

RECEIVED SM
18 MAY 2009
BY: LACA

Draft Premises Standards

NSW submission on the Commonwealth's draft Disability (Access to Premises - Buildings) Standards (Premises Standards)
March 2009

Contents

1	Executive summary	4
2	Introduction	5
3	Background	7
	Current Initiatives	7
4	Summary of key issues	9
4.1	Impact assessment and implementation	9
4.2	Administrative Protocol	11
4.3	Standards and definitions	12
5	Recommendations	14
5.1	Impact assessment and implementation	15
5.2	Administrative Protocol	15
5.3	Standards and definitions	17
6	Rail	19
7	Additional issues raised by the Committee	21
7.1	Class 2 buildings	21
7.2	Serviced apartments	21
7.3	Disability parking permits	22
	APPENDIX A Disability (Access to Premises – Buildings) Standards 2009	23
A.1	General comments	23
A.2	Specific comments	27
	APPENDIX B The Protocol – a model process to administer building access	36
B.1	General comments	36
B.2	Specific comments	37
	APPENDIX C Draft Australian Standards (AS 1428.1 and 1428.4.1)	40
	APPENDIX D Disability (Access to Premises – Buildings) Standards Guidelines 2009	42
D.1	General comments	42
D.2	Specific comments	42
	APPENDIX E RailCorp submission	44
E.1	Executive summary	44
E.2	Disability (Access to Premises – Buildings) Standards 2009	45
E.3	Access to Premises Guidelines 2009	52
E.4	Disability Standards for Accessible Public Transport Amendment 2009 (No.)	53
E.5	The Administrative Protocol	53
E.6	Draft Australian Standards	55
	APPENDIX F Budget impacts	57
F.1	Budget implications	57
F.2	Regulation Impact Statement	58

1 Executive summary

The NSW Government supports:

- The **intent** of the Disability (Access to Premises – Buildings) Standards (draft Standards) to provide better access to people with disabilities, codify the *Disability Discrimination Act* (DDA) and align the DDA and the *Building Code of Australia* (BCA).
- The in-principle implementation of the Premises Standards **after resolution of a number of issues** outlined in the recommendations of this submission.

To facilitate the efficient introduction of the draft Standards, the NSW Government has provided comments and recommendations on the:

- **Administrative Protocol** and a perceived lack of certainty of decisions regarding access matters e.g. Unjustifiable Hardship, Building Upgrade Plans (BUPs) and Access Panels.
- Proposed **Access Panels** as a means to review all alternative solutions and the extent of work for modifications. NSW is concerned that the panels may impact on planning timeframes at a time when jurisdictions are being urged to streamline approvals.
- **Indemnification** of individual members of the proposed Access Panels.
- Need to clarify the relationship between the draft Standards and the 2005 *Disability Standards for Education (Education Standards)* and the *Disability Standards for Accessible Public Transport 2002 (Transport Standards)*.
- Effect on **rail projects** relative to other existing standards that overlap and in some cases contradict the draft Standards.
- Need to develop a **system of documented compliance** for application at the time of building approval.
- Effect on **the NSW Budget** particularly at a time when there is a general slowing in the economy.

A large number of NSW Government agencies have been involved in the preparation of the submission to the Commonwealth. The agencies are:

- The Department of Premier and Cabinet.
- The Department of Planning.
- The Heritage Branch (Department of Planning).
- The Department of Ageing, Disability and Home Care.
- NSW Treasury.
- RailCorp.
- Attorney General's Department.
- Department of Education and Training.
- Department of Health.
- Department of Commerce.
- Ministry of Transport.
- Department of Community Services.
- Department of Corrective Services.
- The NSW Fire Brigade.
- The Department of the Arts, Sport and Recreation.
- State Property Authority.

2 Introduction

Governments, both at the State and Federal levels, have made substantial commitments to improving the lives of people with a disability. These include ratifying the UN Convention on the Rights of Persons with Disabilities and enacting the *Disability Discrimination Act 1992* (DDA). Support for these legal instruments has been backed up through actions that have delivered real improvements for people with a disability. In NSW these actions include programs delivered through the *State Plan, Stronger Together* and *Better Together*.

Fundamental to these improvements has been integration of people with a disability into mainstream society and their inclusion in the community. This places a responsibility upon Government to facilitate, as far as practicable, an environment that is accommodating to the needs of people with a disability.

NSW acknowledges that the intent of the draft Standard is to assist in improving the built environment for people with a disability, specifically by codifying requirements of the DDA for building owners and professionals. Other parts of the community will also benefit from the draft Standard, including; the aged, parents with young children and those that have an injury that affects their mobility.

In preparing this submission, the NSW Government was conscious of the need to assess the benefits of the current proposal for people with a disability against the impact of the Standard on public buildings operated / owned by the Crown and the wider NSW community. The submission also focuses on the relationship of the draft Standards to NSW planning laws, other relevant state and federal legislation, disability policies, building codes and regulations.

The NSW Government is cautious as to the cost impact of the draft Standards, and future dialogue with the Commonwealth is requested regarding the cost impacts and other implementation issues.

It is important to note that the NSW Government has not had sufficient time to conduct a comprehensive analysis of the effect of the Standards on the wider community and specific non-government industries. It has not directly consulted industry or other community stakeholders which have already submitted individual submissions as it applies to specific industry sectors. Nor has it consulted with those stakeholders which have not made a submission to the inquiry.

In preparing this submission, the NSW Government coordinated responses from key government agencies (as detailed in the executive summary). The majority of the agencies operate large and complex property stock and have provided critical assessment on the practical and cost implementation of the draft Standards.

This submission attempts to cover the broad spectrum of views and at the same time assist the Committee in outlining the key issues and ways forward to progress these important reforms.

Disability Council of NSW

As the official adviser to the NSW Government on disability issues, the Disability Council of NSW has been involved in the inter-governmental working group tasked with the preparation of this submission.

In addition, the Disability Council of NSW has provided a separate submission reflecting its views on the draft Standards.

The Disability Council of NSW has advised the NSW Government that people with a disability, their families and carers welcomed the ratification of the UN Convention on the Rights of Persons with Disabilities by the Australian Government in July 2008. Inherent in the Convention, specifically Articles 4, 9 and 19, is the obligation for Government, at all levels to undertake measures to enable persons with a disability to live independently and participate in all aspects of daily life. It is the Council's view that the Premises Standards are necessary and vital if the NSW Government is seriously committed to improving access to buildings and services for people with a disability, their families and carers and fulfilling its obligations under the Convention.

Structure of the submission

For the benefit of the Committee, the submission is structured into:

- A background which addresses the NSW Government's current initiatives in access improvement.
- A summary of key issues categorised under three major themes:
 1. Impact assessment and cost.
 2. The Administrative Protocol.
 3. Standards and definitions.
- Key recommendations relative to the three major themes.
- A summary of issues raised by RailCorp with its own key recommendations.
- Additional issues raised by the Parliamentary Committee following the NSW Government's appearance on March 25, 2009.
- Appendices which support and complement the key issues and recommendations. They are broken into:
 - Appendix A – Disability (Access – Buildings) Standards 2009.
 - Appendix B – The Protocol – a model process to administer building access.
 - Appendix C – Draft Australian Standards (AS 1428.1 and 1428.1.4).
 - Appendix D – Disability (Access – Buildings) Standards Guidelines 2009.
 - Appendix E – RailCorp submission (including additional recommendations).
 - Appendix F – Budget impacts.

3 Background

Current Initiatives

The NSW Government is committed to enhancing access for people with a disability to help them live more active, productive and dignified lives and has implemented a range of initiatives to improve access to public places and services.

It has invested significantly in improving disability access as part of its obligations under the *Disability Discrimination Act 1992 (DDA)*. Examples of current initiatives:

RailCorp – Easy Access Upgrades

RailCorp is currently investing \$25 million per year in Easy Access upgrades to existing train stations, in addition to normal capital expenditure, to ensure all new stations and station upgrade works under other programs incorporate easy access outcomes. Some \$480 million has been invested in the Easy Access Program to date, and 115 of the 307 stations in the CityRail network, or 37 per cent, are wheelchair accessible. A further 20 per cent of stations are wheelchair accessible with the help of a friend or carer. All new and existing CityRail and CountryLink trains are wheelchair accessible with access from the platform to the train via a portable boarding ramp.

Department of Education and Training – Disability Education Standards

Since 1996 the NSW Government has built 50 new schools and relocated a further 20 schools, all of which are fully accessible. Over the past four years, the NSW Department of Education and Training has invested approximately \$23 million annually to support the integration of students with a disability and meet its obligations to students under the Disability Standards for Education (2005). This translates into 1,000 projects undertaken providing access to close to 700 schools. This does not include capital expenditure for additional works or new buildings.

Better Together: A new direction to make NSW Government services work better for people with a disability and their families (2007-2011)

Better Together is a whole-of-government strategy that builds on commitments in the *NSW State Plan* to promote fairness and opportunity for all citizens to participate in community life, including those with a disability. Through *Better Together*, the NSW Government will continue to invest in adapting mainstream services to provide better access for people with a disability.

One priority area of *Better Together* is improving coordination of the NSW Government's investment in accessible infrastructure so that a person with a disability, like anyone else in the community, can catch a bus, train, ferry or taxi and gain access to public buildings such as schools and health facilities. In addition, agencies are required to incorporate their accessible infrastructure obligations within their Total Asset Management (TAM) plans which guide agencies in their capital works expenditure.

TAMs are earmarked for review during 2009 to ensure that accessible infrastructure is included.

In addition, NSW Government policy requires all NSW Government agencies to develop Disability Action Plans (DAPs). These plans provide a mechanism to identify and reduce barriers to services and employment for people with a disability. The Department of Aging, Disability and Home Care (DADHC) oversees the whole-of-government framework for Disability Action Planning.

The Disability Action Planning Guidelines, issued in September 2008, identify seven outcomes which agencies are required to meet in developing their DAPs. Outcome three relates to 'making government buildings and facilities physically accessible to people with a disability'. To achieve this objective agencies are being encouraged to incorporate within their broader asset strategies actions for making government buildings, over time, accessible to people with a disability.

Premises Standards

The NSW Government, through DADHC, the Disability Council of NSW, the Department of Planning and RailCorp, has been working with the Commonwealth on a national framework for disability access standards for the better part of a decade.

This includes work on the previous 2004 draft Standards.

The NSW Government recognises and supports in principle the three key objectives of the current draft Standards which are the:

- Provision of better access to and use of buildings by people with disabilities.
- Codification of the DDA to give more certainty to stakeholders regarding access to and use of buildings by people with disabilities.
- Alignment of the requirements of the DDA with the BCA.

4 Summary of key issues

When approaching policy considerations such as the Premises Standards, the NSW Government must strike a balance between enhanced access for people with disabilities whilst delivering economically responsible and viable outcomes for the entire NSW community.

Notwithstanding the NSW Government's demonstrated support for improving access for people with a disability, and the intent of the draft Standards, the NSW Government would like to draw the Committee's attention to issues requiring resolution that relate to the:

- Impact assessment and implementation.
- Administrative Protocol.
- Standards and definitions.

A summary of each key area is provided below with a series of recommendations in Chapter 4 of this submission.

4.1 Impact assessment and implementation

The NSW Government is concerned that there are significant issues regarding cost and implementation raised in the Regulation Impact Statement (RIS).

Consistent with the COAG Best Practice Regulation Guidelines (2007), the Government considers that the RIS should be used to inform the decision on which option for the draft Standards should be adopted.

As noted in the RIS, implementation of the Premises Standards would be expected to have a negative impact on building activity in all sectors. The potential for industry to defer alterations rather than adhere to new Premises Standards could mean lower demand for construction workers, hence potentially higher unemployment, particularly in regional areas. This contradicts the aim of the Commonwealth's economic stimulus package.

With regard to government sector costs, the RIS notes that the costs of the Premises Standards would need to be funded via tax increases or offsetting reductions in other expenditure. These reductions in other expenditure could include front-line services.

This introduces a significant element of financial risk to the State Government. Given that in NSW, the costs are likely to be significant, the RIS is critical to informing decision-making on which of the options in the RIS should be adopted.

The Government is therefore concerned to ensure that the RIS supporting the proposed draft Standards is as robust as possible and accurately assesses and identifies the costs and benefits of the proposal. However, a preliminary review of the RIS has raised concerns about its underlying methodology.

The Government is concerned that the impacts and costs of implementing the Premises Standards have not been fully evaluated and that the potential costs are underestimated both for the private and public sector. This is supported by a preliminary survey of government departments of the cost impacts of the draft Standards. More information on cost impacts is provided in Appendix F.

For example, achieving essential access requirements in existing schools as stipulated in the draft Standards is estimated at a total of \$1.3 billion over a 40-year period. Without increased funding, the Department of Education will need to reduce expenditure in other areas of its portfolio to meet these requirements.

Regulation Impact Statement - Cost estimation

With regard to the NSW Government sector, the under-estimation of costs in the RIS arises from a number of factors, including:

- The estimation of the impact on the government sector is based on a pro-rata of the percentage of public sector activity versus national activity on a national basis in 2000–01. This data is no longer current and underestimates the current level of public sector activity.
- The estimated costs appear to be too low and are based on data for the Melbourne area.
- Costs of construction are higher in NSW than in other states for number of reasons including higher labour costs.
- Building stock and infrastructure in NSW tends to be older than in other states meaning that the total cost impact is likely to be higher because of the impact on existing and/or heritage buildings.
- The differing levels of construction activity in each state. Furthermore, the NSW Government has recently increased its level of planned infrastructure investment.
- The data does not take into account the considerable increase in the costs of input materials (well above CPI), such as steel, since 2001.
- There is no consideration of the increased life cycle costs, eg maintenance and operation of equipment (such as lifts) and increased rental costs due to a loss of net realisable space. In addition, other flow-on costs are not considered, such as:
 - Non-government agencies and providers that are linked to government agencies eg bus operators. Based on the experience with the Transport Standards these are likely to be significant.
 - The professional development of architects, certifiers, builders and bureaucrats to ensure industry understanding of the Standards.
- The unique nature of many government buildings means that that the case studies will not necessarily be applicable and may not include all relevant costs.

