

PREMISES STANDARDS FREQUENTLY ASKED QUESTIONS

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Premises Standards

What are the Premises Standards?

- The *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards) set performance requirements and provide references to technical specifications to ensure dignified access to, and use of, buildings for people with a disability. They clarify the general non-discrimination provisions of the *Disability Discrimination Act 1992* in relation to the design construction and management of buildings.
- Complying with the Premises Standards satisfies the Disability Discrimination Act non-discrimination requirement for the matters covered by the Standards. If a person acts in accordance with the requirements of the Premises Standards, a successful complaint cannot be made in relation to that action under the Disability Discrimination Act.
- The Premises Standards are made under subsection 31(1) of the Disability Discrimination Act.

Why were the Premises Standards developed?

- Since the Disability Discrimination Act came into force in March 1993, complaints to the Australian Human Rights Commission have shown inconsistencies between the requirements of anti-discrimination law and building law in Australia. This caused difficulty for the building industry.
- The Disability Discrimination Act prohibits unlawful discrimination in the provision of access to public buildings. However, the Disability Discrimination Act provides no design specifications to assist developers in meeting this non-discrimination requirement. Although building regulations progressively added access requirements, there was no certainty that these provisions were, or are, sufficient to satisfy the general non-discrimination required under the Disability Discrimination Act.
- The inconsistency between anti-discrimination law and building law also generated uncertainty and difficulties for people with a disability – who considered that building law standards were inadequate and that individual complaints would not work to bring wide-ranging change to improve access.
- Regulators and certifiers wanted to ensure that the best possible access was provided. However, they could not be sure of the minimum level of access necessary to meet both building and discrimination law requirements.
- In 2000 the Commonwealth Government amended the Disability Discrimination Act to allow for the development of Disability Standards for access to premises (Premises Standards).
- The Premises Standards will clarify accessibility requirements under the Disability Discrimination Act and enable consistency between building law and the Disability Discrimination Act.

How were the Premises Standards developed?

- In 2001 the Australian Building Codes Board (ABCB), an intergovernmental body that sets building standards, was asked to develop a proposal which could form the basis of the Premises Standards.
- The ABCB formed an advisory body comprising a wide cross-section of all stakeholders.
- In 2004, extensive national consultation occurred based on a non-consensus draft standard. Considerable input was received from the community, the disability sector and industry groups.
- Following this, a proposal was presented by the ABCB to the then Government in mid-2005, followed by further advice on costs and benefits of the proposal in early-2006.
- A reference group to advise on a range of unresolved matters was subsequently formed and provided its report to the Government in mid-2008.
- The Attorney-General, the Hon Robert McClelland MP, referred draft Premises Standards to the House of Representatives Standing Committee on Legal and Constitutional Affairs (the Committee) in December 2008, for its review and inquiry.
- The Committee conducted an extensive public inquiry, receiving 146 written submissions and holding public hearings in Sydney, Brisbane, Melbourne and Canberra. The Committee reported to Parliament on 15 June 2009 in a report titled *Access All Areas*.
- The Government tabled its response to the report on 15 March 2010.

- The Premises Standards incorporate changes to the draft Standards to implement the Government's response to the Committee's *Access All Areas* report.

What is the purpose of the Premises Standards?

- The purpose of the Premises Standards is to ensure greater and dignified access to and use of buildings for people with a disability and also provide certainty to the building industry.
- The Premises Standards set performance requirements and technical specifications for non-discriminatory access. The Premises Standards provide a practical and on-going means to improved building access. The Standards achieve this by requiring that all new buildings, together with modifications of existing buildings that require a building approval, meet the standards.
- It is intended that the Building Code of Australia will be harmonised with the Premises Standards.

What are the main differences between the Premises Standards and existing access provisions?

- Some of the major changes from the current building code access requirements will include:
 1. the introduction of requirements for accessible facilities in some new or upgraded accommodation such as Bed and Breakfasts or cabins in holiday parks
 2. increased requirements for the number of accessible units in hotel and motels
 3. the introduction of requirements for access into public swimming pools where the perimeter of the pool is greater than 40 metres
 4. improvements in signage in relation to accessible facilities
 5. increases in the number of accessible entrances and doorways to buildings
 6. increases in circulation space requirements in most areas such as in lifts, accessible toilets and at doorways
 7. the introduction of a requirement for passing and turning spaces on passageways in some contexts (see question '[Do the deemed-to-satisfy provisions of the Premises Standards require more circulation space than the current Building Code of Australia?](#)')
 8. improvements in the types of lifts as well as usability and access features within lifts
 9. improvements in the number and distribution of accessible spaces in cinema and theatres
 10. the introduction of access requirements to common areas in certain new apartment blocks which contain one or more units available for short term rent
 11. significant increases in the number and location of unisex accessible toilets and the introduction of 'ambulant accessible cubicles' in standard toilets, and
 12. increases in the areas covered by hearing augmentation systems in rooms with a built in PA system.

