



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*

# **GUIDELINE ON THE APPLICATION OF THE PREMISES STANDARDS**

**VERSION 2**

**FEBRUARY 2013**



### **Legal status of this Guideline**

This Guideline has been developed by the Australian Human Rights Commission to assist building professionals and those concerned with access to better understand how the Premises Standards apply to new and upgraded public buildings.

While every effort has been made to ensure its accuracy this Guideline does not have legal standing. Those responsible for the design, construction and certification of buildings should refer to the Premises Standards and Explanatory Statement as the primary legal documents.

The Premises Standards and Explanatory Statement can be found at <http://www.ag.gov.au/premisesstandards>

The Guideline also does not seek to address directly the application of state and territory building law and regulation.

Throughout the Guideline there are references to 'good practice' or recommendations that are not a legal requirement.

### **Latest version**

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This Guideline was first issued in March 2011.

### **Version 2 released February 2013**

Please ensure you have access to the latest version of this Guideline at [http://www.humanrights.gov.au/disability\\_rights/standards/PSguide.html](http://www.humanrights.gov.au/disability_rights/standards/PSguide.html)

### **Acknowledgments**

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The Commission would like to thank those people who provided comments on the original Guideline to assist in this update.

The Commission acknowledges the work of Michael Small Consulting [small.consulting@bigpond.com](mailto:small.consulting@bigpond.com) in the preparation of this update.

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## Introduction

This Guideline has been prepared by the Australian Human Rights Commission to assist those responsible for buildings and those interested in access to buildings to understand the application of the *Disability (Access to Premises – buildings) Standards 2010* (Premises Standards).

The original Guideline was issued in March 2011 and this version was issued in February 2013. It contains a number of edits and new notes on interpretation based on feedback from users.

There are a number of important principles to note in relation to the Premises Standards.

**First**, the guiding principles of the Premises Standards are the objects of the *Disability Discrimination Act 1992* (Cth) (DDA), which are:

- to eliminate, as far as possible, discrimination against persons on the basis of their disabilities in various areas, and in particular access to premises, work, accommodation and the provision of facilities, services and land;
- to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and
- to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

**Second**, the purpose of the Premises Standards is:

- to ensure that dignified, equitable, cost-effective and reasonably achievable access to buildings, and facilities and services within buildings, is provided for people with disability, and
- to give certainty to building certifiers, developers and managers that if the Standards are complied with they cannot be subject to a successful complaint under the DDA in relation to those matters covered by the Premises Standards.

**Third**, it is unlawful to contravene the Premises Standards.

**Fourth**, the Premises Standards specify how the objects of the DDA are to be achieved in the provision of accessible buildings.

**Finally**, the Premises Standards prescribe national requirements for new buildings and where new building work is being undertaken in existing buildings in order to comply with the DDA in the areas and for the buildings covered by these Standards.

There is no doubt that the introduction of the Premises Standards will lead to widespread and important improvements in the accessibility and safety of all new and upgraded public buildings in Australia.

These changes will improve the opportunities for people with disability to participate in and contribute to the economic, cultural, social and political life of our community as equal citizens.

The changes will also assist in creating a more sustainable built environment capable of responding to our changing circumstances and our family and community needs.

All of us will benefit from these changes as our individual capacity changes over time.

The changes will also require the development of new skills, knowledge and approaches from those in the building industry including developers, designers and architects, builders, project managers, certifiers and building operators.

The implementation of the Premises Standards, and corresponding changes to the Building Code of Australia, will inevitably raise some questions and result in some challenges. A review of the Premises Standards must start by 1 May 2015 and be completed by 1 May 2016 and this will provide us with an early opportunity to address any issues that arise.

In the meantime this Guideline will be updated from time to time as experience in implementation and interpretation develops.

The introduction of the Premises Standards heralds the most important and widespread improvements in building access Australia has ever introduced and I hope this Guideline will assist in making those improvements a reality.



Graeme Innes AM  
**Disability Discrimination Commissioner**



## Note on revised edition

The Commission received over 180 comments from building professionals, advocates, government agencies and associations. While there were some recurring themes there was a broad spectrum of comments leading to considerable editing and numerous additional notes on interpretation.

The Commission has tried to respond to comments, however, it was not possible within the resources available to respond to all, for example, some of the technical questions relating to interpretation of Australian Standards and comments limited to regulatory matters specific to one state or territory.

A number of commentators requested more clarity on provisions that inevitably rely on the exercise of some professional assessment and judgement, for example, the application of D3.4 Exemptions or the question of what constitutes a bank of toilets in an existing building or a principal entrance.

The Premises Standards, like the Building Code of Australia, include a number of provisions that require case-by-case assessment and professional judgement in relation to their application. Building professionals, and in particular building certifiers, are experienced in exercising that judgment and must continue to do so in some situations. In recognition of this the update of this Guideline has avoided being too prescriptive where professional judgement is called for.

A number of comments related to the actual content of the Premises Standards and those comments have been relayed to the agencies that are responsible for the review of the Premises Standards that must be completed within 5 years of their commencement.

## **Section A – Overview**

This overview provides a broad description of the development of the Premises Standards, the authority, purpose and general application of the Premises Standards and their relationship with the Building Code of Australia.

It is important that this section is read in conjunction with detailed guidance on the Premises Standards that can be found in:

- Section B: Premises Standards, and
- Section C: Schedule 1: Access Code for Buildings

## A.1 DEVELOPMENT OF THE PREMISES STANDARDS

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In 2001, the Australian Government asked the Australian Building Codes Board (ABCB) to develop a proposal that could form the basis of a disability standard in the area of access to public buildings<sup>1</sup>.

This followed requests from sections of the building industry and community sector to address the gap between building law and the DDA and to provide certainty in relation to what levels of access to public buildings would satisfy the general non-discrimination requirements of the DDA.<sup>2</sup>

The ABCB set up the Building Access Policy Committee (BAPC) to develop the proposal. Membership of the BAPC included representatives from all levels of government, the disability community, building professionals and the construction industry, building regulators and the property development sector.

A proposal was presented by the ABCB to the (then) Government in mid 2005, followed by further advice on costs and benefits of the proposals in early 2006.

While much of the content of the proposal was developed by consensus there were a number of issues where agreement at the BAPC could not be reached.

A reference group to advise further on a range of unresolved matters was subsequently formed and provided its report to the Government in mid 2008.

In December 2008, the Attorney-General referred a draft disability standard for premises to the House of Representatives Standing Committee on Legal and Constitutional Affairs (the Committee), for its review and inquiry.

The Committee reported to Parliament on 15 June 2009 in a report titled *Access All Areas*.<sup>3</sup>

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<sup>1</sup> The term 'public buildings' includes privately owned buildings other than private housing.

<sup>2</sup> The DDA can be downloaded at <http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401406?OpenDocument>

<sup>3</sup> *Access all Areas*. House Standing Committee on Legal and Constitutional Affairs Inquiry into the draft Disability (Access to Premises – Buildings) Standards, June 2009, Canberra. <http://www.aph.gov.au/house/committee/laca/disabilitystandards/report.htm>

Following further drafting by the Government in response to the recommendations in the *Access All Areas* report the final *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards) were made and tabled in Parliament on 15 March 2010.

The Premises Standards, including a number of drafting amendments, commenced 1 May 2011.

## **A.2 AUTHORITY OF THE PREMISES STANDARDS**

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Section 23 of the DDA covers access to premises and makes it unlawful to discriminate against a person with disability in relation to access to, or use of, premises.

Other areas of public life protected by the DDA may also require non-discriminatory access to premises to be provided, including in employment, education, the provision of goods, services and facilities, accommodation, membership of clubs and unincorporated associations, and in the administration of Commonwealth laws and programs.

While section 23 of the DDA states it is unlawful to discriminate it does not provide information to people responsible for buildings to assist them to design, construct or manage buildings in ways that do not discriminate.

Subsection 31(1) of the DDA, however, allows the Minister responsible for the DDA to develop disability standards.

It is unlawful to contravene a disability standard.

Disability standards, and in this case the Premises Standards, effectively codify the general non-discrimination requirements of the relevant parts of the DDA.

If a building complies with the Premises Standards those responsible for the building cannot be subject to a successful complaint of unlawful discrimination under the DDA in relation to the matters covered by the Premises Standards.

### **Note on continuing application of the DDA in relation to matters not covered by the Premises Standards**

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It is important to note that complying with the Premises Standards does not mean those responsible for buildings are fulfilling all their responsibilities in relation to possible discrimination under the DDA. Section A5 below identifies a number of areas where complaints of discrimination may still be made in

relation to the use of buildings even if the Premises Standards has been complied with.

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### **A.3 PURPOSE OF THE PREMISES STANDARDS**

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The purpose of the Premises Standards is to both:

- provide for equitable and dignified access to new buildings and those areas of existing buildings that undergo renovation or upgrade that requires a building approval, and
- provide greater certainty to those involved in the design, construction, certification and management of buildings in relation to the level of access required in the buildings covered by the Premises Standards.

### **A.4 RELATIONSHIP WITH BUILDING CODE OF AUSTRALIA AND STATE AND TERRITORY BUILDING LAWS AND REGULATIONS**

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One of the main objectives behind developing the Premises Standards was to develop a single set of design and construction requirements covering access to new buildings and an extension to, or modification of, an existing building.

The Building Code of Australia (BCA) was also amended on 1 May 2011 to achieve consistency with the Access Code for buildings (Schedule 1 of the Premises Standards). Relevant state and territory building laws and regulations are also being reviewed with a view to them being amended to ensure administrative provisions, including certain exemptions and concessions of the Premises Standards, are also consistent, as far as possible.

Specific issues identified for consideration by state and territory building administrations include:

- Concessions for existing buildings upgrades in relation to existing lifts travelling more than 12m so long as they are compliant with BCA 2001 circulation space requirements (Premises Standards 4.4)
- Concessions for existing accessible unisex accessible toilets so long as they are compliant with BCA 2001 circulation space requirements (Premises Standards 4.5)
- 'Affected part' provisions (Premises Standards 2.1(5)) and the lessee concession (Premises Standards 4.3)
- Concessions for existing buildings covered by the '*Specified Class 1b*' definition (Premises Standards 1.4(1), Table D3.1)
- Responding to unjustifiable hardship questions.

Several states and territories have now completed this review and building professionals should refer to their local state and territory building laws and regulations for details.

While legally the two sets of requirements must remain separate documents the intention is that compliance with the new BCA and state and territory building laws and regulations, when revised to incorporate the issues identified above, will also ensure compliance with the Premises Standards.

### **Note on authority of building certifiers in relation to the Premises Standards**

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The Premises Standards state that a building certifier, building developer, and building manager must ensure a building complies with the Access Code for buildings. The Standards apply to the extent that a person is responsible for, or has control over, matters in the Access Code.

It would be unlawful to fail to comply with the requirements of the Premises Standards; however, they do not contain any mechanism for anyone, such as a building certifier, to issue a certificate confirming compliance, or invest authority in a building certifier to refuse to allow a project to proceed on the basis of non-compliance.

A building certifier (or certifying authority) has, however, under state and territory building law the authority to grant or refuse building or construction approval.

Building certifiers can effectively meet their responsibility to ensure compliance with the Access Code by exercising their authority under state and territory building law to approve or refuse a building or construction application.

This is because state and territory building laws require compliance with the BCA and compliance with the access provisions of the BCA also ensures compliance with the Access Code.

There are, however, a number of important provisions within Parts 1 to 4 of the Premises Standards that are not contained within the Access Code (or BCA). These are listed above and include a requirement for 'affected part' upgrades in existing buildings in some situations and the lessee, existing accessible toilet and existing lift concessions.

In order to ensure the greatest possible consistency between the requirements of the Premises Standards and state and territory building laws, state and territory building administrations have been asked to incorporate the above provisions in their building laws or regulations. Doing this would ensure building certifiers have the authority to apply them through local building or construction approval processes.

Building certifiers, developers and managers should check with their state or territory building administrations on progress towards achieving this consistency.

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## A.5 BUILDINGS AND FEATURES NOT COVERED BY THE PREMISES STANDARDS

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Section 23 Access to premises of the DDA refers to non-discriminatory access to and use of premises and covers more than just the construction of buildings used by the public. Section 4 of the DDA defines 'premises' as follows:

premises includes:

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

This definition of premises extends well beyond the scope of the BCA, which is primarily concerned with the construction and safety of buildings. The DDA definition of premises includes areas such as parkland, recreation area, playgrounds, transport vehicles and could apply to non-building elements such as furniture, fixtures and fittings.<sup>4</sup>

While the Premises Standards could address a broader range of access issues in the built environment, at this stage they only apply to public buildings of the type covered by the building classifications within the BCA and only to new buildings and existing buildings that undergo building work that involves extensions to, or modifications of the building where a building or construction approval is required.

This means that there are a number of situations where the Premises Standards are either not triggered or do not apply, including:

- Existing buildings – those buildings that existed before the Premises Standards came into force (or where an application for building/construction approval was sought before the Premises Standards came into force) and are not undergoing any building work.

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<sup>4</sup> Premises' such as aircraft, ferries and public transport conveyances are already covered by the *Disability Standards on Accessible Public Transport 2002*.

- Fitout features of a building for which building approval is generally not required (in some states this may be exempt development) – this might include reception desks, drink fountains, removable workstation partitions, change rooms in clothes shops, moveable furniture, fixtures and fittings.
- Some wayfinding features of buildings not covered by the signage requirements of the Premises Standards – for example tenants’ boards, room identification, directions to key building facilities or features.
- Some short-term holiday accommodation buildings such as those bed and breakfast facilities or holiday cabins that are specifically excluded from the Premises Standards (see discussion under Part D3 of the Access Code below).
- Public footpaths, parks, recreation areas, transport conveyances – those parts of the built environment that are not covered by the Premises Standards.

The Premises Standards also do not cover possible discrimination by staff or building operators in their interactions with people with disability using a building.

In all these situations if a person with disability experiences discrimination because the building or feature is not accessible, or because of discriminatory treatment, a complaint can be made directly under the provisions of the DDA.

So, for example, it will continue to be possible for a person with disability to complain about access to a local shop or hotel that was built before the Premises Standards commenced, about the inaccessibility of certain fixtures and fittings or about the inaccessibility of directional information not covered by the Premises Standards.

### **Note on features covered by the Transport Standards**

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The *Disability Standards for Accessible Public Transport 2002* (Cth) apply to features that are not covered in Part H of the Access Code.

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### **Note on private accommodation**

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Access to private residences (Class 1a buildings) and the accessibility of the internal parts of flats or apartments (Class 2 buildings) are generally not subject to the DDA and are therefore not addressed by the Premises Standards. Those responsible for private residences, however, are encouraged to consider the design guidelines issued by Livable Housing Australia

[www.livablehousingaustralia.org.au/](http://www.livablehousingaustralia.org.au/)

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### **Note on egress**

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While work continues on identifying suitable and effective Deemed-to-Satisfy building solutions to ensure equitable egress for people with disability, at this stage compliance with the relevant fire safety and egress provisions of the BCA ensures compliance with the Premises Standards requirements.

Those responsible for buildings are encouraged to develop policies and procedures for emergency egress including, for example, Personal Emergency Egress Plans (PEEPS) for occupants with disability. A web search will provide examples of PEEPS.

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## **A.6 STRUCTURE OF THE PREMISES STANDARDS**

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The Premises Standards consist of:

- six initial parts setting out the legal application of the Premises Standards and certain exceptions and concessions, and
- an Access Code for Buildings at Schedule 1, which contains a nationally applicable set of Performance Requirements for providing non-discriminatory access to, and use of, those buildings and areas of buildings to which they apply and technical Deemed-to-Satisfy Provisions for those Performance Requirements.