Regulation Impact Statement - Benefit estimation

As noted in the RIS, the nexus between the benefits of the proposal and improved access cannot be proven. The quantitative extensions to access requirements outlined in the RIS are not based on an assessment of disability requirements or other objective measures. Costs are being significantly increased without a commensurate demonstrable increase in benefits. For example:

- The benefits of adapting affected commercial buildings to the 90th percentile are not quantified.
- The proposed proportion of wheelchair spaces in theatres (1-2 per cent) significantly exceeds the estimated proportion of the public that uses a wheelchair (0.5 per cent).
- The proposed ratio of accessible (wide bay) parking spaces substantially exceeds the percentage of those that use these spaces.

There is more detailed comment on the RIS in Appendix F.

Implementation - Existing constraints and heritage

Notwithstanding the provisions of 'Unjustifiable Hardship' included in the Administrative Protocol, the application of the draft Standards to a 'new part' and an 'affected part' of an existing building may not accommodate the specific issues involved in upgrading different types of properties owned by the NSW Government e.g. prisons, hospitals, schools, police and rail stations, heritage buildings etc.

In some instances, compliance with the draft Standards may be impractical. For example, during renovations, applying the number and distribution of wheelchair seating spaces required is unrealistic when applied to major performance venues. Compliance could require an unviable cost in additional renovations, an unsustainable commercial cost in lost ticket sales to both the venue and its presenters/hirers and operational cost in labour to potentially reconfigure theatres for each performance.

As the draft Standards apply to not only the new building work in existing buildings but also to the principal pedestrian entrance and the path of travel to the new work, this could require additional building work that was not envisaged in the proposed development. For example, at campus-type facilities such as a school, where many rooms have an external door opening on to a verandah or first-floor walkway as part of the path of travel to the new work, the doors may have to be widened from the currently accepted 800mm to 850mm or the ramp landings from 1,200mm in length to 1,500mm in length where there is a change of direction, with only minimal access improvement.

There are also specific concerns about the impact on operational requirements for secure accommodation in correctional premises.

The potential need to modify the path of travel to the affected part could cause significant change to heritage buildings and an unacceptable loss of heritage fabric.

Implementation - Streamlining planning processes

The NSW Government, like all states and territories, is committed to moving away from merit-based assessment and encouraging complying development codes as a means of delivering quick turnaround times for essential infrastructure.

The implementation of the Premises Standards could add another level of regulation with the role of Access Panels considering merit assessments potentially leading to delays in planning and building approval processes.

4.2 Administrative Protocol

Under the Commonwealth's proposal, there is a model process, the Administrative Protocol (the Protocol), to administer building access for people with a disability. The main objective of the Protocol is to describe a process that can be adopted by states and territories for determining access to buildings. The process aims to ensure, as far as possible, that the application of the BCA results in the provision of an accessible environment consistent with the objectives of the DDA and the Premises Standards, and as a result, minimise the likelihood of a complaint against a building owner.

Under the proposed Protocol, states and territories would set up Access Panels to make recommendations on access related matters associated with the construction of new buildings or modifications to existing buildings where an alternative solution or a Building Upgrade Plan (BUP) is proposed, or an exception is being sought due to Unjustifiable Hardship or an appeal.

The NSW Government, like other jurisdictions, has been reforming the planning system to streamline approvals and reduce reliance on merit based assessment as a means to slash red tape and minimise approval timeframes for government, business and residential development.

This approach is supported by a national development assessment reform program already underway under the auspices of the Council of Australian Governments.

The Protocol and the proposed Access Panels as a means to review all alternative solutions could impact on planning timeframes at a time when jurisdictions are being urged to streamline approvals. There are also a number of concerns in relation to the concept of BUPs in relation to setting aside the building control legislation and the absence of a model to enforce obligations under BUPs.

Although NSW acknowledges the Protocol has been crafted to minimise complaints in the judicial system, there are some concerns about the cost, implementation, operation and legal status of the proposed Access Panels in adjudicating alternative solutions and Unjustifiable Hardship provisions.

The Access Panel process could present a significant problem for a range of stakeholders and government if decisions about alternative solutions are delayed or there is lack of agreement which prevents a timely solution. There is also concern that the panels may lack industry-specific expertise as there is no requirement, for example, for specialists from the rail and heritage sectors to sit on the Access Panel.

More detail on these matters are contained in Appendix B and E.

Legal uncertainty

Although the Protocol states it is not mandatory, it suggests that if the Protocol were not adopted, states and territories would lose the legal protection it intends to provide.

Even then, the major concern is that the decisions of the Access Panel can still be deemed to contravene the DDA under a court challenge. This uncertainty in the approvals system could potentially lead to fewer developers seeking their own innovative solutions to premise-access issues.

The preamble to the Protocol is clear in stating that Unjustifiable Hardship, following a complaint, is a matter for the court. Yet, it then discusses consideration by an Access Panel in determining a recommendation for an approval.

There is also concern about how Access Panel members will be individually indemnified to avoid personal liability in the Access Panel decision-making process.

Relationship with the building approval process in NSW

The consideration by the Access Panel of Unjustifiable Hardship or approving BUPs may provide for the modification or setting aside of BCA compliance and could cause conflict between the application of the Premises Standards and BCA obligations under NSW building control legislation.

4.3 Standards and definitions

Relationship between the Premises Standards and other standards

There is a lack of clarity and confusion regarding the relationship (and potential conflict) between the draft Standards and other standards created under the DDA, for example, the Transport Standards and the Education Standards. For example, it is unclear if the Premise Standards take precedence over the Transport and Education Standards or vice versa. This relationship and hierarchy needs to be clearly articulated within the Premises Standards.

Inconsistencies between legislation

The NSW Government has concerns that there are a number of inconsistencies between the draft Standards and the BCA in terms of language and definition. The treatment of definitions must be consistent both within the

Access Code and with the BCA, and those included in the Access Code should be closely examined so that only those essential to access matters are included.

Additionally, it is not clear what level of protection the proposed Premises Standards will provide if a complaint is made in the future on the basis of a new version of the Premises Standards. In other words, a building complies with the Premises Standards as they were written in 2009, however may not comply with future Premises Standards. This issue needs to be resolved and clearly articulated within the Premises Standard.

Review process

There has been concern about the review process as applied to the Transport Standards. That review process is now six and half years old (it was due in five years) and even now there is no finalisation of the review in sight.

5 Recommendations

The NSW Government supports in principle the introduction of the Premises Standards, however, there are a number of issues raised in this submission that need to be considered and addressed prior to the finalisation of the Standards.

Recommendation 1

The Australian Government should consider commencing the Premises Standards as they apply to new and existing buildings after further consideration and resolution of a number of issues outlined in the recommendations that follow.

Consideration should also be given to modifications to the draft Standard which would balance the need to improve accessibility to premises and the potential impact of the regulations within the current economic environment and on rural and regional communities. This approach could:

- Allow the benefits of the current proposal to proceed in a controlled fashion, which will result in increased accessibility, codification of the DDA regarding complying access to and use of buildings by people with a disability, and alignment of the DDA and BCA. This will also foster familiarity with new requirements and processes.
- Enable the development of a more sophisticated and practically viable solution for existing buildings undergoing new work and implementation of the solution nationally.
- Provide for a progressive application of the cost impacts across industry and the community, which in the current economic climate, is an important consideration.
- Assist in managing any adverse impacts. There is likely to be disproportionate cost implications for small businesses, smaller buildings, and regional NSW as recognised in the Regulation Impact Statement. These cost implications are particularly important in the current economic and employment environment.

Recommendation 2

The Premises Standards should be amended to enable governments to use agency specific Disability Action Plans to establish a strategic approach to their capital works programs which balance available resources and priorities for improved accessibility to existing buildings based on areas of greatest need.

This would enable agencies like Department of Arts, Sport and Recreation to establish targeted capital works programs for those sites most used by people with disabilities at present.

Recommendation 3

The Commonwealth should consider providing financial assistance to governments for the implementation of the Premises Standards.

The Regulation Impact Statement indicates that the Premises Standards will increase the cost of new and modified buildings and this is supported by the cost estimates supplied by the various NSW Government agencies.

In addition, there is likely to be a cost to NSW in the implementation of the Administrative Protocol and in establishing Access Panels (or assessors) which does not use this model at present. Australian Government

funding would assist in ameliorating the impact of these costs on the State Government's capital works and direct service provision.

5.1 Impact assessment and implementation

Recommendation 4

Further concessions and exemptions need to be developed and codified in the Access Code to minimise the impact of the Premises Standards on existing buildings undergoing modification.

This is necessary to facilitate a more flexible approach to existing buildings undergoing modifications and the delivery of a more practical and economically viable access solution. This will ensure, for example, that walls are not required to be moved or ramp landings to be lengthened for small space gains; or doorways to be widened simply to meet a specified dimension, where only a minimal improvement is gained.

5.2 Administrative Protocol

Recommendation 5

That the Administrative Protocol provides a choice in achieving its stated objectives and intended outcomes through either:

- The proposed Access Panel; or
- Appropriately accredited experts (accredited individually by the jurisdictions).

Recommendation 6

If a decision is taken to proceed with the proposed Access Panel regime or accredited experts, the Premises Standards not be enacted until such time as each jurisdiction has made legislative and administrative arrangements to facilitate their commencement.

In establishing an Access Panel, the NSW Government would need to among other things:

- Consider financial support for the Access Panel concept.
- Consult with the community and interested stakeholders.
- Potentially introduce legislation into NSW Parliament.
- Modify other building and planning control legislation.
- Set up operational arrangements (ie secretariat for the Access Panel).
- Appoint Access Panel members.

If a decision is taken to also adopt a system of accredited experts to perform the same function as an Access Panel, time and resources will be required to adjust the existing certification system for their inclusion and accreditation.

Recommendation 7

In relation to the proposed Access Panel, membership be broadened to require industry specific experts or specific sub-panels within the Access Panel such as ones with expertise in education and transport matters to assess industry specific performance solutions.

It is important as part of the overall NSW objective to achieve an appropriate balance between industry experts and those representing people with disabilities.

The current proposals only stipulate the Access Panel be at a minimum three people with expertise relevant to the issues such as lifts, sensory or mobility aspects of a building and include a minimum of one person who is deemed or accredited to be a person competent in access matters.

In relation to the proposed system of accredited certifiers, as an additional option to complement the Access Panel, this balance would be achieved by private certifiers consulting with relevant parties. This is consistent with current practice as part of the building approval process.

Recommendation 8

The intended application of Unjustifiable Hardship should be further clarified and a clear explanation of the application of this concept at the building approval stage be provided.

Further explanation is required as to how this concept is to be considered by the Access Panel and how and when it is considered a matter for the court.

The NSW Government recognises that the Access Panel (or the proposed option of accredited certifiers) and the reforms generally are intending to provide legal certainty - however more clarification is sought on the legal status of the decisions regarding Unjustifiable Hardship and other matters the Access Panel is responsible for under the Administrative Protocol.

Recommendation 9

The Commonwealth should reconsider the concepts under the Premises Standards (eg BUPs and Unjustifiable Hardship) that permit the setting aside of aspects of building law, where legislation in certain jurisdictions do not support this.

Under NSW legislation (unless formally exempted by Government), it is unlawful for the design and construction of buildings not to comply with the BCA. Under the proposed Premises Standards, the Access Panel is effectively enabling proponents to set aside their responsibilities under the BCA by claiming Unjustifiable Hardship or by receiving endorsement for a Building Upgrade Plan. This concept is inconsistent with current legislation.

Recommendation 10

The Commonwealth should consider developing a model process for ensuring that undertakings made in a BUP are carried out, and provide for enforcement if they are not.

Under the Commonwealth's proposed reforms, there is no system that would ensure that undertakings made by building owners in a BUP (i.e. to undertake specific upgrades within a prescribed timeframe) are met. This could lead to high levels of non-compliance with the Premises Standards.

5.3 Standards and definitions

Recommendation 11

The Commonwealth needs to provide clear guidance on the relationship between all components of the Premises Standards package and the BCA and its referenced documents (ie AS1428.1) to ensure consistent application by all stakeholders.

The legal and administrative links between the various documents require further refinement and to be clearly stated within the Premises Standards.

Additionally, there are a number of instances where the wording, referencing or numbering system between the Premises Standards and the BCA are inconsistent. More details are provided in Appendix A.

Recommendation 12

Clarify the relationship between the Premises Standards and the Education Standards and the Transport Standards.

There should be recognition of existing standards that have been developed to meet the requirements of the DDA and have been recognised by the Australian Human Rights Commission (AHRC).

In NSW, for example, the Education Standards permit alternative solutions in an efficient manner that ensures students with a disability are provided appropriate access to educational facilities. Reference to this Standard would minimise disruption and costs to proposed building plans particularly those currently being undertaken under the Commonwealth's economic stimulus package. When any works are being undertaken on school sites, provisions already provide access to enable:

- One hundred per cent access to all common areas, administration facilities, hall/gym, library.
- Access to least one of any specialist facility, and sufficient general learning spaces to ensure educational outcomes.
- The total number of accessible learning spaces to be at least 50 per cent of the total.

