



Australian Government

Department of Industry and Science

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

Submission Form

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Privacy Statement

The Department of Industry and Science (the Department) is bound by the Australian Privacy Principles (APPs) outlined in [Schedule 1](#) of the *Privacy Act 1988* (Cth) (Privacy Act) which regulates how entities may collect, use, disclose and store personal information. Information is being collected to enable and assist the Department review the effectiveness of the Disability (Access to Premises - Buildings) Standards 2010 (the Standards).

All submissions including comments, opinions and responses to questions will be made publicly available on the Department's Consultation Hub, unless you have clearly indicated your preference for confidentiality. Submissions marked as confidential will not be published. A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with the FOI Act.

The Department will collect from all submissions, personal information including your name and/or the organisation you represent (if applicable), your email address, State/Territory of residence, the reasons for your interest in making a submission and responses for the purposes of reviewing the effectiveness of the Standards.

The personal information provided by you, such as your name and/or the organisation you represent (if applicable), State/Territory of residence and responses to the questions in Section 3, 4, 5 and 6, will be included on the Department's Consultation Hub to identify your submission, unless it is marked confidential. Contact information such as email address will not be published however, upon your agreement it can be used to provide you with updates and developments on the Standards.

A list containing the names of all individuals and organisations that have made submissions may be provided to the Minister's Office. Submissions may be disclosed to Departmental staff, the Minister and staff members of the Minister's Office and the Attorney-General's Department for the purposes of informing the review process. Confidential submissions may only be disclosed to the Attorney-General's Department and will not be disclosed to any other third parties without your consent.

Personal information obtained will be stored and held in accordance with the Department's obligations under the *Archives Act 1983* (Cth). Personal information obtained will only be used and disclosed for the purposes outlined above and will not be otherwise used or disclosed without your consent, except where authorised or required by law. For further information, please refer to the Department's [Privacy Policy](#).

The Department respects your rights to privacy under the Privacy Act and we comply with all the Privacy Act's requirements in respect of collection and management of your personal information. We understand that from time to time you may not want to provide this information to us. That's fine, however, it may mean we are unable to consider your views in relation to the review process of the Standards.

Do you agree with the privacy statement above?

Yes, I agree

Yes, I agree and want to make a confidential submission

No, I do not agree

Please note: Without agreeing to the privacy collection statement you cannot proceed to make a submission.

Section 1: Personal Details

1. Name *(Required)*: Jennifer Nichols
2. Email *(Required)*: jennifer.nichols@architecture.com.au
3. Would you like to receive email alerts about the Premises Standards Review? Yes No
4. What state or territory do you live in? *(Required)*

(Please check only one box)

- Australian Capital Territory
 - New South Wales
 - Northern Territory
 - Queensland
 - South Australia
 - Tasmania
 - Victoria
 - Western Australia
5. What best describes the location where you live? *(Please check only one box)*
 - City
 - Regional
 - Remote
 6. Are you make this submission as:
 - An individual / individuals OR On behalf of an organisation
 7. If you are making this submission on behalf of an organisation, what is the name of the organisation? Australian Institute of Architects, Tasmanian Chapter

8. What best describes your interest in making a submission? *(Please check only one box)*
- I am a person with disability or carer of a person with disability
 - I am an advocate for people with disability
 - I work for an industry representative body such as an industry association
 - I am a building certifier (private certifier, government employed certifier)
 - I am a building manager (property owner or lessee, project manager, operational staff)
 - I am a building developer (property developer, property owner, building designer, builder, project manager, property lessee)
 - I am an accessibility consultant
 - I am a government official
 - Other. Please Describe:
9. If you are a government official, what level of government do you work for:
- Local Government
 - State or Territory Government
 - Australian Government

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Section 2: General View of the Premises Standards

10. How effective have the Premises Standards been in ensuring dignified and reasonable access to buildings is provided for people with disability? *(Please rate 1 to 5 or not applicable, 1 being not effective, 5 being very effective).*

1

2

3

4

5

Not Applicable

11. How effective have the Premises Standards been in giving certainty to the building industry that they are complying with the Disability Discrimination Act 1992? *(Please rate 1 to 5 or not applicable, 1 being not effective, 5 being very effective).*

1

2

3

4

5

Not Applicable

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Section 3: Provisions of the Premises Standards

3.1 Accommodation Buildings

The Premises Standards apply to the following accommodation buildings:

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

Specified Class 1b Buildings

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

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

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

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

Class 3 Buildings

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

Access All Areas acknowledged the concerns raised by representatives of the tourism and accommodation industry that the increased room ratio was not required. However, it did note the lack of evidence provided to support this position and, as a consequence, no recommendation was made in relation to the room ratio¹.