## **A.7 GENERAL APPLICATION OF THE PREMISES STANDARDS**

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Commencing on 1 May 2011, the Premises Standards apply to all new buildings of the specified classes identified in section 2.1 of the Premises Standards.

In addition, since 1 May 2011 where new work that requires building or construction approval is undertaken on an existing building, such as an extension or modification, 'building certifiers', 'building developers' and 'building managers' have been responsible for ensuring that the new or modified part of the building complies with the Access Code found in Schedule 1 of the Premises Standards.

This requirement for the new part of an existing building to comply with the Access Code is limited to the actual work identified in the building application and does not extend to other parts of the building or other parts of the level on which the new part is located (subject to the 'affected part' requirements below).

For example, if the modification to an existing building is the relocating of a doorway or the construction of extended office space the access requirements only apply to the new part identified in the building application and do not extend to other parts of the building or other areas or facilities on the floor such as toilets, if they are not the subject of the building application

In most circumstances it is also necessary to provide an accessible path of travel from the principal pedestrian entrance of an existing building to the new or modified part of that building. This is referred to in the Premises Standards as the 'affected part' of a building. (For more information on the 'affected part' of a building see subsection 2.1(5) in Section B of this Guideline below).

### **Note on BCA and 'affected part'**

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While access requirements relating to the 'affected part' of a building are covered by the Premises Standards they are not a requirement within the BCA. State and territory building laws and regulations are being reviewed to address the issue of the 'affected part' of a building to ensure consistency with the Premises Standards and building professionals should refer to their relevant state and territory building laws and regulations for clarification.

In those states and territories where building laws and regulations have not been changed to reflect the 'affected part' provisions of the Premises Standards building owners/operators remain liable for possible discrimination complaints if the 'affected part' requirements are not addressed irrespective of state and territory building law. (See also the 'Note on authority of building certifiers in relation to the Premises Standards' on page 8 of this Guideline).

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Except in existing public transport buildings (where there is a timetable for upgrading of buildings), the Premises Standards do not apply to any part of an existing building until work requiring the approval of a building certifier (building/construction approval) is undertaken.

#### **A.7.1 Limited application to new parts and 'affected part' in existing buildings**

When new building work takes place in an existing building and a building approval is required for that new work, the requirements for upgrading access are limited to the area of new work and the 'affected part' (see Subsection 2.1(5) - Affected part on page 30 of this Guideline for more discussion on 'affected part').

For example, if a building owner undertakes renovations on one level of their building an application for building approval triggers the application of the Premises Standards. While the Premises Standards will apply to the area of

new work and the 'affected part' of the building they will not apply to the other levels that are not being extended or modified.

These areas of the building outside the area of the new work will continue to be subject to the existing DDA complaints provisions.

See appendix 1 for an overview of the application of the Premises Standards to new and existing buildings.

### **A.7.2 Existing public transport buildings**

In existing public transport buildings, requirements for upgrading access to the passenger use areas are imposed by the timetable for compliance set out in subsection 3.1(3) of the Premises Standards. This timetable preserves the timetable for compliance set out in the *Disability Standards for Accessible Public Transport 2002* (Transport Standards).

Under the provisions of the Transport Standards, new work on existing buildings will not trigger the application of the Premises Standards to an entire building unless modifications are being undertaken to the whole building in accordance with the upgrade timetable in subsection 3.1(3).

The application of the Premises Standards is set out in more detail in the description of section 2.1 of the Premises Standards and *Part H2 Public transport buildings*, see below.

#### **Note on 'affected part' upgrades in transport buildings**

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See the section headed *New work on transport buildings not scheduled for full upgrade under Part H2 Public transport buildings* on page 111 of this Guideline for a discussion on 'affected part' upgrades in transport buildings where the building is not scheduled for upgrade.

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## **A.8 PEOPLE WITH RESPONSIBILITIES UNDER THE PREMISES STANDARDS**

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

- the building approval process for a building – this might be a private certifier or a local government building approval authority
- the design or construction of the building – this might include a designer or architect, developer, builder, project manager or access consultant, or
- any of the matters in the Access Code that apply to the building other than matters relating to the design or construction of the building – this might

include the property owner, lessee, facility manager or operational staff responsible for the ongoing management of a building.

These groups of people are referred to in the Premises Standards as the 'building certifier', 'building developer', and 'building manager' respectively.

### **Note on responsibility of building certifiers**

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See the 'Note on authority of building certifiers in relation to the Premises Standards' on page 8 of this Guideline.

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## **A.9 COMPLYING WITH THE PREMISES STANDARDS' ACCESS CODE**

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It is unlawful under the DDA to contravene the Premises Standards.

Enforcement of the Premises Standards is through the existing DDA complaints mechanism.

Those who have responsibility for or control over a new building or new building work must ensure that the building or new work complies with the Access Code (Part 3.1).

The Access Code is written in the same style as the BCA in that it has a number of mandatory Performance Requirements that are expressed in broad terms. The Access Code then sets out a number of building solutions that would satisfy the Performance Requirements (in the BCA these are generally referred to as the Deemed-to-Satisfy Provisions).

The Deemed-to-Satisfy Provisions of the Access Code refer in many cases to technical details found in separate Australian Standards such as AS 1428.1, which is the primary Australian Standard relating to building access for people with disability.

Those responsible for buildings can ensure the building complies with the Performance Requirements of the Access Code by:

- a) complying with the relevant Deemed-to-Satisfy Provisions of the Access Code (subsection 3.2(1)), or
- b) proposing an alternative to the Deemed-to-Satisfy Provisions that satisfies the Performance Requirements of the Access Code (subsections 3.2(2) and (3)), or
- c) a combination of a) and b).

Because of corresponding changes that have been made to the BCA it is reasonable to conclude that compliance with the Performance Requirements of the BCA through the use of its Deemed-to-Satisfy Provisions will ensure compliance with the Performance Requirements and 'deemed-to-satisfy provisions' of the Access Code.

#### **A.9.1 Alternative approaches**

The Premises Standards allow for innovative solutions to meet the Performance Requirements of the Access Code through the development of new technologies and through the use of alternative approaches, so long as the proposed solution satisfies the Performance Requirements of the Access Code.

For example, while the Premises Standards only refer to specific editions of Australian Standards to meet the Deemed-to-Satisfy requirements of the Access Code, this does not prevent a building owner from complying with a newer Australian Standard if to do so would satisfy the Performance Requirements of the Access Code.

Similarly there may be situations, particularly in relation to existing buildings such as heritage buildings, where it might not be possible to meet the Deemed-to-Satisfy requirements of the Access Code, but an acceptable alternative approach might be proposed.

Building professionals are familiar with this approach referred to as an Alternative Solution in the BCA. Subsections 3.2(2) and (3) of the Premises Standards should be interpreted as allowing for Alternative Solutions to meeting the Performance Requirements of the Access Code.

The BCA provides information on Alternative Solutions and Assessment Methods in A0.8 and A0.9 and further guidance is available on the ABCB website. A building certifier would need to assess the suitability of a proposed Alternative Solution and in the area of access it is anticipated this will often rely on expert judgement that is one of the Assessment Methods referred to in the BCA.

#### **Note on equivalent access and transport related buildings**

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See also the discussion on 'Equivalent access' in relation to public use areas of transport-related buildings under the discussion of Part H2 of the Access Code on page 110 of this Guideline.

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## **A.10 PREMISES STANDARDS ARE MINIMUM REQUIREMENTS – DESIGNING BEYOND THE MINIMUM IS ENCOURAGED**

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The Premises Standards are a set of minimum requirements for the provision of access. While compliance with the Performance Requirements through use of the Deemed-to-Satisfy Provisions of the Access Code or a suitable Alternative Solution would fulfil legal responsibilities in relation to the DDA there is nothing to stop someone from providing a greater degree of access than required by, for example, the Deemed-to-Satisfy Provisions.

The Premises Standards include a number of exemptions and concessions and the Access Code only requires the provision of limited access in some situations. For example, access is only required to the upper floor of a two or three-storey office block if either of the upper floors is greater than 200 m<sup>2</sup>.

These limited access requirements address situations where achieving higher levels of access might be extremely difficult in every instance.

Where it is possible to achieve higher levels of access than the minimum requirements it would be good practice to do so.

For example, the Access Code includes a limit in relation to the number of accessible entrances to a building, requiring only 50% of entrances (including the principal pedestrian entrance) to be accessible. However, where there are no topographical or significant financial considerations associated with making all entrances accessible, designing beyond minimum requirements by making all those entrances accessible should be considered as good practice.

Similarly, a building developer or manager may provide more accessible rooms in a motel, or more accessible car parking spaces in a carpark than the minimum number required by the Access Code. They may also decide to install a fixed hearing-augmentation system in a room that does not have an inbuilt amplification system to ensure better access for people with a hearing impairment attending a lecture.

## **A.11 MAINTENANCE AND MANAGEMENT OF BUILDINGS**

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Obligations to provide access for people with disability continue past the construction of the building. If a building or part of a building becomes inaccessible as a result of any acts or omissions of the building manager or other person responsible for the building, they may be liable for unlawful discrimination.

Below are a number of examples:

- If a building owner or lessee allows an accessible unisex sanitary compartment (accessible toilet) to be used as a storage area, thereby reducing circulation space, there may be grounds for a complaint of unlawful discrimination, even though the toilet was built to the specification required by the Access Code.
- If a building owner or lessee allows overgrown trees or advertising material to impede an accessway that results in a barrier for a person who is blind, there may be grounds for a complaint of unlawful discrimination.
- If low rise lifts provided specifically for people with mobility disability are not operable or operation of them involves a management system that does not provide amenity and dignity.
- If accessible entrances to buildings beside a revolving doorway (that cannot form part of an accessible path of travel) are locked off or require 'staff only' passes.
- If required hearing augmentation systems are not maintained or staff are not trained in their operation.

Building certifiers are not responsible for ensuring access through the ongoing management and maintenance of buildings.

## **A.12 EXCEPTIONS, EXEMPTIONS AND CONCESSIONS**

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The Premises Standards include a number of specific exceptions and concessions that are addressed in more detail in the discussion on Part 4 of the Premises Standards and D3.4 of the Access Code in this Guideline.

While the Access Code includes a number of limitations to the levels of access required, inevitably there will be exceptional situations, particularly in relation to upgrading existing buildings, where requiring full compliance with the Performance Requirements through adoption of the Deemed-to-Satisfy Provisions would be too onerous or where a suitable alternative approach (Alternative Solution) was not available. For this reason the general DDA provision for unjustifiable hardship is retained in the Premises Standards as an exception.

An exemption is also provided to preserve section 47 of the DDA, which provides an exemption for acts done under statutory authority.

Concessions are provided to recognise cases where it has been decided that it would be unreasonable to require full compliance with the Deemed-to-Satisfy Provisions of the Access Code. These relate to:

- lessees (section 4.3)
- existing accessible lifts (section 4.4), and
- existing accessible toilets (section 4.5).

While these concessions are not contained in the BCA it is anticipated that state and territory governments will address these matters through changes to building legislation and regulations. Some states and territories have now achieved this and building professionals should refer to their relevant state and territory building laws and regulations for clarification.

Finally, the Australian Human Rights Commission is provided with power to grant temporary exemptions in relation to public transport buildings (Part 5) from some or all of the requirements of Part H2 of the Access Code. This power is limited to public transport buildings only.

### **Note on temporary exemptions in relation to public transport buildings and Access Panels**

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While the BCA does not have a temporary exemption provision, where one is granted to a developer under the Premises Standards in relation to a transport building the developer could seek recognition of the exemption from the proposed Access Panels (or equivalent). This could allow certifiers to approve a building application under the BCA consistent with the exemption conditions. (See the discussion on 'Decisions by state and territory bodies' in Part 4 Section 4.1 on page 45 of this Guideline).

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## **A.13 REVIEW**

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Section 6.1 of the Premises Standards states that the Minister for Industry, Innovation, Science and Research, in consultation with the Attorney-General, must commence a review of their effectiveness within four years of their commencement. The review must be completed within five years of commencement of the Premises Standards.

Further reviews must be carried out every five years after the completion of the previous review.



## A.14 DOCUMENTS INCORPORATED BY REFERENCE

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The Access Code incorporates a number of Australian Standards by reference.

These include revised *AS 1428.1:2009 General requirements for access – New building work* (and Amendments 2010), *AS/NZS 1428.4.1:2009 Means to assist the orientation of people with vision impairment – Tactile ground surface indicators* (and Amendments 2010) and *AS/NZS 2890.6:2009 Off-street parking for people with disabilities*.

The Access Code also includes reference to other Australian Standards, including earlier editions of AS 1428.1 and AS 1428.4 that are only relevant to transport-related buildings (see the discussion below on Clause A3.1 Documents adopted by reference).

In general, these Australian Standards are referred to in order to provide further technical detail to support the Deemed-to-Satisfy Provisions of the Access Code. These references are consistent with current practice in the BCA. Details of the referenced Australian Standards can be found in Part A3 of the Access Code.

If there is a difference between the technical requirements of the Access Code and any document referenced in the Access Code, including Australian Standards, the Access Code takes precedence.

The Access Code refers to specific editions of Australian Standards. Later and earlier versions of those Australian Standards are not recognised as meeting the Deemed-to-Satisfy requirements of the Access Code.

However, this would not prevent a building owner from complying with a newer Australian Standard as an alternative approach (Alternative Solution) if to do so would satisfy the Performance Requirements of the Access Code.

Anyone involved in the design, construction and certification of buildings needs to have access to the relevant Australian Standards if they intend following the Deemed-to-Satisfy path for compliance with the Access Code.

Australian Standards may be obtained from SAI Global. More information can be found at <http://infostore.saiglobal.com/store/>

## Section B – Premises Standards

This section provides more detailed guidance on the application of the Premises Standards.

Parts 1 to 6 of the Premises Standards contain administrative and regulatory provisions including objects, compliance statements, commencement dates, exceptions and concessions, and the review timetable.

State and territory governments were asked to consider developing complementary regulatory changes to address a number of the administrative provisions found within Parts 1 to 4 of the Premises Standards with a view to achieving consistency between disability discrimination law and building law as much as possible<sup>5</sup>.

This includes addressing administrative provisions, such as requirements for the 'affected part' of buildings, and concessions, such as those available for certain existing accessible toilets and lifts.

Some states and territories have now achieved this and building professionals should refer to their relevant state and territory building laws and regulations for clarification.

Throughout this section, the numbering system corresponds with that in the Premises Standards.

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<sup>5</sup> Issues identified for consideration by state and territory building administrations included:

1. Concessions for existing buildings upgrades in relation to existing lifts travelling more than 12m so long as they are compliant with BCA 2001 circulation space requirements (Premises Standards 4.4)
2. Concessions for existing accessible unisex accessible toilets so long as they are compliant with BCA 2001 circulation space requirements (Premises Standards 4.5)
3. 'Affected part' provisions (Premises Standards 2.1(5)) and the lessee concession (Premises Standards 4.3)
4. Concessions for existing buildings covered by the '*Specified Class 1b*' definition (Premises Standards 1.4(1), Table D3.1)
5. Responding to unjustifiable hardship questions.
6. Limited application of access requirements to new Class 2 buildings approved and built after 1 May 2011.

