



Australian Government

Department of Industry and Science

Review of the Disability (Access to Premises – Building) Standards 2010

Discussion Paper

April 2015

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Glossary of Terms

ABCB — Australian Building Codes Board

Access All Areas — The Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the draft Premises Standards, 2009

Access Code — Schedule 1 of the *Disability (Access to Premises – Buildings) Standards 2010*

Affected Part — An *affected part* is:

1. the principal entrance of an existing building that contains a new part; and
2. any part of an existing building, that contains a new part, that is necessary to provide a continuous accessible path of travel from the entrance to the new part.

Alternative Solution — A building solution which complies with the Performance Requirements other than by reason of satisfying the deemed-to-satisfy provisions

AS 1428.1 – 2009 or AS 1428.1 – 2001 — Australian Standard AS 1428.1 – Design for access and mobility, Part 1: General requirements for access – New building work

BCA — Building Code of Australia, Volume One and Two of the National Construction Code

Building Certifier — Is a person who has responsibility for, or control over, the building approval process for a building, for example, private certifiers, building surveyors and local councils

Building Developer — Is a person with responsibility for, or control over, a building's design or construction, for example, property developers, property owners, building designers, builders, project managers and project lessees.

Building Manager — Is a person with responsibility for, or control over, any of the matters in the *Access Code* that apply to the building other than matters about the design and construction of the building, for example, property owners, property lessees, property managers and operational staff.

DDA — *Disability Discrimination Act 1992*

Deemed-to-Satisfy Provisions — Provisions which are deemed to satisfy the Performance Requirements as outlined in the *Access Code*

The Department — The Department of Industry and Science

NCC — *National Construction Code*, which comprise the *Building Code of Australia (BCA)*, Volume One and Two, and the *Plumbing Code of Australia (PCA)* as Volume Three.

New Building — A building is defined as a *new building* if:

1. it is not part of a building; and
2. either:
 - i) an application for approval for its construction is submitted, on or after 1 May 2011, to the competent authority in the State or Territory where the building is located; or
 - ii) all the following apply:
 - a) it is constructed on behalf of the Crown;
 - b) the construction commences on or after 1 May 2011;
 - c) no application for approval for the construction is submitted, before 1 May 2011, to the competent authority in the State and Territory where the building is located.

New Part — A part of a building is a *new part* of the building if it is an extension to the building or a modified part of the building about which:

1. an application for approval for the building work is submitted, on or after 1 May 2011, to the competent authority in the State or Territory where the building is located; or
2. all of the following apply:
 - i) the building work is carried out for or on behalf of the Crown;
 - ii) the building work commences on or after 1 May 2011;
 - iii) no application for approval for the building work is submitted before 1 May 2011, to the competent authority in the State and Territory where the building is located.

SOU or Sole-Occupancy Unit — Sole-occupancy unit means a room or other part of a building for occupation by one or joint owner, lessee, tenant, or other occupier to the exclusion of any other owner, lessee, tenant, or other occupier and includes:

1. a dwelling; or
2. a room or suite of rooms in a Class 3 building which includes sleeping facilities; or
3. a room or suite of associated rooms in a Class 5, 6, 7, 8 or 9 building; or
4. a room or suite of associated rooms in a Class 9c aged care building, which includes sleeping facilities and any area for the exclusive use of a resident.

Specified Class 1b building — Only specified Class 1b buildings are covered by the Premises Standards and are defined as:

1. a new building with 1 or more bedrooms used for rental accommodation; or
2. an existing building with 4 or more bedrooms used for rental accommodation; or
3. a building that comprises 4 or more single dwellings that are:
 - i) on the same allotment; and
 - ii) used for short-term holiday accommodation.

The Inquiry — The inquiry into the draft Premises Standards by the House of Representatives Standing Committee on Legal and Constitutional Affairs

Premises Standards — Refers to the *Disability (Access to Premises – Buildings) Standards 2010*

Transport Standards— *Disability Standards for Accessible Public Transport 2002*

Classification of Buildings and Structures¹

Class 1 — one or more buildings which in association constitute:

- (a) **Class 1a** — a single dwelling being:
 - (i) a detached house; or
 - (ii) one of a group of two or more attached dwellings, each being a building, separated by a *fire-resisting wall*, including a row house, terrace house, town house or villa unit; or
- (b) **Class 1b** —
 - (i) a boarding house, guest house, hostel or the like:
 - (A) with a total area of all floors not exceeding 300 m² measured over the enclosing wall of the Class 1b; and
 - (B) in which not more than 12 persons would ordinarily be resident;or
 - (ii) 4 or more single dwellings located on one allotment and used for short-term holiday accommodation; which are not located above or below another dwelling or another Class of building other than a *private garage*.

Class 2 — a building containing 2 or more *sole-occupancy units*, each being a separate dwelling.

Class 3 — a residential building, other than a building of Class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including:

- (a) a boarding-house, guest house, hostel, lodging-house or backpackers accommodation; or
- (b) a residential part of an hotel or motel; or
- (c) a residential part of a *school*; or
- (d) accommodation for the aged, children or people with disability; or
- (e) a residential part of a *health-care building* which accommodates members of staff; or
- (f) a residential part of a detention centre.

Class 4 — a dwelling in a building that is Class 5, 6, 7, 8 or 9 if it is the only dwelling in the building.