¹ Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises . Buildings) Standards, House of Representatives Standing Committee on Legal and Constitutional Affairs, 2009, pp. 96-99

Questions – 3.1 Accommodation Buildings

12. Is the bedroom/dwelling threshold for specified Class 1b buildings appropriate?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
13. Has the bedroom/dwelling threshold had any effect on the construction of new specified Class 1b buildings and/or the conversion of existing buildings to specified Class 1b buildings since May 2011?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
14. Is the accessible room ratio for Class 3 buildings (for example, hotels and motels) appropriate?
- Yes. Please explain your answer:
- No. Please explain your answer:
- The Tasmanian Chapter of the Institute would question the basis for the ratio. For example, is it based on real world data or is it an arbitrary decision? We believe an evidence-based ratio is required.
- Not applicable / No comment
15. Are there other issues with accommodation buildings you think should be addressed?
- Yes. Please explain your answer:
- No. Please explain your answer:

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3.2 Accessible Sanitary Facilities

The Premises Standards state that suitable sanitary facilities for personal hygiene must be provided in a convenient location within, or associated with, a building, to the degree necessary, appropriate to²:

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

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

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

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

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

² *Disability (Access to Premises – Buildings) Standard 2010*, Part F2.1 Sanitary and other facilities, p.48

Questions – 3.2 Accessible Sanitary Facilities

16. Have any issues arisen with multiple tenancies on one floor restricting access to accessible sanitary facilities?

Yes. Please explain your answer:

No. Please explain your answer:

Not applicable / No comment

17. Have any issues arisen with the distance between accessible sanitary facilities?

Yes. Please explain your answer:

No. Please explain your answer:

Not applicable / No comment

18. Have there been any issues satisfying the requirements for accessible sanitary facilities?

Yes. Please explain your answer:

No. Please explain your answer:

Not applicable / No comment

19. Are there other issues with accessible sanitary facilities you think should be addressed?

Yes. Please explain your answer:

There is some confusion over the interpretation of the requirements as set out in the Premises Standards and the Building Code, particularly in relation to the provision of separate male and female toilets on different floors. The requirements of the Building Code for the provision of ambulant/accessible toilets are ambiguous and there is a massive cost burden for older, existing buildings being renovated with alternate-gender toilets on alternate floors. The impost on small floor plates in multi-storey office buildings in regional areas is also a concern.

No. Please explain your answer:

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3.3 80th and 90th Percentile Wheelchair Dimensions

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

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

Concerns were raised during the *Access All Areas* inquiry on the relevance of the current 80th and 90th percentile dimensions which were based on research undertaken in 1983^{3,4,5}.

Access All Areas recommended that the Australian Government provide funding for new research within 12 months of *Access All Areas* release, to determine the sizes of wheelchairs and the dimensions of building features necessary to accommodate them. In its response to this recommendation, the Australian Government saw merit in such a study but considered that this should be undertaken once the Standards had been operation for two years so that developments to that time could be taken into account⁶.

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

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

Questions – 3.3 80th and 90th Percentile Wheelchair Dimensions

20. Do you have any comments you would like to make regarding dimensions of building features in the Premises Standards?

Yes. Please explain your answer:

No. Please explain your answer:

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³ Bails, J.H. (1983). Project report on the field testing of the Australian standard 1428-1977 part 1- Recommended amendments and index to part 2 detailed reports. Adelaide South Australia, Public Buildings Department.

⁴ Bails, J.H. (1983). Project report on the field testing of the Australian standard 1428-1977 part 2- Details of field testing of AS1428. Adelaide South Australia, Public Buildings Department.

⁵ Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises . Buildings) Standards, House of Representatives Standing Committee on Legal and Constitutional Affairs, 2009, pp. 80-87

⁶ Government Response to Access All Areas, 2009, p.6

3.4 Passenger Lifts

Some types of passenger lifts, most particularly unenclosed lifts, must be locked off and/or controlled by constant pressure devices⁷. These restrictions mean they cannot be used independently by a person with disability without a key, or in some cases cannot be used by all people with disability given the need to apply constant pressure to the operational controls. For stairway platform lifts, the Premises Standards state that they can only be used in situations in which they are the only practical accessibility option.