## PART 1 PRELIMINARY

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### 1.1 Name of Standards

The formal name of the Premises Standards is the *Disability (Access to Premises – Buildings) Standards 2010* (Cth). The Premises Standards can be found at <http://www.ag.gov.au/premisesstandards>

### 1.2 Commencement

This section states that the date for the commencement of the Premises Standards was 1 May 2011. This was the same date that a new BCA commenced ensuring consistency between the requirements of the BCA and Access Code provisions within the Premises Standards.<sup>6</sup>

Subsections 2.1(3) and (4), however, provide details of when to apply the Premises Standards based on the date an application for actual building/construction approval is made.

### 1.3 Objects

This section sets out the objects of the Premises Standards:

- to ensure that dignified, equitable, cost-effective and reasonably achievable access to buildings, and facilities and services within buildings, is provided for people with disability; and
- to give certainty to building certifiers, developers and managers that if the Standards are complied with they cannot be subject to a successful complaint under the DDA in relation to those matters covered by the Premises Standards.

The reference to dignified access in the first object reflects the need to ensure proper and appropriate respect is afforded to people with disability in the solutions developed to provide access.

The objects will provide guidance to interpretation of the Premises Standards where there is ambiguity in meaning.

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<sup>6</sup> Throughout this Guideline reference is made to the Building Code of Australia (BCA) that is part of the national Construction Code (NCC) The NCC is an initiative of the Council of Australian Governments (COAG) developed to incorporate all on-site construction requirements into a single code. The NCC comprises the BCA, Volume One and Two; and the Plumbing Code of Australia (PCA), as Volume Three.

## 1.4 Interpretation

This section sets out definitions of some of the terms used in the Premises Standards.

Subsection 1.4(1) includes the definition of a *specified Class 1b building*, which is particularly important when determining which Class 1b buildings are required to comply with the Premises Standards (see subparagraph 2.1(1) (a)(i) of the Premises Standards and Note 1 in Table D3.1 of the Access Code).

Subsection 1.4(3) clarifies that when a building or building work is carried out 'for the Crown' it could include a building constructed or upgraded by, or on behalf of, the Commonwealth, states and territories, a public authority of the Commonwealth or an instrumentality of a state.

This is of particular relevance for those buildings that do not require building/construction approval from an approval authority (see subsection 2.1(3) and (4)).

Subsection 1.4(4) clarifies that the Access Code (Schedule 1) is part of the Premises Standards.

## PART 2 SCOPE OF STANDARDS

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### 2.1 Buildings to which the Standards apply

This section sets out the type (Class) of buildings to which the Premises Standards apply and those to which it does not apply.

The basic trigger for the application of the Premises Standards is when any building work is undertaken that requires building/construction approval.

This section also clarifies the trigger for application of the Premises Standards is for new buildings and a new part of an existing building if it is an extension to or modification of that building.

Clarifying whether or not a building should have complied with the Premises Standards is also important for determining future liability should a building be the subject of a discrimination complaint.

Part A4 of the Access Code describes the general use of buildings with different classifications.

#### **Paragraph 2.1(1)(a)**

Paragraph 2.1(1)(a) covers new buildings and states that the Premises Standards apply to:

### **Specified Class 1b buildings**

Class 1b buildings include short-term rental holiday accommodation such as bed and breakfast or farm stay facilities, holiday cabins on tourist parks, or small hostels with a total floor area less than 300 m<sup>2</sup> (measured over the enclosed wall of the whole Class 1b building) and where not more than 12 people would ordinarily be resident (accommodation larger than this would ordinarily be defined as a Class 3 building such as a hotel or motel).

This accommodation is typically rented out on a commercial basis for short periods.

Only *specified Class 1b buildings* are covered by the Premises Standards and these are defined in subsection 1.4(1) of the Standards. The access required for *specified Class 1b buildings* is detailed in Table D3.1 of the Access Code.

For further information on *specified Class 1b building* refer to Section C on page 62 of this Guideline under the heading Table D3.1.

### **Class 2 buildings that have accommodation available for short-term rent**

A Class 2 building is typically a block of residential flats or apartments. While the Premises Standards do not apply to the internal parts of sole occupancy units (SOUs), they do require that certain specified areas available for use in common by all residents be accessible.

Under the Premises Standards, however, this requirement only applies in buildings where one or more SOUs are made available for short-term rent as holiday units, serviced apartments or time-share facilities.

While there is no definition in the Premises Standards of what ‘short-term’ means, a reasonable interpretation would be accommodation rented out on a commercial basis for short periods that generally does not require the signing of a lease agreement.

This requirement only applies to new Class 2 buildings where an application for building approval was lodged after 1 May 2011.

### **Note on BCA coverage of Class 2 buildings**

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This limitation relating to the existence of short-term rented SOUs does not apply in the equivalent provisions of the BCA. In the BCA the application of access requirements to a number of specified common areas is to all new Class 2 buildings irrespective of whether or not they will contain short-term rented SOUs. Building professionals are advised to satisfy the requirements of the BCA on this matter, as the broader scope of requirements in the BCA will also

satisfy the requirements of the Access Code. See the additional commentary on Class 2 buildings under Clause D3.1 *General building access requirements* on page 61 of this Guideline.

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### **Class 3 buildings**

A Class 3 building is typically a hotel, motel, or larger boarding house or hostel.

### **Class 5: 6, 7b, 8 and 9a buildings**

These classifications typically include offices, shops, cafes, libraries, factories, wholesale sales outlets, showrooms, service stations and health-care facilities.

### **Class 7a buildings**

A Class 7a building is a carpark.

### **Class 9b buildings**

A Class 9b assembly building includes a theatre, concert hall, gymnasium, school, and university or trade workshop. A transport-related building or structure that is used by passengers in conjunction with travelling on a public transport service may also be classified as a Class 9b building.

### **Class 9c buildings**

A Class 9c building is an aged-care building.

### **Class 10 buildings**

A Class 10a building is a non-habitable building such as a toilet block in a park or at the start of a bush trail, a structure used to provide shelter, or change rooms associated with a sports field. A transport-related building or structure that is used by passengers travelling on a public transport service, such as an open train station platform, ferry wharf or bus/tram shelter may also be classified as a Class 10 building.

### **Paragraph 2.1(1)(b)**

Paragraph 2.1(1)(b) covers new building work to existing buildings, such as an extension or upgrade, and states that the Premises Standards apply to that new work and any affected part of a building (see subsection 2.1(5) for further information on 'affected part') if a building is:

- a specified Class 1b building,
- part of a Class 2 building which has been approved for construction after the commencement date of the Premises Standards (1 May 2011) and which has accommodation available for short-term rent, or
- a Class 3, 5, 6, 7, 8, 9 and 10 building.

### **Note on amendment to paragraph 2.1(1)(b)**

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Paragraph 2.1(1)(b) has been amended to clarify this requirement:

- (b) a new part, and any affected part, of a building, if the building is:
- (i) a specified Class 1b building; or
  - (ii) a Class 2 building that:
    - (A) is a new building; and
    - (B) has accommodation available for short-term rent; or
  - (iii) a Class 3, 5, 6, 7, 8, 9 or 10 building.
- 

### **Note on scope of upgrade requirements**

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The Premises Standards only apply to that part of the building that is the subject of the building approval application and the 'affected part'.

For example, if in a five-storey building an upgrade of the fourth level was being undertaken, which triggered the need for building approval, the Premises Standards would only apply to the new work on level 4 and the 'affected part'.

Application of the Premises Standards to new work in an existing building does not trigger the need to upgrade the whole building or parts of the building outside the new work that is subject to the building approval application.

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### **Note on transport related buildings and affected part**

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See also the section *New work on transport buildings not scheduled for full upgrade* on page 111 of this Guideline.

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Paragraph 2.1(1)(b) also states that the Premises Standards only apply to Class 2 buildings built (or where a building approval application was submitted) on or after 1 May 2011. They do not apply to upgrades of Class 2 buildings that were built before the Premises Standards commenced or those built under the authority of a building approval body submitted prior to 1 May 2011.

For example, if a block of flats was built in 1990 and is undergoing renovation in 2012 the Premises Standards would not apply to the upgrade.

However, where additional work is proposed on a Class 2 building which is a new building, i.e., one whose approval for construction was submitted on or after 1 May 2011, and which has accommodation available for short-term rent, the effect of subparagraph 2.1(1)(b)(ii) is that the 'new parts' and 'affected parts' of that Class 2 building are within the scope of the Premises Standards.

### **Paragraph 2.1(1)(c)**

Paragraph 2.1(1)(c) imposes access requirements on existing public transport buildings that are still in use on the relevant target date provided by section 3.1. A definition of 'existing public transport building' is provided by subsection 2.1(6).

### **Subsection 2.1(2)**

Subsection 2.1(2) states that the Premises Standards do not apply to:

- the internal parts of a sole-occupancy unit in a Class 2 building, or
- Class 10 buildings, such as a shed or private carpark, where it is part of or associated with either a Class 1a building (private house) or a Class 4 building (such as a single flat for an office block caretaker).

These building classifications are defined by Part 4 of the Access Code and are consistent with the equivalent BCA classifications.

### **Paragraph 2.1(3)(a) - New buildings**

Paragraph 2.1(3)(a) defines a 'new building' as one which is not part of an existing building.

### **Paragraph 2.1(3)(b)**

Paragraph 2.1(3)(b) states that if an application for building/construction approval for a new building was submitted to the approval authority (this could be a private certifier or local government approval authority) on or after 1 May 2011, the Premises Standards apply to that building.

If an application for building/construction approval was submitted before 1 May 2011, the building does not have to comply with the Premises Standards. However, that building would continue to be vulnerable to DDA complaints.

### **Note on responsibilities at the development/planning approval stage**

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The trigger for application of the Premises Standards is the making of an application for building approval. An application for development/planning approval does not trigger the Premises Standards. While requirements vary around Australia there is often insufficient plan detail at the development application stage to determine access provisions.

However, decisions made at the development approval stage can have important consequences for effective achievement of access compliance at the building approval stage.

Many development approval authorities recognise this and will alert applicants to their responsibilities to ensure compliance with the Premises Standards at the later application for building approval stage.

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In some situations, such as where a building is being constructed by or on behalf of the Crown (see 1.4(3) above) an application for building approval might not be required. In these situations the Premises Standards apply if *construction* commenced on or after 1 May 2011.

#### **Subsection 2.1(4) - Existing buildings new work**

Subsection 2.1(4) defines the term ‘new part’ of a building. It means any extension to, or modification of, an existing building for which an application for building work approval is required and is submitted on or after 1 May 2011 to the relevant approval authority.

If the building work is carried out for or on behalf of the Crown and no application for building/construction approval is required, the Premises Standards apply if the construction work is commenced on or after 1 May 2011.

#### **Note on extent of ‘new part’**

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Compliance with the Access Code is only required for those new parts of the building that are the subject of a building application to the extent that the provisions in Part D, E and F of the Access Code apply.

The Access Code will not apply to the whole building or the whole floor that contains a new part, but simply the new work being undertaken.

For example, if a building application is made to upgrade a whole floor of a multi-storey building including toilets and other facilities on that floor the Access Code will apply to all those areas subject to the building application, such as doorways, circulation areas, accessible toilets and signage (subject to the ‘affected part’ requirements of the Premises Standards).

However, if a building application is made to upgrade just one area of a floor and no new work is being undertaken on the rest of that floor, or on the toilets on that floor, the Access Code will only apply to the actual new work being undertaken (subject to the ‘affected part’ requirements of the Premises Standards).

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#### **Note on upgrades to existing buildings where the nature of the upgrade work does not require approval**

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Some renovations and upgrades to existing buildings would not require an application for building/construction approval because the work being undertaken does not require approval, or because in some states and territories it is exempt development.

For example, a shop owner may redecorate or re-arrange their display stands or the owners of an office block may replace damaged roof tiles. In these

situations, where state and territory building regulations do not require a building/construction approval for work to be undertaken, the Premises Standards are not triggered.

Similarly improvements to a building such as painting, re-wiring or replacement of a heater are unlikely to require building approval and hence the Premises Standards would not apply in those cases.

Those responsible for the design, construction, certification and management of upgrades or renovations should check with their state/territory government to determine whether or not an application for a building/construction approval is required and what might be considered exempt development.

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### **Note on changes to existing buildings that may require building approval, but where the changes may not be considered ‘an extension to the building or a modified part of a building’**

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There may be situations where the certifying authority would need to consider whether or not an upgrade should be viewed as ‘an extension to the building or a modified part of a building’ even though a building approval may be required for fire safety or other reasons not related to access issues.

For example, in some jurisdictions a building approval may be required to replace emergency exit signage, install fire-fighting services, construct a new awning to a shop front or replace a carpet if there were fire safety issues involved.

Ordinarily such changes would not be regarded as an extension to or modification of a building sufficient to warrant the application of the Premises Standards (including the ‘affected part’ provisions) and in some cases building certifiers might be called upon to exercise some discretion on this question.

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### **Note on Change of use**

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In some states and territories a change of use of a building may trigger the need for an upgrade of some aspects of the building such as fire safety or amenities so that they are consistent with the new use, even if no new building work was proposed.

That requirement may result in the need for new building work that in turn requires an application for approval for building/construction. In such a situation the Premises Standards may be triggered in relation to the area that is the subject of the new work and in some cases an ‘affected part’ upgrade may also be triggered.

Requirements in relation to ‘change of use’ vary throughout Australia and in many states and territories the certifying authority may exercise some discretion over the degree to which requirements are applied.

Those responsible for buildings should check with their state/territory government about local conditions.

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### **Note on full upgrade of buildings**

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Some states and territories have additional regulations that would require the upgrade of the whole building if, for example, the proposed new work together with other work undertaken during the previous three years represented more than 50% of the total volume of the building.

Those responsible for buildings should check with their state/territory government to determine local conditions.

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### **Subsection 2.1(5) - Affected part**

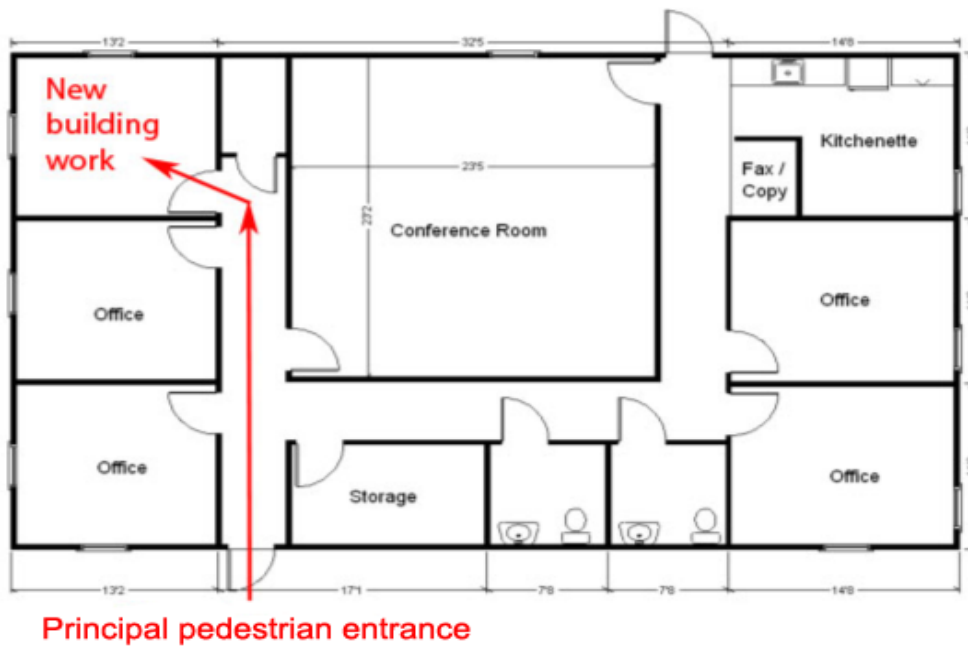
The Premises Standards introduce a new concept referred to as the ‘affected part’ of an existing building. The introduction of this defined area reflects the desire to improve general accessibility of existing buildings over time where full upgrades of a building are not taking place.

