Premises Standards.
- 6.4 The Guidelines to the Premises Standards explain that:

The Access Code refers to the [Building Code of Australia] fire safety provisions relating to the construction of buildings. These

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<sup>1</sup> Clause A2.4, Disability (Access to Premises – Buildings) Standards 2009, hereafter ‘Premises Standards’.

fire safety provisions include emergency egress for all building occupants. Therefore, compliance with the [Building Code] fire safety provisions is deemed to be compliance with the Premises Standard in respect of egress for people with a disability.<sup>2</sup>

- 6.5 A large number of submitters to the inquiry argued that the existing Building Code provisions for emergency egress do not adequately address the safety of people with a disability. The Queensland Chapter of the Society of Fire Safety submitted that:

It is the experience of Engineers Australia: Society of Fire Safety that community expectations with respect to safe egress of buildings for people with a disability... may not be adequately represented in the [Building Code] fire safety provisions.<sup>3</sup>

- 6.6 In an emergency people who are deaf or hearing impaired cannot hear emergency alarms. Similarly, people who are blind or vision impaired may require wayfinding features to safely evacuate a building, and people in wheelchairs or mobility scooters may lack accessible routes to exit a building independently given the current policy that lifts should not be used in the event of a fire.

- 6.7 Witnesses to the inquiry described how the inadequacy of the existing emergency egress provisions impinges on their dignity and their ability to work safely. Mrs Francesca Davenport told the Committee that:

I try not to work weekends – I work at home, because of [the issue of fire safety]. But, if I have to, I make sure I report to security so that if there is an emergency I have alerted them and they know where I am. ...Currently, in most old buildings, the stairwell is too small to keep a person in a wheelchair and allow people to evacuate. In my office, when that happens I have to leave my wheelchair and sit on the floor in the stairwell to be rescued.<sup>4</sup>

- 6.8 Representatives of the Australian Building Codes Board told the Committee that while they sympathised with concerns about the current emergency egress provisions, development of adequate emergency egress provisions would require more time, and that the question was thus:

should we wait until those technical solutions are fully developed, tested and costed before we move forward with the premises

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2 Disability (Access to Premises – Buildings) Standards Guidelines 2009, p. 13.

3 Society of Fire Safety, Queensland Chapter, *Submission 6*, p. 1.

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

standards, or do we move forward [with the Standards] now and look at that as further work for the future?<sup>5</sup>

- 6.9 The Australian Human Rights Commission agreed that further work is required, explaining that while research was undertaken into emergency egress during the development of the Standards:

The Commission understands that the research, while valuable, has not yet delivered practical options suitable for inclusion in the Premises Standards at this stage.<sup>6</sup>

- 6.10 Submitters to the inquiry suggested a number of possible innovations in emergency egress for people with a disability which should be investigated. These included strengthened access requirements in fire stairs, fire-isolated lifts, 'places of refuge/rescue assistance', visual alerts, and 'bed shakers'.

## Fire stairs

- 6.11 As noted in Chapter 4, the Access Code currently exempts fire-isolated stairs and ramps from accessibility requirements. A number of submitters argued that this reduces the safety of these stairs for ambulant people with a disability, such as people who are blind or vision impaired.<sup>7</sup>
- 6.12 The Committee has recommended that this exemption be reconsidered and narrowed.<sup>8</sup> In addition to improving general access to buildings, the inclusion of accessibility features on fire stairs and ramps would provide safer emergency egress for people with a disability.

## Lifts

- 6.13 One of the most urgent short-comings of emergency egress provisions for people with a disability is the lack of a safe means of independent egress for people in wheelchairs or mobility scooters. This problem arises

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5 Mr Kevin Newhouse, Australian Building Codes Board, *Transcript of Evidence*, 12 March 2008, p. 13.

6 Australian Human Rights Commission, *Submission 57*, p. 39; see also Disability Council of NSW, *Submission 58*, pp. 22–23.

7 Disability Council of NSW, *Submission 58*, p. 22; Australian Federation of Disability Organisations, *Submission 83*, p. 20; Australian Blindness Forum, *Submission 65*, p. 14; Southwest Advocacy Organisation, *Submission 81*, p. 3. Mr Chris Gildersleeve from the Queensland Chapter of the Society of Fire Safety indicated that accessibility features in fire stairs 'could be beneficial' in some cases, but that this would need to be assessed on a case-by-case basis: *Transcript of Evidence*, 3 April 2009, p. 31.

8 Recommendation 10, chapter 4, above.

because of the traditional policy that lifts should not be used in event of fire. As a consequence, it may be very dangerous for people with a disability to work in buildings at times when they are unlikely to be able to gain assistance in the event of an emergency.

- 6.14 A number of submissions suggested that consideration should be given to allowing the use of lifts for emergency egress, including imposing requirements for fire-isolated lifts.<sup>9</sup> The Society of Fire Safety submitted that:

Fire safety engineering studies by the National Institute for Standards and Technology (NIST) in the USA prompted by the 1993 World Trade Centre bombing and the 2001 aerial attack have shown that the traditional 'do not use the lift in case of fire' approach may need to be changed.<sup>10</sup>

- 6.15 However, evidence from the Australian Building Code Board suggested that the conclusions of this NIST study have not been widely adopted. Mr Ivan Donaldson told the Committee that:

NIST's recommendations in relation to emergency egress have not been picked up by any jurisdiction in the United States. Indeed, New York City, who you might have thought were somewhat sensitive to this matter, have actually rejected their proposals on the grounds of cost.<sup>11</sup>

- 6.16 The ABCB also argued that they

do not believe that the technical solution at the moment in relation to lifts is cost effective. There are some very significant costs associated with protecting a lift in the event of fire...<sup>12</sup>

## Places of rescue assistance

- 6.17 A number of submitters to the inquiry argued that, in the absence of consensus about the feasibility of lifts as an emergency egress strategy, 'places of rescue assistance' or 'places of refuge' might be one way of providing greater safety for people with a disability until they are assisted
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9 People with Disabilities ACT, *Submission 72*, p. 13; Moonee Valley City Council, *Submission 66*, p. 3; Ms Rita Struthers and Mr Daniel Bedwell, *Submission 121*, p. 16; Mrs Francesca Davenport, Health Science Planning Consultants, *Transcript of Evidence*, 30 March 2009, p. 26.

10 Society of Fire Safety, Queensland Chapter, *Submission 6*, p. 2.

11 Mr Ivan Donaldson, Australian Building Codes Board, *Transcript of Evidence*, 7 April 2009, p. 39.

12 Mr Ivan Donaldson, Australian Building Codes Board, *Transcript of Evidence*, 12 March 2009, p. 12.

to leave a building.<sup>13</sup> Places of rescue assistance are fire-isolated parts of a building where a person can shelter safely until assistance arrives. They may include communication systems to allow a person to call for help,<sup>14</sup> and specialised evacuation chairs.<sup>15</sup> Mr Mark Relf told the Committee that:

At the minimum level, we believe that fire-isolated stairways should incorporate a place of rescue assistance or a place of refuge which incorporates communication systems to emergency services personnel and that those areas could also incorporate specialist evacuation wheelchairs, which have been in the marketplace for decades.<sup>16</sup>

- 6.18 Evidence to the Committee indicated that there had been some disagreement during the development of the Standards as to appropriate locations for safe refuges. Mrs Francesca Davenport told the Committee that:

In the past, the accessible toilet was suggested. I would not agree with that. I would advise my client to put it in the stairwell. Make the landing big enough for two wheelchairs to manoeuvre and park there without endangering anyone. That would be my recommended solution...<sup>17</sup>

- 6.19 Similarly, other submitters suggested that refuges should be placed in the stairwells or in lift lobbies.<sup>18</sup> Toilets were not considered to be a suitable location for a place of rescue assistance, because this option lacks dignity and is likely to be separated from the main exit paths from a building.<sup>19</sup>

- 6.20 Representatives from the building industry, however, did not support the concept of refuges. Mr Bob Appleton from the Master Builders Association told the Committee that:

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13 Mrs Francesca Davenport, Health Science Planning Consultants, *Transcript of Evidence*, 30 March 2009, p. 26.

14 People with Disability ACT, *Submission 72*, p. 11

15 Mr Daniel Bedwell and Ms Rita Struthers, *Submission 121*, p. 15; Mr Daniel Bedwell, private capacity, *Transcript of Evidence*, 3 April 2009, p. 44.

16 Mr Mark Relf, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 23.

17 Mrs Francesca Davenport, Health Science Planning Consultants, *Transcript of Evidence*, 30 March 2009, p. 26.

18 People with Disability ACT, *Submission 72*, p. 11; Mr Daniel Bedwell and Ms Rita Struthers, *Submission 121*, p. 15.

19 Mr Mark Relf, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 23; Mrs Francesca Davenport, Health Science Planning Consultants, *Transcript of Evidence*, 30 March 2009, p. 26.

I am not in favour of refuges. I do not think they are appropriate. I think psychologically a lot of people have problems with refuges.<sup>20</sup>

- 6.21 Some concerns were also raised about the efficacy of places of refuge in very tall buildings, because of the continued requirement that rescue would take place using the stairs. Dr John Macpherson told the Committee that:

... while carrying people down fire stairs from fire refuges might work in one- and two-storey buildings, it would be fairly inadequate once we got into multistorey buildings. Therefore that has really left us with one option, to use an emergency lift...<sup>21</sup>

- 6.22 The Australian Building Codes Board told the Committee that places of refuge were not supported by them during the development of the Standards:

[Places of refuge were] the notion that we could be in this building, and our friend Dougie over there would be faced with a fire. We would leave, but Dougie would go off into a place of refuge and he would be locked in there while the building burned down, and we would come back and get him later. I have to say that that concept did not really get a great deal of support from the ABCB or from others...<sup>22</sup>

## Visual and other alerts

- 6.23 One practical solution which may be suitable for immediate inclusion in the Standards are visual alarms.<sup>23</sup> These alarms use visual cues such as flashing lights to alert a deaf person when an alarm sounds.<sup>24</sup>
- 6.24 The Society of Fire Safety indicated in their submission that standards for visual alarms are already specified in AS 1670.4 – 2004 'Fire Detection, Warning, Control and Intercommunication Systems – System Design, Installation and Commissioning. Part 4: Sound Systems and Intercom

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20 Mr Bob Appleton, Master Builders Australia, *Transcript of Evidence*, 19 March 2009, p. 23.

21 Dr John Macpherson, Spinal Injuries Association (Qld), *Transcript of Evidence*, 3 April 2009, p. 52.

22 Mr Ivan Donaldson, Australian Building Codes Board, *Transcript of Evidence*, 12 April 2009, p. 12.

23 HMinfo Clearinghouse, *Submission 29*, p. 3; Australian Human Rights Commission, *Submission 57*, p. 37; Deafness Forum of Australia, *Submission 18*, p. 8; Victorian Equal Opportunity and Human Rights Commission, *Submission 22*, p. 5; Deafness Council Western Australia, *Submission 27*, p. 2; Disability Council of NSW, *Submission 58*, p. 22; Disability Discrimination Legal Centre, *Submission 51*, p. 15; Deaf Services Australia, *Submission 68*, p. 3

24 Australian Human Rights Commission, *Submission 57*, p. 37.

Systems for Emergency Warning’, which is referenced by the Building Code. However, the Building Code at present only requires visual alarms in high noise environments.<sup>25</sup>

- 6.25 The Deafness Forum of Australia argued that because visual alarms are not yet mandatory:

This generally means that visual warning devices are in the common areas of buildings such as cinemas, shopping centres or airports but only rarely in other buildings such as office buildings or hotels.<sup>26</sup>

- 6.26 Representatives of the Australian Building Codes Board argued, however, that further work would need to be done before visual alarms could be included in the Standards:

There are currently some Australian standards that deal with... [visual emergency alarms]. There were not completed standards at the time that these proposals were developed, so the appropriateness of those standards and what they would cost have not been tested through this process yet. That would have to be done... before any decision was made to include those provisions in the BCA or the premises standards.<sup>27</sup>

- 6.27 In addition to visual alarms, the Deafness Forum of Australia argued that Class 1b and Class 3 accommodation should be required to provide ‘bed shakers’ to wake people who are profoundly deaf.<sup>28</sup>

## Committee comment

- 6.28 Every Australian has the right to expect that reasonable provisions will be made to allow them to leave buildings safely in the event of an emergency. Moreover, it is crucial for equitable, dignified and independent access to buildings that people with a disability can be confident that they will also be able to evacuate from a building in a safe, dignified and independent fashion. On the evidence before the Committee, there is no doubt that the emergency egress provisions of the Premises Standards and the Building Code of Australia fall short of ensuring either the safety or the dignity of

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25 Society of Fire Safety, Queensland Chapter, *Submission 6*, p. 3.

26 Deafness Forum of Australia, *Submission 18*, p. 8.

27 Mr Kevin Newhouse, Australian Building Codes Board, *Transcript of Evidence*, 7 April 2009, p. 37.

28 Deafness Forum of Australia, *Submission 18*, pp. 8-9.

people with a disability. These deficiencies must be rectified as soon as possible.

- 6.29 The innovative techniques for safe evacuation of people with a disability raised in evidence to this inquiry are promising. However the Committee accepts that further research is required to ensure that these approaches will provide safe and cost-effective solutions before they are included in the Premises Standards. The Committee urges the Government and the Australian Building Codes Board to continue work on this issue with a view to adopting any practical solutions which emerge as soon as possible.

### **Recommendation 16**

- 6.30 **The Committee recommends that the Australian Building Codes Board undertake further research to identify deemed-to-satisfy provisions for emergency egress for people with a disability with a view to making changes to the Building Code as soon as possible.**

## **Wayfinding**

- 6.31 Wayfinding refers to building features which allow a person with a disability to locate themselves within a building and find their way to facilities safely and independently. The definition favoured by the Australian Blindness Forum is:

Knowing where you are, where you are headed, and how best to get there; recognise when you have reached your destination; and find your way out – all accomplished in a safe and independent manner.<sup>29</sup>

- 6.32 The Premises Standards presently contain requirements for several features which are useful for wayfinding, including requirements for signage to accessible toilets, spaces with hearing augmentation systems,

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29 Australian Blindness Forum, *Submission 65*, p. 8, citing the US Department of Education National Institute on Disability Research.



and accessible entrances,<sup>30</sup> as well as for luminance contrast and tactile grounds indicators.<sup>31</sup> The Australian Blindness Forum submitted that:

The draft Premises Standards has some limited coverage of Braille and tactile signs, luminance contrast, lighting and tactile indicators. However, wayfinding is much more than these – it is about the ease with which a person proceeds and is facilitated through an environment from one point of interest to another. Wayfinding systems include the basic layout of a building and site, interior and exterior landmarks, views to outside, signs, floor and room numbering, spoken directions, maps, directories, logical progression of spaces, colour coding.<sup>32</sup>

- 6.33 Many submissions argued that more comprehensive requirements for wayfinding should have been included in the Premises Standards. However, most submitters conceded that significant work remained to be done if suitable deemed-to-satisfy provisions are to be identified to comprehensively deal with wayfinding.<sup>33</sup> The Australian Human Rights Commission submitted that:

At this point in time there is little prospect of developing consistent, universally applicable deemed-to-satisfy solutions suitable for the Premises Standards or building law.<sup>34</sup>

- 6.34 Representatives of the Australian Building Codes Board explained to the Committee that their research had indicated that it would be very difficult to codify requirements for wayfinding:

[W]e did some research on way-finding to try and identify what would be the best way of codifying the requirements. That research was done in conjunction with the Victorian Building Commission and through the [Cooperative Research Centre] for Construction Innovation. The outcome from that research was that it is very difficult to try and codify a solution that would be suitable for all buildings and, in fact, it may be much better to try and provide guidance to the industry on the issues that should be taken into account when they are designing these buildings to

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30 Clause D3.6, Premises Standards Schedule 1 Access Code for Buildings (hereafter 'Access Code').

31 Clause D3.8, Access Code.

32 Australian Blindness Forum, *Submission 65*, p. 8.

33 Vision Australia, *Submission 55*, p. 14; Mr Bruce Maguire, Vision Australia, *Transcript of Evidence*, 25 March 2009, p. 7; Ms Amelia Starr, Disability Council of NSW, *Transcript of Evidence*, 25 March 2009, p. 73.

34 Australian Human Rights Commission, *Submission 57*, p. 41.

make sure that the way-finding is implemented in an appropriate way. But the research that we undertook indicated that there was not a single technical solution or a number of technical solutions that you could apply through the building code that would be suitable for all circumstances.<sup>35</sup>

6.35 A number of submissions to the inquiry suggested that wayfinding provisions could be improved by imposing greater requirements for accessible signage.<sup>36</sup> Many submitters also argued that provisions for wayfinding should be considered by, or as part of, the review of the Standards.<sup>37</sup>

6.36 Submitters also requested clarification that the Standards would not prevent complaints being brought under the Disability Discrimination Act or State and Territory anti-discrimination laws in relation to wayfinding.<sup>38</sup> Mr Stephen Fox of the Attorney-General's Department explained that

to the extent that a wayfinding matter is a matter concerned with premises... the standards as proposed contain the class of matters that have to be dealt with in terms of wayfinding in order to comply with the standard. To the extent that there are other wayfinding matters that are not concerned with premises, not concerned with the building structure, then they should continue to be the subject of a potential successful complaint and available for complaint.<sup>39</sup>

6.37 It is the view of the Attorney-General's Department that complaints would not be possible in respect of the design and construction of a building. However, complaints would still be possible in respect of the fitout of the building and any other premises.

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35 Mr Kevin Newhouse, Australian Building Codes Board, *Transcript of Evidence*, 12 March 2009, p. 13.

36 Australian Blindness Forum, *Submission 65*, p. 8; Mr Bruce Maguire, Vision Australia, *Transcript of Evidence*, 25 March 2009, p. 2; Disability Council of NSW, *Submission 58*, p. 41; Blythe-Sanderson Consulting, *Submission 47*, p. 6.

37 Vision Australia, *Submission 55*, p. 14; Blind Citizens Australia, *Submission 118*, p. 8; Australian Braille Authority, *Submission 111*, p. 4; Vision 2020 Australia, *Submission 82*, p. 4; Australian Federation of Disability Organisations, *Submission 83*, p. 11.

38 Australian Blindness Forum, *Submission 65*, p. 8; Disability Council of NSW, *Submission 58*, p. 21; Morris Goding Accessibility Consulting, *Submission 123*, p. 7; Australian Human Rights Commission, *Submission 57*, p. 41; Royal Society of the Blind SA, *Submission 98*, p. 2; National Disability Services, *Submission 54*, p. 7; Vision Australia, *Submission 55*, p. 14; Blind Citizens Australia, *Submission 118*, p. 9; Victorian Equal Opportunity and Human Rights Commission, *Submission 22*, p. 6; Australian Federation of Disability Organisations, *Submission 83*, p. 7.

39 Mr Stephen Fox, Commonwealth Attorney-General's Department, *Transcript of Evidence*, 7 April 2009, p. 37.

## Committee comment

- 6.38 Access to premises should be about more than simply allowing physical entry and exit to buildings. In order for access to be truly equitable, facilities must also be put in place to allow people with a disability to navigate a building independently and with dignity. Requiring people with a disability to be escorted or to rely on there being people in the vicinity to provide directions is not satisfactory.
- 6.39 The requirements for some accessible signage and tactile ground surface indicators in the Premises Standards would provide a degree of assistance to people with a disability to navigate buildings safely. However, much more must be done if people with a disability are to be able to find their way independently.
- 6.40 It is unfortunate that no comprehensive requirements for wayfinding could be identified in the development of the Premises Standards. Such provisions would doubtless have ensured a higher compliance rate and provided greater certainty. However, the Committee accepts that present research indicates that wayfinding matters are best assessed on a case-by-case basis, and that guidelines have been developed to help developers do so. The Committee believes that it is important that building owners and developers should be required to actively consider what wayfinding measures are appropriate for their building.
- 6.41 The Committee therefore considers that it is important that it should remain possible to bring a complaint of unlawful discrimination under the Disability Discrimination Act where reasonable wayfinding features have not been provided.
- 6.42 The Committee also considers that any review process for the Standards must consider whether any further deemed-to-satisfy provisions for wayfinding can be incorporated into the Premises Standards.

## Multiple Chemical Sensitivity

- 6.43 A number of submitters to the inquiry argued that the Premises Standards should contain provisions addressing the needs of people who have Multiple Chemical Sensitivity (MCS) and related disorders. In their current form, the Standards do not contain any provisions relevant to MCS.