Class 5 — an office building used for professional or commercial purposes, excluding buildings of Class 6, 7, 8 or 9.

Class 6 — a shop or other building for the sale of goods by retail or the supply of services direct to the public, including:

- (a) an eating room, cafe, restaurant, milk or soft-drink bar; or
- (b) a dining room, bar area that is not an *assembly building*, shop or kiosk part of a hotel or motel; or
- (c) a hairdresser's or barber's shop, public laundry, or undertaker's establishment; or
- (d) market or sale room, showroom, or service station.

Class 7 — a building which is:

- (a) **Class 7a** — a *carpark*; or
- (b) **Class 7b** — for storage, or display of goods or produce for sale by wholesale.

Class 8 — a laboratory, or a building in which a handicraft or process for the production, assembling, altering, repairing, packing, finishing, or cleaning of goods or produce is carried on for trade, sale, or gain.

Class 9 — a building of a public nature:

- (a) **Class 9a** — a *health-care building*; including those parts of the building set aside as a laboratory; or
- (b) **Class 9b** — an *assembly building*, including a trade workshop, laboratory or the like in a primary or secondary *school*, but excluding any other parts of the building that are of another Class; or
- (c) **Class 9c** — an *aged care building*.

Class 10 — a non-habitable building or structure:

- (a) **Class 10a** — a non-habitable building being a *private garage*, carport, shed, or the like; or
- (b) **Class 10b** — a structure being a fence, mast, antenna, retaining or free-standing wall, *swimming pool*, or the like.

1 About The Review

The *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards) came into effect on 1 May 2011. The Standards aim to provide people with disability with equitable and dignified access to public buildings and provide certainty to industry that they are complying with the *Disability Discrimination Act 1992* (DDA).

As stated in the Premises Standards², every five years the Minister for Industry and Science, in consultation with the Attorney-General, must review the effectiveness of the Standards in achieving their objectives and identify any necessary amendments. The Terms of Reference for the review (Section 2) are based on these requirements.

The review must start before 1 May 2015 and be completed by 1 May 2016.

The Department of Industry and Science is undertaking the review in consultation with the Attorney-General's Department.

Information about this review is provided on the [Department of Industry and Science's website](#) and the [Attorney-General's Departmental website](#).

1.2 About this Paper

The aim of this discussion paper is to provide interested people and organisations with information on the scope of the review, important dates, how to get involved in the review, and to outline key issues for discussion.

2 Terms of Reference

As required by Part 6 – Review of the *Disability (Access to Premises – Buildings) Standards 2010*, this review will³:

- consider the effectiveness of the Premises Standards in achieving their objectives^a including whether the Standards have:
 - provided people with disability with dignified, equitable, cost effective and reasonably achievable access to public buildings, and facilities and services within buildings that they have a right to enter, and
 - given greater certainty for the building industry that access to buildings is not unlawful under the DDA; and
- identify any necessary amendments to the Standards.

The review will also consider:

- the interaction between the Premises Standards and existing regulatory schemes for building control operating in state and territory jurisdictions; and
- inconsistencies in the interpretation and application of the Standards.

^a referred to as 'Objects' in the *Disability (Access to Premises – Buildings) Standards 2010*

Also, the review will examine progress with the implementation of the Australian Government’s response to the House of Representatives Standing Committee on Legal and Constitutional Affairs’ 2009 report entitled, [Access All Areas](#). In doing so, the review will include, but not be limited to, a consideration of the following issues: the small building exemption, the lessee concession, 80th and 90th percentile wheelchair dimensions, locking off lifts, accessible sanitary facilities, swimming pools, accessible parking, accessible room requirements in accommodation buildings, wayfinding, emergency egress, and public transport buildings.

2.1 Assessing Effectiveness

To assess the effectiveness of the Premises Standards, the review will examine:

1. the alignment of the *National Construction Code (NCC)* access provisions with Schedule 1 (*Access Code*) of the Premises Standards;
2. the impact of any inconsistencies between the state and territory building laws and regulations and the provisions of the Standards that are not contained in the NCC;
3. any unintended consequences in the application and interpretation of the Standards; and
4. any barriers, to the participation of people with disability, in accessing new and upgraded public buildings in Australia since 1 May 2011.

3 Review Timetable

Table 1: The Review timetable outlining important dates for the review

Date	Action
Friday 17 April 2015	Call for submissions
Monday 27 April 2015	Commencement of a series of public information sessions
Monday 15 June 2015	Closing date for written submissions
1 May 2016	Review completed

4 Making a Submission

The Department invites responses within the terms of reference for the review. Key questions are provided in this paper, and are replicated in the online submission form, to assist those making a submission.

Your submission must reach the Department by **11.59 PM AEST on Monday 15 June 2015**.

Responses to the discussion paper may be submitted:

1. online, through [the Department’s consultation hub](#);
2. by downloading a form to fill-in (available on [the Department’s consultation hub](#)) and
 - i) emailing to PremisesStandardsReview@industry.gov.au; or
 - ii) posting to Premises Standards Review Team, Sectoral Growth Policy Division, Department of Industry and Science, GPO Box 9839, CANBERRA ACT 2601

The Department prefers submissions to be submitted online through the consultation hub.