The requirement for upgrading of the ‘affected part’ of buildings recognises that there is little value in improving access in new parts of existing buildings if people with disability cannot get to those new parts.

Subsection 2.1(5) defines the term ‘affected part’ of a building.

Affected part means the path of travel between (and including) the principal pedestrian entrance of an existing building to the ‘new part’ or modified part of the building. This path of travel must provide a continuous accessible path of travel (see ‘Accessway’ as defined in A1.1 of the Access Code) from the principal pedestrian entrance to the new part or modified part of the building.

### Diagram illustrating extent of affected part



#### Note on extent of 'affected part'

The definition of 'affected part' of a building is limited to the area between (and including) the principal pedestrian entrance and the new work, but does not extend from the entrance to the allotment boundary or any required carparking spaces. It also does not extend to any toilet facilities or other rooms adjacent to the pathway between the principal pedestrian entrance and the area of the new work.

#### Note on 'affected part' and internal stairways

Subsection D2.1(5) refers to the need to provide a continuous accessible path of travel which by definition cannot contain any step or stairway. When the 'affected part' is triggered it does not require access upgrades to any step or stairway adjacent to a continuous accessible path of travel. For example, if new work in a 4-storey building triggers the application of the 'affected part' and a continuous accessible path is provided via the use of a lift there is no requirement to upgrade the stairway adjacent to the lift. Note, however, that the stairway, as an existing stairway, could be subject to ongoing DDA complaint if it did not include accessible features and as a result someone experienced discrimination.

### **Note on extent of principal pedestrian entrance**

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When constructing a new building the Premises Standards in D3.2(1)(b) requires an accessway from the main points of a pedestrian entry at the allotment boundary to a building required to be accessible.

Separate to this the Premises Standards also requires an accessway through the principal pedestrian entrance in D3.2(2).

However, where new work on an existing building triggers the ‘affected part’ upgrade a continuous accessible path of travel is only required from the principal pedestrian entrance to the area of the new work. This does not extend to the allotment boundary.

Where an access barrier, such as a step, is located at the threshold of a principal pedestrian entrance the ‘affected part’ upgrade would require the removal of the step (unless unjustifiable hardship would result).

However, in many situations a step or flight of stairs may be located some distance from the actual entrance.

For example, a building may be set back from the allotment boundary on a podium, but the steps onto the podium may be at the allotment boundary.

This raises an interpretation question about what forms the entrance to a building.

This is a matter for the certifying authority to assess in the context of individual buildings.

The critical question is whether or not a feature such as a step is part of the building as distinct to part of a pathway from the allotment boundary to the building.

For example, an existing small office block might have a 2 metre deep landing at the principal pedestrian entrance that forms part of the slab the building sits on. In this situation the certifying authority may be of the view that this constitutes part of the building and any step up onto the platform would need to be addressed as part of an ‘affected part’ upgrade.

Provisions in the Premises Standards relating to ‘affected part’ could be subject to further consideration at the first review of the Premises Standards (see Part 6 Review below)

If a certifying authority was of the view that an existing barrier was not captured by the ‘affected part’ requirements the building owner and/or operator would continue to be vulnerable to DDA complaints in relation to that barrier.

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Providing an accessible path of travel may involve, for example, upgrading the access features of the lift such as braille and tactile lift buttons, removing a step into the building at the entrance, upgrading handrails on a ramp, or a combination of these and other measures.

Toilets alongside the ‘affected part’ path of travel need not be upgraded unless they are actually included in the building approval application because they are the subject of new work.

The requirement for upgrading of the ‘affected part’ of a building is limited in some circumstances by the lessee concession in section 4.3, which is described below.

Taken together, subsection 2.1(4) and 2.1(5) mean that where an existing building (of the classes covered by the Premises Standards) is undergoing extension or modification that requires a building approval (a new part) it would be unlawful for that extension or modification to not comply with the Premises Standards. It would also be unlawful to fail to provide an accessible path of travel from the principal pedestrian entrance to the ‘new part’ of the building (subject to the lessee concession in section 4.3 or unjustifiable hardship).

The Premises Standards will not apply to any existing buildings until an application for approval of building work is submitted, except where the work is carried out for or on behalf of the Crown (and no application for building approval is required).

As the ‘new part’ and the ‘affected part’ are the only portions of an existing building within the scope of the Premises Standards, there is no requirement imposed by the Premises Standards to upgrade or modify any other parts of the building in order to comply.

### **Note on ‘affected part’ and the BCA**

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While access requirements relating to ‘affected part’ of a building are part of the Premises Standards they are not part of the new BCA. State and territory building laws and regulations are being reviewed to address the issue of ‘affected parts’ of a building to ensure consistency with the Premises Standards. Building professionals should refer to their relevant state and territory building laws and regulations for clarification.

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### **Note on responsibility of building certifiers and ‘affected part’**

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It would be unlawful under the Premises Standards to fail to address the ‘affected part’ requirements when triggered and those responsible for a building could be subject to complaint under the DDA as a result.

The authority of building certifiers to refuse to allow a project to proceed unless the ‘affected part’ is addressed is, however, limited to those states and territories that have incorporated the ‘affected part’ provisions in building law. See the ‘Note on authority of building certifiers in relation to the Premises Standards’ on page 8 of this Guideline.

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### **Subsection 2.1(6) Public transport buildings**

An ‘existing public transport building’ is defined by subsection 2.1(6) to mean a building (other than a new building) that is the passenger-use area of a Class 9b or Class 10 building used for public transport (being the whole or part of a building).

From 1 May 2011, all new public transport buildings are required to comply fully with the Access Code (Part H2).

Existing public transport buildings will be required to comply with the Access Code (Part H2) in accordance with the timetable set out in the table at section 3.1 of the Premises Standards.

The Transport Standards have been amended to remove those provisions relating to transport buildings that are covered by Part H2 of the Access Code. Some access issues relating to the use of transport buildings such as some fixtures and fittings, however, remain in the Transport Standards.

### **Note on transport buildings and ‘affected part’**

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See the section headed *New work on transport buildings not scheduled for full upgrade* under Part H2 on page 111 of this Guideline for a discussion on ‘affected part’ upgrades in transport buildings where the building is not scheduled for upgrade.

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## **2.2 Persons to whom Standards apply**

This section sets out who has responsibility for ensuring compliance with the Access Code.

Reference to a ‘person’ should be interpreted as including a company, organisation, corporation etc.

### **Subsection 2.2(1)**

Subsection 2.2(1) states that building certifiers, building developers and building managers are required to comply with the Access Code to the extent that they are responsible for, or have control over, matters in the Access Code.

People who do not have responsibility for or control over aspects of a building covered by the Access Code do not have responsibilities imposed on them by the Premises Standards.

### **Subsection 2.2(2) Building certifier**

Subsection 2.2(2) defines ‘building certifier’ as a person (or authority) who has responsibility for, or control over, the building or construction approval process for a building.

The person or organisations who may have control over the building approval process differs between states and territories. The examples of approval authorities provided in the subsection are not intended to be exhaustive. They include private certifiers, building surveyors and local councils.

### **Subsection 2.2(3) Building developer**

Subsection 2.2(3) defines ‘building developer’ as a person or organisation with responsibility for, or control over, its design or construction.

Which person or persons have responsibility or control over the design or construction of a building is to be determined on a case-by-case basis. A number of examples are provided of persons who may fall within this definition including designers, architects, property developers, builders, project managers and property lessees. However, it is possible that in some cases other people, such as access and other consultants, may have responsibilities imposed on them by subsection 2.2(3).

### **Subsection 2.2(4) Building manager**

Subsection 2.2(4) defines ‘building manager’ as a person who has responsibility for, or control over, any of the matters in the Access Code that apply to a building other than matters relating to the design or construction of the building.

This means those people who have control over a building after its construction and certification and who are responsible for ensuring the accessibility of the building is maintained and for ensuring any extensions or modifications, including the affected part upgrade, comply with access requirements. The non-exhaustive list of examples of persons who could be building managers includes: property owners, property lessees, property managers and operational staff.



## **2.3 Actions to which Standards apply**

The practical effect of section 2.3 is that the Premises Standards will apply to those buildings of the classes specified in section 2.1 and areas of buildings specified in the Access Code.

However, if the DDA, because of its limited coverage in some areas, would not have required access to be provided to particular buildings or parts of buildings the Premises Standards will not apply. This is the case, for example, in relation to the internal parts of a privately owned Class 2 sole-occupancy unit.

## **PART 3 REQUIREMENTS OF STANDARDS**

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### **3.1 Building certifiers, developers and managers to ensure buildings comply with the Access Code**

This section states the responsibility of building certifiers, developers and managers (as defined in section 2.2) to ensure that buildings they are responsible for comply with the Access Code.

#### **Subsections 3.1(2) and (3)**

Subsections 3.1(2) and (3) of the Premises Standards provide a separate scheme for the application of the Access Code to existing public transport buildings.

The need for special provision for existing public transport buildings arises from the fact that such buildings have, since 2002, been covered by the Transport Standards. In some instances the Transport Standards include different requirements to those of the Premises Standards and include a timetable by which all existing passenger areas of transport-related buildings must be upgraded.

In order to maintain consistency and ensure those responsible for transport-related buildings can continue with their existing program of upgrading, the relevant provisions found in the Transport Standards have been incorporated into the Premises Standards as Part H2 of the Access Code.

Subsection 3.1(3) provides a timetable for compliance with the requirements of the Access Code for existing public transport buildings.

For more information on the application of the Premises Standards to public transport buildings, and the responsibilities of certifiers in relation to compliance see the guidance on Part H2 of the Access Code below.

### **Note on transport related buildings and affected part**

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See also the section *New work on transport buildings not scheduled for full upgrade* on page 111 of this Guideline.

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## **3.2 Compliance with Access Code**

While section 3.1 describes relevant people's obligations to ensuring a building's compliance with the Access Code section 3.2 sets out how a building certifier or building developer can meet those obligations.

There are three methods for achieving compliance with the Performance Requirements of the Access Code, as there are for achieving compliance with the BCA.

These are (1) by using a 'Deemed-to-Satisfy' approach, or (2) by meeting the Performance Requirements by using an alternative approach, or (3) by using a combination of (1) and (2).

### **Subsection 3.2(1) Deemed-to-Satisfy**

Subsection 3.2(1) relates to the Deemed-to-Satisfy Provisions method of compliance. It states that if a building complies with the Deemed-to-Satisfy Provisions in clauses D3.1 to D3.12, E3.6, F2.2, F2.4 and, for public transport buildings, Part H2, a certifier or developer can be confident that it complies with the Performance Requirements of the Access Code.

### **Subsection 3.2(2) Alternative approach to satisfying the Access Code Performance Requirements**

Subsection 3.2(2) can be interpreted as allowing for an alternative approach to achieving compliance with the Performance Requirements of the Access Code.

This is intended to enable flexible approaches to particular building circumstances to meet access requirements. This flexibility is particularly important in relation to upgrades of existing buildings, including heritage buildings, where strict compliance with the Deemed-to-Satisfy Provisions may not be possible or appropriate.

For example, generally where a step ramp is used, there must be a landing between the top of the ramp and the door so that a person using a wheelchair or walking frame has a flat surface on which to rest while opening the door. Trying to open a door while on a slope is for most people with a mobility aid very difficult if not impossible. When renovating an existing building with limited space this Deemed-to-Satisfy Provision may prove to be very difficult to implement. An alternative approach, in some situations, might be to have

automatic opening doors, which may reduce the need for a landing before the door where it were not possible to provide a landing.

The Premises Standards do not offer any method of applying the alternative approaches allowed for in subsection 3.2(2).

The BCA, however, does. A building solution that complies with the Performance Requirements of the BCA, but not the Deemed-to-Satisfy Provisions, is known in the BCA as an Alternative Solution.

The BCA describes approaches to formulating suitable Alternative Solutions and building professionals will be experienced in assessing their appropriate application. Such an approach should be utilised when considering alternative approaches under subsection 3.2(2).

In some situations, however, a certifier or developer might seek expert advice.

In assessing alternative approaches (Alternative Solutions) certifiers and developers need to ensure the solution provides a level of access and amenity sufficient to meet the Performance Requirements of the Access Code.

This might on occasion result in different forms of access being provided or in the case, for example, of railway platforms the use of non-building solutions such as direct assistance to people getting on or off trains.

### **Note on alternative approach/Alternative Solution**

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While the Premises Standards do not specifically refer to 'Alternative Solutions', the Explanatory Statement uses this term to describe the meaning of subsection 3.2(2).

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### **Subsection 3.2(3)**

In addition Subsection 3.2(3) states that, without limiting the alternative approach referred to in 3.2(2) a building complies with the Access Code if the building as a whole provides a level of access that is not less than the level that the building would have provided if it had complied with the Deemed-to-Satisfy Provisions of the Access Code.

## **PART 4 EXCEPTIONS AND CONCESSIONS**

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### **4.1 Unjustifiable hardship**

Sections 21B and 29A of the DDA allow for an exception to the requirement to not discriminate in situations where avoiding discrimination would impose an unjustifiable hardship.

The Premises Standards were subject to rigorous consultation processes and impact assessments to ensure they could be fully implemented in the widest possible of circumstances.

The exemptions, concessions and limits built into the Premises Standards take account of the views expressed during consultation and the findings of the regulatory impact assessment.

The Premises Standards, therefore, seek to describe the minimum level of access that must be achieved to meet the requirements of the DDA without causing unjustifiable hardship.

Despite this there will, in exceptional circumstances, be some practical constraints on the extent to which compliance with the Premises Standards can be achieved. In some circumstances, it may not be possible to meet the Deemed-to-Satisfy Provisions of the Access Code, or develop an effective Alternative Solution, without causing unjustifiable hardship particularly when undertaking new work on existing buildings.

If a developer and anyone else associated with a project (including a certifier) considers that full application of the Deemed-to-Satisfy Provisions of the Access Code would result in unjustifiable hardship and that there was no suitable Alternative Solution available they could proceed with a project while not fully complying with the Access Code.

If they did proceed with a project without fully complying with the Access Code they may be subject to a DDA complaint if subsequently a person with a disability experienced discrimination as a result of the decision to proceed without full compliance.

Retaining the provision for unjustifiable hardship as an exception under Section 4.1 of the Premises Standards provides a legal means of defending such a decision if subject to a complaint.

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 ground of unjustifiable hardship. Unjustifiable hardship cannot be determined without reference to the particular facts of an individual case. It is only a court that can conclusively determine whether or not a defence of unjustifiable hardship is made out in the context of specific complaints.

The lack of an 'up-front' certification mechanism to determine that a requirement might indeed result in unjustifiable hardship means that building certifiers and building developers may be called upon to exercise professional

judgments in some situations where it is felt a specific requirement would impose an unjustifiable hardship.

Section 4.1 provides additional guidance on what factors should be considered when assessing whether or not a defence of unjustifiable hardship might be available.

These factors are intended to assist both those responsible for buildings when considering the likelihood of success of a claim of unjustifiable hardship and courts in determining such claims.

In considering the view of a developer that full application of the Premises Standards might involve an unjustifiable hardship, a building certifier is not making a formal legal determination on the issue, but exercising a professional judgment on the likelihood of such a defence being successful.