- 6.44 There is currently no commonly accepted definition of MCS.<sup>40</sup> However, the Allergy, Sensitivity and Environmental Health Association Queensland suggested that MCS can be identified as:
- a chronic condition with symptoms that recur in response to low levels of exposure to multiple chemicals that improve or resolve when those chemicals are removed. Symptoms occur in multiple organ systems throughout the body.<sup>41</sup>
- 6.45 The primary difficulties faced by individuals with MCS in accessing the built environment arises from sensitivity to chemicals used in building construction or released by building elements such as carpet, paint and plasterboard, and problems with air quality resulting from building design. The latter may exacerbate the effect of chemicals introduced into the environment through cleaning agents, air fresheners, deodorants and other materials.
- 6.46 Submitters argued that sufferers of MCS face many difficulties, including difficulty accessing services, finding and maintaining employment, and securing suitable accommodation.<sup>42</sup> The South Australian Task Force on Multiple Chemical Sensitivity explained that:
- people with MCS are often unable to access indoor spaces and associated services without experiencing severe and disabling symptoms due to exposure to chemicals in indoor air. Exposure to volatile organic compounds in indoor air is typically 5 to 50 times higher than outdoors, even in heavily polluted cities... This problem not only applies to newly constructed buildings but also to those that have been recently renovated and those that bring toxic materials into the enclosed environment.<sup>43</sup>
- 6.47 Submitters suggested that a very wide range of measures might need to be taken to adapt building practices to protect people with MCS.<sup>44</sup>
- 6.48 The Australian Human Rights Commission has produced some guidelines in relation to access to buildings which refer to issues affecting people

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40 South Australian Task Force on Multiple Chemical Sensitivity, *Submission 44*, p. 2.

41 Allergy, Sensitivity, and Environmental Health Association Queensland, *Submission 60*, p. 3.

42 Allergy and Environmental Sensitivity Support and Research Association, *Submission 103*, p. 1; Fragrance and Chemical Sensitivity Support Group, *Submission 23*, p. 2.

43 South Australian Taskforce on Multiple Chemical Sensitivity, *Submission 44*, p. 3.

44 Allergy, Sensitivity and Environmental Health Association Qld, *Submission 60*, pp. 10-12; Fragrance and Chemical Sensitivity Support Group, *Submission 23*, p. 3. See also the National Institute of Building Studies research into measures for Indoor Environment Quality: 'Indoor Environment Quality', last viewed 29 April 2009, <[ieq.nibs.org/index.php](http://ieq.nibs.org/index.php)>.

with MCS.<sup>45</sup> However, these do not provide a comprehensive set of technical requirements suitable for inclusion as deemed-to-satisfy provisions in the Building Code. Given the complexity of the problems, it is likely that development of detailed and cost-effective provisions suitable for inclusion in the building standards will require significant research.

## Committee comment

- 6.49 The Committee recognises the difficulties facing people with MCS and environmental sensitivities. The Committee urges the Government to undertake research with a view to determining what measures might be taken to alleviate the impact of building design on sufferers of these conditions.

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45 Allergy, Sensitivity and Environmental Health Association Qld, *Submission 60*, pp. 4–5.



## Implementation and review

- 7.1 Implementation and administration of the Premises Standards will be crucial in ensuring the Standards' success in providing equitable and dignified access to people with a disability. This chapter will consider possible strategies for enforcement of the Premises Standards and whether a transitional period for building approvals is required. This chapter also considers the Model Process to Administer Building Access for People with a Disability, which is intended to ensure the consistent application of the Premises Standards in the States and Territories. Finally, this chapter will consider the proposed five year review.

### Transitional arrangement

- 7.2 Once finalised, it is intended that the Premises Standards will be tabled in Parliament. If no amendments are made in either the House of Representatives or the Senate within 15 sitting days of tabling, the Premises Standards would take effect from the day immediately after that 15<sup>th</sup> sitting day.<sup>1</sup> As discussed in Chapter 2, the Access Code of the Premises Standards would be reflected in new access provisions of the Building Code. The adoption date for changes to the Building Code would depend on the timing of the tabling of the Premises Standards.
- 7.3 The timing of the commencement of the Premises Standards, and in particular, the Access Code was raised as an issue by the Housing

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1 Section 31(4), *Disability Discrimination Act 1992* (Cth). Where the days differ in respect of each House, the Premises Standards will take effect from the day immediately after the latter of those 15 sitting days.

Industry Association, who were concerned that certain development applications currently in the process of obtaining approval would have to start the approval process again to ensure they complied with the Premises Standards.

- 7.4 This problem is a result of the time it takes to receive development approval. For Class 2 to Class 9 buildings, the Housing Industry Association estimated that the process of obtaining development consent takes 12 months and can sometimes take up to 18 months or two years.<sup>2</sup>

Unfortunately, planning approvals are no longer sketches. They have shifted quite considerably, particularly in states like New South Wales and Queensland. When you are talking about a building that is beyond a home that has two, three, four or 70 stories in it, you do not get planning approvals on sketches.<sup>3</sup>

- 7.5 Given the length of time between application and approval, and the detail required for development approval, the Housing Industry Association proposed that a transitional period of 12 months be included in the Premises Standards.<sup>4</sup> Under the proposal, where development approval has already been obtained, a 12 month period would be provided for building applications to voluntarily comply with the Premises Standards.<sup>5</sup>

## Committee comment

- 7.6 The Committee acknowledges that transitional periods have certain advantages for the building industry and notes the evidence that Victoria and Western Australia both have some type of transitional period for building approvals.<sup>6</sup> However, the Premises Standards is not a new proposal. It has taken over eight years for a draft version of the Standards to be tabled in Parliament and it will no doubt take more time before a final version is introduced. Peak building groups have been involved in negotiations through out this period and should be aware of the possibility of new obligations. Indeed, a number of submissions noted that prudent developers have been complying with the provisions since 2004.<sup>7</sup>

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2 Ms Kristin Tomkins, Housing Industry Association, *Transcript of Evidence*, 19 March 2009, p. 5.

3 Ms Kristin Tomkins, Housing Industry Association, *Transcript of Evidence*, 19 March 2009, p. 6.

4 Housing Industry Association, *Submission 48*, pp. 4-5; see also Ms Kristin Tomkins, *Transcript of Evidence*, 19 March 2009, p. 5.

5 Housing Industry Association, *Submission 48*, pp. 4-5; see also Ms Kristin Tomkins, *Transcript of Evidence*, 19 March 2009, p. 5.

6 Ms Kristin Tomkins, Housing Industry Association, *Transcript of Evidence*, 19 March 2009, p. 6.

7 John Moxon, Physical Disability Australia, *Transcript of Evidence*, 25 March 2009, p. 17. See also the Disability Council NSW, *Submission 58*, at p. 20 note that LANDCOM have released a



- 7.7 As well, the Regulation Impact Statement acknowledges that the Premises Standards simply codify the existing obligation not to discriminate:
- Thus, in a conceptual sense, neither the standard nor the equivalent amendment to the BCA can be regarded as creating new legal obligations beyond those currently imposed.<sup>8</sup>
- 7.8 Changes to the Building Code are made every year on 1 May. It is unlikely that the Premises Standards requirements will be incorporated into the Building Code before that date and, in effect, this may provide a period in which builders would be able to ensure that their development applications comply with the requirements of the Premises Standards.
- 7.9 Given the protracted history of the Premises Standards, the Committee considers it would be undesirable to delay the introduction of the Premises Standards any further. Consequently, the Committee does not support any additional transition period for the implementation of the Standards.

## The Protocol

- 7.10 A Model Process to Administer Building Access for People with a Disability was tabled, along with a number of other documents, as part of the Committee's terms of reference. The Committee has been asked to comment specifically on the appropriateness and effectiveness of the proposed model process, or 'the Protocol' as it also known.
- 7.11 The Protocol is intended to ensure that the Building Code is applied consistently with the Disability Discrimination Act and the Premises Standards to minimise the possibility that a successful complaint may be brought against a building owner.
- 7.12 State and Territory authorities are not obliged to adopt the Protocol, however Article 10 of the Protocol points out that the 'level of certainty

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series of design guidelines and have committed to ensuring that 25 per cent of housing in new land release areas will be designed and build to incorporate key accessibility elements; see also Australian Human Rights Commission, *Submission 57*, p. 35; Mr Mark Relf, *Submission 90*, p. 5; Australian Network of Universal Housing Design, *Submission 95*, p. 11.

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

afforded by following this Protocol would only be available to those abiding by it.<sup>9</sup>

7.13 The Protocol has a number of stated purposes:

- provide for decisions to be made about access to premises in the course of the building approval process in an efficient and timely manner; and
- give the building industry and its practitioners confidence that when an approval is made, the requirements of the Premises Standards are intended to also be satisfied; and
- assist Administrations and Building Control Authorities to undertake an assessment of Alternative Solutions in a manner that is nationally consistent; and
- give people with a disability confidence that the building approval systems of the States and Territories address the provision of access to and within buildings for people with disability; and
- assist the Australian Government and the States and Territories in fostering an efficient and competitive building industry that is responsive to community needs and the objects of the Premises Standards.<sup>10</sup>

## Scope of the Protocol

7.14 The Protocol would apply where an alternative solution<sup>11</sup> is proposed, or where there are appeals against an interpretation of the Building Code; where modifications or exceptions to the full application of the Building Code are sought; and to existing buildings where the Building Control Authority<sup>12</sup> is vested with discretion to require the upgrading of a building.<sup>13</sup>

7.15 Developers or certifiers are not obliged to take issues to Access Panels or to use the Protocol. A certifier or building approval authority may decide a proposed alternative solution is appropriate without reference to an Access Panel. However, Access Panels would be available to provide

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9 Article 10(2), A Model Process to Administer Building Access for People with a Disability (hereafter 'the Protocol'). The Protocol is *Exhibit 5* to this inquiry,

10 Article 3, the Protocol. Some emphasis from the original text has been removed.

11 An approval authority may still issue an approval if it differs in whole or in part from deemed-to-satisfy provisions in the Building Code of Australia if it can be demonstrated that the design satisfies the relevant performance requirement.

12 The Building Control Authority means the person or body in the jurisdiction responsible for building approval of building solutions.

13 Article 1(1), the Protocol.

expert advice where a certifier or a building approval authority seeks advice about the suitability of a proposed alternative solution.

- 7.16 As discussed in Chapter 4, the Premises Standards contain an unjustifiable hardship exemption which provides that failure to comply with a requirement of the Premises Standards is not unlawful to the extent that doing so would cause unjustifiable hardship. In general, State and Territory building laws do not have an unjustifiable hardship exemption.<sup>14</sup> The Protocol sets out a process which State and Territory building control authorities may adopt to help them consider claims that full application of the Building Code may cause an unjustifiable hardship.
- 7.17 The Protocol envisages that Access Panels would be established by State and Territory administrations to give expert advice on access related matters within the scope of the Protocol as stated above.<sup>15</sup> However, decisions of Access Panels would be non-binding.<sup>16</sup> It would still be possible to lodge complaints under the Disability Discrimination Act to the Australian Human Rights Commission and ultimately, the federal courts.<sup>17</sup>

## The Protocol and States and Territories

- 7.18 The Protocol would be implemented by State and Territory governments. As the regulatory system is different in each state and territory, implementation of the Protocol, if adopted, would also vary. The Australian Building Codes Board told the Committee that:
- There are eight pieces of relevant legislation in each of the jurisdictions and there are different approaches... for example, Victoria – such a concept could easily be integrated within the existing administrative framework for the delivery of the building code. That is not the case in New South Wales, I understand.<sup>18</sup>
- 7.19 The New South Wales Government did not indicate clearly its support or opposition to the Protocol but noted that legislative and administrative change would be required to facilitate the introduction of the Protocol and

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14 Preamble, p. 4, the Protocol.

15 Article 4, the Protocol.

16 Article 5, the Protocol.

17 Article 8, the Protocol.

18 Mr Ivan Donaldson, Australian Building Codes Board, *Transcript of Evidence*, 12 March 2009, p. 10.

recommended that the Premises Standards not be enacted until each jurisdiction had made these changes.<sup>19</sup>

- 7.20 The Victorian Government expressed its support for the Premises Standards more generally but did not specifically comment on the Protocol.<sup>20</sup>
- 7.21 The Tasmanian Government implied support for the Protocol, noting that the Protocol 'could be accommodated in Tasmania by the use of Tasmania's current Building Appeal Board with the addition of more access experts to the Board.'<sup>21</sup> Minor legislative amendments and additional resources would be required to allow the Board to act as an Access Panel.<sup>22</sup>
- 7.22 Similarly, the South Australian Government noted that Access Panels could be incorporated into the existing Building Rules Assessment Commission with some legislative amendment and membership changes.<sup>23</sup> The submission from the South Australian Government notes that the Building Rules Assessment Commission already provides 'expert advice on compliance with the performance requirements in the Building Code for specific building proposals.'<sup>24</sup>
- 7.23 In comparison to Tasmania and South Australia, the Australian Capital Territory (ACT) does not use a statutory process to ensure compliance with the Building Code.<sup>25</sup> Rather, a licensed building surveyor, when appointed as a building certifier, gives building approval.<sup>26</sup> The submission from the ACT Government noted that:
- The ACT has not had resources allocated to administer such systems or processes, and therefore would prefer complete discretion to decide if or not it adopted such a system or process.<sup>27</sup>
- 7.24 The ACT Government also pointed out that the 'system of redress through certifiers had not produced situations in the ACT that would warrant the adoption of the protocol.'<sup>28</sup>
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19 New South Wales Government, *Submission 141*, p. 15.

20 Victorian Government, *Submission 139*, p. 1.

21 Tasmanian Government, *Submission 131*, p. 11.

22 Tasmanian Government, *Submission 131*, p. 11.

23 South Australian Government, *Submission 7*, p. 1.

24 Victorian Government, *Submission 7*, p. 1.

25 ACT Minister for Planning, *Submission 46*, p. 9.

26 ACT Planning and Land Authority website, <[www.actpla.act.gov.au/topics/design\\_build/manage\\_construction/building\\_approval](http://www.actpla.act.gov.au/topics/design_build/manage_construction/building_approval)>, accessed 18 May 2009.

27 ACT Minister for Planning, *Submission 46*, p. 9.

7.25 There was some acknowledgement that while each jurisdiction has different ways of regulating building and development, the Protocol was intended to establish a 'core set of principles' and there would be some flexibility in establishment and implementation:

The states and territories would have to see how they could meld that into their existing building administration and appeals processes, and that would differ between the states.<sup>29</sup>

7.26 Mr Ivan Donaldson from the Australian Building Codes Board told the Committee that he sees the Protocol as providing a necessary interim measure to assist in the implementation of the Premises Standards:

...there is this awareness-education process that is going to need to follow the introduction of the [Premises Standards]...certifiers will need some support during that period. That is the way I see these access panels and the protocol operating in the early years. But, in time, it would simply be part of the normal process of getting a building approved.<sup>30</sup>

7.27 The Australian Human Rights Commission pointed out that the main purposes of the Protocol is to provide certainty:

...the whole point of the administrative protocol is to provide the building industry with some comfort and some surety that, when faced with legitimate questions about alternative solutions or full application of the [Building Code], they can make decisions which reflect the very same decisions that would be made in the context of a [Disability Discrimination Act] complaint of noncompliance with the premises standards.<sup>31</sup>

## Committee comment

7.28 The Committee notes that the purpose of the Protocol is to assist in the implementation of the Premises Standards by providing assistance to building certifiers and greater certainty to developers during the implementation of the Premises Standards and the Building Code.

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28 ACT Minister for Planning, *Submission 46*, p. 9.

29 Mr Detlef Jumpertz, Department of Innovation, Industry, Science and Research, *Transcript of Evidence*, 12 March 2009, p. 16.

30 Mr Ivan Donaldson, Australian Building Codes Board, *Transcript of Evidence*, 12 March 2009, p. 17.

31 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 25 March 2009, p. 36.

- 7.29 The Committee supports the use of the Protocol in principle but notes that its benefits would only be available in those jurisdictions where it is adopted. It is appropriate that state and territory governments would decide whether or not to adopt the Protocol. The Committee suggests that further consultation with state and territory governments would be worthwhile to ensure that adoption of the Protocol is as extensive as possible.
- 7.30 Finally, the Committee does not support the recommendation of the NSW Government that the Premises Standards should not be enacted until after legislative and administrative arrangements are finalised for the implementation of the Protocol. This would create an unnecessary and potentially indefinite delay to the introduction of the Premises Standards.

## Access Panels

- 7.31 Access Panels would be established by the Protocol to assess and endorse building upgrade plans,<sup>32</sup> alternative solutions,<sup>33</sup> requests for modifications or exceptions to the full application of the Building Code in relation to new work on existing buildings and, where required, hear appeals against decisions of the building control authority.<sup>34</sup>
- 7.32 Annex 1 of the Protocol states that the body empowered under State or Territory law to rule on other building regulatory matters may also act as the Access Panel for access related matters, provided it is duly authorised and contains persons with the appropriate expertise.<sup>35</sup>
- 7.33 As noted above, the ACT Government indicated that it is unlikely it would adopt the Protocol or establish Access Panels.<sup>36</sup> However, most submissions supported the establishment of Access Panels:<sup>37</sup>

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32 Clause 1.5, Annex 1, the Protocol states that:

Building upgrade plans may propose an interim solution that is outside the scope of building regulations. An example would be to provide alternative building entrance arrangements, with appropriate signage and staff to provide direction, as an interim measure until such time as all entrances required to be accessible can be provided. If such interim arrangements are not honoured, the recommendation made by the Access Panel using this Protocol would no longer be applicable and a subsequent complaint under the DDA may be successful.

33 As mentioned in Chapter 2 of this report, an approval authority may still issue an approval if it differs in whole or in part from deemed-to-satisfy provisions described in the Building Code if it can be demonstrated that the design complies with the relevant performance requirement.

34 Article 2(1)(b), the Protocol.

35 Clause 1.3(1) Annex 1, the Protocol.

36 ACT Minister of Planning, *Submission 46*, p. 9.

At present, no Access Panel or equivalent body exists in NSW, although we understand that comparable agencies do operate in other jurisdictions. The introduction of this sort of expert forum would be most helpful, provided it can be adequately resourced.<sup>38</sup>

- 7.34 Representatives from the Department of Innovation, Industry, Science and Research told the Committee that the purpose of Access Panels is to provide certainty and flexibility within building approvals processes:

Having got a ruling on a particular alternative solution from an access panel, they also want to be reasonably confident, in implementing that solution, that it will have some certainty and that it will not be subject to unreasonable challenge. So we have attempted to provide as much flexibility for people to make sensible arrangements, especially in relation to building upgrades; to have a properly constituted expert body that can help provide that advice; and to provide as much certainty as possible from the decisions of a panel, but recognising that we cannot ultimately usurp the power of the courts.<sup>39</sup>

## Committee comment

- 7.35 The Committee supports the use of Access Panels as an appropriate means of ensuring that the Building Code is applied consistently with the Disability Discrimination Act and the Premises Standards. The Committee acknowledges and supports the flexible approach provided by the Protocol which allows the state or territory building approval authority to also act as the Access Panel for access related matters, provided it is duly authorised and contains persons with the appropriate expertise.

## Membership of Access Panels

- 7.36 The Protocol provides that at least one *person competent in access* would sit on an Access Panel and where the Access Panel consists of more than 3 persons, at least one-third of the Panel must be represented by *persons competent in access*.<sup>40</sup> The Annex to the Protocol also provides that

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37 See for instance: Tasmanian Government, *Submission 131*, p. 11; South Australian Government, *Submission 7*, p. 1.

38 Armidale Dumaresq Council, *Submission 15*, p. 4.

39 Dr Michael Green, Department of Innovation, Industry, Science and Research, *Transcript of Evidence*, 12 March 2009, p. 17.

40 A *person competent in access* means a person recognised by the State or Territory Administration as having the necessary qualifications and experience in access matters

‘members must have expertise relevant to the issues (eg lifts, sensory or mobility aspects of a building).<sup>41</sup>

7.37 Issues were raised in submissions relating to the composition of Access Panels:

We are concerned about the *make up of access panels* and who will be seen as the ‘access expert’ and how their advice will be taken. Will the access expert be the lone voice on the panel struggling to get the concepts of ‘equity’, ‘independence’ and ‘dignity’ heard in a positive way that results in improvements for people with disabilities and not further concessions against access?<sup>42</sup>

7.38 In contrast, the Property Council of Australia proposed that only one member of an Access Panel should be a ‘person competent in access’ even if the size of the panel increases.<sup>43</sup>

7.39 The Australian Human Rights Commission favoured a balanced approach:

We think the access panel’s representation should be balanced. There needs to be people with knowledge of disability access as well as people with industry experience and independent chairing. That is the standard approach for any panel.<sup>44</sup>

7.40 The Government of South Australia proposed that the Access Panel’s members should depend on the circumstances of the particular matter:

Members must have expertise relevant to the issues (eg lifts, sensory or mobility aspects of a building, and in the case of a heritage building a Heritage Conservation Architect should be also included in the panel).<sup>45</sup>

## Committee comment

7.41 The Committee concludes that membership of Access Panels should be balanced and where appropriate, members should have relevant expertise. The Committee considers the formula provided in the Protocol to be

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appropriate to be part of, and provide advice to, an Access Panel: Article 2(1)(o) of the Protocol.

