



**Australian Government**  
**Department of Industry,  
Innovation and Science**

# **Review of the Disability (Access to Premises – Buildings) Standards 2010**

First Review

April 2016

[www.industry.gov.au/PremisesStandardsReview](http://www.industry.gov.au/PremisesStandardsReview)

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## Executive Summary

The effectiveness of the *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards) in achieving their objectives must be reviewed every five years by the Minister for Industry, Innovation and Science and the Attorney-General. The first review of the Premises Standards was undertaken in 2015 by the Department of Industry, Innovation and Science in consultation with the Attorney-General's Department.

This review examined the effectiveness of the Premises Standards since they came into effect on 1 May 2011. It also examined the implementation of the Australian Government's response to the House of Representatives Standing Committee's recommended changes to the Premises Standards in its 2009 Access All Areas report.

Written submissions formed the primary mechanism for feedback on the Premises Standards. Evidence was collected for the review through analysis of 377 submissions received in response to an issues paper; an assessment of existing processes in states and territories for supporting the implementation of the Premises Standards; and examination of particular issues through a number of stakeholder forums.

Of the 377 submissions received, people with disability, carers and advocates (66 per cent) provided the majority, followed by disability organisations (9 per cent) and local governments (6 per cent). The remaining 19 per cent of submissions were received from access consultants; state governments; the accommodation industry; building certifiers, developers and managers; architects and designers; industry associations; federal government agencies; and non-government organisations. Submissions highlighted a range of concerns and largely provided anecdotal information, rather than quantitative material.<sup>1</sup>

The evidence obtained through the review shows that the Premises Standards have made some improvements in providing people with disability, dignified, equitable, cost effective and reasonable achievable access to public buildings. There is also evidence the Premises Standards have provided a greater level of certainty to the building industry that, if access to buildings is provided in accordance with the Premises Standards, the provision of that access, to the extent covered by these Standards, will not be unlawful under the *Disability Discrimination Act 1992*.

As the Premises Standards only came into effect on 1 May 2011, and its provisions only apply to new buildings or new parts of buildings, after this date, the review team considers that the impact of the Standards and any necessary improvements will become clearer with time as more buildings are covered by them.

The review also highlighted a number of areas where further work can be undertaken to allow the Premises Standards to operate more effectively. This includes addressing areas of misunderstanding and providing greater clarity on technical matters.

The review also found there are limited mechanisms at the Commonwealth level and there appears to be no consistent framework at the state and territory level to collect Premises Standards performance-related data.

The review concluded that, due to a lack of substantive evidence, further detailed analysis and research is needed across a number of areas before substantive change to the Premises Standards can be considered.

Overall, the key themes to emerge from the review relate to:

1. improving connections between the Premises Standards, the NCC and the Transport Standards
2. an inadequate understanding and awareness of the Premises Standards

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<sup>1</sup> See Appendix 5: Profile of Submissions for more information

3. a lack of a coordinated approach to performance-related data collection and
4. a lack of a coherent governance structure for progressing reform of the Premises Standards.

To make the Premises Standards more effective and better understood, the review considers the following overarching recommendations important:

## Improving Connections

1. Amend the Premises Standards where necessary to clarify policy intent, improve interpretation and reflect updates to the National Construction Code, and consider options to harmonise with the Transport Standards where appropriate.

## Improving Understanding

2. Develop guidelines to help stakeholders better appreciate the content and scope of the Premises Standards.
3. Improve education and training to raise awareness and understanding (for example, in relation to improved marketing of accessible accommodation rooms in hotels, and the unjustifiable hardship exemption) of key issues covered by the Premises Standards.

## Improving Measurement

4. Develop guiding principles for coordinated data collection, analysis and audits and gain the cooperation of responsible organisations (including state and territory governments) to enable monitoring and reporting for future reviews.

## Improving Governance

5. Establish a governance structure to oversee a forward work program. This would involve a governance group comprising the Department of Industry, Innovation and Science, the Attorney-General's Department and the Department of Social Services to oversee the work.
6. Establish expert advisory groups under the governance group as needed to provide technical advice and guidance on relevant matters. Expert advisory groups should include representatives relevant to the work program (such as the Australian Building Codes Board, state and territory building regulators, local government, building and construction organisations, design professionals, access consultants, disability organisations and accommodation and tourism stakeholders).

Sub-recommendations under the above recommendations (improving connections, understanding, measurement and governance) are listed in each section of the report.

Proposals for change to make technical amendments to the Premises Standards are listed in Appendix 7.

# 1. Introduction

## 1.1 About the Premises Standards

The *Disability (Access to Premises – Buildings) Standards 2010* (the Premises Standards) came into effect on 1 May 2011. The Premises Standards aim to provide people with disability equitable and dignified access to public buildings<sup>2</sup> and to provide certainty to industry that it is complying with the *Disability Discrimination Act 1992* (the DDA).

The Premises Standards, by improving accessibility in the built environment, represent one action towards achieving the *National Disability Strategy 2010-2020* vision for an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens.

The objectives of the Premises Standards are to<sup>3</sup>:

- ensure dignified, equitable, cost effective and reasonably achievable access to buildings, and to 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 provided in accordance with these Standards, the provision of that access, to the extent covered by these Standards, will not be unlawful under the DDA.

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

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

**Table 1: 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"> <li>• The type or class of buildings to which the Premises Standards apply</li> <li>• The parts of the buildings to which they apply</li> <li>• 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)</li> <li>• Factors for determining unjustifiable hardship</li> </ul>
Part 5	Exemptions the Australian Human Rights Commission (AHRC) may grant from some or all of the requirements in Part H2 of the Access Code (public transport buildings).
Part 6	Details of the reviews of the Premises Standards.
Schedule 1 – Access Code for Buildings	<p>Details of the Performance Requirements and optional Deemed-to-Satisfy (DtS) Provisions 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 to premises.</p> <p>The provisions in Schedule 1 are contained in the <i>National Construction Code</i> (the NCC).</p>

Source: *Disability (Access to Premises - Buildings) Standards 2010*

<sup>2</sup> The term “public buildings” refers to buildings, including privately owned buildings, that the public is entitled or allowed to enter or use.

<sup>3</sup> *Disability (Access to Premises – Buildings) Standards 2010, Part 1 Preliminary, p. 3.*

The Access Code of the Premises Standards 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 Standards.<sup>4</sup> The individual complaints process under the anti-discrimination regime is the primary method of enforcing the Disability Standards. The Australian Human Rights Commission (AHRC) has the power to investigate and conciliate complaints of unlawful discrimination on the grounds of disability. If conciliation is unsuccessful, the complaint is terminated and may proceed to the Federal Court.

Parts 1 to 4 of the Premises Standards have a number of important provisions (as outlined in Table 1) 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 its own decisions on how to incorporate these provisions into its building laws and regulations.

The AHRC 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. Titled *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](#).

## 1.2 The Review

Part 6 of the Premises Standards requires that the Minister for Industry, Innovation and Science, in consultation with the Attorney General, review the Premises Standards every five years. Part 6 also requires that the review consider the effectiveness of the Standards in achieving their objectives.

Prior to the parliamentary passage of the Premises Standards in 2010, the draft Premises Standards were reviewed by the House of Representatives Standing Committee (HRSC) on Legal and Constitutional Affairs (the committee). The committee's report, titled *Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards -Access All Areas (Access All Areas)*, made a series of recommendations to which the Australian Government responded by making a number of immediate changes to the Premises Standards. These changes included adding the *specified Class 1b* definition, further restricting stairway platform lifts and including common areas of Class 2 buildings. The Australian Government agreed to action other recommendations in the longer term, including a study of the 80<sup>th</sup> and 90<sup>th</sup> percentile wheelchair dimensions and more work on emergency egress. The report's final recommendation was for the first five-year review to consider a number of issues with requirements, exemptions, concessions and exceptions in the Premises Standards. A full list of recommendations, and progress against them, is contained in Appendix 3.

This review examines the outstanding recommendations from the Access All Areas report and provides a basis for future action to ensure the Premises Standards are meeting their objectives.

## 1.3 Terms of Reference

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

- consider the effectiveness of the Premises Standards in achieving their objectives<sup>5</sup>, 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

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<sup>4</sup> *Disability Discrimination Act 1992*, Section 32, p. 30

<sup>5</sup> referred to as 'Objects' in the *Disability (Access to Premises – Buildings) Standards 2010*

- 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.

It will also consider:

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

The review also examined progress in implementing the Australian Government's response to the *Access All Areas* report. In doing so the review included, but was not limited to, consideration of the following issues:

- the small building exemption
- the lessee concession
- 80<sup>th</sup> and 90<sup>th</sup> 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.

## Assessing Effectiveness

To assess the effectiveness of the Premises Standards, the review examined:

1. the alignment of the NCC access provisions with the Access Code of the Premises Standards
2. the impact of any inconsistencies between the state and territory building laws and regulations and those provisions of the Standards not contained in the NCC and
3. any unintended consequences in the application and interpretation of the Standards and any barriers to the participation of people with disability in accessing new and upgraded public buildings in Australia since 1 May 2011.

## 1.4 Review Methodology and Consultation Arrangements

The review of the Premises Standards was informed largely by qualitative information obtained through a public submission process. This process was complemented by subsequent consultations with individuals and organisations regarding information in their submissions and a series of three stakeholder forums addressing particular issues highlighted through the submission process.

Officers from the Department of Industry, Innovation and Science, in consultation with the Attorney-General's Department, undertook the review. A steering group, chaired by the Department of Industry, Innovation and Science, was established to oversee the work of the review and comprised senior management from the Department of Industry, Innovation and Science, the Attorney-General's Department and the Department of Social Services.

On 17 April 2015, a discussion paper outlining the context of the review, and issues it would consider, was released. These issues included:

- accommodation buildings
- accessible sanitary facilities
- 80<sup>th</sup> and 90<sup>th</sup> percentile wheelchair dimensions

- passenger lifts
- swimming pools
- accessible carparking
- public transport buildings
- wayfinding
- emergency egress
- small building exemption
- lessee concession
- unjustifiable hardship
- interaction of the Premises Standards with state and territory regulation
- inconsistencies in the interpretation and application of the Premises Standards and
- any other issues raised in submissions.

The submission period was open for eight weeks (17 April 2015 – 15 June 2015). Submissions using the Department's Consultation Hub were encouraged but submissions in all forms, including verbal submissions, emails and letters, were accepted.

The Premises Standards review received 377 submissions. Of these, 353 were public and are available for viewing on the Department of Industry, Innovation and Science's [Consultation Hub](#). A further 24 were provided confidentially. Appendix 4 lists the submissions.

People with disability, carers and advocates (66 per cent) provided the majority of submissions, followed by disability organisations (9 per cent) and local governments (6 per cent). The remaining 19 per cent of submissions were from access consultants; state governments; the accommodation industry; building certifiers, developers and managers; architects and designers; industry associations; Commonwealth agencies; non-government organisations; and standards bodies.

A large proportion of submissions (37 per cent), formed part of the Changing Places campaign. These submissions were largely identical and mostly came from people with disability, carers and advocates. The Changing Places campaign advocates for public toilets with features such as full sized change tables and hoists in major public spaces across Australia to meet the needs of people with disability.

The issue of accessible sanitary facilities received most comment, followed by accommodation buildings and accessible car parking. More information on the profile of the submissions is at Appendix 5.

Following the end of the submission period, the review team analysed the issues raised in submissions. Where necessary, the team sought further clarification from authors of submissions to clarify claims or better understand the issues raised.

Several issues raised in the Premises Standards Review were also the topic of forums. The purpose of these targeted forums was to facilitate the exchange of views by stakeholders on complex issues, such as unjustifiable hardship, or where there were strong and diverse views on specific issues. A list of those attending these forums is at Appendix 6.

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## 2. Requirements for Building Features in the Premises Standards

### 2.1 Accommodation Buildings

The Premises Standards apply to the following accommodation buildings<sup>6</sup>:

- 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.

#### 2.1.1 Specified Class 1b Buildings

##### **Recommendation**

- An expert advisory group consider whether conversion of Class 1a buildings to *specified Class 1b* rooming/boarded houses has been affected by the Premises Standards and the extent of any such effect and, if required, what further actions should be undertaken.

##### **Background**

Only *specified Class 1b buildings* are covered by the Premises Standards; these 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:
  - a. on the same allotment; and
  - b. used for short-term holiday accommodation.<sup>7</sup>

Table D3.1 of the Premises Standards sets out the access requirements of *specified Class 1b* buildings for people with disability.<sup>8</sup>

The 2009 draft Premises Standards introduced a threshold of four or more bedrooms used for rental accommodation regardless of whether the Class 1b building was new or pre-existing.<sup>9</sup> The rationale for this threshold was explained during the HRSC inquiry as a “*compromise between costs and benefits, in the context of a failure of the disability and property sectors to agree on an appropriate threshold*”.<sup>10</sup>

To address concerns at the inquiry that too many Class 1b buildings would be excluded, the committee recommended that the “*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 4 bedroom threshold should be maintained for existing buildings*”.<sup>11 12</sup> The Government

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<sup>6</sup> The Premises Standards also apply to Class 9a health care buildings and Class 9c aged care buildings. These buildings are considered accommodation buildings because people live and sleep in them.

<sup>7</sup> *Disability (Access to Premises – Buildings) Standards 2010*, Part 1.4 Interpretation, p. 5.

<sup>8</sup> *Disability (Access to Premises – Buildings) Standards 2010*, Schedule 1, Part D3 – Access for People with a Disability, Table D3.1, p. 29.

<sup>9</sup> *Disability (Access to Premises – Buildings) Standards 2009*, Draft Only, p. 2.

<sup>10</sup> *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. 37.

<sup>11</sup> *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. 33.

<sup>12</sup> *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, Recommendation 3, p. 37.

accepted this recommendation and *specified Class 1b buildings* were defined in Part 1 of Premises Standards.<sup>13 14</sup>

*Access All Areas* recommended that the five-year review consider whether<sup>15</sup>:

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

### **The Review**

Thirty-nine submissions commented on Class 1b buildings.<sup>16</sup> Most of these submissions came from access consultants, people with disability, carers and advocates, disability organisations and the accommodation industry. Submissions were asked to comment on the appropriateness of the bedroom/dwelling threshold for *specified Class 1b buildings* and the impact of the Premises Standards on the construction of new Class 1b buildings or the conversion of buildings to Class 1b.

While the majority of submissions considered the bedroom/dwelling threshold was inappropriate, this covered a mix of views similar to those expressed during the HRSC inquiry. Some submissions called for lowering or removing the threshold, others for increasing it. In addition, three submissions called for the *specified Class 1b* definition to be replaced with a blanket requirement of one or more bedrooms for all Class 1b buildings regardless of whether they are new or pre-existing.<sup>17</sup>

Twenty-four submissions responded to the question of whether the Premises Standards were having an impact on the construction of new Class 1b buildings or the conversion of existing buildings to Class 1b.<sup>18</sup> Submissions came from a broad range of people and organisations and opinions were mixed.

Regarding the impact of Premises Standards on Class 1b buildings, a clear theme emerged from submissions that the requirements may be acting as a disincentive to the conversion of buildings to *specified Class 1b buildings*.<sup>19</sup> The main reason provided was that the cost of compliance was too onerous, causing a reduction in conversion of pre-existing buildings.

Victorian rooming/boarding house operators commented on the impact the Premises Standards were having on the rooming house industry.<sup>20</sup> The Registered Accommodation Association of Victoria (RAAV) claimed that the Premises Standards have had such an adverse impact on the rate of conversions that it has caused a reduction in the number of rooming houses available to people who

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<sup>13</sup> Government Response to *Access All Areas*, Recommendation 3, p. 2.

<sup>14</sup> Disability (Access to Premises – Buildings) Standards 2010, Part 1.4 Interpretation, p. 5.

<sup>15</sup> *Access All Areas*, Report of the Inquiry into the draft Disability (Access to Premises – Buildings) Standards, House of Representatives' Standing Committee on Legal and Constitutional Affairs, 2009, Recommendation 3, p. 37.

<sup>16</sup> Submissions 3; 5; 6; 51; 52; 118; 124; 138; 157; 206; 241; 253; 257; 279; 280; 282; 283; 286; 296; 300; 304; 307; 310; 314; 315; 324; 329; 331; 334; 335; 337; 342; 346; 353; 371; 372; 376; 377; 383.

<sup>17</sup> Submissions 124; 366; 371.

<sup>18</sup> Submissions 3; 5; 6; 124; 138; 253; 257; 279; 282; 283; 286; 300; 304; 307; 310; 324; 331; 334; 342; 346; 353; 372; 376; 377.

<sup>19</sup> Submissions 246; 279; 331; 376; 324; 283; 5; 342; 310; 282; 246; 257; 304; 383.

<sup>20</sup> Rooming or boarding houses can be distinguished from a share house by the leasing arrangement of the rented premise. That is, residents of a share house have exclusive possession of the rented premises. Whereas, residents of a rooming or boarding house only have exclusive possession to their room with shared access to communal facilities, such as kitchens, bathrooms, laundries and living areas – Victorian Department of Human Services, *Minimum standards in rooming house accommodation*, p. 3.

are disadvantaged or homeless. Further, the RAAV argued that the Premises Standards should not apply to rooming houses as they are “*not public buildings*”.<sup>21</sup>

Conversely, several submissions noted that even if there was a decline, it was likely due to a range of issues and not just those related to the Premises Standards.<sup>22</sup> The Association of Consultants in Access Australia (ACAA) submission reflected this view:

*“...Decisions not to proceed are often made on the basis of a number of factors including planning conditions and regulation requirements in relation to matters such as fire safety, road construction, and parking. Access requirements are just one factor to be considered when assessing a business case for any project. Access requirements, like fire safety requirements, are part of the legal landscape and the cost of doing business.”*<sup>23</sup>

In investigating this matter, the review team sought further information from RAAV<sup>24</sup>, the Victorian Building Authority (VBA) and several local Victorian councils.<sup>25</sup> The RAAV reiterated the adverse impact of the Premises Standards on rooming houses and estimated that the cost of properly converting a Class 1a building to a Class 1b boarding house is approximately \$50,000, rather than the few thousand dollars it cost prior to the introduction of the Premises Standards.

The VBA was aware that conversions have been a concern for some local councils, particularly in areas where there was a need for more affordable housing. The Greater Dandenong City Council subsequently provided data verifying a reduction in the number of applications for Class 1b buildings conversions in the local area. The local council suggested that the cost of conversion was approximately \$30,000–\$40,000 and that challenges in complying with Premises Standards meant people now needed to be much more careful in selecting which buildings they convert. The local council stated that these challenges had led to some people attempting to avoid building approval. It was noted, however, that this problem was more evident with rooming houses that operate for short periods (e.g. less than two years), prior to the building owners’ plans to demolish and rebuild.

In providing information on the number of Class 1b applications, the council noted that it is not possible to conclude how much of the decrease may be attributed to the Premises Standards.

## Findings

Investigation by the review team confirmed that a decrease in certified Class 1a/1b conversions did occur around the time the Premises Standards came into force in one local jurisdiction. Monash City Council also stated in its submission that “*there has been a reduction in building permits for a change of use from a Class 1a (house) to a Class 1b (boarding house) due to the difficulties in complying with access, circulation and accessible features.*”<sup>26</sup>

The review team notes possible suggestions to rectify the matter included creating a definition for rooming houses and removing wheelchair access requirements. However, while it is acknowledged that meeting the requirements for Class 1b conversions under the Premises Standards creates challenges, it is unknown how widespread and significant the impact is. Further investigation is required to determine the scale of the issue.

Source: Greater Dandenong City Council

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<sup>21</sup> Submission 286.

<sup>22</sup> Submissions 307; 124; 334; 353.

<sup>23</sup> Submission 307, p.12.

<sup>24</sup> Teleconference with Keith Stubbs and Matthew Mclean, RAAV, 15 September 2015.

<sup>25</sup> Victorian Building Authority, Telephone conversation, 30 September 2015; Greater Dandenong Council, telephone conversation, 16 October, 2015; RAAV, Telephone Conversation, 15 September 2015.

<sup>26</sup> Submission 310.

## 2.1.2 Class 3 Buildings

### Recommendations

- The tourism and accommodation industry in collaboration with the disability sector undertake to improve the marketing of accessible rooms.
- Further work be undertaken to update data on the economic value of accessible accommodation in Australia.

### Background

The Premises Standards require that Class 3 buildings, which include hotels, motels and hostels, provide access to at least one of each type of room or space for common use by residents (for example, restaurant or gym). Class 3 buildings are also required to make a specified number of accommodation rooms (*sole-occupancy units* or SOUs) accessible.

Prior to the Premises Standards, the *Building Code of Australia* (BCA) made provisions for access for people with disability to Class 3 buildings: access was required to common areas and to a number of SOUs. The Premises Standards moderately increased the room ratio requirements for Class 3 buildings by increasing the number of points at which an additional accessible SOU was required.<sup>27</sup> This meant that for some Class 3 buildings there were no changes to the number of accessible SOUs required, but for most there was a moderate increase (Table 2).

**Table 2: Room Ratios pre and post Premises Standards**

Total Number of SOUs	Accessible SOUs Pre-Premises Standards		Accessible SOUs Post-Premises Standards		Difference
	Number	%	Number	%	
15	1	6.7%	2	13.3%	+1
40	2	5.0%	2	5.0%	0
50	3	6.0%	3	6.0%	0
100	4	4.0%	5	5.0%	+1
200	7	3.5%	9	4.5%	+2
300	11	3.7%	13	4.3%	+2

Sources: Disability (Access to Premises – Buildings) Standards 2010 and Building Code of Australia 2009, Volume One

During the HRSC inquiry, representatives of the tourism and accommodation industries expressed concerns about room ratios.<sup>28</sup> Their view was that there was no evidence to justify increasing the number of accessible SOUs beyond that previously prescribed. Tourism and accommodation industry representatives argued that the room ratio requirements reduced the attractiveness of investment in Class 3 buildings, even though there was a projected growing demand for rooms in Class 3 buildings.

<sup>27</sup> *Disability (Access to Premises – Buildings) Standards 2010*, Schedule 1, Part D3 – Access for People with a Disability, Table D3.1, p. 30.

<sup>28</sup> Access All Areas, Mr Evan Hall, Tourism and Transport Forum, Transcript of Evidence, Melbourne 30 March 2009; Mr Bill Healey, Australian Hotels Association, Transcript of Evidence, Sydney, 25 March 2009.

Access All Areas welcomed the accessible room ratio increases, considering them to be “*neither excessive nor unjustified*”.<sup>29</sup> It was noted that the tourism and accommodation industry has not been able to maximise the utilisation of accessible rooms. However, the committee did not believe this was due to lack of demand. Rather, it concluded that industry, in consultation with people with disability, could do more with the design and marketing of accessible rooms for people with disability and improve staff education. The committee further stated:

*“It is extraordinary that the sector has not developed any guidance for its members on methods for advertising and offering accessible rooms in ways which will not cause offence to the target market. The Committee encourages the hotel industry to collaborate with the disability sector to address these concerns.”*<sup>30</sup>

## The Review

The review canvassed views on the appropriateness of the Class 3 room ratio. Forty submissions commented on the issue.<sup>31</sup> More than half came from people with disability, carers and advocates, and disability organisations. The remaining submissions largely came from access consultants, the tourism and accommodation industry, local governments and building certifiers.

The majority of submissions considered the room ratio to be inappropriate, with most calling for an increase in the number of accessible SOUs. The main reasons provided included difficulties finding available accessible accommodation (particularly lower cost accommodation) for people with disability and the growing number of people in the community with disability.<sup>32</sup>

During consultations, Professor Simon Darcy from the University of Technology Sydney also noted the economic benefits of accessible tourism and servicing people with disability. As highlighted by Professor Darcy, the European Commission report published in 2014<sup>33</sup> showed that in 2012, trips by people with access needs within Europe contributed 8.7 million jobs and €394 billion to the economy. The European Commission also suggested that if further accessibility was implemented an additional €142 billion could be contributed to GDP and 3.4 million jobs created. This trend is supported by Professor Darcy’s research showing the contribution of tourists with disability in 2003-04 to be worth between \$3.8 billion and \$5.7 billion in GDP to the Australian economy and supporting 51 820 to 77 495 direct jobs.<sup>34</sup> While the Australian research is dated, it demonstrates the wider economic contribution of supporting the disability community.

Conversely, some submissions called for a decrease in the room ratio. Many of these submissions came from those in the tourism and accommodation industry. The main reason cited was a lack of demand for accessible accommodation.<sup>35</sup> This view was expressed as an issue not only for the hotel industry but also for backpacker accommodation and other forms of short-term accommodation. The main points are summed up in the Tourism and Transport Forum submission, which states:

*“... the industry’s main concern is with the ratio of accessible rooms in Class 3 accommodation buildings, which far exceeds the room stock needs of disabled visitors. These vacant rooms incur a critical operational cost and make*

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<sup>29</sup> 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. 99.

<sup>30</sup> 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. 99.

<sup>31</sup> Submissions 3; 5; 17; 71; 106; 124; 138; 141; 145; 228; 253; 263; 276; 280; 296; 303; 307; 314; 324; 331; 334; 337; 341; 342; 343; 345; 348; 349; 355; 357; 358; 362; 363; 366; 368; 371; 372; 374; 377; 385.

<sup>32</sup> Submissions 17; 341; 106; 71; 377.

<sup>33</sup> *Economic Impact and Travel Patterns of Accessible Tourism in Europe – Final Report*, European Commission 2014.

<sup>34</sup> Buhalis, D & Darcy, S (Eds) 2011, “Accessible Tourism, Concepts and Issues”, in Cooper, C et. al, *Aspects of Tourism*, Channel View Publications, Bristol; Open Doors Organization, Accessed 01 December 2015, <http://opendoorsnfp.org/>

<sup>35</sup> Submissions 384; 276; 335; 368.

*development and refurbishment of accommodation properties, especially smaller properties as well as those in regional locations, unviable.*<sup>36</sup>

Submissions from the industry also noted the emerging competitive pressures from the growth of alternative accommodation providers such as AirBNB and the use of Class 2 apartment buildings for short-term rental.<sup>37</sup> It was considered that these forms of short-term accommodation are subject to less onerous requirements in both the Premises Standards and the NCC as well as in state and territory and local regulations.

To support the claim for reducing the room ratio, several stakeholders from the tourism and accommodation industry<sup>38</sup> referred to a report by PricewaterhouseCoopers (PwC) titled *An Assessment of Accessible Accommodation in Australia: Supply and Demand* (the PwC report). The PwC report was commissioned by the former Department of Resources, Energy and Tourism in 2013, following agreement from state, territory and Commonwealth tourism ministers. Submissions to this review specifically referred to a number of findings and opportunities outlined in the PwC report. These include that:

- the occupancy rate for accessible rooms across Australia in 2012 was estimated to be 45.5 per cent, compared to the occupancy rate of standard rooms at 65.9 per cent<sup>39</sup> and
- there may be an opportunity to revisit room ratios to account for various levels of support needed. This includes tying the room ratio to ABS data on the proportion of population with disability, and to the severity of their disability.

While the PwC report did not specifically mention it, the accommodation industry and Austrade submissions called for the room ratio to be adjusted to align with demand for accessible rooms, given that supply exceeds the requirements prescribed by the Premises Standards.

However, the review team also notes the PwC report made additional findings relevant to promoting demand, including:

- in the short-term, as the Premises Standards take hold, supply of accessible rooms is expected to outpace demand from people with accessibility needs
- in the longer term demand for accessible rooms by people with accessibility needs will increase moderately faster than supply of accessible accommodation, i.e. the occupancy rate of accessible rooms by people with disability will increase through time
- the average occupancy rate of accessible rooms is expected to grow from 45.5% in 2012 to 60.3% by 2032
- survey results point towards information asymmetry (i.e. information not linking travellers with appropriate accommodation) as one possible cause of lower occupancy rates for accessible rooms and
- there are opportunities for the accommodation industry to work more closely with the disability sector to increase awareness and marketing of accessible rooms.

To further understand the issues with Class 3 room ratios, the review team held a stakeholder forum in Sydney on 20 November 2015. Attendees came from a range of organisations and backgrounds, including certifiers, access consultants, disability organisations, accommodation and tourism sectors, and the building industry. A full list of attendees is provided in Appendix 6.

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<sup>36</sup> Submission 368, p.1.

<sup>37</sup> Submissions 276;335; 368; 384.

<sup>38</sup> Submissions 276; 368; 384; 384.

<sup>39</sup> The PwC reports notes that on average accessible rooms are rented by people with disability 30.2 per cent of the time. This figure is based on reports by accommodation providers on the people accommodating accessible rooms.

From submissions and the forum, the following points are clear:

- in general, those from the accommodation and tourism industry consider the current ratio is too onerous, particularly in relation to pre-existing buildings, because accessible rooms are not utilised to the same extent as other rooms
- people with disability and disability organisations dispute the need to reduce the ratio and have provided anecdotal evidence of the difficulties in securing suitable accommodation
- there is scope to improve the marketing of accessible rooms to people with disability, noting research indicates that people with accessibility needs are a market with unmet needs and further economic potential and
- there is some support for exploring the possibility of amending the Premises Standards so that the room ratio includes a mix of accessible rooms, which may include both wheelchair accessible rooms and ambulant<sup>40</sup> accessible rooms.

The overarching issue of Alternative Solutions and Unjustifiable Hardship also apply to Class 3 buildings. This is addressed in Section 3.3, page 52.

### Findings

The review team acknowledges that occupancy rates for accessible rooms in Class 3 buildings are currently lower than the occupancy rate of standard rooms. However, it is evident from the PwC report that occupancy rates are expected to increase.<sup>41</sup>

It is also evident from the submission process, the forum and the PwC report that effective marketing of accessible rooms is not widespread. Whilst there are hotels that do advertise accessible rooms, anecdotal evidence from people with disability suggests the information is often not useful for them in determining whether a room meets their needs. It is the review team's finding that more needs to be done to improve the marketing of accessible rooms. Collaboration between the accommodation industry and people with disability, in this respect, would be mutually beneficial.

Whilst work has previously been done on the economic value of accessible tourism, including accessible accommodation, the research on the Australian accommodation industry is now more than ten years out of date. The review team considers that it may be beneficial to update this research to provide a better understanding of the economic value of accessible accommodation in Australia.

The review team considers that it is premature to consider changing the room ratio. Rather, the room ratio should be revisited in the next review of the Premises Standards, which should consider current and future predicted occupancy rates, the dissemination of effective marketing by the accommodation industry and data on the economic value of accessible tourism.

## 2.1.3 Other Issues - Accommodation Buildings

### *The Review*

There were comments in 154 submissions on other issues associated with accommodation buildings.<sup>42</sup> Of these, half were from the Changing Places campaign, calling for provision of

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<sup>40</sup> Able to walk, In P. Collin (Ed.), Dictionary of medical terms. London, United Kingdom: A&C Black. (2008).

<sup>41</sup> The PwC report found that in the short-term, as the Premises Standards take hold, supply of accessible rooms is expected to outpace demand by people with accessibility needs. But in the longer term, demand for accessible rooms by people with accessibility needs will increase moderately faster than supply of accessible accommodation. That is, the occupancy rate of accessible rooms by people with disability will increase through time and the average occupancy rate of accessible rooms is expected to grow from 45.5% in 2012 to 60.3% by 2032.

<sup>42</sup> Submissions 3; 5; 6; 7; 9; 10; 11; 15; 16; 17; 19; 20; 23; 27; 30; 31; 34; 37; 39; 40; 44; 46; 47; 48; 51; 52; 53; 59; 62; 64; 65; 66; 67; 69; 70; 71; 72; 73; 77; 78; 84; 86; 91; 93; 98; 100; 105; 108; 109; 114; 116; 118; 121; 122; 124; 128; 133; 137; 138; 141; 142; 143; 144; 157; 170; 196; 201; 204; 206; 207; 208; 212; 216; 218; 219; 220; 221; 222; 223; 230; 231; 233; 234; 235;

accessible adult changing facilities in Class 3 buildings and other accommodation buildings, both in SOUs and in common areas.<sup>43</sup> The issue of Changing Places sanitary facilities is addressed in Section 2.2 Accessible Sanitary Facilities, page 22.

A wide range of other issues raised in relation to Class 2 buildings, residential housing and the fit-out of hotel rooms are examined below.

In addition, a number of submissions raised wayfinding as an issue associated with hotels.<sup>44</sup> This issue is addressed in Section 2.8 Wayfinding Heritage buildings, also noted as an issue, are addressed more broadly in Section 3.3 Unjustifiable Hardship Exception, page 52.

### **Class 2 Buildings**

The use of Class 2 buildings for short-term accommodation through original design or post-construction change of use was a concern raised in a number of submissions.<sup>45</sup> These submissions argued that where a Class 2 building (i.e. apartments) is being used for short-term accommodation it should be reclassified as a Class 3 accommodation building.

### **Findings**

The review team notes that the delineation between Class 2 and Class 3 buildings and the post-construction use of apartments as short-term accommodation has been considered by the Australian Building Codes Board (ABCB) on a number of occasions. At its June 2015 meeting the ABCB agreed to undertake a comprehensive review in 2017 of Class 2 and Class 3 classification issues. This will include an assessment of the effectiveness of the [Holiday and Short Term Rental Code of Conduct](#), which was released by the Holiday Rental Industry Association in 2012 as an industry self-regulatory initiative. The review team considers that this matter will be adequately addressed by the ABCB in the 2017 review.

### **Residential Housing**

Seventeen submissions commented on private housing, which falls into the Class 1a and Class 2 (SOU) classification of buildings.<sup>46</sup> In general, submissions considered it inappropriate for private residential housing to be excluded from the access requirements in the Premises Standards.

### **Findings**

Access to private residences (Class 1a buildings) and the accessibility of the internal parts of flats or apartments (Class 2 buildings) are generally not covered by the DDA and are therefore not covered by the Premises Standards. This is why, in Class 2 buildings, access requirements are limited to common areas where one or more SOU are made available for short-term rent.<sup>47</sup>

### **Fit-out**

Recommendation 4 of the Access All Areas report suggests consideration be given to the development of disability standards in relation to building fit-out. Currently, *AS 1428.2 Design for Access and Mobility, Part 2: Enhanced and additional requirements* (AS 1428.2-1992) covers fit-out of buildings such as counter height, telephones, post boxes and furniture under. A number of

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236; 237; 238; 239; 240; 241; 242; 243; 244; 245; 246; 247; 248; 249; 253; 257; 258; 260; 264; 267; 268; 276; 280; 281; 285; 286; 287; 288; 289; 290; 291; 292; 293; 294; 296; 300; 302; 303; 307; 308; 310; 315; 316; 319; 324; 327; 329; 330; 333; 334; 335; 337; 341; 342; 343; 346; 349; 353; 357; 361; 364; 366; 369; 370; 371; 372; 373; 383; 384; 388.