**Subsection 4.1(1)**

Subsection 4.1(1) states that a failure to comply with the Premises Standards would not be unlawful if compliance would result in unjustifiable hardship.

**Subsection 4.1(2)**

Subsection 4.1(2), however, states that compliance with the Premises Standards is still required to the maximum extent not involving unjustifiable hardship. The Performance Requirements of the Access Code must be complied with to the maximum extent possible.

For example, while enlarging a lift shaft might be considered to involve unjustifiable hardship, it may be possible to improve access by upgrading the lift controls and providing announcements in lifts.

**Subsection 4.1(3)**

Subsection 4.1(3) of the Premises Standards requires that when assessing questions relating to unjustifiable hardship all relevant facts must be taken into consideration. This subsection proposes 16 factors that are relevant to questions of unjustifiable hardship.

The list of factors provided in paragraphs 4.1(3)(a)–(p) is not meant to be exhaustive and no individual factor is intended to be conclusive of unjustifiable hardship in a particular case.

The factors include:

- increases in costs or loss of revenue likely to result from compliance (paragraph (a))

- decreases in costs and increases in revenue likely to result from compliance (paragraph (b))
- the extent to which construction has been or will be financed by government funds (paragraph (c))
- the extent to which the building is used for public purposes and has a community function (paragraph (d))
- the financial position of the person required to comply (paragraph (e))
- the effect that compliance is likely to have on the financial viability of that person (paragraph (f))
- any exceptional technical factors (paragraph (g))
- resources available to the person required to comply (paragraph (h))
- whether the cost of alterations to make the premises accessible is disproportionate to the value of the building, taking into account the improved value that would result from the alterations (paragraph (i))
- benefits that would accrue from compliance to people with disability and other building users, and detriments that would result from non-compliance (paragraph (j))
- the detriment likely to be suffered as a result of compliance by the building certifier, developer or manager, or by people with disability and other building users (paragraph (k))
- the effect of compliance on the heritage significance of the building (paragraph (l)) (see **Heritage significance** below)
- evidence of efforts made in good faith by a person to comply with the Premises Standards, including consulting access consultants and building certifiers (paragraph (m))
- the terms of any action plan that a person may have given to the Australian Human Rights Commission, and any evidence about its implementation (paragraph (n)) (see **Action plans/Building upgrade plans** below)
- the nature and results of any consultation about means of achieving compliance with the requirement (paragraph (o)) (see **Consultation** below) and
- any decisions of a state or territory body established to make recommendations to building authorities about access matters (paragraph (p)) (see **Decisions by state and territory bodies** below)

Taken together these 16 factors make it clear that the cost and technical difficulty of providing access are not the sole determining factors in a claim of unjustifiable hardship.

Unjustifiable hardship must be assessed in the wider context of benefits and detriments to all parties concerned, including any benefits that might be achieved from the provision of improved access (such as increases in sales revenue from people with disability or increased rental income), the detriment that may be experienced by people with disability if access is not provided, benefits to the community as a whole from improved access, and whether public funding is being used for the building project.

This approach is consistent with case law under the DDA that demonstrates that it is not enough for the purposes of the DDA to demonstrate hardship; hardship must be unjustifiable in order to be an effective defence.

### **Heritage significance**

The fact that a building might have a heritage listing is not in itself sufficient to justify a claim that providing access might result in unjustifiable hardship.

Paragraph 4.1(3)(l), however, proposes that one factor that may be relevant to an assessment of a claim of unjustifiable hardship is evidence that compliance would detrimentally affect heritage features of the building that are 'essential' to the heritage significance of the building.

The intention of this provision is to recognise that an unjustifiable hardship defence may be valid where compliance would substantially detract from the heritage significance of the building by modifying or destroying features of 'essential' heritage significance to the building.

However, the fact that compliance will detrimentally affect elements of the building that are 'merely incidental' to the heritage significance of the building is unlikely to validate a defence of unjustifiable hardship.

Assessment of unjustifiable hardship in relation to heritage buildings will in part turn on the reasons for the heritage significance of the building.

If the building's heritage significance relates primarily to the architectural features of the building (for example, because of a particularly unusual style, or because it is an exemplar of a particular historical style), it is more likely that modification of building elements that are crucial to that architectural style will affect the heritage significance of the building as a whole.

If, however, the heritage significance of the building relates to the historical circumstances surrounding the building (such as an important historical event which occurred at the building, or the residence of a significant historical figure in the building), it is less likely that modification of building features to provide access will detrimentally affect the heritage significance of the building.

Acceptance of an argument that a particular requirement of the Premises Standards would result in unjustifiable hardship because of the heritage features of a building would be unlikely to excuse the provision of no access features at all.

Access will still be required to the maximum extent possible without giving rise to unjustifiable hardship. For example, while modifying the principal entrance to a building might detrimentally affect an essential heritage feature of a building, (and thus arguably result in unjustifiable hardship) providing entry through another part of the building is likely to be required.

When heritage questions arise expert opinion should be sought and careful consideration should be given to identifying suitable Alternative Solutions before considering a defence based on unjustifiable hardship.

Inevitably questions relating to 'essential' heritage features will need to be discussed and resolved with relevant heritage bodies.

The development of a comprehensive heritage significance statement would assist to identify individual elements and 'grade' their significance to ascertain which could be more easily altered to facilitate access.

The Heritage Council of Victoria produced a useful Technical Leaflet in 2008 on access to heritage places in which a process for improving access is outlined as described below:

The recommended process for developing and implementing a scheme for improving access to a heritage place is as follows:

1. Review the significance of the heritage building or place, identify the elements of significance and have a suitably qualified heritage consultant prepare or update a conservation management plan (CMP). CMPs should define policies to assist in resolving how access can be achieved and allow design solutions that meet the legislative requirements while retaining heritage significance.
2. Undertake an access audit, using an access consultant if necessary, to determine the place's existing and required level of accessibility. Not only to the principal pedestrian entry and other parts of the building, but also to services offered and to information provided.
3. Develop accessibility options using an architect with experience of working with heritage places and testing these against the CMP or statement of significance. The option that maximises access but has the minimum impact on heritage significance should generally be selected.



4. Establish a policy on access and heritage and prepare an action plan. The final strategy to overcoming access issues in heritage places may involve BCA performance-based responses, called Alternative Solutions, rather than using the prescriptive BCA Deemed-to-Satisfy Provisions or management responses such as providing awareness training.
5. Obtain appropriate heritage, planning and building permits prior to implementing the action plan.

See *Access for all in heritage buildings* (2008, download only) available at <http://www.dpcd.vic.gov.au/heritage/publications-and-research/technical-information>

Additional useful guidance is available at <http://www.environment.gov.au/heritage/ahc/publications/commission/books/access-heritage-buildings.html>

### **Action plans/Building upgrade plans**

Part 3 of the DDA states that a person or organisation may prepare and implement an action plan (DDA sections 59 and 60). Action plans are required, under section 61 of the DDA, to address a number of matters, including:

- the devising of policies and programs to achieve the objects of the DDA
- communication of these policies and programs
- review of practices to allow the identification of discriminatory practices
- setting of goals and targets against which the success of the plan may be assessed
- other means for evaluating policies and programs set out in the action plan, and
- the appointment of persons to implement the provisions of the action plan.

Under section 11 of the DDA, an action plan complying with these requirements may be given to the Australian Human Rights Commission and considered as one of the factors in the assessment of unjustifiable hardship claims.

Paragraph 4.1(3)(n) of the Premises Standards ensures that action plans will also be relevant to assessing unjustifiable hardship for the purposes of the Premises Standards.

An action plan may take the form of a 'Building upgrade plan' that puts forward a plan of action for addressing access issues over a period of time where immediate compliance might affect broader upgrade plans or cause unjustifiable hardship.

For example, a developer might be undertaking some minor upgrade work on a building such as replacing a single loadbearing wall which would require building approval. Such an application would trigger the application of the Premises Standards to the 'affected part' of the building. The developer might consider putting forward a 'Building upgrade plan' (action plan) proposing a phased implementation of access requirements or a delayed implementation until a major upgrade due to take place in the near future.

A court, if dealing with a complaint in relation to the Premises Standards would consider such a plan in looking at the question of unjustifiable hardship.

A building certifier might also consider such a written plan when assessing an application for building approval or occupancy where specific circumstances might mean that immediate compliance was not possible or reasonable.

Those states and territories that have established Access Panels or similar (see 'Decisions by state and territory bodies' below) and adopted the factors listed in subsection 4.1(3) would also consider any Building Upgrade Plan (action plan) in their deliberations.

### **Consultation**

Paragraph 4.1(3)(o) states that the outcomes of consultation between building certifiers, developers and managers and people with disability are also relevant to an assessment of unjustifiable hardship. It is intended that the consultation should be directed at identification of practical means of achieving full compliance with the Premises Standards, or, where that is not practicable, other means of achieving the maximum possible access for people with disability.

### **Decisions by state and territory bodies**

Paragraph 4.1(3)(p) states that any decision of a state or territory body established to make recommendations to building approval authorities about building access matters is a relevant consideration in assessing a claim of unjustifiable hardship.

This paragraph is intended to provide a mechanism for the recognition of the views of specialist Access Panels or similar bodies established in states and territories to advise or make recommendations about 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 inclusion of this paragraph is to add weight to such decisions made in relation to building law in the event of a subsequent complaint under the Premises Standards or DDA.

Access Panels or similar bodies are not making legally binding decisions about whether a defence of unjustifiable hardship is valid in relation to the full application of the Premises Standards. That is a determination to be made under the Premises Standards or DDA by a court.

Access Panels, or similar bodies, are providing advice or making recommendations about whether the full application of the Premises Standards would likely result in unjustifiable hardship.

Before considering appeals in relation to possible unjustifiable hardship careful consideration should be given to whether or not there are relevant concessions or exceptions available and whether or not suitable Alternative Solutions might be developed to meet the Performance Requirements of the Access Code.

It is intended that Access Panels, or similar bodies will use the factors identified under subsection 4.1(3) in their deliberations.

People considering applying to Access Panels or similar are advised to address all the factors to determine if they apply to a proposed unjustifiable hardship application.

If these factors are carefully considered and applied by that state or territory Access Panel or similar body, a court, when dealing with a complaint involving a proposed defence of unjustifiable hardship in relation to non-compliance with the Premises Standards would have to give greater weight to that advice or recommendation.

Certifiers and developers would have greater confidence to proceed with a project with the assistance of Access Panels (or similar) and because of paragraph 4.1(3)(p) they would also have greater confidence that decisions to exempt full compliance with the Premises Standards could be justified in the event of a future complaint.

State and territory administrations are not required to establish such Access Panels, however, the Commonwealth has encouraged the states and territories to do so and issued guidance on their composition and operation to facilitate uniform implementation.

### **Note on BCA compliance and ‘unjustifiable hardship’**

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Due to the fact that the BCA requires the same levels of access as the Access Code, there will also be situations where full application of the BCA would arguably be too onerous and equally impose an ‘unjustifiable hardship’.

If a certifying authority decides to proceed with or without the advice or recommendation of an Access Panel or similar body and allow a development to proceed without full compliance with the Premises Standards the certifying authority would then need to consider how they would deal with the corresponding non-compliance with the equivalent provisions in the BCA.

Because the BCA is an ‘up-front’ approval process, certifiers will be required to certify that a building fully complies with the Performance Requirements of the BCA through either meeting the Deemed-to-Satisfy Provisions or formulating an Alternative Solution.

There is no general exception in the BCA to allow for different levels of access on the basis that full compliance would impose ‘unjustifiable hardship’.

Objective DO1 of the BCA, however, recognises that in exceptional situations full application of the BCA might be unreasonable. The BCA Guide states:

**As far as is reasonable**

There may be occasions when the application of a rule is ‘unreasonable’. Use of the phrase ‘as far as is reasonable’ indicates that the BCA provisions are not absolute. This is consistent with the intent of the DDA. (BCA DO1)

Some, but not all, states and territories have formal mechanisms in place that allow for appeals to vary or limit the full application of the BCA in exceptional situations and certifiers should refer to their local building laws and regulations to clarify processes.<sup>7</sup>

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<sup>7</sup> For example, in NSW a certifying authority must under clause 187 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) seek the approval (concurrence) of the Director-General of the Department of Planning and Infrastructure to proceed with issuing a construction certificate for a proposal that involves non-compliance with a specified provision of the BCA.

A certifying authority may apply to the Access Advisory Committee, established by the NSW Building Professionals Board, for its advice as to whether compliance with the Premises Standards would, in the particular circumstances of a proposed development, involve unjustifiable hardship.

Where the Committee makes a recommendation that unjustifiable hardship has been made out, under delegation from the Director-General the Committee may give its concurrence to the relevant requirements of the BCA (i.e. those BCA requirements which correspond to the requirements of the Access Code which are objected to) not having to be complied with when assessing the construction certificate.

(Amendments to the EP&A Regulation are being sought to extend these provisions to complying development certificates and to make the referral of applications involving unjustifiable hardship to a committee such as the Access Advisory Committee a mandatory requirement).

### **Note on Access Panels or similar bodies**

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Most states and territories have established or are well on the way to establishing Access Panels or similar. Developers and building professionals are advised to contact their own state/territory building administrations to find out more.

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### **Note on Access Panels and Alternative Solutions**

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Some Access Panels or similar bodies may also provide advice on questions of whether or not a proposed Alternative Solution meets the Performance Requirements of the Premises Standards and BCA. In any event, decisions about Alternative Solutions should be fully documented.

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### **Subsection 4.1(4) - Additional factors which must be considered where a substantial issue of unjustifiable hardship is raised**

If, after assessment of the factors in paragraphs 4.1(3)(a) to (p), a substantial issue of unjustifiable hardship has been raised, subsection 4.1(4) provides additional factors that must be considered in assessing whether unjustifiable hardship might exist.

These are:

- the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with the Premises Standards, and
- any measures undertaken, or to be undertaken by, or on behalf of, or in association with, a person or organisation to ensure substantially equal access.

This provision emphasises that the purpose of the Premises Standards is to provide the best possible level of access to people with disability without imposing unjustifiable hardship. The factors are relevant both to the determination of whether unjustifiable hardship exists, and in determining what compliance would nevertheless be required by subsection 4.1(2) in the event of such a finding. Measures that would, for example, provide some level of accessibility, but which do not require structural adjustment of premises may be considered and utilised under this provision.

The subsection emphasises that consideration of the greatest possible provision of access is an integral part of assessing whether compliance with the requirements of the Access Code would impose unjustifiable hardship.

### **Subsection 4.1(5)**

Subsection 4.1(5) states that the unjustifiable hardship provision in section 4.1 must be interpreted and applied in a manner which is consistent with the scope and objects of the DDA and in particular the object of removing discrimination as far as possible. Interpretation must also take account of the rights and interests of all relevant parties.

### **4.2 Acts done under statutory authority etc**

Section 4.2 preserves the general exemption under the DDA in relation to anything done in direct compliance with, for example, an order of a court or another law that has been prescribed under the DDA.

### **4.3 Lessees**

Where an existing building is modified or extended in a way that triggers the requirement for a building approval, the Premises Standards will generally require an upgrade of the 'affected part' of the building. This will entail the provision of a continuous accessible path of travel between the principal pedestrian entrance and the new part of the building (see section 2.1).

Section 4.3 provides a limited concession from this requirement. Where a building is occupied by a number of lessees, ie, by 2 or more lessees, and an application for approval of building work is made by one of the lessees for work on the area of the building that they lease, there is no requirement on the lessee or any other person to provide a continuous accessible path of travel to the area of new work which the person leases.