Additionally, there are significant inconsistencies between the requirements of the Premises Standards and the Transport Standards for rail premises. The precedence and legal obligation are unclear for rail premises and infrastructure. More information is in Chapter 6 of this submission and the full RailCorp submission is detailed in Appendix E.

Recommendation 13

Consider the merits of developing design criteria for existing buildings by function, for example health and arts etc and then recognising these as being compliant with the Premises Standards.

This will assist in addressing the unique issues of these buildings and how they function and can be utilised by either the Access Panel or appropriately accredited experts.

Recommendation 14

The Commonwealth should consider including in the Premises Standards a system of documented compliance for application at the time of building approval which could be used to overcome confusion regarding the status of inevitable revisions of the Premises Standards and its referenced documents.

It needs to be clarified whether a building built under the Premises Standards (when finalised) will still be deemed consistent with the DDA under a future version of the Premises Standards. Consideration of how states and territories adopt and implement future versions of the BCA may assist in addressing this issue.

Recommendation 15

The first review of the Premises Standards should be completed (not commenced) within three years with reviews thereafter every five years.

Under the Transport Standards a review was due to be completed in five years. The review has still not been completed six and half years on.

The NSW Government considers it prudent that the first review be completed in three years to enable swift identification and rectification of teething problems with the operation of the legislation with reviews being completed every five years thereafter.

6 Rail

The draft Premises Standards have a number of unique and specific implications for rail infrastructure and premises. A full submission by RailCorp including further recommendations can be found at Appendix E.

RailCorp is committed to improving access to passenger rail services for all customers in line with the objectives of the DDA. The capital investment required for RailCorp to fully comply with the current requirements of the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) is estimated to be in excess of \$4 billion. However, the adoption of the draft Premises Standards in its current form will have further significant financial impact on the NSW railways.

The commitment given to the rail industry by both the Federal Attorney General and the Australian Buildings Codes Board (ABCB) in 2004 was that the transfer of the rail requirements for premises would be done without any increase or decrease in the obligations of the Transport Standards. This commitment is reconfirmed in Part H2 of the draft Premises Standards Guidelines (p.24):

'All Access Code related requirements (ie within the scope of the Premises Standards) have been transferred from the Transport Standards to the Premises Standards without reducing or increasing the current requirements.'

This has not been achieved however, as there are a number of changes, omissions, conflicts and inconsistencies in the drafting of the Premises Standards which will significantly increase the obligations for RailCorp premises over and above the current legislated requirements under the Transport Standards.

The limited and selective transfer of public transport premises requirements from the Transport Standards to the draft Premises Standards creates confusion in terms of legal obligation, scope and design compliance for rail premises:

- The obligations for rail premises have been increased contrary to the stated intention of the Premises Standards Guidelines that the transfer of the Transport Standards will result in no increase or decrease in obligation.
- The precedence of the Transport Standards for transport premises and infrastructure in the rail corridor is not clear.
- The definitions and referenced standards are inconsistent with each other and do not recognise the unique constraints of the rail environment or the importance of the interface between stations and trains in the provision of accessible services.

The other major concern is that current rail exemptions to the Transport Standards will become invalid if the Transport Standards are amended.

The key recommendations are:

Recommendation 16

Maintain the Transport Standards in their current form, that is, no amendment be made to the Transport Standards.

Recommendation 17

Refer to the Transport Standards in the Premises Standards and the BCA, while requiring their substance to be complied with under those codes.

Recommendation 18

Establish clear precedence of the Transport Standards for legal and regulatory clarity.

Recommendation 19

Ensure that the definitions and scope of obligation for public transport buildings within the Premises Standards exactly reflects the current legal requirement under the Transport Standards.

Recommendation 20

Apply Transport Standards to all parts of new and existing transport premises in the rail corridor and remove the requirement for 'affected part' for these premises.

Recommendation 21

Amend the DDA to give legal effect to industry specific codes of practice for accessible service provision as alternative compliance mechanisms.

Recommendation 22

The administration model for building approvals recognise and enable industry specific codes of practice for accessible premises.

7 Additional issues raised by the Committee

On 25 March 2009, the NSW Government was invited to appear before the House of Representatives Standing Committee on Legal and Constitutional Affairs as part of its public inquiry into the draft Standards. Representatives of the Department of Planning, Department of Ageing, Disability and Home Care, RailCorp, Department of Education and Training and NSW Health appeared before the Committee.

The Committee sought the NSW Government's perspective on three specific issues:

- The potential for inclusion of common areas of Class 2 buildings (residential apartments) into the draft Standards.
- Whether there needs to be a distinction between residential apartments and serviced apartments with respect to their building classification.
- Consideration of increasing the number of parking spaces for people with disabilities required by the Premises Standards in relation to the number of parking permits issued by the Government.

7.1 Class 2 buildings

The Committee advised there had been a great deal of focus in the inquiry process on the exclusion of the common areas of Class 2 buildings from the draft Premises Standards.

However, the key issue is whether the DDA applies to Class 2 buildings or part thereof.

If the Commonwealth is seeking to clarify the application of the DDA and considering inclusion of Class 2 buildings (or part thereof) in the legislation, the NSW Government would be happy to provide a further submission by way of addendum in terms of any implications the inclusion of Class 2 buildings would have.

However, given the NSW Government's submission is focussed on the draft Standards as they currently stand, any supplementary submission to address this issue would require further consultation with relevant agencies such as the Department of Housing and the Office of Fair Trading.

7.2 Serviced apartments

The Committee asked for a NSW perspective on how serviced apartments should be classified with respect to the BCA.

The NSW Government notes there are some unresolved issues in relation to which BCA classification 'serviced apartment buildings' fall under (ie Class 2 or Class 3), and how the absence of a national definition of serviced apartment tends to exacerbate this situation. By their very nature, some serviced apartments could be considered as a domicile with long term residential stays, whilst others are more transient in the nature of their use.

A possible solution to this issue is to consider the development of a national definition of 'serviced apartments' for the purposes of the BCA and its classification system, which could be included in the BCA.

Achievement of this outcome would require agreement of all states and territories on this definition and its compatibility with their various administrative and legislative provisions.

7.3 Disability parking permits

The Committee has been told of the reported high number of parking permits for people with a disability issued in NSW relative to other states and asked if the NSW Government has given any consideration to increasing the number of disabled parking spaces required by the Premises Standard relative to absolute numbers of disabled permits that are currently being issued.

Correspondence has been sent to the NSW Roads and Traffic Authority seeking its advice in relation to the quantum of disabled parking permits.

APPENDIX A Disability (Access to Premises – Buildings) Standards 2009

A.1 General comments

Issue	Comment	Solution	Agency
Cost impacts			
Cost implications for modifications to existing buildings	<ul style="list-style-type: none"> The implications of the Premises Standards, especially for existing buildings undergoing modifications, are potentially considerable. The proposed application of the Standards to the path of travel from the entrance to the new work in an existing building could introduce significant costs and discourage upgrading work. The possibility of significant access requirements being triggered by other minor upgrades/redevelopment could also lead to decisions to defer even minor works. This could result in the falling behind of essential maintenance or technical upgrades necessary to remain current. Implementation of these proposals will potentially contradict Commonwealth and State Government's initiatives to increase building activity. 	<ul style="list-style-type: none"> Refer to NSW Government Recommendations 1, 2 and 3. 	NSW Treasury Department of Planning Department of the Arts, Sport and Recreation Department of Commerce Department of Education and Training NSW Health Department of Corrective Services Department of Community Services Ministry of Transport
Feasibility and practicality in existing buildings	<ul style="list-style-type: none"> Costs of compliance of meeting the draft Premises Standards are expected to be very high, even assuming that compliant solutions are possible, particularly where there are conflicts between building access requirements and heritage compliance requirements. 	<ul style="list-style-type: none"> The widest possible range of acceptable alternatives should be kept open to encourage compliance and innovation. 	Department of the Arts, Sport and Recreation

Issue	Comment	Solution	Agency
Impact on regional and rural communities	<ul style="list-style-type: none"> Implementation of the Premises Standards may deter developers building office accommodation particularly in rural and regional areas of NSW. Regional areas typically have lower economic output per capita than the metropolitan area. The result of implementing these Standards could be a higher opportunity cost. It could also impact on community and social infrastructure such as community halls or clubs when modifications are undertaken. 	<ul style="list-style-type: none"> Consider impact on regional and rural building stock. 	<p>Department of Community Services</p> <p>NSW Treasury</p>
Standards, terminologies and definitions			
Relationship between parts unclear	<ul style="list-style-type: none"> A clear understanding is required of how the various Parts of the Premises Standards are intended to relate to each other. For example, how does a BCA user know that the 'affected part' of their building is subject to compliance? 	<ul style="list-style-type: none"> The administrative provisions of Part 1 to Part 5 are related to the Access Code, which, in turn, is related to the Protocol. BCA users in particular will need clear guidance regarding the relationships of these documents and instruction on where they can be accessed. 	Department of Planning
Consistency with BCA	<ul style="list-style-type: none"> It is not clear that the Access Code must be read in conjunction with the BCA. Other important building construction requirements are not contained in the Access Code. References to specific clauses of the BCA, such as in tables E3.6(a) and F2.4(a) and other provisions, indicate clearly that the Access Code cannot operate in isolation. 	<ul style="list-style-type: none"> To ensure that the relationship between the Access Code and the BCA is clearly established in the Access Code, a new clause to explain this relationship needs to be inserted, including the incorporation of Part A0 of the BCA in the Access Code. Reference should be made to the need to also consult the BCA in the design and construction of a building for all other matters not addressed by the Access Code. 	Department of Planning
Deemed to satisfy provisions	<ul style="list-style-type: none"> It is understood that public transport buildings must comply with clauses D3, E3 and F2 <i>and</i> Part H2 of the draft Premises Standards. However, it is not immediately clear that this is the case. There may be some confusion that public transport buildings are required to comply to Part H2 only. 	<ul style="list-style-type: none"> Clarification of the requirement for public transport buildings to comply with both sections of the Standards. 	Ministry of Transport

Issue	Comment	Solution	Agency
Class 9b Assembly buildings	<ul style="list-style-type: none"> The Premises Standards refer to Class 9b assembly buildings that are public transport buildings. There is no clarification on what public transport buildings are not considered to be Class 9b and may therefore not be within the scope of the Standards. For example, a small building out of which a private bus company operates. 	<ul style="list-style-type: none"> Include clarification on what public transport buildings do not fall within the Class 9b specifications and whether these are affected by the draft Premises Standards. 	Ministry of Transport
Exemptions and concessions from the Premises Standards	<ul style="list-style-type: none"> It is not clear how the concept and application of Unjustifiable Hardship is intended to operate as an exemption or concession to the Premises Standards, particularly as part of the building approval process. Status is unclear for buildings and parts that are less than the 'cut-off' point to require accessibility or to be granted an exemption (ie are these buildings or parts not regulated by or otherwise protected from the requirement to comply with the Premises Standards?) See comment re 4.4, 4.5 and Table D3.1 Class 1b under 'Specific Comments'. 	<ul style="list-style-type: none"> Clarify the intended application of Unjustifiable Hardship. Clearly articulate the status of buildings and parts that appear to be not regulated under the Premises Standards. 	Department of Planning
No limit to size of work to which the Standards will apply	<ul style="list-style-type: none"> There is no definition of the word 'modification'. This may mean, for works undertaken, including routine maintenance work, that an accessible path to the principal entrance may be required if (in the most extreme examples): <ul style="list-style-type: none"> Fixed furniture and fittings are modified, eg lights, kitchen cupboards, laboratory benches, taps and door handles. A space has changes to the finishes, eg carpet, paint, cement render. A wall is moved or a new doorway inserted. A major refurbishment is carried out but the use of the spaces is not changed, eg if some school laboratories are upgraded with new benches, paint, lights, and floor finishes. It is assumed that changes to curtains, wall hangings, pictures and loose furniture would not be considered a modification to a building, but changes to an exhibition in a museum or art gallery might be. 	<ul style="list-style-type: none"> The word modification should be defined so that it identifies what is considered to be a modification and limits the scale of work to which the draft Standards apply. 	Department of Commerce

Issue	Comment	Solution	Agency
Egress provisions of the Standard			
Provision for egress for people with disabilities.	<ul style="list-style-type: none"> The NSW Government acknowledges the issue of egress was not included in the current proposals and that it is to be considered at a later stage of the reforms. A number of agencies however expressed concern that the Premises Standards by its very nature will mean more people are given access to premises and therefore creating an issue when it comes to emergency egress (ie getting people out of a building in the event of an emergency). There is an 'administrative fix' by relying on the deemed-to-satisfy provisions of the BCA, which however do not specifically address egress for people with disabilities. 	<ul style="list-style-type: none"> The Australian Building Codes Board (ABCB) needs to prioritise research for providing egress to ensure adequate provision is made for people with disabilities once they have been able to access premises. Emergency egress for people with a disability in certain types of buildings is currently being dealt with through management plans and therefore should be reflected in the Premises Standards such as the emergency egress management plans currently in use in the corrective services environment for the legal containment of prisoners and offenders. Adopt emergency egress management plans for all secure correctional/detention premises 	<p>NSW Fire Brigade</p> <p>Department of Ageing, Disability and Home Care</p> <p>Department of Corrective Services</p>
Existing constraints and heritage			
Existing building restraints	<ul style="list-style-type: none"> The inclusion of heritage values as a basis for a claim of Unjustifiable Hardship is noted. However, the inclusion of the path of travel in the definition of 'affected part' will increase costs and significant heritage fabric may be lost. Additionally, minor works could trigger a more substantial upgrade because of the path of travel provisions. The manner in which Unjustifiable Hardship provisions are intended to be implemented will not provide any guidance for non-compliance situations stemming from these constraints. 	<ul style="list-style-type: none"> Implement different levels of exemptions and concessions according to scale/context and use of modifications, existing constraints, such as heritage fabric, structure, material (ie masonry, timber), etc. Limit the retrospectivity in ways that will minimise the impact on the existing building, such as not requiring walls to be moved for small space gains; passing bays to be included in existing corridors or landings and doorways to be widened simply to meet a specified dimension, where there would only be a minimum benefit. 	<p>Department of the Arts, Sports and Recreation</p> <p>Department of Planning</p> <p>Heritage Branch</p> <p>Attorney Generals Department</p>