<sup>43</sup> Submissions 7; 9; 10; 11; 15; 16; 17; 19; 20; 23; 27; 34; 37; 40; 44; 46; 53; 59; 62; 64; 65; 66; 67; 70; 72; 73; 78; 86; 100; 105; 108; 109; 114; 121; 122; 128; 133; 137; 142; 143; 144; 196; 201; 212; 216; 218; 219; 220; 221; 222; 230; 231; 233; 234; 235; 236; 237; 238; 239; 240; 242; 243; 244; 245; 246; 247; 248; 258; 264; 281; 285; 288; 289; 290; 291; 292; 293; 302.

<sup>44</sup> Submissions 249; 308.

<sup>45</sup> Submissions 204; 307; 319; 384.

<sup>46</sup> Submissions 3; 98; 124; 141; 260; 268; 294; 327; 330; 333; 342; 349; 353; 366; 371; 372; 373.

<sup>47</sup> *Disability (Access to Premises – Buildings) Standards 2010*, Schedule 1, Part D3 – Access for People with a Disability, Table D3.1, p. 30.

submissions considered that the requirements for fit-outs related to SOUs do not go far enough, imposing requirements on sanitary facilities but not providing any further accessibility requirements for SOU. For example, access consultant Mr Mark Relf stated that<sup>48</sup>:

*“While the Premises Standards define the number of units needing to be accessible there is no guidance as to the technical accessibility requirements of what needs to be provided within an accessible unit to enable appropriate access for people with disability... While furniture and fixtures are usually outside the scope of building regulations, the unique aspect of Class 3 hotels and motels requires a minimum level of fitout and amenity to facilitate the rooms and suites for public use. Therefore, it is necessary that fixtures be accessible for people with physical disabilities, hearing and vision impairments to ensure safe, equitable and dignified access consistent with the objectives of the DDA.”*

### **Findings**

While it makes sense to ensure that an accessible SOU has sufficient circulation spaces within the SOU as a whole, fit-out is generally not within the scope of the NCC as items in a room are frequently moved or replaced. In addition, it is not possible for the Premises Standards to regulate such requirements because the fit-out of hotel rooms, including the size and positioning of furniture, takes place after the building certification process. As such, it is not possible to enforce fit-out requirements through the NCC/Premises Standards mechanism.

However, the review team notes that a complaint about fit-out and the placement of furniture can still be made under the DDA, even in a building complying with the Premises Standards.

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<sup>48</sup> Submission 300.

## 2.2 Accessible Sanitary Facilities

### Recommendations

- Expert advisory group to investigate whether, and how, accessible adult changing facilities should be included in the Premises Standards.
- Expert advisory group to consider developing a workable definition of “bank of toilets” and determine whether changes to specifications may be needed. For example, consideration should be given to the impact the definition may have on the requirement for an accessible sanitary facility at 50 per cent of banks of toilets and on the distance between accessible sanitary facilities in large buildings.

### Background

The Premises Standards state that suitable sanitary facilities must be provided in a convenient location within, or associated with, a building, to the degree necessary, appropriate to<sup>49</sup>:

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

The type and number of facilities required are stated in the Premises Standards. The specifications for the construction of accessible sanitary facilities are included in the Premises Standards through reference to the Australian Standard *AS 1428.1:2009 – Design for access and mobility – Part 1: General requirements for access – New building work* (AS 1428.1-2009).

Before the Premises Standards, the *Building Code of Australia* (BCA) required one accessible toilet for every 100 closet pans or urinals. It did not include requirements to have an accessible toilet for every storey of Class 5, 6, 7, 8 or 9 buildings with a bank of toilets.<sup>50</sup>

The introduction of the Premises Standards significantly increased the number of accessible toilets required. By referencing AS 1428.1-2009 the Premises Standards also increased the dimensions of accessible toilets to meet the 90th percentile wheelchair dimensions.

*Access All Areas* noted concerns with accessible sanitary facilities, such as a belief the proposed requirements were too onerous or too lenient. In response to these concerns the report recommended the five-year review consider whether problems with accessible sanitary facilities had arisen from tenancies restricting access to sanitary facilities or from the distances between accessible toilets being too great.

### The Review

Submissions were asked to comment on whether issues had occurred with multiple tenancies restricting access to accessible sanitary facilities, or with the distance between accessible sanitary facilities. The review also asked whether there had been problems satisfying the requirements of accessible sanitary facilities and whether there were other issues associated with accessible sanitary facilities.

Of the submissions received, 258 commented on accessible sanitary facilities.<sup>51</sup> The majority came from disability organisations, people with disability, carers and advocates, and access consultants.

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<sup>49</sup> *Disability (Access to Premises) Standards 2010*, Part F2.1 Sanitary and other facilities, p. 48.

<sup>50</sup> *Building Code of Australia 2009*, Volume One, Section F2.4, pp. 317-319.

<sup>51</sup> Submissions 2; 3; 6; 7; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 27; 28; 29; 30; 32; 33; 34; 36; 37; 38; 39; 40; 41; 42; 42; 44; 45; 46; 47; 49; 50; 51; 52; 53; 54; 55; 57; 58; 59; 62; 64; 65; 66; 67; 71; 72; 73; 74; 76; 77; 78; 79; 80; 81; 82; 84; 85; 86; 88; 89; 91; 93; 94; 96; 97; 100; 102; 104; 105; 106; 107; 108; 109; 113; 114; 115; 116; 118; 120; 121; 122;

Of these submissions, 122 were part of the Changing Places campaign, which called for provision of accessible adult changing facilities that comply with the design features of a Changing Places sanitary facility as described by Changing Places Australia.<sup>52 53</sup>

The main issues identified through the submission process were:

- adult changing facilities
- the definition of a bank of toilets and
- restricting access to toilets where there are multiple tenancies.

These are addressed below.

### **Restricting of toilets - multiple tenancies**

Eleven submissions commented on the locking or restricting of toilets.<sup>54</sup> There was little evidence from submissions of widespread problems with multiple tenancies restricting access to accessible sanitary facilities because of building work. Rather, the key issue appeared to be the management practice of locking toilets or restricting access to facilities in some instances, including using accessible sanitary facilities for storage.

### **Findings**

There is little evidence locking or restricting of accessible sanitary facilities is widespread. The review team considers that in most instances it is a matter for building management rather than an issue that can be controlled at the point of building certification. However, the review team notes that complaints about restricting access to and locking toilets can still be made under the DDA.

### **“Bank of toilets” and the distance between accessible sanitary facilities**

In relation to distance between accessible sanitary facilities and other problems, some submissions noted the absence of a definition of “bank of toilets” in the Premises Standards.<sup>55</sup> The ABCB describes the issues caused by the lack of a definition<sup>56</sup>:

*“F2.4 and Table F2.4(a) use the term ‘bank of toilets’ for the purpose of determining when and where accessible unisex sanitary compartments and sanitary compartments suitable for a person with an ambulant disability are required. The correct interpretation of what constitutes a bank of toilets is therefore critical to the correct application of the requirements for accessible sanitary facilities. However, a ‘bank of toilets’ is not defined and can be subject to different interpretations.”*

The lack of a definition has an impact in situations where:

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124; 125; 126; 127; 128; 130; 131; 132; 133; 134; 135; 137; 138; 138; 139; 142; 143; 144; 145; 146; 148; 149; 151; 152; 153; 154; 155; 157; 158; 159; 161; 162; 163; 164; 165; 166; 167; 169; 170; 171; 172; 174; 175; 176; 177; 178; 180; 182; 183; 184; 185; 186; 187; 191; 194; 195; 196; 199; 200; 201; 202; 203; 205; 206; 208; 211; 212; 213; 214; 215; 216; 218; 219; 220; 221; 222; 223; 224; 225; 227; 228; 230; 231; 232; 233; 234; 235; 236; 237; 238; 239; 240; 242; 243; 244; 245; 246; 247; 248; 249; 256; 257; 258; 262; 263; 264; 265; 267; 274; 277; 279; 280; 281; 285; 286; 288; 289; 290; 291; 292; 293; 294; 296; 300; 302; 303; 306; 307; 308; 309; 314; 315; 317; 318; 319; 329; 330; 331; 332; 333; 334; 336; 337; 341; 342; 343; 345; 346; 348; 349; 350; 352; 353; 356; 360; 361; 362; 363; 366; 367; 369; 371; 372; 377; 378; 388; 389.

<sup>52</sup> Submissions 7; 9; 10; 11; 16; 17; 20; 21; 23; 24; 25; 27; 32; 33; 34; 37; 39; 40; 42; 44; 46; 47; 51; 53; 54; 57; 59; 62; 64; 65; 66; 67; 72; 73; 74; 78; 80; 86; 100; 105; 107; 108; 114; 121; 122; 125; 126; 127; 128; 131; 132; 133; 135; 137; 139; 142; 143; 144; 146; 148; 151; 158; 159; 161; 162; 163; 164; 166; 167; 171; 171; 175; 176; 180; 183; 185; 186; 187; 191; 195; 196; 199; 201; 205; 211; 215; 216; 218; 219; 220; 221; 222; 225; 230; 231; 232; 233; 234; 235; 236; 237; 238; 239; 240; 242; 243; 244; 245; 246; 247; 248; 258; 264; 281; 285; 288; 289; 290; 291; 292; 293; 302.

<sup>53</sup> <http://changingplaces.org.au/build-a-toilet/designs/>

<sup>54</sup> Submissions 3; 19; 45; 124; 274; 334; 341; 342; 371; 372; 378.

<sup>55</sup> Submissions 319; 223; 300; 353; 119.

<sup>56</sup> Submission 119.

- a storey has more than one bank of sanitary compartments containing male and female sanitary compartments at not less than 50% of those banks; and
- the distance between accessible sanitary facilities in large buildings such as stadiums, large shopping complexes and airports.

### Findings

The review team is of the view that the lack of a definition of “bank of toilets” may have a significant impact on accessibility provisions in the Premises Standards. As such, it is proposed that the expert advisory group develop a workable definition of “bank of toilets”. Consideration should also be given to the impact the definition may have on the requirement for accessible sanitary facilities to be provided at 50 per cent of banks of toilets where a storey has more than one bank of toilets and on the distance between accessible sanitary facilities in large buildings.

### Other Issues – Accessible Adult Changing Facilities

The biggest issue raised in regard to accessible sanitary facilities was the absence of accessible adult changing facilities in AS 1428.1-2009, which is referenced in the Premises Standards. In addition to the 120 submissions forming part of the Changing Places campaign, 70 other submissions also called for accessible adult changing facilities to be part of the Premises Standards.<sup>57</sup>

Accessible adult changing facilities, of which Changing Places toilets are one type, are accessible sanitary facilities with additional features to assist people unable to use standard accessible toilets independently. Additional features include adjustable adult changing benches, centrally located toilets and hoists.

The majority of submissions on this issue, including those outside the Changing Places campaign, claim the lack of accessible adult changing features in accessible sanitary facilities means people with more complex disability do not have appropriate or dignified access to suitable accessible sanitary facilities when out in public.

It was noted in some submissions that a small number of accredited Changing Places toilets have successfully been installed in Australia by some local councils. The majority of these are in Victoria, with a smaller number in other states and territories. In 2015, Western Australia’s Disability Services Commission, in partnership with the Western Australian Local Government Association, announced it was providing funding to local governments to install or upgrade current public toilet facilities, which will include Changing Places facilities.<sup>58</sup>

### Findings

The review team acknowledges that the lack of accessible sanitary facilities incorporating adult changing facilities is affecting people with more complex disability and their ability to use sanitary facilities when out in public.

The review team proposes that an expert advisory group consider the issue of accessible adult changing facilities, including if and how they might be incorporated into the Premises Standards.

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<sup>57</sup> Submissions 12;13; 14; 28; 29; 30; 49; 58; 76; 77; 79; 81; 82; 84; 85; 89; 93; 97; 102; 104; 106; 109; 120; 124; 130; 134; 138; 149; 152; 153; 154; 155; 157; 165; 169; 170; 172; 174; 177; 182; 184; 200; 202; 203; 213; 214; 224; 256; 265; 294; 296; 306; 315; 317; 330; 334; 334; 336; 337; 341; 345; 346; 348; 349; 352; 360; 363; 371; 372; 378.

<sup>58</sup> <http://www.disability.wa.gov.au/individuals-families-and-carers/for-individuals-families-and-carers/recreation-and-leisure-/changing-places/>

## 2.3 80<sup>th</sup> and 90<sup>th</sup> Percentile Wheelchair Dimensions

### Recommendation

- Expert advisory group to investigate whether changes to the 80<sup>th</sup> and 90<sup>th</sup> percentile wheelchair dimensions should be considered.

### Background

The Premises Standards adopt a mix of 80<sup>th</sup> and 90<sup>th</sup> percentile wheelchair dimensions for passageways and other building features. The 80<sup>th</sup> and 90<sup>th</sup> 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.

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

In response to claims that the wheelchair dimensions used in AS 1428.1-2009 no longer reflected the size of wheelchairs currently in use, the Australian Government funded research into wheelchair spatial dimensions in 2014.<sup>59</sup> In early 2015, the results of the research were published and the research report (the Caple report) concluded that most of the specified dimensions in the Australian Standards and referenced in the Premises Standards are still suitable.

### The Review

Submissions were asked to comment on the 80<sup>th</sup> and 90<sup>th</sup> percentile dimensions of building features. Seventy-five submissions commented on the matter, with the majority of responses coming from people with disability, disability organisations, local governments and access consultants.<sup>60</sup>

The main issues expressed in submissions were:

- concerns with the Caple report and the 80<sup>th</sup> and 90<sup>th</sup> percentile dimensions
- calls for universal application of the 90<sup>th</sup> percentile, and
- motor scooters not being accommodated by the dimensions specified in the Premises Standards and AS 1428.1-2009.

### Caple Report – Wheelchair Spatial Dimensions

Many submissions argued the current 80<sup>th</sup> and 90<sup>th</sup> percentile dimensions of building features are inadequate.<sup>61</sup> Reasons for this centred on difficulty manoeuvring wheelchairs through the built environment and a belief that dimensions fail to reflect the size of typical manual and powered wheelchairs.

In support of these claims, several submissions noted the findings of the Caple report that some dimensions may not adequately be meeting the 90<sup>th</sup> percentile.<sup>62</sup> These include the dimensions required for 180-degree turning circles and landing length, the dimensions of a lift, the design of hand basins and shower recesses, and the seating spaces in auditoriums of assembly buildings.

<sup>59</sup> Government Response to *Access All Areas*, 2009, p.6.

<sup>60</sup> Submissions 3; 5; 6; 15; 17; 18; 24; 26; 35; 47; 50; 52; 71; 77; 92; 94; 106; 113; 115; 116; 124; 138; 154; 157; 198; 203; 208; 223; 228; 241; 249; 255; 263; 266; 279; 280; 296; 300; 304; 306; 307; 308; 314; 318; 319; 324; 326; 331; 334; 336; 337; 338; 340; 341; 342; 343; 345; 346; 349; 352; 353; 361; 362; 363; 366; 367; 371; 372; 374; 375; 377; 384; 385; 388; 389.

<sup>61</sup> Submissions 5; 17; 24; 26; 35; 52; 77; 106; 115; 116; 124; 138; 157; 208; 228; 249; 255; 263; 300; 306; 307; 308; 314; 318; 319; 336; 340; 341; 342; 343; 345; 346; 349; 353; 361; 362; 363; 366; 371; 372; 374; 377; 385; 389.

<sup>62</sup> Submissions 124; 272; 306; 307; 353; 366.

## Findings

Many of the submissions argue that aspects of the percentile dimensions are inadequate, regardless of the Caple report's conclusion that most of the dimensions are suitable. However, it is difficult to assess whether there were problems with current requirements in the Premises Standards as many submissions considered the width of dimensions and pathways only in general terms. In regard to the dimensions noted in the Caple report that may not accurately reflect the 90<sup>th</sup> percentile, the review team supports further investigation of the matter.

## Universal Application of the 90<sup>th</sup> Percentile

Allowing the 80<sup>th</sup> percentile requirement, rather than the 90<sup>th</sup> percentile, for some building features in the Premises Standards was a concession made during negotiation of the draft standards. While the Premises Standards do permit the 80<sup>th</sup> percentile, it is limited to situations where it is unlikely to cause problems with access, such as straight corridors.

Ten submissions noted that there is inconsistency between the Premises Standards and the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) over the width of an accessible path of travel (or passageway).<sup>63</sup> The Transport Standards have a minimum dimension of 1200mm (90<sup>th</sup> percentile) rather than the Premises Standards' 1000mm dimension (80<sup>th</sup> percentile). Submissions argued that the difference in dimensions can cause confusion for industry and potential disruption to people with disability. Submissions claimed that a person with disability could effectively access public transport, but then not be able to move easily around a building. Submissions also claimed that many new buildings would not find the requirement overly onerous, with most choosing to build beyond the 90<sup>th</sup> percentile already for general functionality reasons. The submissions suggest universally adopting the 90<sup>th</sup> percentile for all new buildings as a means of providing better and more consistent access for people using wheelchairs.

## Findings

The review team notes the arguments in submissions to use the 90<sup>th</sup> percentile for all building dimensions, rather than the current two-tiered 80<sup>th</sup> and 90<sup>th</sup> percentile system. This includes alignment with the Transport Standards, simplification of provisions for industry practitioners and greater accessibility for people with disability. However, submissions provided only anecdotal evidence that people with disability are having significant difficulty negotiating the 80<sup>th</sup> percentile, and only speculation on the impact of the suggested change on the building industry. The review team recommends referring the matter to an expert advisory group for further consideration.

## Motorised Mobility Devices (MMDs)

A number of submissions noted the difficulties caused by the current dimensions for building features when using mobility scooters and larger powered wheelchairs.<sup>64</sup> These submissions called for an update of the Premises Standards and AS 1428.1-2009 to accommodate these larger devices. Similar calls were made during the 2012 and 2015 reviews of the Transport Standards. An Austroads Motorised Mobility Devices project – which came out of the 2012 review of the Transport Standards – aims “to develop and publish a Standards Australia standalone technical specification document that outlines the design specifications for MMDs for use on public infrastructure (such as footpaths) and public transport (buses, trains, trams and ferries).”<sup>65</sup> More information on this project is provided in Chapter 11 of the [final report](#) of the 2015 Transport Standards Review.<sup>66</sup>

<sup>63</sup> Submissions 124; 155; 307; 308; 342; 345; 353; 361; 366; 371.

<sup>64</sup> Submissions 24; 306; 307; 318; 319; 336; 349; 353; 371; 372.

<sup>65</sup> <http://www.jr.net.au/Austroads/Project/Details.aspx?ProjectID=1488>, accessed 20 February 2016.

<sup>66</sup>

[https://infrastructure.gov.au/transport/disabilities/review/files/Review\\_of\\_Disability\\_Standards\\_for\\_Accessible\\_Public\\_Transport.pdf](https://infrastructure.gov.au/transport/disabilities/review/files/Review_of_Disability_Standards_for_Accessible_Public_Transport.pdf)

## ***Findings***

While some submissions provided information on the difficulty of manoeuvring mobility scooters within the built environment, mobility scooters are currently outside the scope of the Premises Standards. However, there is work under way to create technical specifications for mobility scooters. The review team considers that this work should be completed before further consideration is given to increasing the 80<sup>th</sup> and 90<sup>th</sup> percentage measurements to accommodate mobility scooters.

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## 2.4 Passenger Lifts

### Recommendation

- The Premises Standards be updated to reflect revisions to the specification of passenger lift types in the NCC.

### Background

The Premises Standards contain requirements for passenger lifts in two separate sections. Firstly, Section 4.4 - Lift Concession provides a concession to pre-existing lifts that would otherwise need to be replaced with a larger lift to meet the requirements of Table E3.6(b). This concession is available where the dimensions of the passenger lift floor are not less than 1100mm x 1400mm and the lift travels more than 12 metres.<sup>67</sup> The concession was included in the Premises Standards in acknowledgement of the considerable cost of upgrading the size of pre-existing lifts in a *new part* or an *affected part* of a building.

Secondly, the Premises Standards outline in Performance Requirement EP3.4 that where there is a passenger lift in a building required to be accessible, it must be suitable for use by people with disability. The Premises Standards also set out the deemed-to-satisfy (DtS) provisions, which, if followed, ensure compliance with EP3.4.

In response to Access All Areas, the Australian Government agreed to Recommendation 15(ii) of the inquiry that the Premises Standards should explicitly restrict stairway platform lifts to situations in which they were the only practical option. The inquiry also recommended urgent technical advice be sought on whether there were safe alternatives to locking off lifts and the use of constant pressure devices (“hold to use” devices).<sup>68</sup> The government also accepted in principle the request for technical advice and agreed to refer the issue to the ABCB for advice.<sup>69</sup>

### The Review

The review sought comments on issues using lifts which are locked off and/or controlled by constant pressure devices, alternatives to locking off lifts, restrictions on the installation of stairway platform lifts and any other issues. Comments on passenger lifts were contained in 73 submissions.<sup>70</sup> The majority of these submissions came from people with disability, carers and advocates and disability organisations, followed by local governments and access consultants.

### Stairway Platform Lifts

The majority of submissions commented on the practice of locking off stairway platform lifts and the use of constant pressure devices, considering them undignified and discriminatory.<sup>71</sup> Aside from not locking lifts and having single touch operation rather than “hold to use” operation, there were few suggestions for alternatives to these lifts.

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<sup>67</sup> *Disability (Access to Premises – Buildings) Standards 2010*, Schedule 1, Part 4, Section 4.4 – Lift Concession.

<sup>68</sup> *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. 95.

<sup>69</sup> Government Response to *Access All Areas*, Report of the Inquiry in Draft *Disability (Access to Premises – Buildings) Standards*, House of Representatives; Standing Committee on Legal and Constitutional Affairs, 2009, p. 6.

<sup>70</sup> Submissions 1; 2; 3; 5; 6; 17; 18; 22; 45; 52; 55; 67; 71; 83; 88; 93; 106; 113; 116; 118; 124; 157; 203; 206; 208; 228; 249; 263; 267; 277; 280; 296; 300; 303; 307; 308; 309; 310; 316; 319; 327; 329; 331; 333; 334; 336; 337; 338; 340; 341; 342; 343; 345; 346; 348; 349; 353; 358; 360; 361; 362; 364; 366; 367; 369; 370; 371; 372; 374; 377; 385; 388; 389.

<sup>71</sup> Submissions 1; 6; 18; 22; 52; 88; 116; 118; 124; 206; 296; 300; 303; 307; 309; 334; 341; 342; 343; 345; 346; 349; 353; 360; 361; 366; 370; 371; 372; 377; 389.

As noted earlier, concerns about the use of stairway platform lifts, and the level of access they provided to people with disability, led to their restriction in the Premises Standards to situations in which it is not possible to install another type of lift. The technical requirements for stairway platform lifts, as specified in AS 1735.7-1998, require the locking of lifts and the use of constant pressure devices as safety features to prevent injuries. Stairway lifts, unlike other types of lifts, are not enclosed and operate near people. Whilst there may be avenues to improve the operation and safety of stairway platform lifts, such technology does not appear to be readily available in the Australian market.

### **Findings**

From submissions received, it can be concluded that stairway platform lifts are not well regarded by people who use them. This aversion is largely based on safety concerns and concerns that the lifts are undignified to use because they are locked off and difficult for some people with disability to operate independently once unlocked. The Premises Standards recognise the drawbacks of stairway platform lifts and limit them to a small number of situations, but stop short of removing them as a last resort option where they are the only reasonable choice between accessibility and no accessibility for people with disability.

The review team considers that it would be useful to revisit the issue at the next five-year review to see if any new technologies have entered the market that satisfy the safety requirements of the lift standards and which could be a good alternative to stairway platform lifts

### **Other Issues**

A number of submissions, including the ABCB submission, noted the inconsistency between how passenger lifts are described in the Premises Standards and in the NCC.<sup>72</sup> The Premises Standards reference a number of lift standards in the AS 1735 series, whereas the NCC removes reference to the lifts as defined by AS 1735 and instead uses descriptions of the type of lifts. In its submission, the ABCB proposed that the Premises Standards be aligned with the NCC. This alignment is one of the proposals for change in Appendix 7.

### **Findings**

There is currently a mismatch between the description of lift types in the Premises Standards and the NCC that needs to be resolved. The review team recommends the Premises Standards be updated to reflect the revision in the NCC regarding the description of lift types as outlined in Appendix 7 – Proposals for Change in the Premises Standards.

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<sup>72</sup> Submissions: 307; 119; 329;

## 2.5 Swimming Pools

### Recommendations

- Section D3.10(3) of the Premises Standards be amended to provide clarification by removing the words “in length”.
- An expert advisory group consider ways to improve the understanding of accessibility issues in swimming pool design in any updated guideline.
- Consideration of whether, and how, accessible changing facilities should be included in the Premises Standards as part of the larger body of work regarding accessible adult changing facilities.

### Background

Access All Areas recommended that this review consider the requirements for swimming pools, including whether too many pools are being exempted from providing access for people with disability.

The Premises Standards specify the requirements for accessible entries/exits from swimming pools. Table D3.1 requires that an accessible entry/exit is required if:

1. the total perimeter of a swimming pool is greater than 40 metres
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. the swimming pool is not for the exclusive use of occupants of a Class 1b building or SOU in a Class 2 or Class 3 building.

Section D3.10 Swimming Pools, contains four options for providing accessible entry/exit as follows:

1. a fixed or movable ramp and an aquatic wheelchair; or
2. a zero depth entry at a maximum gradient of 1:14 and an aquatic wheelchair; or
3. a platform swimming pool lift and an aquatic wheelchair; or
4. a sling-style swimming pool lift.

If a swimming pool is more than 70 metres, a sling-style swimming pool lift is only permitted if another one of the entry/exit options is also provided.

Before the Premises Standards, there were no access requirements for swimming pools in the BCA. As such, the Premises Standards requirements provided a mechanism to significantly improve swimming pool standards.<sup>73</sup>

### The Review

The review asked submissions to comment on the appropriateness of the 40-metre threshold, whether there had been issues complying with the Premises Standards and if there were any other issues related to swimming pools.

Fifty-three submissions commented on the accessible swimming pool provisions.<sup>74</sup> The majority came from people with disability, carers and advocates, accessibility consultants, building certifiers and local governments.

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<sup>73</sup> Final Regulation Impact Statement for Decision (RIS 2009-05), *Proposal to Formulate Disability (Access to Premises – Buildings) Standards and Amend the Access Provisions of the Building Code of Australia (RIS2008-02 – as amended)*.

<sup>74</sup> Submissions 3; 5; 18; 26; 45; 52; 67; 71; 88; 93; 105; 106; 115; 116; 118; 124; 138; 157; 169; 206; 208; 227; 241; 249; 266; 277; 294; 297; 300; 303; 307; 308; 309; 319; 322; 326; 341; 342; 343; 348; 349; 352; 353; 354; 357; 363; 366; 367; 369; 371; 372; 377; 389.

## Appropriateness of the 40-metre Threshold

Twenty-seven submissions commented on the appropriateness of the threshold.<sup>75</sup> Approximately 70 per cent of these expressed concern that the 40-metre perimeter threshold was inappropriate. These comments came from people with disability, carers and advocates, disability organisations and local governments. Most considered that more swimming pools should be made accessible for people with disability. However, there was significant variation in suggestions put forward for improving accessibility. The three main suggestions for improvement were that:

- all swimming pools and spas should be accessible regardless of size<sup>76</sup>
- the threshold should be reduced to capture more swimming pools<sup>77</sup> and
- swimming pool usage or the classification of building should form the basis for accessibility requirements.<sup>78</sup>

From submissions, it appears there is some confusion surrounding specification of perimeter thresholds in the Premises Standards. Several submissions expressed disapproval of the 40-metre and 70-metre thresholds, yet they appear to mistake the perimeter for the length of a pool. The misinterpretation is unsurprising given that pools are most commonly described in term of length (e.g. 25-metre pool, 50-metre pool). Adding to the confusion is that Section D3.10(3) refers to “*where a swimming pool has a perimeter of more than 70m in length*”.

### Findings

The review team understands the swimming pool threshold was included in the Premises Standards as an acknowledgment of spatial challenges and cost associated with providing access to small pools such as spas, plunge pools and paddling pools.

Based on the variety of views expressed in submissions, along with instances of misinterpretation of the perimeter threshold, it is not possible for the review team to determine the appropriateness of the swimming pool threshold at this time.

The review team considers that clearer wording in D3.10(3) would improve understanding of the threshold measurement. It is the review team’s view that any guideline developed to assist understanding of the Premises Standards could include an explanation of the swimming pool requirements.

## Other Issues - Swimming Pool

Fifty-two submissions raised other issues with the swimming pool requirements or compliance with the Premises Standards.<sup>79</sup> More than half came from disability organisations and people with disability, carers and advocates, while local governments and access consultants represented a third of submissions. The main issues were options for accessible entry/exit of a swimming pool, issues using alternative solutions, and adult changing facilities at swimming pools.

Submissions demonstrated that preferences varied considerably from person to person for the favoured type of pool entry and exit methods outlined in Section D3.10(2). For example, several submissions considered access to a pool via a sling-style lift undignified, yet other submissions favoured slings as the preferred method of exit and entry. The only consistent trend was that ramped

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<sup>75</sup> Submissions 3; 5; 52; 115; 124; 138; 157; 206; 227; 241; 249; 277; 297; 303; 307; 308; 309; 319; 322; 342; 352; 353; 357; 366; 371; 372; 377.

<sup>76</sup> Submissions 124; 138; 206; 249; 297; 303; 308; 342; 353; 371.

<sup>77</sup> Submissions 157; 352.

<sup>78</sup> Submissions 206; 303; 342; 372.

<sup>79</sup> Submissions 5; 18; 26; 45; 52; 67; 71; 88; 93; 105; 106; 115; 116; 118; 124; 138; 157; 169; 206; 208; 227; 241; 249; 266; 277; 294; 297; 300; 303; 307; 308; 309; 319; 322; 326; 341; 342; 343; 348; 349; 352; 353; 354; 357; 363; 366; 367; 369; 371; 372; 377; 389.

entry was favoured in larger pools.<sup>80</sup> Even so, several submissions questioned the cost of installing ramps and favoured other methods of pool entry and exit.

A number of submissions noted the difficulties some developers experience using Alternative Solutions, that is, the use of pool entry and exit methods that satisfy the relevant Performance Requirement of the NCC but are not specified in the Premises Standards. There was a perceived reluctance by building certifiers to deviate from the DtS provisions and approve Alternative Solutions. This trend was noticed more broadly across the review and is discussed further in Section 5, page 61.

A number of submissions also called for accessible adult changing facilities to be included in swimming pools.<sup>81</sup> Some submissions raised that if accessible entry and exits are required, then appropriate changing and sanitary facilities also need to be provided.

## **Findings**

It is apparent that the concerns and diversity of views expressed at the time of Access All Areas remain. While many people and groups expressed strong views on pools and the method of entry and exit, there was no consistent preference for a particular method. As a result, no changes to the pool entry and exit methods are recommended at this time.

The current methods of accessible pool entry and exit, as outlined in the Premises Standards, aim to allow the use of different options depending on the pool and its intended use. As previously noted, the Premises Standards do not prevent the use of other approaches to creating an accessible pool entry and exit, as long as they satisfy the relevant Performance Requirements. This is discussed further in Section 5, page 61.

Given the range of accessible entry and exit methods provided for swimming pools, the review team is of the view that there is merit in providing associated accessible adult changing facilities, where changing facilities are provided. As such, the matter should be reviewed by an expert advisory group as part of the larger body of work regarding accessible adult changing facilities (For more information refer to Section 2.2, page 22).

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<sup>80</sup> Submissions: 26; 93; 138; 157; 297; 307;

<sup>81</sup> Submissions: 67; 105; 106; 116; 124; 138; 169; 208; 294; 352; 357; 366; 371; 377;

## 2.6 Accessible Carparking

### Recommendations

- Guidance on accessible carparking be developed as part of the development of an updated guideline for the Premises Standards; this may also include reference to AS/NZS 2890.6-2009.
- An expert advisory group on data (see Section 6 Data Collection Activities and Audits, page 67) consider the issue of data in relation to carparking permits versus number of accessible carparks.
- Prior to the next five-year review, research should be undertaken to clarify whether the current ratio is sufficient as a minimum standard or whether consideration needs to be given to changing the ratio.
- An expert advisory group consider the specifications within the AS/NZS 2890.6-2009 to determine whether there is a need to consider requesting changes to the standard.
- An expert advisory group consider an editorial amendment to D3.5d, replacing “designated” with “identified with signage” and clarifying the intended meaning of D3.5d related to signage and shared zones.

### Background

According to the Premises Standards, 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.<sup>82</sup>

However, it does not need to be provided in a Class 7a building or a carparking area where a parking service is provided and if direct access to any carparking space is not available to the public.

The ratio of accessible carparking spaces is set out in Table D3.5.<sup>83</sup> The ratio varies depending on building class but generally ranges from one accessible carparking space per 50 spaces to one accessible carparking space per 100 spaces.

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

*Access All Areas* recommended the five-year review consider the adequacy of accessible carparking.<sup>84</sup>

### The Review

The review sought comment on the availability of accessible carparking since the introduction of the Premises Standards, whether there had been any issues satisfying the requirements for accessible parking, and any other issues. There were 135 submissions with comments on accessible car parking.<sup>85</sup> These were predominantly from people with disability, disability organisations and local governments. Thirty-seven were from the Changing Places campaign, which called for replacing

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<sup>82</sup> *Disability (Access to Premises – Buildings) Standard 2010*, Section D3.5 Accessible carparking, pp.34-35.

<sup>83</sup> *Disability (Access to Premises – Buildings) Standard 2010*, Section D3.5 Accessible carparking, Table D3.5 carparking spaces for people with a disability, pp.35-36.

<sup>84</sup> *Disability (Access to Premises – Buildings) Standards 2010*, Part 6 Review, pp. 112-116.