41 Clause 1.3(2) Annex 1 of the Protocol.

42 HC Harrison Consultants, *Submission 42*, p. 4.

43 Property Council of Australia, *Submission 84*, p. 8.

44 Commissioner Graeme Innes, Australian Human Rights Commission, *Transcript of Evidence*, 25 March 2009, p. 35.

45 Government of South Australia, *Submission 33*, p. 6.



appropriate, however, as there appear to be sensitivities with regard to the membership of Access Panels, consideration should be given to clarifying the membership of Access Panels in the 'Guidance Advice' included at Annex 1 to the Protocol.

## Decisions of Access Panels

7.42 Access Panels would have limited scope to make recommendations. Specifically, they would be able to make recommendations on access related matters associated with the construction of new buildings, building work on existing buildings, and change of use to existing buildings where an alternative solution is proposed; or where an unjustifiable hardship exemption is sought.<sup>46</sup>

7.43 A number of submissions from both the building industry and the disability sector argue that decisions of Access Panels, particularly with regard to unjustifiable hardship, need to be binding if they are to provide certainty.<sup>47</sup> The Housing Industry Association argued that:

It is also essential that the proposed Access Panels, if introduced, are sufficiently authorised and recognised by legislation, either in the Premises Standard or the [Disability Discrimination Act], to ensure that a determination of [unjustifiable hardship] is binding for the building owner.<sup>48</sup>

7.44 The Cairns Community Legal Centre agreed on this matter:

We are of the opinion that constituting a statutory body which only *assists* State administrations and building control authorities by making *recommendations* **will in no way ensure compliance** with the Premises Standards (and BCA) and thus the [Disability Discrimination Act].<sup>49</sup>

7.45 Representatives from the New South Wales Government pointed out that this is a widespread concern:

When you read the preamble to the protocol, it tends to suggest that the only body that can really determine unjustifiable hardship is the court, based on a complaint. So it is almost after the event. A lot of people are struggling and trying to come to terms with how you are then going to be able to adjudicate on unjustifiable

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46 Article 5(1), the Protocol.

47 Master Builders Association, *Submission 50*, p. 17.

48 Housing Industry Association, *Submission 48*, pp. 5–6.

49 Cairns Community Legal Centre, *Submission 93*, p. 18, original emphasis.

hardship as part of the building approval process with any great degree of confidence.<sup>50</sup>

- 7.46 However, providing Access Panels with the authority to make binding decisions would not just provide certainty, it may also have unintended consequences. The Australian Human Rights Commission pointed out that making the decisions of Access Panel binding would exclude the capacity of people to lodge complaints about Access Panels under the Disability Discrimination Act.<sup>51</sup>
- 7.47 The other, arguably more serious, consequence is that giving Access Panels the power to make binding decisions would effectively fetter the jurisdiction of the courts. At present, complaints of unjustifiable hardship are decided by the Federal Court. This is reiterated in the Guidelines to the Premises Standards, which states:

There is ... no mechanism in the [Disability Discrimination Act] or the Premises Standards for anyone to give prior approval for non-compliance with any part of the Premises Standards on the grounds of unjustifiable hardship. Decisions about unjustifiable hardship can only be made by a Court following an actual complaint.<sup>52</sup>

## Committee comment

- 7.48 The Committee understands the need for certainty, particularly in relation to claims of unjustifiable hardship. It would appear that the intention of the Protocol and the establishment of Access Panels was to provide as much as certainty as possible within the existing framework.
- 7.49 However, it is not the intention of the Protocol to allow Access Panels to make binding decisions and nor should it be. The Federal Court has the appropriate standing and authority to make these kinds of determinations. Given enough time, a body of case law will inevitably develop to provide guidance on unjustifiable hardship. The Committee concludes that the decisions of Access Panel should not be binding.

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50 Mr Stephen Durnford, NSW Department of Planning, *Transcript of Evidence*, 25 March 2009, p. 96.

51 Commissioner Graeme Innes, Australian Human Rights Commission, *Transcript of Evidence*, 25 March 2009, p. 35.

52 Part 5.1(3), Disability (Access to Premises – Buildings) Standards Guidelines 2009. The Guidelines are *Exhibit 3* to the Committee's inquiry.

## Enforcement and review

### Enforcement

- 7.50 The Premises Standards is a significant shift away from a complaints-based approach towards a compliance based framework. The incorporation of the Access Code into the Building Code establishes the mechanism of compliance and State and Territory building approval mechanisms would provide a level of enforcement.
- 7.51 Disability discrimination complaints can still be made where a building has not complied with the provisions of the Premises Standards. However, it is clear from the experience of the Transport Standards, and the Disability Discrimination Act more generally, that relying on individual complaints is not an effective means of enforcement.<sup>53</sup> Success would therefore be substantially reliant on the ability of State and Territory building approval authorities to enforce compliance with the Premises Standards.
- 7.52 The Public Interest Advocacy Centre pointed out a number of reasons why enforcement of the Premises Standards might be difficult even after the shift towards a compliance-based approach: the highly technical nature of the Premises Standards; the untested nature of the requirements for building certifiers, developers and managers; and, the sometimes unreliable building certification process in ensuring compliance with existing access requirements.<sup>54</sup> With regard to this last point, the Public Interest Advocacy Centre's submission points to the Australian Human Rights Commission's report, *The Good, the Bad and the Ugly*, which states that 'in far too many cases the requirements of even the current [Building Code] and its referenced technical specifications found in a number of Australian Standards are not being met.'<sup>55</sup>
- 7.53 To ensure that compliance with the Premises Standards is effectively monitored, the NSW Disability Discrimination Legal Centre recommended that the Disability Discrimination Commissioner:

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53 NSW Disability Discrimination Legal Centre, *Submission 51*, p. 17. However, the submission goes on to note that *Corcoran v Virgin Blue Airlines Pty Ltd* is currently before the Federal Court.

54 Public Interest Advocacy Centre, *Submission 91*, p. 12.

55 Australian Human Rights Commission, *The Good, the Bad and the Ugly*, <[www.hreoc.gov.au/disability\\_rights/buildings/good.htm](http://www.hreoc.gov.au/disability_rights/buildings/good.htm)> , accessed 14 May 2009.

...be granted the power to investigate breaches of the Standards, and bring complaints, where there are cases of broader systemic non-compliance, without requiring an individual complainant.<sup>56</sup>

7.54 The Public Interest Advocacy Centre suggested three mechanisms for monitoring compliance with the Premises Standards:

- Resourcing of the state and territory Auditors General to enable an annual audit of a sample of BCA-certified new buildings or building work;
- Establishment of a mechanism within state and territory building administrations to enable an appropriately broad sample compliance audit of certified new building and building work; and
- Requiring and resourcing local government development approval bodies to undertake a BCA compliance audit on a sample of certified new buildings and building work.<sup>57</sup>

7.55 The Public Interest Advocacy Centre suggests that the first option, requiring State and Territory Auditors General to audit compliance, is preferable.<sup>58</sup>

## Committee comment

7.56 The Committee notes the concern relating to the enforcement of the Transport Standards. However, the Committee also notes that the Premises Standards would not necessarily experience the same difficulties with compliance because of the incorporation of the Access Code into the Building Code. The Committee is confident that the building approvals process would assist in enforcing the provisions of the Premises Standards. Consequently, there would be less reliance on individual complaints for enforcement.

7.57 Although the incorporation of the Access Code into the Building Code would increase compliance with the Premises Standards, it does not mean that monitoring and enforcement are not necessary.

7.58 The Committee agrees that the Disability Discrimination Commissioner should be given the power to investigate non-compliance with the Premises Standards and to bring complaints where there is systemic

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56 NSW Disability Discrimination Legal Centre, *Submission 51*, p. 18; This suggestion was also made in the draft report of the Review of the Transport Standards: Allen Consulting Group, *Review of the Disability Standards for Accessible Public Transport: Draft Report*, January 2008, p. 149. Available from < [www.ddatransportreview.com.au/?x=report](http://www.ddatransportreview.com.au/?x=report)>, accessed 12 May 2009.

57 Public Interest Advocacy Centre, *Submission 91*, p. 13.

58 Public Interest Advocacy Centre, *Submission 91*, p. 13.

non-compliance with the Premises Standards without requiring an individual complainant.

- 7.59 The Committee considers that an audit of a sample of Building Code certified new buildings or building work prior to the review would assist in identifying any areas of non-compliance. In addition, monitoring and enforcement of the Premises Standards should be assessed as part of the five year review with the view to determining the most appropriate and effective monitoring and enforcement mechanism given the rate of compliance with the Premises Standards over the first five years of operation.

### **Recommendation 17**

- 7.60 **The Committee recommends that the Disability Discrimination Commissioner be given the power to investigate non-compliance with the Premises Standards and to bring a complaint where there is non-compliance with the Premises Standards without requiring an individual complaint.**

### **Recommendation 18**

- 7.61 **The Committee recommends that an audit of a sample of new buildings or building work be conducted by the Australian Government prior to the review of the Premises Standards.**

## **Review**

- 7.62 Section 5.1 of the Standards provides that the Minister for Innovation, Industry, Science and Research, in consultation with the Attorney-General, is to review, five years after their commencement, the effectiveness of the Standards in achieving their objects.
- 7.63 The proposed review was evidently a matter important to submitters. Many submissions indicated that although the Premises Standards was not a perfect document, there should be no further delay in their

introduction.<sup>59</sup> It is expected that the review process would provide the opportunity to assess the effectiveness of the Premises Standards.

7.64 The Australian Human Rights Commission has made the point that the review process is particularly important given the highly technical nature of the Standards and the difficulty that many individuals would have in challenging non-compliance.<sup>60</sup>

7.65 Submissions have suggested that the review should:

- assess whether the natural building upgrade cycle in existing buildings had in fact triggered the requirement for the owner to upgrade the building to the Premises Standards;<sup>61</sup>
- assess whether the agreed compliance target for existing buildings had been met;<sup>62</sup>
- analyse the level of compliance with the Premises Standards and new Building Code of Australia, including compliance with deemed-to-satisfy technical solutions;<sup>63</sup>
- analyse the Alternative Solutions proposed to meet the performance requirements of the Premises Standards and Building Code of Australia;<sup>64</sup>
- consider whether problems brought to Access Panels reflect interpretive problems or identify particularly onerous demands, particularly on existing building owners and operators.<sup>65</sup>

7.66 To achieve this data must be collected.<sup>66</sup> The NSW Disability Discrimination Legal Centre recommended that data must be collected by

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59 See Rhonda Galbally, Victorian Disability Advisory Council, *Transcript of Evidence*, 30 March 2009, pp 53-54; Minister for Planning (ACT), *Submission 46*, p. 10; Australian Human Rights Commission, *Submission 57*; Office of the Anti-Discrimination Commissioner (TAS), *Submission 62*, p. 1; Public Interest Advocacy Centre, *Submission 91*, p. 10; Australian Institute of Building Surveyors, *Submission 97*, p. 11; NSW Disability Discrimination Legal Centre, *Submission 51*, p. 4.

60 Australian Human Rights Commission, *Submission 57*, p. 31.

61 Physical Disability Australia, *Submission 45*, p. 3; Australian Human Rights Commission, *Submission 57*, p. 28; Disability Council NSW, *Submission 58*, pp. 24–25; People with Disabilities (ACT), *Submission 72*, p. 7.

62 Physical Disability Australia, *Submission 45*, p. 3.

63 Australian Human Rights Commission, *Submission 57*, p. 31.

64 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 271; see also Australian Human Rights Commission, *Submission 57*, p. 31.

65 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 27.

building certifiers, building developers and building managers demonstrating their compliance with the Premises Standards.<sup>67</sup> The data should be made publicly available.<sup>68</sup>

7.67 The Australian Human Rights Commission suggested that:

This data might be collected throughout the first five years of the Premises Standards by sample audits undertaken by building administrations or other appropriate bodies in partnership with professional associations and representatives of the disability community.

7.68 The Public Interest Advocacy Centre recommended that:

An appropriate body be established before or at the time the Draft Premises Standards come into effect to:

- (a) identify and collect the baseline data necessary to inform the five-year review;
- (b) determine key criteria for the five-year review; and
- (c) work with key stakeholders to ensure that data is collected and reported in standardised (and therefore comparable) form across jurisdictions.

7.69 The NSW Disability Discrimination Legal Centre also pointed out that data collection is consistent with Australia's obligations under the Convention on the Rights of Persons with Disabilities. Under section 31, States Parties are obliged to:

Undertake to collect appropriate information, including statistical data and research data, to enable them to formulate and implement policies to give effect to the present Convention.<sup>69</sup>

## Lessons learnt from the review of the Transport Standards

7.70 The Transport Standards review commenced after the Transport Standards had been operating for five years. It has now been seven years since the Transport Standards commenced and two years since the review

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66 Public Interest Advocacy Centre, *Submission 91*, p. 18; Australian Human Rights Commission, *Submission 57*, p. 31; Mr Peter Simpson, *Submission 94*, p. 4; NSW Disability Discrimination Legal Centre, *Submission 51*, p. 19;

67 NSW Disability Discrimination Legal Centre, *Submission 51*, p. 19.

68 NSW Disability Discrimination Legal Centre, *Submission 51*, p. 19.

69 Section 31, *Convention on the Rights of Persons with Disabilities*.

process commenced and the report of the review is not finalised or publicly available.<sup>70</sup>

- 7.71 In addition to the delay, a number of submissions have pointed out that the deficient monitoring and compliance of the Transport Standards means that a proper assessment of its objectives is difficult:

This was particularly highlighted in the process of the five-year review of the Public Transport Standards, with the consultants identifying a lack of data available for review that could indicate whether or not there had been any significant improvements or otherwise in access to public transport over the five-year period.<sup>71</sup>

- 7.72 The Committee can learn valuable lessons from the current review of the Transport Standards. The recommendations made in this chapter are intended to avoid some of the difficulties experienced by the review of the Transport Standards and to establish an effective review process for the Premises Standards.

## Committee comment

- 7.73 The review of the Premises Standards serves both a practical and a symbolic purpose. The Committee agrees with the Australian Human Rights Commission's comments that:

We need to give confidence to the disability community that the standard is working for them. We need to allow the professions, through the review, to identify areas where they need to supplement training information and professional development for their professional members, because problems in implementation will come out. Finally, the benefit for industry is that they will, through that review process and monitoring, be able to identify areas where their concerns are shown to be correct. As a result, if they can justify that their concerns are correct, then some changes can be made.<sup>72</sup>

- 7.74 The Committee agrees that the Review must include certain requirements to be effective. The review should specify a commencement date and a completion date and should take no longer than 12 months. The review

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70 A draft report is available on the Allen Consulting Group website: <[www.ddatransportreview.com.au](http://www.ddatransportreview.com.au)>

71 Public Interest Advocacy Centre, *Submission 91*, p. 11.

72 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 27.



should be completed within five years of the commencement of the Premises Standards.

- 7.75 Prior to the commencement of the Premises Standards, the Government should identify what data will be collected, how it will be collected and allocate sufficient resources to support this process prior to the commencement of the Premises Standards. Baseline data is required for an effective assessment of the Standards and collection of data should commence immediately. Data collection should be consistent across the jurisdictions.
- 7.76 The review should consider the extent to which existing buildings have been upgraded, the level of compliance with the Premises Standards and new Building Code, and provide an analysis of the Alternative Solutions proposed to meet the performance requirements of the Premises Standards and Building Code of Australia.<sup>73</sup>
- 7.77 In addition to monitoring and evaluating the requirements of the Premises Standards, consideration should be given to specific matters that are currently not addressed in the Premises Standards or where the Committee has identified that they should be reviewed. These areas are identified by the Committee through out the report. They are:
- The small building exemption: specifically, whether the cost involved in installing a lift is less than estimated in the RIS and subsequently, whether it would appropriate to remove the exemption altogether.
    - ⇒ If the small building exemption is maintained, whether the threshold should be changed from 200m.
  - The lessee concession: the review should consider the number of applications for new work submitted by lessees and whether building owners should take on the responsibility of providing access between the entrance and the new work.
  - 90<sup>th</sup> vs 80<sup>th</sup> percentile dimensions: new research should be completed on wheelchair dimensions for use by the review process. The review should consider the impact of the 90<sup>th</sup> percentile dimensions on the building sector and whether the 90<sup>th</sup> percentile dimensions should be adopted by the Premises Standards as a whole.
  - Locking off lifts: if the Premises Standards continue to allow the use of lifts controlled by constant pressure devices and which require locking

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73 Mr Michael Small, Australian Human Rights Commission, *Transcript of Evidence*, 7 April 2009, p. 271; see also Australian Human Rights Commission, *Submission 57*, p. 31.

off, these provisions should be re-examined at the time of the five year review to determine whether they continue to be necessary.

- Accessible toilets: the review should consider whether the requirements for accessible sanitary facilities proposed by the Premises Standards are adequate, particularly with regard to construction costs, distance between facilities and access where there are multiple tenancies on a single storey.
- Swimming pools: the review should consider whether the 40 metre threshold for accessibility has exempted an unjustifiably large number of swimming pools. The cost-effectiveness of providing access to small swimming pools should also be reviewed.
- Accessible parking: the review should consider whether the accessible parking provisions of the Premises Standards are adequate.
- Class 1bs: the review should consider (1) how many Class 1b buildings were exempted from compliance by the four room threshold, and how many were not; and (2) whether the imposition of access requirements has had an effect on the conversion of existing buildings to Class 1b buildings as well as on the construction of new Class 1b accommodation.
- Wayfinding: the review should consider whether any further deemed-to-satisfy provisions for way finding can be incorporated into the Premises Standards.
- Emergency egress: the review should consider whether any further deemed-to-satisfy provisions for emergency egress can be incorporated into the Premises Standards.
- Public transport buildings: the review should assess the operation of the Premises Standards in conjunction with the Transport Standards.

**Recommendation 19**

7.78 The Committee recommends that:

- the Premises Standards provide commencement and completion dates for the review process;
- the completion date for the review be within five years of the commencement of the Premises Standards;
- the Premises Standards set out the issues to be considered by the review and that these issues include:
  - ⇒ the small building exemption;
  - ⇒ the lessee concession;
  - ⇒ 80<sup>th</sup> and 90<sup>th</sup> percentile wheelchair dimensions;
  - ⇒ locking off lifts;
  - ⇒ accessible toilets;
  - ⇒ swimming pools;
  - ⇒ accessible car parking;
  - ⇒ Class 1b buildings;
  - ⇒ wayfinding;
  - ⇒ emergency egress; and,
  - ⇒ public transport buildings;
- the Premises Standards set out the criteria by which effectiveness of the Standards is to be assessed;
- the Australian Government identify what data will be collected and how it will be collected in each jurisdiction during the first four years;
- baseline data be collected; and
- funding be provided for the review.

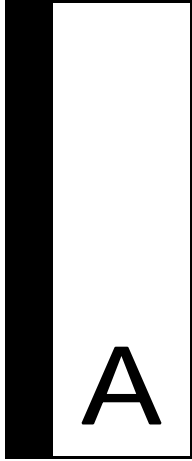
7.79 The Committee anticipates that the Premises Standards will be finalised and tabled in Parliament promptly. However, to ensure the momentum that has developed since the Federal election in 2007 is not lost, the Committee reserves the right to re-examine the Premises Standards in 12 months.

## Concluding comments

- 7.80 After 17 years, it is clear that many buildings are still not complying with their obligations under the Disability Discrimination Act to provide non-discriminatory access. This means that people with a disability continue to experience difficulty accessing buildings, and face social and economic disadvantage as a result, including decreased employment prospects and obstacles to participation in the broader community.
- 7.81 In contrast to the complaints based system established under the Disability Discrimination Act, which has largely failed to produce broad change in the built environment, the Premises Standards is a regulatory device of general application. Through incorporation of the Access Code into the Building Code, all new buildings and buildings undergoing significant upgrades, would be required to comply with the provisions of the Premises Standards.
- 7.82 Although there is still some way to go, the Committee supports the Premises Standards as a significant milestone on the path to equal access. The benefits of the Premises Standards would be widespread, immediate and real. The Committee also expects the Premises Standards to provide intangible benefits such as dignity, social inclusion and respect.
- 7.83 The Committee notes that underpinning this report and its recommendations are certain fundamental concepts, including dignity, equality, certainty and cost-effectiveness. The Committee is of the view that the Premises Standards would provide certainty to building owners, managers and designers about how they can design, construct and certify buildings in a way that meets the requirements of the Disability Discrimination Act. Equally, the Committee considers that the Premises Standards would greatly improve access to buildings for people with a disability, reducing both literal and figurative obstacles to participation in the social, economic, and political life of the community.
- 7.84 Where it has recommended change, the Committee has been careful to consider the cost-effectiveness of its recommendation, however, it is expected that more detailed estimations would be necessary following this report. The Committee supports a balanced approach to weighing up the costs and benefits, keeping in mind the difficulties involved in calculating the benefits for a device like the Premises Standards.
- 7.85 The Committee is acutely aware that the Premises Standards have a long history. It has taken many years to reach this point and the Premises Standards are still in draft form. The Committee is of the view that the

finalisation of the Premises Standards should be considered a priority. Where the Committee has recommended changes to the Premises Standards, it urges the Government to draft these amendments promptly so that finalised Premises Standards can be introduced to Parliament as soon as possible.