A.2 Specific comments

Reference	Comment	Solution	Agency
Disability (Access to Premises – Buildings) Standards 2009 Parts 1–5			
Part 2	<ul style="list-style-type: none"> Application to existing buildings subject to building renovations or alterations. In reviewing Part 2 – Scope of the Standards and in particular 2.1(4) and 2.1(5), it is unclear whether this applies to all work, not just work which is subject to an application for approval and the affected part. 	<ul style="list-style-type: none"> It is requested that the wording of 2.1 (4) (b) be reviewed to ensure that small works of a minor nature are not captured by the clause and that there is additional guidance on the application of the standards to existing buildings undergoing modification. Insert a definition of 'modification' into section 1.4 on interpretation. 	NSW Attorney General's Department Ministry of Transport
Part 2.1(5)	<ul style="list-style-type: none"> There does not appear to be any requirement to apply the Access Code to the affected part of a building. Inclusion of the path of travel from the main entrance to the new work has implications for the upgrading of all existing buildings undergoing modifications. The intent displayed by the Federal Attorney General in his speech of December 2008, is for the Premises Standards to only apply to existing buildings when undergoing significant upgrading work. The application of building regulations in an existing building, retrospectively across the board to construction work additional to that proposed (ie the 'affected part') is inconsistent with NSW building control legislation. 	<ul style="list-style-type: none"> Clarify the intended application of this provision. Incorporate the concepts of the AG's statement of December 2008 – of the Premises Standards recognising practical realities of what could be reasonably required and enforced and that they would apply to existing buildings only when undergoing significant upgrade work. This would imply levels of application that are not currently indicated. 	Department of Planning

Reference	Comment	Solution	Agency
Part 2.1 (5) (b) (ii)	<ul style="list-style-type: none"> The inclusion of 'path of travel' in the definition of 'affected part' will have a substantial impact on heritage fabric and will increase the cost of works involving existing buildings. It may also significantly limit the reuse of heritage buildings where additions may assist in making the original part of the building viable. This clause introduces a significant aspect of retrospective upgrading of existing/heritage buildings. Concessions and exemptions to allow a functional minimum would significantly reduce costs and impacts on heritage fabric. Whilst the Access Panels proposed by the Protocol would be available to consider such cases, much fabric could be lost by a lack of time to refer the case to the Panel or a lack of understanding of the options available, (ie a perception of the need for complete compliance with DTS provisions). 	<ul style="list-style-type: none"> Further concessions and exemptions need to be developed and codified in the Access Code for application to the 'affected part' to minimise the impact of the Standards to existing buildings undergoing modification. 	Heritage Branch
Part 2.2	<ul style="list-style-type: none"> (1) It is not clear why application of the Standards is specified for these persons. (2) The term 'building approval process' usually relates to those controls applied by the respective state or territory (and not by individual persons). 	<ul style="list-style-type: none"> (1) Clarify the intent. (2) Reword to reflect the process applied by individuals. 	Department of Planning
Part 3–3.1	<ul style="list-style-type: none"> The trigger for compliance for public transport buildings appears to be the target date in the table. It is unclear whether modifications to the building also trigger the requirement to comply with the standards or if both apply. 	<ul style="list-style-type: none"> Further clarification under Part 3 on compliance triggers. 	Ministry of Transport
Part 3 Table	<ul style="list-style-type: none"> Public buildings are not generally 'provided' by building certifiers or building managers. 	<ul style="list-style-type: none"> Change wording to convey the intended meaning. 	Department of Planning
Part 4 Clause 4.1 (3) (k)	<ul style="list-style-type: none"> The terminology used is not current for the assessment of heritage sites. The approach and terminology should be amended to reflect terms set out in the appropriate national standard on heritage assessment, which is the <i>Burra Charter</i> 1999. See http://www.icomos.org/australia for a copy of the document. 	<ul style="list-style-type: none"> Reword the following text: (k) if detriment under paragraph (j) involves. <ul style="list-style-type: none"> The potential loss of cultural significance of a heritage listed place. The potential loss of fabric of high heritage value. An irreversible impact on the cultural significance. This new wording should also appear in Annex 1 of the Protocol because the text is repeated there. 	Heritage Branch

Reference	Comment	Solution	Agency
Part 4.1	<ul style="list-style-type: none"> It is not clear how Unjustifiable Hardship can be an exception or concession from the Standards, applied at building approval stage, when the preamble to the Protocol clearly states that it is a matter for the courts following a complaint. 	<ul style="list-style-type: none"> Provide clear explanation of the application of Unjustifiable Hardship at the approval stage of the building process: how it is intended as a consideration of an Access Panel; and how and when it is a matter for the court. Clearly articulate who can determine this matter and the process for doing so. 	Department of Planning
Part 4.3	<ul style="list-style-type: none"> It is not clear who is responsible for determining whether an applicant is a lessee or not. What criteria applies? 	<ul style="list-style-type: none"> Include criteria for assessing status of applicant as a lessee. 	Department of Planning
Part 4.4	<p>The concession applies to:</p> <ul style="list-style-type: none"> Any lift that meets the criteria specified, however different consideration may be required when such a lift is being worked on as part of the new work. A lift that travels more than 12m. Presumably a lift that travels less than 12m need not comply, however no statement is made to exclude such a lift from the need to comply. 	<ul style="list-style-type: none"> Clarify the intended application of the concession. Clarify the basis of the 12m travel criteria. Clarify the application of the Standards to parts of buildings that fall below the cut-off line for the application of provisions (ie a lift that travels less than 12m). (See comments regarding D3.1 and also Class 1b below). 	Department of Planning
Parts 4.4 and 4.5	<ul style="list-style-type: none"> There does not appear to be a requirement to consider the upgrading of existing lifts and toilets. 	<ul style="list-style-type: none"> Clarify where the requirement for the upgrading of these facilities is made. 	Department of Planning
Disability (Access to Premises – Buildings) Standards 2009 Schedule 1			
Part A			
Part A1.1	<ul style="list-style-type: none"> Numerous definitions state, 'has the same meaning as the BCA' and others duplicate the BCA definition. This approach implies that the other definitions are different from those in the BCA. From the intended 'mirroring' concept, definitions included in the Premises Standards must duplicate those in the BCA. 	<ul style="list-style-type: none"> Treatment of definitions must be consistent, both within the Access Code and with the BCA and those included in the Access Code should be closely examined so that only those essential to access matters are included. 	Department of Planning
Part A2	<ul style="list-style-type: none"> There is a need to explain the numbering system and the proposed mirroring of the BCA. Sections jump from A to D with no mention of why B and C are missing. BCA numbers are mixed up eg A3 is referenced documents (BCA Spec A1.3) and A4 is classification (BCA A3). Other omissions include – Parts D1, D2, E1, E2, F1 and H1. Without explanation, this layout will be very confusing for users. 	<ul style="list-style-type: none"> The relationship of the Access Code with the BCA needs to be stronger and clearly articulated. Suggest a new clause explaining the layout and the relationship of the Access Code with the BCA (including the insertion of Part AO) and renumbering the Parts of the Access Code to clearly 'mirror' the BCA and its numbering of provisions. 	Department of Planning

Reference	Comment	Solution	Agency
Part A2.4	<ul style="list-style-type: none"> The inclusion of this provision causes a dilemma regarding other provisions of the BCA that have not been mentioned, such as structural provisions, health and amenity, energy efficiency etc. The Guidelines indicate in Part 7 that the reference to the BCA's fire safety provisions include egress and that compliance with the BCA provisions for fire safety is deemed to be compliance with the Premises Standards in terms of egress for people with disabilities. 	<ul style="list-style-type: none"> Clarify that the Access Code must be read in conjunction with all the provisions of the BCA and remove any provisions that are not access-related. Clearly articulate in the Access Code the intended relationship of the BCA provisions for egress to be deemed to meet the Premises Standards in terms of egress for people with disabilities. 	Department of Planning
Part A3.1 Table 1	<ul style="list-style-type: none"> Parts of AS 1735 are very old for referenced Standards, ie from 23 years to 10 years old. 	<ul style="list-style-type: none"> Standards Australia should be requested to undertake reviews of such old Standards, to ensure their suitability for current building practice and regulatory reference. 	Department of Planning
Part A4.1	<ul style="list-style-type: none"> (b)(ii) Incorrectly adds the numerical 'accessibility' criteria to the classification of single 'holiday' dwellings (ie any number of these dwellings will still be Class 1b). 	<ul style="list-style-type: none"> Amend the description to read 'single dwellings located on one allotment, used for short term holiday accommodation' and leave the numerical criteria to Table D3.1. 	Department of Planning
Part A2.4 Part A4 Part 7	<ul style="list-style-type: none"> Part A2.4 Specifically refers to fire safety and identifies the BCA as the document for reference in relation to fire safety provisions. Part A4 then goes on to cite Performance Requirement DP4 of the BCA, which specifically requires the provision of exits appropriate to 'mobility and other characteristics of occupants'. Therefore, egress appropriate for people with disabilities must be provided. No DTS solution to achieve this is given in the Standards. The Guidelines address egress in Part 7 by relying on DTS provision for egress. This exposes many logical inconsistencies with the performance requirements of the BCA. Once access is facilitated for people with disabilities, reliance on DTS provisions alone for egress is inadequate as a practical solution. Example 1: Renovation for an affected part of a building also requires improvements to the accessible path of travel to the entrance. The distance involved may greatly exceed compliant egress distances defined in Part D. A person with a disability may be near a fire stair but required to traverse the original access way. To satisfy the Performance Requirement, fire separation may be needed. 	<ul style="list-style-type: none"> Advice needs to be sought by the ABCB and guidance provided to industry on the adequacy of relying on DTS equivalence when undertaking alternative solutions to directly meet the performance requirements. An example of providing equivalent egress is accessible lifts (at least one) could be required to be contained in fire resisting shafts. However, this will add to cost. 	NSW Fire Brigade

Reference	Comment	Solution	Agency
Part A2.4 Part A4 Part 7 (continued)	<ul style="list-style-type: none"> • Example 2: A passenger lift when provided must be suitable for access by people with disabilities. In an emergency, the lift will be the only suitable means of egress. However, the DTS provisions provide no practical solution for egress, as signage is required warning people not to use the lifts in the case of fire. In fact, if followed, the warning risks a person with a disability being abandoned in a building. • The essence of the problem is that access is facilitated without any consideration of time constraints, whereas egress is required under a restricted time imperative due to the possible development of fire. Access pathways need to be reliable as egress pathways, in practice and so enhanced passive protection through fire separation or increased available time for egress through active measures such as sprinklers needs to be considered. • The ambiguity is compounded by the fact that reference in DTS provisions is generally 'stairway or ramp'. Whilst stairways are commonly used, the DTS provisions allow for choice. A reasonable interpretation of the practical position would effectively require fire ramps rather than stairs in buildings less than 25m. This is likely to be very costly and impractical. • The requirement of A0.10 of the BCA means that DP4 needs to be considered whenever disabled access provisions are catered for in an alternative solution dealing with access matters. The DTS provisions manifestly do not meet the performance requirement DP4 for people with disabilities, eg wheelchairs, negotiating fire stairs. The position of approval authorities and developers may therefore be somewhat ambiguous if in the event of fire a person with a disability is unable to evacuate. 		NSW Fire Brigade

Reference	Comment	Solution	Agency
Part D			
Part D DP1 to DP9	<ul style="list-style-type: none"> • These Performance Requirements should mirror the BCA. The Access Code has deleted any reference to Class 2 buildings in the limitations; however not mentioning them does not clarify the status of a Class 2 building regarding the application of the Access Code. • It is not clear that there are other Performance Requirements in Part D of the BCA that require compliance. • DP6: BCA fire safety provisions for egress do not support the 'Access to Premises' goals. Fire exits by nature are 'inaccessible'. 	<ul style="list-style-type: none"> • Status of Class 2 buildings needs to be stated. Reinstate limitations to Performance Requirements as it appears in the BCA (Section D), including reference to Class 2 buildings, associated Class 7a buildings etc. • Indicate where the missing Performance Requirements are ie DP2, 3, 5 and 7. Any action taken to address the comments under A2.4 above may assist in addressing this issue. • Emergency egress for people with a disability should be complemented and supported by the use of management plans. This should be reflected in the Premises Standards. 	<p>Department of Planning</p> <p>Department of Ageing, Disability and Home Care</p>
Part D3	<ul style="list-style-type: none"> • Currently access is not provided to all rooms of a similar type. • This requirement presents problems on building types containing multiple room types, for example schools. Currently access is not provided to all rooms of a similar type if access is gained to a representative number. • Police stations, prisons and courthouses have 'restricted access zones' such as cells and therefore may require special consideration. 	<ul style="list-style-type: none"> • In existing education facilities, compliance with the Education Standards be recognised as compliance with the Premises Standards. • Examine potential concessions relating to 'restricted access zones'. 	Department of Commerce
Part D3.1	<p>The following is what occurs under the Education Standards:</p> <ul style="list-style-type: none"> • All new facilities are 100 per cent accessible for all spaces however in existing facilities, the following applies: <ul style="list-style-type: none"> • Schools have multiple types of spaces, especially in secondary schools where the curriculum is offered in common areas (hall, library), general teaching and specialist teaching facilities. • Providing access to 100 per cent of various types of specialist learning spaces, to ensure access to the curriculum required by an individual with a disability. 	<ul style="list-style-type: none"> • Recognise existing standards that have been developed to meet the requirements of the DDA eg Education Standards and others that have been recognised by the Australian Human Rights Commission. 	Department of Education and Training