<sup>85</sup> Submissions 2; 3; 4; 5; 6; 7; 9; 13; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 32; 36; 37; 38; 40; 43; 44; 45; 46; 47; 48; 51; 53; 54; 55; 59; 60; 62; 64; 65; 66; 67; 70; 71; 72; 73; 74; 77; 78; 80; 81; 86; 88; 93; 96; 99; 105; 106; 108; 109; 110; 113; 114; 116; 118; 121; 122; 124; 128; 133; 137; 138; 141; 142; 143; 144; 152; 157; 170; 178; 194; 196; 201; 203; 208; 217; 223; 228; 249; 255; 263; 267; 277; 279; 280; 286; 296; 300; 306; 307; 308; 309; 310; 314; 315; 319; 325; 326; 327; 333; 336; 337; 341; 342; 343; 345; 346; 348; 352; 353; 355; 356; 357; 358; 360; 361; 362; 364; 365; 366; 367; 370; 371; 372; 377; 378.

roadside kerbing with ramped entry layback kerbing.<sup>86</sup> However, it should be noted that this is out of scope as the Premises Standards do not apply to on-street parking.

## Availability of Accessible Carparking

Forty-nine submissions responded to the question of whether there had been a change in the availability of accessible carparking since the introduction of the Premises Standards.<sup>87</sup> Most came from people with disability, carers and advocates and local governments, and views were mixed. Approximately half thought availability had improved while others considered availability had not changed or had worsened.

Regardless of the mixed views on changes to availability, a significant majority of submissions claimed the ratios of accessible car parking spaces specified in the Premises Standards will be insufficient by the next five-year review. This was primarily on the basis that the number of people with disability will grow as the population ages.

Examples of responses include:

**Hans Tracksdorf** *"It's interesting, there are now so many people with council disabled stickers on their cars and yet the number of accessible car spaces has hardly increased."*<sup>88</sup>

**Mark Relf** *"As of March 2015 in NSW, the number of Mobility Parking Permits (MPP) that have been issued is 363,477, which is 4.8% of the 7.6 million people in NSW and more than seven times the estimated number in 1996.*

*363,477 MPPs is 7.8% of the 4,660,430 drivers licences for cars and light vehicles in NSW.*

*363,477 MPP holders includes a growth of 41,603 in the past 5 years with 16,375 growth in the past 2014 year alone.*

*It is evident that 1% to 2% of spaces required by Table D3.5 of the BCA and Premises Standards Access Code to be accessible in 2015 is grossly inadequate."*<sup>89</sup>

Overall, submissions mostly proposed two solutions. The first was simply to increase the ratio of accessible parking spaces provided in Table D3.5.<sup>90</sup> Some called for larger increases depending on the class of building – for example, larger ratio increases to nursing homes, surgeries, hospitals and Class 9b buildings where there is high public use, like swimming pools. The second was to correlate the number of accessible car parks with the number of accessible parking permits issued by the relevant jurisdiction.<sup>91</sup> These submissions argued that this would accommodate jurisdictions which issue a greater proportion of accessible parking permits.

Many submissions raised the misuse of accessible parking by people without an accessible parking permit. Whilst this issue is outside the scope of the Premises Standards, it does impact the availability of accessible carparks and influences the effectiveness of the current ratio.

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<sup>86</sup> Submissions 7; 16; 17; 20; 21; 25; 32; 37; 40; 44; 51; 53; 59; 62; 64; 65; 66; 70; 72; 73; 78; 80; 86; 105; 108; 114; 121; 122; 128; 133; 137; 142; 143; 144; 196; 201; 217.

<sup>87</sup> Submissions 3; 5; 9; 18; 22; 24; 26; 36; 37; 43; 48; 51; 55; 59; 71; 118; 124; 138; 141; 157; 178; 203; 228; 249; 274; 277; 280; 286; 300; 306; 308; 309; 314; 315; 325; 326; 327; 336; 341; 342; 343; 353; 356; 357; 360; 361; 371; 372; 377.

<sup>88</sup> Submission 270.

<sup>89</sup> Submission 300.

<sup>90</sup> Submissions 48; 138; 308; 310; 341; 342; 343; 349; 361; 371.

<sup>91</sup> Submissions 300; 353; 360; 377.

## Findings

The review did seek data from states and territories on the number of disability parking permits issued each year. Some jurisdictions were able to provide this data, others were not. Even with data on the number of disability permits from some jurisdictions, it was not possible for the review to make a firm conclusion whether the ratio of accessible parking spaces in the Premises Standards was adequate. The number of permits issued differed greatly between states, even from year to year.

The review team considers that without a register of accessible car parking permits issued in each jurisdiction, it is difficult to assess definitively whether there is a growing need for more designated accessible spaces.

Further, the accessible carpark ratios in the Premises Standards are maintained as a national minimum standard. Significant variation between states and territories mean some jurisdictions may need to consider the number of parking permits issued per year and increase accessible parking spaces beyond the minimum standards.

A firm conclusion on the adequacy of accessible carpark ratios requires more data and analysis, and the review team considers there would be value in undertaking a study of the availability of accessible carparking in time for the next five-year review. This may also consider whether the number of accessible car parking spaces required in Table D3.5 is appropriate or whether ratios should be increased, particularly at nursing homes, surgeries, hospitals and Class 9b buildings where there is high public use, like swimming pools.

## Accessible Carparking - Satisfying the Requirements

Forty-three submissions made comments on satisfying the requirements for accessible carparking and a further 120 commented on other issues.<sup>92 93</sup> The main themes to emerge from submissions were the maximum distance of accessible carparks from a building entry, issues related to the specifications of AS/NZS 2890.6-2009 for accessible car parking and the interpretation of D3.5d on designating carparking spaces for people with disability.

### *Maximum distance of an accessible carpark from a building entry*

Several submissions called for provisions in the Premises Standards, or in AS/NZS 2890.6-2009, to define a maximum distance between accessible car parks and a building entry point or lift lobby.<sup>94</sup>

## Findings

Provisions on maximum distances between accessible car parks and building entry point or lift lobbies were considered during the development of the Premises Standards. Provision for a maximum distance was not included due to the difficulty of accommodating the wide range of building and entrance configurations. For example, there may be multiple accessible pedestrian entrances distributed around a building while parking areas may not be similarly distributed. In addition, a carpark can cater to multiple buildings and businesses and an accessible carpark is not designated for each them. The AHRC Guideline provides some advice on this issue:

*“While not directly addressed in the Access Code, the most appropriate location for the accessible car parking spaces will be, to some extent, determined by the use and function of the building.*

<sup>92</sup> Submissions 5; 6; 22; 23; 24; 38; 45; 46; 48; 86; 88; 106; 113; 116; 118; 124; 152; 170; 203; 223; 249; 279; 280; 286; 300; 307; 309; 310; 314; 315; 325; 327; 336; 337; 343; 345; 355; 356; 367; 371; 372; 377.

<sup>93</sup> Submissions 2; 4; 5; 7; 9; 13; 16; 17; 18; 19; 20; 21; 24; 25; 26; 32; 36; 37; 38; 40; 43; 44; 45; 46; 47; 48; 51; 53; 54; 59; 60; 62; 64; 65; 66; 67; 70; 72; 73; 74; 77; 78; 80; 81; 88; 93; 96; 99; 105; 106; 108; 109; 110; 113; 114; 116; 118; 121; 122; 124; 128; 133; 137; 138; 142; 143; 144; 152; 157; 194; 196; 201; 208; 217; 228; 249; 255; 263; 267; 277; 279; 280; 286; 296; 300; 306; 307; 308; 309; 310; 310; 314; 319; 333; 336; 337; 341; 341; 343; 345; 346; 346; 348; 352; 353; 355; 356; 357; 358; 362; 364; 365; 366; 367; 370; 371; 372; 377; 378.

<sup>94</sup> Submissions 124; 307; 330.

*For example, a carpark associated with a cinema should have the accessible carparking spaces as close as possible to the main pedestrian entrance and cinema ticketing area.*

*It may be more appropriate in a building with multiple pedestrian entrances, such as a shopping centre, to distribute accessible carparking spaces to ensure that the distance between the accessible car parking spaces and the entrances to the buildings are minimised.*

*Alternatively, a building may have more than one carpark, but the use and function of the building suggests all required accessible carparking spaces be placed in just one of the carparks.<sup>95</sup>*

The review team considers that the AHRC Guideline are appropriate in this instance. It remains the case that the most appropriate location of accessible carparking depends on the function and use of a building and is best determined on an individual basis.

### **Specifications of AS/NZS 2890.6-2009**

A number of submissions raised specific issues related to the specifications of AS/NZS 2890.6-2009 for accessible carparking spaces. These submissions called for:

- the definition of a bollard to include its thickness, height and placement. It was claimed some bollards are too low for people to see and people are backing into them. Further, there were calls for columns not to be used as bollards as these can make shared zones inaccessible<sup>96</sup>;
- the entry/exit space for rear vehicle access for the unloading and loading of wheelchairs be designated to promote awareness of potential encroachment onto the area shared with vehicles.<sup>97</sup> It is claimed a growing number of people use rear-loading vans for transporting people with wheelchairs and mobility scooters. It is suggested the lack of markings, such as unbroken lines, on the space shared with vehicles is creating safety concerns; and
- accessible carparking spaces to be further designated with a vertical sign.<sup>98</sup>

### **Findings**

The review considers that an expert working group should consider the specifications within AS/NZS 2890.6-2009 to determine whether there is a need to consider changes to the standard. The matter can then be referred to Standards Australia for consideration if required.

The review team found that there also appeared to be a lack of awareness of AS/NZS 2890.6-2009 and a failure to comply with its specifications. The review team considers that guidelines should take into account these specifications to promote compliance with the Premises Standards.

### **Interpretation of D3.5(d)**

A number of submissions noted that D3.5(d) is difficult to interpret.<sup>99</sup> D5.5(d) currently states:

*D3.5 Accessible carparking spaces:*

*(d) need not be designated where there is a total of not more than 5 carparking spaces, so as to restrict the use of the carparking space only for people with a disability.*

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<sup>95</sup> *Guideline on the Application of the Premises Standards*, version 2 – 2013, Australian Human Rights Commission, p. 95-6.

<sup>96</sup> Submission 307.

<sup>97</sup> Submission 360.

<sup>98</sup> Submission 327.

<sup>99</sup> *Disability (Access to Premises – Buildings) Standard 2010*, Section D3.5 Accessible carparking, pp.34-35.

## Findings

The review team acknowledges that Section D3.5 could be misunderstood. By way of clarification, this section is intended to outline that, while at least one accessible car parking space complying with AS/NZS 2890.6-2009 is required in any carpark covered by the Premises Standards, signage and markings designating an accessible car parking space are only required in a car park with more than five spaces. This means that where an accessible carpark is provided and there are fewer than five carpark spaces, signage and markings designating that particular accessible carpark are not required. Yet all other requirements, such as minimum dimensions and gradient, must still be provided.

An editorial amendment to D3.5(d), replacing “designated” with “identified with signage” may be appropriate. Further clarification can also be addressed in the guideline.

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## 2.7 Public Transport Buildings

### Recommendations

- The Department of Industry, Innovation and Science to work with the Department of Infrastructure and Regional Development to consider ways to harmonise the Transport Standards with the Premises Standards where appropriate
- Revise guidance material to provide more clarity on instances where the Premises Standards and the Transport Standards interact and differ and on which structures related to transport buildings are classified as Class 9b or Class 10.
- Expert advisory group to consider how a “whole-of journey” approach to accessibility planning may be promoted and encouraged through guidance material.

### Background

The Transport Standards imposed accessibility requirements on public transport buildings. To preserve these the specifications, they were transferred from the Transport Standards to Part H2 of the Premises Standards.<sup>100</sup> These DtS 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.

The Premises Standards specify the requirements for disability access to public buildings while the Transport Standards apply to operators and providers of public transport services and specify requirements for the accessibility of the premises, conveyances and infrastructure.

At present, the Premises Standards and the Transport 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 timing: the Transport Standards were enacted in 2002, with the first review commencing in 2007 prior to the release of AS1428.1-2009, while the Premises Standards passed into law in 2010.

Access All Areas recommended the five-year review consider the impact of the Premises Standards on public transport buildings to ensure inconsistencies have not occurred through the application of both the Premises Standards and the Transport Standards to such buildings.

### The Review

This issue received comments from 145 submissions, predominantly from people with disability, carers and advocates, disability organisations, accessibility consultants, local governments, state governments and others from the public transport industry.<sup>101</sup> Of the 145 submissions, 76 came from the Changing Places campaign, which called for the upgrade of lifts and ramps and the inclusion of accessible adult changing facilities in public transport buildings.<sup>102</sup> Submissions were asked to

<sup>100</sup> *Disability (Access to Premises – Buildings) Standard 2010*, Part H2 Public transport buildings, p. 51.

<sup>101</sup> Submissions 7; 10; 13; 15; 16; 17; 18; 19; 20; 25; 26; 32; 33; 34; 37; 40; 51; 52; 53; 59; 62; 64; 65; 66; 67; 69; 72; 73; 76; 78; 80; 86; 93; 96; 99; 105; 108; 113; 114; 116; 117; 118; 121; 122; 123; 124; 128; 133; 137; 138; 142; 143; 144; 154; 157; 165; 193; 196; 198; 201; 206; 208; 212; 215; 216; 218; 219; 220; 222; 224; 228; 228; 229; 230; 231; 233; 234; 235; 236; 237; 238; 239; 240; 241; 242; 243; 244; 245; 246; 247; 248; 249; 258; 264; 265; 267; 273; 278; 280; 281; 287; 288; 289; 290; 291; 292; 293; 294; 300; 302; 303; 307; 308; 310; 312; 314; 315; 316; 319; 320; 327; 329; 333; 337; 342; 343; 345; 348; 349; 352; 353; 354; 354; 361; 365; 367; 369; 371; 372; 374; 385.

<sup>102</sup> Submissions 7; 10; 15; 16; 17; 19; 20; 25; 32; 33; 33; 34; 37; 40; 51; 53; 59; 62; 64; 65; 66; 67; 72; 73; 76; 78; 80; 86; 105; 108; 114; 121; 122; 128; 133; 137; 142; 143; 144; 196; 201; 212; 215; 216; 218; 219; 220; 222; 230; 231; 233; 234; 235; 236; 237; 238; 239; 240; 241; 242; 243; 244; 245; 246; 247; 248; 258; 264; 281; 288; 289; 290; 291; 292; 293; 302.

comment on whether there have been unintended consequences or inconsistencies in applying both the Premises Standards and the Transport Standards to public transport buildings and whether there were any other issues.

## Unintended Consequences or Inconsistencies in Applying both the Premises Standards and the Transport Standards

The most significant concern, expressed by over 80 per cent of respondents, is a lack of harmony between the Premises Standards and the Transport Standards. The issue relates largely to the different Australian Standards referenced in the Premises Standards and the Transport Standards. Some of the differences identified relate to specifications for stairways, risers and nosings, accessible toilets, ramp landings, luminance contrasting strips on glass panelling, step ramps, doorway circulation spaces, signage, hearing augmentation and tactile ground surface indicators (TGSIs).

Submissions indicated that it is confusing and frustrating for industry in environments where the two standards differ in close proximity to each other, such as in passenger use areas of transport-related buildings. It was claimed that, in many instances, it was not clear to building managers, developers, accessibility consultants, certifiers and designers which standard to implement.<sup>103</sup> Several submissions suggested that, in situations where it is unclear which standard to apply, some operators are addressing the more onerous standard to ensure both standards are met, and others the standard that is more practical for the situation.

It was also claimed that the interaction between the Premises Standards and Transport Standards creates inconsistencies in terms of accessibility along a path of travel for people with disability.<sup>104</sup> To illustrate concerns, Guide Dogs Australia provided the example below:

*“Mary has low vision and travels by train each day. The inconsistent luminance contrasting strips on glass panelling at her local station concourse, and on stairs leading to the platform, means that Mary cannot easily identify accessible walkways and barriers as she moves through the station.”<sup>105</sup>*

Vision Australia suggested that this is exacerbated when a person moves between locations and transport hubs. The requirement to adapt to the different type and placement of accessibility features causes confusion and stress for people with disability.

In addition to managing the inconsistency between the Premises Standards and Transport Standards, transport operators from the rail industry noted increased complexity in meeting requirements since the Premises Standards came into effect.<sup>106</sup> Review team discussions with Queensland Rail provided more insight. Queensland Rail noted that the Transport Standards were intended to apply to the whole site whereas the Premises Standards apply to “buildings” and Part H2 only applies to buildings classified as Class 9b and Class 10. Rail stations are complex sites and there is a need to define elements of a station that are or are not a building. For example, a platform shelter is classified as Class 10a; a footbridge, stairs or ramp without a roof is Class 10b; and, with a roof, the classification changes to Class 9b. Operators need greater clarity in relation to their obligations and the requirements. In addition, there is a conflict between access requirements for transport buildings versus non-transport buildings, which has led to differing interpretations amongst operators, providers, contractors, engineers and certifiers.

In addressing these issues, some submissions called for greater alignment of the Premises Standards and Transport Standards, a new class of building in the Premises Standards related to transport

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<sup>103</sup> Submissions 7; 29; 155; 270; Queensland Rail, further consultation.

<sup>104</sup> Submissions 24; 133; 222; 344.

<sup>105</sup> Submission 316.

<sup>106</sup> Submissions 312; 320; Queensland Rail, further consultation.

buildings and more guidance material on how and when the two standards apply. Further, to address inconsistencies in the path of travel, some stakeholders called for a “whole-of journey” approach to be introduced into the Premises Standards.<sup>107</sup> The purpose would be to create greater cohesion and collaboration in planning accessibility features to optimise independent travel for people with disability. It was proposed that the definition should take into consideration an accessible journey for people with disability “from arrival to departure”. In the case of transport hubs, it was suggested this should begin at the main pedestrian arrival point for accessing transport and end at the main pedestrian departure point, such as vehicle pickup, footpath or other point.

## Findings

The review team acknowledges there are unique accessibility challenges related to public transport buildings caused by the close interaction between the Premises Standards and the Transport Standards. These issues may be addressed by improving the alignment between the Premises Standards and the Transport Standards and through appropriate guidance material.

It is noted that a [second review](#) of the Transport Standards was publicly released by the Australian Government on 10 July 2015, along with the Government’s response. One of the major recommendations involves the modernisation of the Transport Standards. This represents an opportunity to harmonise the provisions of the Transport Standards with those of the Premises Standards, where practical.

It is clear from the submission process that improved guidance material is required. This material should provide greater clarity in relation to where the Premises Standards and Transport Standards apply by focussing on the points and aspects where they differ. Further, while the AHRC Guideline provides some information in relation to transport building requirements, more information is needed to define which aspects of a building are classified under Part H2 as Class 9b or Class 10 structures.

To assist integration of accessibility features at public transport sites, adopting a “whole-of journey” approach to accessibility planning has merit. However, rather than integrating this into the provision of the Premises Standards, the review team considers it would be best encouraged through supporting guidance material.

The review team notes the suggestion from rail industry stakeholders that public transport buildings be assigned their own classification in the Premises Standards.<sup>108</sup> This request was based on the premise that railway stations are complicated sites and that the provisions in Part H2 in the Premises Standards and the mix of Class 9b and Class 10a structures is complicated. However, the review team notes the implications if this suggestion were adopted extend far beyond the access provisions. Further, this suggestion is outside the scope of this review. Proposals for new classes of buildings are best discussed with the Office of the ABCB.

## Other Issues - Public Transport Buildings

A number of other issues were raised by submissions, with several discussed in Sections 2.2 and 2.3. (page 22 and page 25). The two main issues expressed related to the schedule of upgrade for public transport buildings and service animal relief areas in airports.<sup>109</sup>

### Schedule of upgrade

A small number of submissions raised concern about transport providers not meeting the schedule of upgrade for existing transport-related buildings. These submissions put forward examples of train stations lacking accessible ramps, lifts, stairways and toilet facilities.<sup>110</sup> However, the information

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<sup>107</sup> Submissions 24; 33; 123; 197; 290.

<sup>108</sup> Submissions 315; 329.

<sup>109</sup> Submissions 13; 19; 33; 69; 118; 157; 273; 352.

<sup>110</sup> Submissions 13; 19; 33; 118; 157; 352.

provided and timetable for upgrade set out in Section 3.1 of the Premises Standards indicate these amendments are likely to be addressed by service providers in their forward work plan.<sup>111</sup>

### **Findings**

Regarding the timetable for the upgrade of existing transport-related buildings outlined in the Premises Standards, Section 3.1, it is of note that all accessibility aspects will require full compliance by 31 December 2022. As such, compliance with the requirements would be best assessed as part of the first review of the Premises Standards post 31 December 2022.

### ***Service animal relief areas***

Another issue raised during the submission process was the availability of appropriate relief areas for assistance animals in public transport related buildings.<sup>112</sup> This was raised as an issue in airport terminals, where there can be a considerable amount of time spent indoors without access to grassed areas or facilities. While some airports, such as Adelaide and Brisbane, provide facilities for animals that are reasonably proximate to boarding areas, many airports do not. This means passengers with assistance animals may be placed in a situation where they must walk a significant distance to find a suitable location, often outside the security-controlled area that they may have already entered.

### **Findings**

Concerning service animal relief areas the review team notes that the Aviation Access Forum, run through the Department of Infrastructure and Regional Development, encourages airport operators to consider providing such facilities through Disability Access Facilitation Plans (DAFP). The plans are designed as a communication tool between airline and airport operators and the travelling public on the availability and accessing of services for passengers with disability. In developing their DAFP, operators are encouraged to consider the access needs of passengers with disability and to consult with the disability sector and broader community when planning/implementing changes to airport infrastructure or services. It is considered that this is the most appropriate mechanism to promote animal relief areas.

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<sup>111</sup> Disability (Access to Premises – Buildings) Standards 2010, Section 3.1 pp. 9-11.

<sup>112</sup> Submissions 69; 273.

## 2.8 Wayfinding

### Recommendation

- Following finalisation of the new wayfinding standard by Standards Australia, an expert advisory group should consider options for incorporating the standard in the Premises Standards.
- Expert advisory group to consider further information to be included in a guideline to promote the best practice installation of TGSIs.

### Background

Wayfinding refers to building features that enable people with disability to locate where they are within the environment and independently negotiate 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
- TGSIs to warn of hazards.

However, the wayfinding requirements in the Premises Standards are limited because at the time the Premises Standards were developed no Australian Standard specifying wayfinding requirements existed.

Access All Areas concluded it was important for any review of the Premises Standards to consider whether any other DtS provisions for wayfinding could be incorporated in the Premises Standards. Since the HSRC inquiry, Standards Australia has developed a draft wayfinding standard (AS 1428.4.2). The draft standard was released for public comment on 16 November 2015, with the submission period closing on 15 February 2016. Over 1,000 submissions were received.

### The Review

Sixty-five submissions commented on wayfinding.<sup>113</sup> Submissions came from a broad range of people and organisations including people with disability, carers and advocates, disability organisations, local and state governments, access consultants and building certifiers. The review asked people to comment on the adequacy of the wayfinding provisions in the Premises Standards, whether they had issues satisfying the requirements and whether there were any other issues.

Forty-eight submissions considered the current provisions for wayfinding inadequate.<sup>114</sup> The majority of these came from disability organisations, people with disability, carers and advocates, access consultants and local governments. The main concern was the lack of provisions concerning consistent signage for wayfinding. However, many were aware of the draft wayfinding standard and recommended referencing the new standard in the Premises Standards as a means of addressing the current inadequacies.

Sixteen submissions commented on issues with satisfying the wayfinding requirements.<sup>115</sup> The main issue to emerge was poor installation and placement of TGSIs. It was stated that more needs to be done to ensure consistency and integration of the type and placement of TGSIs, both within a site and more widely within local areas.

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<sup>113</sup> Submissions 2; 5; 19; 45; 67; 69; 84; 93; 96; 105; 115; 116; 117; 118; 124; 138; 145; 157; 206; 208; 228; 249; 262; 263; 272; 277; 287; 294; 296; 300; 303; 307; 308; 309; 314; 315; 316; 319; 321; 327; 331; 332; 336; 337; 338; 341; 342; 346; 348; 349; 353; 356; 358; 361; 362; 363; 367; 369; 370; 371; 372; 374; 375; 377; 385.

<sup>114</sup> Submissions 5; 19; 45; 84; 96; 105; 115; 116; 117; 118; 124; 138; 145; 157; 206; 208; 228; 262; 272; 277; 294; 300; 303; 307; 308; 314; 316; 319; 321; 327; 333; 336; 341; 342; 348; 349; 353; 356; 361; 362; 363; 367; 369; 370; 371; 372; 374; 385.

<sup>115</sup> Submissions 2; 116; 124; 208; 228; 307; 309; 319; 331; 337; 356; 371; 372; 374; 377; 385.

The vast majority of issues raised in respect of wayfinding within buildings are the subject of the new wayfinding standard under development by Standards Australia. Several submissions also contained comments on the use and implementation of hearing augmentation. This is addressed separately in Section 7, page 73.

## Findings

From the submissions, it appears the wayfinding requirements in the Premises Standards are considered inadequate by many. The review team considers it would be beneficial to delay any changes to the wayfinding requirements in the Premises Standards until the new wayfinding standard is finalised. Following this, an expert advisory group should consider how the wayfinding standard might be incorporated into the Premises Standards.

The other issue raised in a number of submissions was poor installation of TGSIs. The review team considers that further guidance should be developed to assist the building industry about best practice placement and installation of TGSIs.

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## 2.9 Emergency Egress

### Recommendations

- Update the Premises Standards to include any revised emergency egress provisions (including DP7) of the NCC.
- Consider any new methods for quantifying the benefits of additional emergency egress options (as costs and technologies may change over that time), at the next five-year review.

### Background

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; rather, Section A2.4 references the fire safety provisions in the NCC.<sup>116 117</sup>

*Access All Areas* made two recommendations in relation to emergency egress:

*“Recommendation 10: The Committee recommends that the current exemption of fire-isolated stairs and ramps in paragraph D3.3(b) be amended to provide accessibility as far as practicable, with particular consideration given to tactile ground surface indicators, luminance contrast stair nosings and second handrails.”<sup>118</sup>*

*Recommendation 16: The Committee recommends that the Australian Building Codes Board undertake further research to identify DtS provisions for emergency egress for people with disability with a view to making changes to the Building Code as soon as possible.”<sup>119</sup>*

The Australian Government accepted Recommendation 10, in part, to include luminance contrast stair nosings on fire-isolated stairs. Other aspects of the recommendation were deferred until a safety and technical assessment was undertaken by the ABCB.

Following this, the NCC was amended to include a number of additional requirements aimed at improving emergency egress, including changes to 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 an associated new Performance Requirement in the NCC (DP7), were introduced.<sup>120 121</sup>

In response to Recommendation 16, a Consultation Regulatory Impact Statement (RIS) was prepared in 2014 to evaluate further accessibility measures. Two options were proposed:

- Option 1: Inclusion of five DtS 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 exit
  - Proposal 5 – accessibility of fire-isolated exits

<sup>116</sup> *Disability (Access to Premises – Buildings) Standards 2010*, Part A2.4 Fire Safety, p. 21.

<sup>117</sup> *National Construction Code 2015*, Building Code of Australia – Volume One, Section D Access and Egress, Section D1 Provision for Escape.

<sup>118</sup> *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. 69.

<sup>119</sup> *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. 130.

<sup>120</sup> [www.abcb.gov.au/~media/Files/Download%20Documents/Education%20and%20Training/Handbooks/2013%20Lifts%20Used%20During%20Evacuation\\_accessible.pdf](http://www.abcb.gov.au/~media/Files/Download%20Documents/Education%20and%20Training/Handbooks/2013%20Lifts%20Used%20During%20Evacuation_accessible.pdf)

<sup>121</sup> List of Amendments – NCC 2013 – Volume One, p. 6.

- Option 2 – a non-mandatory handbook.

A final RIS was released in 2015 and, after consideration by the Board<sup>122</sup> of the ABCB, it was agreed not to support the DtS provisions, as the benefits were considered unlikely to outweigh the associated cost. The Board, instead, supported developing a non-regulatory handbook where the proposals outlined in Option 1 would be documented for reference and available for use on a case-by-case basis by governments and the building industry.

## The Review

The review asked submissions to provide comments, if any, on the on the emergency egress provisions in the NCC and 69 submissions responded.<sup>123</sup> The majority of the submissions came from people with disability, carers and advocates, disability organisations, local governments and access consultants.

The majority of these submissions sought changes to the emergency egress requirements, including fire-isolated lift access, safe refuges and improvements in wayfinding, such as signage and visual alarms. Further, some submissions wished to see Performance Requirement DP7 included in the Premises Standards.

Overall, many of the submissions were critical of the RIS outcome and the decision not to adopt Option 1. Concerns remain over the reduced ability of people with disability to safely evacuate buildings compared to people without disability. Furthermore, some submissions considered there are particular situations in which emergency accessible paths of travel should be mandatory.

The submissions also provided mixed views on the development of a non-mandatory handbook. Some considered the handbook ineffective for established buildings, given its non-mandatory nature, while others considered it would be useful.

## Findings

Since the Premises Standards came into effect, a number of additional emergency egress measures have been incorporated into the NCC. Given this, the review team considers it sensible for the Premises Standards to be amended to include Performance Requirement DP7, on the use of lifts to assist occupants to evacuate a building, and its associated DtS provisions.

Submissions indicate that some stakeholders remain concerned with the current DtS provisions for emergency egress. However, given the RIS has only recently been released by the ABCB, an assessment of the effectiveness of the recently developed handbook should be considered at the next five-year review of the Premises Standards, to allow time for a more appropriate assessment.

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<sup>122</sup> The Board reports to the Australian Government minister and state and territory ministers responsible for building regulatory matters (known as the Building Ministers' Forum). It provides a vital link for industry between building and plumbing practice, and government building and plumbing regulatory policy. For more information on the Board, please go to:

<http://www.abcb.gov.au/about-the-australian-building-codes-board/about-the-abcb-board-and-the-abcb-office.aspx>

<sup>123</sup> Submissions 3; 6; 13; 18; 19; 24; 48; 71; 77; 87; 113; 115; 116; 124; 138; 145; 157; 188; 193; 206; 208; 223; 228; 249; 254; 255; 266; 279; 286; 294; 296; 300; 303; 307; 308; 309; 316; 319; 320; 325; 327; 329; 331; 333; 334; 337; 340; 342; 343; 345; 348; 349; 352; 360; 361; 362; 363; 366; 367; 369; 370; 371; 372; 374; 377; 385; 388; 389.

## 3. Exemptions, Concessions and Exceptions

### 3.1 Small Building Exemption

#### Recommendation

- Expert advisory group to consider whether there is a case to amend the exception at F2.4(i) to refer only to wheelchair accessible sanitary facilities and to clarify that ambulant toilet amenities are still required on floors other than the entrance level where appropriate.
- Amend clause D3.3(f)(ii) so that the floor area threshold of 200m<sup>2</sup> for each storey only applies to the parts of each storey available to occupants and not exempted by clause D3.4. The review has included this matter in Appendix 7: Proposals for Change in the Premises Standards, to be considered by an expert advisory group.

#### Background

Provision D3.3(f) provides an exemption for Class 5, 6, 7b and 8 buildings of no more than three storeys, where each floor (except the entrance floor) is not more than 200m<sup>2</sup>, from requirements of providing a lift or ramp. Consequently, the upper floors do not need to provide wheelchair accessible sanitary facilities (F2.4(i)); however, all other accessibility requirements apply.

Including a small building exemption in the Premises Standards was justified based on cost. It was considered the cost of providing wheelchair access between upper and lower floors of small buildings would trigger the unjustifiable hardship provision of the Premises Standards.<sup>124</sup>

#### The Review

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

Ninety-seven submissions responded to the questions on the small building exemption.<sup>125</sup> Of these, 36 were from the Changing Places campaign, which called for the removal of the exemption for all new public buildings.<sup>126</sup> The majority of remaining submissions came from disability organisations, people with disability, carers and advocates, access consultants, local governments and building certifiers. The submissions were asked to comment on whether the small building exemption remains appropriate.

#### *Appropriateness of the small building concession*

Submission numbers were evenly distributed between those from the disability sector calling for removal of the exemption or a reduction in the 200m<sup>2</sup> threshold and those that supported maintaining the exemption or increasing the threshold. Comments focussed mostly on the limitation of the threshold and requests for clarification on when the exemption applies.

Those submissions calling for removal of the exemption considered it counterproductive to social, cultural and economic inclusion.<sup>127</sup> Each of these submissions recommended the unjustifiable hardship provision be used to determine where access requirements need not be provided.

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<sup>124</sup> *Disability (Access to Premises – Buildings) Standards 2010*, Part 4, Section 4.1 Unjustifiable hardship, pp. 11-12

<sup>125</sup> Submissions 2; 3; 5; 7; 10; 13; 16; 17; 19; 20; 25; 30; 32; 33; 34; 34; 37; 40; 44; 45; 47; 51; 53; 54; 59; 62; 65; 66; 67; 70; 71; 72; 73; 78; 80; 83; 86; 87; 93; 105; 108; 113; 114; 116; 118; 122; 124; 128; 133; 138; 157; 165; 178; 196; 206; 208; 212; 223; 228; 249; 257; 262; 263; 266; 280; 294; 296; 300; 303; 307; 309; 310; 314; 316; 319; 328; 329; 331; 332; 337; 338; 340; 342; 348; 352; 353; 360; 364; 366; 369; 371; 372; 374; 377; 385; 388; 389.

<sup>126</sup> Submissions 7; 10; 16; 17; 19; 20; 25; 32; 33; 34; 34; 37; 40; 44; 47; 51; 53; 54; 59; 62; 65; 66; 67; 70; 72; 73; 78; 80; 86; 105; 108; 114; 122; 128; 133; 212.

<sup>127</sup> Submissions 228; 353; 366; 371; 372.

In the absence of removing the small building exemption, two submissions called for a reduction in the 200m<sup>2</sup> floor threshold on the basis of potentially lower costs involved with installing lifts and ramps compared to when the threshold was developed in 2004.<sup>128</sup> These submissions called for a new RIS to reassess the costs and benefits of providing the exemption based on 150m<sup>2</sup>, 200m<sup>2</sup>, and 250m<sup>2</sup> floor sizes.

In addition, a few submissions considered the exemption should not be available for buildings where it might deny people access to important employment opportunities, services or facilities available on the upper levels. The idea of assessing a building based on business services was also addressed in Access All Areas, which concluded that providing access based on the class of building was a more effective means of codifying building access obligations, as businesses within a building may be subject to change over time.