## Appendix A – List of Submissions

- 1 Mrs Jan Cocks
- 1a Mrs Jan Cocks SUPPLEMENTARY (to Submission No. 1)
- 2 Mr Bob Harris
- 3 Mr Rodney Holder
- 4 South Australian Access Consultants Network
- 5 Ms Dianne Proctor
- 6 Society of Fire Safety
- 7 Department for Planning and Local Government
- 8 Mr Graham Lockerbie
- 9 Older Women's Network New South Wales Inc
- 10 COTA Over 50's Ltd
- 11 Hobsons Bay City Council
- 12 Ms Anne Fitzpatrick
- 12a Ms Anne Fitzpatrick SUPPLEMENTARY (to Submission No. 12)
- 13 Ms Robyn Perham
- 14 Australian Lawyers for Human Rights
- 15 Armidale Dumaresq Council
- 16 Disabled Access Consultancy Pty Ltd

- 16a Disabled Access Consultancy Pty Ltd SUPPLEMENTARY (to Submission No. 16)
- 17 Mr John Farragher
- 18 Deafness Forum of Australia
- 19 Mr Stephen Huntington
- 20 Audio Telex
- 21 Council on the Ageing (COTA) NSW Inc
- 22 Victorian Equal Opportunity and Human Rights Commission
- 22a Victorian Equal Opportunity and Human Rights Commission SUPPLEMENTARY (to Submission No. 22)
- 23 Fragrance And Chemical Sensitivity Support Group
- 24 Mr Barry Bennett
- 25 Mr Robert Knott
- 26 Brisbane Airport Corporation
- 27 Deafness Council Western Australia Incorporated
- 28 Victorian Access Consultants Network
- 29 Hminfo Clearinghouse
- 30 ClubsAustralia
- 31 IDEAS: Information on Disability and Education Awareness Services
- 32 Museums Australia
- 33 Government of South Australia
- 34 Arts Access Victoria
- 35 Eric Martin & Associates
- 36 Coffs Harbour City Council Access Advisory Committee
- 37 Mr John Moxon
- 38 Mr Murray Mountain
- 39 Mr Max Murray
- 40 Mr David Currie



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- 41 Queenslanders with Disability Network
- 42 HC Harrison Consultants Pty Ltd
- 42a HC Harrison Consultants Pty Ltd SUPPLEMENTARY (to Submission No. 42)
- 43 Mr John Cleeland
- 44 South Australian Task Force on Multiple Chemical Sensitivity
- 45 Physical Disability Australia Ltd
- 46 Minister for Planning (ACT)
- 47 Blythe-Sanderson Group
- 48 Housing Industry Association
- 49 Access Australia
- 50 Master Builders Australia
- 50a Master Builders Australia SUPPLEMENTARY (to Submission No. 50)
- 51 NSW Disability Discrimination Legal Centre Inc
- 51a NSW Disability Discrimination Legal Centre Inc SUPPLEMENTARY (to Submission No. 51)
- 52 Tourism Transport Forum
- 52a Tourism Transport Forum SUPPLEMENTARY (to Submission No. 52)
- 53 Australian Hotels Association
- 54 National Disability Services
- 55 Vision Australia
- 56 Mr Peter Conroy
- 56a Mr Peter Conroy SUPPLEMENTARY (to Submission No. 56)
- 57 Australian Human Rights Commission
- 57a Australian Human Rights Commission SUPPLEMENTARY (to Submission No. 57)
- 58 Disability Council NSW
- 59 Ms Heather Milton

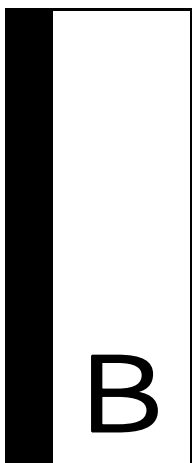
- 60 Allergy, Sensitivity & Environment Health Association (ASEHA)
- 61 Arts Access Australia
- 62 Office of the Anti-Discrimination Commissioner
- 63 Disability Services Commission
- 64 City of Melbourne
- 65 Australian Blindness Forum
- 66 Moonee Valley City Council
- 67 Action for More Independence & Dignity in Accommodation
- 68 Deaf Services Australia
- 69 Mr Garth Moore
- 70 Cerebral Palsy League of Queensland
- 71 Western Australian Local Government Association (WALGA)
- 72 People With Disabilities
- 73 Darwin Community Legal Services
- 74 Spinal Cord Injuries Australia
- 75 City of Yarra
- 76 Ms Jo-An Partridge
- 77 Disability Alliance
- 78 Disability Discrimination Legal Service Inc
- 79 Latrobe City Council
- 80 Victorian Disability Advisory Council
- 81 Southwest Advocacy Association
- 82 Vision 2020 Australia
- 83 Australian Federation of Disability Organisations
- 84 The Property Council of Australia
- 85 Master Lifts
- 86 Anti- Discrimination Commission
- 87 Independent Living Centre NSW

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- 88 Mr Paul Henderson
- 89 Moreland City Council
- 90 Mr Mark Relf
- 91 Public Interest Advocacy Centre Ltd
- 92 Health Science Planning Consultants Pty Ltd
- 92a Health Science Planning Consultants Pty Ltd SUPPLEMENTARY  
(to Submission No. 92)
- 93 CAIRNS COMMUNITY LEGAL CENTRE INC
- 94 Mr Peter Simpson
- 95 Australian Network of Universal Housing Design
- 96 Victorian Council of Social Service
- 97 Australian Institute of Building Surveyors
- 98 Royal Society for the Blind
- 99 People With Disabilities (WA) Inc.
- 100 Mr Ron Lochert
- 101 Queensland Tourism Industry Council
- 102 Welfare Rights Centre
- 103 Allergy and Environment Sensitivity Support and Research  
Association Inc.
- 104 Scangroup Pty Ltd
- 105 National Ethnic Disability Alliance
- 106 Ms Raelene West
- 107 The Association of Consultants in Access Australia
- 108 National Seniors National Policy Office
- 109 Deaf Australia Inc
- 110 NSW Heritage Council
- 111 Australian Braille Authority
- 112 Anti Discrimination Board
- 113 Mr Frank Nott

- 114 Independent Living Centre (TAS) Inc.
- 115 City of Stonnington
- 116 Australasian Railway Association
- 116a Australasian Railway Association SUPPLEMENTARY (to Submission No. 116)
- 117 Physical disability Council of NSW
- 118 Blind Citizens Australia
- 119 Ministerial Advisory Council on Disability Western Australia
- 120 People with Disability Australia NSW
- 121 Ms Rita Struthers
- 121a Ms Rita Struthers SUPPLEMENTARY (to Submission No. 121)
- 122 Spinal Injuries Association
- 123 Morris Goding Accessibility Consulting
- 124 Launceston City Council
- 125 Mr David Green
- 126 Ability Rights Victoria
- 127 Mr Anthony Samuels
- 128 Mr David Brant
- 129 Lane Cove Council
- 130 Shopping Centre Council of Australia
- 131 Tasmanian Government
- 132 City of Boroondara
- 133 Australian Building Codes Board
- 134 City of Sydney
- 135 Australian Institute of Architects
- 136 Mr Dan Davidson
- 137 Municipal Association of Victoria
- 138 Ms Natalie Moos
- 139 Victorian Government

- 140 Ms Annie- Marie Howarth
- 141 New South Wales Government
- 142 Vision Australia, Deafness Forum, Deaf Australia Inc and Blind Citizens Australia
- 143 Oaks Hotels and Resorts
- 144 Mr David Squirrell
- 145 Western Australian Government
- 146 Carers Queensland



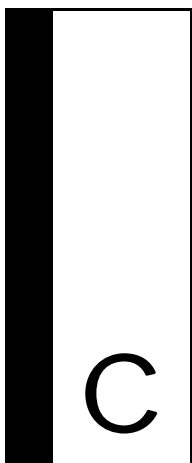


## Appendix B \_ List of Exhibits

- 1 The Hon Robert McClelland  
*Disability (Access to Premises – Buildings) Standards 2009*
- 2 The Hon Robert McClelland  
*Summary of Main Australian Standards referenced in the Access Code*
- 3 The Hon Robert McClelland  
*Disability (Access to Premises – Buildings) Standards Guidelines 2009*
- 4 The Hon Robert McClelland  
*Regulation Impact Statement*
- 5 The Hon Robert McClelland  
*A Model Process to Administer Building Access for People with a Disability, 'The Protocol'*
- 6 The Hon Robert McClelland  
*Disability Standards for Accessible Public Transport Amendment 2009*

- 7 Attorney-General's Department  
*Regulation Impact Statement Appendix C (i)*
- 8 Attorney-General's Department  
*Regulation Impact Statement Appendix C (ii)*
- 9 Standards Australia  
*AS 1428.1 General requirements for access – New building work*
- 10 Standards Australia  
*AS 1428.4.1 Tactile ground surface indicators for the orientation of people with vision impairment*
- 11 Standards Australia  
*AS 2890. 6 Off-street car parking for people with disabilities*
- 12 Mrs Jan Cocks  
*Parking for the Disabled Campaigns - "Check out the Permit not the Person"*  
(Related to Submission No. 1a)





## Appendix C – List of Hearings and Witnesses

**Thursday, 12 February 2009 - Canberra**

**Australian Building Codes Board**

Mr Ivan Donaldson, General Manager

Mr Kevin Newhouse, Manager

**Australian Human Rights Commission**

Mr Michael Small, Senior Policy Officer, Disability Rights Unit

**Thursday, 26 February 2009 - Canberra**

**Attorney-General's Department**

Ms Rachel Antone, Senior Legal Officer, Disability Discrimination Section

Mr Peter Arnaudo, Assistant Secretary, Human Rights Branch

Mr Stephen Fox, Principal Legal Officer, Disability Discrimination Section

**Thursday, 12 March 2009 - Canberra**

**ACT Planning & Land Authority**

Mr David Parsons, Principal Officer, Construction Policy, Legislation,  
Codes & Standards

**Australian Building Codes Board**

Mr Darren Atkinson, Executive Officer

Mr Ivan Donaldson, General Manager

Mr Kevin Newhouse, Manager

**Department of Innovation, Industry, Science & Research**

Dr Michael Green, General Manager, Manufacturing Innovation Branch,  
Manufacturing Division

Mr Detlef Jumpertz, Manager, Building Policy Section, Manufacturing  
Innovation Branch, Manufacturing Division

**Thursday, 19 March 2009 - Canberra**

**Deafness Forum of Australia**

Ms Nicole Lawder, Chief Executive Officer

**Housing Industry Association**

Ms Kristin Tomkins, Executive Director, Building Policy

**Master Builders Australia**

Mr Robert Appleton, National Director, Technical & Regulatory Policy

Mr Wilhelm Harnisch, Chief Executive Officer

**Wednesday, 25 March 2009 - Sydney**

**Individuals**

Mr Peter Conroy

Ms Alix Goodwin, Executive Director, Strategic Policy & Planning

**Australian Hotels Association**

Mr Bill Healey, Chief Executive

Ms Juliana Payne, National Manager Accommodation

**Australian Human Rights Commission**

Commissioner Graeme Innes, Human Rights & Disability Discrimination  
Commissioner

Mr Michael Small, Senior Policy Officer, Disability Rights Unit

**Australian Network of Universal Housing Design**

Ms Amelia Starr, National Convenor

**Department of Education & Training**

Mr Alan Smith, Manager, Compliance & Energy

**Department of Planning**

Mr Stephen Durnford, Team Leader, Building Systems Unit

Mr Christopher Johnson, Executive Director, Special Projects

**Disability Council NSW**

Mr Dougie Herd, Chief Executive

**NSW Department of Ageing, Disability & Home Care**

Mr Mark Lawler, Director, Asset Management

**NSW Department of Education & Training**

Ms Melissa Clements, Manager, Disability Policy & Planning, Disability Programs, Office of Schools

Mr Douglas White, R/Director, Strategic Asset Planning & Procurement

**NSW Department of Health**

Ms Patsy Choo, Deputy Director, Asset Performance

**NSW Disability Discrimination Legal Centre Inc**

Ms Fiona Given, Policy Officer

Ms Joanna Shulman, Principal Solicitor

**Physical Disability Australia Ltd**

Mr John Moxon, Life Member

Mr Mark Relf, Representative

**Property Council of Australia**

Mr Paul Waterhouse, Executive Director, National Policy

**RailCorp**

Ms Margaret Stack, Manager Disability Services

**Spinal Cord Injuries Australia**

Mr Greg Killeen, Policy & Advocacy Officer

Mr Sean Lomas, Policy and Information Manager

**The Disability Council of NSW**

Mr Andrew Buchanan, Chair

**The Property Council of Australia**

Mr Peter Verwer, Chief Executive

**Vision Australia**

Mrs Caroline Lewis, Manager Access Consulting, (Built & Pedestrian Environment)

Mr Bruce Maguire, Senior Policy Officer

**Monday, 30 March 2009 - Melbourne**

**Access Australia**

Mr Michael Fox, Director

**Australian Federation of Disability Organisations**

Ms Leah Hobson, National Policy Officer

**Blythe-Sanderson Group**

Mr Andrew Sanderson, Director

Mr George Xinos, Access Consultant/Occupational Therapist

**Disability Discrimination Legal Service Inc**

Mr Placido Belardo, Principal Solicitor

**Health Science Planning Consultants Pty Ltd**

Ms Francesca Davenport, Senior Architect & Access Consultant

**Latrobe City Council**

Mr Bill Lawler, Project Officer, Rural Access

**The Association of Consultants in Access Australia**

Mr Bob Kellow, Vice President

**Tourism Transport Forum**

Mr Evan Hall, National Manager, Accommodation & Tourism Investment

**Victorian Access Consultants Network**

Ms Joe Manton, Convenor

**Victorian Disability Advisory Council**

Dr Rhonda Galbally, Chair

**Victorian Equal Opportunity and Human Rights Commission**

Ms Chelsey Bell, Senior Legal Officer

Dr Helen Szoke, Chief Conciliator/Chief Executive Officer

**Friday, 3 April 2009 - Brisbane****Individuals**

Mr Daniel Bedwell

Mr John Deshon

Mr Max Murray

**Armidale Dumaresq Council**

Mr Stephen Gow, Director, Planning and Environment Services

**CAIRNS COMMUNITY LEGAL CENTRE INC**

Ms Sue Tomasich, Solicitor, Disability Discrimination Legal Service

**Gold Coast City Council**

Ms Rita Struthers, Social Planner (Disability)

**Master Lifts**

Mr William Wakefield, Director

**Society of Fire Safety**

Mr Chris Gildersleeve, Queensland Chapter

**Spinal Injuries Association**

Dr John MacPherson, Member

Mr John Mayo, Manager, Community Relations

**Welfare Rights Centre - Brisbane**

Mr Lawrence Laikind, Solicitor, Operating Disability Discrimination Legal Advocacy Service

**Tuesday, 7 April 2009 - Melbourne**

**Attorney-General's Department**

Ms Rachel Antone, Senior Legal Officer, Disability Discrimination Section

Mr Stephen Fox, Principal Legal Officer, Disability Discrimination Section

**Australian Building Codes Board**

Mr Ivan Donaldson, General Manager

Mr Kevin Newhouse, Manager

**Australian Human Rights Commission**

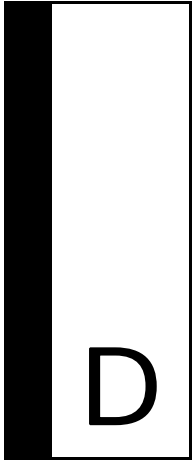
Commissioner Graeme Innes, Human Rights & Disability Discrimination  
Commissioner

Mr Michael Small, Senior Policy Officer, Disability Rights Unit

**Department of Innovation, Industry, Science & Research**

Mr Detlef Jumpertz, Manager, Building Policy Section, Manufacturing  
Innovation Branch, Manufacturing Division

Mr Greig Ryan, Assistant Manager



Appendix D





Chart 1 – Application of the Premises Standards to New and Existing Buildings

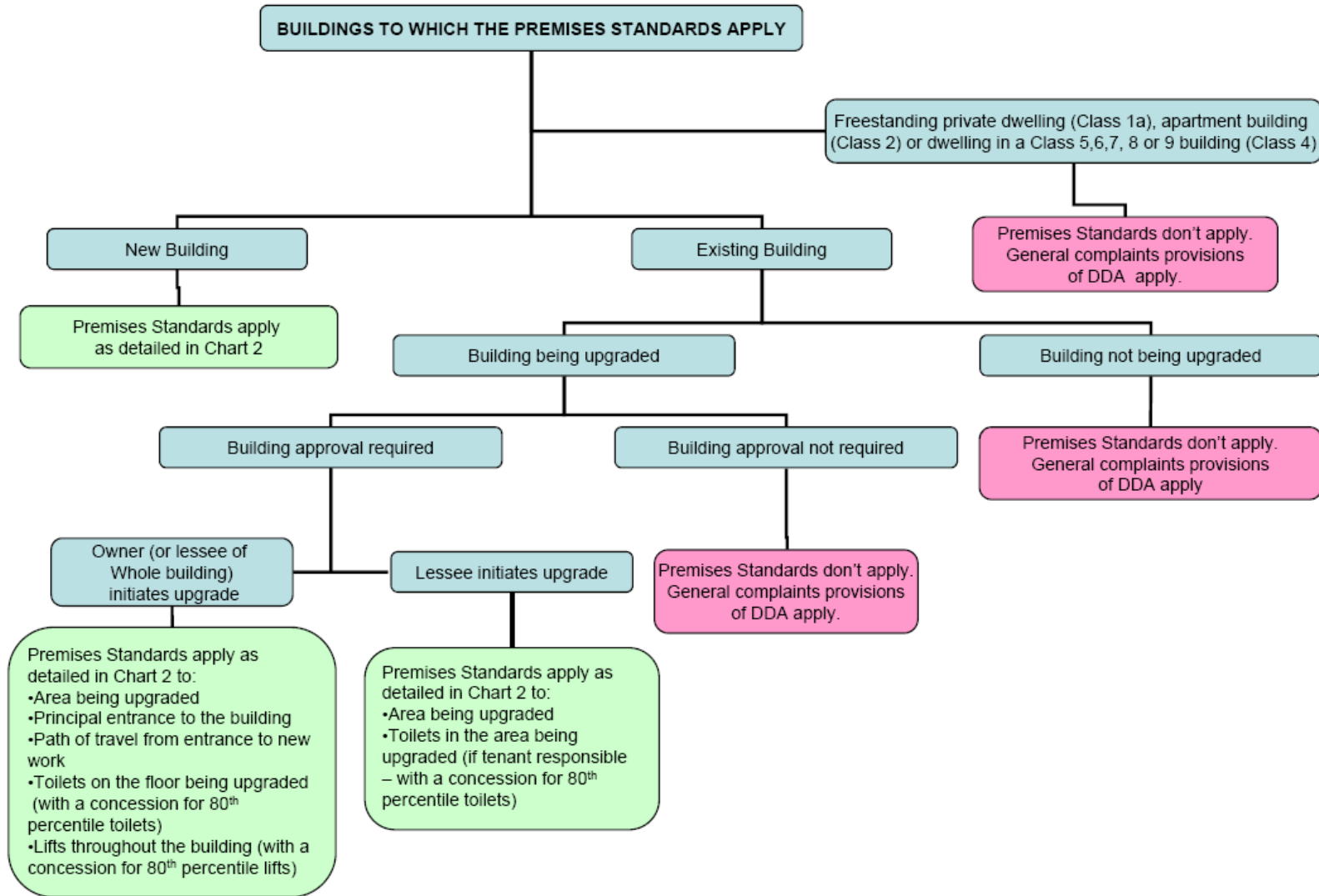
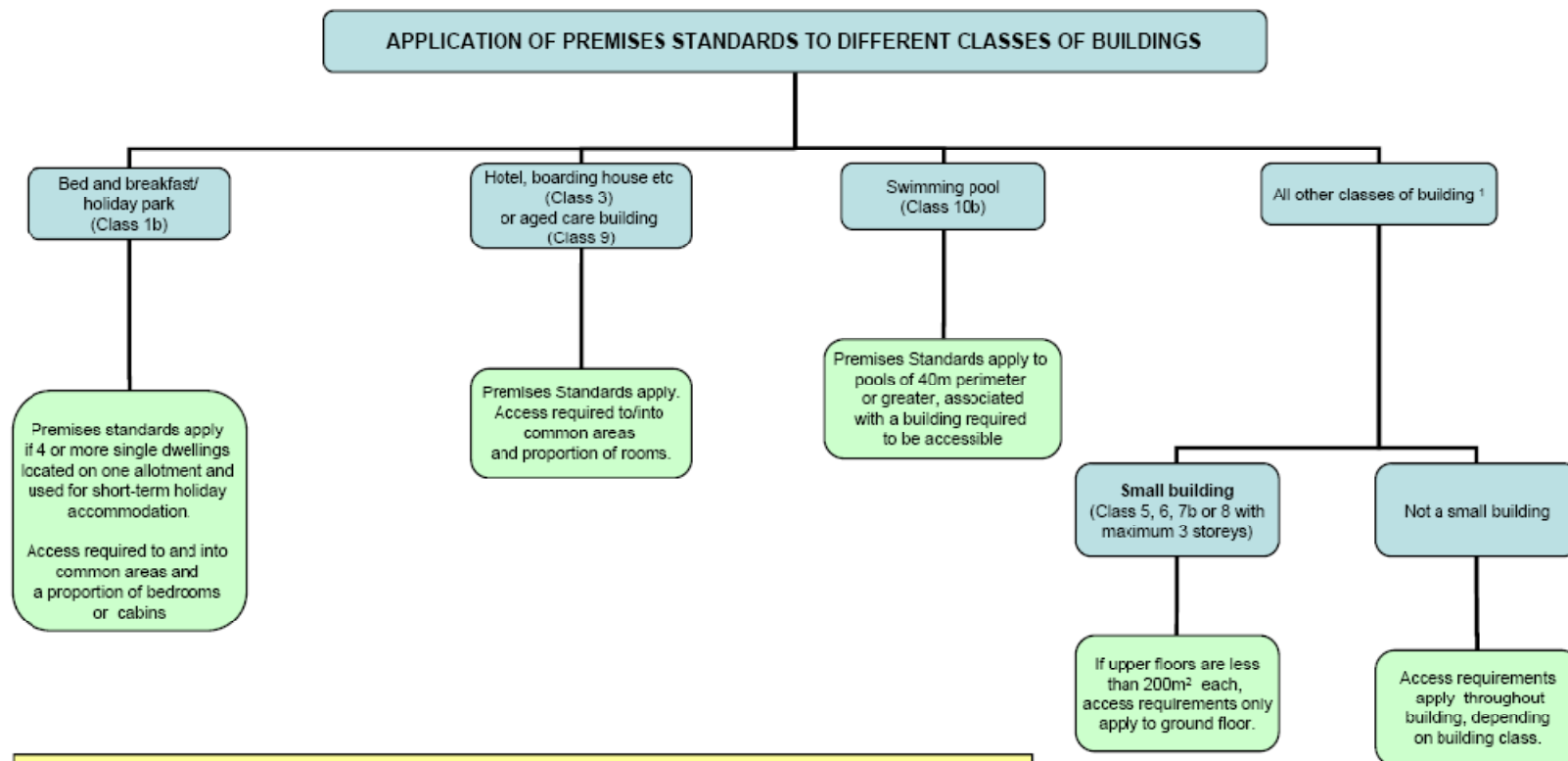