Reference	Comment	Solution	Agency
Part D3.1Table	<ul style="list-style-type: none"> • Subclause (a) refers to 'short term stay' accommodation. It is not clear what constitutes short-term stay. • The Standards do not refer to Class 1b dwellings of less than 4 on one allotment or less than 4 bedrooms in a boarding house or the like. Thus, such small buildings are not provided protection under the Standards. • In contrast, D3.4 states clearly that specified Class 5,6,7b or 8 buildings are not required to be accessible. • The status of Class 2 buildings is not stated in the documentation. • Premises Standards provide Class 3 'no more than 2 sole occupancy units (SOU) can be located next to each other. 	<ul style="list-style-type: none"> • Define the limits of 'short term stay' to clarify the intended application of the provisions. • Include an application clause in Part D3 that clearly indicates the building classifications to which the Standards are intended to apply, as well as those to which they are not intended to apply, as per BCA D3.1. • Mention is required that the Standards do not apply to Class 1b dwellings on one allotment or buildings with less than four dwellings or bedrooms; Class 2 buildings and associated Class 7a buildings; and parts of buildings exempted by being below specified cut-off points, as commented in 4.4 above. • Premises Standards to be amended to recognise that all SOU in a Class 3 building may be accessible. 	<p>Department of Planning</p> <p>Department of Ageing, Disability and Home Care</p>
Part D3.2 (1) (b) (i)	<ul style="list-style-type: none"> • Transit between fully or partially accessible buildings, is often impeded by previous designs such as half levels, and stair access at either end to elevated walkway/pedestrian links. 	<ul style="list-style-type: none"> • In existing education facilities, compliance with the Education Standards be recognised as compliance with the Premises Standards. • In 9b buildings, where the delivery of educational experiences can be provided without the need for building interconnections, then such access not be required. 	Department of Education and Training
Part D3.2 (2) (a) and (b)	<ul style="list-style-type: none"> • In some older school designs, compliance with both (a) and (b) would cause great difficulty. 	<ul style="list-style-type: none"> • As above. 	Department of Education and Training
Part D3.3 (d)	<ul style="list-style-type: none"> • Retrofitting passing bays to existing buildings undergoing modifications may destroy heritage values. • Generally public buildings provide ample corridor space to meet the volume of traffic or allow for other requirements, ie hospitals for bed movement, etc. • However, passing bays may be difficult to achieve in existing building upgrades, where the corridors are narrow, particularly for heritage-listed buildings. 	<ul style="list-style-type: none"> • Codify exemptions and concessions rather than rely on Unjustifiable Hardship provisions. • The passing bays are very likely to be filled with furniture over time, some signage or a symbol could be considered. 	Department of Commerce

Reference	Comment	Solution	Agency
Part D3.4 (a)	<p>Requires other specific examples to ensure applicability to other areas eg:</p> <ul style="list-style-type: none"> Trade Facilities (construction, metal and engineering), noting some schools are now delivering components of TAFE courses. Describe high-risk activities, eg areas where molten metals are used, training with high-risk machinery and substances. 	<ul style="list-style-type: none"> Add extended list as required. Include better examples from Standards Guidelines. 	Department of Education and Training
Part D3.4	<ul style="list-style-type: none"> The list of exemptions does not include other areas that cannot reasonably be made accessible. Exemptions in relation to heritage buildings are not clear. 	<ul style="list-style-type: none"> Broaden the list to include any back-of-house areas that cannot reasonably be made accessible (eg fly towers and some technical control rooms). Exemptions need to be defined and stated clearly with guidelines for adoption of standards for heritage sites. 	Department of the Arts, Sport and Recreation
Part D3.5	<ul style="list-style-type: none"> The change to this Standard would impact on the construction cost of health care facilities. Subclause (b) omits reference to the occupants of a building, which is in conflict with both DP8 and the BCA. 	<ul style="list-style-type: none"> Add the words 'or occupants' at the end of D3.5 (b), for consistency with the Performance Requirement and the BCA. 	NSW Health Department of Planning
Part D3.9	<ul style="list-style-type: none"> During renovations, applying the number and distribution of wheelchair seating spaces required is unrealistic when applied to major performance venues. Any compliance required could mean an unviable cost in renovations, an unsustainable commercial cost in lost ticket sales to both the venue and its presenters/hirers and operational cost in labour to potentially reconfigure theatres for each performance. The loss of usable space has been underestimated with respect to wheelchair spaces. For example, in a venue seating 544 people, there would be a net loss of 39 seats to accommodate 11 new wheelchair spaces. This is a net loss of 7.2 per cent. 	<ul style="list-style-type: none"> Reduce the number of wheelchair spaces required and remove or modify the distribution requirement for 'new part' and 'affected part' of existing buildings. Clarify the application of wheelchair spaces within a specified category for theatres. 	Department of the Arts, Sport and Recreation Department of Planning NSW Treasury
Part D3.11	<ul style="list-style-type: none"> A height limitation of 3.5m will be introduced on the use of ramps for access in buildings. This requirement needs clarification for steep sites with multiple buildings. In some instances ramps may be used to connect dispersed buildings across a campus, the total change of level can exceed 3.5m. 	<ul style="list-style-type: none"> Clarification on intent of clause is required. 	Department of Commerce
Part D3.11 (a)	<ul style="list-style-type: none"> This creates an issue in existing schools where design and slope has buildings with rises greater than 3.6m. Some heritage buildings might have ceiling heights that require wheelchair ramps higher than 3.6m. 	<ul style="list-style-type: none"> Refine the clause to clarify its application. 	Department of Education and Training

Reference	Comment	Solution	Agency
Part D4.6	<ul style="list-style-type: none"> Subclause (a) requires a type of Braille 'in accordance with criteria set out by the Australian Braille Authority'. How is this criteria obtained? And from whom? 	<ul style="list-style-type: none"> The 'criteria' required should form part of the Premises Standard to ensure ready access by all parties involved in the building process. 	Department of Planning
Part E			
Part E3	<ul style="list-style-type: none"> The increased lift car size is a modest cost impact however achieving a 100mm to 200mm wider lift shaft could be impractical and costly. It is also noted that the Education Standards lift is larger than the current BCA requirement. 	<ul style="list-style-type: none"> In existing education facilities, compliance with the Education Standards be recognised as compliance with the Premises Standards. 	Department of Commerce
Part H			
General	<ul style="list-style-type: none"> A range of specific comments are raised in RailCorp submission at Appendix E. 		
Part H2.2	<ul style="list-style-type: none"> Subclauses (6) and (7) refer to 'manoeuvring areas' and 'a passing area' respectively. These terms differ from previous reference in the Access Code in D3.3 (d) and from those in AS 1428.1 	<ul style="list-style-type: none"> Terms should be consistent within the Access Code and the relevant Australian Standard. 	Department of Planning

APPENDIX B The Protocol – a model process to administer building access

B.1 General comments

Comment	Solution	Agency
Clarification of the Access Panel		
<ul style="list-style-type: none"> • NSW does not currently have any specific body to undertake the proposed functions and responsibilities of an Access Panel, unlike some other jurisdictions. • The decisions of the Access Panel can still be deemed to contravene the DDA under a Court challenge. This uncertainty in the approvals system will potentially lead to fewer developers seeking innovative solutions to premise access issues and rather start to rely upon pursuing the Unjustifiable Hardship pathway to avoid potential challenge. This will undermine the intent of the improved Premises Standards. • Acceptable solutions under the BCA to meet the Premises Standards assessed by the Access Panel that would still be subject to a possible court challenge under the DDA could be problematic. 	<ul style="list-style-type: none"> • Introduce a rigorous 'Accessibility' accreditation system for private certifiers to empower them under NSW building control legislation to undertake assessments as to whether a new or modified building can meet the new access requirements under the Premises Standards. Certifiers who have obtained the appropriate level of accreditation would be able to assess access and either ensures the DTS provisions are met or where necessary undertake an assessment of an alternate solution to meet the Standards. Establishment of an accessibility accreditation framework for private certifiers in NSW would achieve the following: <ul style="list-style-type: none"> • Introduce a significant amount of flexibility and potential innovation into the planning/BCA system by having certifiers that are trained and accredited consider accessibility by undertaking performance based assessments of alternate solutions to meet the standards. This would be in place of only a single panel of experts. • The number of certifiers would ensure that there would be significant resources in the system to meet the demand for new building certification. A single 'access panel of experts' may be an unnecessary new layer of bureaucracy, which could potentially delay the provision of accessible buildings. 	<p>Department of Ageing, Disability and Home Care</p>

Comment	Solution	Agency
Clarification of the Access Panel		
(continued)	<ul style="list-style-type: none"> • Ensure that designers (through consulting their building certifier on BCA compliance) are made aware of the level of access expected for buildings from the Standards. This should broaden the general level of understanding and recognition of the need to integrate access considerations at the outset of the design process. • Bring building accessibility in line with the current framework in NSW for certifiers who, once appropriately accredited, can currently assess alternate solutions for fire safety, Bushfire Planning as well as a range of other BCA considerations. • The activities of accredited certifiers are covered by the NSW Building Professionals Board and subject to the appropriate level of rigorous access accreditation are also able to obtain an enhanced level of professional indemnity for works undertaken by them. 	Department of Ageing, Disability and Home Care

B.2 Specific comments

Comment	Solution	Agency
Articles		
Article 4		
<ul style="list-style-type: none"> • The proposed process would potentially involve considerable legislative and administrative changes and will generate additional costs and the need for additional resources. A detailed cost analysis would be required to ascertain the extent of those resources required to operate the Panel. • New legislation would be required to constitute the Panel in NSW and this could impact on the timely implementation of the Premises Standards. • NSW has previously not supported the mandating of Access Panels and has been of the view that councils/certifiers in conjunction with persons competent in access, should be able to perform the necessary functions of an Access Panel and included as an option to Access Panels. 	<p>The Protocol should provide for a choice in achieving its stated objectives and intended outcomes through either an:</p> <ul style="list-style-type: none"> • Access Panel: or • Appropriately accredited experts in access. <ul style="list-style-type: none"> • The Standards should not commence until each jurisdiction has made any necessary legislative and administrative arrangements to facilitate their commencement. 	Department of Planning

Comment	Solution	Agency
Articles		
Article 5		
<ul style="list-style-type: none"> • It is noted that an Access Panel would make 'recommendations' on access related matters. However, it is unclear whether it is intended for these recommendations to be binding on the 'building certifying authority'. • It appears to be that every 'alternative solution' regarding BCA related access matters that are proposed by a developer to be referred to an Access Panel for assessment, to the exclusion of a certifying authority. • This would appear to create an unnecessary regulatory burden on the development industry and could inhibit the process currently underway in NSW of expediting development and construction approvals. 	<ul style="list-style-type: none"> • Clarify the status of recommendations of the Access Panel (or equivalent) and clarify that the Access Panel (or equivalent) should only make recommendations for the certifying authority to act upon. • It is considered that a certifying authority would be able to determine whether an 'alternative solution' meets the performance standards for access issues in the BCA, as they currently do with every other aspect of the BCA, including life safety issues. Therefore, reconsider the need for an Access Panel to be the only option to perform this function. (Also refer comments above under Article 4). 	Department of Planning
Article 6		
<ul style="list-style-type: none"> • The concept of a Building Upgrade Plan (BUP) that defers or sets aside compliance with the BCA is inconsistent with the building control legislation in NSW which requires compliance with the BCA in terms of new building work (unless formally exempted by the Government). • The BUP concept would need new legislation simply for the access component of the building approval process, which seems an unnecessary regulatory burden. • Additionally, the deferral of compliance with the BCA (which could be the outcome of a BUP) particularly for a substantial period of time, raises issues as to whether monitoring of compliance can be achieved and appropriately resourced. • This concept will generate considerable work for jurisdictions in pursuing and enforcing BUPs that will also require additional and ongoing resources. ■ It is not clear if the costing associated with the BUP process and its ongoing monitoring has been factored into the costing for the proposal. ■ It is not clear whether there is a limit on how long 'interim measures, such as non-building measures' can remain in place before compliance with the BCA is required. 	<ul style="list-style-type: none"> • Clarify the status of 'interim measures' proposed as an alternative to building solutions under the BCA (ie how long they may be permitted as a solution to access issues). • Clarify the limits of a BUP to ensure that other necessary BCA compliance may be assessed and is achieved in an 'affected part' of an existing building during the normal building process (ie it must be quite clear that a BUP is only applicable to access issues within that area). • A uniform national process needs to be developed for the monitoring and enforcing of undertakings made in a BUP and limiting the time periods permitted for non-compliance. • Clarify the intent of any building approval being on the basis of a BUP. • Reconsider the practicality and implications of the BUP concept. 	Department of Planning