Submissions do not need to respond to every question and space is provided for additional comments. Attachments, providing supporting evidence, may also be included.

If you would prefer to make an oral submission, you may do so through the Department's consultation hub or by email. Please ensure the sound file is an MP3 file.

Unless you request for your submission to be treated confidentially, it will be publicly available on the [Department's consultation hub](#) following the close of submissions. Submissions will be published with names of authors. Other personal details from the online submission form, or downloaded form, will be removed.

5 Public Information Sessions

The Department will be holding a series of information sessions on the review in each state and territory commencing 27 April 2015. All interested parties can attend these sessions. However, as the sessions will be limited to providing information on the review process and how to lodge a submission, there will not be an opportunity to accept verbal submissions at that time.

Further information about the date, location and time of the information sessions is available on the [Premises Standards Review web page](#). Attendees are requested to register their interest on the [review's web page](#) as all venues have limited capacity.

6 About the Standards

The objectives of *Disability (Access to Premises – Buildings) Standards 2010* are to⁴:

- ensure that dignified, equitable, cost-effective and reasonably achievable access to buildings, and facilities and services within buildings, is provided for people with disability; and
- to give certainty to *building certifiers, building developers* and *building managers* that, if access to buildings is providing in accordance with these Standards, the provision of that access, to the extent covered by these Standards, will not be unlawful under the *Disability Discrimination Act 1992* (DDA).

The Standards comprise 6 parts and Schedule 1 – Access Code for Buildings (*Access Code*). Table 2 provides a description of some of the inclusions in different parts of the Standards.

Table 2: Description of some of the inclusions in parts of the Premises Standards

Part of the Premises Standards	Description
Parts 1 to 4	<ul style="list-style-type: none"> • The type or class of buildings to which the Premises Standards apply • the parts of the buildings to which they apply • some concessions (for example, for existing passenger lifts, existing accessible unisex toilets, lessees and existing buildings covered by the '<i>specified Class 1b</i>' definition) • sets out factors for determining unjustifiable hardship
Part 5	Exemptions that the Australian Human Rights Commission may grant with some or all of the requirements in Part H2 of the <i>Access Code</i> (public transport buildings).
Part 6	Details on the reviews of the Premises Standards
Schedule 1 – Access Code for Buildings	<p>Details of the Performance Requirements and optional <i>deemed-to-satisfy provisions</i> that a <i>building certifier/manager/developer</i> must comply with to satisfy the non-discrimination parts of the DDA. The Premises Standards do not codify all requirements of the DDA in relation to access of premises.</p> <p>The provisions in Schedule 1 are contained in the <i>National Construction Code</i>.</p>

The *Access Code* of the Premises Standard is replicated in the [National Construction Code](#) (NCC) which is enforced through state and territory building laws and regulations. It is also unlawful under the DDA to contravene the Premises Standards⁵. Enforcement of the Premises Standards is through the existing DDA complaints mechanism. The Australian Human Rights Commission has the power to investigate and conciliate complaints of unlawful discrimination on the grounds of disability.

Parts 1 to 4 of the Premises Standards have a number of important provisions (as outlined in Table 2) that are not covered in the NCC because they fall within the purpose of the state and territory building laws and regulations. With the introduction of the Standards, each state and territory jurisdiction made their own decisions on how these provisions would be incorporated into their building laws and regulations.

The Premises Standards are available on line at the [ComLaw website](#).

The Australian Human Rights Commission has published a guideline to assist the building industry, and those with an interest in access, to understand how the Premises Standards apply to buildings. Entitled '*Guideline on the application of the Premises Standards, version 2 – 2013*', it provides a practical understanding of the Premises Standards, but it has no legal standing and is not a substitute for the Standards. The guideline is available on the [Commission's website](#).

6.1 Application of the Premises Standards

Since 1 May 2011, when the Premises Standards came into effect, the Standards have applied to new buildings (*new building*) and new parts of buildings (*new part*), where building work to be undertaken requires building or construction approval^{6,7}. The Premises Standards also apply to any *affected part* of a building with a *new part* (for example, the principal pedestrian entrance of an existing building).

As a consequence, the Standards **do not** apply to buildings built prior to 1 May 2011 unless the building has undergone additional building work which has required building approval.

The Premises Standards apply to people who have responsibility for, or control over:

- the building approval process – a *building certifier*;
- the design or construction of a building – a *building developer*; and
- any matters in the *Access Code* that apply to the building other than matters about the design and construction of the building – a *building manager*.

If a building complies with the Premises Standards, those responsible for the building (*building certifier, building developer, building manager*) cannot be subject to a successful complaint of unlawful discrimination under the DDA, in relation to matters covered by the Premises Standards⁸.

The Premises Standards **do not** apply to a number of access-related matters including:

- buildings which existed before the Premises Standards came into force, or where an application for building/construction approval was sought before the Premises Standards came into force, and have not undergone any building work since that has required a building approval;
- private residential dwellings (Class 1a buildings);
- some short-term holiday accommodation buildings such as those bed and breakfast facilities or holiday cabins (Class 1b) that are specifically excluded from the Premises Standards (*specified Class 1b building*);
- internal parts of flats or apartments (*sole-occupying units or SOUs*) in Class 2 buildings;
- fit-out of buildings which do not require building approval;
- maintenance of buildings;
- public footpaths, parks, recreation areas, transport conveyances; and
- some wayfinding features (see Section 7.1.1 - Wayfinding).