Conversely, several submissions recommended the exemption be maintained or the threshold increased. These submissions claimed the provisions remain as appropriate as when the Premises Standards came into effect in 2011.<sup>129</sup> Their arguments centred on the significant cost and impact on usable floor space if there was a requirement to provide a lift or ramp in a small building. It was claimed both aspects would discourage people from occupying such premises or proceeding with building projects. This was seen as a particular issue for heritage buildings.

### Findings

The review team finds that the small building exemption for Class 5, 6, 7b and 8 buildings, including the 200m<sup>2</sup> threshold, remains an appropriate compromise between cost and accessibility. In coming to this finding, the review team considered not only the initial cost of installing a lift or ramp but the significant space constraints of providing a lift or ramp in these types of smaller buildings.

### *Access provisions required under the exemption*

Several submissions requested clarification of the access provisions relating to levels not required to be made accessible by a lift or ramp under the small building exemption D3.3(f).<sup>130</sup>

To clarify, while access via a lift or a ramp under provision D3.3(f), or accessible sanitary facilities under F2.4(i), are not required on certain storeys, all other accessible features are required. This includes features such as door hardware, luminance contrast requirements, door circulation space, corridor widths, features on stairways, signage, hearing augmentation and other elements vital to supporting safe access and egress to people with an ambulant disability and those who are vision or hearing impaired.

In addition, two submissions claimed that the exemption under F2.4(i) from providing accessible unisex sanitary compartments and accessible unisex showers on non-entrance levels should only refer to an exemption for “wheelchair accessible sanitary” facilities. It was suggested it needs to be clearer that ambulant toilet and shower amenities still need to be provided if toilet and shower facilities are provided on those levels.<sup>131</sup>

### Findings

The review team notes the suggestion to remove wheelchair-specific access provisions on upper and lower levels in existing buildings where the exemption D3.3(f) applies. However, it acknowledges that the access provisions may also benefit a broad range of people with disability who do not use wheelchairs: for example people who use canes or assistance animals. The Premises Standards

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<sup>128</sup> Submissions 124; 223.

<sup>129</sup> Submissions 76; 69; 57; 29; 37; 2; 331; 310; 388.

<sup>130</sup> Submissions 7; 29; 33; 36; 57; 79; 290.

<sup>131</sup> Submission 300, 307.

acknowledge this, exempting pre-existing small buildings from only the requirement for a lift or ramp to upper floors; therefore, the review team considers the current exemption is appropriate.

The review team considers, however, that it would be beneficial for an expert advisory group to consider whether the exemption should only refer to “wheelchair” accessible sanitary facilities. Given the small building exemption was only intended to provide an exemption in relation to lifts or ramps, it would make sense for ambulant sanitary facilities to be provided, similar to the requirement for all other provisions of the Premises Standards.

### ***Calculating the floor area to be exempt***

A number of submissions requested clarification on how to calculate floor area under this provision—specifically, where the upper or lower floors of a building are more than 200m<sup>2</sup>, but part of the floor area consists of areas that would be deemed to be exempt under clause D3.4.<sup>132</sup> Areas deemed exempt under clause D3.4 may include plant rooms and other restricted areas unavailable to most building occupants and the general public. These are areas not normally occupied by tenants and are considered inappropriate for access requirements. In these instances, the respondents are uncertain if the exempt area should be included or excluded in calculating the 200m<sup>2</sup> floor area

### **Findings**

The review team considers that if a floor has areas that are exempt under D3.4, those areas should not be included when calculating floor area for the purposes of accessing the small building exemption. For example, where an upper or lower floor of a building is 250m<sup>2</sup>, but the floor is occupied in part by a 60m<sup>2</sup> plantroom, then the plantroom would be exempt under clause D3.4 and the floor space within scope would be 190m<sup>2</sup>.

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<sup>132</sup> Submissions 119; 307; 337.

## 3.2 Lessee Concession

### Recommendations

- Expert advisory group to explore options to revise the lessee concession to provide greater access to ground floor shopfronts where appropriate.
- Expert advisory group to advise how best to include subdivisions and strata title holders in the Premises Standards.

### Background

Section 4.3 of the Premises Standards provides a limited concession from the requirement to upgrade the path of travel from the entrance of a building to areas of new work where the lessee occupies only a part of a building and is not the owner of the building. The concession does not apply if the entire building with the new part is leased to only one person. It is available so lessees are only responsible for accessibility improvements in the area they lease.

Within the leased area, all of the requirements of the Premises Standards still apply to the upgraded part of the building. However, the obligation to upgrade the “affected part”, i.e. the path of travel from the building entrance to the upgraded part, does not apply.

The Access All Areas report commented that lessees should not be financially responsible for upgrading the path of travel between the entrance and the new work.<sup>133</sup> The committee recommended further consideration be given to whether building owners should take on this responsibility and that the five-year review consider whether the lessee concession was being used by building owners to avoid compliance with the Premises Standards.

### The Review

This issue received comment from 38 submissions, mainly from access consultants, local governments and disability organisations.<sup>134</sup> The submissions were asked to comment on whether the lessee concession was being used appropriately and whether there were other issues with the lessee concession that needed to be addressed.

#### *Appropriateness of the lessee concession*

While the concept of the lessee concession had support from the majority of responses, the submissions expressed two main concerns, that:

- where a lessee occupies a significant proportion of a building, the lessee does not have sufficient responsibility for accessibility upgrades, only having to upgrade the area of their lease and
- the application of the concession to ground floor premises with street access controlled by lessees is inadequate.

#### *Lessee concession abrogates responsibility of the lessee and/or building owner*

A number of submissions considered that the lessee concession abrogates too much responsibility from the lessee or building owner where a lessee occupies a significant proportion of a building.<sup>135</sup> These submissions maintained that if the lessee occupies a large floor area, the lessee and/or building owner should be required to update the affected part of the building and provide an

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<sup>133</sup> *Access All Areas*, Report of the Inquiry into the draft Disability (Access to Premises – Buildings) Standards, House of Representatives' Standing Committee on Legal and Constitutional Affairs 2009, p. 71

<sup>134</sup> Submissions 5; 113; 116; 124; 136; 206; 208; 223; 228; 253; 263; 277; 280; 294; 296; 300; 303; 307; 308; 309; 319; 327; 329; 337; 338; 340; 342; 348; 353; 361; 364; 366; 370; 371; 372; 377; 389.

<sup>135</sup> Submissions 2; 124; 353; 371.

accessible path of travel from the main entrance. It was proposed by some submissions that the size of the leased area should be the determining criterion for access to the concession.

### Findings

It is important to note that leases can exchange frequently in relatively short periods. While the suggestion to use size of the leased area as the determining trigger for the concession is not without merit, it could result in significantly increased cost to tenants and building owners between multiple lease exchanges.

There remains the assumption outlined in *Access All Areas* that the public area of major commercial buildings will be upgraded over a 15-year cycle. This, coupled with turnover of building stock, should trigger the requirements of the Premises Standards at that time.

It is the review team's view that the lessee concession remains appropriate to reduce the cost pressures on lessees and building owners.

### **Application of the concession - ground floor premises**

Several submissions argued that the lessee concession is being used inappropriately to avoid providing access to ground floor premises.<sup>136</sup> This was particularly evident where a leased area with direct access from the street, and no common area within the property, was exempt from upgrading an inaccessible entrance due to the multi-tenanted nature of the building. Shopfront businesses with a step entry are the prime candidates for this situation.

Two submissions claimed that prior to the Premises Standards local authorities nearly always sought building entrance upgrades to individual shops consistent with the objectives of the DDA.<sup>137</sup> However, due to the implementation of the lessee concession in the Premises Standards the progressive upgrade of existing buildings has deteriorated. It was further suggested that in these situations providing a ramp or step ramp as per the Australian Standards (AS 1428.1-2009) would not be overly onerous in terms of cost or loss of floor space.

However, it is of note that a confidential submission from a local council outlined that there are situations where providing a ramp in some small shops can take up too much floor space, creating challenges for the business.

### Findings

The review consulted further on this matter, seeking the perspectives from the ABCB, the ACAA, access consultant Mr Mark Relf and the City of Sydney.<sup>138</sup> It was noted that ramped entry should be provided in the majority of shop-front situations, yet upgrades were being restricted due to the current interpretation of the lessee concession. Further context was provided by the ABCB:

*"The lessee concession was written to account for situations where access to leased areas was via common areas. This would be the case if a multi-level office building had different tenants on every floor. The building entrances, entry foyer, lift lobby and lifts would all be part of the common areas. If one tenant undertook building work on their floor, the lessee concession exempts the need to upgrade the affected part which gives access to the tenant's floor.*

*Where a leased area has direct access from the street this changes the context. An example would be a café whereby it is a leased portion of a larger building. If the lessee of the café undertook work within the café that triggered compliance with the Premises Standards, the current lessee concession would exempt them from upgrading an inaccessible entrance (which is the 'affected part'). This would*

<sup>136</sup> Submissions 300; 319; 348.

<sup>137</sup> Submissions 300; 319.

<sup>138</sup> Submissions 119; 300; 307; 319.

*be the case even though the café has control over that part of the building and no other parties are inconvenienced by the need to upgrade the ‘affected part’.*<sup>139</sup>

The review team believes it was not the intention of the lessee concession to enable building owners or lessees to avoid upgrading an inaccessible entrance with direct access to the street. It is the review team’s view that the lessee concession should be amended to ensure that, where not overly onerous, ground level access is provided to shopfront premises with exclusive access to the street. During consultations, it was suggested that an appropriate measure might be that ramp access is provided where there are one to three steps. However, it was also considered the issue would benefit from further exploration by an expert advisory group to see if a more workable solution can be developed. Consideration may also be given to the wider interpretation of how building entrances should be treated when considering upgrades to the “affected part”.

### **Other issues**

A number of other issues were raised in submissions. The main issues were:

- building owner avoidance and
- the definition of “lessee”.

#### **Building owner avoidance**

A small number of submissions raised the concern that building owners may be inappropriately utilising the lessee concession to avoid making extensive access improvements to a building.<sup>140</sup> The main scenario put forward is that building owners may be encouraging lessees to submit applications for building works on their behalf. This issue was initially raised in the *Access All Areas* report into the Draft Premises Standards 2009.

#### **Findings**

Given that there is little available evidence and that only a small number of submissions raise the matter as an issue, the review can only consider that this issue is not widespread.

#### **The definition of “lessee”**

Several submissions questioned whether the lessee concession should apply to subdivisions and strata title holders.<sup>141</sup> It is understood from further consultation that industry has generally been treating subdivisions and strata title holders flexibly under the Premises Standards.

In addition, the Australian Capital Territory (ACT) Environment and Planning Directorate submission sought clarification on the definition of “lessee”, noting that the term lessee is used with freehold land title (which the ACT does not have) in mind.<sup>142</sup>

#### **Findings**

The review team acknowledges that a strata situation is comparable to a lessee situation and agrees that subdivisions and strata title holders need to be accounted for in the Premises Standards. It is anticipated that subdivisions and strata title holders will be treated as lessees under the lessee concession. However, the expert advisory group should further explore the matter.

Regarding the application of “lessee” in the ACT, the review team understands that when developing the Premises Standards the intention was that the concession would apply the same way in the ACT as the rest of Australia, regardless of the “technicalities” of the territory system.

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<sup>139</sup> ABCB email correspondence, 29 October 2015.

<sup>140</sup> Submissions 300; 307; 353.

<sup>141</sup> Submissions 2; 307.

<sup>142</sup> Submission 136.

## 3.3 Unjustifiable Hardship Exception

### Recommendations

- An expert advisory group consider a coordinated approach to improving the mechanisms to apply for unjustifiable hardship exemptions.
- Develop guidance information, including education and training material, to raise awareness across a broad range of stakeholders on the purpose of the unjustifiable hardship exemption, the role of Access Panels and the application process.

### Background

The unjustifiable hardship exception was included in Section 4.1 of the Premises Standards to preserve the exemptions provided by sections 21B and 29A of the DDA where avoiding discrimination would impose unjustifiable hardship on the discriminator. In some circumstances, it may be unreasonable to require full compliance, particularly when undertaking new work on existing buildings.

A finding of unjustifiable hardship may not relieve the building certifier, developer or manager of all responsibilities under the Premises Standards. Compliance with the Premises Standards is still required to the maximum extent not involving unjustifiable hardship.

There is no mechanism in the DDA or the Premises Standards for anyone to give prior approval for non-compliance with any part of the Premises Standards on the grounds of unjustifiable hardship. Unjustifiable hardship cannot be determined without reference to the particular facts of a case. The presence or absence of unjustifiable hardship can therefore only be conclusively determined by the Federal Court.

### Access Panels

Subsection 4.1(3)(p) of the Premises Standards provides a mechanism for recognising the decisions of specialist Access Panels established in states and territories to advise building authorities on whether to accept claims of unjustifiable hardship from building developers and on whether proposed Alternative Solutions provide adequate access. This provision recognises that Access Panels could play an important and meaningful role in guiding a court about the existence of unjustifiable hardship in the event of a complaint.

The ABCB developed a protocol to encourage the states and territories to establish Access Panels and facilitate uniform implementation. Where Access Panels, or their equivalent, were established, it was anticipated they would provide expert advice on solutions in cases where the DtS provisions were impractical or would impose unjustifiable hardship.

### Assessing cases of unjustifiable hardship

Unjustifiable hardship is not defined in the Premises Standards. However, a list of factors provides guidance on what is relevant in concluding whether compliance with the Premises Standards would impose, or would have imposed, unjustifiable hardship on the person seeking a building approval or defending a complaint of non-compliance with the Standards. The list of 16 factors in Section 4.1(3) is not exhaustive and no individual factor is intended to be conclusive of the presence of unjustifiable hardship in a particular case.

The factors also make clear that the cost to the developer and technical difficulty of providing access are not the sole determining factors of unjustifiable hardship. However, if a substantial issue of unjustifiable hardship is raised, these are additional factors to be considered (refer to Section 4.1(4) of the Premises Standards). This provision emphasises that consideration of the greatest possible provision of access is an integral part of assessing whether the strict requirements of the Premises Standards would impose unjustifiable hardship.

The onus is on the applicant to establish that it would be unfair and unreasonable for them to comply with a particular requirement in the Premises Standards.

### **Interpreting and applying unjustifiable hardship**

For the Premises Standards, unjustifiable hardship is to be interpreted and applied consistently within the scope and objectives of the DDA, in particular the objective of removing discrimination as far as possible. Interpretation must also take account of the rights and interests of all relevant parties.

*A Model Process to Administer Building Access for People with a Disability 2010* (the Protocol) was developed by the ABCB to assist in applying the DDA and Premises Standards consistently and to minimise the possibility that a successful complaint may be brought against a building owner.<sup>143</sup>

## **The Review**

Access All Areas noted that “*perhaps the most important limitation on the application of the Premises Standards is the ‘unjustifiable hardship’ exception*”.<sup>144</sup>

Submissions were asked to comment on the operation of the unjustifiable hardship exception, including the arrangements for identifying and responding to questions of unjustifiable hardship, and on the adequacy of guidance material for considering cases consistently and transparently. Sixty submissions responded to the questions on the unjustifiable hardship exception, with one-third from people with disability, carers and advocates and disability organisations.<sup>145</sup>

A stakeholder forum to discuss the unjustifiable hardship exception was held on 20 November 2015.

There was a strong and consistent view, both in the submissions and at the forum, that the exception is not operating appropriately because the current arrangements are confusing, the mechanisms lack authority and there is insufficient guidance on applying and assessing cases of unjustifiable hardship.

### **Current arrangements and mechanisms**

Submissions claimed that the current arrangements for considering cases of unjustifiable hardship are diverse and confusing. The review team has examined the arrangements within each jurisdiction, which are summarised in Table 3.

**Table 3: Summary of the treatment of the Unjustifiable Hardship Exception in each state and territory**

<i>Region</i>	<i>Provisions in legislation</i>	<i>Mechanism</i>	<i>Applications</i>
<b>ACT</b>	No specific provisions in place	No Access Panel or equivalent has been established	Nil
<b>NSW</b>	No specific provisions in building legislation.	An accredited certifier or the Access Advisory Panel established by the Building Professionals Board may assess cases of unjustifiable hardship.	FY2011-12 – 2 considered and approved FY2012-13 – 1 considered and approved FY2013-14 - none

<sup>143</sup> *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, section 7.11 p. 139

<sup>144</sup> *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, section 4.34 p. 60

<sup>145</sup> Submissions: 2; 3; 5; 71; 87; 93; 113; 116; 118; 124; 136; 154; 206; 208; 223; 228; 251; 257; 262; 263; 274; 276; 277; 279; 280; 286; 287; 294; 296; 300; 303; 304; 307; 308; 309; 314; 316; 319; 323; 328; 329; 332; 337; 338; 340; 341; 342; 352; 353; 355; 361; 364; 370; 371; 372; 373; 377; 381; 388; 389;

Region	Provisions in legislation	Mechanism	Applications
NT	No specific provisions in building legislation.	The Building Appeals Board may hear appeals against certification decisions and evaluate assessment methods to arrive at Alternative Solutions	3 cases heard – only one supported (commercial premises).
Qld	No specific provisions in building legislation.	An Access Panel provides advice to building certifiers on Alternative Solutions or advice on unjustifiable hardship	Not available
SA	Sections 80 (3) and 80A(2) of the <i>Development Regulations 2008</i> makes reference to unjustifiable hardship.	The Building Rules Assessment Commission considers cases of unjustifiable hardship	Two applications: <ul style="list-style-type: none"> <li>a retrofit of a storage facility to student accommodation (claimed unjustifiable hardship on financial grounds) - unsuccessful</li> <li>the conversion of a storage facility to a small bar, (claimed unjustifiable hardship on heritage grounds) - successful</li> </ul>
TAS	Section 218A(3) of the <i>Building Act 2000</i> states that an application must be made on the ground that compliance with a access provision of the BCA would impose unjustifiable hardship on the applicant.	The Tasmanian Resource Management and Planning Appeals Tribunal, via a 2012 Amendment to the <i>Building Act 2000</i> , determine applications for cases of unjustifiable hardship.	One application was lodged, and later withdrawn.
VIC	Building Regulation 116 aligns the operations of the regulations with the Premises Standards.	Applications for cases of unjustifiable hardship can be made to the Building Appeals Board.	FY 2011/12 = 23 cases FY 2012/13 = 19 cases FY 2013/14 = 16 cases
WA	No specific provisions in place.	No Access Panel or equivalent has been established	Nil

Source: state and territory jurisdictions

As can be seen from Table 3, the jurisdictions have taken different approaches to handling cases of unjustifiable hardship. South Australia, Victoria and Tasmania have amended their legislation to recognise unjustifiable hardship in their building regulations and have established mechanisms to assess such cases. Neither the Australian Capital Territory's nor Western Australia's building legislation recognise the unjustifiable hardship exception and both rely upon the courts to make a binding decision if people make a case for exemption from complying with parts of the Premises Standards. On the other hand, New South Wales, the Northern Territory and Queensland do not recognise unjustifiable hardship in their building legislation but have established Access Panels, or equivalents, to consider cases of unjustifiable hardship. The diverse approaches are reflected in the low number of unjustifiable hardship applications. If this trend continues, further

research could be undertaken to better understand the reason for the low numbers, prior to the next review.

The concept of unjustifiable hardship is highly complex and often misunderstood. Submissions requested that the details of applications and decisions be transparent to assure stakeholders decisions are being made consistently. Transparency may also assist applicants decide whether to claim unjustifiable hardship.<sup>146</sup>

Some stakeholders believed applications for unjustifiable hardship do not proceed because many stakeholders, especially those in small business, do not have the skills and resources to present a case. There is little guidance material available to assist in making an application for unjustifiable hardship. Guidance material would be particularly beneficial where supporting documentation is needed to address matters such as the financial aspects and to demonstrate the benefits likely to accrue and detriments likely to be suffered. The ACAA submission also suggested the interpretation of the phrase “substantially equal access” in Section 4.1(4) of the Premises Standards is creating difficulties and is not being interpreted as intended.<sup>147</sup> However, this could be resolved with guidance material that clarifies the factors to be considered when faced with a possible claim of unjustifiable hardship.

Several submissions claimed that few building developers are prepared to risk the cost of litigation when only the Federal Court can determine whether or not a defence of unjustifiable hardship is available. The review is not aware of any cases having reached the Federal Court to establish precedent through judgement.<sup>148</sup>

The review team notes that building authorities can find it difficult to convene Access Panels with the appropriate skills or expertise to assess applications. The People with Disability Australia (PWDA) submission considered that panels should include people with disability as representatives and that people should be chosen for their ability to represent people from a range of situations, not focus on individualised needs.<sup>149</sup> The ACAA suggested more work is needed to develop a workable protocol that can be applied consistently to assure building professionals any decision made by an Access Panel guarantees they will not later be faced with a complaint.<sup>150</sup>

Further, through the submission and consultation process a significant number of stakeholders raised the particular difficulty in applying the Premises Standards to heritage buildings. Ongoing challenges remain in finding an appropriate balance between the level of accessibility required for a site compared to the cost of accessibility and the impact on heritage significance. Submissions considered that improvements in the application of the unjustifiable hardship and to Alternative Solutions are required to achieve more workable solutions.

Submissions also claimed that in addition to the 16 criteria to consider in a case of unjustifiable hardship, other criteria are needed to deal with the complexities associated with alterations and additions to existing buildings.

### ***Unjustifiable hardship exemption and alternative solutions***

A number of participants at the stakeholder forum expressed concern that there is a tendency for unjustifiable hardship exemptions to be confused with seeking a decision on an alternative solution to the NCC DtS provisions. In simple terms, people seek exemptions to permit non-compliance with the Premises Standards, while an alternative solution seeks to do something different from the NCC DtS provisions. While these outcomes may appear connected, they operate under different legislation. At

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<sup>146</sup> Submission 300.

<sup>147</sup> Submission 307, p.57.

<sup>148</sup> Submissions 300; 251.

<sup>149</sup> Submission 349.

<sup>150</sup> Submission 307.

the Unjustifiable Hardship Forum, Tasmania's Anti-Discrimination Commissioner noted that, in Tasmania, exemptions can be used to “*defer compliance rather than exempt compliance*”.<sup>151</sup> This is because Tasmanian building certifiers can defer compliance for two years with a further one-year extension, which provides a level of flexibility in the system.

### Findings

From the anecdotal evidence provided during the review and the low number of applications recorded, it could be inferred there is no great demand for the unjustifiable hardship exception and that people are working around it to resolve building access issues. However, there were also counter-claims that projects, especially those involving heritage buildings and those in remote and regional areas, are not proceeding because the process is too onerous, costly and does not provide sufficient certainty that a future complaint on non-compliance with the DDA will not occur.

The review team concludes that better education and training on the purpose of the exemption, the role of Access Panels and the application process would provide stakeholders with more confidence and certainty that buildings are compliant with the Premises Standards and will not be faced with a complaint under the DDA. A consistent approach to applying and assessing applications of unjustifiable hardship would serve to provide stakeholders with more confidence and certainty.

Stakeholders would benefit from:

- guidance material on how to apply or assess cases of unjustifiable hardship
- reviewing the mechanisms to consider cases of unjustifiable hardship, with emphasis on the membership and operation of Access Panels, including broader representation from all stakeholder groups, and on ways to make their decisions more transparent and consistent and
- clarifying provisions in the Premises Standards identified in this report (see Appendix 7: Proposals for Change in the Premises Standards).

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<sup>151</sup> Unjustifiable Hardship Forum, 20 November 2015. For more details, see Appendix 6. Public Consultations, page 106.

## 4. Interaction of the Premises Standards with State and Territory Regulation

### Recommendations

- All new access-related provisions within the NCC be included in the Access Code of the Premises Standards (refer to Appendix 7 for proposals categorised “Alignment with NCC”)
- New guidelines be developed to better explain the requirements of the Premises Standards.

### Background

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 by incorporating the Access Code into the NCC.<sup>152</sup>

As noted in the introduction to this report, the Access Code of the Premises Standards is replicated in Volume One of the NCC and is enforced through state and territory building laws and regulations.<sup>153</sup> It was intended that the NCC would be harmonised with the Premises Standards to allow compliance to be achieved principally through the normal building certification processes and that Parts 1 to 4 of the Premises Standards would be incorporated into the state and territory building laws and regulations as necessary. This section examines the extent to which this has occurred and whether there have been any negative consequences.

### The Review

There were 128 submissions containing comments on the interaction of the Premises Standards with state and territory regulation, with over half from the Changing Places campaign and the remainder from people with disability, carers and advocates, disability organisations, access consultants, building certifiers and local governments.<sup>154 155</sup> The review asked submissions to comment on inconsistencies resulting from the alignment of the provisions in Parts 1 to 4 of the Premises Standards with state and territory building regulations and any other matters relating to the interaction of the Premises Standards with building legislation.

### Alignment of the Non-Access Code Provisions with State and Territory Building Regulations

The review team surveyed state and territory building authorities to identify whether Parts 1 to 4 of the Premises Standards had been aligned with state and territory building legislation. The results of the survey are summarised in Appendix 9. Figure 2 summarises the different approaches taken by each state and territory government in referencing Parts 1 to 4 of the Premises Standards.

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<sup>152</sup> 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.

<sup>153</sup> Volume One of the NCC is *The Building Code of Australia for Class 2 to Class 9 Buildings*; Volume 2 of the NCC is *The Building Code of Australia Class 1 and Class 10 buildings*.

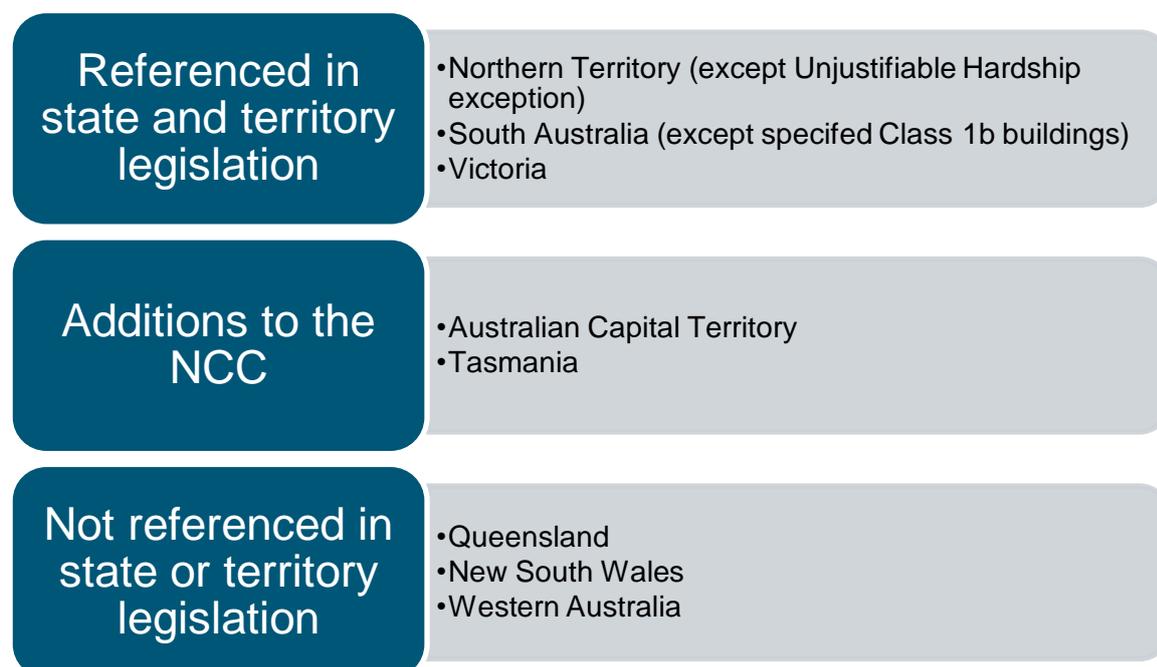
<sup>154</sup> Submissions 7; 10; 16; 17; 20; 25; 32; 33; 34; 37; 39; 40; 44; 47; 51; 53; 59; 64; 65; 67; 72; 73; 78; 80; 86; 105; 108; 114; 122; 128; 133; 137; 138; 142; 143; 144; 196; 201; 212; 216; 218; 219; 220; 221; 222; 230; 231; 233; 234; 235; 236; 237; 238; 239; 240; 242; 243; 244; 245; 246; 247; 248; 258; 264; 281; 285; 288; 289; 290; 291; 293; 302.

<sup>155</sup> Submissions 2; 3; 7; 8; 10; 16; 17; 18; 20; 25; 30; 32; 33; 34; 37; 39; 40; 44; 47; 51; 52; 53; 59; 64; 65; 67; 71; 72; 73; 78; 80; 86; 87; 93; 105; 108; 113; 114; 116; 118; 122; 124; 128; 133; 136; 137; 138; 141; 142; 143; 144; 157; 196; 201; 206; 207; 208; 208; 212; 216; 218; 219; 220; 221; 222; 223; 224; 228; 230; 231; 233; 234; 235; 236; 237; 238; 239; 240; 242; 243; 244; 245; 246; 247; 248; 258; 263; 264; 277; 280; 281; 285; 286; 288; 289; 290; 291; 292; 293; 294; 296; 302; 303; 307; 308; 309; 316; 319; 320; 325; 327; 328; 329; 337; 342; 345; 353; 356; 357; 361; 366; 371; 372; 374; 375; 377; 385.

Victoria is the only jurisdiction to fully reference the Premises Standards concepts, exceptions and concessions. South Australia has referenced all but specified Class 1b buildings. Similarly, the Northern Territory has adopted all provisions in Parts 1 to 4, except for the unjustifiable hardship exception. The Australian Capital Territory and Tasmania are referenced as additions in the NCC, while New South Wales, Queensland and Western Australia have not defined any of the concepts or provisions, nor adopted any additional measures relating to the Premises Standards. Only in Victoria have the AHRC exemptions for public transport been adopted.

The review team did not find evidence from submissions, or from discussions with states and territories, of a major problem with the way in which they reference Parts 1 to 4 of the Premises Standards. However, the review found that the diverse approach is having an impact on the application of some provisions of the Premises Standards, particularly the unjustifiable hardship exception (discussed in Section 3.3 of this report).

**Figure 1: Different approaches to referencing the Premises Standards Parts 1-4 by states and territories**



Source: Department of Industry, Innovation and Science from data provided by **state** and **territory** jurisdictions

## Alignment of the Premises Standards with the NCC

The ABCB and the ACAA submissions identified a small number of inconsistencies that have emerged between the Access Code of the Premises Standards and the NCC due to updates to the NCC since the Premises Standards took effect in May 2011.<sup>156</sup> All of the new access-related provisions within the NCC need to be included in the Access Code of the Premises Standards: these are listed in Appendix 7: Proposals for Change in the Premises Standards, page 110.

The review team notes that as the NCC moves towards a three-year amendment cycle starting in 2016, it is expected inconsistencies of this nature will reduce over time, although, given the amendment cycle of the NCC, there will always be gaps and inconsistencies (Section 7 addresses this further).

A few inconsistencies with Australian Standards were identified in the submissions and are listed in Appendix 7: Proposals for Change in the Premises Standards (page 110). These inconsistencies

<sup>156</sup> Submissions 119; 307.

relate to provisions concerning Braille and tactile exit signage, terms regarding lifts in lieu of reference to standards and fire stair handrails incorporating some AS 1428.1-2009 features.<sup>157</sup>

Inconsistency between the jurisdictions on the trigger point for building works to require a building permit was also mentioned in the submissions as an area of concern, particularly in relation to refurbishment of existing buildings and heritage buildings. For instance, there are different triggers in the respective Building Acts for major refurbishments and views were expressed both that the triggers were too low and too high.<sup>158</sup> It should be noted, however, that building triggers are the responsibility of individual states and territories.

Submissions from the Changing Places campaign claimed that AS 1428.1-2009 is not compliant with the DDA because it does not meet the needs of all people with disability, in particular, people who require accessible adult changing facilities.<sup>159</sup> This issue was addressed in Section 2.2 Accessible Sanitary Facilities, page 22.

Several submissions proposed ways to align the Premises Standards with state and territory building regulations. The ACAA proposed that the Premises Standards become a stand-alone document enacted by both the DDA and the NCC. The ACAA also proposed each jurisdiction develop an agreed protocol to better align all relevant parts of the Premises Standards with state and territory building regulations. Generally, submissions from people with disability, carers and advocates and disability organisations contended that access to buildings should be uniform throughout Australia.<sup>160</sup>

The submissions indicated that some stakeholders do not have a good working knowledge of the relationship between the Premises Standards and the NCC. Discussions at the unjustifiable hardship stakeholder forum held on 20 November 2015 acknowledged that stakeholders find it difficult to understand how the Commonwealth layer of legislation (i.e. the DDA and Premises Standards) fits with state and territory building regulations.

Consequently, submissions requested clearer directives and interpretative information on the Premises Standards and its relationship with other legislation and standards. Improvements to guidance material would make it easier for certifiers to be clear about their obligations under the Premises Standards and the NCC. Other submissions, mainly from people with disability, carers and advocates, suggest that the Premises Standards should clarify, either in its introduction or by guidelines, that the DDA applies to all buildings at any time and that the DDA covers other aspects of the building beyond the scope of the Premises Standards.<sup>161</sup> To clarify the legislative relationships, the review team has prepared a brief explanation of the Australian building legislative framework in Figure 6: Relationship between Federal and state and territory legislation (see Appendix 9: Summary of Parts 1 to 4 of the Premises Standards)

Premises Standards).

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<sup>157</sup> Submission 337.

<sup>158</sup> Submissions 371; 372.

<sup>159</sup> Submissions 7; 10; 16; 17; 20; 25; 32; 33; 34; 37; 39; 40; 44; 47; 51; 53; 59; 64; 65; 67; 72; 73; 78; 80; 86; 105; 108; 114; 122; 128; 133; 137; 138; 142; 143; 144; 196; 201; 212; 216; 218; 219; 220; 221; 222; 230; 231; 233; 234; 235; 236; 237; 238; 239; 240; 242; 243; 244; 245; 246; 247; 248; 258; 264; 281; 285; 288; 289; 290; 291; 293; 302.

<sup>160</sup> Submissions 33; 118; 280; 328; 357; 374; 375; 385.

<sup>161</sup> Submissions 124; 288; 371; 372.