Comment	Solution	Agency
Articles		
<ul style="list-style-type: none"> It is not clear that a BUP applies only to access matters or whether there is any overlap with other aspects of new work in an existing building. Additionally, as the general approval process in NSW is not retrospective, the consideration of retrospectivity, as per Article 6, may require separate approvals when requirements are made for the refurbishment of an 'affected part' of an existing building to comply with access standards. A BUP will let a third party set aside aspects of the BCA for an undetermined period of time. This could have a flow on effect that would be undesirable and unintended, on compliance with other BCA provisions applicable to the area. A BUP not approved or consulted on by a council may impact on works that council may require as part of modifications to an existing building. It is noted that once the Access Panel endorses a BUP compliance with the 'building approval process', or any building approval, is to be on the basis of that plan. It is unclear what is intended here. 		Department of Planning
Article 7		
<ul style="list-style-type: none"> Assessment of qualification and experience of Panel Members will generate additional workload and costs for Administrations. Ensuring indemnity of a Panel member as proposed will potentially have legal and legislative consequences. 	<ul style="list-style-type: none"> The Commonwealth needs to consider in more detail the real costs and complexities of implementation of this concept. Providing an option for an accredited access consultant could help to reduce the costs, complexities and timeframes associated with the Access Panel concept. (Also refer comments above under Articles 4 and 5) Clarify how indemnification of individual panel members is to be achieved. 	Department of Planning

APPENDIX C Draft Australian Standards (AS 1428.1 and 1428.4.1)

Reference	Issue	Solution	Agency
AS 1428.1 General requirements for access – new building work			
General	<ul style="list-style-type: none"> The additional requirements will increase costs: <ul style="list-style-type: none"> 90th percentile wheelchair spatial dimensions (Previously 80th percentile). Ramp landings to be 1200mm as previous but 1500mm at direction change. Door widths on an accessway to be not less than 850mm to accommodate A90 wheelchairs. Accessible sanitary facilities to be minimum 1900mm x 2300mm (Increased size from 1600mm x 2000mm) to accommodate A90 wheelchairs. These requirements are achievable in new designs but in many older buildings will be difficult to achieve. Is it feasible to widen all existing doorways in a large campus if modification is required to affected part and path of travel? Threshold ramps are very useful in solving access problems particularly where existing buildings are being upgraded. If the height and gradient of the threshold ramps are reduced, this could reduce their effectiveness as a design solution and could potentially make accessible access harder to achieve and more costly. 	<ul style="list-style-type: none"> Codify exemptions and concessions rather than rely on Unjustifiable Hardship provisions. For threshold ramps to be used in existing buildings, the definition should be left as per the current code. For new buildings the new Standards should apply. 	Department of Commerce

Reference	Issue	Solution	Agency
Increased circulation requirements will increase costs	<ul style="list-style-type: none"> Whilst the draft Australian Standards do not explicitly control room sizes, there will be increased circulation requirements as an outcome of the implementation of the Standard, which may require extra space. For example, where rooms are tightly planned with fixed furniture, ie schools TAFEs and some health facilities, the standard room plan may need to be increased in size. This will cause increased costs every time that room type is included in a project. 	<ul style="list-style-type: none"> The cost estimates should assess these increased requirements. 	Department of Commerce
AS 1428.4.1 Tactile indicators			
Provide specific luminance contrast	<ul style="list-style-type: none"> The requirement for all spaces to be accessible means that the current restricted application of tactile indicators in public buildings will no longer be appropriate. Schools will require tactile indicators at all changes of level, ramps, etc. NSW DET has previously sought exemption from this requirement and is likely to seek exemption from the revised requirements. 	<ul style="list-style-type: none"> The Premises Standards should recognise the current exemptions for educational facilities. 	Department of Commerce

APPENDIX D Disability (Access to Premises – Buildings) Standards Guidelines 2009

D.1 General comments

Issue	Comment	Solution	Agency
Assessment of Unjustifiable Hardship	The Guideline does not adequately address the issue of how Unjustifiable Hardship is intended to be assessed under the Premises Standards and Protocol.	Expand the Guideline to include explanation of the intended process for assessing Unjustifiable Hardship and the nature (advisory or binding) and place of any decision in the building approval process.	Department of Planning
How to assess 'Unjustifiable Hardship' on heritage sites	The consideration of the heritage value of a building in the assessment of Unjustifiable Hardship is not adequately addressed in the Guideline.	The Guideline should be expanded to a discussion about how Unjustifiable Hardship on heritage buildings will be assessed. The explanation should refer to: <ul style="list-style-type: none"> The Burra Charter and the assessment of culturally significant fabric, Conservation Management Plans and Heritage Impact Statements to assist in balancing access needs and the retention of significant heritage fabric; or A separate national guideline on the subject be produced. 	Heritage Branch

D.2 Specific comments

Reference	Comment	Solution	Agency
Part 5 Exceptions and Concessions 5.1 Unjustifiable Hardship (8)	The text has potentially discriminatory practice in suggesting a 'rear' door could be used. The existing text: <i>'While it may be too difficult to provide access to a small heritage listed building through the front door, it may be possible to design easier access for</i>	Reword the text as follows: <i>'While it may be too difficult to provide access to a heritage listed building through the existing or original door, it may be possible to provide or enhance an alternative entrance so that it becomes the principal public entrance for all patrons'.</i> The text needs to be included in Annex 1 of	Heritage Branch

Reference	Comment	Solution	Agency
	<i>all visitors through a rear or side door</i> ’.	the Protocol, where it is repeated.	

APPENDIX E RailCorp submission

E.1 Executive summary

RailCorp is committed to improving access to passenger rail services for all customers in line with the objectives of the *Disability Discrimination Act 1992* (DDA). RailCorp's Easy Access program commenced in 1994 to progressively upgrade access to CityRail stations for the elderly and people with disabilities, luggage and young children.

RailCorp is currently investing \$25M per year in Easy Access upgrades and all new stations and station upgrade works under other programs incorporate easy access outcomes. \$480M has been invested in the Easy Access Program to date, and 115 of the 307 stations in the CityRail network (37 per cent) are wheelchair accessible. A further 20 per cent of stations are wheelchair accessible with the help of a friend or carer. Over 90 per cent of the 97 CountryLink stations are wheelchair accessible but will require further upgrade to become fully compliant. All new and existing CityRail and CountryLink trains are wheelchair accessible with access from the platform to the train via a portable boarding ramp.

The capital investment required for RailCorp to fully comply with the current requirements of the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) is estimated to be in excess of \$4B. The adoption of the Premises Standards in their current form will have further significant financial impact on the NSW railways.

E.1.1 Key issues

RailCorp has significant concerns about the adoption of the Premises Standards and Schedule 1 by the Building Code of Australia (BCA) in their current form. Key issues include:

- Increased obligations and cost for station compliance over and above the current legal requirements of the Transport Standards.
- Lack of recognition of unique industry issues within the Premises Standards, the Access Code and the Administrative Protocol including:
 - Structural, technical, operational and safety constraints in the rail corridor.
 - Risks inherent in the interface between rail premises, infrastructure and trains.
 - The interface of premises with infrastructure, conveyances and information in the provision of access to the rail services for people with disabilities.
- The limited and selective transfer of public transport premises requirements from the Transport Standards to the Premises Standards creates confusion in terms of legal obligation, scope and design compliance for rail premises which is exacerbated by:
 - Need to cross reference between the Transport Standards, Premises Standards, BCA and conflicting Australian Standards for transport premises.
 - Disparity and ambiguity in the definitions and referenced standards between the Transport Standards, the Premises Standards, the Access Code and therefore the BCA.

- Lack of clear precedence of the Transport Standards for premises in the rail corridor within the Premises Standards, Access Code and the Guidelines.
- Current rail exemptions to the Transport Standards will become invalid if the Transport Standards are amended.

E.1.2 Key recommendations

The following key recommendations for rail premises must be addressed prior to the Premises Standards being adopted to ensure regulatory and legal clarity and industry confidence to continue high capital investment in access improvements within the transport sector:

- Maintain the Transport Standards in their current form ie no amendment be made to the Transport Standards.
- Refer to the Transport Standards in the Premises Standards and the BCA, while requiring their substance to be complied with under those codes.
- Establish clear precedence of the Transport Standards for legal and regulatory clarity.
- Ensure that the definitions and scope of obligation for public transport buildings within the Premises Standards exactly reflects the current legal requirements under the Transport Standards.
- Apply the Transport Standards to all new and existing parts of transport premises in the rail corridor and remove the requirement for 'affected part' for these premises.
- Amend the DDA to give legal effect to industry specific codes of practice as alternative compliance mechanisms for accessible premises and infrastructure.
- Amend the Administrative Protocol for implementation of the Transport Standards and Premises Standards within the BCA to:
 - Enable industry specific sub-panels within the Access Panel/Administrative Protocol to assess industry specific performance solutions.
 - Adopt certification categories specific to particular industries as an alternative to the Access Panel.
- Funding to be provided by the federal government through the National Disability Strategy or Infrastructure Australia for the upgrade of access to transport premises and associated infrastructure.

E.2 Disability (Access to Premises – Buildings) Standards 2009

E.2.1 Transfer of Transport Standards to Premises Standards and the BCA increases current access obligations for rail premises in the rail corridor.

Federal commitment

The commitment given to the rail industry by both the Federal Attorney General and the Australian Buildings Codes Board (ABCB) in 2004 was that the transfer of the rail requirements for premises would be done without any increase or decrease in the obligations of the Transport Standards. This commitment is reconfirmed in Part H2 of the draft Premises Standards Guidelines (p.24):

'All Access Code related requirements (ie within the scope of the Premises Standards) have been transferred from the Transport Standards to the Premises Standards without reducing or increasing the current requirements'.

This has not been achieved however, as there are a number of changes, omissions, conflicts and inconsistencies in the drafting of the Premises Standards which will significantly increase the obligations for RailCorp premises over and above the current legislated requirements under the Transport Standards.

As the draft Premises Standards are in conflict with the current legal requirements for transport premises ie the Transport Standards, and also in conflict with the stated intention of the draft Premises Standards Guidelines, changes cannot wait for the five year review of the Premises Standards.

Impact on buildings in the rail corridor

Rail stations have as their principal function the provision of passenger access to the rail service (ie trains). As part of the provision of this service, station premises may also include ancillary areas that are not accessible to passengers eg the booking office and staff amenity areas.

Upgrade of the station entrance and accessible paths as a result of routine maintenance work, minor alterations and changes to staff facilities is not currently required under the Transport Standards. This intention for station accessibility is clearly stated in Part 32.3 (2) of the *Transport Standards Guidelines 2004* which reads:

'It is the particular upgrading, reconstruction or refurbishment that must comply with the Disability Standards and not the infrastructure as a whole. For instance, providers don't have to put in a lift if they are only upgrading their information system or constructing a waiting room'.

The impact of the 'affected part' requirements of 2.5 (5) of the Premises Standards will mean that a simple upgrade of a staff or service area on a railway station which may cost \$200,000 triggers an upgrade of the path from that area to the entry of the station (shared by public and the staff) which is effectively an upgrade of the whole station with an average cost in excess of \$6M.

The access requirements for passengers with mobility impairments, who will benefit from an accessible path and station entrance by way of lifts, are already covered by the Transport Standards and the associated compliance timeframes. RailCorp's current strategic priority for improving station accessibility is based on maximum benefit to passengers, building equitable access within the rail network and addressing safety risks. Limited financial and technical resources will inevitably lead to less effective access outcomes for passengers if station upgrading for accessibility is driven by minor works to ancillary areas and maintenance programs rather than the needs of passengers with disabilities.

The Premises Standards, by defining public transport buildings in terms of passenger use areas; 9b classification and referring in 2.1 (6) to 'whole or part of the building', are forcing a station to be classified in separable parts. This not only appears contradictory to clause H2.1 (4) which precludes classification in separable parts for public transport buildings such as stations, but also triggers a significant and costly increase to the current access obligations for RailCorp premises.

Recommendations

To ensure the same level of obligation under the Premises Standards as currently exists under the Transport Standards, the following changes need to be made prior to adoption of the Premises Standards:

- Part 2.1 (6) – amend to read 'An **existing public transport building** is a building (other than a new building) that an operator/transport provider provides for passenger use as part of a public transport service'.
- Part H2 Note – delete words 'Class 9b'.
- Part H2.1 (1) – amend to read 'The Deemed-to-Satisfy Provisions of this Part apply to public transport buildings used by passengers as part of a public transport service'.
- Part H2.2 (9) – delete 'Class 9b'.

- Part H2.3 (2) – delete ‘Class 9b’.
- Delete para H2.1(4) which apparently prevents the use of multiple classifications under Part H and would allow an ancillary use to be part of the overall classification.
- Change the requirements of Part H of Schedule 1 of the Premises Standards to include other than passenger use areas of transport buildings which are inside the rail corridor.
- Delete the requirement for ‘affected part’ applying to other than passenger use areas of public transport buildings in the rail corridor.

E.2.2 Definitions omitted, ambiguous or not appropriate for premises in the rail corridor

Building

The definition of ‘premises’ in s4 of the DDA is very broad and includes:

- Existing buildings, including heritage buildings.
- Proposed or new buildings.
- Car parks.
- Open air sports venues.
- Footpaths, public gardens and parks.

The Transport Standards (Clause 1.21) defines ‘premises’ as ‘structures, buildings or attached facilities that an operator provides for passenger use as part of a public transport service’.

There is no definition of ‘building’ or ‘premises’ in either Part 1.4 or Schedule 1 of the draft Premises Standards so the scope of inclusion of buildings in both the Premises Standards and the BCA Access Code is unclear.

Public transport building

It is also unclear what constitutes a building in the rail/transport environment for the purposes of these Standards. It is unclear whether associated facilities (covered or uncovered) such as platforms, stairs onto a platform, overhead footbridges, level crossings that form a pathway for passengers to a station and the like are included in the definition of premises for the purposes of the Premises Standards.

Part 2.1 (6) and Part H2 Note and H2.1 (1) refer to the requirements of public transport buildings that are class 9b buildings. Currently all passenger use transport buildings are captured under the Transport Standards regardless of the class of the building. Not all passenger use, rail transport buildings are necessarily classified as 9b buildings under the BCA.

