

Scope of the Premises Standards

Introduction

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

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

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

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

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

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

Class 1a buildings

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

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

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

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

4 Clause A4.1, Access Code.

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

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

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

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

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

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

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

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

11 Australian Network for Universal Housing Design, *Submission 95*, p. 4; see also Victorian Disability Advisory Council, *Submission 80*, p. 6.

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

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

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

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

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

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

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

Committee comment

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

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

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

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

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

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

Class 2 buildings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Use of Class 2 buildings for commercial short stay accommodation

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

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

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

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

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

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

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

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

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

Application of the Disability Discrimination Act to Class 2 buildings

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

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

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

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

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

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

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

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

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

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

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

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

Committee comment

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

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

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

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

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

Recommendation 2

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

Class 1b buildings

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

65 Clause A4.1, Access Code.

66 Table D3.1, Access Code.

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

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

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

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

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

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

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

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

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

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

3.45 The Australian Human Rights Commission submitted that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

disabilities should not be excluded from utilising more than half of those facilities.⁷⁹

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee comment

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

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

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

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

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

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

Recommendation 3

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

Fitout and premises other than buildings

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

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

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

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

on them by the Disability Discrimination Act if they are publicly available.⁹¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee comment

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

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

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

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

Recommendation 4

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

Existing buildings

Trigger for accessibility requirements in existing buildings

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

⁹⁸ See paragraph 2.1(1)(b), Premises Standards.

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

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

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

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

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

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

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

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

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

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

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

Committee comment

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

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

Should different requirements be imposed on new and existing buildings?

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

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

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

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

109 Regulation Impact Statement 2008, p. 110.

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

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

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

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

Committee comment

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

Maintenance and management of buildings after construction

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

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

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

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

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

3.85 A number of submitters argued that building managers do not always maintain facilities in a usable state, and that the Premises Standards should impose obligations for maintenance on building owners.¹¹⁶ Maintenance issues which were noted in submissions included:

- use of accessible toilets as storage areas, or permanent locking of facilities;¹¹⁷
- poor maintenance of hearing loops;¹¹⁸
- inadequate policing of accessible car parking spaces;¹¹⁹
- theatres not reserving accessible seating for people with a disability;¹²⁰ and
- objects such as pot plants and rubbish bins obstructing access in lifts.¹²¹

3.86 Submitters to the inquiry told the Committee that it was not enough to ensure that a building provides access at the time of its construction. Requirements for maintenance and management of the facilities are also required.¹²² Mr Placido Belardo told the Committee that many minor modifications over the life of a building might combine to prevent access, and that:

if you are solely focused on the time at which the building permit is issued, without a corresponding check to see whether subsequent issues would be addressed, then you could have a problem.¹²³

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

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

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

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

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

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

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

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

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

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

Committee comment

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

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

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

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

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

128 See Building Code of Australia, section I2.

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

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

Persons with responsibilities under the Standards

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

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

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

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

129 See section 2.2, Premises Standards.

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

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

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

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

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

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

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

Committee comment

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

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

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

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

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