When do the Premises Standards apply?

- The Premises Standards come into operation on 1 May 2011 and will apply to buildings where building approval is lodged on or after that date.

- The Premises Standards will apply to all new buildings of the specified classes. These are building classifications used in building law – for a description see question *‘What types of buildings are covered by the Premises Standards?’*
- Where new work is undertaken on an existing building, such as an extension or renovation, the new or modified part of the building will be required to comply with the Premises Standards.
- Some upgrades or improvements to buildings such as re-wiring, painting, replacement of heating or air conditioning systems or general maintenance are unlikely to require building approval and hence the Premises Standards would not apply in those cases.
- In most circumstances it will also be necessary to provide an accessible path of travel from, and including, the principal public entrance to the new or modified part of the building. (For further information see the question *‘How do the Premises Standards apply to paths of travel (accessways)?’*)
- Specific access requirements are not imposed on existing buildings outside the area of the new work, except in some cases to provide for an accessible path of travel to the new or modified part of the building.
- Except in public transport buildings, the Premises Standards do not apply to any part of an existing building until work requiring the approval of a building regulator is undertaken.
- In existing public transport buildings, requirements for access are imposed by the timetable for compliance set out in subsection 3.1(3) of the Premises Standards. This timetable preserves the access upgrade schedule set out in the *Disability Standards for Accessible Public Transport 2002* (Transport Standards).
- Existing buildings not undergoing new work are still subject to Disability Discrimination Act complaint. (For further information see the question *‘Can complaints still be made under the Disability Discrimination Act about premises?’*)

Who are bound by the Premises Standards?

- The Premises Standards apply to people with responsibility for, or control over:
 - the building approval process for a building (referred to as the building certifier)
 - the design or construction of the building (building developer), or
 - any of the matters in the Access Code, which provides the technical requirements for satisfying the Standards, that apply to the building other than matters relating to the design or construction of the building (building manager).
- Building owners may be classified as either building developers or building managers.
- In most cases it will be clear who these people are. The Premises Standards have taken a wide view of who should be liable. This will provide a strong incentive for all the key people responsible for building design, approval, construction and management to take the necessary steps to ensure the Standards are met.

What types of buildings are covered by the Premises Standards?

- The Premises Standards apply to most Building Code of Australia building classes. This includes office blocks, education facilities, retail outlets, entertainment venues and buildings used for commercial activities. Section 2.1 of the Standards outlines the buildings covered.

- Private residences are not covered. However, common areas of apartment blocks are covered if the apartment block has apartments available for short-term rent.
- Because of their domestic character, the Premises Standards do not cover detached private residences, apartment blocks and flats which are not used for short-term rent, or private residences attached to buildings of different classifications, such as a caretaker's residence.

Do the Premises Standards apply to bed and breakfast establishments?

- Yes. Bed and breakfast and small boarding house and hostel type buildings are Class 1b buildings.
- The Premises Standards apply to certain specified Class 1b buildings, being:
 - **newly constructed** Class 1b buildings with 1 or more bedrooms used for rental accommodation
 - **existing** Class 1b buildings with 4 or more bedrooms used for rental accommodation (i.e. the Premises Standards will apply if they are modified in such a way as to require a building approval), and
 - buildings comprising of 4 or more single dwellings that are on the same allotment and used for short-term holiday accommodation, for example, holiday cabins in a tourist park.

How do the Premises Standards apply to apartment blocks?

- Residential apartment blocks are Class 2 buildings. The Premises Standards will apply only to *new* Class 2 buildings that have one or more units available for short-term rental accommodation (i.e. to apartment blocks where it is proposed there be units available for short term rent and whose building application is submitted after 1 May 2011).
- Only the common areas of new Class 2 buildings are covered.
- The Premises Standards will not apply to the internal parts of units in a Class 2 building.
- The Premises Standards will not cover Class 2 buildings constructed prior to 1 May 2011.

How do the Premises Standards apply to public transport buildings?

- The Premises Standards provide a separate scheme for existing public transport buildings.
- The Premises Standards provides a timetable for compliance for existing public transport buildings.
- Public transport buildings also have additional or different requirements imposed on them.
- This has been done to ensure that public transport buildings continue to have regulatory provisions consistent with the requirements applicable generally to transport infrastructure by the *Disability Standards for Accessible Public Transport 2002*. The Transport Standards have been amended to remove access requirements that are now covered by the Premises Standards.
- The deemed-to-satisfy requirements for public transport buildings are principally given in Part H2 of the Access Code.