7 Issues for the Review

The *Access All Areas* report made a number of recommendations regarding specific provisions of the Premises Standards for consideration at the five-year review. These are discussed in the following sections.

7.1 Provisions of the Premises Standards

7.1.1 Requirements for Building Features in the Premises Standards

Access All Areas made several recommendations regarding the requirements for building features in the Premises Standards. These include the accessible room requirements in accommodation buildings, accessible sanitary facilities, 80th and 90th percentile wheelchair dimensions, locking off lifts, swimming pools, accessible parking, public transport buildings, wayfinding, and emergency egress.

Accommodation Buildings

The Premises Standards apply to the following accommodation buildings:

- *specified Class 1b buildings*;
- Class 2 buildings approved on or after 1 May 2011 for construction and used for short-term rent (common areas only); and
- Class 3 buildings.

Specified Class 1b Buildings

Only *specified Class 1b buildings* are covered by the Premises Standards and are defined as:

1. a new building with 1 or more bedrooms used for rental accommodation; or
2. an existing building with 4 or more bedrooms used for rental accommodation; or
3. a building that comprises 4 or more single dwellings that are:
 - i) on the same allotment; and
 - ii) used for short-term holiday accommodation.

Access All Areas recommended the five-year review consider whether:

1. the bedroom/dwelling threshold is appropriate; and
2. there is any evidence that the requirements in the Premises Standards have influenced:
 - i) the construction of new class 1b buildings; or
 - ii) the conversion of existing buildings to Class 1b.

Class 3 Buildings

In Class 3 buildings, which include hotels, motels and hostels, access is required to at least one of each type of room or space for common use by residents. Class 3 buildings are also required to make a specified number of accommodation rooms (*sole-occupancy units* - SOUs) accessible. The precise number depends on the total number of rooms available in the Class 3 building. For example, a hotel with 100 rooms is required to make 5 accessible rooms available whereas a hotel with 300 rooms is required to have 13 accessible rooms.

Access All Areas acknowledged the concerns raised by representatives of the tourism and accommodation industry that the increased room ratio was not required. However, it did note the lack of evidence provided to support this position and, as a consequence, no recommendation was made in relation to the room ratio⁹.

Questions – Accommodation Buildings

1. Is the bedroom/dwelling threshold for *specified Class 1b buildings* appropriate? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Has the bedroom/dwelling threshold had any effect on the construction of new *specified Class 1b buildings* and/or the conversion of existing buildings to *specified Class 1b buildings* since May 2011? *Yes/No – Please explain or Not Applicable / No Comment.*
3. Is the accessible room ratio for Class 3 buildings (for example, hotels and motels) appropriate? *Yes/No – Please explain or Not Applicable / No Comment.*
4. Are there other issues with accommodation buildings you think should be addressed? *Yes/No – Please explain.*

Accessible Sanitary Facilities

The Premises Standards state that suitable sanitary facilities for personal hygiene must be provided in a convenient location within, or associated with, a building, to the degree necessary, appropriate to¹⁰:

1. the function or use of the building; and
2. the number and gender of the occupants; and
3. the disability or other particular needs of the occupants.

Access All Areas recommended the requirements for sanitary facilities in Class 5, 6, 7, 8 and 9 buildings be reviewed in the five-year review to determine whether issues have arisen with:

1. multiple tenancies on one floor leading to a restriction in access to an accessible sanitary facility to fewer tenants than occupy the floor; or
2. the distance between accessible sanitary facilities.

Currently, accessible unisex toilets are required to contain a closet pan, washbasin, shelf or bench top, and adequate means of disposal of sanitary towels. In addition, the circulation spaces, fixtures and fittings of all accessible sanitary facilities must comply with *AS 1428.1-2009 Design for access and mobility: General requirements for access – New building work*. Neither the Premises Standards nor *AS 1428.1-2009* include a requirement for other accessible features such as a hoist system or adjustable change tables, which may be used by people with complex disabilities.

Whilst the call for additional accessible features in sanitary facilities was noted in *Access All Areas*, it did not become a recommendation of the report.

Questions – Accessible Sanitary facilities

1. Have any issues arisen with multiple tenancies on one floor restricting access to accessible sanitary facilities? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Have any issues arisen with the distance between accessible sanitary facilities? *Yes/No – Please explain or Not Applicable / No Comment.*
3. Have there been any issues satisfying the requirements for accessible sanitary facilities? *Yes/No – Please explain or Not Applicable / No Comment.*
4. Are there other issues with accessible sanitary facilities you think should be addressed? *Yes/No – Please explain.*

80th and 90th Percentile Wheelchair Dimensions

The Premises Standards adopt a mix of 80th and 90th percentile wheelchair dimensions for passageways and other building features. The 80th and 90th percentile dimensions refer to the dimensions of building features required to allow the adequate manoeuvring of 80 per cent or 90 per cent of wheelchairs.

90th percentile dimensions are required at turns greater than 60 degrees, accessible sanitary facilities, and at doors and doorway circulation spaces; otherwise 80th percentile dimension apply. The 80th and 90th percentile dimensions are specified in *AS 1428.1-2009*.