Chart 2 – Application of the Premises Standards to different classes/types of building

**Unjustifiable hardship and Standards:**

Section 32 of the DDA makes it unlawful to contravene a provision of a disability standard. However, a builder/owner would have recourse to a defence under the Premises Standards if complying with the Standards would cause unjustifiable hardship. The provision in the Standards relating to unjustifiable hardship would also allow a court to take into account a decision of an access panel in the matter (see below). The decision of an access panel would also be a relevant consideration in determining unjustifiable hardship under section 11 of the DDA.

**Access Panels:**

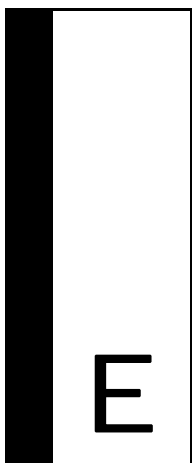
If a builder/owner is unable to comply with the Standards, then that person can approach an access panel to request approval for an alternative solution under the BCA. The decisions of this access panel could be taken into account by a court if the person argues unjustifiable hardship under the Standards.

**Note 1:**

All other classes of buildings include: commercial accommodation such as hotels; office blocks; shops, restaurants, retail etc; carparks; warehouses, factories; hospitals, nursing homes and health clinics; aged care; toilet blocks and public shelters.



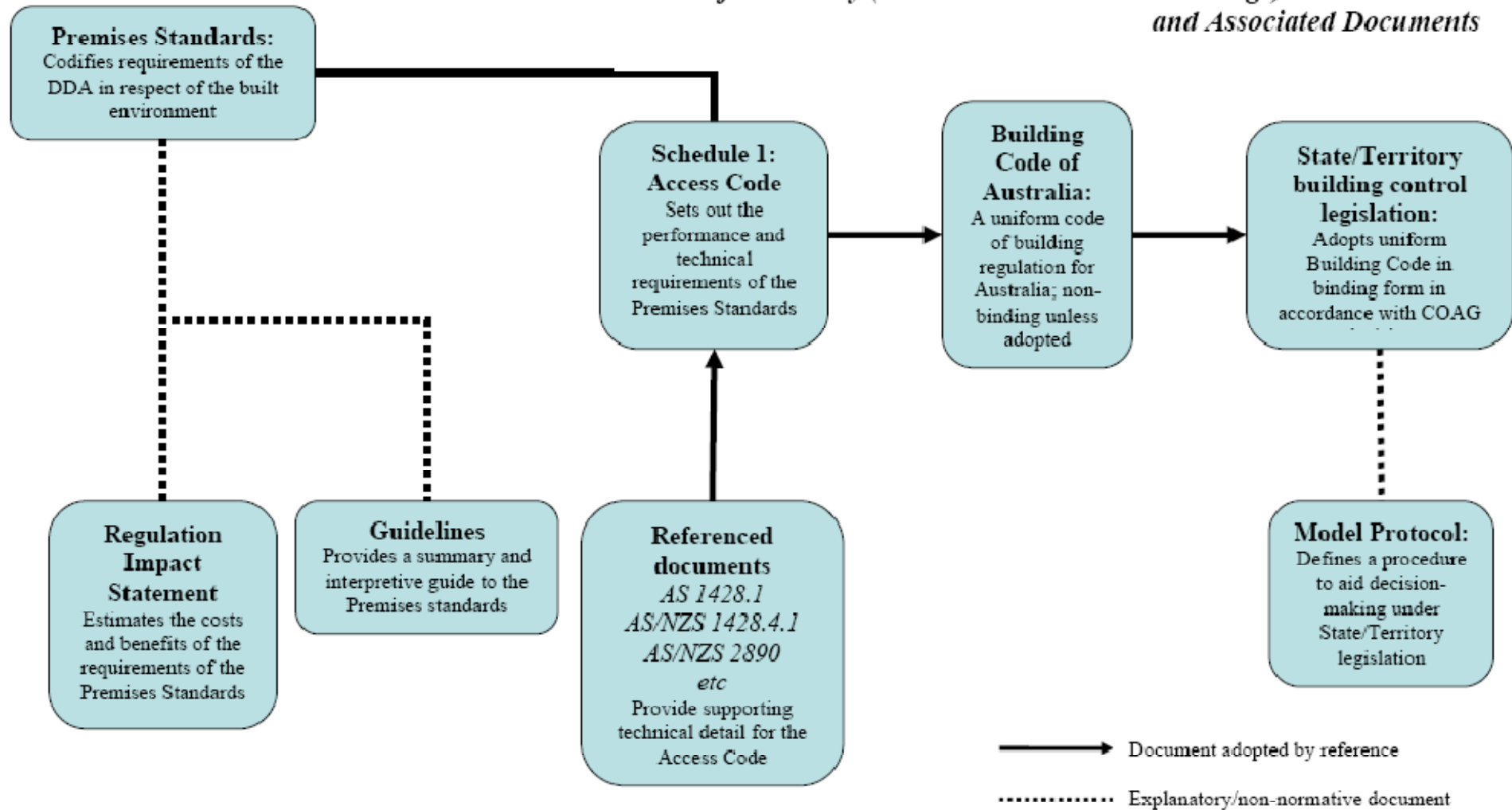




Appendix E

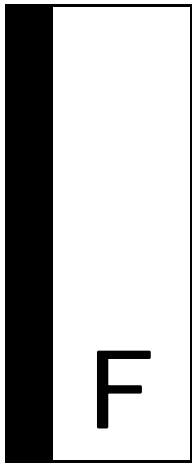


*Draft Disability (Access to Premises — Buildings) Standards 2009  
and Associated Documents*









Appendix F





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02 DEC 2008

BY: LACA

M.R.

## Disability (Access to Premises — Buildings) Standards 2009<sup>1</sup>

### *Disability Discrimination Act 1992*

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I, ROBERT McCLELLAND, Attorney-General, make these Standards under subsection 31 (1) of the *Disability Discrimination Act 1992*.

Dated 2009

[DRAFT ONLY - NOT FOR SIGNATURE]

Attorney-General

---

### Part 1 Preliminary

#### 1.1 Name of Standards

These Standards are the *Disability (Access to Premises — Buildings) Standards 2009*.

#### 1.2 Commencement

These Standards commence on [*commencement date*].

*Note* These Standards take effect as provided by subsections 31 (3) and (4) of the Act.

#### 1.3 Objects

The objects of these 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

**CONSULTATION DRAFT ONLY**

- 
- (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.

## 1.4 Interpretation

- (1) In these Standards:

**Access Code** means the Access Code for Buildings, published by the Australian Building Codes Board, a copy of the text of which is set out in Schedule 1.

*Note* The Access Code is based on the provisions in the Building Code of Australia 2008.

**Act** means the *Disability Discrimination Act 1992*.

**affected part**, of a building, has the meaning given by subsection 2.1 (5).

**building certifier** has the meaning given by subsection 2.2 (2).

**building developer** has the meaning given by subsection 2.2 (3).

**building manager** has the meaning given by subsection 2.2 (4).

**existing public transport building** has the meaning given by subsection 2.1 (6).

**new building** has the meaning given by subsection 2.1 (3).

**new part**, of a building, has the meaning given by subsection 2.1 (4).

**relevant building** means a building, or a part of a building, to which these Standards apply under section 2.1.

**specified Class 1b building** means a building:

- (a) with 4 or more bedrooms used for rental accommodation; or
- (b) that comprises 4 or more single dwellings that are:
  - (i) on the same allotment; and
  - (ii) used for short-term holiday accommodation.

**Transport Standards** means the *Disability Standards for Accessible Public Transport 2002*.

*Note* Unless the contrary intention appears, a term that is used in these Standards and in the Act has the same meaning in these Standards as it has in the Act.

- (2) In these Standards, a reference to a class of building by a number, or by a number and letter, is a reference to a building of that class within the meaning of the Access Code.
- (3) For these Standards, a building is constructed, and building work is carried out, for the Crown if the building is constructed, or the building work is carried out, for any of the following:
- (a) the Commonwealth;
  - (b) a State;
  - (c) a Territory;
  - (d) a public authority of the Commonwealth;

- 
- (e) an instrumentality of a State.
- (4) The Access Code is taken to be part of these Standards.

---

## Part 2                      Scope of Standards

### 2.1        Buildings to which Standards apply

- (1) Subject to subsection (2), these Standards apply to the following:
  - (a) a new building, to the extent that the building is:
    - (i) a specified Class 1b building; or
    - (ii) a Class 3, 5, 6, 7, 8, 9 or 10 building;
  - (b) a new part, and any affected part, of a building, to the extent that the part of the building is:
    - (i) a specified Class 1b building; or
    - (ii) a Class 3, 5, 6, 7, 8, 9 or 10 building;
  - (c) an existing public transport building that is still in use on the target date mentioned in an item in the table in section 3.1.
- (2) These Standards do not apply to a new Class 10 building, a new part of a Class 10 building, or an affected part of a Class 10 building if it is associated with:
  - (a) a Class 1a building; or
  - (b) a Class 2 building; or
  - (c) a Class 4 part of a building.

*Note 1* The building classifications mentioned in subsections 2.1 (1) and (2) have the meanings set out in clause A4.1 of the Access Code in Schedule 1.

*Note 2* The Act applies to actions relating to buildings to which these Standards do not apply.

- (3) A building is a ***new building*** if:
  - (a) it is not a part of a building; and
  - (b) either:
    - (i) an application for approval for its construction is submitted, on or after [*commencement date*], to the competent authority in the State or Territory where the building is located; or
    - (ii) all of the following apply:
      - (A) it is constructed for or on behalf of the Crown;
      - (B) the construction commences on or after [*commencement date*];
      - (C) no application for approval for the construction is submitted, before [*commencement date*], to the competent authority in the State or Territory where the building is located.

- 
- (4) A part of a building is a ***new part*** of the building if it is an extension to the building or a modified part of the building about which:
- (a) an application for approval for the building work is submitted, on or after [*commencement date*], to the competent authority in the State or Territory where the building is located; or
  - (b) all of the following apply:
    - (i) the building work is carried out for or on behalf of the Crown;
    - (ii) the building work commences on or after [*commencement date*];
    - (iii) no application for approval for the building work is submitted, before [*commencement date*], to the competent authority in the State or Territory where the building is located.
- (5) An ***affected part***:
- (a) is part of an existing building that contains a new part; and
  - (b) is made up of:
    - (i) the principal pedestrian entrance to the building; and
    - (ii) any part of the building that is necessary to provide a continuous accessible path of travel from the entrance to the new part of the building.
- (6) An ***existing public transport building*** is a building (other than a new building) that is the passenger use area of a Class 9b building used for public transport (being the whole or part of the building).

*Note* An existing public transport building may be a building with or without any new part or affected part.

## 2.2 Persons to whom Standards apply

- (1) These Standards apply to the following persons to the extent that they are responsible for, or have control over, matters in the Access Code for a relevant building:
- (a) a building certifier;
  - (b) a building developer;
  - (c) a building manager.

*Note* For the meaning of ***relevant building*** see section 1.4.

- (2) A ***building certifier***, for a relevant building, is a person who has responsibility for, or control over, the building approval process for a building.

### *Example*

The following persons could be building certifiers for these Standards:

- (a) private certifiers;
- (b) building surveyors;
- (c) local councils.

- 
- (3) A **building developer**, for a relevant building, is a person with responsibility for, or control over, its design or construction.

*Example*

The following persons could be building developers for these Standards:

- (a) property developers;
  - (b) property owners;
  - (c) building designers;
  - (d) builders;
  - (e) project managers;
  - (f) property lessees.
- (4) A **building manager**, for a relevant building, is a person who has responsibility for, or control over, any of the matters in the Access Code that apply to the building other than matters about the design or construction of the building.

*Example*

The following persons could be building managers for these Standards:

- (a) property owners;
- (b) property lessees;
- (c) property managers;
- (d) operational staff.

### 2.3 Actions to which Standards apply

These Standards apply to an action concerning the provision of access to relevant buildings (and facilities and services within them) to the extent that the provision of access is:

- (a) a matter to which any of paragraphs 31 (1) (a) to (f) of the Act applies;  
and
- (b) a matter covered by the Access Code.

*Note* These Standards are subject to section 12 of the Act. That is, the provisions of these Standards are limited application provisions within the meaning of that section.

### 2.4 Construction of Standards

These Standards are intended to be within the power conferred by the Act, and are to be construed accordingly.

*Note* A provision that, despite this section, cannot be construed as being entirely within the power conferred by the Act has effect to the extent that the provision is within that power — see subsection 13 (2) of the *Legislative Instruments Act 2003*.



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## Part 3 Requirements of Standards

### 3.1 Building certifiers, developers and managers to ensure buildings comply with the Access Code

- (1) A building certifier, building developer or building manager of a relevant building (other than an existing public transport building) must ensure that the building complies with the Access Code.
- (2) A building certifier, building developer or building manager of an existing public transport building must comply with subsection (3) if:
  - (a) the building certifier, building developer or building manager is an operator or provider within the meaning of the Transport Standards; and
  - (b) any existing public transport building provided for passenger use as part of a public transport service provided by the building certifier, building developer or building manager is still in use on the target date mentioned in an item in the table in this section.
- (3) For subsection (2), the building certifier, building developer or building manager must ensure that the public transport service meets the performance requirements of the Access Code that apply to it for each aspect of the public transport building mentioned in an item of the following table, on and after the target date mentioned in the item, to at least the level of compliance mentioned in the item.

Item	Target date	Aspect	Level of compliance
1	<i>[commencement date]</i>	(a) symbols and signs (b) lighting (c) hearing augmentation (d) emergency warning systems	100%
2	<i>[commencement date]</i>	(a) accessways (b) manoeuvring areas (c) passing areas (d) ramps (e) doorways and doors (f) lifts (g) stairways (h) toilets (i) tactile ground surface indicators (j) controls	25%
3	31 December 2012	(a) surfaces (b) handrails and grabrails	100%

Item	Target date	Aspect	Level of compliance
4	31 December 2012	(a) accessways (b) manoeuvring areas (c) passing areas (d) ramps (e) doorways and doors (f) lifts (g) stairways (h) toilets (i) tactile ground surface indicators (j) controls	55%
5	31 December 2017	(a) accessways (b) manoeuvring areas (c) passing areas (d) ramps (e) doorways and doors (f) lifts (g) stairways (h) toilets (i) tactile ground surface indicators (j) controls	90%
6	31 December 2022	all aspects applicable to public transport buildings	100%

*Note* The level of compliance in this table is expressed as a percentage of existing public transport buildings provided by the building certifier, building developer or building manager for passenger use as part of that type of public transport service that are still in use on the target date.

### 3.2 Compliance with Access Code

- (1) For section 3.1, a building certifier or building developer of a relevant building is taken to have ensured that the building complies with the Access Code if the building complies with:
  - (a) clauses D3.1 to D3.12 of the Access Code; and
  - (b) for a public transport building — Part H2 of the Access Code.

*Note* The provisions mentioned in paragraphs (a) and (b) are described in the Access Code as deemed-to-satisfy provisions. They are limited to matters relating to the design and construction of a building so this subsection applies only to building certifiers and developers.

- (2) Subsection (1) is not intended to limit the way in which a relevant building may otherwise satisfy the applicable performance requirements.

- 
- (3) Without limiting subsection (2), a relevant building is taken to comply with the Access Code if the building provides a level of access that is not less than the level that the building would have provided if it had complied with the provisions mentioned in subsection (1).

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## Part 4                      Exceptions and concessions

### 4.1                      Unjustifiable hardship

- (1) It is not unlawful to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on a person or organisation.
- (2) However, compliance is required to the maximum extent not involving unjustifiable hardship.

*Example*

While enlarging a lift may impose unjustifiable hardship, upgrading the lift controls panel to provide braille and tactile buttons may not.

- (3) In determining whether compliance with a requirement of these Standards would involve unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including the following:
  - (a) any additional capital, operating or other costs, or loss of revenue, that would be directly incurred by, or reasonably likely to result from, compliance with the requirement;
  - (b) any reductions in capital, operating or other costs, or increases in revenue, that would be directly achieved by, or reasonably likely to result from, compliance with the requirement;
  - (c) the extent to which the building is provided by or on behalf of a public authority for public purposes;
  - (d) the financial position of a person or organisation required to comply with these Standards;
  - (e) any effect that compliance with the requirement is reasonably likely to have on the financial viability of a person or organisation required to comply;
  - (f) any exceptional technical factors (such as the effect of load bearing elements on the structural integrity of the building) or geographic factors (such as gradient, topography or regional or remote location), affecting a person or organisation's ability to comply with the requirement;
  - (g) financial, staffing, technical, information and other resources reasonably available to a person or organisation required to comply with these Standards, including any grants, tax concessions, subsidies or other external assistance provided or available;
  - (h) whether the cost of alterations to make a premises accessible is disproportionate to the value of the building, taking into consideration the improved value that would result from the alterations;
  - (i) benefits reasonably likely to accrue from compliance with these Standards, including benefits to people with disabilities, to building users or to other affected persons, or detriment likely to result from non-compliance;

- 
- (j) detriment reasonably likely to be suffered by a building developer, building certifier or building manager, or a person with a disability or other building user, including in relation to means of access, comfort and convenience, if compliance with these Standards is required;
  - (k) if detriment under paragraph (j) involves loss of heritage values — the extent to which relevant heritage value or features of the building are essential, and to what extent incidental, to the building;
  - (l) whether compliance with the requirement may reasonably be achieved by less onerous means than those objected to by a person as imposing unjustifiable hardship;
  - (m) any evidence regarding efforts made in good faith by a person to comply with these Standards, including consulting access consultants or building certifiers;
  - (n) if a person has given an action plan to the Commission under section 64 of the Act — the terms of the action plan and any evidence about its implementation;
  - (o) the nature and results of any processes of consultation, including at local, regional, State, national, international, industry or other level, involving, or on behalf of, a building developer, building manager or building certifier and people with a disability, about means of achieving compliance with the requirement, including in relation to the factors listed in this subsection;
  - (p) any decisions of a State or Territory body established to make recommendations to building authorities about building access matters.
- (4) If a substantial issue of unjustifiable hardship is raised having regard to the factors mentioned in paragraphs (3) (a) to (p), the following additional factors are to be considered:
- (a) the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with these Standards;
  - (b) any measures undertaken, or to be undertaken by, on behalf of, or in association with, a person or organisation to ensure substantially equal access.
- (5) For these Standards, *unjustifiable hardship* is to be interpreted and applied having due regard to the scope and objects of the Act (in particular the object of removing discrimination as far as possible) and the rights and interests of all relevant parties.