## Compliance and Enforcement

Many submissions commented on the lack of state and territory compliance and monitoring of the Premises Standards. A significant proportion of these comments were based on lived experience and, from that experience, a belief that enforcement is not undertaken effectively. This was especially apparent in matters relating to the provision of accessible car parking, where enforcement is a matter outside the scope of the Premises Standards.

The ACAA submission claimed that without substantive changes to align building regulations in each state and territory with Parts 1 to 4 of the Premises Standards, the unaligned provisions of the Premises Standards are not enforceable under state and territory building legislation.<sup>162</sup> The submission also stated accessibility consultants or an access advisory group should conduct ongoing periodic audits of access to assure consumers buildings comply with the Premises Standards. South Australia's Office of the Commissioner for Equal Opportunity noted in its submission that monitoring and compliance are the responsibility of the state government, and that:

*"1(i) it does seem, however very difficult to gauge the impact of the Standards when there are no mandatory inspection requirements under the Act, no reporting, and seemingly no tracking done at any level."<sup>163</sup>*

The Guide Dogs Australia submission noted that enforcement of the Premises Standards through the existing DDA complaints mechanism, which arguably places undue burdens on the complainant (usually a person with disability or their family), is inherently counterproductive to achieving an efficient resolution.<sup>164</sup> The process also fails to encourage the application of best practice by architects in the design process and strict adherence to the Premises Standards during the construction, renovation or remediation process.

The submission from South Australia's Office of the Commissioner for Equal Opportunity also claimed the individual complaints system limits the ability to address systemic discrimination and structural causes and can expose individual complainants to potential victimisation.<sup>165</sup> Furthermore, it means that the ordinary person needs to have technical knowledge about the Premises Standards to make a complaint.

Application and enforcement of the Premises Standards at the state and territory level entrenches the lack of consistent application and enforcement. This is exacerbated by the fact that, despite the intent of the Premises Standards, interpretation and stringency appears subjective rather than objective.

## Findings

The state and territory governments have adopted different approaches to referencing Parts 1 to 4 of the Premises Standards in their building legislation and compliance and monitoring does not appear to be consistently and rigorously applied. This may cause significant confusion for stakeholders.

The relationship between the Premises Standards, the NCC and the state and territory building laws is complex and difficult for many stakeholders to understand. Efforts should be made to improve consistency. The development of guidelines would also assist in providing greater clarification and understanding for users.

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<sup>162</sup> Submission 307.

<sup>163</sup> Submission 355.

<sup>164</sup> Submission 316.

<sup>165</sup> Submission 355.

## 5. Inconsistencies in the Interpretation and Application of the Premises Standards

### Recommendation

- Develop guidelines to provide greater clarification and understanding of the Premises Standards.
- Improve education and training material available for different stakeholder groups, to raise awareness of issues covered by the Premises Standards.

### Background

A key factor in the successful implementation of the Premises Standards is interpreting and applying the standards as they were intended. However, this relies on the ability of building certifiers, managers and developers to exercise their professional judgement when deciding on the use of DtS provisions or alternative solutions that meet the Premises Standards' Performance Requirements.

Decisions by building professionals in interpreting and applying the Premises Standards can lead to varying outcomes, both within and across jurisdictions. Submissions raised 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 DtS 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.

This review sought to identify situations where inadequate and/or inconsistent interpretation and application of the Premises Standards might be causing difficulty or concerns within the building industry.

### The Review

Sixty-four submissions responded to matters relating to the interpretation and application of the Premises Standards.<sup>166</sup> The submissions were asked to comment on:

- whether the Premises Standards are easy to understand and use
- the adequacy of training and professional guidance on the application of the Premises Standards for the building industry
- inconsistent or incorrect application of the DtS provisions in the Premises Standards and whether the DtS provisions are sufficiently clear for practical application by the building industry
- impediments to using Alternative Solutions and
- use of independent expertise by the building industry to assist in assessing compliance with the Premises Standards.

### Understanding and Using the Premises Standards

A consistent theme across the submissions, in response to questions in this section as well as in other sections, was that stakeholders have trouble understanding the Premises Standards and associated documents. The content and application of the Premises Standards, as a legal and technical document, can be difficult for people who are not building professionals to understand. Further, the Premises Standards heavily reference Australian Standards, which are neither freely available nor universally accessible.

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<sup>166</sup> Submissions 2; 13; 71; 90; 113; 115; 116; 117; 118; 123; 124; 136; 138; 141; 157; 165; 193; 208; 223; 228; 251; 253; 263; 268; 270; 274; 277; 279; 280; 286; 296; 300; 303; 307; 308; 309; 310; 314; 316; 319; 320; 323; 327; 328; 332; 336; 337; 338; 340; 342; 345; 346; 352; 355; 358; 361; 366; 371; 372; 374; 375; 377; 385; 388.

Of 19 submissions that responded to the question of whether the Premises Standards were easy to use, only seven submissions considered the Premises Standards easy to use and understand, although most did not say why.<sup>167 168</sup> The Building Designers Association of Queensland submission noted that while the majority of provisions are easy to determine, different professionals might interpret the standard differently.<sup>169</sup> The City of Launceston claimed there is a “*lack of understanding of the realities of the provisions*”.<sup>170</sup> The concerns of people with disability, carers and advocates, and disability organisations focussed mainly on problems with accessing and navigating the Premises Standards and the referenced Australian Standards.<sup>171</sup>

The format of the Premises Standards and the referenced documents, such as the Australian Standards, is inaccessible to many, particularly people with vision impairment.<sup>172</sup> The ACAA and Vision Australia submissions referred to the [Americans with Disabilities Act Access Guidelines](#) which are freely available in accessible formats and readily understood because they include narrative descriptions, technical provisions, exemptions and detailed guidance material.<sup>173</sup> Some submissions also wanted the Premises Standards to be restructured using clearer language and to include guidance material in the same document.<sup>174</sup> Vision Australia, in its submission, noted the complexity and inaccessibility of the Premises Standards and considered that the low awareness of people with disability (especially people with visual impairment) was caused by this.<sup>175</sup>

The cost of accessing referenced Australian Standards and their limited accessibility, particularly when using screen readers, creates an additional barrier to better understanding the Premises Standards for people with disability and the broader community.<sup>176</sup> However, this issue is outside the scope of the Premises Standards and this review.

Several submissions claimed that the broader community and industry are generally ignorant of accessibility features and that more education and promotion are needed.<sup>177</sup> Some suggested the release of a non-mandatory handbook or guide to understand the intent and correct application of the Premises Standards.<sup>178</sup>

A wide range of guidance material is currently available to building professionals, people with disability and the community in general. Examples include but are not limited to:

- The AHRC Guideline, prepared after the Premises Standards came into effect and updated in February 2013. The City of Sydney submission claimed the AHRC Guideline do not meet industry needs and suggested industry-specific guidelines be developed to help professionals across the building industry better understand and interpret the Premises Standards.<sup>179</sup> The ACAA also requested that any update to the AHRC Guideline include a full index and guidance material.<sup>180</sup>

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<sup>167</sup> Submissions 117; 118; 141; 157; 228; 263; 268; 270; 300; 308; 314; 316; 327; 361; 366; 371; 372; 385.

<sup>168</sup> Submissions 141; 268; 270; 327; 371; 372.

<sup>169</sup> Submission 338.

<sup>170</sup> Submission 388.

<sup>171</sup> Submissions 308; 333; 342; 374; 385.

<sup>172</sup> Submissions 307; 308; 314; 316; 349.

<sup>173</sup> Submissions 307; 308.

<sup>174</sup> Submission: 300; 307.

<sup>175</sup> Submissions 308; 316.

<sup>176</sup> Submissions 308; 353; 328.

<sup>177</sup> Submissions 228; 308; 355; 374; 383; 385 .

<sup>178</sup> Submissions 206; 278.

<sup>179</sup> Submission 319.

<sup>180</sup> Submission 307.

- The ABCB Guide to NCC Volume One, which provides explanatory material on the accessibility to buildings provisions, and which has become more accessible to practitioners and the general public since February 2015, as the NCC is now available free online.
- At the state and territory level, guidance material is available to building professionals from various sources. For example, the NSW Building Professionals Board has a dedicated webpage on the Premises Standards and the Tasmanian Department of Justice has a comprehensive webpage (Disability Access to Buildings) that provides information for the building sector.<sup>181</sup>
- Individual local councils also provide information on accessibility in their built environment, with many having clear access policies and/or committees to identify and remove barriers preventing participation by people with disability. This material aims to inform and assist people with disability and the community. There is also evidence that councils have initiated programs directed at engaging the business community on accessibility issues. Examples include: [Missed Bu\\$iness? How to attract more customers by providing better access to your business](#) by Marrickville Council; and [Shopfront Improvement Grants](#) by the Adelaide City Council.<sup>182 183</sup>

## Findings

There remains a low level of awareness in certain stakeholder groups, which can lead to a higher chance of misinterpreting the Premises Standards.

Noting the range of information on the Premises Standards, the review team recognises that there is a need to update much of this material, as well as refocus it to better address the needs of the different stakeholders. The AHRC guideline has endeavoured to fill a gap but the review team proposes that the Commonwealth coordinating committee consider preparing new guidelines as a matter of priority.

## Training in Application of the Premises Standards

The ACAA notes that considerable effort was put into developing resource material (e.g. the AHRC Guidelines, a series of national training programs and an ABCB Awareness Resource Kit, Module Five – Understanding the Disability Access Provisions) when the Premises Standards were introduced.<sup>184 185 186</sup>

However, it appears these resources may be insufficient as several respondents claimed local governments and building professionals remain largely ignorant of the Premises Standards or, if they are aware, are ignoring aspects of the standards (for example, hearing augmentation).<sup>187</sup> The ACAA asserted that the lack of understanding of various exemptions, concessions and exceptions prevents some projects from proceeding.<sup>188</sup> Submissions from people with disability, carers and advocates and disability organisations claimed more training and professional guidance is needed to avoid non-compliance and reduce the number of poor access outcomes.<sup>189</sup> Recognising that the disability sector and lawyers working in the area of discrimination and building law need to be better informed the Tasmanian Anti-Discrimination Commission<sup>190</sup> delivered a pilot workshop on the

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<sup>181</sup> Tasmanian Department of Justice website [http://www.justice.tas.gov.au/building/regulation/disability\\_access\\_to\\_buildings](http://www.justice.tas.gov.au/building/regulation/disability_access_to_buildings)  
<http://www.marrickville.nsw.gov.au/en/community/community-services/accessibility/missed-business/>

<sup>183</sup> <http://www.adelaidecitycouncil.com/your-council/funding/shopfront-improvement-grants/>

<sup>184</sup> <https://www.humanrights.gov.au/guidelines-application-premises-standards>

<sup>185</sup> <http://www.abcb.gov.au/education-events-resources/NCC-awareness-resource-kits.aspx>

<sup>186</sup> Submission 307.

<sup>187</sup> Submissions 280; 286; 303; 328.

<sup>188</sup> Submission 307.

<sup>189</sup> Submissions 71; 90; 117; 118; 138; 193; 280; 371; 372; 374; 375; 385.

<sup>190</sup> Now known as Equal Opportunity Tasmania.

Premises Standards in February 2016.<sup>191</sup> There is potential for this training module to be provided throughout Australia.

Some submissions identified gaps where resources and training material have not been targeted. For example, professionals within the property sector, such as real estate agents, facility managers and project managers, are not usually part of the training and professional guidance network. Consequently, they may not be aware of obligations under the Premises Standards. Similarly, people with disability, carers and advocates and disability organisations would benefit from information and training on the Premises Standards to improve their understanding of their legal rights. Several submissions noted that the Premises Standards and the NCC do not educate building professionals about the functional needs of people with disability.<sup>192</sup> Understanding these needs assists building professionals understand how to satisfy the Performance Requirements of the NCC and apply effective alternative solutions.

Submissions also expressed a view that continuing professional development (CPD) courses should be compulsory and/or made a condition of licensing for all trades and professionals operating in the building industry.<sup>193</sup> The ACAA has developed accreditation, professional development and support services that it offers to its members and interested professionals. Individual associations such as the Australian Institute of Building Surveyors, the Australian Institute of Architects, Master Builders Australia and others have also from time to time developed and delivered training under CPD programs.

## Findings

In summary, the submissions proposed that training and other resources be developed to promote awareness and understanding of the Premises Standards and target:

- the building industry, including the functional purpose of particular access features, giving consideration to making such training a component of mandatory CPD for relevant professionals<sup>194</sup>
- those with responsibility for ongoing maintenance of accessible features<sup>195</sup> and
- people with disability and disability organisations to better understand the requirements of the Premises Standards and compliance issues.

## Inconsistent or Incorrect Application of the Deemed-to-Satisfy (DtS) Provisions

A number of inconsistencies with the NCC and Australian Standards referenced in the Premises Standards, identified during the review, included in Appendix 7: Proposals for Change in the Premises Standards for consideration by an expert advisory group.

Some submissions considered errors and ambiguities in AS 1428.1-2009 a cause of inconsistent and incorrect application of the DtS provisions, but little evidence of inconsistent or incorrect application of the DtS provisions of the Premises Standards as set out in the Access Code was provided to the review.<sup>196</sup> The ACAA submission noted that problems associated with inconsistent and incorrect application of the referenced DtS provisions in Australian Standards have been a longstanding problem and can be ameliorated to some extent through better guidance material and training.<sup>197</sup>

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<sup>191</sup> Submission: 353; and Australian Council of Human Rights Authorities, Data Collection Forum, 9 December 2015.

<sup>192</sup> Submissions: 372; 385;

<sup>193</sup> Submissions: 307; 342; 361;

<sup>194</sup> Submissions: 307; 353;

<sup>195</sup> Submission 353;

<sup>196</sup> Submissions: 309; 342; 371;

<sup>197</sup> Submission 307;

## Impediments to Using Alternative Solutions

Submissions put forward a number of explanations for a perceived reluctance by building professionals to consider alternative solutions. These submissions, primarily from local government, cited the main impediments as the legal implications and cost penalties in the event of a successful claim under the DDA, inconsistent advice from consultants and hesitancy by building certifiers to exercise their discretionary judgement.<sup>198 199 200</sup>

Overall, submissions requested more support and training to develop Alternative Solutions.<sup>201</sup> Several submissions claimed the skill and expertise of building certifiers and designers and access consultants in assessing whether the Performance Requirements have been met is often questionable and, as a consequence, their conservatism has stifled innovation.<sup>202</sup> One building certifier suggested it should be mandatory to seek an appropriate level of expertise in preparing an alternative solution.<sup>203</sup>

One of the purposes of Access Panels was to assist building control authorities undertake assessments of alternative solutions in a nationally consistent way.<sup>204</sup> Better understanding of the role of Access Panels, and improved advice on Alternative Solutions by Access Panels, would likely improve confidence in their advice and increase their usage. Submissions also noted a lack of compliant examples or best practice precedents, which could help in upgrades of existing buildings.<sup>205</sup> Guidelines or information material, with best practice precedents, would also help prepare and present alternative solutions.<sup>206</sup>

## Use of Independent Expertise by the Building Industry

Several submissions acknowledged the importance of securing independent expertise on the application of the Premises Standards, particularly in the early stages of a project, but noted that many projects do not do this.<sup>207</sup> Fully scoping the access requirements in the early concept and design development phase of a project is the most effective way to ensure a building complies with the Premises Standards and the NCC.<sup>208</sup> Some submissions argued that judging by the state of non-compliance, independent expertise is either not used or possibly ignored.<sup>209</sup> Submissions noted that the availability of independent expertise is affected by location, meaning it can be difficult to engage specialists in regional areas.<sup>210</sup>

The submissions identified the major sources of independent expert advice as the Australian Institute of Building Surveyors (AIBS), the Association of Accredited Certifiers, (AAC), the Royal Institution of Chartered Surveyors (RICS) and access consultants.<sup>211</sup> Surveyors/certifiers are heavily relied upon but do not always have the required expertise.<sup>212</sup> Submissions also noted that despite seeking

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<sup>198</sup> Submissions 118; 136; 309; 310; 319; 338; 346; 338; 388.

<sup>199</sup> Submissions 279; 303; 337.

<sup>200</sup> Submission 307.

<sup>201</sup> Submissions 300; 319; 342.

<sup>202</sup> Submissions 124; 300; 319; 371; 372.

<sup>203</sup> Submission 2.

<sup>204</sup> *A Model Process to Administer Building Access for People with a Disability*, Article 3.1.

<sup>205</sup> Submissions 113; 300; 307; 319; 328.

<sup>206</sup> Submission 274.

<sup>207</sup> Examples: Submissions 307; 337.

<sup>208</sup> Submission 307.

<sup>209</sup> Submissions 71; 1438; 223; 286; 303; 337.

<sup>210</sup> Submissions 274; 338.

<sup>211</sup> Submission 342.

<sup>212</sup> Submissions 2; 124; 371.

appropriate levels of expertise, the quality of access reports and Alternative Solutions is variable and the independence of access consultants questionable.<sup>213</sup>

Other submissions called for a new level of compliance monitoring, proposing that DDA Access Inspectors be legislated to inspect, notify, enforce, fine or shut down non-compliant premises.<sup>214</sup>

### ***Findings***

In summary, the review found that:

- there is a general lack of awareness of accessibility features and understanding of the Premises Standards
- accessibility of the Premises Standards could be improved and
- there is a need to improve guidance and training material, and for these resources to be pitched at different stakeholder groups.

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<sup>213</sup> Submissions 319; 377.

<sup>214</sup> Submissions 71; 113; 223.

## 6. Data Collection Activities and Audits

### Recommendations

- Establish an expert advisory group (comprising state and territory building authorities, the AHRC, the Australian Council of Human Rights Agencies (ACHRA), local government, people with disability and access consultants) to develop guiding principles for Premises Standards measurement requirements for consideration by the Commonwealth. Matters to be considered would include the purpose of collecting and reporting data, what to measure, how to measure, collect and report and who should collect and report data.
- Establish processes for the systematic and coordinated collation and analysis of data on implementation of the Premises Standards to improve monitoring and to inform future reviews.
- State and territory building authorities consider ways to improve the transparency of decisions on questions of unjustifiable hardship and accepted Alternative Solutions.
- Expert advisory group examine the results of compliance audits undertaken since May 2011, with a view to determining factors for non-compliance. Outcomes to be reported to the Building Ministers' Forum (BMF).

### Background

To evaluate the effectiveness of the Premises Standards, Access All Areas recommended that:

- an audit of a sample of new buildings or building work be conducted by the Australian Government prior to the review of the Premises Standards
- the Australian Government identify what data will be collected and how it will be collected in each jurisdiction during the first four years and
- baseline data be collected.<sup>215</sup>

During preparations for the first five-year review it was confirmed that no formal coordinated or systematic data identification and collection activities have been undertaken, either prior to the commencement of the Premises Standards or in the first four years of implementation. Consequently, there is no baseline data to assist in assessing the effectiveness of the Premises Standards or to facilitate evidence-based decision-making.

### Development of the Premises Standards

During the development of the Premises Standards it was proposed that a “sample of audits” would identify the extent to which the Premises Standards and the DtS technical references are being implemented. It was intended that the primary source of evidence in the compliance audit would be the building approvals process, which enforces the provisions of the Premises Standards.<sup>216</sup>

Access All Areas reported:

*“that an audit of a sample of BCA certified new buildings or building work prior to the review would assist in identifying areas of non-compliance. In addition, monitoring and enforcement of the Premises Standards should be assessed as part of the five year review with the view to determining the most appropriate and*

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<sup>215</sup> 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 2009.

<sup>216</sup> 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 2009, p. 150.

*effective monitoring and enforcement mechanism given the rate of the compliance with the Premises Standards over the first five years of operation.*<sup>217</sup>

However, there are two things to note in this statement:

1. It implies that the sample would compare and identify the most effective monitoring and enforcement mechanism(s) in operation across several jurisdictions.
2. The final recommendation shifted the onus of conducting the audit from state and territory Auditors General to the Australian Government, without recognising the limitations of the Australian Government's ability to enforce compliance.

Access All Areas stated that data would be consistently collected across the jurisdictions and that appropriate resources would be allocated to support this process. It is evident the HRSC inquiry believed the building approvals process would assist in enforcing the provisions of the Premises Standards and, presumably, that that process would serve the basis of the audit.<sup>218</sup>

In contrast to the Education Standards and Transport Standards, which are both complaints-based, the Premises Standards were developed to make more use of industry-based compliance mechanisms. The mechanism for compliance is the incorporation of the Access Code into the NCC, which is used in state and territory building approval processes. Complaints about non-compliance can be made to the AHRC under the existing DDA complaints process.

## Data from State and Territory Building Regulators

The review team consulted with the state and territory building regulators and the AHRC on activities undertaken to identify existing data to evaluate the effectiveness of the Premises Standards.

The consultations revealed that:

- Limited data exists, but it is inconsistently collected and reported across the jurisdictions and decision-making is not transparent. For example, authorities tend to report only on the number of unjustifiable hardship applications received, with little or no detail on whether applications were rejected, re-submitted or accepted, and why.
- Few resources have been dedicated to identifying and assessing non-compliance, although the Western Australian Building Commission has developed and implemented an audit regime that, while still in its infancy, has the potential to provide compliance data. It is noted that building surveyors/certifiers in Western Australia generally welcomed the compliance audit as it provides them with guidance on complying with the building legislation.
- South Australia and Victoria have conducted general building audits, but not Premises Standards-specific audits. South Australia does not audit technical aspects such as compliance with NCC provisions. Victoria has audited building permits undertaken in early 2013, involving particular parts of the NCC: Part D3.1 (general building access requirements), D3.2 (Access to buildings), D3.3 (parts of buildings accessible) and D3.5 (accessible car parking).<sup>219</sup>
- Given the decentralised nature of the building control systems, there is currently no central repository of representative data on building activity with the degree of specificity required to inform compliance with the Premises Standards.

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<sup>217</sup> *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 2009, p 151.

<sup>218</sup> *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 2009, p. 155.

<sup>219</sup> Victoria's new Building Audit Program, established to monitor the level of compliance with the relevant building act and regulations, carried out audits on 450 building permits in 2013-14. *VBA Annual Report 2013-14* p 10.

- Audit programs tend to take a risk-based approach, focussing on those building areas that pose the greatest risk (e.g. swimming pool safety, fire safety or other matters subject to public scrutiny). They also tend to focus on examining the paperwork associated with approvals.
- There is no mechanism to share or draw upon innovative solutions, either within a jurisdiction or across jurisdictions. For example, there is no known repository for accepted Alternative Solutions.

## Data from Anti-Discrimination Bodies

Several building authorities noted that complaints remain the main trigger for investigations and audits. Individual complaints of unlawful discrimination under the DDA, which are lodged with the AHRC, remain the primary method of enforcing the Premises Standards.

Officers from the Attorney-General's Department have consulted with the AHRC and state and territory human rights and anti-discrimination agencies on their complaints data collection activities. Each state and territory has its own anti-discrimination law, which operates concurrently with the Commonwealth legislation. Only the AHRC can receive complaints directly about breaches of the Premises Standards, as they are made under the DDA. However, state and territory authorities may receive discrimination complaints relating to access to a building (often in the context of a complaint about discrimination in employment or education). These authorities will often resolve issues of determining reasonable adjustment and unjustifiable hardship in light of the obligations set out in the Premises Standards. Consultations with the state and territory bodies have revealed there is no meaningful data on these types of cases.

The AHRC keeps data on complaints about certain categories of disability discrimination (including "access to premises" and "contravention of Disability Standards") as part of its general function of conciliating anti-discrimination complaints. In the first year the Premises Standards were introduced (2011-2012), the AHRC recorded that four per cent (48) of all disability discrimination complaints related to access to premises. The AHRC has since recorded annual two per cent increases in disability discrimination complaints in this area, to six per cent in 2012-2013 and eight per cent in 2013-2014. Many of these complaints involved access to beaches, parks and night clubs rather than to buildings covered by the Premises Standards. The majority of complaints were successfully conciliated and only a small number proceeded to court.

## Education and Transport Standards

The absence of a national framework for reporting on monitoring and compliance is not unique to the Premises Standards.

The 2012 Transport Standards review has recommended that the Australian Government, jointly with state and territory governments, establish a national framework for reporting on progress against the Transport Standards. This recommendation has received in-principle support from the Australian Government but will require development of a Regulatory Impact Statement, which will consider options to gather consistent and meaningful data and make a recommendation on the most efficient and effective method of reporting data. The results are to be considered by the Transport and Infrastructure Council (ministerial) with a view to implementation.<sup>220</sup>

Similarly, the 2015 review of the Education Standards reported that *"there is no consolidated national measure to determine how well the Standards have been implemented"*, and that *"data is not consistently collected at the national level"*.<sup>221</sup>

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<sup>220</sup> Australian Government response to the 2015 report on the *Review of Disability Standards for Accessible Public Transport 2002*.

<sup>221</sup> Report on the *Review of Disability Standards for Education 2005* June 2012 p. 45.

## The Review

The review acknowledges that identifying and collecting data relevant to the Premises Standards present significant challenges. There is no mechanism at the Commonwealth level to address the outstanding matters in the *Access All Areas* report concerning data identification and collection.<sup>222</sup>

The review team conducted a stakeholder forum by teleconference on 9 December 2015 to discuss what data collection and audit activities, if any, are under way in Australia. Representatives from all state and territory building regulators, local government, the ACHRA, the AHRC and the ACAA participated. A list of participants is provided at Appendix 6.

The forum identified a range of mechanisms currently in place, but nothing that specifically addresses the Premises Standards. As for audits, the forum confirmed that there are no regular audits of the Premises Standards being undertaken anywhere in Australia and there do not appear to be any plans for audits of relevance to the Premises Standards.

A few submissions referred to a lack of quantifiable evidence to help inform decision-making and suggested further research be undertaken in a number of areas in preparation for the next five-year review.<sup>223</sup> In particular, the PWDA submission noted that “(a)t present the Premises Standards have no compliance or data gathering measures which severely hampers the ability for parties to review, evaluate and implement changes”.<sup>224</sup> The ABCB also acknowledged that the lack of detailed data on specific aspects of building activity significantly limits its ability to undertake the research and analysis required in preparing regulatory impact statements.

In the absence of a data framework, evidence of the effectiveness of the Premises Standards, or the level of compliance or non-compliance, is largely anecdotal. Submissions commonly made assertions the review was unable to substantiate due to lack of data. For example, there were many requests to increase the ratio for accessible car parking, but little data available to assess such claims.

Where data does exist the quality is so variable that it is not feasible to make comparisons and draw meaningful conclusions. For example, some states and territories only gather complaints under the broad umbrella of “disability”. When disability complaints are categorised into sub-groups, different classifications are used across all states and territories (e.g. accommodation, goods and services, services and facilities, housing, clubs). An AHRC “Access to Premises” complaint may cover matters, such as office fit-out, the actions of a shop manager or a building built before 2011, that are not covered by the Premises Standards. This makes it difficult to identify which, if any, AHRC complaints involve a breach of the Premises Standards.

Accessing relevant data is a key barrier to the data collection process. While the states and territories are responsible for administering the building control systems, the certification functions have largely been delegated to local governments and, in most jurisdictions, to private certifiers. The review found that data potentially relevant to the Premises Standards is ordinarily held by individual local councils and is not currently aggregated at state level. For instance, data on the number of Class 1b buildings that have been exempted from compliance under the four room threshold, or the number of swimming pools exempted under the 40m threshold, is likely to be held, if at all, at the local level.<sup>225 226</sup> Obtaining access to this data requires significant cooperation and coordination from all levels of government.

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<sup>222</sup> See recommendations 18 & 19 of Appendix 3.

<sup>223</sup> Submissions 29; 344.

<sup>224</sup> Submission 349.

<sup>225</sup> *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. 37.

<sup>226</sup> The *Access All Areas* report suggested that data of this nature be collected for consideration at the first review.

### Case study: Number of disability parking permits

The problems associated with obtaining quantitative data were highlighted during the review team's investigations into the number of disability parking permits issued since 2010. It is difficult to make comparisons and draw meaningful conclusions from the disability parking permit metric because of challenges in:

**The quality of the data** – it is not always apparent what the data actually represents because some jurisdictions (e.g. WA) record data that is inclusive of organisational permits while others (e.g. NSW and Tasmania) separate individual permits and organisational permits. The data presented may also be inclusive of temporary, long term and permanent permits (e.g. ACT) and the definition of these categories varies across the regions.

**Accessing the data** – data on permits is published on the NSW Roads and Maritime Services website (statistics table 7.1.2) on a quarterly basis and in the Tasmanian Department of Infrastructure, Energy and Resources' annual reports. The review was able to obtain data from the ACT and Western Australia upon request; however, data on permits issued in Victoria and the Northern Territory is available only by contacting individual local councils. With 79 and six councils respectively, there is no assurance the cumbersome and time consuming nature of contacting these councils will elicit consistent or appropriate responses.

The review team notes that there is scope for stakeholders to share information and leverage existing mechanisms. For example, it should be possible for stakeholders to obtain information on approved Alternative Solutions, to be made aware of innovative solutions and build on these developments. The state and territory building authorities have implemented, or are exploring, a number of mechanisms to help collect data relating to the Premises Standards, which may be useful for other jurisdictions. In addition to the Western Australia Building Commission's compliance audit program:

- Tasmania is implementing a software tool, IPLAN, which captures and tracks all building planning matters and has the potential to collect building data, including data on the Premises Standards. This tool is, however, still very rudimentary.
- There is potential within the ACT to extract building data although additional resources would be required to interrogate the records system. This jurisdiction is unique in that it has a central data repository (because it has no local government level).
- The Australian Bureau of Statistics (ABS) publishes data on building activity, although this data does not correlate with building classifications as detailed in the NCC and therefore provides no useful basis for compliance data analysis. In some regions (WA, VIC and the ACT), certifiers collect information for the ABS and there may be opportunity to add questions aligned with NCC classifications to this process.

In addition to these mechanisms, the review team considers there is benefit to be gained by encouraging regular dialogue between all stakeholder groups on data identification and collection processes. As a first step, discussion should aim to forge a shared view on the purpose of data collection and the development of measures as educational tools. The outcome of these discussions can then be used to identify where practice notes and future training should be focussed.

A consistent request from stakeholders during the review was for discussions on data collection to be more inclusive of a broader range of stakeholders, in particular people with disabilities. Currently, there appears to be no formal engagement between the state and territory building authorities and anti-discrimination authorities.

The review considers that an audit of a sample of buildings in the short term is likely to result in inconclusive outcomes because:

- A compliance audit relies on the jurisdictions having comparable building certification systems. Currently, there is no central repository for building approval documentation, with the certification processes being highly diverse and maintained mainly by local governments.
- A sample audit, as recommended by the HRSC inquiry, is more likely to highlight anomalies in the certification process, such as missing or incomplete information, and not necessarily confirm the extent of non-compliance with the Premises Standards.
- Currently, there are insufficient resources and capacity within the jurisdictions to collect data and undertake regular audits. These are costly activities and audits are usually conducted by an independent body with the requisite skill sets.<sup>227</sup> Such audits tend to focus on compliance with administrative matters and only shift to technical audits that involve onsite visits if severe non-compliance is identified.
- An audit may impact on state and territory authorities' monitoring and enforcement control systems.

It is also the view of the review team that any data activity or audit of a sample of new buildings or building work requires the full cooperation of the state and territory authorities and a commitment to provide the resources necessary to identify, collect and report meaningful data on an annual basis.

The review team is aware of other reviews of building legislation under way in several states and territories that may also lead to enhanced data collection capability. The outcomes of these reviews may give more prominence to the Premises Standards.

## Findings

There is no consistent data framework in place to quantitatively assess the effectiveness of the Premises Standards. Some building authorities have developed tools to identify areas of non-compliance, but these are still in early stages of implementation. The purpose of collecting data, how and what data should be collected and the method of collection need to be considered in consultation with state and territory governments and stakeholders more broadly.

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<sup>227</sup> An audit of the Victorian building permit system in 2011, which pre-dates the Premises Standards, cost \$645,000 and revealed that 96 per cent of the 401 building permits examined failed to comply with basic building standards 80 of the 401 permits underwent a further technical assessment. The audit, which examined only 4 local councils, did not identify building work that triggered the Premises Standards.

## 7. Other Issues Requiring Consideration

A number of issues raised in the submissions are not covered by the review's terms of reference, but may have policy significance for the implementation of the Premises Standards. These include issues concerning the alignment of the review cycle with other standards and codes and concerning hearing augmentation.

### Review Cycle for the Premises Standards

#### Recommendation

- An expert working group consider whether it is necessary to amend the current five-year review cycle for the Premises Standards to fit in with the new three year publication cycle of the NCC.

#### The Review

At the time the Premises Standards were introduced the NCC, then known as the BCA, was on an annual cycle of review and publication. It made sense to place the Premises Standards on a five-year review cycle. In doing so, any changes from the first or subsequent reviews would be incorporated into the BCA and would have several years of practical application prior to the next review. With the shift to a three-yearly review cycle for the NCC and a five-yearly cycle for the Premises Standards, this will occur less frequently.

For example, if the Premises Standards review recommends amendments to the Standards that are adopted and subsequently impact the NCC, it could be between one and three years before changes to the NCC take effect.<sup>228</sup> If it were three years, there would then only be around one year of practical application of the amended standards prior to their next review, which would likely reduce the ability of the review to assess the Premises Standards.

### Hearing Augmentation

#### Recommendations

- An expert advisory group consider a workable definition of inbuilt amplification system.

If *AS 1428.5-2010 Design for access and mobility - Communication for people who are deaf or hearing impaired* (AS 1428.5-2010) is revised and is in a suitable format for inclusion in the Premises Standards and NCC, the expert advisory group considers how the standards might be incorporated.

#### Background

Hearing augmentation can be defined as the communication of information for people who are deaf or hearing impaired by using a combination of audio, visual and tactile means. The provision of an effective hearing augmentation system is aimed at assisting people with a hearing impairment to access communications associated with a building's use.

Hearing augmentation system options to comply with the DtS provisions include:

- audio frequency induction loop systems (hearing aid T-switches can be used, or receivers provided to those without a T-switch on their hearing aids)
- frequency modulation (individual receivers worn by users to receive radio waves (i.e. a FM transmitter / receiver systems)) and

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<sup>228</sup> Depending on the proposed changes to the Premises Standards, different approval processes would need to take place (that would have varying timeframes).

- infra-red (transmitter / receiver system, where individual receivers are worn by users to receive infra-red beams by a direct line of sight).