Concerns were raised during the *Access All Areas* inquiry on the relevance of the current 80th and 90th percentile dimensions which were based on research undertaken in 1983^{11,12,13}.

Access All Areas recommended that the Australian Government provide funding for new research within 12 months of *Access All Areas* release, to determine the sizes of wheelchairs and the dimensions of building features necessary to accommodate them. In its response to this recommendation, the Australian Government saw merit in such a study but considered that this should be undertaken once the Standards had been operation for two years so that developments to that time could be taken into account¹⁴.

In keeping with its response, the Australian Government funded research into wheelchair spatial dimensions which was completed in February 2015. The research found that the majority of spatial requirements in the Premises Standards and referenced Australian Standards remain appropriate.

A copy of the research report is available through [ABCB's website](#).

Questions – 80th and 90th Percentile Wheelchair Dimensions

- A. Do you have comments you would like to make regarding dimensions of building features in the Premises Standards? *Yes/No – Please explain.*

Passenger Lifts

Some types of passenger lifts, most particularly unenclosed lifts, must be locked off and/or controlled by constant pressure devices¹⁵. These restrictions mean they cannot be used independently by a person with disability without a key, or in some cases cannot be used by all people with disability given the need to apply constant pressure to the operational controls. For stairway platform lifts, the Premises Standards state that they can only be used in situations in which they are the only practical accessibility option.

Access All Areas recommended that the Australian Government seek technical advice on whether there is an alternative to locking off some types of lifts. This will be examined as part of the review.

Questions – Passenger Lifts

1. Have you had issues using lifts which are locked off and/or controlled by a constant pressure device? *Yes/No – Please explain.*
2. Is there an alternative option to locking off some types of lifts? *Yes/No – Please explain or Not Applicable / No Comment.*
3. Have there been any issues satisfying the restriction on the installation of stairway platform lifts? *Yes/No – Please explain or Not Applicable / No Comment.*
4. Are there other issues with passenger lifts you think should be addressed? *Yes/No – Please explain.*

Swimming Pools

The Premises Standards describe the requirements for accessibility to and from swimming pools. According to the Premises Standards, access to and from swimming pools is required if¹⁶:

1. the total perimeter of a swimming pool is greater than 40 metres; and
2. the swimming pool is associated with a Class 1b, 2, 3, 5, 6, 7, 8 or 9 building that is required to be accessible; and
3. if the swimming pool is not for the exclusive use of occupants of a Class 1b building or a *sole-occupancy unit* (SOU) in a Class 2 or Class 3 building.

Access All Areas recommended the five-year review consider whether the 40-metre perimeter threshold was exempting too many swimming pools from accessibility requirements¹⁷.

Questions – Swimming Pools

1. Is the 40 metre perimeter threshold appropriate? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Have there been any issues satisfying the requirements for swimming pools? *Yes/No – Please explain or Not Applicable / No Comment.*
3. Are there other issues with the swimming pool provisions you think should be addressed? *Yes/No – Please explain.*

Accessible Carparking

According to the Premises Standards¹⁸, accessible carparking must be provided in:

1. a Class 7a building (i.e. a carpark) required to be accessible; and
2. a carparking area on the same allotment as a building required to be accessible.

However, they need not be provided in a Class 7a building or a carparking area where a parking service is provided, or if direct access to any carparking space is not available to the public. The number of car parking spaces required depends on the class of building.

The Premises Standards do not apply to on-street parking.

Access All Areas recommended the five-year review consider the adequacy of accessible carparking¹⁹.

Questions – Accessible Carparking

1. Has the availability of accessible carparking for people with disability changed with the introduction of the Premises Standards in May 2011? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Have there been any issues satisfying the requirements for accessible carparking? *Yes/No – Please explain or Not Applicable / No Comment.*
3. Are there other issues with accessible carparking provisions you think should be addressed? *Yes/No – Please explain.*

Public Transport Buildings

The *Disability Standards for Accessible Public Transport 2002* (Transport Standards) placed accessibility requirements on public transport buildings. To preserve this, aspects of the Transport Standard, within scope of the NCC, were transferred to Part H2 of the Premises Standards²⁰. These *deemed-to-satisfy provisions* are additional to, and take precedence over, those required for Class 9b and Class 10 public transport buildings outlined elsewhere in the Premises Standards.

At present, the Transport Standards and the Premises Standards are not identical in their requirements mainly because the Transport Standards reference older Australian Standards, for example, *AS 1428.1-2001* rather than *AS 1428.1-2009*. These inconsistencies were not deliberate, but were the result of the timing of the two Standards. The Transport Standards were enacted in 2002 with the first review commencing in 2007 prior to the release of *AS 1428.1-2009*. The [second review](#) is currently underway.

In contrast, the Premises Standards passed into law in 2010. Another example of inconsistency is the minimum size of a unisex accessible toilet. In *AS 1428.1-2001*, the accessible toilet is required to measure at least 2.0m x 1.6m whereas the minimum measurements required by *AS 1428.1 2009* are 2.3m x 1.9m.

Access All Areas recommended that the five-year review consider the impact of the Premises Standards on public transport buildings to ensure that inconsistencies have not occurred

through the application of both the Premises Standards and the Transport Standards to such buildings.