Do the Premises Standards apply to public toilets and footpaths?

- Public toilets are classified as Class 10 buildings which are covered by the Premises Standards.

- Therefore, the Premises Standards will apply to new public toilet buildings and those undergoing modification that requires building approval.
- The Premises Standards extends to the property occupied by a building covered by the Standards. Therefore, footpaths within the property of a building covered by the Standards will be covered by the Standards. Footpaths that are not within a building's boundaries are not dealt with by the Premises Standards.

How do the Premises Standards apply to paths of travel (accessways)?

- A path of travel is the path from, and including, the principal pedestrian entry to the new part of the building.
- As well as new parts, the Premises Standards applies to the principal pedestrian entrance and any part of the building that is necessary to provide a continuous accessible path of travel from the entrance to the new part.
- This requirement only applies if the renovation is being done by the building owner, or a lessee that occupies the whole building.

What are the exemptions and concessions of the Premises Standards?

- The Premises Standards generally apply to all parts of the building used by occupants. However, there are a number of exemptions and concessions.

Exemptions

- A general exemption is provided for unjustifiable hardship. A claim of unjustifiable hardship will be available in circumstances where it is unreasonable to require full compliance with the Premises Standards. For further information see the next question '[What is 'unjustifiable hardship'?](#)'
- There is also an exemption for acts done under statutory authority. For instance, actions taken in compliance with a court order or industrial instrument will not be subject to the Premises Standards.
- The Australian Human Rights Commission is given power to grant temporary exemptions in relation to the special requirements applied to existing public transport buildings. This is similar to such a power for transport infrastructure in the Transport Standards.
- There is also a general exemption for areas where providing access would be inappropriate because of the purpose for which the area is used (e.g. a fire lookout tower), or to areas that would pose a health or safety risk for people with a disability.

Concessions

- The following concessions apply:
 - **small buildings:** accessible ramps and lifts will not need to be provided in certain classes of small buildings. A 'small building' for this purpose is a building of 3 storeys or less, the upper storeys of which are each less than 200m².
 - **lessees:** lessees are only obliged to comply with the Premises Standards for the portion of a building that they lease. Neither they nor the building owner will be required to provide an accessible path of travel from the principal entrance to new work being undertaken by a lessee (unless the lessee leases the whole building)

- **existing accessible lifts:** existing lifts travelling more than 12 metres that conform to the floor space requirements of the Building Code of Australia prior to the commencement of the Premises Standards will not need to be enlarged, and
- **existing accessible toilets:** existing accessible toilets that conform to the floor space requirements of the Building Code of Australia prior to the commencement of the Premises Standards are not required to be upgraded.

What is 'unjustifiable hardship'?

- In some circumstances it may be unreasonable to require full compliance, particularly when undertaking new work on existing buildings.
- The Disability Discrimination Act provides an exception to the Act's requirements where avoiding discrimination would impose an unjustifiable hardship on the discriminator. For example where the costs of a requirement far outweighs the potential benefits.
- Unjustifiable hardship under the Premises Standards has the same broad approach as in the DDA itself. 'Unjustifiable hardship' is not defined but a list of factors provide guidance as to what is relevant in reaching a conclusion that it 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 factors include costs, loss of value, impact on revenue, capacity to pay and impact on financial viability, technical building factors, the relationship of cost to the value of the building and the benefits of access, whether the building is used for public purposes or has a community function and the effort expended in trying to comply with the Standards. This is not an exhaustive list of the factors mentioned.
- Without limiting what is meant by the term, it demands an inquiry of what is fair and reasonable in the circumstances. It effectively places the onus on an applicant to establish that it would be unfair and unreasonable for them to comply in regard to particular requirements in the Premises Standards.
- Compliance with the Premises Standards is still required to the maximum extent not involving unjustifiable hardship.

How will the Premises Standards be enforced?

- Failure to fully comply with the Premises Standards means that those responsible for the building are vulnerable to successful discrimination complaints unless they can put forward a defence of unjustifiable hardship.
- It is intended that the Building Code of Australia will be harmonised with the Premises Standards. Therefore, compliance will be achieved principally through the normal building certification process.
- Existing buildings that are not undergoing any renovation or change of use which would need a building approval, will continue to be subject to the existing provisions of the Disability Discrimination Act and owners and operators will continue to be exposed to complaints if non-discriminatory access is not provided.

Can complaints still be made under the Disability Discrimination Act about premises?

- Yes, complaints under the Disability Discrimination Act may be made in certain circumstances.