Without changes to recognise in H2 all parts of a public transport building (not just those classed 9b) used by a passenger to access the rail service, a modification such as the replacement of a small platform canopy or resurfacing of a platform will trigger the need to upgrade the station entrance and the accessible path to/from the entrance – effectively a whole station upgrade – as it would be captured under Part D3 [and the effect of part 2.1 (5)] and not Part H2 for public transport buildings.

Existing building

The use of the terms 'new' and 'existing' are not clear in their application to the rail environment. Buildings outside the rail corridor are similar to other buildings in the common domain. However, premises in the rail corridor, whether they be stations for passenger use or otherwise, are subject to the existing constraints of the rail corridor in terms of the feasibility of increasing space for improved accessibility.

These rail constraints include:

- Defined corridor width.
- Adjoining and overhead property, infrastructure and topography.
- Vertical separation is typical between station entrance and platform.
- Linear platform configuration.
- Track configuration, signalling and overhead power lines.
- The interface with trains and train gauge.
- Requirements of other relevant legislation particularly the Rail Safety Act.
- The age of the rail network and the associated heritage value of existing buildings and structures.

Even when existing rail premises are replaced ie effectively built new, the above constraints limit the achievable levels of accessibility. For this reason, the term 'new' should only apply to new rail premises (public use or otherwise) built outside the rail corridor or those built in completely new rail corridors. All premises within existing rail corridors must be considered as 'existing', even when largely rebuilt or replaced.

Rail platform

Railway platforms are included as Infrastructure in the Transport Standards and the proposed amendment to the Transport Standards does not address this issue. Clauses 18.3, 18.4 and 18.5 of the Transport Standards refer specifically to bus stops, rail platforms and ferry wharves as infrastructure, not premises for the purposes of the Transport Standards. Yet platforms are integral to passenger access to the rail service and cannot be considered separately from other station elements in terms of passenger safety or accessibility.

Platforms act to constrain sometimes-large numbers of the public and provide an interface to trains and the public on them. They have similar characteristics to buildings in that regard and share egress paths from any related buildings, whether covered or not. Questions of safety and egress are already covered under the Building Code and should be applied to platforms, bridges and stairs in a similar way to other publicly accessible areas in the Premises Standard.

Accessway

The term 'accessway' is used in the Premises Standards for the first time. It appears a similar term to 'access path' used in the Australian Standards which are referred to in the proposed Part H of the Building Code of Australia, however terminology is inconsistent. There needs to be a clear statement for the definition of an 'accessway' being equivalent to an 'access path' used in the Premises Standards. Consistency of terminology is required to clearly define scope of accessible requirements and to avoid confusion.

Recommendations

- Define 'building' and 'transport building' in terms of the rail corridor and associated infrastructure.
- Define 'existing' rail premises as all transport buildings (new or old, passengers use or otherwise) within an existing rail corridor.

- Clarify status of rail platforms (and other associated structures).
- Align the references and definitions of 'access path', 'accessway' and 'accessible path of travel' to ensure clarity of scope of obligation.

E.2.3 Precedence of the Transport Standards is unclear

The precedence of the Transport Standards and the application of this precedence to all rail premises used by passengers are not clear in the draft Premises Standards. In addition, the use of the definition for existing transport buildings in 2.1 (6) creates confusion as to whether Part H2 applies to new transport buildings. As the Transport Standards currently apply to both new and existing transport premises for passenger use, the assumption is that Part H2 applies to both new and existing public transport buildings. This is supported by the wording in Part H2 which does not limit the application of the part to **existing** public transport buildings. However, the wording of Part 2.1 (1) specifically refers to existing public transport buildings as does Part 2.1 (6).

It needs to be very clear that Part H2 applies to all new and existing public transport premises that function for passenger use as part of a public transport service. This applies to all parts of rail stations where the principal function is to provide passenger access to the rail service (ie trains). These need to be covered by Part H2 even though some parts of the station may include areas that passengers are unable to access (ie staff only facilities like the booking office).

Recommendations

- Delete note in Part H2 stating that the provisions of H2 are 'additional to those contained in Parts D3, E3 and F2' and clarify as necessary.
- Amend D3.0 (a); E3.0 (a) and F3.0 (a) to read 'or' instead of of.
- State clearly that the previous requirements of the Transport Standards take precedence over any issues of content, interpretation, expression or the like.

E.2.4 Technical standards are inconsistent

The duality of differing and separated technical requirements for public transport and non-public transport premises under the Premises Standards creates confusion for rail operators, providers, passengers, designers and architects in two ways:

- Not all clauses relating to premises in the Transport Standards have been brought across to the Premises Standards. For example fixtures and fittings such as seating and booking office counter heights have not been brought across.
- The requirements and referenced standards are different between the Premises Standards and Part H2 for many of the elements that have been brought across.

For example, the Transport Standards deliberately reference AS1428.4 1992 to define the DDA obligation for tactile tiles on rail platforms. The Premises Standards reference the proposed draft AS1428.4.1 which includes tactile configurations for rail platforms which are inappropriate for rail safety, operations and the access of people with mobility impairment in confined spaces near a known hazard.

Not only are there disparate requirements for public transport and non-public transport premises, with the more onerous requirements falling on public transport premises where space available to achieve more generous standards is uniquely limited; but in many cases, the different requirements appear to have no sound basis in relation to fundamental principles of accessibility. It is important that the principles behind the standards are consistent and clear, so that unique constraints can be given consistent interpretation.

This will facilitate clarity and consistency in the design process and will forestall the likely extensive submission of issues for resolution to any administrative body.

Areas of major technical disparity include:

- Access paths.
- Lighting.
- Lifts.
- Signs.
- Hearing augmentation.

Recommendation

The confusion created by the disparity in the referenced standards is best dealt with through co-regulation and recognition of industry specific Codes of Practice for accessible premises. This approach ensures relevant standards are applied to industries such as rail with specific constraints. See 'ABCB Administrative Protocol' in this submission for more detail on this recommendation.

E.2.5 Transport Standards for premises not transferred

This limited and selective transfer of requirements from the Transport Standards and then on to the BCA will present problems in the interpretation of requirements in the public transport context. Those involved in building design for transport will need to look in the BCA, The Premises Standards and The Transport Standards as well as the variously referenced (and sometimes contradictory) Australian Standards in order to fully understand all requirements relevant to a particular building design. There will be a definite cost associated with this related to interpretation, precedence of information and the consequent confusion involved. RailCorp will bear this cost, either in higher fees or in educating designers in what is required. All parties involved in the administrative process will also bear the cost of resolving the issues that will arise due to this duality and lack of clarity of compliance requirements.

A large part of the essential interpretative and technical information contained in the Transport Standards and associated Guidelines has not been transferred to the proposed Premises Standards, and that information which has transferred does not appear in Schedule 1 nor the BCA including:

- Part 1 Transport Standards.
- Clauses 32 and 33 Transport Standards related to Adoption and Compliance.
- Clause 37.7 Transport Standards.
- Part 40 of the Guidelines Assumptions about mobility aids.
- Transport Standards requirements for furniture, fittings, equipment and information provision which are related to Premises and form an integral part of building design.

In addition to the above, there are numerous omissions, editorial issues and minor changes to transferred transport requirements which affect meaning and legal obligations. The impact of these is unclear and needs to be considered.

Recommendations

- Delete note in Part H2 stating that the provisions of H2 are 'additional to those contained in Parts D3, E3 and F2' and clarify as necessary.
- State clearly that the requirements of the Transport Standards 2002 as amended, take precedence over any issues of content, interpretation, expression or the like.
- Locate requirements relevant to public transport building design in a single reference document in order to avoid confusion and the necessity for building designers to reference requirements in multiple locations.
- Refer to the Transport Standards in their entirety in the Premises Standards and the BCA.
- State clearly in the Premises Standards and Part H2 of the BCA Access Code that the whole of the Transport Standards will prevail for any meaning or interpretation related to the BCA.
- Correct changes and omissions in the Premises Standards and BCA to ensure that the obligations for transport buildings are consistent with that required in the Transport Standards.

E.2.6 Inequity of compliance triggers between public transport and non-transport buildings

Both the Transport Standards and the Premises Standards require full compliance for new premises at construction. However, while a strict schedule for compliance applies to existing rail premises, existing non-public transport premises in the draft Premises Standards have triggers for compliance based on approval of new work.

The prescriptive Schedule of Compliance for existing rail premises has transferred from the Transport Standards to Part 3.1(3) of the Premises Standards and is relevant to all material covered by Part H2 of the Premises Standards. This introduces a substantial financial inequity into the Premises Standards with owners of rail premises locked into an upgrade regime not tied to the natural maintenance and refurbishment cycle enjoyed by owners of other types of premises.

The requirement of both the Transport Standards and Part 3.1(3) of the Premises Standards to upgrade every station in the network also represents questionable cost benefit to the community when the total number of passengers using the 60 lowest patronage stations (approximately 20 per cent of stations) equates to less than one per cent of the total patronage on the CityRail network. RailCorp estimates that approximately 50 per cent of the cost of network compliance will be expended to return just five per cent of patronage coverage at the lowest patronage stations.

Recommendation

Remove the compliance timeframes for public transport premises and amend the measure for rail network compliance from full compliance at 100 per cent of stations to reasonable and equitable patronage coverage of accessible stations in the network.

E.3 Access to Premises Guidelines 2009

E.3.1 Precedence of the Transport Standards

The statement in 4.7(3) of the Premises Standards Guidelines is unclear as to the precedence of the Transport Standards. The definitional issues detailed in Section A.2 of this submission are particularly relevant to the interpretations of precedence.

This ambiguity of definition and scope, combined with the fact the Guidelines hold no legal weight, means that the precedence of the Transport Standards is not clearly established.

Recommendation

There needs to be a clear statement of precedence of the Transport Standards within the Premises Standards and the BCA to avoid the confusion created by the disparity and inconsistency of the standards relevant to rail as they are currently drafted.

E.3.2 Scope of access upgrade required under Transport Standards

The Premises Standards and their associated Guidelines do not accurately reflect Part 32.3 (2) of the Transport Standards Guidelines 2004 which reads:

'It is the particular upgrading, reconstruction or refurbishment that must comply with the Disability Standards and not the infrastructure as a whole. For instance, providers don't have to put in a lift if they are only upgrading their information system or constructing a waiting room'.

Recommendations

- Change the requirements of Part H of Schedule 1 of the Premises Standards to include other than passenger use areas of Public Transport Buildings which are inside the rail corridor.
- Delete the requirement for 'affected part' applying to other than passenger use areas of public transport buildings in the rail corridor.
- Include the above statement from the Transport Standards in the Premises Standards and the BCA.

E.3.3 Assumptions and guidelines relevant to public transport

The interpretative information and assumptions stated in the Guidelines to the Transport Standards have not been brought across to the Premises Standards and the Access Code.

Recommendations

- The Guidelines need to be redrafted to reflect the actual inclusions, exclusions and definitions of the Premises Standards (and BCA) in relation to public transport buildings.
- Amend Premises Standards, Access Code and Guidelines to reflect intention of the Transport Standards for rail buildings in the rail corridor.

E.4 Disability Standards for Accessible Public Transport Amendment 2009 (No.)

E.4.1 Current transport exemptions become invalid

In 2007 the Australian Human Rights Commission granted rail operators and providers a range of temporary exemptions from the Transport Standards to recognise the unique safety, operational, technical and space configuration constraints of the rail environment. In the transfer of the various Parts of the Transport Standards to Part H2 of the Premises Standards, the granted temporary exemptions will become invalid. Access to Premises Standards are dealt with under paragraph 31(1)(f), so that transferring rail premises out of the Transport Standards makes them ineligible for exemptions.

This loss of granted exemptions and inability to seek new temporary exemptions will reintroduce uncertainty for the rail industry. The exemptions have improved the disability standards by recognising the confined space and practical limitations of the rail environment. Without these exemptions both the rail industry and rail passengers with a disability face continuing uncertainty as to the access requirements and their responsibilities under the DDA Standards. This will have the effect of significantly increasing the access obligations for rail premises over and above their current status which is contrary to the stated intention of the Guidelines that the transfer does not increase the current requirements for rail premises.

Recommendations

No amendment be made to the Transport Standards for three reasons:

- To ensure that current obligations for public transport building are not increased
- To ensure that the current exemptions to the Transport Standards for rail transport remains valid.
- To adequately address the definitional, technical and regulatory contradictions, inconsistencies and omissions of the current drafting.

E.5 The Administrative Protocol

E.5.1 Access Panel

RailCorp supports the concept of an Access Panel and the accredited certifiers system to assess performance solutions, Building Upgrade Plans and Unjustifiable Hardship considerations within the building approval process. RailCorp also supports the Panel's involvement in assessing approval for the compliance of rail premises with the Transport Standards, Premises Standards and the BCA subject to the concerns outlined below being adequately addressed.

E.5.2 Assessment of rail constraints

Inclusion of rail industry expertise in BCA process

RailCorp is concerned that the Premises Standards and the BCA, in their current proposed form, will not adequately address the significant legal, regulatory and interpretative issues detailed in this submission.

While the Protocol may 'ensure that the application of the Access Code under the *Premises Standards* is consistent with the application of the BCA under building regulation' (p.4 *A Model Process to Administer Building Access for People with a Disability*), how will consistency be achieved with the current legal requirements and referenced standards for public transport premises (the Transport Standards) and the current exemptions granted to recognise specific rail industry constraints in achieving practical accessibility?

Building compliance and access improvements in the rail corridor have unique challenges:

- Over 90 per cent of upgrades and maintenance work undertaken in the rail environment are to existing premises and infrastructure as opposed to new rail stations in new corridors.
- Premises and rail platforms have a strongly linear construction which imposes unavoidable space restrictions; platform edges are a dynamic interface between the pedestrian and vehicular environment and in most cases rail buildings require vertical separation from street level by the track infrastructure.
- Due consideration is essential for rail operational requirements and relevant legislation particularly the *Rail Safety Act*.
- The number of access consultants and certifiers with appropriate expertise and experience in the rail industry is extremely limited.