Questions – Public Transport Buildings

1. Have there been unintended consequences or inconsistencies in applying both the Premises Standards and the Transport Standards to public transport buildings? *Yes/No – Please explain or Not Applicable.*
2. Are there other issues with public transport buildings you think should be addressed? *Yes/No – Please explain.*

Wayfinding

Wayfinding refers to building features which allow people, including people with disability, to locate where they are within the environment, and independently negotiate around that environment.

The Premises Standards include some wayfinding requirements such as:

- signage to accessible toilets and accessible entrances;
- signage of spaces with hearing augmentation; and
- tactile ground surface indicators to warn of hazards.

Access All Areas recommended the five-year review consider whether any other *deemed-to-satisfy provisions* for wayfinding could be incorporated in the Premises Standards.

Questions - Wayfinding

1. Do the wayfinding provisions in the Premises Standards provide adequate accessibility to buildings and building services for people with disability? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Have there been any issues satisfying the wayfinding requirements in the Premises Standards? *Yes/No – Please explain or Not Applicable / No Comment.*
3. Are there other issues with wayfinding you think should be addressed? *Yes/No – Please explain.*

Emergency Egress

Emergency egress refers to the way a person can exit a building during an emergency. Emergency egress is not specifically dealt with in the Premises Standards. The Premises Standards (Section A2.4) reference the fire safety provisions in the NCC²¹.

Access All Areas recommended the ABCB undertake further research to identify *deemed-to-satisfy provisions* for emergency egress as there were concerns that the current provisions did not appropriately address the needs of people with disability.

Some changes were made to the NCC in 2013 to improve the accessibility of thresholds, handrails, door hardware and Braille and tactile signage for fire-isolated exits. In addition, a non-mandatory Handbook, [‘Lifts Used in Evacuation’](#), and associated new Performance Requirement in the NCC, were introduced.

In 2014, a Consultation Regulatory Impact Statement (RIS) was prepared to evaluate further accessibility measures. Two options were proposed:

- Option 1: Inclusion of five *deemed-to-satisfy* proposals in the NCC.
 - Proposal 1 – visual alarms
 - Proposal 2 – visual and tactile alarms in SOUs
 - Proposal 3 – co-location of fire-isolated exits with lifts
 - Proposal 4 – accessible paths of travel to an exits
 - Proposal 5 – accessibility of fire-isolated exits
- Option 2 – a non-mandatory handbook.

As a consequence of available evidence at the current time, the final RIS released this year supported the development of a non-regulatory handbook where the proposals outlined in Option 1 will be documented for reference and available for use on a case-by-case basis by governments and the building industry. Further information on emergency egress is available on the [ABCB's website](#).

Questions – Emergency Egress

1. Do you have any comments to make regarding emergency egress? *Yes/No – Please explain.*

7.1.2 Exemptions, Concessions and Exceptions

The Premises Standards contain a number of exemptions, concessions and exceptions including the small building exemption, the lessee concession and the unjustifiable hardship exception.

Small Building Exemption

The small building exemption refers to the exemption of Class 5, 6, 7b or 8 buildings with no more than three storeys and each floor (except the entrance floor) no more than 200 m², from requirements for a lift or ramp. As a consequence, the upper floors do not need to provide wheelchair accessible sanitary facilities; however, all other accessibility requirements apply.

The inclusion of a small building exemption in the Premises Standards was justified on the basis of cost. It was considered the cost of providing access to upper floors of small buildings would trigger the unjustifiable hardship provision of the Premises Standards²².

Access All Areas recommended the exemption be reconsidered during the five-year review to determine if an exemption based on cost was still appropriate²³.

Questions – Small Building Exemption

1. Is the small building exemption still appropriate? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Are there other issues with the small building exemption you think should be addressed? *Yes/No – Please explain.*

Lessee Concession

The lessee concession exempts lessees from the requirement to upgrade the path of travel from the entrance of a building to the areas of new work where they are the lessee of only a part of a building.

Access All Areas recommended the five-year review consider whether the lessee concession was being used by building owners to avoid compliance with the Premises Standards²⁴.

Questions – Lessee Concession

1. Is the lessee concession being used appropriately? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Are there other issues with the lessee concession you think should be addressed? *Yes/No – Please explain.*

Unjustifiable Hardship

It is not unlawful to fail to comply with the Premises Standards if, and to the extent that, compliance would impose unjustifiable hardship on a person or organisation. However, compliance is required to the maximum extent possible not involving unjustifiable hardship²⁵.

Only a court can conclusively determine whether or not a defence of unjustifiable hardship is available. But the Premises Standards state that any decision of a state or territory body, such as an Access Panel, established to make recommendations to building approval authorities about building access matters, is a relevant consideration in assessing a claim of unjustifiable hardship²⁶. Access Panels advise, or make recommendations on, whether to accept claims from *building developers* that the full application of the Premises Standards would be too onerous and likely result in unjustifiable hardship. The Premises Standards in Part 4.1 outline the unjustifiable hardship exception including the circumstances that should be taken into account when Access Panels consider whether a case of unjustifiable hardship exists²⁷.