Hearing augmentation provisions are outlined in a number of sections of the Premises Standards including:

- DP9 Performance requirement – an inbuilt communication system for entry, information, entertainment, or for the provision of a service, must be suitable for occupants who are deaf or hearing impaired. Clause DP9 does not apply to inbuilt communication systems used only for emergency warning purposes.
- D3.7, which describes where a hearing augmentation system must be provided, sets the requirements for hearing augmentation systems where they are required, for calculating the number of persons accommodated in a room or space served by an inbuilt communication system and for screens used to supplement public address systems.
- H2.13 – if a public address system is installed, it must comply with clause 21.1 of AS 1428.2.

Hearing augmentation systems must be provided where an inbuilt amplification system is provided (other than one used only for emergency warning). They are required in the following locations, as outlined in the BCA Clause D3.7(a) and Premises Standards Part D3.7(1):

- in a room in a Class 9b building (that is, an assembly building such as a school, university or trade workshop)
- in an auditorium, conference room, meeting room, or room for judicial purposes and
- at any ticket office, teller's booth, reception areas and similar areas where the public is screened from the service provider.

## The Review

Six submissions commenting on this issue were received, representing both the disability sector and the building sector.<sup>229</sup> Two raised concerns that hearing augmentation provisions are being circumvented. In some cases amplification systems are hired by venues and charged to the client, installed but not connected or used inappropriately, and are therefore not effective or meeting their intended use. Submissions also identified other solutions, such as SoundField Systems, are also often unsuitable or ineffective.

Although the NCC and Premises Standards include a number of prescriptive parameters for the installation of a hearing augmentation system, they do not consider a number of critical factors such as sound reverberation and the acoustic quality of finishes, background noise, sound source distances, volume and shape of rooms. These are significant factors in providing an effective system in large open spaces, such as sports stadiums. It is also important to consider the specific use and layout of the building to determine suitable hearing augmentation systems. There are buildings that have been built to meet the DtS provisions of the NCC, but where the final installation may not be appropriate for people who are hearing impaired. For example, installing a hearing loop system within a large public hall with poor acoustics may not be effective.

The ACAA submission called for referencing AS 1428.5-2010 as a mandated standard for all hearing augmentation uses; however, the ABCB suggested that that the standard would need to be reviewed to be suitable for use in regulation through the NCC, including an assessment of potential costs and benefits.<sup>230</sup>

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<sup>229</sup> Submissions 117; 193; 206; 308; 378; 307.

<sup>230</sup> Submission 307.

In general, issues with the application of these provisions appear to rest on problems of interpretation. Given changes in technology over time, clarification is required, particularly in the definition of inbuilt amplification system, which now needs to address Skype and video conferencing.

### ***Findings***

The review noted the poor interpretation and application of the hearing augmentation provisions and the potential benefits of guidance information to ensure proper application of the provisions.

There could also be benefit in Standards Australia reviewing AS 1428.5-2010 and for an expert advisory group to review its appropriateness in being referenced in the Premises Standards.

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## 8. Conclusions

Based on available evidence, the review team found that the Premises Standards have made some improvements in providing people with disability, dignified, equitable, cost effective and reasonably achievable access to public buildings. The review also demonstrated that the Premises Standards have given a greater level of certainty to the building industry about meeting their obligations in relation to the DDA.

Given the Premises Standards only came into effect on 1 May 2011, and its provisions were not retrospective (applying to only new buildings or new parts of buildings), the review team considers that the impact of the Premises Standards, and any improvements required, will become clearer with time as more buildings come within the scope of the Premises Standards.

However, the review found a number of areas where further work can be undertaken in order for:

- the Premises Standards to operate as they were intended
- understanding of the Premises Standards to be improved and
- some technical matters to be addressed to improve the implementation.

The review found there are limited mechanisms at the Commonwealth level, and no consistent framework at the state and territory level, to collect Premises Standards performance information.

The review concluded that, due to a lack of substantive evidence, further detailed analysis and research is needed across a number of areas before substantive change to the Premises Standards can be considered.

In terms of further action, key themes that emerged related to:

1. improving connections between the Premises Standards, the NCC and the Transport Standards
2. an inadequate understanding and awareness of the Premises Standards
3. a lack of a coordinated approach to performance-related data collection and
4. a lack of a coherent governance structure for progressing reform of the Premises Standards.

## Improving Connections

Since the Premises Standards were introduced the NCC has undergone a number of modifications that have created inconsistencies with the Premises Standards. Further, a number of submissions noted concerns regarding the interaction of the Premises Standards with the Transport Standards.

### Recommendation 1

**Amend the Premises Standards where necessary to clarify policy intent, improve interpretation and reflect updates to the National Construction Code, and consider options to harmonise with the Transport Standards where appropriate.**

#### *Sub-recommendations*

- a. The Premises Standards be updated to reflect revisions to the specification of passenger lift types in the NCC (Section 2.4).
- b. Section D3.10(3) of the Premises Standards be amended to provide clarification by removing the words “in length” (Section 2.5).
- c. The Department of Industry, Innovation and Science to work with the Department of Infrastructure and Regional Development to consider ways to harmonise the Transport Standards with the Premises Standards where appropriate (Section 2.7).

- d. Update the Premises Standards to include any revised emergency egress provisions (including DP7) of the NCC (Section 2.9).
- e. Amend clause D3.3(f)(ii) so that the floor area threshold of 200m<sup>2</sup> for each storey only applies to the parts of each storey available to occupants and not exempted by clause D3.4. The review has included this matter in Appendix 7: Proposals for Change in the Premises Standards, to be considered by an expert advisory group (Section 3.1).
- f. All new access-related provisions within the NCC be included in the Access Code of the Premises Standards (refer to Appendix 7 for proposals categorised “Alignment with NCC”) (Section 4).

## Improving Understanding

From submissions, it was clear that issues remain with understanding the requirements of the Premises Standards. The review considers it would be beneficial for guidelines to be developed to improve understanding – among building professionals as well as the public – of the requirements of the Premises Standards. Particular issues requiring clarity included accessible carparks, accessible accommodation, unjustifiable hardship, alternative solutions, swimming pools, the small building exemption and lessee concessions.

## Recommendation 2

**Develop guidelines to help stakeholders better appreciate the content and scope of the Premises Standards.**

### *Sub-Recommendations*

- a. Guidance on accessible carparking be developed as part of the development of an updated guideline for the Premises Standards; this may also include reference to AS/NZS 2890.6-2009 (Section 2.6).
- b. Revise guidance material to provide more clarity on instances where the Premises Standards and the Transport Standards interact and differ and on which structures related to transport buildings are classified as Class 9b or Class 10 (Section 2.7).
- c. New guidelines be developed to better explain the requirements of the Premises Standards (Section 4).
- d. Develop guidelines to provide greater clarification and understanding of the Premises Standards (Section 5).
- e. State and territory building authorities consider ways to improve the transparency of decisions on questions of unjustifiable hardship and accepted alternative solutions (Section 6).

## Recommendation 3

**Improve education and training to raise awareness and understanding (for example, in relation to improved marketing of accessible accommodation rooms in hotels, and the unjustifiable hardship exemption) of key issues covered by the Premises Standards.**

### *Sub-Recommendations*

- a. The tourism and accommodation industry in collaboration with the disability sector undertake to improve the marketing of accessible rooms (Section 2.1.2).
- b. Further work be undertaken to update data on the economic value of accessible accommodation in Australia (Section 2.1.2).

- c. Develop guidance information, including education and training material, to raise awareness across a broad range of stakeholders on the purpose of the unjustifiable hardship exemption, the role of Access Panels and the application process (Section 3.3).
- d. Improve education and training material available for different stakeholder groups, to raise awareness of issues covered by the Premises Standards (Sections 5).

## Improving Measurement

The lack of data on the operation of the Premises Standards impeded the review team's ability to assess the effectiveness of the Premises Standards in meeting their objectives and the impact, if any, of particular issues raised by submissions.

### Recommendation 4

**Develop guiding principles for coordinated data collection, analysis and audits and gain the cooperation of responsible organisations (including state and territory governments) to enable monitoring and reporting for future reviews.**

#### *Sub-Recommendations*

- a. Prior to the next five-year review, research should be undertaken to clarify whether the current ratio is sufficient as a minimum standard or whether consideration needs to be given to changing the ratio (Section 2.6).
- b. Consider any new methods for quantifying the benefits of additional emergency egress options (as costs and technologies may change over that time), at the next five-year review (Section 2.9).
- c. Establish processes for the systematic and coordinated collation and analysis of data on implementation of the Premises Standards to improve monitoring and to inform future reviews (Section 6).

## Improving Governance

Access All Areas recognised further work would be needed in the lead-up to this review to better understand the issues and assess the effectiveness of the Premises Standards. There would be benefit in establishing a governance structure to ensure that issues identified in this review are progressed and to prepare for the next five-year review.

### Recommendation 5

**Establish a governance structure to oversee a forward work program. This would involve a governance group comprising the Department of Industry, Innovation and Science, the Attorney-General's Department and the Department of Social Services to oversee the work.**

### Recommendation 6

**Establish expert advisory groups under the governance group as needed to provide technical advice and guidance on relevant matters. Expert advisory groups should include representatives relevant to the work program (such as the Australian Building Codes Board, state and territory building regulators, local government, building and construction organisations, design professionals, access consultants, disability organisations and accommodation and tourism stakeholders).**

### **Matters for Expert Advisory Groups – Sub-recommendations**

- a. Consider whether the conversion of Class 1a buildings to *specified Class 1b* rooming/boarding houses has been affected by the Premises Standards, the extent of any such effect and, if required, what further actions should be undertaken (Section 2.1.1).
- b. Investigate whether, and how, accessible adult changing facilities should be included in the Premises Standards (Section 2.2).
- c. Consider developing a workable definition of “bank of toilets” and determine whether changes to specifications may be needed. For example, consideration should be given to the impact the definition may have on the requirement for an accessible sanitary facility at 50 per cent of banks of toilets and on the distance between accessible sanitary facilities in large buildings (Section 2.2).
- d. Investigate whether changes to the 80<sup>th</sup> and 90<sup>th</sup> percentile wheelchair dimensions should be considered (Section 2.3).
- e. Consider ways to improve the understanding of accessibility issues in swimming pool design in any updated guideline (Section 2.5).
- f. Consider whether, and how, accessible adult changing facilities should be included in the Premises Standards as part of the larger body of work regarding accessible adult changing facilities (Section 2.5).
- g. Consider the issue of data in relation to carparking permits versus number of accessible carparks (Section 2.6).
- h. Consider the specifications with AS/NZS 2890.6-2009 to determine whether there is a need to consider requesting changes to the standard.
- i. Consider an editorial amendment to D3.5d, replacing “designated” with “identified with signage” and clarifying the intended meaning of D3.5d related to signage and shared zones (Section 2.6).
- j. Consider how a “whole-of journey” approach to accessibility planning may be promoted and encouraged through guidance material (Section 2.7).
- k. Following finalisation of the new wayfinding standard by Standards Australia, consider options for incorporating the standard in the Premises Standards (Section 2.8).
- l. Consider further information to be included in guidance material to promote the best practice installation of TGSIs (Section 2.8).
- m. Consider whether there is a case to amend the exception at F2.4(i) to refer only to wheelchair accessible sanitary facilities and to clarify that ambulant toilet amenities are still required on floors other than the entrance level where appropriate (Section 3.1).
- n. Explore options to revise the lessee concession to provide greater access to ground floor shopfronts where appropriate (Section 3.2).
- o. Advise how best to include subdivisions and strata title holders in the Premises Standards (Section 3.2).
- p. Consider a coordinated approach to improving the mechanisms to apply for unjustifiable hardship exemptions (Section 3.3).
- q. Establish an expert advisory group (comprising state and territory building authorities, the AHRA, the ACHRC, local government, people with disability and access consultants) to develop guiding principles for Premises Standards measurement requirements for consideration by the Commonwealth. Matters to be considered would include the purpose of

collecting and reporting data, what to measure, how to measure, collect and report and who should collect and report data (Section 6).

- Examine the results of compliance audits undertaken since May 2011, with a view to determining factors for non-compliance. Outcomes to be reported to the Building Ministers' Forum (BMF) (Section 6).
- r. Consider whether it is necessary to amend the current five-year review cycle for the Premises Standards to fit in with the new publication cycle of the NCC (Section 7).
- s. Consideration a workable definition of inbuilt amplification system (Section 7).
- t. If AS 1428.5-2010 is revised and is in a suitable format for inclusion in the Premises Standards and NCC, consider how the standards might be incorporated (Section 7).

## Next Steps

It is a legislated requirement that this report be provided to the Minister for Industry, Innovation and Science and the Attorney-General by 1 May 2016.

The report findings highlight the need to establish appropriate oversight mechanisms to address the matters raised in the review and improve the effectiveness of the Premises Standards in achieving their objectives.

It is recommended that a Premises Standards Governance Group under the leadership of the Department of Industry, Innovation and Science, the Attorney-General's Department and the Department of Social Services be established to oversee the implementation of the Australian Government's response to the review recommendations and to assist in preparations for the next review.

Expert advisory groups could be established on an as-needed basis to provide guidance and support to the Governance Group on issues including, but not limited to, collecting data, monitoring impacts and developing guidelines. In addition, they would provide technical advice to the Governance Group on proposals for change supported by the review and classified as having material effect on the Premises Standards.

The review recommends that expert advisory groups include representatives relevant to the approved work program and, where appropriate, from:

- the Australian Government (including the Department of Industry, Innovation and Science, the Attorney-General's Department, the Department of Infrastructure and Regional Development and the Department of Social Services)
- state and territory building regulators
- local government (e.g. the Australian Local Government Association)
- the building and construction sector (such as the Office of the Australian Building Codes Board, the Property Council of Australia, Master Builders Australia and the Housing Industry Association)
- design professionals (such as the Australian Institute of Building Surveyors and the Australian Institute of Architects)
- access consultants (such as the Association of Consultants in Access Australia)
- the disability sector (such as the AHRC and peak disability organisations including the Australian Cross-Disability Alliance and the ACHRA)
- accommodation and tourism industry stakeholders and
- Standards Australia.

Subsequent reviews are to be carried out every five years after the previous review is completed. The next review must be completed and reported to the Minister for Industry, Innovation and Science and the Attorney-General by 1 May 2021.

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# Appendix 1: Glossary of Terms and Abbreviations

## **ABCB**

Australian Building Codes Board

## **ACAA**

Association of Consultants in Access Australia

## **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*

## **ACHRA**

Australian Council of Human Rights Agencies

## **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.

## **AIA**

Australian Institute of Architects

## **AIBS**

Australian Institute of Building Surveyors

## **Alternative Solution**

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

## **AHRC**

Australian Human Rights Commission

## **AAC**

Association of Accredited Certifiers

## **ABS**

Australian Bureau of Statistics

## **AS 1428.1 – 2009 or AS 1428.1 – 2001**

Australian Standard AS1428.1 – Design for access and mobility, Part 1: General requirements for access – New building work

## **AS 1428.2-1992**

*AS 1428.2 Design for Access and Mobility, Part 2: Enhanced and additional requirements*

## **AS 1428.5-2010**

*AS 1428.5-2010 Design for access and mobility - Communication for people who are deaf or hearing impaired*

**AS 1735**

Australian Standards AS 1735 (Parts 1, 2, 3, 7, 8, 12, 14) – Lifts, escalators and moving walks

**AS/NZS 2890.6-2009**

AS/NZS 2890.6-2009 Parking facilities—Off-street parking for people with disabilities

**BCA**

Building Code of Australia, Volumes 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**

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**

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 (DtS Provisions)**

Provisions which are deemed to satisfy the Performance Requirements as outlined in the Access Code

**The Department**

The Department of Industry, Innovation and Science

**Education Standards**

*Disability Standards for Education 2005*

**GPOs**

general purpose outlets

**GDP**

Gross Domestic Product

**HRSC**

House of Representatives Standing Committee on Legal and Constitutional Affairs

**The Inquiry**

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

**MBA**

Master Builders Association of Australia

**MMDs**

Motorised Mobility Devices

## **NCC**

*National Construction Code*, comprising 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.

## **PWDA**

People with Disability Australia

## **Premises Standards (the Standards)**

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

## **The Protocol**

*A Model Process to Administer Building Access for People with a Disability 2010*

## **The PwC report**

Refers to *An Assessment of Accessible Accommodation in Australia: Supply and Demand*

## **RAAV**

Registered Accommodation Association of Victoria

## **RIS**

Regulation Impact Statement

## **RICS**

The Royal Institution of Chartered Surveyors

### **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.

## **TGSIs**

Tactile Ground Surface Indicators

### **Transport Standards**

*Disability Standards for Accessible Public Transport 2002*

## **VBA**

Victorian Building Authority

### **2008 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).*

## Appendix 2: Classification of Buildings and Structures

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

- (a) **Class 1a** — a single dwelling being:
  - (i) a detached house; or
  - (ii) one of a group of two or more attached dwellings, each being a building, separated by a *fire-resisting wall*, including a row house, terrace house, town house or villa unit; or
- (b) **Class 1b** —
  - (i) a boarding house, guest house, hostel or the like:
    - (A) with a total area of all floors not exceeding 300 m<sup>2</sup> measured over the enclosing wall of the Class 1b; and
    - (B) in which not more than 12 persons would ordinarily be resident; or
  - (ii) 4 or more single dwellings located on one allotment and used for short-term holiday accommodation; which are not located above or below another dwelling or another Class of building other than a *private garage*.

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

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

- (a) a boarding-house, guest house, hostel, lodging-house or backpackers accommodation; or
- (b) a residential part of an hotel or motel; or
- (c) a residential part of a *school*; or
- (d) accommodation for the aged, children or people with 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.

## Appendix 3: Summary of Progress on *Access All Areas* Report Recommendations

Introduction of the Premises Standards (Recommendation 1) <i>The Committee recommends that</i>	Response	Status
<p><b>Recommendation 1</b></p> <p>The Premises Standards be without delay. Any issues which cannot be finalised without causing delay should be considered at a later date.</p>	Accepted	<p>Introduced on 1 May 2010</p> <p><b>This recommendation is completed.</b></p>

### Scope of the Premises Standards (Recommendations 2 to 4)

<i>The Committee recommends that</i>	Response	Status
<p><b>Recommendation 2</b></p> <p>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.</p>	<p>Accepted in part.</p> <p>The Government agrees to the adoption of the approach of the 2004 draft Premises Standards to set access standards in relation to common areas of new Class 2 buildings where one or more sole-occupancy units are available for short-term rent. This will deliver the principal benefits of the requirements at a reasonable cost. The vast majority of building activity in regard to Class 2 buildings is applicable to new buildings.</p> <p>Recognising that this situation may change over time, and that further evidence may emerge, the question of including existing Class 2 buildings within the scope of the Premises Standards will be reviewed three years from the Standards being adopted.</p>	<p>The Premises Standards amendment on 22 Sept 2010 included:</p> <p>“a Class 2 building that:</p> <ul style="list-style-type: none"> <li>• Is a new building; and</li> <li>• Has accommodation available for short-term rent.”</li> </ul> <p>However, by complying with the requirements in the BCA, which requires certain levels of access in specified common areas for all new Class 2 buildings, it will also ensure compliance with the limited provisions of the Premises Standards on this issue (refer to page 66 of</p>

<i>The Committee recommends that</i>	Response	Status
		the AHRC Guideline). <b>This recommendation is completed.</b>
<p><b>Recommendation 3</b></p> <p>The 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.</p>	<p>Accepted.</p> <p>The Premises Standards will require for new single Class 1b buildings, regardless of the total number of bedrooms, that at least one bedroom, including sanitary facilities, and guest facilities such as an eating area, must be accessible. The Committee report does not specifically address the question of holiday accommodation on a single allotment. It is noted that the ratio of accessible dwellings, where there are four or more Class 1b buildings used for holiday accommodation on a single allotment, will remain unchanged.</p>	<p>No further action required.</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 4</b></p> <p>Consideration be given to the development of disability standards in relation to building fit out and places other than buildings.</p>	<p>Accepted in principle.</p> <p>While the Government accepts this recommendation in principle, additional consultation with stakeholders, states and territories will be necessary.</p>	<p>Building fit-out matters are essentially the matters dealt with in AS 1428.2, such as counter heights, telephones, post boxes, vending machines, furniture and fitments etc. They are outside the scope of the NCC so if they were to be dealt with it would have to occur either as a separate disability standard or through the Premises Standards, not the NCC.</p> <p><b>This recommendation is completed.</b></p>

## Concessions and Exemptions and Exceptions (Recommendations 5 to 10)

<i>The Committee recommends that</i>	Response	Status
<p><b>Recommendation 5</b></p> <p>The small building exemption for Class 5, 6, 7b or 8 buildings be limited to the provision of lift or ramp access between floors.</p>	<p>Accepted.</p> <p>The Government agrees that all reasonable means to provide access to these buildings should be applied. It therefore supports the Committee's recommendation to limit the exemption for small buildings – such that only lift or ramp access, together with features on the non-entrance floors that are reliant on lift or ramp access between floors (principally accessible sanitary facilities) – will be optional. All other applicable access features will be required.</p>	<p>Access Code D3.3(f) allows Class 5, 6, 7b or 8 buildings that have 2 or 3 floors to qualify for the exemption for small buildings where there is a lift or ramp access between floors .</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 6</b></p> <p>The exemptions in paragraphs D3.4 (a) – (e) be replaced with a general exemption for areas which pose a clear health and safety risk for people with disability.</p>	<p>Accepted in principle.</p> <p>The Government supports the recommendation to provide a general exemption (as is currently the case in the Building Code of Australia) but, following further consultation with state and territory building control authorities, is of the view that there may be areas where health and safety is not the only consideration as to the appropriateness of providing access. (This will be referred to the Australian Building Codes Board for further review.)</p>	<p>This relates to the Access Code and the Committee's recommendation was taken up in the final Access Code.</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 7</b></p> <p>The words “regional or remote location” be deleted from paragraph 4.1(3)(f) of the Premises Standards.</p>	<p>Accepted</p>	<p>The original 4.1(3)(f) is now 4.1.(3)(g). The words “regional or remote location” have been omitted.</p> <p><b>This recommendation is completed.</b></p>

The Committee recommends that	Response	Status
<p><b>Recommendation 8</b></p> <p>Further consideration be given to clarifying the meaning of “heritage value” in paragraph 4.1(3)(k) of the Premises Standards. Consideration should be given to ensuring consistency with the tests used in state and territory legislation in relation to heritage. The Committee further recommends that the words “and to what extent incidental” be deleted from paragraph 4.1(3)(k) of the Premises Standards.</p>	Accepted	<p>The original 4.1(3)(k) is now 4.1.(3)(l) and the clause has been reworded to clarify the meaning of “heritage value” and omits the words “and to what extent incidental”.</p> <p>The clause now reads “if detriment under paragraph (k) involves loss of heritage <i>significance</i> – the extent to which <i>the</i> heritage features of the building are essential, <i>or merely incidental, to the heritage significance of the building</i>”.</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 9</b></p> <p>Subsection 4.1(3) of the Premises Standards be amended to include consideration of the extent to which the building work concerned involves the use of public funds; and</p> <p>That paragraph 4.1(3)(i) be amended to include specific reference to the use of the building for public purposes and the extent to which the building has a significant community function.</p>	Accepted	<p>Subsection 4.1(3)(c) was changed from “the extent to which the building is provided by or on behalf of a public authority for public purposes” to “the extent to which the construction of the building has or will be financed by government funding”.</p> <p>A new subsection was inserted into 4.1(3)(i) – now 4.1(3)(d) – to read “the extent to which the building:</p> <ul style="list-style-type: none"> <li>• is used for public purposes; and</li> <li>• has a community function”.</li> </ul> <p><b>This recommendation is completed.</b></p>

<i>The Committee recommends that</i>	Response	Status
<p><b>Recommendation 10</b></p> <p>The current exemption for fire-isolated stairs and ramps in paragraph D3.3(b) be amended to provide accessibility as far as practicable, with particular consideration given to tactile ground surface indicators, luminance contrast stair nosings and second handrails.</p>	<p>Accepted in part.</p> <p>The Government accepts the recommendation to include luminance contrast stair nosings on fire-isolated stairs. Consideration of other accessibility components requires safety and technical assessment of their impact on building design requirements and an evaluation of cost, and will be referred to the Australian Building Codes Board for further consideration</p>	<p>The Access Code D3.3 – Parts of buildings to be accessible, has been significantly re-worded and re-ordered The Report reference to D3.3(b) is now D3.3(a) This part is more specific in the requirements and does not address tactile ground surface indicators, luminance contrast stair nosings and second handrails.</p> <p><b>Refer to review report Section 2.9 Emergency Egress.</b></p>

## Specific Provisions of the Premises Standards (Recommendations 11 to 15)

<i>The Committee recommends that</i>	Response	Status
<p><b>Recommendation 11</b></p> <p>Technical matters raised by submissions to this inquiry which relate to Australian Standards be referred to Standards Australia for urgent consideration.</p>	<p>Accepted.</p> <p>The Government has been in dialogue with Standards Australia in relation to the revision of three of the Australian Standards referenced in the Premises Standards, namely AS 1428.1, AS 1428.4.1 and AS 2860. The Standards Australia standards were completed at the end of 2009. The matters raised in the submissions to the Committee were passed to Standards Australia and considered in that process.</p>	<p>Table 1 in Part A3 refers to referenced documents. These include:</p> <p>AS 1428.1 – Design for access and mobility</p> <p>AS 1428.4.1 – Design for access and mobility</p> <p>AS 1735 – Lifts, escalators, and moving walks</p> <p>AS/NZS 2890 – Parking facilities.</p> <p>The Government response incorrectly referred to AS/NZS 2860 and not AS/NZS 2890.</p> <p>AS 1428.1 and AS 1428.4.1 were amended in 2010 prior to the Premises Standards commencing on 1 May 2010. AS/NZS 2890 was amended in 2009.</p> <p>The matters raised have been considered by the relevant Standards Australia committees in finalising the Australian Standards that were referenced in the Premises Standards. The reference should be to AS/NZS 2890.6 which covers accessible carparking.</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 12</b></p> <p>The objects of the Premises Standards be amended to include a reference to dignified access for people with disability.</p>	<p>Accepted</p>	<p>The words “dignified access” are now in the objects 1.3(a).</p> <p><b>This recommendation is completed.</b></p>

The Committee recommends that	Response	Status
<p><b>Recommendation 13</b></p> <p>The Australian Government provide funding for new research, to be completed within 12 months of the tabling of this report, into wheelchair sizes and the dimensions of building features necessary to accommodate them. The results and the issue of 90th percentile dimensions should be returned to this Committee for reconsideration at that time.</p>	<p>Accepted in principle.</p> <p>The Government sees merit in the study proposed but considers that this should be undertaken when these Standards have been in operation for two years so that developments to that time can be taken into account</p>	<p>The Caple report was provided in February 2015.</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 14</b></p> <p>Table F2.4(a) be amended to make it clear that every accessible room in a Class 1b building must have an accessible toilet before a concession is provided in relation to common accessible toilets.</p>	<p>Accepted</p>	<p>Table F2.4(a) was amended to address this recommendation The table replaced the original “for <i>an</i> accessible bedroom” to now read “for <i>every</i> accessible bedroom”</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 15</b></p> <p>Urgent technical advice be sought as to whether safe alternatives to locking off of lifts and constant pressure devices are available; and</p> <p>the Premises Standards provide that stairway platform lifts should only be used in situations in which they are the only practical accessibility option.</p>	<p>Accepted in principle.</p> <p>The issue of technical advice on safe alternatives to locking off of lifts and constant pressure devices will be referred to the Australia Building Codes Board for its consideration.</p> <p>The Government accepts the recommendation concerning stairway platform lifts.</p>	<p>Part (i) of this recommendation has been completed; there were no alternatives available at the time. There is some work being done by Standards Australia to adopt International Organization for Standardization (ISO) lift standards in Australia rather than having Australia-specific standards.</p> <p>Part (ii) was completed by including a provision in the Premises Standards that only allows a stairway platform lift to be used where it is not possible to install another type of passenger lift.</p> <p><b>This recommendation is completed.</b></p>

## Matters not Addressed by the Premises Standards (Recommendation 16)

<i>The Committee recommends that</i>	Response	Status
<p><b>Recommendation 16</b></p> <p>The Australian Building Codes Board undertake further research to identify deemed-to-satisfy provisions for emergency egress for people with disability with a view to making changes to the Building Code as soon as possible</p>	<p>Accepted in principle.</p> <p>This matter will be referred to the Australian Building Codes Board for its consideration</p>	<p>Some additional egress requirements have been included in the NCC. The final RIS released in 2015 supported the development of a non-regulatory handbook.</p> <p><b>This recommendation is completed.</b></p>

## Enforcement and Review (Recommendations 17 to 19)

<i>The Committee recommends that</i>	Response	Status
<p><b>Recommendation 17</b></p> <p>The Disability Discrimination Commissioner be given the power to investigate non-compliance with the Premises Standards and to bring a complaint where there is non-compliance with the Premises Standards without requiring an individual complaint.</p>	<p>Noted.</p> <p>The Australian Human Rights Commission plays a key role in dealing with human rights in Australia. The Government is currently considering the rights of representative groups to bring legal proceedings in relation to anti-discrimination legislation in light of the recommendation of the Access to Justice Taskforce. The role of the Commission more generally will also need consideration in relation to the report of the National Human Rights Consultation.</p>	<p><b>No changes have been made to the complaints process.</b></p>
<p><b>Recommendation 18</b></p> <p>An audit of a sample of new buildings or building work be conducted by the Australian Government prior to the review of the Premises Standards.</p>	<p>Accepted</p>	<p><b>Refer to review report Section 6 – Data Collection Activities and Audits, , page 67</b></p>
<p><b>Recommendation 19.1</b></p> <p>The Premises Standards provide commencement and completion dates for the review process.</p>	<p>Accepted.</p>	<p>This is addressed in subsection 6.1(2)</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 19.2</b></p> <p>The completion date for the review be within five years of the commencement of the Premises Standards.</p>	<p>Accepted</p>	<p>This is addressed in subsection 6.1(2)</p> <p>This recommendation is completed.</p>

<i>The Committee recommends that</i>	Response	Status
<p><b>Recommendation 19.3</b></p> <p>The Premises Standards set out the issues to be considered by the review and that these issues include:</p> <ul style="list-style-type: none"> <li>• the small building exemption;</li> <li>• the lessee concession;</li> <li>• 80th and 90th percentile wheelchair dimensions;</li> <li>• locking off lifts;</li> <li>• accessible toilets;</li> <li>• swimming pools;</li> <li>• accessible car parking;</li> <li>• Class 1b buildings;</li> <li>• wayfinding;</li> <li>• emergency egress; and,</li> <li>• public transport buildings.</li> </ul>	<p>Part 3: Accepted in principle. The Government accepts in principle the issues to be considered by the review and the identification of criteria to assess effectiveness of the Premises Standards, but does not believe it is appropriate to include these matters in the Premises Standards.</p>	<p>Addressed in report.</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 19.4</b></p> <p>The Premises Standards set out the criteria by which effectiveness of the Standards is to be assessed.</p>	<p>Part 4: Accepted in principle. The Government accepts in principle the issues to be considered by the review and the identification of criteria to assess effectiveness of the Premises Standards, but does not believe it is appropriate to include these matters in the Premises Standards</p>	<p>Criteria were not included in the Premises Standards.</p> <p>Section 2.1 of the review discussion paper, released on 21 April 2015, identified the criteria to assess the effectiveness of the Premises Standards.</p> <p><b>This recommendation is completed.</b></p>
<p><b>Recommendation 19.5</b></p> <p>the Australian Government identify what data will be collected and how it will be collected in each jurisdiction during the first four years;</p>	<p>Part 5: Noted.</p>	<p><b>Refer to review report Section 6 Data Collection Activities and Audits, page 67</b></p>

<i>The Committee recommends that</i>	Response	Status
<b>Recommendation 19.6</b> baseline data be collected; and	Part 6: Noted.	<b>Refer to review report Section 6 Data Collection Activities and Audits, page 67</b>
<b>Recommendation 19.7</b> funding be provided for the review	Part 7: Noted.	<b>Recommendation addressed.</b>

## Appendix 4: Submissions Received

### Organisations

1	Direct Lifts Australia	295	Shopping Centre Council of Australia
69	Assistance Dogs International	296	JMG Building Surveyors
99	LINK Community Transport Inc.	297	SR Smith Australia
119	Australian Building Codes Board (ABCB)	304	Southern Homeless Network
120	Shoalhaven City Council	307	Association of Consultants in Access Australia (ACAA)
122	Budawang School	308	Vision Australia
128	Shoalhaven Family Medical Centres	309	Adelaide City Council
134	Association for Children with a Disability(auspice body for Changing Places Australia)	310	Monash City Council
136	ACT Environment and Planning Directorate Building Policy Section	312	Australasian Railway Association (ARA)
141	Australian Network for Universal Housing Design	314	PWD ACT
204	Unit Owners Association of Queensland	315	SA Department of Planning, Transport and Infrastructure (DPTI) - Technical Services
206	Eric Martin and Associates	316	Guide Dogs Australia
212	Interchange Shoalhaven	319	City of Sydney
228	Erika Webb Enterprises	321	Australian Braille Authority
233	Husky Ferry	322	Royal Lifesaving Society Australia (RLSSA)
248	Ulladulla Endoscopy and Medical Centre	325	Corporation of the City of Whyalla
249	Port Macquarie-Hastings Council	326	Barkly Regional Council
261	SA Heritage Council	327	Michael Fox Architects
262	Environmental Design	330	Dignity for Disability
263	Blind Citizens WA Inc	332	Australian Institute of Architects, Tasmania
264	Changing Places Australia	333	Blind Citizens Australia
268	Rights & Inclusion Australia	334	Penrith City Council
270	Access Australia	335	Backpacker Operator Association of NSW (BOA)
273	Department of Infrastructure and Regional Development	336	Campbelltown City Council
274	Bathurst Regional Council	338	Building Designers Association of Queensland
276	Austrade	339	Stop Smart Meters Australia Inc.
278	BCA Logic	340	Department of Planning, Transport and Infrastructure - Development Division
286	Registered Accommodation Association of Victoria Ltd (RAAV)	341	Disability Action South-east (DAS)
294	Hobsons Bay City Council		