To ensure industry specific performance solutions are achieved, industry specific expertise is required in the BCA approval process for alternative solutions whether by accredited certifier or Panel.

Where a Panel is established as the mechanism to administer this process, industry-specific sub-panels could be incorporated to provide industry-specific subject matter expertise to assess performance solutions in that industry.

In the event that a certification model is adopted, inclusion of certification categories specific to particular industries ensures that relevant expertise is utilised.

This approach is in line with the intent stated in Annex 1 Clause 1.3 that the Panel be broad based and have expertise relevant to the issues. Appropriate indemnification would need to be extended to sub-panel members depending on the governance structure and terms of reference adopted for their inclusion.

E.5.3 Industry codes of practice

Legal recognition for industry specific codes of practice for access to premises would provide the mechanism to align the inconsistencies, contradictions and incompatibilities of the Premises Standards, the BCA and the Transport Standards.

Compliance with an accredited industry specific Code of Practice would be the basis for compliance, by means of an alternative solution, with the BCA performance requirements and consequently compliance with the requirements of the DDA Standards appropriate to that industry.

Application of an accredited industry code of practice to the Administrative Protocol (and potentially other areas covered by the BCA) has numerous, significant benefits:

- The concept is consistent with the regulatory approach of the current and proposed BCA approval process
- Provides one reference document to resolve the disparate requirements of related legislation (for rail, the Transport Standards), the Premises Standards and the BCA Access Code in their application to new and existing buildings.
- Enables a clear means of verification of compliance for buildings with industry-specific constraints and provides industry-specific clarification in terms of the BCA classification and terminology.

- Reduces the potential legal liability of Access Panel members (or accredited certifiers, should that model be adopted) by providing a detailed, industry specific reference document.
- Provides a nationally consistent approach to performance solutions aligned to the objectives of both the Premises and Transport Standards in the industry specific environment.
- Provides clear and practical guidelines for performance solutions in environments with unique constraints, be they operational, safety, structural, legislative or technical in nature.
- Removes the inherent inefficiency of 'reinventing the wheel' for rail performance based access solutions.
- Provides an authoritative, well-researched and broadly accepted reference document to minimise repetitive or detailed deliberations in any administrative process.
- Reduces the administrative workload and level of interpretative expertise required and thus enables cost savings to be accrued from regulatory and administrative efficiency and timely provision of advice on alternative industry specific solutions and building upgrade plans.
- Overcomes specific limitations inherent in the BCA related to the interpretation of requirements related to some building types, more effectively facilitating BCA objectives and specific industry objectives.
- Allows codification of current industry practice and translation of the inherent requirements and concepts of other relevant legislation (eg the Rail Safety Act in the rail industry).
- One document includes all of the elements to be considered in provision of access to a service for people with a disability. In rail, these include the interface between station entrances, buildings, platforms, other infrastructure such as footbridges and stairs, the train-platform interface, the train or tram and the track.
- Provides clarification and certainty about relevant Guidelines provided in the Premises and Transport Standards.

Recommendations

- Industry sub-panels be enabled within the Administrative Protocol to assess performance solutions where there are industry specific constraints.
- The DDA be amended to give legal effect to industry specific codes of practice as compliance mechanisms.
- Industry specific codes of practice to be enabled within the Administrative Protocol to inform access to premises solutions in industries with specific constraints.

E.6 Draft Australian Standards

E.6.1 Accessibility requirements are not consistent between Standards

There appears to be little consistency or reasoned basis in the application of the fundamental principles of accessibility within the referenced draft Australian Standards across premises. The following examples of inconsistency are provided for rail applications:

Access path width

Transport Standards require an accessible path of 1200mm, whereas the Premises Standards require an accessible path of 1000mm, but with a number of associated requirements.

Frequency of landings on ramps

Frequency of landings on ramps at 1:14 are required to be every 6m by the Transport Standards but every 9m by the Premises Standards.

Size of turning and manoeuvring space including size of wheelchairs

The 80th percentile wheelchair is generally required in the Transport Standards, but the 90th percentile wheelchair is used in the Premises Standards. This means circulation space where turns must take place, each side of doors and space in accessible showers and the like is considerably greater.

Space to cross passages at the top and bottom of stairs and ramps

No requirement in the Transport Standards but additional space of up to 900mm is required in the Premises Standards.

E.6.2 Draft Australian Standards are not appropriate for the rail environment

Many of the requirements in the draft Australian Standards do not consider the structural, technical, operational and safety constraints of the rail environment. Rail examples include:

Tactile tiles

The configuration for rail platforms in AS1428.4.1 form a barrier to people with mobility impairment in confined spaces and pose a safety risk for all passengers including the person with vision impairment.

Hearing augmentation

Provision of functionally effective hearing augmentation is technically difficult to achieve in the rail environment – visual information displays provide an equivalent form of access for people with hearing impairment.

Recommendations

Prior to the adoption of the draft Australian Standards:

- A separate public review and consultation process to be undertaken in relation to the content of the draft Australian Standards.
- Industry expertise be sought to amend the Standards to ensure that requirements realistically reflect specific industry constraints.

APPENDIX F Budget impacts

F.1 Budget implications

The following preliminary indicative cost estimations have been supplied by some of the most significantly affected NSW Government agencies to illustrate the potential cost implications of the proposed standard **above** existing disability access capital expenditure already included in the agencies capital program. The costs are based on the agencies' Total Asset Management Plans and used the cost escalations in the Regulation Impact Statement. Estimates are in nominal dollars.

The costs in the table are only additional capital expenditure and do not include impacts on revenue received and life cycle and flow-on costs (both capital and recurrent).

Table 1 Additional costs of implementing the draft Premises Standards for buildings undergoing modifications

Department/agency	2009–10 to 2012–13*	2009–10 to 2019–20*	Comments
Department of Corrective Services	5,214	12,807	Heritage buildings were excluded from the cost estimates
Department of Education and Training	187,280	560,937	Based on costs of current integration program applied to schools requiring upgrades and the Education Disability Standards for Education (2005) no longer applying. The current integration program is based on modifying school premises for prospective and attending students with disabilities. It is estimated the outstanding liability for all DET sites to comply with the Disability Standards, could be a great as \$3billion.
Department of Health	40,455	121,169	Data for the ten-year period is based on extrapolation of 2009-10 to 2012-13 data.
RailCorp	1,601,000	3,029,000	Based on the Disability Standards for Accessible Public Transport Amendment 2009 no longer applying. Average cost per City Rail station of \$5 to \$9 million per station. Average estimated cost per country Link Station is \$2 million.

*Amounts in 000s

Table 2 Additional costs of implementing the draft Premises Standards for new buildings

Department/Agency	2009–10 to 2012–13*	2009–10 to 2019–20*	Comments
Department of Corrective Services	23,010	70,443	Based on current 600-bed Correctional Centre, assuming continued inmate growth at average of 300 per year requiring new facility every two years.
Department of Education and Training	160,000	400,000	Based on costs of current integration program applied to schools requiring upgrades and the Education Disability Standards for Education (2005) no longer applying. The current integration program is based on modifying school premises for prospective and attending students with disabilities.
Department of Health	2,096	35,086	Health has advised that many of the access requirements in new Health buildings are complied if not exceeded but there are costs due to some of the additional requirements eg increasing to 90 th percentile.
RailCorp	n/a	n/a	Rail Corp's premises/stations are existing, not new.

*Amounts in 000s

F.2 Regulation Impact Statement

Given the relatively short timeframe to respond to the proposed Standards, the NSW Government has not had time to fully review the Regulation Impact Statement (RIS) and its underlying assumptions. The NSW Government was not provided with the detailed cash analysis underlying the options and is therefore not able to comment on this area. However, the NSW Government would be happy to provide further comments if these are supplied.

Further it is noted that the RIS suggests it was prepared in line with the COAG *Best Practice Regulation Guidelines (October 2007)* if this has not already occurred. The NSW Government recommends that the draft RIS be submitted to the Office of Best Practice Regulation (OBPR) for review and advice. Additionally, the NSW Government State Plan commits the Government to cutting red tape and reducing unnecessary administrative burdens and costs to business, government and to the community. Any regulatory measures implemented by the NSW Government must bear this in mind.

Methodological issues

There are concerns about the methodology used in this study. It would appear that the costs of the proposed Premises Standards have been significantly understated and the benefits overstated. The main concerns are discussed under Chapter 3 of the submission. Other issues of concern are:

Cost estimation

- The cost impact will vary significantly depending on the age and location of the facility, which is not considered in the RIS. For example site topography will have a significant impact on the ability to comply with the revised access requirements.

- The partial upgrade study does not include theatres etc, which have particular issues to address. Therefore it is likely that the projected costs are significantly underestimated when applied to major performance venues and is based on an assumption that compliant solutions can be found. This is particularly the case where refurbishment might trigger significant extra work, in performance spaces and buildings that are heavily constrained by heritage and conservation requirements.
- The cost due to a loss of usable space has been underestimated with respect to wheelchair spaces. For example, in a venue seating 544, there would be a net loss of 39 seats to accommodate 11 new wheelchair spaces. This is a net loss of 7.2 per cent. The estimated revenue loss would be in the region of \$25,000 per week (based on 39 seats at \$80 x eight shows per week) whenever all 11 wheelchair spaces were used.
- The section (Clause 7.4.3) that relates to limitations on use of ramps and lifting devices could leave the only possible solution being vertical platform lifts. In existing buildings that are structurally constrained, these additional constraints will narrow the options to a single choice that may not be possible in many parts of the building from a structural and/or heritage perspective.

Benefit estimation

- As noted in the RIS, the nexus between the benefits of the proposal and improved access cannot be proven.
- The quantitative extensions to access requirement outlined in the RIS are not based on an assessment of requirements for those with disabilities or other objective measures. For example, the proposed ratio of accessible (wide bay) spaces substantially exceeds the proportion of users of wide bay spaces. Costs are therefore significantly increased without a commensurate increase in benefits.
- Most wheelchairs are accommodated under the 80th percentile. The benefit of adopting commercial buildings to this standard is not demonstrated.
- The RIS claims that 0.5 per cent of the population currently use wheelchairs. It uses this number to calculate the probability of an individual requiring an accessible environment at some stage of their lives. Yet some of this proportion would include people who are not able to travel far, such as those over 65 years old in nursing homes. Regardless, the proposed proportion of wheelchair spaces in theatres (1–2 per cent) and parking spaces exceeds the estimated proportion (0.5 per cent) by a considerable margin.
- The Willingness to Pay is then used to provide a second perspective on potential benefits. However, there are significant concerns with the Willingness to Pay methodology because of the reliance on one study and arbitrary changes to this study's estimates, as follows:
 - The work of Dr Jack Frisch is used extensively as the basis of the methodology (page 52). Yet it is not clear why this is the case. Is it the only study and methodology of its kind? This would be unlikely. What other methodologies are available?
 - The RIS methodology reduced the contribution of building access issues to the incremental cost of living from 50 per cent of the total to 25 per cent (page 53). Yet it does not offer any supporting evidence of why this should be and appears to be arbitrary adjustment. This is supported by a footnote on page 54, which notes this is an imprecise estimate.
 - The Willingness of Pay using the Frisch methodology assumes that half of the average value of loss experienced due to a disability is estimated at 40 per cent of income. There is no evidence to explain why this estimate was chosen. Nor is there any evidence to explain why an estimate of 20 per cent was chosen as the loss attributable to an inaccessible environment. Again these estimates appear to be arbitrarily chosen.

- Finally the Willingness to Pay methodology does not appear to account for current standards. In effect it appears to be starting from no disability standards. What should be calculated is the additional (if any) willingness to pay between existing standards and the new proposed standards. This would reduce the benefits of the new proposals compared with current estimations, as existing standards (in NSW) are arguably quite high.

Benefit/Cost ratio

It is not clear that the benefit/cost ratio that is used in the RIS to justify the proposed standard should be in fact be greater than one because:

- The RIS uses real discount rates of four per cent and seven per cent with four per cent being the preferred rate. However under the NSW Government Guidelines for Economic Appraisal, a real discount rate of seven per cent is used as the central discount rate to assess the merit of its capital proposals. The Office of Best Practice Regulation also suggests using an annual real discount rate of seven per cent (using sensitivity analysis at three per cent and 11 per cent. The use of four per cent as the preferred rate markedly improves the benefit/cost ratio of the proposed standard. If the seven per cent real discount rate is used the benefit/cost ratio of the proposed standard is 1.05 to 1. Under NSW guidelines implementation of the proposed standard is would be considered to provide marginal benefits at best. The benefit/cost ratio for new buildings only gives a much higher ratio of 2.62 to 1 (at four per cent) and 2.35 to 1 (at seven per cent).
- The RIS assumes an increase in the participation rate of 50 per cent for people with disabilities (p.51). It argues that Frisch's 100 per cent increase is optimistic and so assumes that 50 per cent is more reasonable. There does not appear to be any scientific method of why this was chosen. Rather it is half way between no impact and 100 per cent impact of Frisch. These figures are then subject to a sensitivity test (p.104+). This concludes there is some degree of confidence that their quantified benefit cost analysis is justified. Yet, four out of nine of the sensitivity analyses yield a benefit cost ratio of less than one (p.108) and one is marginally over 1.0. Clearly, there are significant risks of a negative cost-benefit ratio from the adoption of this proposed standard notwithstanding use of their own methodology and data. Better sensitivity analysis, with potential ranges for each element used in calculations would provide confidence in the data.