- An existing building that is not undergoing an upgrade is not required to comply with the Premises Standards, and could therefore still be the subject of a complaint that it did not meet the general requirement for access under the Disability Discrimination Act.
- Unmodified areas of existing buildings are also not covered by the Premises Standards and may be the subject of a successful complaint under the Disability Discrimination Act.
- Complaints under the Disability Discrimination Act for actions not covered by the Premises Standards, for example requirements placed on employers not to discriminate against their employees, are not answered by compliance with the Premises Standards.
- If an issue is not covered by the Premises Standards and someone experiences discrimination because the feature is not accessible, a Disability Discrimination Act complaint can be made.
- However, where a building or part of the building is within the scope of the Premises Standards, and complies with those requirements, a complaint will not be successful under the Disability Discrimination Act for those matters covered by the Standards.

How will the Premises Standards be reviewed?

- The Minister for Industry, Innovation, Science and Research, in consultation with the Attorney-General, must commence a review of the effectiveness of the Standards within four years of the commencement of the Standards.
- The review must be completed within five years of commencement.
- Further reviews must be carried out every five years after the completion of the previous review.

Access Code

Are all entrances to a building required to be accessible?

- The Premises Standards require that the principal pedestrian entrance to a relevant building (i.e. a building which is covered by the Premises Standards) be accessible and at least 50% of all entrances be accessible.
- For example, if a building has 3 entrances, the principal entrance and at least one of the other entrances must be accessible.
- In large buildings, an accessible pedestrian entrance must not be located more than 50m from a pedestrian entrance that is not accessible.

What types of lifts are permitted?

- The types of passenger lifts that can be used to provide access for people with a disability are currently limited to full commercial-type lifts. These are not cost effective in some circumstances, particularly in small buildings.
- The Premises Standards recognise a wider range of lifts including stairway platform lifts and low-rise platform lifts.
- However, stairway platform lifts, low-rise platform lifts and lifts for persons with limited mobility are subject to restrictions and can only be used in specific circumstances.

Is access required into a swimming pool?

- The Premises Standards require at least one form of access be provided to **swimming pools open to the public** if the swimming pool has a perimeter of more than 40 metres.
- This requirement extends to newly constructed pools or those undergoing modification requiring building approval.
- This includes council pools, hotel pools available to all residents and health centre pools.
- There are different ways access into a swimming pool for a person using a wheelchair can be provided including a sling style lift, a platform lift, a zero depth entry or a fixed or movable ramp.
- If the swimming pool has a perimeter of more than 70 metres, at least one means of providing entry must be by a ramp, zero depth entry or platform lift.

Do the deemed-to-satisfy provisions of the Premises Standards require more circulation space than the current Building Code of Australia?

- Generally yes. The Premises Standards refers to a number of documents developed by Standards Australia, the main one being AS 1428.1, which contain the technical details on how to design and construct accessible features.
- AS 1428.1 has been revised as part of the development of the Premises Standards.
- The revision includes increased circulation space in accessible toilets, at doorways and on corridors where there is a change in direction of more than 60 degrees.
- The minimum width of passageways generally will stay the same as the current Building Code of Australia, but there is a new requirement for passing spaces and turning spaces along passageways.
- Passing spaces are required every 20 metres where a direct line of sight is not available along the length of the passageway and turning spaces are required within 2 metres of the end of any passageway and every 20 metres irrespective of whether or not there is a clear line of sight.

Do the deemed-to-satisfy provisions of the Premises Standards require more unisex accessible toilets than the current Building Code of Australia?

- Currently only one unisex accessible toilet per 100 toilets is required. This can be provided in any location in the building.
- The Premises Standards will require a unisex accessible toilet wherever there is a male and female toilet block.
- The only exception to this is where there are more than one male and female toilet blocks on a single floor such as in a sports stadium or shopping centre. In this situation a unisex accessible toilet will only be required at 50% of the toilet blocks.
- If male and female toilet blocks are spread out, such that male toilets are on one floor and female toilets are on another, then a unisex accessible toilet will only be required at either the male or the female block.
- The Premises Standards also require an ambulant accessible toilet cubicle in each male and female toilet block. An ambulant accessible toilet cubicle includes features such as a higher toilet seat and handrails.

Will there be improvements in physical access to hotels, motels, cinemas and theatres

- The deemed-to-satisfy Premises Standards include increases in the numbers of accessible units in hotels and motels and wheelchair accessible spaces and their locations in cinemas and theatres.
- Table D3.1 of the Premises Standards provides requirements on the number of accessible units in hotels and motels, depending on the number of sole-occupancy units in the building.
- Table D3.9 provides minimum numbers of wheelchair seating spaces for cinemas and theatres, depending on the number of fixed seats in a room or space.
- There are also deemed-to-satisfy requirements in relation to the position and distribution of accessible units and accessible spaces to ensure choice and amenity.