## 4.2 Acts done under statutory authority etc

These Standards do not render unlawful anything done in a circumstance mentioned in section 47 of the Act.

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### 4.3 Lessees

- (1) If the lessee of a new part of a building submits an application for approval for the building work, the following people do not have to ensure that the affected part of the building complies with these Standards:
  - (a) the building developer;
  - (b) the building certifier;
  - (c) the building manager.
- (2) Subsection (1) does not apply if a building with a new part is leased to only 1 person.

### 4.4 Lift concession

The requirement in Table E3.6 (b) of the Access Code that a lift is to have a floor dimension of not less than 1 400 mm x 1 600 mm does not apply to an existing passenger lift that is in a new part, or an affected part, of a building, if the lift:

- (a) travels more than 12 m; and
- (b) has a lift floor that is not less than 1 100 mm by 1 400 mm.

### 4.5 Toilet concession

- (1) Paragraphs F2.4 (c) and (e) of the Access Code, to the extent that they require compliance with AS 1428.1—200X, *Design for access and mobility, Part 1: General requirements for access—New building work*, do not apply to the following:
  - (a) existing accessible sanitary compartments;
  - (b) existing sanitary compartments suitable for use by a person with a disability.
- (2) For subsection (1) to apply, a sanitary compartment mentioned in paragraph (a) or (b) must:
  - (a) comply with AS 1428.1—2001, *Design for access and mobility, Part 1: General requirements for access—New building work*; and
  - (b) be located in either a new part, or an affected part, of a building.

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## Part 5 Review

### 5.1 Timetable for review

- (1) The Minister for Innovation, Industry, Science and Research, in consultation with the Attorney-General:
  - (a) is to review, 5 years after these Standards commence, the effectiveness of these Standards in achieving their objects; and
  - (b) is to carry out a subsequent review every 5 years after the completion of the previous review.
- (2) A review includes identifying any necessary amendments to these Standards.

*(Schedule 1 prepared by Australian Building Codes Board)*

## Schedule 1 Access Code for Buildings

(section 1.4)

### Part A1 Interpretation

#### A1.1 Definitions

***accessible*** means having features to enable use by people with a disability.

***accessway*** means a continuous *accessible* path of travel (as defined in AS 1428.1) to, into or within a building.

***aged care building*** means a Class 9c building for residential accommodation of aged persons who, due to varying degrees of incapacity associated with the ageing process, are provided with personal care services and 24-hour staff assistance to evacuate the building during an emergency.

***assembly building*** means a building where people may assemble for:

- (a) civic, theatrical, social, political or religious purposes; or
- (b) educational purposes in a *school, early childhood centre, preschool, or the like*; or
- (c) entertainment, recreational or sporting purposes; or
- (d) transit purposes.

***atrium*** has the same meaning as in the *BCA*.

***BCA*** means the Building Code of Australia.

***carpark*** means a building that is used for the parking of motor vehicles but is neither a *private garage* nor used for the servicing of vehicles, other than washing, cleaning or polishing.

**early childhood centre** means a preschool, kindergarten or child-minding centre.

**exit** has the same meaning as in the *BCA*.

**fire-isolated ramp** means a ramp within a fire-resisting enclosure which provides egress from a *storey*.

**fire-isolated stairway** means a stairway within a fire-resisting shaft and includes the floor and roof or top enclosing structure.

**floor area** means:

- (a) in relation to a building — the total area of all *storeys*; and
- (b) in relation to a *storey* — the area of all floors of that *storey* measured over the enclosing walls, and includes:
  - (i) the area of a *mezzanine* within the *storey*, measured within the finished surfaces of any external walls; and
  - (ii) the area occupied by any internal walls or partitions, any cupboard, or other built-in furniture, fixture or fitting; and
  - (iii) if there is no enclosing wall, an area which has a use that:
    - (A) contributes to the fire load; or
    - (B) impacts on the safety, health or amenity of the occupants in relation to the provisions of the *BCA*; and
- (c) in relation to a room — the area of the room measured within the finished surfaces of the walls, and includes the area occupied by any cupboard or other built-in furniture, fixture or fitting; and
- (d) in relation to a fire compartment — the total area of all floors within the fire compartment measured within the finished surfaces of the bounding construction, and if there is no bounding construction, includes an area which has a use which contributes to the fire load; and
- (e) in relation to an *atrium* — the total area of all floors within the *atrium* measured within the finished surfaces of the bounding construction and if no bounding construction, within the external walls.

**health-care building** means a building whose occupants or patients undergoing medical treatment generally need physical assistance to evacuate the building during an emergency and includes:

- (a) a public or private hospital; or
- (b) a nursing home or similar facility for sick or disabled persons needing full-time nursing care; or
- (c) a clinic, day surgery or procedure unit where the effects of the predominant treatment administered involve patients becoming non-ambulatory and requiring supervised medical care on the premises for some time after the treatment.

**luminance contrast** means the amount of light reflected from one surface or component, compared to the amount of light reflected from the background or surrounding surfaces.

**mezzanine** means an intermediate floor within a room.

**private garage** means:



- 
- (a) any garage associated with a Class 1 building; or
  - (b) any single *storey* of a building of another Class capable of accommodating not more than 3 vehicles, if there is only one such *storey* in the building; or
  - (c) any separate single *storey* garage associated with another building where such garage is capable of accommodating not more than 3 vehicles.

**required** means *required* to satisfy a Performance Requirement or a Deemed-to-Satisfy Provision of the Access Code as appropriate.

**residential aged care building** means a building whose residents, due to their incapacity associated with the ageing process, are provided with physical assistance in conducting their daily activities and to evacuate the building during an emergency.

**sanitary compartment** means a room or space containing a closet pan or urinal.

**school** includes a primary or secondary *school*, college, university or similar educational establishment.

**sole-occupancy unit (SOU)** means a room or other part of a building for occupation by one or joint owner, lessee tenant, or other occupier to the exclusion of any other owner, lessee, tenant, or other occupier and includes:

- (a) a dwelling; or
- (b) a room or suite of rooms in a Class 3 building which includes sleeping facilities; or
- (c) a room or suite of associated rooms in a Class 5, 6, 7, 8 or 9 building; or
- (d) a room or suite of associated rooms in a Class 9c *aged care building*, which includes sleeping facilities and any area for the exclusive use of a resident.

**storey** has the same meaning as in the *BCA*.

**swimming pool** means any excavation or structure containing water and used primarily for swimming, wading, paddling, or the like, including a bathing or wading pool, or spa.

## A1.2 Language

A reference to a building in the Access Code is a reference to an entire building or part of a building, as the case requires.

## **Part A2 Adoption of Standards etc**

### **A2.1 Adoption of Standards and other references**

Where a Deemed-to-Satisfy Provision references a document, rule, specification or provision, that adoption does not include a provision:

- (a) specifying or defining the respective rights, responsibilities or obligations as between themselves of any manufacturer, supplier or purchaser; or
- (b) specifying the responsibilities of any trades person or other building operative, architect, engineer, authority, or other person or body; or
- (c) requiring the submission for approval of any material, building component, form or method of construction, to any person, authority or body other than a person or body empowered under State or Territory legislation to give that approval; or
- (d) specifying that a material, building component, form or method of construction must be submitted to any person, authority or body for expression of opinion; or
- (e) permitting a departure from the code, rule, specification or provision at the sole discretion of the manufacturer or purchaser, or by arrangement or agreement between the manufacturer and purchaser.

### **A2.2 Referenced Standards etc**

- (1) A reference in a Deemed-to-Satisfy Provision to a document under clause A2.1 refers to the edition or issue, together with any amendment, listed in clause A3.1 and only so much as is relevant in the context in which the document is quoted.
- (2) Any:
  - (a) reference in a document listed in clause A3.1 (primary document) to another document (secondary document); and
  - (b) subsequent references to other documents in secondary documents and those other documents;is a reference to the secondary and other documents as they existed at the time of publication of the primary document listed in clause A3.1.
- (3) The provisions of subclause (2) do not apply if the secondary referenced document is also a primary referenced document.

### **A2.3 Differences between referenced documents and the Access Code**

The Access Code overrules in any difference arising between it and any Standard, rule, specification or provision in a document listed in clause A3.1.

## **A2.4 Fire safety**

Fire safety provisions relating to the construction of buildings are located in the *BCA*.

## Part A3 Access Code — documents adopted by reference

### A3.1 Documents adopted by reference

The Standards and other documents listed in column 1 of Table 1 are referred to in the clauses of the Access Code listed in column 4 of the table.

**Table 1** Schedule of referenced documents

No.	Date	Title	Provision(s) of Access Code
<b>AS 1428</b>		<b>Design for access and mobility</b>	
Part 1	200X	General requirements for access — New building work	A1.1, D3.1, Table D3.1, D3.3, D3.6, D3.8, D3.11, Spec D3.10, F2.4
Part 1	2001	General requirements for access — New building work	H2.7, H2.8, H2.10, H2.15
Part 1 (Supplement 1)	1993	General requirements for access — Buildings — Commentary	H2.2
Part 2	1992	Enhanced and additional requirements — Buildings and facilities	H2.2, H2.3, H2.4, H2.5, H2.7, H2.10, H2.11, H2.12, H2.13, H2.14
Part 4	1992	Tactile ground surface indicators for the orientation of people with vision impairment	H2.11
<b>AS/NZS 1428</b>		<b>Design for access and mobility</b>	
Part 4.1	200X	Tactile ground surface indicators for the orientation of people with vision impairment	D3.8
<b>AS 1735</b>		<b>Lifts, escalators and moving walks (SAA Lift Code)</b>	
Part 1	2003	Lifts, escalators and moving walks	Table E3.6 (a)
Part 2	2001	Passenger and goods lifts — Electric	Table E3.6 (a)
Part 3	2002	Passenger and goods lifts — Electrohydraulic	Table E3.6 (a)
Part 7	1998	Stairway lifts	Table E3.6 (a), Table E3.6 (b)
Part 8	1986	Inclined lifts	Table E3.6 (a)
Part 12	1999	Facilities for persons with disabilities, Amendment 1	Table E3.6 (b), H2.6

No.	Date	Title	Provision(s) of Access Code
Part 14	1998	Low-rise platforms for passengers	Table E3.6 (a), Table E3.6 (b)
Part 15	2002	Lifts for people with limited mobility — Restricted use — Non-automatically controlled	Table E3.6 (a), Table E3.6 (b)
Part 16	1993	Lifts for persons with limited mobility — Restricted use — Automatically controlled	Table E3.6 (a), Table E3.6 (b)
<b>AS/NZS 2890</b>		<b>Parking facilities</b>	
Part 6	200X	Off-street carparking for people with disabilities	D3.5

## Part A4 Building classifications

### A4.1 Classifications

**Class 1** — one or more buildings which in association constitute:

- (a) **Class 1a** — a single dwelling being:
  - (i) a detached house; or
  - (ii) one of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit; or
- (b) **Class 1b**:
  - (i) a boarding house, guest house, hostel or the like:
    - (A) with a total area of all floors not exceeding 300 m<sup>2</sup> measured over the enclosing wall of the Class 1b; and
    - (B) in which not more than 12 persons would ordinarily be resident; or
  - (ii) 4 or more single dwellings located on one allotment and used for short-term holiday accommodation;

which are not located above or below another dwelling or another Class of building other than a *private garage*.

**Class 2** — a building containing 2 or more *sole-occupancy units*, each being a separate dwelling.

**Class 3** — a residential building, other than a building of Class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including:

- (a) a boarding-house, guest house, hostel, lodging-house or backpackers accommodation; or
- (b) a residential part of an hotel or motel; or
- (c) a residential part of a *school*; or
- (d) accommodation for the aged, children or people with a disability; or
- (e) a residential part of a *health-care building* which accommodates members of staff; or
- (f) a residential part of a detention centre.

**Class 4** — a dwelling in a building that is Class 5, 6, 7, 8 or 9 if it is the only dwelling in the building.

**Class 5** — an office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9.

**Class 6** — a shop or other building for the sale of goods by retail or the supply of services direct to the public, including:

- (a) an eating room, cafe, restaurant, milk or soft-drink bar; or
- (b) a dining room, bar, shop or kiosk part of a hotel or motel; or

- 
- (c) a hairdresser's or barber's shop, public laundry, or undertaker's establishment; or
  - (d) market or sale room, showroom, or service station.

**Class 7** — a building which is:

- (a) **Class 7a** — a *carpark*; or
- (b) **Class 7b** — for storage, or display of goods or produce for sale by wholesale.

**Class 8** — a laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing, or cleaning of goods or produce is carried on for trade, sale, or gain.

**Class 9** — a building of a public nature:

- (a) **Class 9a** — a *health-care building*; including those parts of the building set aside as a laboratory; or
- (b) **Class 9b** — an *assembly building*, including a trade workshop, laboratory or the like in a primary or secondary *school*, but excluding any other parts of the building that are of another Class; or
- (c) **Class 9c** — an *aged care building*.

**Class 10** — a non-habitable building or structure:

- (a) **Class 10a** — a non-habitable building being a *private garage*, carport, shed, or the like; or
- (b) **Class 10b** — a structure being a fence, mast, antenna, retaining or free-standing wall, *swimming pool*, or the like.

## Part D Access and egress

### DP1 Performance requirement

Access must be provided, to the degree necessary, to enable:

- (a) approach the building from the road boundary and from any *accessible* carparking spaces associated with the building; and
  - (i) approach the building from any *accessible* associated building; and
  - (ii) access work and public spaces, accommodation and facilities for personal hygiene; and
- (b) identification of *accessways* at appropriate locations which are easy to find.

Limitation Clause DP1 does not apply to a Class 4 part of a building.

### DP4 Performance requirement

*Exits* must be provided from a building to allow occupants to evacuate safely, with their number, location and dimensions being appropriate to:

- (a) the travel distance; and
- (b) the number, mobility and other characteristics of occupants; and
- (c) the function or use of the building; and
- (d) the height of the building; and
- (e) whether the *exit* is from above or below ground level.

### DP6 Performance requirement

So that occupants can safely evacuate the building, *accessways* to *exits* must have dimensions appropriate to:

- (a) the number, mobility and other characteristics of occupants; and
- (b) the function or use of the building.

Limitation Clause DP6 does not apply to the internal parts of a *sole-occupancy unit* in a Class 3 building or Class 4 part of a building.

### DP8 Performance requirement

Carparking spaces for use by people with a disability must be:

- (a) provided, to the degree necessary, to give equitable access for carparking; and
- (b) designated and easy to find.

Limitation Clause DP8 does not apply to a building where:  
(a) a parking service is provided; and



- (b) direct access to any carparking spaces by the general public or occupants is not available.

**DP9 Performance requirement**

An inbuilt communication system for entry, information, entertainment, or for the provision of a service, must be suitable for occupants who are deaf or hearing impaired.

Limitation

Clause DP9 does not apply to:

- (a) a Class 4 part of a building; or
- (b) an inbuilt communication system used only for emergency warning purposes.

## Part D3 Access for people with a disability

### D3.0 Deemed-to-satisfy provisions

The Performance Requirements of clauses DP1, DP4, DP6, DP8 and DP9 are satisfied by complying with:

- (a) clauses D3.1 to D3.12; and
- (b) for public transport buildings, Part H2.

### D3.1 General building access requirements

Buildings and parts of buildings must be *accessible as required* by Table D3.1, unless exempted by clause D3.4.

**Table D3.1: Requirements for access for people with a disability**

Class of building	Access requirements
<b>Class 1b</b>	
(a) Dwellings located on one allotment* and used for short-term holiday accommodation consisting of: <ul style="list-style-type: none"> <li>(i) 4 to 10 dwellings</li> <li>(ii) 11 to 40 dwellings</li> <li>(iii) 41 to 60 dwellings</li> <li>(iv) 61 to 80 dwellings</li> <li>(v) 81 to 100 dwellings</li> <li>(iv) more than 100 dwellings</li> </ul>	To and within: <ul style="list-style-type: none"> <li>1 dwelling</li> <li>2 dwellings</li> <li>3 dwellings</li> <li>4 dwellings</li> <li>5 dwellings</li> <li>5 dwellings plus one additional dwelling for each additional 30 dwellings or part thereof</li> </ul>
(b) A boarding house, bed and breakfast, guest house, hostel or the like containing 4 or more bedrooms used for rental accommodation, other than those described in (a)	To and within: <ul style="list-style-type: none"> <li>1 bedroom and associated sanitary facilities; and</li> <li>not less than 1 of each type of room or space for use in common by the residents or guests, including a cooking facility, sauna, gymnasium, <i>swimming pool</i>, laundry, games room, eating area, or the like; and</li> <li>rooms or spaces for use in common by all residents on a floor to which access by way of a ramp complying with AS 1428.1 or a passenger lift is provided</li> </ul>
* A community or strata-type subdivision or development is considered to be on a single allotment.	

Class of building	Access requirements
<b>Class 3</b>	
Common areas	<p>From a pedestrian entrance <i>required</i> to be <i>accessible</i> to at least one floor containing <i>sole-occupancy units</i> and to the entrance doorway of each <i>sole-occupancy unit</i> located on that level</p> <p>To and within not less than one of each type of room or space for use in common by the residents, including a cooking facility, sauna, gymnasium, <i>swimming pool</i>, common laundry, games room, TV room, individual shop, dining room, public viewing area, ticket purchasing service, lunchroom, lounge room, or the like</p> <p>Where a ramp complying with AS 1428.1 or a passenger lift is installed:</p> <ul style="list-style-type: none"> <li>(a) to the entrance doorway of each <i>sole-occupancy unit</i>; and</li> <li>(b) to and within rooms or spaces for use in common by the residents,</li> </ul> <p>located on the levels served by the lift or ramp</p>
<p>Sole-occupancy units</p> <p>If the building or group of buildings contain:</p> <p>1 to 10 <i>sole-occupancy units</i></p> <p>11 to 40 <i>sole-occupancy units</i></p> <p>41 to 60 <i>sole-occupancy units</i></p> <p>61 to 80 <i>sole-occupancy units</i></p> <p>81 to 100 <i>sole-occupancy units</i></p> <p>101 to 200 <i>sole-occupancy units</i></p> <p>201 to 500 <i>sole-occupancy units</i></p> <p>more than 500 <i>sole-occupancy units</i></p>	<p>Not more than 2 <i>required accessible sole-occupancy units</i> may be located adjacent to each other</p> <p>Where more than 2 <i>accessible sole-occupancy units</i> are <i>required</i>, they must be representative of the range of rooms available</p> <p>To and within:</p> <p>1 <i>accessible sole-occupancy unit</i></p> <p>2 <i>accessible sole-occupancy units</i></p> <p>3 <i>accessible sole-occupancy units</i></p> <p>4 <i>accessible sole-occupancy units</i></p> <p>5 <i>accessible sole-occupancy units</i></p> <p>5 <i>accessible sole-occupancy units</i> plus 1 additional <i>accessible sole-occupancy unit</i> for every 25 units or part thereof in excess of 100</p> <p>9 <i>accessible sole-occupancy units</i> plus 1 additional <i>accessible sole-occupancy unit</i> for every 30 units or part thereof in excess of 200</p> <p>19 <i>accessible sole-occupancy units</i> plus 1 additional <i>accessible sole-occupancy unit</i> for every 50 units of part thereof in excess of 500</p>
<b>Class 5</b>	To and within all areas normally used by the occupants
<b>Class 6</b>	To and within all areas normally used by the occupants

Class of building	Access requirements
<b>Class 7a</b>	To and within any level containing <i>accessible</i> carparking spaces
<b>Class 7b</b>	To and within all areas normally used by the occupants
<b>Class 8</b>	To and within all areas normally used by the occupants
<b>Class 9a</b>	To and within all areas normally used by the occupants
<b>Class 9b</b>	
<i>Schools and early childhood centres</i>	To and within all areas normally used by the occupants
<i>An assembly building not being a school or an early childhood centre</i>	To wheelchair seating spaces provided in accordance with clause D3.9  To and within all other areas normally used by the occupants, except that access need not be provided to tiers or platforms of seating areas that do not contain wheelchair seating spaces
<b>Class 9c</b>	
Common areas	From a pedestrian entrance <i>required</i> to be <i>accessible</i> to at least one floor containing <i>sole-occupancy units</i> and to the entrance doorway of each <i>sole-occupancy unit</i> located on that level  To and within not less than one of each type of room or space for use in common by the residents, including a cooking facility, sauna, gymnasium, <i>swimming pool</i> , common laundry, games room, TV room, individual shop, dining room, public viewing area, ticket purchasing service, lunchroom, lounge room, or the like  Where a ramp complying with AS 1428.1 or a passenger lift is installed: <ul style="list-style-type: none"> <li>(a) to the entrance doorway of each <i>sole-occupancy unit</i>; and</li> <li>(b) to and within rooms or spaces for use in common by the residents;</li> </ul> located on the levels served by the lift or ramp
Sole-occupancy units	Where more than 2 <i>accessible sole-occupancy units</i> are <i>required</i> , they must be representative of the range of rooms available.
If the building or group of buildings contain:	To and within:
1 to 10 sole-occupancy units	1 accessible sole-occupancy unit
11 to 40 sole-occupancy units	2 accessible sole-occupancy units
41 to 60 sole-occupancy units	3 accessible sole-occupancy units
61 to 80 sole-occupancy units	4 accessible sole-occupancy units