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

Questions – 3.4 Passenger Lifts

21. Have you had issues using lifts which are locked off and/or controlled by a constant pressure device?
- Yes. Please explain your answer:
- No. Please explain your answer:
22. Is there an alternative option to locking off some types of lifts?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
23. Have there been any issues satisfying the restriction on the installation of stairway platform lifts?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
24. Are there other issues with passenger lifts you think should be addressed?
- Yes. Please explain your answer:
- No. Please explain your answer:

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⁷ Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises . Buildings) Standards, House of Representatives Standing Committee on Legal and Constitutional Affairs, 2009, pp. 92-5

3.5 Swimming Pools

The Premises Standards describe the requirements for accessibility to and from swimming pools. According to the Premises Standards, access to and from swimming pools is required if⁸:

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

Access All Areas recommended the five-year review consider whether the 40-metre perimeter threshold was exempting too many swimming pools from accessibility requirements⁹.

Questions - 3.5 Swimming Pools

25. Is the 40 metre perimeter threshold appropriate?

- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment

26. Have there been any issues satisfying the requirements for swimming pools?

- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment

27. Are there other issues with the swimming pool provisions you think should be addressed?

- Yes. Please explain your answer:
- No. Please explain your answer:

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⁸ *Disability (Access to Premises – Buildings) Standard 2010*, Table D3.1, pp. 28-31

⁹ *Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises . Buildings) Standards*, House of Representatives Standing Committee on Legal and Constitutional Affairs, 2009, pp.99-102

3.6 Accessible Carparking

According to the Premises Standards¹⁰, accessible carparking must be provided in:

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

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

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

Access All Areas recommended the five-year review consider the adequacy of accessible carparking¹¹.

Questions - 3.6 Accessible Carparking

28. Has the availability of accessible carparking for people with disability changed with the introduction of the Premises Standards in May 2011?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
29. Have there been any issues satisfying the requirements for accessible carparking?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
30. Are there other issues with accessible carparking provisions you think should be addressed?
- Yes. Please explain your answer:
- No. Please explain your answer:

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¹⁰ *Disability (Access to Premises – Buildings) Standard 2010*, Section D3.5 Accessible carparking, pp.34-35

¹¹ *Disability (Access to Premises – Buildings) Standards 2010*, Part 6 Review, pp. 112-116

3.7 Public Transport Buildings

The *Disability Standards for Accessible Public Transport 2002* (Transport Standards) placed accessibility requirements on public transport buildings. To preserve this, aspects of the Transport Standard, within scope of the NCC, were transferred to Part H2 of the Premises Standards¹². These *deemed-to-satisfy provisions* are additional to, and take precedence over, those required for Class 9b and Class 10 public transport buildings outlined elsewhere in the Premises Standards.

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

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

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

Questions – 3.7 Public Transport Buildings

31. Have there been any unintended consequences or inconsistencies in applying both the Premises Standards and the Transport Standards to public transport buildings?

Yes. Please explain your answer:

No. Please explain your answer:

Not applicable / No comment

32. Are there other issues with public transport buildings you think should be addressed?

Yes. Please explain your answer:

No. Please explain your answer:

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¹² *Disability (Access to Premises – Buildings) Standard 2010*, Part H2 Public transport buildings, p. 51

3.8 Wayfinding

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

The Premises Standards include some wayfinding requirements such as:

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

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

Questions – 3.8 Wayfinding

33. Do the wayfinding provisions in the Premises Standards provide adequate accessibility to buildings and building services for people with disability?

Yes. Please explain your answer:

No. Please explain your answer:

Not applicable / No comment

34. Have there been any issues satisfying the wayfinding requirements in the Premises Standards?

Yes. Please explain your answer:

No. Please explain your answer:

Not applicable / No comment

35. Are there other issues with wayfinding you think should be addressed?

Yes. Please explain your answer:

Institute members in Tasmania have experienced numerous problems in relation to heritage buildings. The provision of tactile indicators can be extremely difficult when they encroach on public space where the buildings are close to the boundary. In these cases, there needs to be a clear description in the Premises Standards as to how to deal with this.