For example, if one of a number of lessees to a building applies for an approval for an extension to, or modification of, an area on the sixth level of an existing multi-storey building, and this approval triggers the application of the Premises Standards, then the lessee would only be required to make the building work that is the subject of the building application comply with the relevant parts of the Premises Standards. That is, the lessee would not need to provide an accessible path of travel from the entrance to the building to the sixth floor (the affected part).

If the application for the extension or modification of the sixth floor included an application to renovate the toilets within the leased area, the lessee would be required to upgrade those toilets to meet the Premises Standards requirements (subject to any other concession which might apply to existing accessible toilets under section 4.5 below).

This concession recognises that the lessee generally has no control over those parts of a building that they do not lease, such as the common areas of a building.

### **Note on situation where entry to leased area does not involve use of any common area**

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In some situations a lessee may, for example, lease an area of a building such as a retail shop on the ground floor where entry to the shop is directly off the street frontage.

In this situation entry to the shop does not involve use of any common areas. Nonetheless section 4.3 would not require an upgrade of the ‘affected part’ if the lessee were one of a number of lessees in the building even if they were the sole occupants of that part of the building.

This is because the current wording of section 4.3 provides a concession to one of a number of lessees in a ‘building’ and not a part of a building.

For example, if a building contained multiple lessees of ground floor shops with each having their own separate entrance each of the entrances would be considered to be the principal entrance. If one of the lessees were undertaking new work at the back of their shop any access related issues in that new work would be required to comply with the Premises Standards, but there would be no requirement to address the ‘affected part’ even if there was a step at the front of their shop and the lessee had control over all the area leased.

However, in this example the lessee would continue to be vulnerable to a potential discrimination complaint because of the step.

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### **Note on sub-lessees**

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Sometimes a building may be leased out to one person or organisation who in turn sub-leases parts of the building.

In this situation the building is considered to have a number of lessees and an application for building approval to undertake new work by one of the lessees would not trigger the ‘affected part’.

However, the lessees (and owner) would continue to be vulnerable to a potential discrimination complaint arising from any access barrier.

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If the building application extends beyond the area of the building leased by the applicant, the concession will not apply to the path of travel to those areas.

Where this concession applies there would be no requirement to upgrade existing paths or stairways leading to the area of new work unless those paths or stairways themselves were included in the new work building application.

The concession will not apply if the building is leased to only one person or entity or if the application for building approval is made by the owner of the building.

The lessee concession is a matter that has been identified for consideration at the first review of the Premises Standards (see Part 6 Review below).

#### **4.4 Lift concession**

Section 4.4 provides a concession from the requirements of Table E3.6(b) of the Access Code in relation to lift dimensions for existing lifts.

Where an existing lift travels more than 12 metres and has a lift floor of not less than 1100 mm by 1400 mm, i.e., if it complies with access requirements imposed by the BCA prior to the commencement of the Premises Standards, it does not have to meet the usual Access Code requirements.

The Premises Standards would otherwise require the floor space of a lift that travels more than 12 metres to be a minimum of 1400 mm by 1600 mm.

This concession recognises that the earlier access requirements for lifts under the BCA only required floor dimensions of 1100 mm by 1400 mm and that rebuilding a lift shaft to house the larger lift floor dimensions could impose an unreasonable cost.

Other access features on a lift undergoing upgrade required by Table E3.6(b), such as requirements for accessible lift controls and provision of audible information are not affected by this concession and must be provided.

It is intended that this concession will be reflected in building law through changes to state and territory building legislation or regulation. Some states and territories have now achieved this and building professionals should refer to their relevant state and territory building laws and regulations for clarification.

#### **4.5 Toilet concession**

Section 4.5 provides a concession for existing accessible sanitary compartments or existing sanitary compartments suitable for use by people with ambulant disabilities that are included in an application for new building work approval and as a result trigger the Premises Standards. The concession states that certain existing accessible sanitary compartments or existing sanitary



compartments suitable for use by people with ambulant disabilities do not have to comply with AS 1428.1–2009 as generally required by the Access Code.

The concession, however, is available only where an existing sanitary compartment or existing sanitary compartments suitable for use by people with ambulant disabilities complies with the circulation and fitout requirements of AS 1428.1–2001. If an existing accessible sanitary compartment triggers a requirement for upgrading because it is subject to new work and it does not even meet the requirements of AS1428.1–2001, it would be required to upgrade to meet the requirements of AS 1428.1–2009 subject to the defence of unjustifiable hardship.

So, for example, if an existing toilet undergoing new work met the circulation space requirements of AS1428.1-2001 but did not have AS1428.1-2001 compliant grabrails there would be a requirement to upgrade the grabrails to meet the AS1428.1-2009 requirements.

However, if the only way to meet the AS 1428.1-2009 fitout requirements were to extend the size of the compartment this would be inconsistent with the concession, in which case consideration might be given to proposing an Alternative Solution that allows for the concession to be applied.

This concession recognises that the significant cost of upgrading the circulation space in existing sanitary facilities would not be justified where those facilities meet previous accessibility requirements.

It is intended that this concession will be reflected in building law through changes to state and territory building legislation or regulation. Some states and territories have now achieved this and building professionals should refer to their relevant state and territory building laws and regulations for clarification.

### **Note on effect of upgrade on the provision of ambulant accessible toilets**

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Where an existing accessible toilet is required to be upgraded to comply with AS 1428.1-2009 this would not trigger the need for an upgrade of the other male and female toilets at the bank to provide for ambulant accessible toilets unless those other toilets were the subject of new work.

There is, however, nothing to stop any developer from providing ambulant accessible toilets at the time of upgrade to the accessible toilet.

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## **PART 5 COMMISSION EXEMPTIONS**

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Part 5 provides a mechanism and describes the process for the Australian Human Rights Commission to grant temporary exemptions from some requirements of the Access Code but *only* in relation to the passenger use areas of public transport buildings covered by Part H2.

The Commission cannot grant temporary exemptions in relation to the requirements of the Access Code for buildings other than for passenger use areas of public transport buildings.

This substantially replicates the provisions in relation to transport infrastructure in the Transport Standards.

For more information on the Commission's temporary exemption powers, see [www.humanrights.gov.au/disability\\_rights/exemptions/exemptions.html](http://www.humanrights.gov.au/disability_rights/exemptions/exemptions.html)

## **PART 6 REVIEW**

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Subsections 6.1(1) and (2) provide a timetable for review of the Premises Standards.

The section requires that the Minister for Innovation, Industry, Science and Research, in consultation with the Attorney-General, must commence a review of the effectiveness of the Premises Standards within four years of their commencement.

The review must be completed within five years of the commencement of the Premises Standards and subsequent reviews must be conducted every five years after the conclusion of the previous review.

Subsection 6.1(3) states that the review must include the identification of any necessary amendments to the Premises Standards.

The review could be expected to cover a wide range of issues relating to the implementation of the Premises Standards, including matters such as:

- the scope of the Premises Standards including the inclusion of any classes or subsets of classes of buildings
- the operation of the small building exemption provided by clause D3.3(f)
- the effect of the lessee concession provided by section 4.3 on upgrades of common areas in buildings containing multiple lessees

- the application of the exemptions in clause D3.4 and their effect on building access
- the adequacy of dimensions required by the Premises Standards
- the necessity of practices such as the locking off of lifts
- the adequacy of provisions for accessible toilets
- the application of the Premises Standards to swimming pools
- the adequacy of provisions for accessible car parking
- whether further provisions for way finding could be incorporated in the Premises Standards
- whether any additional provisions in relation to emergency egress could be included in the Premises Standards
- the application of the Premises Standards to public transport buildings, and
- the scope or nature of the disabilities to be addressed by the Premises Standards.

Given the timeframe for the design and construction of new buildings it is likely that the first review will take place when only a relatively small number of buildings have been completed under the Premises Standards.

This will provide an opportunity for an early assessment of its implementation and an opportunity to improve its effectiveness and address interpretation questions that have arisen.

Building professionals and community organisations concerned about public building access are encouraged to note their experiences in applying the Premises Standards in order to contribute to this review.

## Section C – Schedule 1: Access Code for Buildings

The Access Code contains a number of Performance Requirements and Deemed-to-Satisfy Provisions as well as reference to Australian Standards or particular parts of them.

The Performance Requirements are satisfied by compliance with the Deemed-to-Satisfy Provisions, by the development of a suitable alternative approach (Alternative Solution) or by a combination of both.

Those familiar with the BCA will note that while there may be some minor differences in section and clause numbering, the Access Code is structured and written in the same style as the access provisions in the BCA<sup>8</sup>. This is so that the provisions of the Access Code can be very substantially replicated in the BCA in order to achieve consistency between the two documents.

The guidance information below will be supplemented as experience in applying the Premises Standards and Access Code develops.

Please ensure you have access to the latest version of this Guideline at [http://www.humanrights.gov.au/disability\\_rights/standards/PSguide.html](http://www.humanrights.gov.au/disability_rights/standards/PSguide.html)

Throughout this section, the numbering system corresponds with that of the Access Code.

### PART A1 INTERPRETATION

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#### Clause A1.1 Definitions

This clause defines the meaning of key words and expressions used in the Access Code. Words and expressions defined in A1.1 are shown in italics when used in the Access Code, to indicate that the defined term applies.

#### Clause A1.2 Language

This clause states that when the Access Code refers to a building, that reference is to either the whole or any part of the building, as the case may be.

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<sup>8</sup> The minor differences do not reflect a difference in requirements, but are necessary because the BCA includes a number of cross-references not specifically related to access issues.

## **PART A2 ADOPTION OF STANDARDS ETC**

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### **Clause A2.1 Adoption of Standards and other references**

This clause specifies the elements of a document that are not included when the document is referenced in the Access Code.

Contractual matters or provisions defining responsibilities of various parties including manufacturers, suppliers, purchasers, tradespersons, engineers and architects, are excluded amongst others.

This clause also excludes certain other matters in Australian Standards or other documents that are not appropriate for adoption in the Access Code if referenced in a Deemed-to-Satisfy Provision, namely requirements relating to required approvals, and rules relating to discretions and arrangements between manufacturers and purchasers.

### **Clause A2.2 Referenced Standards etc**

The Premises Standards must, by law, list specific editions of Australian Standards that are referenced as Deemed-to-Satisfy Provisions.

This clause specifies that the editions or versions of referenced Australian Standards adopted by the Access Code are those identified in Clause A3.1.

Earlier or later editions of these Australian Standards have no legal standing as satisfying Deemed-to-Satisfy Provisions compliance with the Access Code.

However, this does *not* prevent a building developer from complying with a newer Australian Standard or other set of technical specifications if to do so would satisfy the Performance Requirements of the Access Code as suitable alternative approaches (Alternative Solutions).

#### **Note on amended Australian Standards**

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AS 1428.1 – 2009 and AS/NZS 1428.4.1–2009 were amended in 2010 prior to the Premises Standards commencing on 1 May. These amendments are therefore considered to be captured by reference to the 2009 editions.

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#### **Note on having access to referenced Australian Standards**

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If building professionals are proposing to meet the requirements of the Access Code using a Deemed-to-Satisfy building solution it is important they have access to the referenced editions of the relevant Australian Standards.

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### **Clause A2.3 Differences between referenced documents and the Access Code**

This clause clarifies that the provisions of the Access Code take precedence over any referenced document. This provision is necessary to resolve any differences that may exist between the Access Code and the documents it references.

### **Clause A2.4 Fire safety**

This clause refers the reader to the BCA fire safety provisions relating to the construction of buildings.

While work continues on identifying suitable and effective Deemed-to-Satisfy building solutions to ensure equitable egress for people with disability, at this stage compliance with the BCA provisions relating to fire safety also ensures compliance with the Premises Standards requirement.

## **PART A3 ACCESS CODE – DOCUMENTS ADOPTED BY REFERENCE**

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### **Clause A3.1 Documents adopted by reference**

This clause lists the specific edition of each document adopted by the Access Code, including any amendments considered appropriate.

Clause A3.1 lists multiple editions of some referenced documents. For example, both the 2001 and 2009 editions of AS 1428.1 are listed.

This occurs as a result of transferring the existing premises provisions contained in the Transport Standards to the Premises Standards in Part H2.

The Transport Standards were developed almost 10 years ago and included references to the most recent editions of Australian Standards at that time including AS 1428.1–2001 and AS 1428.2–1992.

These references are retained for the purposes of Part H2 dealing with passenger-use areas of public transport buildings. More generally, the Access Code references more recent editions of Australian Standards including AS 1428.1–2009 and AS/NZS 1428.4.1–2009.

Certifiers and developers need to take particular note of which edition is referenced in the Deemed-to-Satisfy Provision. This information is clearly stated in the final column of Table 1 in A3.1.

### **Note on Australian Standards**

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The copyright of Australian Standards is not owned by the Australian Government. This Guideline does not therefore replicate the detailed technical

content of the Australian Standards and readers will need to make their own arrangements to obtain copies of them: <http://infostore.saiglobal.com/store/>

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## PART A4 BUILDING CLASSIFICATIONS

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### Clause A4.1 Classifications

The purpose for which a building is designed, constructed or adapted for use determines its classification. This clause sets out the definitions of each of the ten classes of building in exactly the same form as used for the BCA.

The Access Code contains different requirements depending on the classification of a building. The classification of a building, therefore, assists those responsible for buildings to identify what level of access is required of the building being constructed or modified.

#### **Note on specified Class 1b buildings**

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While the classification of Class 1b buildings provides a general definition of this type of building, the Premises Standards only apply to *specified Class 1b buildings* (see Section 1.4 of the Premises Standards for the definition of *specified Class 1b buildings*).

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**Multiple classifications:** It is possible for a single building to have parts with different classifications, such as a theatre (Class 9b) with a number of retail shops (Class 6) on the road frontage. A part of a building can also have more than one classification, such as a hotel (Class 6) used as a nightclub (Class 9b).

Where a part of a building has more than one classification and there is a difference in the levels of access required for those classifications, the more stringent requirement should be applied as is the case currently under the BCA.

## PART D ACCESS AND EGRESS

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Part D of the Access Code sets out the general Performance Requirements and Deemed-to-Satisfy Provisions relating to the provision of access to buildings, safe egress from buildings, carparking and inbuilt communication systems.

The Premises Standards only require compliance with Performance Requirements for the classes of buildings, and parts of buildings, which are within the scope of the Premises Standards as specified in section 2.1 above.

Examples of buildings that are not within the scope of the Premises Standards include residences (Class 1a) and residences attached to a commercial building (Class 4), bed and breakfast or holiday cabin type buildings (Class 1b) other than '*specified Class 1b buildings*', the internal parts of sole-occupancy units in apartment blocks (Class 2), and non-habitable buildings (Class 10) associated with residences (Class 1a).

### **Performance Requirement DP1**

This Performance Requirement establishes the performance to be met in providing access to and within a building.

Compliance with DP1 'to the degree necessary' is achieved by:

- a) complying with the clauses identified in clause D3.0 (Deemed-to-Satisfy Provisions)
- b) developing a suitable alternative approach (Alternative Solution), or
- c) a combination of a) and b)

### **Performance Requirement DP4**

This Performance Requirement establishes the performance to be met in providing egress from a building. Compliance with DP4 is achieved by:

- a) complying with the clauses identified in clause D3.0 (Deemed-to-Satisfy Provisions)
- b) developing a suitable alternative approach (Alternative Solution), or
- c) a combination of a) and b).