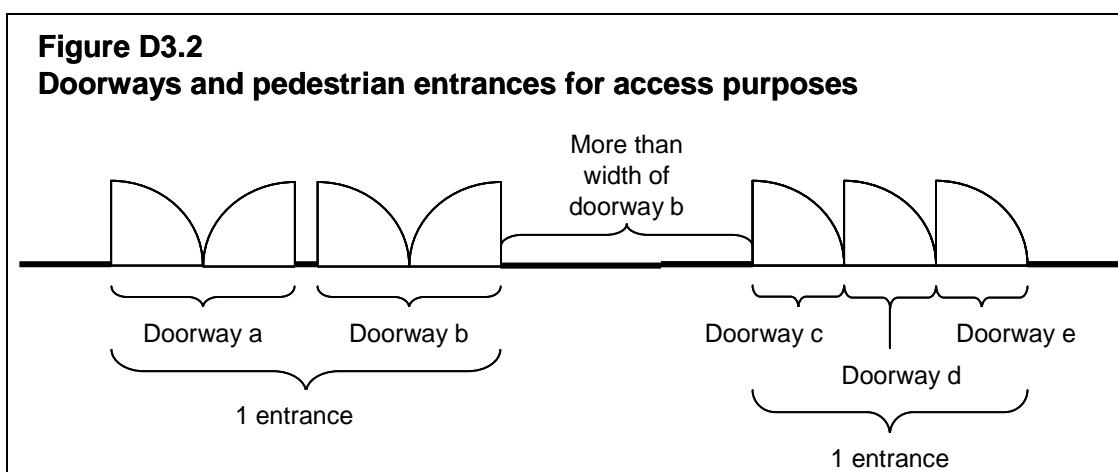
Class of building	Access requirements
81 to 100 sole-occupancy units	5 accessible sole-occupancy units
101 to 200 sole-occupancy units	5 <i>accessible sole-occupancy units</i> plus 1 additional <i>accessible sole-occupancy unit</i> for every 25 units or part thereof in excess of 100
201 to 500 sole-occupancy units	9 <i>accessible sole-occupancy units</i> plus 1 additional <i>accessible sole-occupancy unit</i> for every 30 units or part thereof in excess of 200
more than 500 sole-occupancy units	19 <i>accessible sole-occupancy units</i> plus 1 additional <i>accessible sole-occupancy unit</i> for every 50 units of part thereof in excess of 500
<b>Class 10a</b>	
Non-habitable building located in an <i>accessible</i> area intended for use by the public and containing a sanitary facility, change room facility or shelter	To and within: (a) an <i>accessible</i> sanitary facility; and (b) a change room facility; and (c) a public shelter or the like
<b>Class 10b</b>	
Swimming pool	To and into <i>swimming pools</i> with a total perimeter greater than 40m, associated with a Class 1b, 3, 5, 6, 7, 8 or 9 building that is <i>required</i> to be <i>accessible</i> , but not <i>swimming pools</i> for the exclusive use of occupants of a 1b building or a <i>sole-occupancy unit</i> in a Class 3 building

### D3.2 Access to buildings

- (1) An *accessway* must be provided
  - (a) to a building *required* to be *accessible*:
  - (b) from the main points of a pedestrian entry at the allotment boundary; and
    - (i) from another *accessible* building connected by a pedestrian link; and
    - (ii) from any *required accessible* carparking space on the allotment.
- (2) In a building *required* to be *accessible*, an *accessway* must be provided through the principal pedestrian entrance, and:
  - (a) through not less than 50% of all pedestrian entrances including the principal pedestrian entrance; and
  - (b) in a building with a total *floor area* more than 500 m<sup>2</sup>, a pedestrian entrance which is not *accessible* must not be located more than 50 m from an *accessible* pedestrian entrance;

except for pedestrian entrances serving only areas exempted by clause D3.4.

- (3) Where a pedestrian entrance *required* to be *accessible* has multiple doorways:
  - (a) if the pedestrian entrance consists of not more than 3 doorways — not less than one of those doorways must be *accessible*; and
  - (b) if the pedestrian entrance consists of more than 3 doorways — not less than 50% of those doorways must be *accessible*.
- (4) For the purposes of subclause (3):
  - (a) an *accessible* pedestrian entrance with multiple doorways is considered to be one pedestrian entrance where:
    - (i) all doorways serve the same part or parts of the building; and
    - (ii) the distance between each doorway is not more than the width of the widest doorway at that pedestrian entrance (see Figure D3.2); and
  - (b) a doorway is considered to be the clear, unobstructed opening created by the opening of one or more door leaves (see Figure D3.2).
- (5) Where a doorway on an *accessway* has multiple leaves, (except an automatic opening door) one of those leaves must have a clear opening width of not less than 850 mm in accordance with AS 1428.1.



### D3.3 Parts of buildings to be accessible

In a building *required* to be *accessible*:

- (a) an *accessway* must be provided to each area *required* by Table D3.1 to be *accessible*, but need not be provided to areas or buildings exempted by clause D3.4;
- (b) every ramp and stairway, except for ramps and stairways in areas exempted by clause D3.4, *fire-isolated ramps* and *fire-isolated stairways*, must comply with:
  - (i) for a ramp, clause 11 of AS 1428.1; and
  - (ii) for a stairway, clause 12 of AS 1428.1;

- (c) every passenger lift must comply with clause E3.6;
- (d) *accessways* must have:
  - (i) passing spaces complying with AS 1428.1 at maximum 20 m intervals on those parts of an *accessway* where a direct line of sight is not available; and
  - (ii) turning spaces complying with AS 1428.1:
    - (A) within 2 m of the end of *accessways* where it is not possible to continue travelling along the *accessway*; and
    - (B) at maximum 20 m intervals along the *accessway*;
- (e) an intersection of *accessways* satisfies the spatial requirements for a passing and turning space;
- (f) a passing space may serve as a turning space.

### D3.4 Exemptions

The following areas are not *required* to be *accessible*:

- (a) a cleaners' store room, a commercial kitchen, a staff serving area in a bar, a foundry floor, a cool room, a fire lookout, a lighthouse, a rigging loft or the like;
- (b) areas only used for building services and maintenance (testing, inspections, verification, repair and overhaul) such as:
  - (i) a cooling tower and power plant;
  - (ii) an equipment or lift motor room, an electrical switchroom, a battery room, a machinery room, a plant room, boiler room and a pump room;
  - (iii) a bunded area;
  - (iv) a fire control centre;
  - (v) a loading dock;
  - (vi) an access route for maintenance, pits, lift shafts and ventilation shafts; and
  - (vii) a sub-station, telecommunication equipment room, metering area; or the like;
- (c) areas containing raw or hazardous materials, produce or bulk storage such as a waste containment area, silo, grain bin, chemical store, storage racks or the like;
- (d) upper floors of warehouses used solely for wholesale and or logistic/distribution purposes which are not accessible to the public;
- (e) *mezzanine* areas used only for storage, plant and equipment or the like;
- (f) in a Class 5, 6, 7b or 8 building:
  - (i) containing not more than 3 *storeys*; and
  - (ii) with a *floor area* for each *storey*, excluding the entrance *storey*, of not more than 200m<sup>2</sup>;

a *storey* or level other than the entrance *storey*, except if the *storey* or level is served by a ramp complying with AS 1428.1 or a passenger lift;

- (g) any path of travel providing access only to an area exempted by this clause.

### D3.5 Accessible carparking

*Accessible* carparking spaces:

- (a) subject to (b), must be provided in accordance with Table D3.5 in:
- (i) a Class 7a building *required to be accessible*; and
  - (ii) a carparking area on the same allotment as a building *required to be accessible*; and
- (b) need not be provided in a Class 7a building or a carparking area where a parking service is provided and direct access to any of the carparking spaces is not available to the public; and
- (c) subject to (d), must comply with AS 2890.6; and
- (d) need not be designated where there is a total of not more than 5 carparking spaces, so as to restrict the use of the carparking space only for people with a disability.

**Table D3.5 Carparking spaces for people with a disability**

Class of building to which the Class 7a building or carparking area is associated	Number of accessible carparking spaces required
<b>Class 1b and 3</b>	
(a) Boarding house, guest house, hostel, lodging house, backpackers accommodation, or the residential part of a hotel or motel.	To be calculated by multiplying the total number of carparking spaces by the percentage of: <ul style="list-style-type: none"> <li>(a) accessible sole-occupancy units to the total number of sole-occupancy units; or</li> <li>(b) <i>accessible</i> bedrooms to the total number of bedrooms; and</li> </ul> the calculated number is to be taken to the next whole figure.
(b) Residential part of a <i>school</i> , accommodation for the aged, disabled or children, residential part of a <i>health care building</i> which accommodates members of staff or the residential part of a detention centre.	1 space for every 100 carparking spaces or part thereof.
<b>Class 5, 7, 8 and 9c</b>	1 space for every 100 carparking spaces or part thereof.
<b>Class 6</b>	
(a) Up to 1 000 carparking spaces; and	1 space for every 50 carparking spaces or part thereof.



<b>Class of building to which the Class 7a building or carparking area is associated</b>	<b>Number of accessible carparking spaces required</b>
(b) for each additional 100 carparking spaces or part thereof in excess of 1 000 carparking spaces.	1 space.
<b>Class 9a</b>	
(a) Hospital (non-outpatient area)	1 space for every 100 carparking spaces or part thereof.
(b) Hospital (outpatient area): (i) up to 1 000 carparking spaces; and (ii) for each additional 100 carparking spaces or part thereof in excess of 1 000 carparking spaces.	1 space for every 50 carparking spaces or part thereof.  1 space.
(c) Nursing home	1 space for every 100 carparking spaces or part thereof.
(d) Clinic or day surgery not forming part of a hospital	1 space for every 50 carparking spaces or part thereof.
<b>Class 9b</b>	
(a) School	1 space for every 100 carparking spaces or part thereof.
(b) Other assembly buildings: (i) up to 1 000 carparking spaces; and (ii) for each additional 100 carparking spaces or part thereof in excess of 1 000 carparking spaces.	1 space for every 50 carparking spaces or part thereof.  1 space.

### **D3.6 Signage**

In a building *required* to be *accessible*:

- (a) Braille and tactile signage complying with Part D4 and incorporating the international symbol of access or deafness, as appropriate, in accordance with AS 1428.1 must identify each:
  - (i) sanitary facility, except a sanitary facility within a *sole-occupancy unit* in a Class 1b or Class 3 building; and
  - (ii) space with a hearing augmentation system; and
- (b) signage including the international symbol for deafness in accordance with AS 1428.1 must be provided within a room containing a hearing augmentation system identifying:
  - (i) the type of hearing augmentation; and
  - (ii) the area covered within the room; and

- (iii) if receivers are being used and where the receivers can be obtained; and
- (c) signage in accordance with AS 1428.1 must be provided for *accessible* unisex sanitary facilities to identify if the facility is suitable for left or right handed use; and
- (d) signage to identify an ambulant *accessible* sanitary facility in accordance with AS 1428.1 must be located on the door of the facility; and
- (e) where a pedestrian entrance is not *accessible*, directional signage incorporating the international symbol of access, in accordance with AS 1428.1 must be provided to direct a person to the location of the nearest *accessible* pedestrian entrance; and
- (f) where a bank of sanitary facilities is not provided with an *accessible* unisex sanitary facility, directional signage incorporating the international symbol of access in accordance with AS 1428.1 must be placed at the location of the sanitary facilities that are not *accessible*, to direct a person to the location of the nearest *accessible* unisex sanitary facility.

### **D3.7 Hearing augmentation**

- (1) A hearing augmentation system must be provided where an inbuilt amplification system, other than one used only for emergency warning, is installed:
  - (a) in an auditorium, conference room, meeting room, room for judicatory purposes, or a room in a Class 9b building; or
  - (b) at any ticket office, teller's booth, reception area or the like, where the public is screened from the service provider.
- (2) If a hearing augmentation system *required* by subclause (1) is:
  - (a) an induction loop, it must be provided to not less than 80% of the *floor area* of the room or space served by the inbuilt amplification system; or
  - (b) a system requiring the use of receivers or the like, it must be available to not less than 95% of the *floor area* of the room or space served by the inbuilt amplification system, and the number of receivers provided must be not less than:
    - (i) if the room or space accommodates up to 500 persons, 1 receiver for every 25 persons (or part thereof), or 2 receivers, whichever is the greater; and
    - (ii) if the room or space accommodates more than 500 persons but not more than 1 000 persons, 20 receivers plus 1 receiver for every 33 persons (or part thereof) in excess of 500 persons; and
    - (iii) if the room or space accommodates more than 1 000 persons but not more than 2 000 persons, 35 receivers plus 1 receiver for every 50 persons (or part thereof) in excess of 2 000 persons; and

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- (iv) if the room or space accommodates more than 2 000 persons, 55 receivers plus 1 receiver for every 100 persons (or part thereof) in excess of 2 000 persons.
  - (3) The number of persons accommodated in the room or space served by an inbuilt amplification system must be calculated according to clause D1.13 of the *BCA*.
  - (4) Any screen or scoreboard associated with a Class 9b building and capable of displaying public announcements must be capable of supplementing any public address system, other than a public address system used for emergency warning purposes only.

### **D3.8 Tactile indicators**

- (1) For a building *required* to be *accessible*, tactile ground surface indicators must be provided to warn people who are blind or have a vision impairment that they are approaching:
  - (a) a stairway, other than a *fire isolated stairway*;
  - (b) an escalator;
  - (c) a passenger conveyor or moving walk;
  - (d) a ramp other than a *fire isolated ramp*, a step ramp, kerb ramp or a *swimming pool* ramp; and
  - (e) in the absence of a suitable barrier:
    - (i) an overhead obstruction less than 2 m above floor level, other than a doorway; and
    - (ii) an *accessway* meeting a vehicular way adjacent to any pedestrian entrance to a building, excluding a pedestrian entrance serving an area referred to in clause D3.4, if there is no kerb or kerb ramp at that point;except for areas exempted by clause D3.4.
- (2) Tactile ground surface indicators *required* by subclause (1) must comply with sections 1 and 2 of AS/NZS 1428.4.1.
- (3) A hostel for the aged, nursing home for the aged, a *residential aged care building*, Class 3 accommodation for the aged, Class 9a *health-care building* or a Class 9c *aged care building* need not comply with paragraphs (1) (a) and (d) if handrails incorporating a raised dome button in accordance with the requirements for stairway handrails in AS 1428.1 are provided to warn people who are blind or have a vision impairment that they are approaching a stairway or ramp.

### D3.9 Wheelchair seating spaces in Class 9b assembly buildings

Where fixed seating is provided in a Class 9b *assembly building*, wheelchair seating spaces complying with AS 1428.1 must be provided in accordance with the following:

- (a) the number and grouping of wheelchair seating spaces must be in accordance with Table D3.9; and
- (b) in a cinema:
  - (i) with not more than 300 seats — wheelchair seating spaces must not be located in the front row of seats; and
  - (ii) with more than 300 seats — not less than 75% of *required* wheelchair seating spaces must be located in rows other than the front row of seats; and
  - (iii) the location of wheelchair seating is to be representative of the range of seating provided.

**Table D3.9 Number of wheelchair seating spaces in Class 9b assembly buildings**

Number of fixed seats in a room or space	Number of wheelchair seating spaces	Grouping and location
Up to 150	3 spaces	1 single space; and 1 group of 2 spaces
151 to 800	3 spaces plus 1 additional space for each additional 50 Seats or part thereof in excess of 150 seats	not less than 1 single space; and not less than 1 group of 2 spaces; and not more than 5 spaces in any other group
801 to 10 000	16 spaces plus 1 additional space for each additional 100 seats or part thereof in excess of 800 seats	not less than 2 single spaces; and not less than 2 groups of 2 spaces; and not more than 5 spaces in any other group; and the location of spaces is to be representative of the range of seating provided
More than 10 000	108 spaces plus 1 additional space for each additional 200 seats or part thereof in excess of 10 000 seats	not less than 5 single spaces; and not less than 5 groups of 2 spaces; and not more than 10 spaces in any other group; and the location of spaces is to be representative of the range of seating provided

### D3.10 Swimming pools

- (1) Not less than one means of *accessible* water entry/exit in accordance with Part D5 must be provided for each *swimming pool required* by Table D3.1 to be *accessible*.
- (2) An *accessible* entry/exit must be by means of:
  - (a) a fixed or movable ramp and an aquatic wheelchair; or

- 
- (b) a zero depth entry at a maximum gradient of 1:14 and an aquatic wheelchair; or
  - (c) a platform *swimming pool* lift and an aquatic wheelchair; or
  - (d) a sling-style *swimming pool* lift.
- (3) Where a *swimming pool* has a perimeter of more than 70 m in length, at least one *accessible* water entry/exit must be provided by a means specified in paragraph (2) (a), (b) or (c).
- (4) Latching devices on gates and doors forming part of a *swimming pool* safety barrier need not comply with AS 1428.1.

### **D3.11 Ramps**

On an accessway:

- (a) a series of connected ramps must not have a combined vertical rise of more than 3.6 m; and
- (b) a landing for a step ramp must not overlap a landing for another step ramp or ramp.

### **D3.12 Glazing on an accessway**

On an *accessway*, where there is no chair rail, handrail or transom, all frameless or fully glazed doors, sidelights and any glazing capable of being mistaken for a doorway or opening, must be clearly marked in accordance with AS 1428.1.

## **Part D4      Braille and tactile signs**

### **D4.1      Scope**

This Part sets out the requirements for the design and installation of Braille and tactile signage as *required* by clause D3.6.

### **D4.2      Location of Braille and tactile signs**

Signs including symbols, numbering and lettering must be designed and installed as follows:

- (a) Braille and tactile components of a sign must be located not less than 1 200 mm and not higher than 1 600 mm above the floor or ground surface;
- (b) signs with single lines of characters must have the line of tactile characters not less than 1 250 mm and not more than 1 350 mm above the floor or ground surface;
- (c) signs identifying rooms containing features or facilities listed in clause D3.6 must be located:
  - (i) on the wall on the latch side of the door with the leading edge of the sign located between 50 mm and 300 mm from the architrave; and
  - (ii) where (i) is not possible, the sign may be placed on the door itself.

### **D4.3      Braille and tactile sign specification**

- (1) Tactile characters must be raised or embossed to a height of not less than 1 mm and not more than 1.5 mm.
- (2) Sentence case (upper case for the first letter of each main word and lower case for all other letters) must be used for all tactile characters; and
  - (i) upper case tactile characters must have a height of not less than 15 mm and not more than 55 mm; and
  - (ii) lower case tactile characters must have a height of 50% of the related upper case characters.
- (3) Tactile characters, symbols, and the like, must have rounded edges.
- (4) The entire sign, including any frame, must have all edges rounded.
- (5) The background, negative space or fill of signs must be of matt or low sheen finish.
- (6) The characters, symbols, logos and other features on signs must be matt or low sheen finish.

- 
- (7) The minimum letter spacing of tactile characters on signs must be 2 mm.
  - (8) The minimum word spacing of tactile characters on signs must be 10mm.
  - (9) The thickness of letter strokes must be not less than 2 mm and not more than 7 mm.
  - (10) Tactile text must be left justified, except that single words may be centre justified.
  - (11) Tactile text must be Arial typeface.

#### **D4.4 Luminance contrast**

The following apply to *luminance contrast*:

- (a) the background, negative space, fill of a sign or border with a minimum width of 5 mm must have a *luminance contrast* with the surface on which it is mounted of not less than 30%;
- (b) tactile characters, icons and symbols must have a minimum *luminance contrast* of 30% to the surface on which the characters are mounted;
- (c) *luminance contrasts* must be met under the lighting conditions in which the sign is to be located.

#### **D4.5 Lighting**

Braille and tactile signs must be illuminated to ensure *luminance contrast* requirements are met at all times during which the sign is required to be read.

#### **D4.6 Braille**

The following applies to Braille:

- (a) Braille must be grade 1 Braille (uncontracted) in accordance with the criteria set out by the Australian Braille Authority;
- (b) Braille must be raised and domed;
- (c) Braille must be located 8 mm below the bottom line of text (not including descenders);
- (d) Braille must be left justified;
- (e) where an arrow is used in the tactile sign, a solid arrow must be provided for Braille readers;
- (f) on signs with multiple lines of text and characters, a semicircular Braille locator at the left margin must be horizontally aligned with the first line of Braille text.