No. Please explain your answer:

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3.9 Emergency Egress

Emergency egress refers to the way a person can exit a building during an emergency. Emergency egress is not specifically dealt with in the Premises Standards. The Premises Standards (Section A2.4) reference the fire safety provisions in the NCC¹³.

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

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

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

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

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

Questions – 3.9 Emergency Egress

36. Do you have any comments to make regarding emergency egress?

Yes. Please explain your answer:

No. Please explain your answer:

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¹³ Disability (Access to Premises – Buildings) Standard 2010, Part A2.4 Fire safety, p. 21

3.10 Small Building Exemption

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

The inclusion of a small building exemption in the Premises Standards was justified on the basis of cost. It was considered the cost of providing access to upper floors of small buildings would trigger the unjustifiable hardship provision of the Premises Standards¹⁴.

Access All Areas recommended the exemption be reconsidered during the five-year review to determine if an exemption based on cost was still appropriate¹⁵.

Questions – 3.10 Small Building Exemption

37. Is the small building exemption still appropriate?

Yes. Please explain your answer:

No. Please explain your answer:

Not applicable / No comment

38. Are there other issues with the small building exemption you think should be addressed?

Yes. Please explain your answer:

Many of the buildings in Hobart and Launceston would fall into this category; they are unlikely to be demolished or replaced for economic and heritage reasons. The Institute believes the 200 square metre cutoff is too restrictive and, consequently, many developers abort work because it is prohibitive to comply for such a small area.

No. Please explain your answer:

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¹⁴ *Disability (Access to Premises – Buildings) Standards 2010*, Part 4, Section 4.1 Unjustifiable hardship, pp. 11-12

¹⁵ Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises . Buildings) Standards, House of Representatives Standing Committee on Legal and Constitutional Affairs, 2009, p. 57

3.11 Lessee Concession

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

Access All Areas recommended the five-year review consider whether the lessee concession was being used by building owners to avoid compliance with the Premises Standards¹⁶.

Questions – 3.11 Lessee Concession

39. Is the lessee concession being used appropriately?

Yes. Please explain your answer:

No. Please explain your answer:

Not applicable / No comment

40. Are there other issues with the lessee concession you think should be addressed?

Yes. Please explain your answer:

No. Please explain your answer:

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¹⁶ *Disability (Access to Premises – Buildings) Standards 2010, Part 6 Review, pp.69-71*

3.12 Unjustifiable Hardship

It is not unlawful to fail to comply with the Premises Standards if, and to the extent that, compliance would impose unjustifiable hardship on a person or organisation. However, compliance is required to the maximum extent possible not involving unjustifiable hardship¹⁷.

Only a court can conclusively determine whether or not a defence of unjustifiable hardship is available. But the Premises Standards state that any decision of a state or territory body, such as an Access Panel, established to make recommendations to building approval authorities about building access matters, is a relevant consideration in assessing a claim of unjustifiable hardship¹⁸. Access Panels advise, or make recommendations on, whether to accept claims from *building developers* that the full application of the Premises Standards would be too onerous and likely result in unjustifiable hardship. The Premises Standards in Part 4.1 outline the unjustifiable hardship exception including the circumstances that should be taken into account when Access Panels consider whether a case of unjustifiable hardship exists¹⁹.

¹⁷ *Disability (Access to Premises – Buildings) Standard 2010*, Part 4.1 Unjustifiable hardship, p.11

¹⁸ *Disability (Access to Premises – Buildings) Standards 2010*, Section 4.1 (3)(p) Unjustifiable hardship, p. 12

¹⁹ *Disability (Access to Premises – Buildings) Standards 2010*, Part 4, Section 4.1 Unjustifiable hardship, pp. 11-12

Questions – 3.12 Unjustifiable Hardship

41. Is the unjustifiable hardship exception operating appropriately?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
42. Are the arrangements for identifying and responding to questions of unjustifiable hardship adequate?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
43. Is the guidance available for people considering cases of unjustifiable hardship consistent and transparent?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
44. Do you have other comments you would like to make on unjustifiable hardship?
- Yes. Please explain your answer:
- Anecdotal evidence from Institute members suggests that many clients are reticent to claim unjustifiable hardship because of the uncertainty of the process, and the unknown associated costs. As a result, clients factor this into their risk assessment and often abort work. Bodies that are unlikely to be able to claim unjustifiable hardship also tend to delay work as a result.
- No. Please explain your answer:

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Section 4: Interaction of the Premises Standards with State and Territory Regulations

The Premises Standards are designed to:

- clarify the accessibility requirements under the DDA; and
- harmonise the requirements of the NCC and the DDA in relation to access to buildings through incorporation of the *Access Code* in the NCC²⁰.