Questions – Unjustifiable Hardship

1. Is the unjustifiable hardship exception operating appropriately? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Are the arrangements for identifying and responding to questions of unjustifiable hardship adequate? *Yes/No – Please explain or Not Applicable / No Comment.*
3. Is the guidance available for people considering cases of unjustifiable hardship consistent and transparent? *Yes/No – Please explain or Not Applicable / No Comment.*
4. Do you have other comments you would like to make on unjustifiable hardship? *Yes/No – Please explain.*

7.2 Interaction of the Premises Standards with State and Territory Regulations

The Premises Standards are designed to:

- clarify the accessibility requirements under the DDA; and
- harmonise the requirements of the NCC and the DDA in relation to access to buildings through incorporation of the *Access Code* in the NCC^b.

In doing so, the *Access Code* sets out the Performance Requirements that a *building certifier/manager/developer* must comply with to satisfy the requirements of the DDA as it relates to buildings.

The incorporation of the *Access Code* in the NCC, formerly referred to as the *Building Code of Australia* (BCA), means compliance with the Premises Standards is achieved principally through the normal building certification process.

The NCC is implemented through the state and territory building laws and regulations. But, as outlined in Section 6 of this paper, there are provisions in Parts 1 to 4 of the Premises Standards that are not in the NCC.

These provisions are administrative matters that are outside the scope of the NCC. Instead, they are handled by the states and territories which have taken different approaches, where necessary, to incorporating them into their building laws and regulations. This provides *building certifiers* with the authority to apply these building access provisions through their local building or construction approval processes.

The review will seek to identify the impact of any inconsistencies between the Parts 1 to 4 of the Premises Standards and the existing state and territory building laws and regulations.

Questions – Interaction of the Premises Standards with State and Territory Regulations

1. Has aligning the provisions in Parts 1 to 4 of the Premises Standards with state and territory building regulations led to any inconsistencies? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Are there any outstanding matters you think need to be addressed? *Yes/No – Please explain or Not Applicable / No Comment.*
3. Do you have other comments you would like to make regarding the interaction of the Premises Standards with state and territory regulations? *Yes/No – Please explain.*

^b In 2014, the BCA was incorporated into the *National Construction Code* (NCC). The BCA comprises Volumes 1 and 2 of the NCC. The *Plumbing Code of Australia* (PCA) comprises Volume 3.

7.3 Inconsistencies in the Interpretation and Application of the Premises Standards

A key factor in the successful implementation of the Premises Standards is in interpreting and applying the standards as was intended. However, this relies on the ability of *building certifiers, managers and developers* to exercise their professional judgement when making decisions on the application of the *deemed-to-satisfy provisions* or whether *alternative solutions* meet the Performance Requirements of the NCC and the Premises Standards.

Decisions made by building professionals in their interpretation and application of the Standards can lead to varying outcomes, both within and across the jurisdictions. There are concerns that some professionals are disinclined to accept *alternative solutions* because of their limited understanding of disability access issues, or a perception that not following the *deemed-to-satisfy provisions* results in increased liability. This reluctance to consider *alternative solutions* has the potential of eliminating the intended flexibility provided by the performance-based nature of the Premises Standards.

As described in Section 7.1.2, if complying with a requirement of the Premises Standards would impose an unreasonable burden then a person may make a claim of unjustifiable hardship. Unjustifiable hardship should only be used where the *deemed-to-satisfy provisions* are considered too difficult and no *alternative solution* is available. It was intended that cases of unjustifiable hardship would be referred to state or territory Access Panels, or similar, for a recommendation or decision.

The review seeks to identify situations where inadequate and/or inconsistent interpretation and application of the Standards may be causing difficulty or concerns within the building industry.

Questions – Inconsistencies in the Interpretation and Application of the Premises Standards

1. Are the Premises Standards easy to understand and use? *Yes/No – Please explain or Not Applicable / No Comment.*
2. Is there sufficient training and professional guidance on the application of the Premises Standards for the building industry? *Yes/No – Please explain or Not Applicable / No Comment.*
 - i. Do you use training and guidance material? *Yes - Please describe the material you use / No - Please Explain.*
3. Is there evidence of any inconsistent or incorrect application of the deemed-to-satisfy provisions in the Premises Standards? *Yes/No – Please explain or Not Applicable / No Comment.*
4. Are the deemed-to-satisfy provisions sufficiently clear for practical application by the building industry? *Yes/No – Please explain or Not Applicable / No Comment.*
5. Are there any impediments to using Alternative Solutions? *Yes/No – Please explain or Not Applicable / No Comment.*
6. Do the unjustifiable hardship provisions have an impact upon building work? *Yes/No – Please explain or Not Applicable / No Comment.*

7. Does the building industry make adequate use of independent expertise to assist in assessing compliance with the Premises Standards? *Yes/No – Please explain or Not Applicable / No Comment.*
8. Do you have other comments on inconsistencies in the interpretation and application of the Premises Standards you would like to make? *Yes/No – Please explain.*

7.4 Other Issues

The Department is also interested to hear from you on any other issues relating to the Premises Standards that have not been discussed in this paper.

Questions

1. Is there anything else you would like to tell us about the Premises Standards? *Yes/No – Please explain.*

8.0 What Happens to Submissions

You will receive an email acknowledgement on reception of your submission. If you lodged your submission online, you will receive a link to a copy of your submission and a unique ID for any future reference.

After the public submission period, the Department will prepare a report for consideration by the Minister for Industry and Science and the Attorney-General by 1 May 2016.