## Part D5 Accessible water entry/exit for swimming pools

### D5.1 Scope

This Part contains the requirements for types of *accessible* water entry/exit for *swimming pools*.

### D5.2 Fixed or moveable ramp

A fixed or moveable ramp must:

- (a) have a slip-resistant surface; and
- (b) have a maximum gradient of 1:14; and
- (c) have handrails complying with the requirements for ramps in AS 1428.1, installed on both sides of the ramp; and
- (d) have kerbs in accordance with the requirements for ramps in AS 1428.1; and
- (e) extend to a depth of not less than 900 mm and not more than 1 100 mm below the stationary water level; and
- (f) have landings in accordance with the requirements for ramps in AS 1428.1, with a landing located at the bottom and top of each ramp and a landing must be located at a level between 900 mm and 1 100 mm below the stationary water level.

### D5.3 Zero depth entry

A zero depth entry must have:

- (a) a slip-resistant surface; and
- (b) a maximum gradient of 1:14; and
- (c) a single handrail complying with the requirements for handrails in AS 1428.1, from the top of the entry point continuous to the bottom level area; and
- (d) a level area:
  - (i) 1 500 mm long for the width of the zero depth entry at the entry point; and
  - (ii) located at the bottom of the zero depth entry at a level between 900 mm and 1 100 mm below the stationary water level.

### D5.4 Platform swimming pool lift

A platform *swimming pool* lift must be:

- (a) capable of being operated from the *swimming pool* surround, within the *swimming pool*, and on the platform; and
- (b) located where the water depth is not more than 1 300 mm; and



- (c) designed to withstand a weight capacity of not less than 160 kg and be capable of sustaining a static load of not less than 1.5 times the rated load.

### **D5.5 Sling-style swimming pool lift**

A sling lift must comply with the following:

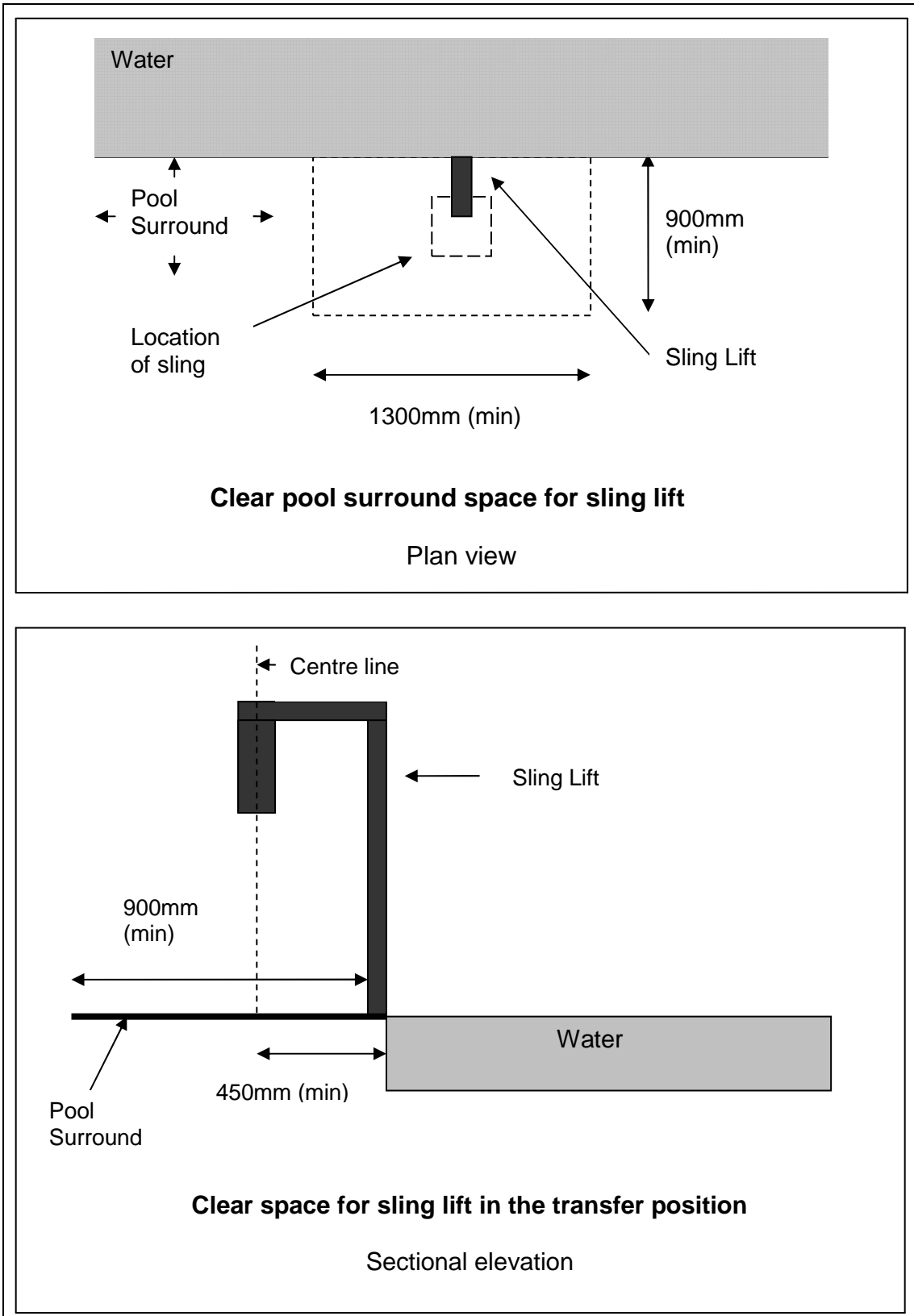
- (a) a sling lift must be located where the water depth is not more than 1 300 mm;
- (b) when the sling is in the raised position and in the transfer position, the centreline of the sling must be located over the *swimming pool* surround and not less than 450 mm from the *swimming pool* edge;
- (c) the surface of the *swimming pool* surround between the centreline of the sling and the *swimming pool* edge must have a gradient of not more than 1:50 and must be slip-resistant;
- (d) a clear space:
  - (i) not less than 900 mm x 1 300 mm; and
  - (ii) with a gradient of not more than 1:50; and
  - (iii) a slip-resistant surface; and
  - (iv) located so that the centreline of the space is directly below the lifting point for the sling;must be provided on the *swimming pool* surround parallel with the *swimming pool* edge on the side remote from the water (see Figure D5.7);
- (e) a sling lift must be capable of being operated from the *swimming pool* surround, within the *swimming pool* and from the sling;
- (f) the sling must be designed so that it will submerge to a water depth of not less than 500 mm below the stationary water level;
- (g) a sling lift must be designed to withstand a weight of not less than 136 kg and be capable of sustaining a static load not less than 1.5 times the rated load.

### **D5.6 Aquatic wheelchair**

An aquatic wheelchair must comply with the following:

- (a) the height of the top surface of the seat must be not less than 430 mm;
- (b) the seat width must be not less than 480 mm;
- (c) a footrest must be provided;
- (d) armrests must be located on both sides of the seat and must be capable of being moved away from the side of the chair to allow a person to transfer on and off the seat.

**Figure D5.7 Clear pool surround space for sling lift**



## Part E3 Lift installations

### EP3.4 Performance Requirement

When a passenger lift is provided in a building *required to be accessible*, it must be suitable for use by people with a disability.

### E3.0 Deemed-to-Satisfy Provisions

Performance Requirement EP3.4 is satisfied by complying with:

- (a) clause E3.6; and
- (b) for public transport buildings, Part H2.

### E3.6 Passenger lifts

In an *accessible* building, every passenger lift must:

- (a) be one of the lift types identified in Table E3.6 (a), subject to the limitations on use specified in the table; and
- (b) have *accessible* features in accordance with Table E3.6 (b); and
- (c) not rely on a constant pressure device for its operation if the lift car is fully enclosed.

**Table E3.6 (a) Limitations on use of types of passenger lifts**

Lift type	Limitations on use
AS 1735.1 Appendix A	No limitation
AS 1735.2 electric passenger lift	No limitation
AS 1735.3 electrohydraulic lift	No limitation
AS 1735.7 stairway platform lift	Must not: <ul style="list-style-type: none"> <li>(a) be used to serve a space in a building accommodating more than 100 persons calculated according to clause D1.13 of the <i>BCA</i>; or</li> <li>(b) be used in a high traffic public use area such as a theatre, cinema, auditorium, transport interchange, shopping centre or the like; or</li> <li>(c) connect more than 2 <i>storeys</i>; or</li> <li>(d) where more than 1 stairway lift is installed, serve more than 2 consecutive <i>storeys</i>; or</li> <li>(e) when in the folded position, encroach on the minimum width of a stairway <i>required</i> by clause D1.6 of the <i>BCA</i>.</li> </ul>
AS 1735.8 inclined lift	No limitation

Lift type	Limitations on use
AS 1735.14 low-rise platform lift	Must not travel more than 1 000 mm
AS 1735.15 lift for persons with limited mobility	Must not: <ul style="list-style-type: none"> <li>(a) for an enclosed type, travel more than 4m; or</li> <li>(b) for an unenclosed type, travel more than 2m; or</li> <li>(c) be used in high traffic public use areas in buildings such as a theatre, cinema, auditorium, transport interchange, shopping complex or the like</li> </ul>
AS 1735.16 lift for persons with limited mobility	Must not travel more than 12 m

**Table E3.6 (b) Application of features to passenger lifts**

Feature	Application
Handrail complying with the provisions for a mandatory handrail in AS 1735.12	All lifts except: <ul style="list-style-type: none"> <li>(a) a stairway platform lift complying with AS 1735.7; and</li> <li>(b) a low-rise platform lift complying with AS 1735.14</li> </ul>
Lift floor dimension of not less than 1 400 mm x 1 600 mm	All lifts which travel more than 12 m
Lift floor dimensions of not less than 1 100 mm x 1 400 mm	All lifts which travel not more than 12 m except a stairway platform lift complying with AS 1735.7
Lift floor dimensions of not less than 810 mm x 1 200 mm	A stairway platform lift complying with AS 1735.7
Minimum clear door opening complying with AS 1735.12	All lifts except a stairway platform lift complying with AS 1735.7
Passenger protection system complying with AS 1735.12	All lifts with a power operated door
Lift landing doors at the upper landing	All lifts except a stairway platform lift complying with AS 1735.7
Lift car and landing control buttons complying with AS 1735.12	All lifts except: <ul style="list-style-type: none"> <li>(a) a stairway platform lift complying with AS 1735.7; and</li> <li>(b) a low-rise platform lift complying with AS 1735.14</li> </ul>
Lighting in accordance with AS 1735.12	All enclosed lift cars

Feature	Application
<p>(a) Automatic audible information within the lift car to identify the level each time the car stops; and</p> <p>(b) audible and visual indication at each lift landing to indicate the arrival of the lift car; and</p> <p>(c) audible information and audible indication <i>required</i> by (a) and (b) is to be provided in a range of between 20–80 dbA at a maximum frequency of 1 500 Hz</p>	All lifts serving more than 2 levels
Emergency hands-free communication, including a button that alerts a call centre of a problem and a light to signal that the call has been received	All lifts except a stairway platform lift complying with AS 1735.7

## Part F2 Sanitary and other facilities

### FP2.1 Performance Requirement

Suitable sanitary facilities for personal hygiene must be provided in a convenient location within or associated with a building, to the degree necessary, appropriate to:

- (a) the function or use of the building; and
- (b) the number and gender of the occupants; and
- (c) the disability or other particular needs of the occupants.

### F2.0 Deemed-to-Satisfy Provisions

The Performance Requirement of clause FP2.1 is satisfied by complying with:

- (a) clauses F2.2 and F2.4; and
- (b) for public transport buildings, Part H2.

### F2.2 Calculation of number of occupants and fixtures

The number of persons accommodated must be calculated according to clause D1.13 of the *BCA* if it cannot be more accurately determined by other means.

### F2.4 Accessible sanitary facilities

In a building required to be accessible:

- (a) *accessible unisex sanitary compartments* must be provided in *accessible* parts of the building in accordance with Table F2.4 (a); and
- (b) *accessible unisex showers* must be provided in accordance with Table F2.4 (b); and
- (c) at each bank of toilets where there is one or more toilets in addition to an *accessible unisex sanitary compartment* at that bank of toilets, a *sanitary compartment* suitable for a person with an ambulant disability in accordance with AS 1428.1 must be provided for use by males and females; and
- (d) an *accessible unisex sanitary compartment* must contain a closet pan, washbasin, shelf or bench top and adequate means of disposal of sanitary towels; and
- (e) the circulation spaces, fixtures and fittings of all *accessible* sanitary facilities provided in accordance with Table F2.4 (a) and (b) must comply with the requirements of AS 1428.1; and
- (f) an *accessible unisex sanitary facility* must be located so that it can be entered without crossing an area reserved for one sex only; and

- (g) where two or more of each type of *accessible* unisex sanitary facility are provided, the number of left and right handed mirror image facilities, must be provided as evenly as possible; and
- (h) where male sanitary facilities are provided at a separate location to female sanitary facilities, *accessible* unisex sanitary facilities are only *required* at one of those locations.

**Table F2.4 (a) Accessible unisex sanitary compartments**

Class of building	Minimum accessible unisex sanitary compartments to be provided
Class 1b	<ul style="list-style-type: none"> <li>(a) Not less than 1; and</li> <li>(b) where private <i>accessible</i> unisex <i>sanitary compartments</i> are provided for an <i>accessible</i> bedroom, common <i>accessible</i> unisex <i>sanitary compartments</i> need not be provided</li> </ul>
Class 3 and Class 9c <i>aged-care building</i>	<ul style="list-style-type: none"> <li>(a) In every accessible sole-occupancy unit provided with sanitary compartments within the accessible sole-occupancy unit, not less than 1; and</li> <li>(b) at each bank of <i>sanitary compartments</i> containing male and female <i>sanitary compartments</i> provided in common areas, not less than 1</li> </ul>
Class 5, 6, 7, 8 and 9 — except for within a ward area of a Class 9a <i>health-care building</i>	<p>Where clause F2.3 of the <i>BCA</i> requires closet pans:</p> <ul style="list-style-type: none"> <li>(a) 1 on every <i>storey</i> containing <i>sanitary compartments</i>; and</li> <li>(b) where a <i>storey</i> has more than 1 bank of <i>sanitary compartments</i> containing male and female <i>sanitary compartments</i> at not less than 50% of those banks</li> </ul>
<p>Class 10a — except:</p> <ul style="list-style-type: none"> <li>(a) a Class 10a appurtenant to another Class of building; and</li> <li>(b) a <i>sanitary compartment</i> dedicated to a single caravan/camping site</li> </ul>	<p>At each bank of <i>sanitary compartments</i> containing male and female <i>sanitary compartments</i>, not less than 1</p>

**Table F2.4 (b) Accessible unisex showers**

Class of building	Minimum accessible unisex showers to be provided
Class 1b	(a) Not less than 1; and (b) where private <i>accessible</i> unisex showers are provided for an <i>accessible</i> bedroom, common <i>accessible</i> unisex showers need not be provided
Class 3 and Class 9c <i>aged-care building</i>	(a) In every <i>accessible sole-occupancy unit</i> provided with showers within the <i>accessible sole-occupancy unit</i> , not less than 1; and (b) 1 for every 10 showers or part thereof provided in common areas
Class 5, 6, 7, 8 and 9 — except for within a ward area of a Class 9a <i>health-care building</i>	Where clause F2.3 of the <i>BCA</i> requires 1 or more showers, not less than 1 for every 10 showers or part thereof
Class 10a — except: (a) a Class 10a appurtenant to another class of building; and (b) a <i>sanitary compartment</i> dedicated to a single caravan/camping site	Where showers are provided, 1 for every 10 showers or part thereof



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## Part H2 Public transport buildings

**Note:** Part H2 contains Deemed-to-Satisfy Provisions for Class 9b public transport buildings additional to those contained in Parts D3, E3 and F2 that apply to public transport buildings.

### H2.1 Application of Part

- (1) The Deemed-to-Satisfy Provisions of this Part apply to the passenger use areas of a Class 9b building used for public transport.
- (2) The Deemed-to-Satisfy Provisions of this Part take precedence where there is a difference to the Deemed-to-Satisfy Provisions of Parts D3, E3 and F2.
- (3) For an airport that does not accept regular public transport services, as defined in the Disability Standards for Accessible Public Transport 2002, only clauses H2.8, H2.9, H2.10, H2.11, H2.12 and H2.13 of this Part apply.
- (4) Subparagraph A3.3 (a) (i) of the *BCA* does not apply to this Part.

### H2.2 Accessways

- (1) An *accessway* must comply with AS 1428.2.
- (2) If an *accessway* branches into 2 or more parallel tracks:
  - (a) the ends of each track must be on the main pedestrian traffic routes; and
  - (b) the parallel tracks must have equal convenience and be located as close as practicable to the main pedestrian branch.
- (3) The minimum unobstructed width of an *accessway* must be 1.2 m, except that:
  - (a) the minimum unobstructed width of a moving walkway forming part of an *accessway* may be not less than 850 mm; and
  - (b) the minimum unobstructed width of a doorway in an *accessway* may be not less than 850 mm.
- (4) Poles, columns, stanchions, bollards and fixtures must not project into an *accessway*.
- (5) Obstacles that abut an *accessway* must have a *luminance contrast* with a background of not less than 30%.
- (6) Manoeuvring areas that allow a 180 degree wheelchair turn must comply with clause 6.2 of AS 1428.2.
- (7) A passing area must be provided at least every 6 metres along any two-way *accessway* that is less than 1 800 mm wide.

- (8) Ground and floor surfaces must comply with clause 9 of AS 1428.2 and AS 1428.1. Supplement 1 provides criteria for the selection of floor surfaces.
- (9) The requirements of subparagraph D3.3 (d) (ii) do not apply to Class 9b public transport buildings.

### **H2.3 Ramps**

- (1) A ramp forming part of an *accessway* must comply with clause 8 of AS 1428.2.
- (2) The requirements of paragraph D3.11 (a) do not apply to Class 9b public transport buildings.

### **H2.4 Handrails and grabrails**

- (1) A handrail must comply with clause 10.1 of AS 1428.2.
- (2) Handrails must be placed along an *accessway* wherever passengers are likely to require additional support or passive guidance.
- (3) A grabrail must comply with clause 10.2 of AS 1428.2.
- (4) A grabrail or handrail must be provided at fixed locations where passengers are required to pay fares.

### **H2.5 Doorways and doors**

Doorways and doors must comply with clause 11 (except clause 11.5.2) of AS 1428.2.

### **H2.6 Lifts**

Lift facilities must comply with AS 1735.12.

### **H2.7 Stairways**

Stairs must comply with:

- (a) clause 9.1 of AS 1428.1, including the notes; and
- (b) clause 9.2 of AS 1428.1; and
- (c) clause 13.2, 13.3 and Figures 8 and 9 of AS 1428.2.

### **H2.8 Unisex accessible toilet**

If toilets are provided, there must be at least one unisex *accessible* toilet without an airlock that complies with AS 1428.1 clause 10, sanitary facilities.

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## **H2.9 Location of accessible toilets**

*Accessible* toilets must be in the same location as other toilets.

## **H2.10 Symbols and signs**

- (1) The international symbols for accessibility and deafness in accordance with clauses 14.2 and 14.3 of AS 1428.1 must be used to identify an access path and which facilities and boarding points are *accessible*.
- (2) Signs must be placed in accordance with clause 17.4 of AS 1428.2.
- (3) The size of accessibility symbols must comply with Table 1 of AS 1428.2.
- (4) The symbol for accessibility must incorporate directional arrows and words or, if possible, pictograms, to show passengers the way to *accessible* facilities such as toilets.
- (5) Signs must comply with clause 17.1 and Figure 30 of AS 1428.2.
- (6) If a sign incorporates raised lettering or symbols, they must be at least 0.8 mm above the surface of the sign.
- (7) If an operator or provider supplements a notice with Braille characters, they must be placed to the left of the raised characters.

## **H2.11 Tactile Ground Surface Indicators**

Tactile ground surface indicators must be installed in accordance with AS 1428.4 on an *accessway* and must indicate changes of direction in accordance with clause 18.1 of AS 1428.2.

## **H2.12 Lighting**

Any lighting provided must comply with minimum levels of maintenance illumination for various situations shown in the notes to clause 19.1 of AS 1428.2.

## **H2.13 Hearing augmentation**

If a public address system is installed, it must comply with clause 21.1 of AS 1428.2.

## **H2.14 Emergency warning systems**

- (1) If an emergency warning system is installed, it must comply with clause 18.2.1, 18.2.2 and 18.2.3 of AS 1428.2.
- (2) In the event of an emergency, provision must be made for people with vision impairment to locate the *exit* path.

## **H2.15    Controls**

Controls must comply with clause 11 of AS 1428.1.

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### **Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.