- |  |   |
|--|---|
| 344 EMR Australia PL   | 367 Kingborough City Council  |
| 345 Arts Access Australia  | 368 Tourism and Transport Forum (TTF)   |
| 346 City of Port Phillip   | 369 Allergy and Environmental Sensitivity Support and Research Association (AESSRA) |
| 348 City of Melbourne  | 370 SLOPES  |
| 349 PWDA   | 371 Queenslanders with Disability Network   |
| 350 JFA Purple Orange  | 372 Spinal Injuries Australia   |
| 351 National Disability Services                                 | 373 Queensland Action for Universal Housing   |
| 352 Darebin Disability Advisory Committee                        | 374 Australian Blindness Forum  |
| 353 Tasmanian Anti-Discrimination Commission                     | 377 Marrickville City Council   |
| 354 Sunshine Coast Council                                       | 378 Darwin Community Legal Service  |
| 355 Equal Opportunity Commission of South Australia              | 380 Standards Australia   |
| 356 No Permit No Park  | 381 ICOMOS  |
| 359 Northern Sydney Council of Parents and Citizens Associations | 383 Hosted Accommodation of Australia   |
| 360 WA Disability Services Commission                            | 384 Australian Building Codes Working Group   |
| 361 ParaQuad Tasmania  | 385 Royal Society for the Blind   |
| 362 House with No Steps  | 386 Local Government Association of Queensland                                      |
| 364 Victorian Building Authority                                 | 388 City of Launceston  |
| 366 Physical Disability Council of NSW (PDCN)                    |   |

## Individuals

- |                             |                       |
|-----------------------------|-----------------------|
| 2 Charles Slack-Smith       | 16 Susan Brown        |
| 3 Brian Ross                | 17 Alison Grills      |
| 4 David                     | 18 RJohn Carter       |
| 5 Marc Joyce                | 19 Louise             |
| 6 Jon Stanhope              | 20 Karen Reynolds     |
| 7 Annette Pham              | 21 Mario Brnabic      |
| 8 Bill Lawler               | 22 Ang Pisani         |
| 9 Sarah Hancock             | 23 Patricia Anne Hunt |
| 10 Harry Audus              | 24 Belinda Mullan     |
| 11 Mark Reradon             | 25 Susan Young        |
| 12 Samantha Wynd            | 26 Marisa McCague     |
| 13 Gael Schmid              | 27 Julie Smith        |
| 14 Sue Bannister            | 28 Jillian Cheek      |
| 15 Carolina Olivares-Martin | 29 Amanda Preece      |

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30	Amanda Hanna	68	Robert Brown
31	Loretta Sayers	70	Vanessa Skjonnemand
32	Sam Moskwa	71	Glenda Lee
33	Mary Corkery	72	Janet Cowden
34	Sofie Mitropoulos	73	Rosanna Lam
35	Ossie Kadel	74	Chris Coghlan
36	Ronae Tryde Pursey	75	Bronwen McClelland
37	Kim	76	Leonie Donaldson
38	Laurie Power	77	Paul Harris
39	Lucio Pulvirenti	78	Trish Dawson
40	Alexandra Oates	79	Margaret Flood
41	Virginia Dods	80	George Seremetidis
42	Wendy Theunissen	81	Carol Vigo
43	Anne Simpson	82	Dianne Lynch
44	Joanne Sharp	83	Helen Morris
45	Leslie Wiles	84	Lois Blakemore
46	Jane James	85	Carolyn Catterson
47	Craig Stokoe	86	Andrew J Moore
48	Senga Wardrope	87	Nathan Harris
49	Emma Kaine	88	Yolanda Newman
50	Ian Grieve	89	Margolit Phillips
51	Peter Murphy	90	Nancy Esposito
52	Kim	91	Kylie Jones
53	David John Gregurke	92	Joan Dudley
54	Yvette	93	Wilma Gibbs
55	Margaret Gagen	95	Peter Harris
56	Mick	97	Derek Robertson
57	Christine Mackay	98	Tania Hornberg
58	Emma-Lou Saxby-Tisdell	100	Lucy Kaldor
59	Emily Vaughton	102	Tim Paton
60	Anne McGann	103	Karen Gillow
62	Lorraine Wearne	104	Carolyn Sharp
64	Tai Lee	105	Con Michos
65	Adrian Cooke	106	Elizabeth Ellis
66	Josh	107	Daniel Jenkins
67	Rita Hayes	108	Jenny Bray

109 Dale Dumpleton	157 Daniel Mendes
110 Ken Wills	158 Benard
112 Ricky Buchanan	159 Leo Steman
114 Debra Jefferis	160 Colin Edwards
115 Murray Mountain	161 Peter Shackleton
116 Robyn Thompson	162 Paul Johnstone
117 Peter J Kerley	163 Michelle
118 William Peacock	164 Lorain McElligott
121 Angela Small	165 Malcolm
124 John McPherson	166 Robert Lee
125 Greg	167 Linda Garvin
126 Rebecca Panigyraakis	168 Cheryl Norris
127 Julie Sankey	169 Clive Wright-Smith
129 Emma	170 Fiona Scheibel
130 Megan Costello	171 Nikki Boys
131 Danielle Bugg	172 Melinda Mackay
132 Paige Davis	173 Robyn
133 Dr Duc Hao Pham	174 Carol Ritchie
135 Kim Batchelor	175 Sanjay Sircar
137 Kay Phillips	176 Ana Pender
138 Snezana Trkulja	177 Margaret Ker
142 Colleen Laoudikos	178 Chris Rowntree
143 Leanne Phillips	179 Ann Darbyshire
144 Martin Benge	180 Pat Gunn
145 Richard Seidman	181 Karen Stewart
146 Mary Mcaleer	182 Ruth Ellis
147 Kris Kostovski	183 Beris Eden
148 Souhayla	184 Frank Hodges
149 Prue Vines	185 Salote
150 Phil Malcolm	186 Teresa Quinn
151 Joy Palmer	187 Lucy Hamilton
152 Kathy Barry	188 Meryl Tobin
153 Dorothy Daniels	189 Sorcha
154 Rowan Stanley	190 Tracey Kent
155 Sue Presswell	191 Julie Farrell
156 Shane Crosby	192 Marilyn Goninon

193 Andrew Stewart	235 Nga Pham
194 Daniel	236 Kha Vu
195 Bridget Wright	237 Ham Pham
196 Kate Groves	238 Jimmy Dzung Pham
197 Rebecca Maria	239 Khoi Vu
198 Gabi Smalley	240 khoa Vu
199 Elizabeth	241 Tanya
200 Sue Morgan	242 Lee Vu
201 Lindy Jurd	243 Hanh Parton
202 Norma Jacques	244 Colin Burnes
203 Cheryl Chandler	245 Sylvia Stone
205 Caroline Knight	246 Kelly Rooney
208 Jennifer Barling	247 Elaine Howard
209 Michael Hollmann	250 Michelle Haynes
210 Ronny Gunnarsson	251 John Van der Have
211 Sarah Cooper	252 Raelene West
213 Wendy Coy	255 Kazu Milne
214 David Darlington	256 Stephanie Gleeson
215 April Harrison	257 Richard Casley
216 Ken Tyquin	258 Shaun McCredie
217 Barbara Westhead	259 Des Le Fevre
218 Tanya McQuillan King	260 Jane Bringolf
219 Michelle Joyce	265 Nola Pedersen
220 Sue Norman	266 Noel Sharp
221 Leonie Robinson	267 Mikol Furneaux
222 Bianca Wong	277 Hans Tracksdorf
223 Kingsley Lunt	279 Mark Baker
224 Kevin Butler	280 Alan Merry
225 Belinda Thompson	281 Sorcha Conlon
226 Charles Günther	282 Nab Matejic
227 Duncan Wick	283 Lucy Matejic
229 Terry	284 Stephen Perks
230 Karen Aldwell	285 Linda Fread
231 Jenny and David McDonald	287 Steven Weller
232 Mark Hamburger	288 Julie Kipling
234 Carrie Foley	289 Carol Vidler

290 Nicola McKay

291 Cora Ferrariz

292 Sarah Baston

293 Maihuyen Au

300 Mark Relf

302 Mandy Meredith

318 Amanda Stenson

323 George

324 Ian Ugarte

328 Kevin Debnam

337 Aja Goddard

342 Max Murray

343 Greg Curnow

357 Bill Simpson

358 Liyana Mohamed Yusof

375 David Vickery

382 Chris Kennedy

## Confidential Submissions

63 Confidential

94 Confidential

96 Confidential

111 Confidential

113 Confidential

139 Confidential

140 Confidential

207 Confidential

253 Confidential

254 Confidential

272 Confidential

303 Confidential

306 Confidential

311 Confidential

313 Confidential

317 Confidential

320 Confidential

329 Confidential

331 Confidential

347 Confidential

363 Confidential

365 Confidential

376 Confidential

379 Confidential

## Appendix 5: Profile of submissions

The profile of submissions by issue and stakeholder group is provided in the following graphs.

**Figure 2: Profile of Submissions by Issue**

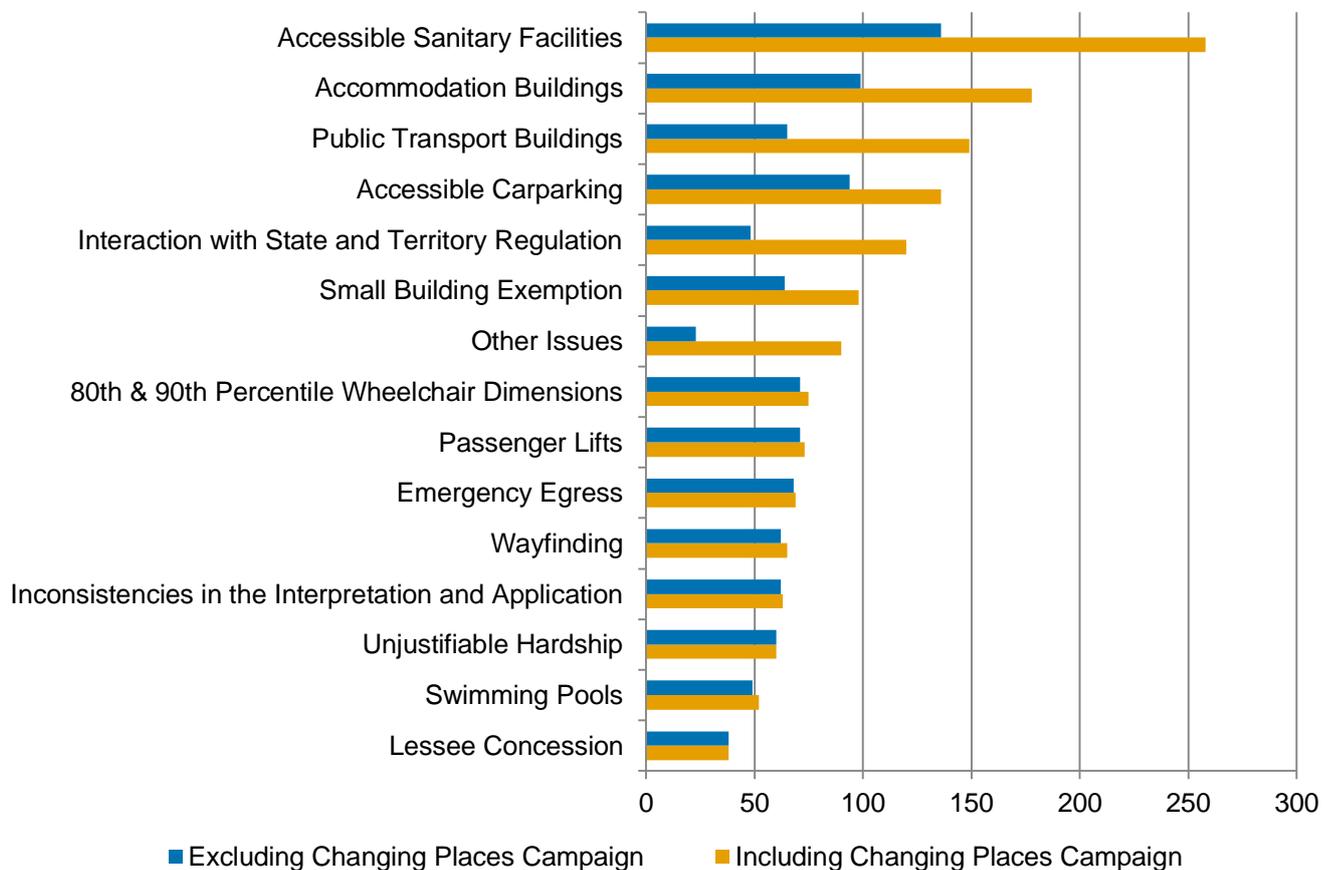
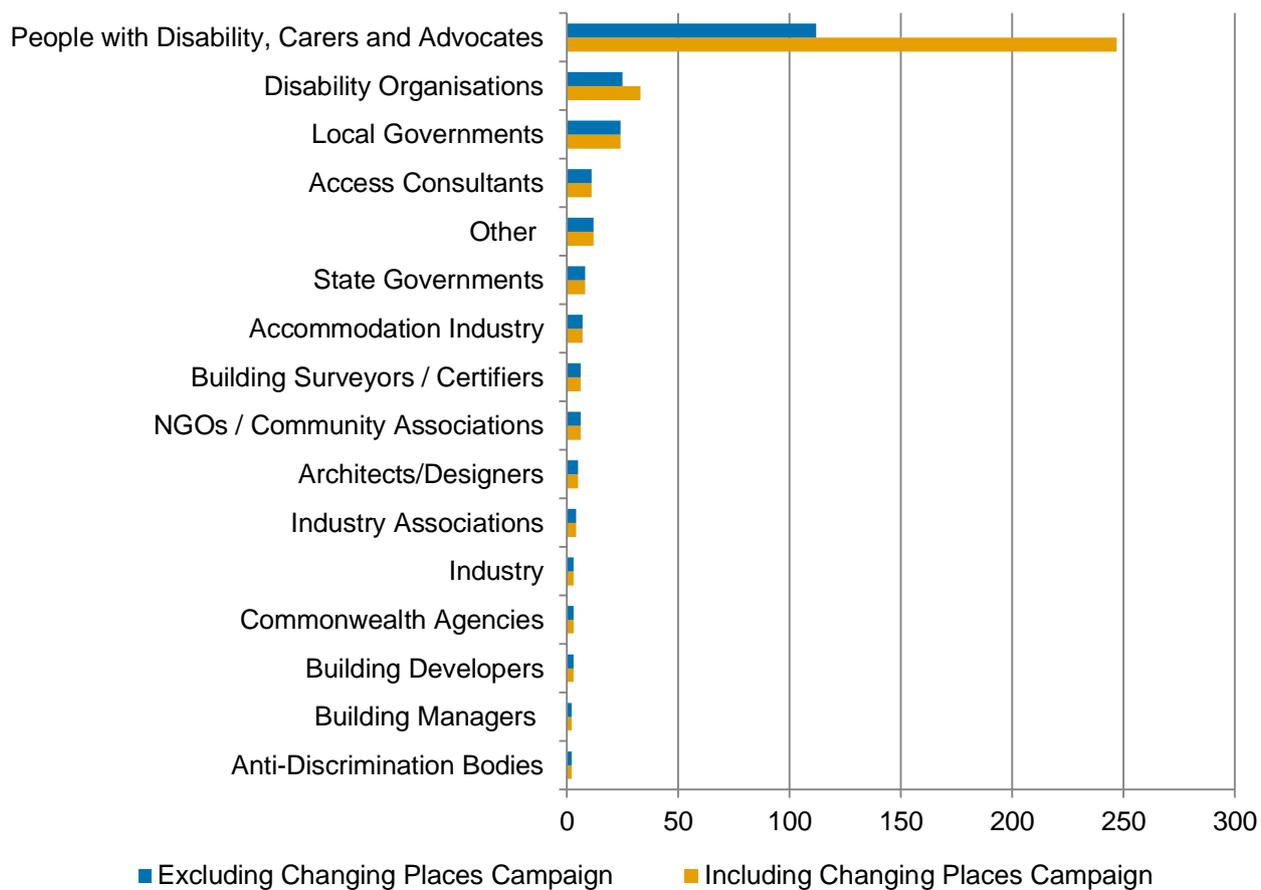


Figure 3: Profile of Submissions by Stakeholder Group



## Appendix 6: Public consultations

### Review information sessions

The Department held a series of public information sessions in each state and territory over a three week period from 27 April to 19 May 2015. The information sessions provided stakeholders and interested persons with information on the scope of the review, the review process and how to make a submission.

After the call for submissions, the review team conducted information sessions as follows:

1. Monday 27 April, Sydney
2. Tuesday 28 April, Penrith
3. Thursday 30 April, Brisbane
4. Friday 1 May, Cairns (teleconference)
5. Tuesday 5 May, Hobart
6. Thursday 7 May, Melbourne
7. Friday 8 May, Geelong (teleconference)
8. Monday 11 May, Adelaide
9. Tuesday 12 May, Perth
10. Thursday 14 May, Darwin
11. Monday 18 May, Canberra
12. Tuesday 19 May, Gold Coast (teleconference)

A total of 137 people attended both the sessions and the teleconferences.

The public presentation is available on the review website.

### Targeted consultations

The review conducted three targeted stakeholder forums as follows:

#### **Class 3 Accommodation Buildings forum – 20 November 2015**

1. Jodie Evans, Department of Planning, Transport & Infrastructure (SA)
2. Dave Parsons, Environment & Planning Directorate ACT Government
3. Emma McDonald, Tourism Investment & Regulatory Reform, Austrade
4. Bianca Tomanovic, Tourism & Transport Forum (NSW)
5. Olivia Graham, Tourism Accommodation Australia
6. Michael Georgeson, Accommodation Association of Australia
7. Adam Newband, Development Manager, YHA Ltd
8. Serena Ovens, Physical Disability Council of New South Wales
9. Jordana Goodman, Physical Disability Council of New South Wales
10. Kevin Newhouse, Australian Building Codes Board
11. Bruce Maguire, Vision Australia
12. Samantha French, People with Disability Australia
13. Anthony Livingston, Workplace Standards Tasmania, Department of Justice
14. Chris Porter, Association of Consultants in Access Australia
15. Mike Harding, Housing Industry Association

16. Michael Small, Michael Small Consulting Pty Ltd

### **Unjustifiable hardship forum - 20 November 2015**

1. Jodie Evans, Department of Planning, Transport & Infrastructure (SA)
2. Dave Parsons, Environment & Planning Directorate ACT Government
3. Michael Said, Department of Planning, NSW
4. John Van der Have, Access Consultant, Bio-Building Design Pty Ltd
5. Hui Wang, Heritage Specialist, City of Sydney
6. Peter Conroy, Senior Building Surveyor, City of Sydney
7. Emma McDonald, Tourism Investment & Regulatory Reform, Austrade
8. Merrilyn Alyett, Australian Human Rights Commission
9. Darryl Barrett, Advisor to the Age & Disability Discrimination Commissioner
10. Matthew Cross, Property Council of Australia
11. Kevin Newhouse, Australian Building Codes Board
12. Ben Moseley, Master Builders Australia
13. John Deshon, John Deshon Pty Ltd
14. Anthony Livingston, Workplace Standards Tasmania, Department of Justice
15. Roger Gillet, Building Services, City of Launceston
16. Samantha French, People with Disability Australia
17. Mark Relf, Accessibility Solutions
18. Bruce Maguire, Vision Australia
19. Corina Mulholland, SA Equal Opportunity Commission
20. Trish Spargo, SA Equal Opportunity Commission
21. Chris Porter, Association of Consultants in Access Australia
22. Ron Sherar, JMG Building Surveyors
23. Michael Small, Michael Small Consulting Pty Ltd
24. Robin Banks, Equal Opportunity Commission Tasmania

### **Data Collection teleconference - 9 December 2015**

1. Dave Parsons, Environment & Planning Directorate (ACT)
2. John Tansey, NSW Fair Trading
3. Michael Said, Department of Planning (NSW)
4. Bruce Harding, Department of Lands, Planning & the Environment (NT)
5. Phil Finnimore, Department of Housing & Public Works (QLD)
6. Elizabeth Hepburn, Workplace Standards Tasmania, Department of Justice
7. Richard Harris, Workplace Standards Tasmania, Department of Justice
8. Vicki Browne, Victorian Building Authority
9. Wayne Clarke, Victorian Building Authority
10. Allen Kong, Victorian Building Authority
11. Paul Da Costa, WA Building Commission, Principal Building Surveyor
12. Allan Shiell, WA Building Commission, Audit Manager
13. Kevin Newhouse, ABCB
14. Rolf Fenner, Australian Local Government Association

15. John Prendergast, City of Greater Dandenong
16. Glen Redmayne, Marrickville Council
17. Con Livanos, Association of Consultants in Access Australia
18. Marilyn Aylett, Australian Human Rights Commission
19. Robin Banks, Australian Council of Human Rights Authorities
20. Michael Small, Michael Small Consulting Pty Ltd

## **Other consultations**

1. Anna Rigg, City of Sydney
2. Dennis Hogan, Victorian Building Authority
3. Glenn Redmayne, Marrickville Access Committee
4. Keith Stubbs, Registered Accommodation Association of Victoria
5. Matthew McLean, Registered Accommodation Association of Victoria
6. Bianaca Tomanovic, Tourism and Transport Forum
7. Emma McDonald, Austrade
8. Michael Small, Michael Small Consulting Pty Ltd
9. Roger Gillett, City of Launceston
10. John Prendergast, City of Greater Dandenong
11. Con Livanos, Association of Consultant in Access Australia
12. Simon Darcy, University of Technology, Sydney
13. Mark Relf, Access Consultant
14. Rhianne Jory, Australasian Railway Association
15. Kim Castle, Australasian Railway Association
16. Natalie Billings, Queensland Rail
17. Gail Lebransky, Transport NSW
18. Jeanette Bath, Department of Planning, Transport and Infrastructure SA
19. Kevin Newhouse, Australian Building Codes Board
20. Geoff Smith, Department of Infrastructure and Regional Development
21. Katrina Cristofani, Department of Infrastructure and Regional Development
22. Zoe Grant, Department of Infrastructure and Regional Development

## Appendix 7: Proposals for change in the Premises Standards

The review identified a number of wording and reference improvements that could be made to the Premises Standards to provide clarification and consistency and to better align the Premises Standards with the NCC and Australian Standards.

These proposed technical updates have been classified as Proposals for Change (PFC) and are outlined in the tables in this Appendix. The PFCs include editorial corrections, alignment with the NCC, revised wording to improve interpretation of the Premises Standards and amendments to the Premises Standards and Australian Standards that would improve the Premises Standards' effectiveness in meeting their objectives.

Any changes to legislation require appropriate level of approval, depending on the type of amendment.

The PFCs have been categorised as follows:

- **Amendment** - Requires amending the Premises Standards or an Australian Standard referenced in the Premises Standards
- **Clarification** - To improve interpretation of the Premises Standards
- **Alignment with NCC** - To ensure consistency between the Premises Standards with updates to the NCC
- **Alignment with Australian Standards** - To ensure consistency between Premises Standards with updates to Australian Standards
- **Alignment with Australian Standards** - to ensure consistency between Premises Standards with updates to Australian Standards
- **Editorial correction** - To correct errors in original wording of the Premises Standards

## Editorial Corrections

### 1. Concession for Sanitary Facility Signage

<b>Premises Standards Clause</b>	Part D3.6(a)(i)
<b>Status of Proposed Change</b>	No Material change
<b>Description of proposed change:</b>	
<p>Extend the concession to not provide sanitary facility signage to also apply to SOUs in Class 9c buildings and remove the reference to Class 1b SOUs.</p> <p>D3.6(a)(i) to be amended as follows:</p> <p><b>D3.6 Signage</b></p> <p>In a building required to be accessible-</p> <p>(a) Braille and tactile signage complying with Specification D3.6 and incorporating the international symbol of access or deafness, as appropriate, in accordance with AS 1428.1 must identify each-</p> <p>(i) sanitary facility, except a sanitary facility within a <del>sole-occupancy unit</del> <u>bedroom</u> in a Class 1b <u>building</u> or <u>a sole-occupancy unit in a Class 3 or Class 9c building</u>;</p>	
<b>Justification:</b>	
<p>D3.6 requires accessible (Braille and tactile) signage to identify sanitary facilities. However, a concession is available not to provide signage where it would not otherwise be provided (i.e. where the sanitary facilities would be readily apparent such as within a Class 3 hotel room). This concession should be extended to apply to a SOU in a Class 9c building, which is a similar circumstance to a SOU in a Class 3 building.</p> <p>The clause should also be amended to remove the incorrect reference to a Class 1b SOU and instead refer to a bedroom in a Class 1b building, as a Class 1b building cannot contain a SOU.</p>	
<b>Review Recommendation</b>	Editorial correction supported.

### 2. Concession for Sanitary Facility Signage

<b>Premises Standards Clause</b>	D3.10(3) Swimming pools
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>	
<p>Amended Section D3.10(3) of the Premises Standards with a minor clarification by removing the words “in length”.</p>	
<b>Justification:</b>	
<p>From submissions, it appears there is some confusion surrounding specification of perimeter thresholds in the Premises Standards. Several submissions appear to mistake the perimeter for the length of a pool. To clarify, perimeter is a measure of the distance around the pool, while the length is a measure of the distance between two points. The misinterpretation is unsurprising given that pools are most commonly described in term of length (e.g. 25-metre pool, 50-metre pool). Adding to confusion is that Section D3.10(3) refers to “<i>where a swimming pool has a perimeter of more than 70m in length</i>”.</p>	
<b>Review Recommendation</b>	Editorial correction supported.

### 3. Performance Requirement for Access and Egress

<b>Premises Standards Clause</b>	Part D - DP6
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>	
<p>Amend the limitation to DP6 as follows:</p> <p>Clause DP6 does not apply to a Class 1b or Class 10 building, or the internal parts of a <i>sole-occupancy unit</i> in a Class 3 building.</p>	
<b>Justification:</b>	
Editorial correction.	
<b>Review Recommendation</b>	Editorial correction supported.

### 4. Designated Carparking Spaces

<b>Premises Standards Clause</b>	<i>D3.5d</i>
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>	
<p><i>Amendment to D3.5d, replacing “designated” with “identified with signage” and providing revised guidance to clarify the intended meaning of D3.5d related to signage and shared zones.</i></p>	
<b>Justification:</b>	
<p>This section is intended to outline that while at least one accessible car parking space complying with AS 2890.6 is required in any carpark covered by the Premises Standards, signage and markings designating an accessible car parking space are only required in a car park with more than a total of five spaces. This means where an accessible car park is provided where there are fewer than five car parking spaces, signage and markings designating that particular accessible car park are not required. All other requirements such as a shared zone must still be provided</p> <p>An editorial amendment to D3.5d, replacing “designated” with “identified with signage” may be appropriate. Further clarification can also be provided in the guidelines.</p>	
<b>Review Recommendation</b>	Editorial correction supported.

## 5. Braille and Tactile Signs – Sentence or Title Case

<b>Premises Standards Clause</b>	Part D4.3(2)
<b>Status of Proposed Change</b>	No material change
<p><b>Description of proposed change:</b></p> <p>Change the requirement for tactile characters in signs to be “sentence case” to “title case”.</p> <p><b>Part D4 Braille and Tactile Signs</b></p> <p><b>3. Braille and tactile sign specification</b></p> <p>(a) ...</p> <p>(b) <del>Sentence</del> <u>Title</u> case (upper case for the first letter of each main word and lower case for all other letters) must be used for all tactile characters, and—</p> <p>(i) ...</p>	
<p><b>Justification:</b></p> <p>The common understanding of sentence case and title case is as follows:</p> <p>Sentence case –</p> <p>“The standard capitalisation of an English sentence, with the first letter uppercase and subsequent letter lowercase with exceptions like proper nouns or acronyms”.</p> <p>Title case –</p> <p>“The capitalisation of text in which the first letter of each major word is set in capital”.</p> <p>Part D4 currently requires sentence case; however, the description given for sentence case (“uppercase for the first letter of each main word and lower case for all other letters”) is a description of title case. This anomaly should be corrected by changing the requirement to title case.</p>	
<b>Review Recommendation</b>	Editorial correction supported.

## 6. Limitations on the Use of Stairway Platform Lifts and Lifts for Persons with Limited Mobility

<b>Premises Standards Clause</b>	Part E3 Table E3.6a						
<b>Status of Proposed Change</b>	No material change						
<p><b>Description of proposed change:</b></p> <p>Align the wording for the limitations on use of lifts in high traffic public use areas by amending Table E3.6a as follows:</p> <p><b>Table E3.6a LIMITATIONS ON USE OF TYPES OF PASSENGER LIFTS</b></p> <table border="1"> <thead> <tr> <th>Lift type</th> <th>Limitations on use</th> </tr> </thead> <tbody> <tr> <td>Stairway platform lift</td> <td>                     Must not-                     <ul style="list-style-type: none"> <li>(a) ...</li> <li>(b) be used in a high traffic public use area such as a theatre, cinema, auditorium, transport interchange, shopping centre or the like; or</li> </ul> </td> </tr> <tr> <td>Lift for persons with limited mobility</td> <td>                     Must not-                     <ul style="list-style-type: none"> <li>(a) ...</li> <li>(b) ...</li> <li>(c) be used in a high traffic public use areas <del>in buildings</del> such as a theatre, cinema, auditorium, transport interchange, shopping <del>complex</del> centre or the like.</li> </ul> </td> </tr> </tbody> </table>		Lift type	Limitations on use	Stairway platform lift	Must not- <ul style="list-style-type: none"> <li>(a) ...</li> <li>(b) be used in a high traffic public use area such as a theatre, cinema, auditorium, transport interchange, shopping centre or the like; or</li> </ul>	Lift for persons with limited mobility	Must not- <ul style="list-style-type: none"> <li>(a) ...</li> <li>(b) ...</li> <li>(c) be used in a high traffic public use areas <del>in buildings</del> such as a theatre, cinema, auditorium, transport interchange, shopping <del>complex</del> centre or the like.</li> </ul>
Lift type	Limitations on use						
Stairway platform lift	Must not- <ul style="list-style-type: none"> <li>(a) ...</li> <li>(b) be used in a high traffic public use area such as a theatre, cinema, auditorium, transport interchange, shopping centre or the like; or</li> </ul>						
Lift for persons with limited mobility	Must not- <ul style="list-style-type: none"> <li>(a) ...</li> <li>(b) ...</li> <li>(c) be used in a high traffic public use areas <del>in buildings</del> such as a theatre, cinema, auditorium, transport interchange, shopping <del>complex</del> centre or the like.</li> </ul>						
<p><b>Justification:</b></p> <p>Table E3.6a spells out limitations on the use of different types of lifts and, for these two types of lifts, does not permit them to be used in high traffic public use areas. However, these equivalent limitations have been worded differently. The proposed change is to achieve consistency in wording.</p>							
<b>Review Recommendation</b>	Editorial correction supported.						

## Editorial / Clarification

### 7. Seating in Class 9b Assembly Buildings

<b>Premises Standards Clause</b>	Part D3.9 and Table D3.9
<b>Status of Proposed Change</b>	No material change
<p><b>Description of proposed change:</b></p> <p>Delete the requirement in D3.9(b)(iii) for wheelchair seating spaces in cinemas to be representative of the range of seating provided and instead rely on the requirements in Table D3.9 for the representative nature of wheelchair seating spaces.</p> <p><b>D3.9 Wheelchair seating spaces in Class 9b assembly buildings</b></p> <p>Where fixed seating is provided in a Class 9b assembly building, wheelchair seating spaces complying with AS 1428.1 must be provided in accordance with the following:</p> <ul style="list-style-type: none"> <li>(a) ...</li> <li>(b) In a cinema-             <ul style="list-style-type: none"> <li>(i) ...</li> <li>(ii) ...</li> <li><del>(iii) the location of wheelchair seating is to be representative of the range of seating provided.</del></li> </ul> </li> </ul>	
<p><b>Justification:</b></p> <p>D3.9 contains requirements for the number and distribution of wheelchair seating spaces in Class 9b assembly buildings, including a requirement for wheelchair seating to be representative of the range of seating provided in prescribed circumstances.</p> <p>The requirement for wheelchair seating to be “representative” appears in two places; the clause (for a cinema) and the table (for all Class 9b assembly buildings including a cinema), with the requirements being different for a cinema depending on whether the clause or table is applied. During the development of these provisions, it was agreed that the total seating capacity of the facility should determine the extent and distribution of wheelchair seating spaces to be provided (e.g. in small venues – fewer than 800 seats – all spaces can be provided on one level but for large venues – more than 800 seats – the range of seating has to be representative). This approach acknowledges that there is generally only one point of entry in venues with seating capacities less than 800 and providing “representative” wheelchair seating would be impractical where seating is tiered.</p>	
<b>Review Recommendation</b>	<p>The proposal is to correct an error. Depending on whether the clause or the table is used to determine the “representative” nature of seating in a cinema, a different outcome will result. Using the clause, all cinemas regardless of size require representative seating, whereas using the table only cinemas with more than 800 seats need representative seating. The latter is the intention.</p> <p>Correction supported.</p>

## Clarification

### 8. Definition and Application of a Continuous Accessible Path of Travel: Compliance with AS 1428.1

<b>Premises Standards Clause</b>	Part A1.1 and Part D3
<b>Status of Proposed Change</b>	No material change
<p><b>Description of proposed change:</b></p> <p>The issue concerns the application of a “continuous accessible path of travel” through the definition of “accessway” in the BCA.</p> <p>There are a number of provisions in AS 1428.1 which do not refer to “continuous accessible path of travel” or are not referenced in the BCA (e.g. walkways (not referenced in D3.3a), luminance contrast on doors and possibly several other parts of AS 1428.1).</p> <p>For clarity it is suggested that, as part of the review of the access standards, consideration be given to including a provision similar to D3.2(b) in BCA 2010 (below) clearly specifying that buildings required to be accessible must comply fully with AS 1428.1, except where specifically exempted or varied by the Code. This change would simplify Part D3.</p> <p><b>BCA 2010 Volume One: D3.2 General building access requirements</b></p> <p>(a) ...</p> <p>(b) Parts of buildings required to be accessible must comply with this Part and AS 1428.1.</p>	
<p><b>Justification:</b></p> <p>Prior to the introduction of the Premises Standards and alignment of the BCA with the Access Code in 2011, Part D3 of the BCA explicitly required compliance with AS 1428.1, as shown above in D3.2(b). This direct reference to AS 1428.1 was lost in drafting the corresponding provisions in the Premises Standards.</p> <p>Although there is no specific single clause that states an accessible building is one that complies with AS 1428.1, it is implicit and, in some instances explicit, throughout the Access Code “Deemed to Satisfy” provisions that a building suitable for use by people with disability is one that has accessways linking the various elements that are required to be accessible. An accessway is defined in the Premises Standards as a continuous accessible path of travel as defined by AS 1428.1.</p> <p>Therefore, the general rule is that AS 1428.1 must be complied with. However, there are cases where the Access Code only applies some requirements of AS 1428.1 to specific features, for example:</p> <ul style="list-style-type: none"> <li>– D3.3 whereby fire-isolated stairs and ramps need only comply with nominated clauses in AS 1428.1.</li> <li>– D3.8 does not require TGSIs to be installed for some types of ramps, whereas AS 1428.1 Clauses 9 and 10.3 require them on all ramps.</li> <li>– F2.4 only requires certain things to be installed in a unisex accessible toilet whereas AS 1428.1 Clause 15.4 has a more extensive list of fixtures.</li> </ul> <p>As a result, the rule is "comply with AS 1428.1 unless the Access Code specifically excludes a requirement of the standard" .</p>	
<b>Review Recommendation</b>	Supported.