### **Note on egress**

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Clause D3.0 does not contain any specific Deemed-to-Satisfy requirements relating to egress for people with disability. While work continues on identifying suitable and effective Deemed-to-Satisfy building solutions to ensure equitable egress for people with disability at this stage compliance with the relevant BCA egress provisions also ensures compliance with the Premises Standards requirement.

In February 2013 the ABCB provided the following information on their work in the area of emergency egress:

The ABCB has an established Emergency Egress for All Occupants project to ensure that safe, equitable and dignified egress from a building is available to all occupants in an emergency, to compliment the increase in access to buildings resulting from the commencement of the Premises Standards. As a first phase of this project, amendments to existing Deemed-to-Satisfy (D-t-S) requirements have been included in BCA 2013 which is adopted nationally as of May 1 this year in the areas of:



- Door Handles in the path of travel to an exit
- Braille and Tactile Signage
- Thresholds
- Handrails
- Inclusion of Performance Requirement DP7

The inclusion of DP7 will allow consideration to be given to a building design which includes the use of lifts in evacuation through an Alternative Solution. The ABCB is also in the process of finalising a non-mandatory handbook which will provide guidance on issues that must be considered in the design and approval of suitably designed lifts.

A number of additional proposed amendments to D-t-S Provisions are also under consideration, which are likely to have impacts which require further analysis. Due to the complexity and scope of the proposals, there is a need for early engagement with affected stakeholders and the ABCB intend to facilitate this through the release of an ABCB Directions Report. The report will:

- Provide background and inform stakeholders of progress to date
- Outline amendments under consideration and examine the need for further impact analysis
- Outline timeframes and proposed details for incremental amendments
- Highlight opportunities for stakeholders to provide feedback.

It is intended that the Handbook and Directions Report will be freely available from [www.abcb.gov.au](http://www.abcb.gov.au) in 2013.

In the meantime those responsible for buildings are encouraged to develop policies and procedures for emergency egress including, for example, Personal Emergency Egress Plans (PEEPS) for occupants with disability. A web search will provide examples of PEEPS.

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### **Performance Requirement DP6**

This Performance Requirement establishes the performance to be met in providing access to exits within a building. See comments on clause A2.4 of the Premises Standards above.

The Performance Requirement does not apply to bed and breakfast facilities (Class 1b) or non-habitable buildings (Class 10), or to the internal parts of a sole-occupancy unit in an apartment block (Class 3). It should also be noted that the Premises Standards do not apply to sole-occupancy units in a Class 2 building (see paragraph 2.1(2)(a) of the Premises Standards).

### **Performance Requirement DP8**

If carparking is provided in or around a building and the carpark is associated with that building, accessible carparking spaces must be provided (other than in

relation to Class 2 buildings). These spaces are required to be larger than a conventional space. This facilitates a person transferring from a vehicle to their wheelchair or other mobility aid or disembarking in their wheelchair.

This Performance Requirement establishes the performance to be met in providing carparking spaces for use by people with disability. Compliance with DP8 is achieved by:

- a) complying with the clauses identified in clause D3.0 (Deemed-to-Satisfy Provisions)
- b) developing a suitable alternative approach (Alternative Solution), or
- c) a combination of a) and b).

The Performance Requirement does not apply to a building where a parking service is provided, such as valet parking where direct access to carparking spaces by the general public or occupants is not available.

### **Performance Requirement DP9**

This Performance Requirement establishes the performance to be met in providing communication systems suitable for occupants who are Deaf or who have a hearing impairment. Compliance with DP9 is achieved by:

- a) complying with the clauses identified in clause D3.0 (Deemed-to-Satisfy Provisions)
- b) developing a suitable alternative approach (Alternative Solution), or
- c) a combination of a) and b).

This requirement is not intended to apply to equipment such as televisions or music systems that are provided for occupant's, but which are not associated with the specific functioning of the building or a space within a building such as a lecture theatre or the delivery of services or entertainment.

The Performance Requirement does not apply to an inbuilt communication system that is only used for emergency warning purposes.

### **Note DP2, DP3, DP5 and DP7**

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These Performance Requirements have general application to all buildings and are addressed in the BCA as mandatory requirements.

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## **PART D3 ACCESS FOR PEOPLE WITH A DISABILITY**

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This Part provides information to allow those responsible for buildings to meet the Performance Requirements of the Premises Standards by complying with the Deemed-to-Satisfy Provisions of the Access Code.

### **Note on professional judgment and discretion**

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Every effort was made in the development of the Premises Standards to provide clear 'deemed-to-satisfy' building solutions for building professionals to apply. However, the Premises Standards, like the BCA, include a number of provisions that require case-by-case assessment of their application. For example, in the application of D3.4 Exemptions; determining which is a principal pedestrian entrance; identifying what constitutes a bank of toilets or how to interpret specific provisions in referenced Australian Standards.

Building professionals, and in particular building certifiers, are experienced in exercising that judgment and must continue to do so in some situations. In recognition of this the update of this Guideline has avoided being too prescriptive where professional judgement is called for.

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### **Clause D3.0 Deemed-to-satisfy Provisions**

This clause links the Performance Requirements and the Deemed-to-satisfy Provisions. It clarifies that Performance Requirements DP1, DP4, DP6, DP8 and DP9 will be satisfied in relation to accessibility if compliance is achieved with clauses D3.1–D3.12, and Part H2 in relation to public transport buildings.

### **Clause D3.1 General building access requirements**

In general terms the object of the Premises Standards is to ensure that relevant parts of a building and associated buildings are connected by accessways suitable for use by people with disability in a dignified and equitable manner.

Section 1.3 of the Premises Standards also states that the access provided should be cost effective and reasonably achievable. Limits to the extent of access required depend on the classification of the building.

This clause sets out these requirements in Table D3.1 and stipulates that the requirements of the table must be complied with unless exempted by Clause 3.4 (or in exceptional circumstances a defence of unjustifiable hardship was relevant).

The level of access to be provided is detailed in D3.2 to D3.12 where relevant.

### Table D3.1 Requirements for access for people with disability

Table D3.1 provides most of the detail of the extent of access of buildings depending on their classification, but it must be read in conjunction with Clause D3.4, which provides exemptions to the requirement for access and other specific limits found throughout D3.2 to D3.12.

#### Note on storey, floor and level

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While the terms storey, floor and level are not specifically defined in the Premises Standards *Storey* has a specific (and defined) meaning in the BCA.

Storey means a space within a building which is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but not-

- (a) a space that contains only-
  - I. a lift shaft, stairway or meter room; or
  - II. a bathroom, shower room, laundry, water closet, or other sanitary compartment; or
  - III. accommodation intended for not more than 3 vehicles; or
  - IV. a combination of the above; or
- (b) a mezzanine

In order to maintain consistency between the two this Guideline adopts the same meaning and where appropriate that term has been used.

However, there are instances when a storey can contain different floors or levels that are still within the one storey. Because of the implications of changes in level for access for people with disability, some provisions apply to a level or floor within a storey rather than just to a storey.

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#### Class 1b

While access requirements do not apply to Class 1a buildings (typically a detached house, town house or terrace house), they do apply to certain Class 1b buildings.

A Class 1b building is one with a total floor area less than 300 m<sup>2</sup> (measured over the enclosed wall of the whole Class 1b building) and where not more than 12 people would ordinarily be resident (accommodation larger than this would ordinarily be defined as a Class 3 building, such as a hotel or motel).

This type of building includes those used for short-term holiday accommodation such as cabins in caravan parks, tourist parks, farm stay, holiday resorts and similar tourist accommodation.

Short-term accommodation can also be provided in a boarding house, guest-house, hostel, bed and breakfast accommodation or the like.

While there is no definition of ‘short-term’, this accommodation is typically rented out on a commercial basis for short periods and generally does not require the signing of a lease agreement.

Section 2.1 of the Premises Standards states that the Standards only apply to *specified Class 1b buildings* and Table D3.1 refers to the definition *specified Class 1b buildings* found in subsection 1.4(1).

The effect of this is that while some Class 1b buildings are covered by the Premises Standards, some are not. This also applies with the BCA.

Table D3.1 identifies two types of *specified Class 1b buildings* with different access requirements.

**Type (a):** Where the Class 1b buildings are separate dwellings such as holiday cabins, lodges, eco-retreats, etc, access is required to at least one of the dwellings *only* if there are four or more dwellings used for short-term holiday accommodation on the same allotment.

The number of accessible dwellings required is dependent on the number of dwellings in total on a ratio basis.

So, for example, if a new development of three cabins was being proposed this would not trigger the application of the Premises Standards.

**Type (b):** Where the Class 1b building is a boarding house, hostel, bed and breakfast, farm stay or similar where typically accommodation is provided for one or more people within the same dwelling when applying the definition of *specified Class 1b buildings* there are two triggers for access requirements.

**Newly constructed:** Where this type of Class 1b building is a newly constructed single Class 1b building, Table D3.1 requires that access be provided to and within at least one bedroom, at least one of each type of room or space for use in common by guests, and to and within all rooms or spaces for use in common on floors served by a lift or accessible ramp.

So, for example, if someone builds a new building that is to be used as a bed and breakfast with one or more rooms made available for accommodation, at least one bedroom and associated sanitary facilities must be accessible. If the bed and breakfast also has, for example, a dining room, laundry, cooking facility

or games room made available to all guests at least one example of each type of room or space must also be accessible.

*Existing building:* Where an existing building is being converted to offer this type of short-term accommodation, which is often the case, access is only required to one bedroom and associated sanitary facilities (and at least one of each type of room or space for use in common by residents) where there are four or more bedrooms made available to guests.

For example, if an existing farmhouse is converting two bedrooms to farm stay short-term accommodation, access is not required by the Premises Standards, but if four or more bedrooms are being made available to guests at least one bedroom and associated sanitary facilities (and at least one of each type of room or space for use in common by residents) must be made accessible.

### **Note on existing buildings converting to Class 1b buildings**

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The access requirements apply to both new Class 1b buildings and existing buildings that are being converted to Class 1b buildings.

While the conversion of an existing building to a Class 1b building might be seen as establishing a 'new' accommodation facility the fact that it is an existing building means it should not be regarded as 'newly constructed' and therefore subject to access requirements no matter how many bedrooms are made available to guests. So, for example, an existing Class 1a building being converted to a Class 1b B&B would only be required to provide accessible facilities if 4 or more bedrooms were being made available to the public for rental purposes.

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Those Class 1b buildings that are not covered by the definition *specified Class 1b buildings* (less than four dwellings on the same allotment and less than four bedrooms in a converted existing building) would continue to be subject to possible DDA complaints by virtue of the fact that it is not within the scope of the Premises Standards because it is not a *specified Class 1b building*.

Clearly there are many variations on the style of short-term accommodation made available and certifiers and developers will need to make decisions about the application of the Premises Standards on a case-by-case basis.

### **Class 2 buildings**

A Class 2 building is a block of flats or an apartment building containing 2 or more sole-occupancy units each being a separate dwelling. While the access provisions do not apply to the internal parts of sole-occupancy units (SOUs), Table D3.1 does require an accessway from a common use pedestrian

entrance to at least one floor containing SOUs and to and within at least one of each type of room or space such as a BBQ area, garbage bin area, games room or gymnasium used in common by all the residents.

Where a lift or accessible ramp serves other levels access must be provided to the entrance doorway of SOUs and to and within rooms or spaces for use in common by residents the levels served by the lift or ramp.

There is no requirement to make private areas provided for the exclusive use of a limited number of residents accessible. For example, a roof-top tennis court or spa that is only available to the penthouse suite(s) is not required to be accessible.

This means that it would be possible, for example, to have a two or three storey 'walk up' block of flats where access is only required to the entrance doorways to SOUs on the ground floor (and one of each type of room or space for use in common by the residents on that floor) so long as there were no unique common rooms or spaces on the upper floors.

There are two limits to the access requirements relating to Class 2 buildings under the Premises Standards.

First, the requirement only applies to *new* Class 2 buildings where an application for building approval was made after 1 May 2011. It does not apply to existing Class 2 buildings that undergo upgrades or renovations, but which were built before 1 May 2011 (or where the application for building approval was lodged before 1 May 2011).

If, however, a Class 2 building was subject to the Premises Standards i.e. an application for building approval was lodged on or after 1 May 2011, and the building included SOUs made available for short-term rent (see below), any future upgrades would also trigger the application of the Premises Standards to any new work and the 'affected part'.

Designers and certifiers will need to satisfy themselves of the date the building was originally approved for construction to determine if the Premises Standards apply.

Secondly, the Premises Standards are limited in their coverage of Class 2 buildings to those buildings where the public has the right to access the building and use common facilities as is the case where one or more SOUs is made available for short-term holiday accommodation rent.

It is not possible, however, to determine at the building approval stage whether or not any Class 2 building will at some point in time make short-term accommodation SOUs available. This puts designers, certifiers and managers in a difficult position in terms of DDA compliance after construction.

The BCA is not limited by the issue of the availability of short-term SOUs in the building and will require certain levels of access in specified common areas for all new Class 2 buildings. Designers, certifiers and managers need to comply with the requirements of the BCA in relation to Class 2 buildings, as compliance with the BCA in this instance will also ensure compliance with the limited provisions of the Premises Standards on this issue.

### **Note on Class 2 SOU on first floor**

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In some situations the ground floor of a building may not contain SOUs at all, for example, if the ground floor consists of retail shops or a carpark. The Premises Standards require an accessway from the pedestrian entrance required to be accessible to at least one floor containing SOUs where a common pathway is provided as the means of access to the SOUs. This means that if the first group of SOUs are on an upper floor and there is a common pathway to the SOUs access must be provided to that upper floor by way of a lift or ramp complying with AS 1428.1.

While this can be easily achieved in relation to buildings of multiple storeys where a lift is provided there may be difficulty in achieving this in smaller developments that may only have 2 or 3 storeys and a small number of SOUs. In this situation the developer may consider the range of lifts permissible and, in some situations, consider grounds for a defence of unjustifiable hardship. (See the discussion of unjustifiable hardship in Section B of this Guideline 4.1 *Unjustifiable hardship*).

In the building where there are a number of SOUs above shops or a carpark, for example, and entry to each of the upper floor SOUs is via a private flight of stairs with no common stairway, access would not be required to the SOUs on the upper floor.

In a situation where there is a single SOU above a shop, because the definition of a Class 2 building is 'a building containing 2 or more sole occupancy units; each of which is a separate dwelling' the SOU cannot be classified as a Class 2 building and therefore access would not be required to that single upper level SOU. In this situation the SOU would be a Class 4 building that is not covered by the Premises Standards

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### Note on split-levels

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In some situations an apartment building may include split-levels on a storey where the lift only services one of the levels. Table D3.1 in relation to Class 2 buildings specifically refers to ‘floor’ and ‘level’ as distinct to ‘storey’ (see Note on storey, floor and level on page 62 of this Guideline). This means that access would only need to be provided to SOUs on one level rather than on 2 levels that are part of one storey.

However, if a room or space for use in common by the residents that was required to be accessible were located on a level not serviced by the lift access would be required to that room or space.

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### Note on access to entrance doorways to SOUs

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The terminology used in Table D3.1 has led to different interpretations in the application of the Premises Standards to questions such as the requirements for minimum clear door opening widths, luminance contrast requirements and circulation space around doorways outside SOUs on a floor required to be accessible.