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

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

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

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

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

²⁰ 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.

Questions – 4 Interaction of the Premises Standards with State and Territory Regulations

45. Has aligning the provisions in Parts 1 to 4 of the Premises Standards with state and territory building regulations led to any inconsistencies?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
46. Are there any outstanding matters you think need to be addressed?
- Yes. Please explain your answer:
- No. Please explain your answer:
- Not applicable / No comment
47. Do you have other comments you would like to make regarding the interaction of the Premises Standards with state and territory regulations?
- Yes. Please explain your answer:
- No. Please explain your answer:

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Section 5: Inconsistencies in the Interpretation and Application of the Premises Standards

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

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

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

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

Questions – 5 Inconsistencies in the Interpretation and Application of the Standards

48. Are the Premises Standards easy to understand and use?

Yes. Please explain your answer:

No. Please explain your answer:

While the interpretation is clear in the case of new buildings, there is currently widespread confusion over works on heritage buildings in Tasmania and a lack of certainty as to how far the guidelines are applicable and to what extent the scope is for dealing with partial areas within existing buildings. Our members have also experienced varying interpretations from building surveyors. There appears to be a range of interpretations from building surveyors as to the instigation of the code, particularly in relation to the amount of upgrading required to existing building infrastructure to bring it into compliance with the Premises Standards when only small amounts of new works are being undertaken. Similarly, with heritage buildings, there is often uncertainty in the interpretation building surveyors can make and they rely on access consultants' reports, i.e. how to deal with a narrow front door in a listed heritage building when doing an interior fitout for offices or other public functions. There is currently no certainty as to how far the Premises Standards are applicable.

For example, one of our members reported an ongoing project (a two-story Georgian building) whereby a client wants to do a fitout of the interior for office accommodation to rent on the open market. The building is listed on the Tasmanian Heritage Register and has a limited budget. The front door addressing the street is below footpath level with steps down to it, there is only an original stair for vertical circulation internally which is narrow but in original condition. The building was once a traditional two-storey residence.

The problems needing to be addressed to comply with the Premises Standards are:

- Cannot get level or ramp access to the front door as it is too close to the street and circulation space does not allow for it within the site. Access to other areas of the building is not possible without major disruption to the rest of the site, which comprises adjacent tenancies. The front door is a traditional Georgian panelled door in an 800 millimetre nominal opening, so access widths cannot be achieved.
- Similarly internal rooms have access doors that are original panel doors in narrow frames and, whilst not as sensitive as the external façade, will still cause problems if each door needs to be altered.
- Corridors between rooms are too narrow to provide circulation paths as required by AS1428.1 and, whilst an access toilet could be constructed, it would be compromised by circulation.

As a result of these issues, there is no certainty as to what approach the architects can advise the client to take; to provide modifications to comply with the code would not be possible for heritage, budget and general compliance reasons. The advice of building surveyors is to have an access consultant provide a report as to the suitability of the scheme, which still gives no certainty as to what can be done and simply adds another layer of bureaucracy. The architects are still unsure how far they must go towards meeting the Premises Standards and the Tasmanian Chapter of the Institute feels strongly that, with potential topographical and/or heritage issues relating to existing building fabric, consistency in interpretation needs to be addressed, along with methods of review / discretion in determining reasonable adherence in extenuating circumstances.

In another case, there was project to undertake a fitout to a small part of level three in a three-storey building with a minimal budget. The building is served by a lift and stair access with centrally loaded corridor configuration. The project proposed alterations to one small part of one of the existing floors. The design proposed alterations to some rooms but left others unchanged with only minor work such as replacing carpet and painting.

The problems encountered on this project were:

- Because the project required a building permit, the building surveyor advised that he would assess the entire site area, which meant rooms with no proposed alterations had to be modified so door access into the room became compliant with current widths - a very costly exercise given the minimal budget.
- There was a requirement to upgrade the path of travel to the front door to be compliant when the development was for a small area of the total building. Luckily in this case it was minimal but, in other cases, it could be prohibitive.