If you have any queries regarding the review, including any issues with accessibility, please contact the Premises Standard Review team by email at PremisesStandardsReview@industry.gov.au; or by telephone on 02 6102 9636.

Key Links

Department of Industry and Science's Premises Standards Review webpage

www.industry.gov.au/PremisesStandardsReview

Department of Industry and Science's Consultation Hub

<https://consult.industry.gov.au/>

Attorney-General's Department

<http://www.ag.gov.au/RightsAndProtections/HumanRights/DisabilityStandards/Pages/Disabilitystandardsforpremises.aspx>

Disability (Access to Premises – Buildings) Standards 2010 Legislation

<http://www.comlaw.gov.au/Series/F2010L00668>

Access All Areas 2009 Inquiry

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=laca/disabilitystandards/report.htm

Guideline on the Application of the Premises Standards Version 2, February 2013, Australian Human Rights Commission

<http://www.humanrights.gov.au/sites/default/files/document/page/PremisesStandardsGuidelineV2.pdf>

Australian Building Codes Board

<http://www.abcb.gov.au/work-program/access-for-people-with-a-disability.aspx>

National Construction Code 2015

<http://services.abcb.gov.au/NCCOnline/>

Review of the Disability Standards for Accessible Public Transport, Department of Infrastructure and Regional Development

<http://www.infrastructure.gov.au/transport/disabilities/review/2012.aspx>

Lifts Used in Evacuation – non-mandatory handbook, Australian Building Codes Board

<http://www.abcb.gov.au/education-events-resources/publications/abcb-handbooks.aspx>

Emergency Egress – Australian Building Codes Board

<http://www.abcb.gov.au/en/work-program/Emergency%20Egress%20for%20All%20Occupants.aspx>

Wheelchair Spatial Dimensions Research Report

<http://www.abcb.gov.au/work-program/access-for-people-with-a-disability.aspx>

References

- ¹ *Disability (Access to Premises – Buildings) Standards 2010*, Part A4.1 Building classifications, pp. 24-25
- ² *Disability (Access to Premises – Buildings) Standards 2010*, Part 6 Review, p. 16
- ³ *Disability (Access to Premises – Buildings) Standards 2010*, Part 6 Review, p. 16
- ⁴ *Disability (Access to Premises – Buildings) Standards 2010*, Part 1 Preliminary, p. 3
- ⁵ *Disability Discrimination Act 1992*, Section 32, p. 30
- ⁶ *Disability (Access to Premises – Buildings) Standards 2010*, Section 2.1 Buildings to which Standards apply, p. 5
- ⁷ *Disability (Access to Premises – Buildings) Standards 2010*, Part 6, Review, pp. 17-51
- ⁸ Guideline on the Application of the Premises Standards, Version 2, Australian Human Rights Commission, February 2013, p.6
- ⁹ Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives' Standing Committee on Legal and Constitutional Affairs, 2009, pp. 96-99
- ¹⁰ *Disability (Access to Premises – Buildings) Standard 2010*, Part F2.1 Sanitary and other facilities, p.48
- ¹¹ Bails, J.H. (1983). Project report on the field testing of the Australian standard 1428-1977 part 1—Recommended amendments and index to part 2 detailed reports. Adelaide South Australia, Public Buildings Department.
- ¹² Bails, J.H. (1983). Project report on the field testing of the Australian standard 1428-1977 part 2—Details of field testing of AS1428. Adelaide South Australia, Public Buildings Department.
- ¹³ Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives' Standing Committee on Legal and Constitutional Affairs, 2009, pp. 80-87
- ¹⁴ Government Response to Access All Areas, 2009, p.6
- ¹⁵ Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives' Standing Committee on Legal and Constitutional Affairs, 2009, pp. 92-5
- ¹⁶ *Disability (Access to Premises – Buildings) Standard 2010*, Table D3.1, pp. 28-31
- ¹⁷ Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives' Standing Committee on Legal and Constitutional Affairs, 2009, pp.99-102
- ¹⁸ *Disability (Access to Premises – Buildings) Standard 2010*, Section D3.5 Accessible carparking, pp.34-35
- ¹⁹ *Disability (Access to Premises – Buildings) Standards 2010*, Part 6 Review, pp. 112-116
- ²⁰ *Disability (Access to Premises – Buildings) Standard 2010*, Part H2 Public transport buildings, p. 51
- ²¹ *Disability (Access to Premises – Buildings) Standard 2010*, Part A2.4 Fire safety, p. 21
- ²² *Disability (Access to Premises – Buildings) Standards 2010*, Part 4, Section 4.1 Unjustifiable hardship, pp. 11-12
- ²³ Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives' Standing Committee on Legal and Constitutional Affairs, 2009, p. 57
- ²⁴ *Disability (Access to Premises – Buildings) Standards 2010*, Part 6 Review, pp.69-71
- ²⁵ *Disability (Access to Premises – Buildings) Standard 2010*, Part 4.1 Unjustifiable hardship, p.11
- ²⁶ *Disability (Access to Premises – Buildings) Standards 2010*, Section 4.1 (3)(p) Unjustifiable hardship, p. 12
- ²⁷ *Disability (Access to Premises – Buildings) Standards 2010*, Part 4, Section 4.1 Unjustifiable hardship, pp. 11-12