## 9. Accessible Sanitary Facilities

<b>Premises Standards Clause</b>	Part F2.4
<b>Status of Proposed Change</b>	Material change
<p><b>Description of proposed change:</b></p> <p>Provide a definition of what constitutes a “bank of toilets”.</p>	
<p><b>Justification:</b></p> <p>F2.4 and Table F2.4(a) use the term “bank of toilets” for the purpose of determining when and where accessible unisex sanitary compartments and sanitary compartments suitable for a person with an ambulant disability are required. The interpretation of what constitutes a bank of toilets is therefore critical to the correct application of the requirements for accessible sanitary facilities. However, a bank of toilets is not defined and can be subject to different interpretations.</p> <p>The AHRC Premises Standards Guidelines describe a bank of toilets as follows:</p> <p><i>Generally a bank of toilets would consist of separate male and female compartments or blocks.</i></p> <p><i>Typically each of the male and female compartments or blocks would include closet pans and washbasins and would be located next to, or close to, each other.</i></p> <p><i>However, male and female sanitary facilities might be located on separate floors or may be separated by some distance on a single floor. In this case a bank of toilets consists of a set of male and female sanitary facilities no matter how far they are from each other.</i></p> <p><i>For example, if in a 10-storey building male and female sanitary facilities were located on alternate floors (5 floors with male facilities and 5 floors with female facilities) this would be considered to be 5 banks of toilets i.e. the male on one floor and the female on the next floor together constitute a bank of toilets.</i></p> <p><i>Similarly, if male sanitary facilities were located on one side of a building and female sanitary facilities were on the other side the two together would be considered a bank of toilets.</i></p> <p><i>On occasion, for example in a hospital setting, a number of separate toilets may be distributed around a part of a building used by the public such as a waiting area. In this case the multiple toilets servicing the same area might be considered to be the bank.</i></p>	
<b>Review Recommendation</b>	<p>For consideration by an expert advisory group including an assessment of any impact(s) that a definition may have on the Premises Standards.</p> <p>The review notes that adoption of this definition may require a RIS.</p>

## 10. Toilet Concession

<b>Premises Standards Clause</b>	4.5(2)(b)
<b>Status of Proposed Change</b>	No material change
<p><b>Description of proposed change:</b></p> <p>Remove “affected part” from 4.5(2)(b).</p> <p>Clause 4.5(2)(b) to be amended as follows:</p> <p><b>4.5 Toilet Concession</b></p> <p>(1) ...</p> <p>(2) For subsection (1) to apply, a sanitary compartment mentioned in paragraph (a) or (b) must:</p> <ul style="list-style-type: none"> <li>(a) comply with AS 1428.1—2001, <i>Design for access and mobility, Part 1: General requirements for access—New building work</i>; and</li> <li>(b) be located in <del>either a new part, or an affected part,</del> of a building.</li> </ul>	
<p><b>Justification:</b></p> <p>PS 4.5(2) provides the criteria covering the concession in relation to AS 1428.1 2001 for compliant accessible toilets and states that the toilet must “be located in either a new part, or an affected part, of a building”.</p> <p>As toilets are not captured under the definition of affected part, the reference to “affected part” implies toilets alongside an affected part must also be upgraded, which is not what was intended when the Premises Standards were drafted</p> <p>The definition of affected part includes “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”.</p>	
<b>Review Recommendation</b>	<p>Supported</p> <p>The inclusion of the concept the “affected part” was intended to enable people to get from the entrance of the building to a specific part of the building where new work was being undertaken, and only at that point where new work was being undertaken would accessible facilities be necessary.</p>

## 11. Accessible Sanitary Compartments in Class 9b Childcare Buildings

<b>Premises Standards Clause</b>	Part F2.4 Accessible Sanitary Facilities
<b>Status of Proposed Change</b>	Material change
<b>Description of proposed change:</b>	
Remove the requirement for ambulant and accessible toilets to be installed at a bank of toilets containing junior pans in a Class 9b early childhood centre.	
<b>Justification:</b>	
Requirements for provision of unisex accessible sanitary compartments in Class 9b early childhood centres are contained in Table F2.4(a), which requires: <ul style="list-style-type: none"> <li>• one on every storey containing sanitary compartments and</li> <li>• where a storey has more than one bank of sanitary compartments containing male and female sanitary compartments, at not less than 50 per cent of those banks.</li> </ul> <p>The requirement for an ambulant toilet is in F2.4(c) and is triggered by the provision of one or more toilets in addition to an accessible unisex sanitary compartment at a bank of toilets.</p> <p>Under the current wording, Class 9b early childhood centres are required to be provided with both ambulant and accessible toilets at locations where junior pans are required for children, despite the fact that some dimensions of accessible and ambulant facilities (e.g. pan and washbasin height) are not suitable for children.</p>	
<b>Review Recommendation</b>	This proposed change will resolve a conflicting set of requirements. For consideration by an expert advisory group (in conjunction with a definition of a “bank of toilets”).

## 12. Class 3 buildings – Order of Requirements

<b>Premises Standards Clause</b>	Part D3 Table D3.1 Class 3
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>	
Relocate the requirements for the location and representative nature of Class 3 SOUs (i.e. “not more than two SOUs...” and – “where more than 2 SOUs...” ) to follow the requirements for the number of accessible SOUs.	
<b>Justification:</b>	
Requiring SOUs to be accessible and determining the number that needs to be accessible logically comes before what to do with a particular number of them.	
<b>Review Recommendation</b>	Supported.

## 13. Gradient for Zero Depth Swimming Pool Entry

<b>Premises Standards Clause</b>	D3.10(2)(b)
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>	
Remove the maximum gradient specified for zero depth swimming pool entry from D3.10(2)(b), as follows:	
<b>D3.10(2) Swimming pools</b>	
<ul style="list-style-type: none"> <li>(a) ...</li> <li>(b) An accessible entry/exit must be by means of- <ul style="list-style-type: none"> <li>(i) a fixed or movable ramp and an aquatic wheelchair; or</li> <li>(ii) a zero depth entry <del>at a maximum gradient of 1:14</del> and an aquatic wheelchair; or</li> </ul> </li> </ul>	
<b>Justification:</b>	
The specifications for swimming pool entry ramps, including a zero depth entry, are contained in Specification D5.3 – Accessible water entry/exit for swimming pools. Therefore, there is no need to specify the gradient in D3.10(2)(b). Note that the gradient for a fixed or movable ramp is not covered in D3.10(2)(a), so the approach used is inconsistent.	
<b>Review Recommendation</b>	Supported.

## Alignment with NCC

### 14. Definitions – Early Childhood Centre

<b>Premises Standards Clause</b>	Part A1.1
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  Update the definition of “early childhood centre” for consistency with the same definition in the BCA, which is: <b>early childhood centre</b> means any premises or part thereof providing or intending to provide a centre-based education and care service within the meaning of the Education and Care Services National Law Act 2010 (Vic), the Education and Care Services National Regulations and centre-based services that are licensed or approved under state and territory children’s services law, but excludes education and care primarily provided to school aged children in outside school hours settings.	
<b>Justification:</b>  Since the Premises Standards were prepared the definition of “early childhood centre” has been changed. To maintain consistency between the Premises Standards and the BCA the definition in the Premises Standards should be aligned.  These changes do not alter the technical requirements of the Premises Standards.	
<b>Review Recommendation</b>	Supported.

### 15. Definitions – Reference to BCA 2009

<b>Premises Standards Clause</b>	Part A1.1
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  In the definition of “BCA” update the edition to refer to the edition current at the time of enactment of any revised version of the Premises Standards.	
<b>Justification:</b>  The Access Code currently refers to the 2009 edition of the BCA.	
<b>Review Recommendation</b>	Supported.

## 16. Definitions – Swimming Pool

<b>Premises Standards Clause</b>	Part A1.1
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  Update the definition of “swimming pool” for consistency with the same definition in the BCA, which is:  “ <i>swimming pool</i> means any excavation or structure containing water and principally used, or that is designed, manufactured or adapted to be principally used for swimming, wading, paddling or the like, including a bathing or wading pool, or spa”. <b>Justification:</b>  Since the Premises Standards were prepared the definition of “swimming pool” has been changed. To maintain consistency between the Premises Standards and the BCA, the definition in the Premises Standards should be aligned.  These changes do not alter the technical requirements of the Premises Standards.	
<b>Review Recommendation</b>	Supported.

## 17. Definitions – Access and Egress

<b>Premises Standards Clause</b>	Part D
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  Inclusion of performance requirement DP7 in the Premises Standards.	
<b>Justification:</b>  To align with the additional emergency egress measures that have been incorporated into the NCC with its latest revision.	
<b>Review Recommendation</b>	Supported.

## 18. Definitions – Passenger Lifts

<b>Premises Standards Clause</b>	Part A1.1 and Part E3 Tables E3.6(a) and (b)
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  Insert definitions for “electric passenger lift”, “electrohydraulic passenger lift”, “inclined lift”, “low-rise, low-speed constant pressure lift”, “low-rise platform lift”, “small-sized, low-speed automatic lift” and “stairway platform lift”.  Replace the reference to Australian Standards for lifts (excluding AS 1735.12) in Tables E3.6(a) and (b) with references to the above definitions.  Remove the word “lift” from E3.6(a) as follows:  <b>E3.6 Passenger lifts</b>  In an <i>accessible</i> building, every passenger lift must:  (a) be one of the lift types identified in Table E3.6 (a), subject to the limitations on use specified in the table; and	
<b>Justification:</b>  Since the Premises Standards were prepared the method of referring to types of lifts has changed from referring to the relevant Australian Standard in Tables E3.6(a) and (b), to a description of types of lifts via the definitions listed above. To maintain consistency between the Premises Standards and the BCA the abovementioned changes should be made.  These changes do not alter the technical requirements of the Premises Standards.	
<b>Review Recommendation</b>	Supported.

## 19. Signage

<b>Premises Standards Clause</b>	Part D3.6 (a)
<b>Status of Proposed Change</b>	No material change
<p><b>Description of proposed change:</b></p> <p>Amend D3.6 to reflect updates to NCC D3.6 (a) (ii) that introduce exit signs, as follows:</p> <p><b>D3.6 Signage</b></p> <p>In a <i>building</i> required to be <i>accessible</i>-</p> <p>(a) Braille and tactile signage complying with specifications D3.6 must-</p> <p>(i) incorporate the international symbol of access or deafness, as appropriate, in accordance with AS1428.1 and identify each-</p> <p style="padding-left: 40px;">(A) sanitary facility, except a sanitary facility within a sole-occupancy unit in a Class 1b or Class 3 building; and</p> <p style="padding-left: 40px;">(B) space with hearing augmentation system; and</p> <p>(ii) identify each door required by E4.5 to be provided with an exit sign and state-</p> <p style="padding-left: 40px;">(A) "Exit"; and</p> <p style="padding-left: 40px;">(B) "Level"; and either</p> <p style="padding-left: 80px;">(aa) the floor level number; or</p> <p style="padding-left: 80px;">(bb) a floor level descriptor; or</p> <p style="padding-left: 80px;">(cc) a combination of (aa) and (bb); and</p> <p>(b) signage....</p>	
<p><b>Justification:</b></p> <p>The requirement to provide Braille and tactile exit signs already exist in the NCC, so including the requirement in the Premises Standards would not introduce a new requirement. Rather, aligning the Premises Standards with the NCC would provide protection against a DDA complaint on this matter.</p>	
<b>Review Recommendation</b>	Supported.

## 20. Table 1 Referenced Document and Clause References

<b>Premises Standards Clause</b>	Part A3.1 Table 1
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b> Update the referenced documents and clause references for each referenced standard.	
<b>Justification:</b> The current list of referenced documents should be updated to reflect the editions referenced in the BCA. Also, references to clauses where standards are referred to are not complete and should be updated once all changes to the Access Code, including to referenced documents, are completed.	
<b>Review Recommendation</b>	Supported.

## 21. Definition of Class 10 Building

<b>Premises Standards Clause</b>	Part A4.1 (NCC A3.2)
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b> Update the definition of a Class 10 building to reflect the inclusion of Class 10c private bushfire shelters, as follows: <b>Class 10:</b> a non-habitable building or structure- (a) ... (b) ... (c) <b>Class 10c</b> – a private bushfire shelter.	
<b>Justification:</b> At the time of preparation of the Premises Standards, Class 10 buildings consisted of Class 10a buildings and Class 10b structures. Since that time, a Class 10c private bushfire shelter was added to the definition. The description of Class 10 in the Premises Standards Access Code should be updated for consistency with the BCA. It should be noted that this change is only to ensure consistency between the Access Code and the BCC. There are no access requirements applied to Class 10c private bushfire shelters.	
<b>Review Recommendation</b>	Supported.

## 22. Referenced Standards

<b>Premises Standards Clause</b>	Part A2.2
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  Add a new subclause (4) as follows:  (4) Where the Access Code references a document under clause A2.1 which is subject to publication of a new edition or amendment not listed under clause A3.1, the new edition or amendment need not be complied with in order to comply with the Deemed to Satisfy Provisions.	
<b>Justification:</b>  The purpose of this change is to align the Access Code with the similar provision in the BCA. The purpose of this subclause is to prevent changes to requirements being imposed through amendments to secondary referenced documents without proper regulatory scrutiny.	
<b>Review Recommendation</b>	Supported.

## 23. Swimming Pool Sling Lift Figures

<b>Premises Standards Clause</b>	Part D5 Figure D5.7
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  Amend Figure D5.7 in the Access Code to align with Figure 5 BCA Specification D3.10.	
<b>Justification:</b>  Figure 5 (BCA) in the BCA is an updated and clearer version of the similar figure used in the Access Code. There is no technical difference between the two versions but the BCA version is consistent with accepted drafting protocols and styles.	
<b>Review Recommendation</b>	Supported.

## 24. Inconsistent References to Class 9c

<b>Premises Standards Clause</b>	A1.1; D3.8(3), Table F2.4(a) and Table F2.4(b)
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  Update references to “Class 9c aged care buildings” to “Class 9c buildings” wherever they occur in the Access Code.	
<b>Justification:</b>  Since the Premises Standards were prepared the method of referring to Class 9c aged care buildings has changed. Class 9c buildings, by definition, can only be aged care buildings so the need to refer to them as aged care buildings is redundant.  These changes do not alter the technical requirements of the Premises Standards.	
<b>Review Recommendation</b>	Supported.

## Alignment with Australian Standard

### 25. Handrails and Domed Buttons (Tactile Indicators)

<b>Premises Standards Clause</b>	Part D3.8(c)
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  In D3.8(c), change the reference for domed buttons from AS 1428.1 to AS 1428.4.1 and remove reference to “requirements for stairway handrails”, as follows:  <b>D3.8 Tactile indicators</b>  (a) ... (b) ... (c) A hostel for the aged, nursing home for the aged, a <i>residential aged care building</i> , Class 3 accommodation for the aged, Class 9a <i>health care building</i> or a Class 9c <i>aged care building</i> need not comply with (a)(i) and (iv) if handrails incorporating a raised dome button in accordance with <del>the requirements for stairway handrails in AS 1428.1</del> AS 1428.4.1 are provided to warn people who are blind or have a vision impairment that they are approaching a stairway or ramp.  A consequential change would then also be required to A3.1 Table 1 to change the clauses identified as referencing AS 1428.1 and AS 1428.4.1.	
<b>Justification:</b>  D3.8(c) contains a concession from the requirement to provide Tactile Ground Surface Indicators (TGSIs) at stairways and handrails in certain buildings provided that a raised dome button is provided on the handrail. The concession exists in recognition that TGSIs can provide a trip hazard for some occupants, particularly the aged, and that sufficient warning of a change in level can be provided by the presence of a domed button on a handrail.  The current clause references AS 1428.1, however, the provisions for raised dome buttons are now contained in AS 1428.4.1, which does not contain ‘requirements for stairway handrails’.	
<b>Review Recommendation</b>	Supported.

## Alignment with NCC and Australian Standards

### 26. Signage

<b>Premises Standards Clause</b>	Part D3.6
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b> Rationalise sign requirements (overlaps and inconsistencies between BCA and AS 1428.1).	
<b>Justification:</b> Both D3.6 of the Access Code and AS 1428.1 contain specifications for accessible signage. These specifications overlap and are inconsistent for some features. There is an opportunity to rationalise and simplify these requirements.	
<b>Review Recommendation</b>	Defer until the wayfinding standard has been completed.  For consideration by an expert advisory group as it affects not only the Premises Standards but also AS1428.1 and the wayfinding standard.

## Amendment (to an Australian Standard)

### 27. Carpet Pile Height

<b>Premises Standards Clause</b>	Part D3.3(g) and (h)
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b> Delete D3.3(g) and (h) and amend AS 1428.1 to reflect these requirements.	
<b>Justification:</b> D3.3(g) and (h) were added to the Access Code in response to concerns raised that the specifications for carpet pile height in AS 1428.1 were too restrictive. At the time it was not possible to have AS 1428.1 amended for the finalisation of the Premises Standards. The opportunity should now be taken to move these requirements into AS 1428.1.	
<b>Review Recommendation</b>	Supported – refer to Standards Australia to amend AS 1428.1 for this proposal to take effect.  Review comment: the provision in the Premises Standards overrides the AS 1428.1.

## 28. Accessible Switches and GPOs in SOUs

<b>Document</b>	Referenced standard
<b>Clause/Item</b>	AS 1428.1 Clause 14
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b> Amend Clause 14.2 of AS 1428.1 so that it applies only in accessible sanitary facilities and accessible residential sole-occupancy units rather than to all sole-occupancy units.	
<b>Justification:</b> Clause 14.2 of AS 1428.1 currently contains requirements for switches and general purpose outlets (GPOs) that control their positioning and actuation. These requirements apply in accessible sole-occupancy units (which include those in residential buildings but also those in Class 5, 6, 7, 8 and 9 buildings) and accessible sanitary facilities. The current wording does not reflect the original intent that the requirements of 14.2 only apply to accessible SOUs that are in residential buildings.	
<b>Review Recommendation</b>	Supported – refer for consideration by an expert advisory group to consider implications for the Premises Standards before providing to Standards Australia for amendment.

## 29. Accessible Unisex Toilet – Luminance Contrast Toilet Seat

<b>Document</b>	Referenced standard
<b>Clause/Item</b>	AS 1428.1 – 15.2.3(e)
<b>Status of Proposed Change</b>	Material change
<p><b>Description of proposed change:</b></p> <p>Review the requirement for minimum luminance contrast for accessible toilets.</p> <p>Current wording is as follows:</p> <p style="padding-left: 40px;">15.2.3 Seat</p> <p style="padding-left: 40px;">A toilet seat shall be provided on accessible toilets. The toilet seat shall—</p> <ul style="list-style-type: none"> <li>(a) be of the full-round type, (i.e., not open fronted) and with minimal contours to the top surface;</li> <li>(b) be securely fixed in position when in use;</li> <li>(c) have seat fixings that create lateral stability for the seat when in use;</li> <li>(d) be load-rated to 150 kg; and</li> <li>(e) have a minimum luminance contrast of 30% with the background (e.g., pan, wall or floor against which it is viewed).</li> </ul>	
<p><b>Justification:</b></p> <p>To satisfy the luminance contrast requirement, suppliers are installing coloured seats (see picture) While it is understood that the intent is to make the seat more visible for people with low vision, it has been suggested that:</p> <ol style="list-style-type: none"> <li>1. People with low vision are more likely to use a standard toilet rather than an accessible toilet. Standard toilets are not required to have luminance contrast.</li> <li>2. Their appearance in accessible SOU in Class 3 or 1b buildings contributes to the reluctance of some patrons to use those rooms.</li> <li>3. Their use accentuates 'difference' and makes accessible facilities stand out as 'special' rather than being inclusive.</li> </ol> <div style="text-align: center;">  </div>	
<b>Review Recommendation</b>	For consideration by an expert advisory group

## Amendment (to the Premises Standards)

### 30. Small Building Concession – Calculation of Floor Area

<b>Premises Standards Clause</b>	Part D3.3(f)
<b>Status of Proposed Change</b>	No material change
<b>Description of proposed change:</b>  It is proposed that in calculating the floor area of a storey to determine whether the concession for small buildings is applicable, areas not normally occupied or inappropriate for access should not be included.	
<b>Justification:</b>  Currently, an exemption is given to upper storeys of small buildings of specific classes if the floor area is not more than 200 m <sup>2</sup> , regardless of its proposed use. This exemption reflects the assessment made that requiring access to every level of small buildings might cause unjustifiable hardship in many instances.  The current methodology for calculating the floor area of storeys is contained in its definition as “the area of all floors of that storey measured over the enclosing walls”. However, the calculated floor area should exclude areas that are not generally occupied (e.g. plant rooms). Typically, the exemption does not apply even though the calculated space may not be used by occupants (e.g. a small office of 50 m <sup>2</sup> adjoining a 400 m <sup>2</sup> plant room that is aggregated to a 450 m <sup>2</sup> total and hence exceedsthe exemption threshold).  D3.4 sets out general exemptions from the access requirements that are assessed on a case-by-case basis.	
<b>Review Recommendation</b>	For consideration by an expert advisory group as recommended in Section 3.1 of this report.

## Appendix 8: Key Links

### Department of Industry and Science's Premises Standards Review webpage

[www.industry.gov.au/PremisesStandardsReview](http://www.industry.gov.au/PremisesStandardsReview)

### Department of Industry and Science's Consultation Hub

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

### Attorney-General's Department

<https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Australias-Anti-Discrimination-Law.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](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>

### National Construction Code 2015

<http://www.abcb.gov.au/Resources/NCC>

### 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/Resources/Publications/Education-Training/Lifts-Used-During-Evacuation>

### Emergency Egress – Australian Building Codes Board

<http://www.abcb.gov.au/Resources/Publications/Consultation/Emergency-Egress-for-Occupants-with-a-Disability-Final-Decision-RIS>

### Wheelchair Spatial Dimensions Research Report

<http://www.abcb.gov.au/Resources/Publications/Research/Research-on-Spatial-Dimensions-for-Occupied-Manual-and-Powered-Wheelchair-Projects>

## Appendix 9: Summary of Parts 1 to 4 of the Premises Standards

### Summary of the State and Territory approaches

The NCC 2011, which aligned the BCA with the Access Code, was adopted by the states and territory governments on 1 May 2011.

Parts 1 to 4 of the Premises Standards have provisions that are not covered in the NCC because they fall within the purpose of the state and territory building laws and regulations. These include:

- Concessions for existing building upgrades relating to existing lifts, unisex sanitary facilities, lessees and responding to unjustifiable hardship questions; and
- New concepts relating to an access provisions such as affected part and Specified Class 1 b.

With the introduction of the Premises Standards, each state and territory made their own decisions on how these provisions would be incorporated into their building laws and regulations.

### Australian Capital Territory<sup>231</sup>

The building and plumbing administrators are located within the ACT Chief Minister, Treasury and Economic Development Directorate. The building legislations include Building Act 2004 and Building (General) Regulation 2008. Sections 42 and 49 of the Act require full BCA compliance, including BCA provisions that mirror the Premises Standards. The DDA and Premises Standards unilaterally apply without secondary application in ACT law.

The Premises Standards concessions for existing lifts and toilets are mirrored in the BCA ACT appendix to Volume 1, to provide concessions on the BCA provisions that align with the Standards. The Appendix also mirrors the Standard's provisions about certain Class 1b buildings, also to align the BCA with the Standards. Concessions are mirrored but there are no deemed-to-satisfy (DTS) provisions for exemptions as yet. In the case of unjustifiable hardship or an AHRC exemption, they could currently be taken account of in an alternative solution, rather than acting directly on the BCA's DTS provisions, in some cases, where the BCA performance provisions are still satisfied even if at a level less than the respective DTS provisions.

There are no specific provisions for consideration of unjustifiable hardship cases, nor provisions for AHRC exemptions for public transport buildings.

The ACT has not established an Access Panel, or an equivalent.

A comprehensive review of the ACT Building Act and associated laws is underway, with introduction of legislation expected for 2015-16, subject to Cabinet and passage of Bills.<sup>[1]</sup> The main purpose of the review is to modernise the legislation and help ensure building regulation is effective in providing expected public protections.

### New South Wales<sup>232</sup>

The Building Code of Australia component of the National Construction Code (NCC) is referenced and given effect through the Environmental Planning and Assessment (EP&A) Act 1979 and EP&A Regulation 2000, which is administered by the Department of Planning and Environment. The

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<sup>231</sup> Cleared with ACT Environment and Planning Directorate, 27 January 2016

<sup>[1]</sup> *Jurisdictional Actions to Reduce Building and Construction Regulations*: a report prepared by Victoria on behalf of the Building Ministers' Forum – report to COAG meeting October 2014

<sup>232</sup> Cleared with NSW Government – Planning and Environment, 8 February 2016.

Plumbing Code of Australia component of the NCC is referenced in the Plumbing and Drainage Act 2011, which is administered by NSW Fair Trading.

The Premises Standards are not specifically referenced in NSW legislation.

Unjustifiable hardship cases are assessed by the certifying authority, however the certifying authority may seek a recommendation in relation to an application for unjustifiable hardship from the Building Professionals Board's Access Advisory Committee. The Committee's recommendations are advisory only. The Board is responsible for the accreditation and regulation of accredited certifiers.

## Northern Territory<sup>233</sup>

The Building Advisory Services within the Department of Lands, Planning & the Environment administers the Northern Territory building laws and regulations.

The legislation that makes reference to the BCA is Building Act (and regulations).

All the Premises Standards concepts, exceptions, concessions and provision for AHRC exemptions for public transport are referenced in the Building Regulations section 5. There are no provisions relating to unjustifiable hardship.

As per regulation 26, the Building Appeals Board has been established to hear appeals against certification decisions and evaluate assessment methods to arrive at Alternative Solutions.

Complaints with non-compliant building work can be lodged with the Building Advisory Services. The Director of Building Control investigates complaints of non-compliant building work.

A review on building certification is currently underway.

## Queensland<sup>234</sup>

The Department of Housing and Public Works administers the Queensland building and plumbing laws and regulations. The legislation that makes reference to the NCC is the *Building Act 1975* and its Regulations 2006 and the *Plumbing and Drainage Act 2002* and associated regulations.

The Queensland Development Code (QDC) provides the building standards framework specific to the region and extends the scope of the BCA. Schedule 1 of the *Building Act 1975* details the parts of the QDC that have legislative effect (eg Swimming pool barriers, private health facilities Fire safety in budget accommodation). The remaining parts of the QDC are advisory standards only. The BCA contains numerous additional provisions specific to Queensland. If there is an inconsistency between the BCA and the QDC, the QDC prevails.

The Premises Standards new concepts and provisions are not defined in the Act.

There is no process to consider unjustifiable hardship cases. The courts are the only jurisdiction that can make a binding decision.

There are no additional measures relating to the Premises Standards exemptions and concessions.

Certifiers rely on the Commonwealth provisions under the DDA in relation to provisions for AHRC exemptions.

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<sup>233</sup> NT Department of Lands, Planning and the Environment, 27 May 2015

<sup>234</sup> Clearance requested from QLD Department of Housing and Public Works, 12 January 2015 and 27 January 2016.

## South Australia<sup>235</sup>

The Department of Planning, Transport and Infrastructure administers the South Australian building laws and regulations.

The legislation that makes reference to the NCC is the Development Act 1993 (and regulations 2008).

The new concepts, including exemptions and concessions provided by the Premises Standards are referenced in Sections 4 and 53A (2) and (3) and regulation 80 (2), (3) and (4).

Unjustifiable hardship cases are considered by the Building Rules Assessment Commission (BRAC) established under Section 36 of the Act. Regulation 80A allows the BCA to be modified in cases of unjustifiable hardship. The role of BRAC is to provide advice to applicants as to whether or not a modification should be granted. BRAC does not provide design advice.

There are no specific provisions in the legislation for AHRC exemptions for public transport buildings.

## Tasmania<sup>236</sup>

The Department of Justice administers the building regulatory functions.

The legislation that makes reference to the BCA is Building Act 2000 (section 55) and the Building Regulations 2004 and the Plumbing Regulations 2004

The Premises Standards are referenced in the Tasmanian appendix to BCA Volume 1 of the NCC. The referencing in the BCA allows those exemptions and concessions found only in the Access Code, and not the BCA, to be applied in Tasmania. These include: lessees, lift concessions for existing buildings, sanitary facilities, acts one under legal authority and conversion of an existing building to Class 1b accommodation.

There are no specific provisions in the legislation for AHRC exemptions for public transport buildings. However, the *Guidance on the regulatory documents for disability access for premises and their application* advice document notes that applications can be made to the AHRC in accordance with the Premises Standards.

The Tasmanian Resource Management and Planning Appeals Tribunal, via a 2012 Amendment to the Building Act 2000, determine applications for cases of unjustifiable hardship.

## Victoria<sup>237</sup>

The Victorian Building Authority administers, monitors and enforces compliance with the building laws and regulations. The legislation that makes reference to the BCA includes:

- Building Act 1993 (the Act)
- Building Regulations 2006 (the Regulations)
- Plumbing Regulations 2008
- Building Regulation 116 aligns the operations of the Regulations with the Premises Standards.
- Under section 160B of the Act, a person may apply on the ground of unjustifiable hardship to the Building Appeals Board (BAB) for a determination that an access provision does not apply, or applies with specified modifications or variations, to a building or land.
- All the new Premises Standards concepts are referenced in regulation 116.
- Practice notes PN2014-14 and PN2016-39 cover all aspects of the Access Code and explain how to apply to the to consider cases of unjustifiable hardship.

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<sup>235</sup> SA Department of Planning, Transport and Infrastructure, 28 January 2016.

<sup>236</sup> Clearance requested from TAS Department of Justice, 27 January 2016.

<sup>237</sup> Victorian Building Authority, 28 January 2016.

- While there is provision for AHRC exemptions for public transport, the BAB is yet to receive applications relating to this provision.

The end date for the Regulations is 6 June 2016 and as part of the 'sun-setting' process, the regulations are currently being evaluated to assess if they continue to be relevant or require change.

## Western Australia<sup>238</sup>

The Building Commission within the Department of Commerce administers building and construction matters. The legislation that makes reference to the BCA is *Building Act 2011* and *Building Regulations 2012*. The *Building Services (Complaint Resolution and Administration) Act 2011* established the role of the Building Commissioner as regulator and the Building Commission as a central place for the administration of building regulation and customer service.

There are no defined terms or measures specifically addressing accessibility for people with a disability in Western Australia that is administered by the Building Commission other than those in the BCA. For these matters, Western Australia also relies on the Premises Standards, which takes precedence over the Building Act. The intent is that those to whom the Premises Standards apply should exercise their own judgement when complying with the Premises Standards and any non-compliance should be addressed through the processes of the Disability Discrimination Act.

In accordance with section 39 of the building act, and r32 and 33 of the regulation, the Building Commissioner has powers to modify building standards under specific circumstances although this power does not extend to modifying the Premises Standards.

### **Building approval process**

The Building Act prescribes the building standards. The person named as the builder on the building permit is responsible for ensuring compliance with the applicable standards.

The building approval process is a front-end approval process i.e. building permits are required prior to building work commencing.

A building proponent will obtain a Certificate of Design Compliance from a registered building surveyor which will be attached to a building permit application to the local government permit authority. The Certificate of Design Compliance is the evidence required by the Building Act for demonstrating compliance with the BCA. Subject to all other relevant approvals being in place the local government permit authority will grant the applicants the building permit.

## **A brief explanation of the relationship between key legislation**

The Disability Discrimination Act 1992 (DDA) is commonwealth legislation that protects individuals across Australia from unfair treatment in many parts of public life. The Act makes disability discrimination unlawful and promotes equal rights, equal opportunity and equal access for people with disabilities.

The Premises Standards is subordinate legislation (regulations) made under the DDA. It covers general building access requirements to meet section 23 of the DDA (a provision of Part 2). The Premises Standards only apply to structures governed by the BCA, that is, to buildings using the categories and classifications of buildings in the BCA. It does not cover all access requirements of Part 2 of the DDA, such as:

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<sup>238</sup> WA Building Commission, 28 January 2016.

- existing buildings, except in areas which are the subject of a building upgrade or extension and the path of travel to that area, or where compliance is required by the compliance timetable for existing public transport buildings
- access requirements for certain types of premises, classes of buildings and particular areas of some classes of buildings, such as parkland, Class 1a buildings, Class 1b buildings other than 'specified Class 1b buildings', and the internal areas of sole occupancy units in Class 2 buildings to the extent that the DDA is applicable, and
- access requirements not governed by the BCA, such as building fit out or discriminatory management practices.
- Compliance with the Premises Standard is an effective defence against a claim of disability discrimination brought in the Federal Court.

Schedule One of the Premises Standards is the Access Code, which sets out the performance requirements and optional deemed-to-satisfy provisions that a building certifier/manager/developer must comply with to satisfy the non-discrimination parts of the DDA. The Access Code is replicated in the National Construction Code (NCC), which is enforced through state and territory building legislation.

The NCC incorporates all on-site construction requirements into a single code. It comprises the Building Code of Australia (BCA), Volume One and Two; and the Plumbing Code of Australia (PCA), as Volume Three. The NCC is given legal effect by the building legislation in each State and Territory. The state and territory building laws and regulations adopt the NCC as a technical reference that must be complied with.

The following diagram shows the relationships between the different legislative instruments.

Figure 4: Relationship between Federal and state and territory legislation