Not applicable / No comment

49. Is there sufficient training and professional guidance on the application of the Premises Standards for the building industry?

Yes. Please explain your answer:

No. Please explain your answer:

The Tasmanian Chapter of the Institute would welcome more training on the application of the Premises Standards.

Not applicable / No comment

50. Do you use training and guidance material?

Yes. Please describe the material you use:

Institute members in Tasmania report that they use what material they can but it is minimal and difficult to source.

No. Please explain your answer:

51. Is there evidence of any inconsistent and incorrect application of the deemed-to-satisfy provisions in the Premises Standards?

Yes. Please explain your answer:

Anecdotally, Tasmanian members of the Institute have reported that work not done by our members does not always meet the Premises Standards.

No. Please explain your answer:

Not applicable / No comment

52. Are the deemed-to-satisfy provisions sufficiently clear for practical application by the building industry?

Yes. Please explain your answer:

No. Please explain your answer:

Not applicable / No comment

53. Are there any impediments to using Alternative Solutions?

Yes. Please explain your answer:

The high level of uncertainty surrounding the Premises Standards means the impediments are not necessarily known at project inception.

No. Please explain your answer:

Not applicable / No comment

54. Do the unjustifiable hardship provisions have an impact on building work?
- Yes. Please explain your answer: Refer to Section 3.12 - Unjustifiable Hardship
 - No. Please explain your answer:
 - Not applicable / No comment
55. Does the building industry make adequate use of independent expertise to assist in assessing compliance with the Premises Standards?
- Yes. Please explain your answer:
 - No. Please explain your answer:
 - Not applicable / No comment
56. Do you have other comments on inconsistencies in the interpretation and application of the Premises Standards you would like to make?
- Yes. Please explain your answer: Refer to question 57.
 - No. Please explain your answer:

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Section 6: Other Issues

57. Is there anything else you would like to tell us about the Premises Standards?

Yes. Please explain your answer:

The architecture industry in Tasmania is generally supportive of the Disability (Access to Premises - Buildings) Standard 2010.

In the experience of Tasmanian Institute members, many approved works still do not comply with the Standards and the confusion over the application has cost some Tasmanian architects numerous projects. Anecdotal evidence from these members suggests that buildings are being sold or leased for redevelopment purposes, with many members of the general public, as well as real estate professionals unaware of the requirements. The problem is only exacerbated by seeing others complete works without complying with the requirements of the Standards. In order to avoid having to comply with the requirements, usually because of the cost implications, others undertake work as maintenance only. Others again are completing works in secret and getting away with not complying with the requirements. For example, one architecture firm reported having a potential client who wished to lease a space for an inner-city ballet studio. The space was within a 1960s building, had a number of slightly differing levels on the ground floor, and an upper floor level. Additional toilet facilities were required and, therefore, the access from the toilets through to the front door had to be provided. This was going to add significant cost due to the number of levels on the ground floor. Additionally, the stairs required upgrading to meet the current codes (handrails etc). The clients saw all of this as being too expensive for a modest ballet studio and decided not to proceed. They were also a little bemused, as a similar facility had opened recently nearby, which did not seem to provide all of the accesses including the required access through the front door. Any process to have an amendment considered for this application (building appeal) was considered too onerous, would take too long, and cost too much money.

In another example, involving a restaurant/café in North Hobart, a client spent considerable money to provide level compliant access through the front door (with a minor ramp) because the toilets required modification, only to see several other developments not provide the same level of access. Maybe these premises got a dispensation, or the building surveyor deemed them compliant for other reasons. It is our members' understanding that as soon as any toilet facility is modified to add a fixture or move a fixture, or there is any structural change, or works in excess of \$5000, this would then invoke the requirement for a building permit and, by default, compliance with the Premises Standards.

No. Please explain your answer:

Thank you for completing this submission form.

Should you wish to provide attachments to your response, please include with your completed submission form. To assist us, we would appreciate you identifying attachments by the section number and question number used in this form. We can accept attachments as Microsoft Office files, PDF files and MP3 files.

Once completed you may email this form, and any attachments, to PremisesStandardsReview@industry.gov.au

or post to:

Premises Review Team
Sectoral Growth Policy Division
Department of Industry and Science
GPO Box 9839
CANBERRA ACT 2601.

End of form.