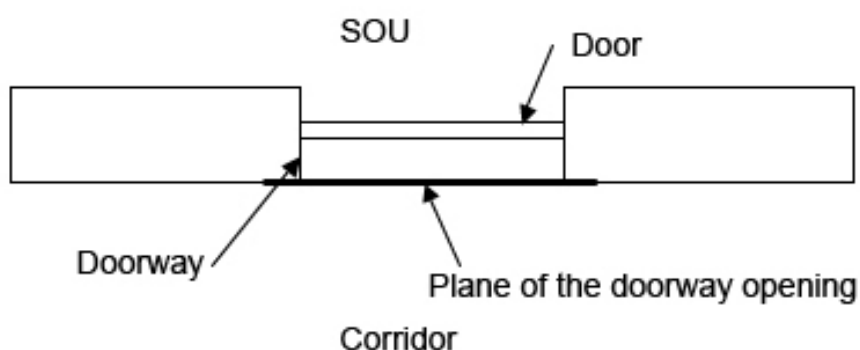
Table D3.1 refers to the requirement for a continuous accessible path of travel ‘to the entrance doorway’ of SOUs located on a level required to be accessible.

When drafting the Premises Standards it was necessary to ensure that the scope of the Premises Standards was limited to specified public ‘common areas’ consistent with the scope of s 23 of the DDA.

In order for an entrance doorway to a SOU to be covered by access requirements, it would need to be part of a ‘common area’.

During consultation on the update of this Guideline it emerged that there are two interpretations commonly being applied.

The first is that the common area within a Class 2 building finishes at the plane of the doorway opening to a SOU and does not extend beyond this point.



This interpretation would suggest that the door and circulation space around the doorway and other access features such as door hardware and luminance contrast do not need to comply with the requirements of AS 1428.1.

The second interpretation is that the common area finishes at the plane of the door and that therefore the doorway and door are part of the common area and should comply with the requirements of AS 1428.1.

The Commission considers the second interpretation generally consistent with the intent to broaden the choice of accommodation options available to people with disability by providing the opportunity for a person with disability to visit, purchase or rent a unit. However, this is an issue that requires further consideration as a resolution to the question has important implications for the application of both the Premises Standards and BCA.

The Commission has sought the views of the Australian Building Codes Board's Building Codes Committee and when that is received the issue will be re-visited in this Guideline.

Provisions in the Premises Standards relating to this issue will also be subject to further consideration at the first review of the Premises Standards (see 'Part 6 Review' in Section B above).

#### **However in the meantime ...**

Those responsible for Class 2 buildings are reminded that irrespective of the final outcome of discussions on this matter the Premises Standards set out minimum requirements and there is nothing to stop developers from providing access at levels beyond the minimum.

Providing clear door opening widths and circulation space requirements outside doorways to SOUs consistent with AS 1428.1 would not only improve accessibility for people with disability, but also improve the amenity of the building for occupiers moving furniture and possessions in and out of SOUs.

It should also be noted that some local council's require a certain percentage of SOUs to be accessible or adaptable including requirements for circulation space and that at least one state government (South Australia) requires Class 2 developments of more than 20 SOUs to provide access to and within 5% of SOUs. This would include AS 1428.1 compliant circulation at and through doorways.

Those responsible for Class 2 buildings are also reminded of the design guidelines issued by Livable Housing Australia

[www.livablehousingaustralia.org.au/](http://www.livablehousingaustralia.org.au/)

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### **Note on accessible carparking spaces**

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D3.5 of the Access Code that deals with accessible carparking does not require accessible carparking spaces to be provided in association with a Class 2 building, and carparking areas associated with a Class 2 building are not considered to be a 'common area'. Some local governments may, however, have some requirements for accessible carparking spaces with a Class 2 building where local planning or development controls require a percentage of adaptable SOUs.

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### **Note on Townhouses when classified as Class 2 buildings**

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In some situations a Townhouse might be classified as a Class 2 building if a number are located above a common carpark. Under the Premises Standards, if classified as Class 2 buildings there are no access requirements within and from the carpark. In addition if the entry to each Townhouse is private space or along a private passage and there is no common use principal pedestrian entrances or common passageway there would be no access requirements in such a development.

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### **Note on stairways in Class 2 buildings**

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Table D3.1 only requires specified parts of a Class 2 building to be accessible. If the Class 2 requirements of Table D3.1 can be met by making the common areas only on the ground floor accessible, accessible "features to enable use by people with a disability" are not required to other floors. In this scenario, the stairway to other floors not required to be accessible would not need to comply with AS 1428.1.

If other floors are required to be accessible under Table D3.1 because a lift is installed, or because common facilities required to be accessible are located on those floors, the stair serving those floors would have to comply with the stair requirements in AS 1428.1.

This means that 2 and 3 storey 'walk-up' blocks of flats could install stairways without all the features described in AS 1428.1 if the stairway led to floors not required to be accessible.

As with other areas of application of the Premises Standards, these requirements are the minimum required to ensure compliance with the Premises Standards. There is nothing in the Premises Standards to stop a developer from providing greater levels of access than required and developers are encouraged to provide access features on such stairways.

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### **Class 3 buildings**

Class 3 buildings include hotels, motels, larger boarding houses or hostels, residential parts of schools or universities, specialist accommodation for people with disability and residential parts of detention centres.

*Common areas:* Table D3.1 requires that access be provided through a pedestrian entrance to at least one floor containing sole-occupancy units (SOUs) and to the entrance doorway of each SOU located on that level. (See discussion on *Note on doors and doorways into SOU* under Class 2 above)

Access must also be provided to and within at least one of each type of room or space used in common by residents such as bars, TV rooms and restaurants.

A two- or three-storey Class 3 building need not have the upper storey accessible so long as there is no unique room or space available to all residents on the upper storey and that upper storey is not served by a lift or accessible ramp.

For example, if a two-storey hotel has a reception area, two bars, one laundry and a restaurant all on the ground floor, access would be required to the SOU entrance doorways on the ground floor, the reception area, at least one of the bars, the laundry and the restaurant.

Where a lift or accessible ramp serves other levels, common areas, including up to the entrance doorways of SOUs on those other levels must also be accessible.

### **Note on minimum requirement**

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As with other areas of application of the Premises Standards, these requirements are the minimum required to ensure compliance with the Premises Standards. There is nothing in the Premises Standards to stop a developer from providing greater levels of access than required.

For example, if a hotel has two bars and only one is required to be accessible by the Access Code, there is nothing to stop the developer from making both bars accessible.

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*Sole-occupancy units:* Table D3.1 provides details of the ratio of accessible sole-occupancy units that are required. This varies from one accessible SOU in Class 3 buildings with one to ten SOUs up to, for example, five accessible SOUs in a Class 3 building with 90 SOUs.

In order to ensure equitable variety of choice in Class 3 buildings, Table D3.1 also states that where more than two accessible SOUs are required in a Class

3 building (for example a hotel with 41 or more SOUs), they are to be representative of the range of rooms available, taking into account amenity and pricing.

For example, in a large hotel required to have ten accessible rooms, the rooms must be distributed to provide a variety of views, proximity to facilities and price ranges.

Table D3.1 also requires that no more than two SOUs required to be accessible can be located adjacent to each other.

### **Note on right-hand/left-hand facilities**

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F2.4(g) of the Access Code requires that when there is more than one accessible SOU, alternate left and right-handed sanitary facilities must be provided in the accessible SOUs.

Where a person is seated on the toilet and facing forward and the grabrail is on the right hand side, the cubicle is set up for a right-hand transfer.

This ensures the availability of choice for people who, for example, need to transfer from a wheelchair from one side or the other in order to access the toilet pan.

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### **Class 5, 6, 7b and 8 buildings**

These classes of buildings typically include offices, shops, cafes, libraries, factories, wholesale sales outlets, showrooms and service stations.

Table D3.1 requires that access be provided to all areas within the building normally used by the occupants, with the exception of those areas that are exempted by D3.4.

The term 'occupants' refers to any person using the building including visitors, employees, employers and owners.

### **Note on limited small building concession**

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In addition to the exemptions in D3.4, Class 5, 6, 7b and 8 buildings may also qualify for the small-building exemption for access to upper floors under D3.3(f) below. Class 9a buildings (health-care) and Class 9b buildings (schools and the like) do not qualify for this additional exemption.

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## Note on provision of unisex accessible toilets

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The Premises Standards requires that, in all these classes of building, if toilets are provided for staff, customers or visitors, a unisex accessible toilet is required irrespective of the number of toilets provided. This has been the case under the BCA for many years.

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### **Class 7a carpark**

Access, in the form of a continuous accessible path of travel, must be provided from any building required to be accessible to any level of an associated carpark containing a required accessible carparking space.

### **Class 9a buildings**

A Class 9a building is a health-care building.

Table D3.1 requires that access be provided to all areas within the building normally used by the occupants, with the exception of those areas that are exempted by D3.4. Class 9a buildings are also not required to provide AS 1428.1 compliant accessible unisex toilets within a ward area.

The term ‘occupants’ refers to any person using the building including visitors, employees, employers and owners.

### **Class 9b buildings**

A Class 9b building includes schools, universities, early childhood centres, theatres, cinemas, sports stadiums and concert halls.

*Schools, universities etc:* Access must be provided to all areas normally used by the occupants with the exception of those areas that are exempted by clause D3.4 of the Access Code.

*Other Class 9b buildings:* In an assembly building of a type other than a school, university or an early childhood centre, such as theatres and stadiums, access need not be provided to tiers or platforms containing seating areas if no wheelchair seating spaces are provided on those levels.

In larger Class 9b buildings, wheelchair seating spaces must be provided in locations that are representative of the fixed-seating locations provided and take into account amenity, proximity to facilities, available sightlines and pricing.

Generally it would not be acceptable in a Class 9b building in which fixed seating is provided to have all wheelchair seating spaces provided in a single location.

In the case of assembly buildings, such as theatres and concert halls, areas used by the occupants include change rooms, offices, orchestra pits, stages or the like.

### **Note on distribution of seating spaces**

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The distribution of seating spaces in Class 9b buildings is covered by clause D3.9 of the Access Code.

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*Class 9b transport buildings:* For Class 9b buildings that are public transport buildings the passenger-use areas of these buildings are subject to Part H2 in addition to the general access provisions.

### **Class 9c buildings**

Class 9c buildings are aged-care buildings. The Access Code and referenced technical Deemed-to-Satisfy Provisions are focussed on the needs of people with disability and not specifically aged persons.

For this reason, the access specifications of Deemed-to-Satisfy Provisions have not been applied to all SOUs in Class 9c buildings, but only to those specific rooms that are required to be provided for people with disability.

The extent of access to be provided in Class 9c aged-care buildings detailed in Table D3.1 is similar to that for Class 3 buildings. There is nothing in the Premises Standards, however, to stop developers providing higher ratios of accessible SOUs to meet the needs of residents.

### **Class 10 buildings**

*Class 10a buildings:* A Class 10a building is a non-habitable building. Certain Class 10a buildings are required to be accessible if they are located in an accessible area. Examples of Class 10a buildings to which the Access Code may apply are a toilet block in a park or at the start of a trail, a structure used to provide shelter, and change rooms associated with a sports field or swimming pool.

Generally, if the building is located at a point where it would be relatively easy for a person with disability to get to, such as where there is a carpark next to the building or a formed pathway or drop-off point at the beginning of a walkway or track the Premises Standards will apply.

However, in some circumstances, a Class 10a building may be located where it may not be possible to provide an accessible path of travel, such as a considerable way into a nature walk. In such cases, the Class 10a buildings need not be accessible.

Clearly there will be many variations on the location of Class 10a buildings and certifiers and developers will need to make decisions about the application of the Premises Standards on a case-by-case basis.

A Class 10a building could also be a transport-related building or structure that is used by passengers travelling on a public transport service, such as an open train station platform, ferry wharf or bus/tram shelter.

*Class 10b buildings:* The only Class 10b structure to which the Premises Standards apply is a swimming pool. Where a Class 10b swimming pool is a pool such as a health centre pool, public pool or a common-use pool associated with a Class 3 building, and has a perimeter measured at the water's edge of more than 40 metres, Table D3.1 requires at least one form of access for people with disability be provided.

#### **Note on use of pools for exclusive use by limited number of occupants**

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Access is not required to a swimming pool associated with a Class 1b, Class 2 or Class 3 building if the swimming pool is for the exclusive use of one group of occupants. For example, if a hotel has a suite with its own swimming pool for the exclusive use of the occupants of that suite, the swimming pool need not be accessible even if it is over 40 metres perimeter.

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Methods for accessing a swimming pool can be found in clause D3.10 and details of Deemed-to-Satisfy Provisions for those methods can be found in *Part D5 Accessible water entry/exit for swimming pools* of the Access Code (identified as Specification D3.10 in the BCA).

*Class 10 transport buildings:* Some Class 10 buildings may be public transport buildings or structures (for example, an open railway platform). The passenger-use areas of these buildings will be subject to Part H2 of the Access Code.

### **Clause D3.2 Access to buildings**

Clause D3.2 sets out the requirements of the Access Code in relation to the extent of access for people with disability that must be provided to and into a building.

#### **Subclause D3.2 (1)**

This sub-clause requires an accessway to any building required to be accessible according to Table D3.1 as follows:

1. **From the main points of a pedestrian entry at the allotment boundary.** Generally there will only be one pedestrian entry from the allotment boundary to a building entrance. However, with larger



developments the allotment boundary might span an area with a number of pedestrian entries from different streets. In this case, each of the pedestrian pathways that leads to an entrance required to be accessible by D3.2 (2) is required to be accessible.

This requirement has been part of the BCA for many years and raises some interpretation and application questions. In some situations a building might be some considerable distance from the allotment boundary and making the pedestrian path accessible might not be possible or would be financially onerous. Performance Requirements in such a case might be met by providing a roadway to a drop-off point or carpark next to or close to accessible entrances.

2. **From another building required to be accessible connected by a pedestrian link.** If two buildings that are required to be accessible are connected by a pedestrian link such as a walkway (other than a public footpath external to the building allotment) or an overhead pedestrian bridge, the pedestrian link is required to be accessible.
3. **From any required accessible carparking space on the allotment.** If a building provides carparking facilities within the building or on the same allotment and is required to provide one or more accessible parking spaces, an accessway is required from each accessible carparking space to an accessible entrance, but not necessarily the principal pedestrian entrance.

In a multi-storey carpark only those levels that contain an accessible carparking space are required to provide an accessway to the building.

An ‘accessway’ means a continuous accessible path of travel (as defined by AS 1428.1) to, into or within a building.

#### **Note on amendment to D3.2(1)**

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An amendment has been made to D3.2(1) in order to clarify the requirements. This subclause now reads:

- (1) An *accessway* must be provided to a building *required* to be accessible:
    - (a) from the main points of a pedestrian entry at the allotment boundary;
    - (b) from another *accessible* building connected by a pedestrian link; and
    - (c) from any *required accessible* carparking space on the allotment.
-

### **Subclause D3.2(2)**

This subclause covers the provision of accessible entrances to buildings required to be accessible by Table D3.1.

It requires an accessway (continual accessible path of travel) through the principal pedestrian entrance in all cases, and through not less than 50% of the total number of all pedestrian entrances, including the principal pedestrian entrance, where there are multiple pedestrian entrances.

Where 50% is less than a whole number it should be rounded up. For example if a building has 3 entrances 50% would be 1.5 entrances. This should be rounded up to 2 entrances.

In buildings with a total floor area more than 500 m<sup>2</sup>, an inaccessible entrance cannot be more than 50 m from an accessible entrance. This ensures that situations where people have to travel an unreasonable distance between entrances are avoided.

An entrance that serves only an area exempted by D3.4 need not be accessible.

The principal pedestrian entrance is required to be accessible in all cases because it would be the most commonly used entrance by all building users. This is particularly important in public buildings where the principal entrance is often used as a focus for events or as a ceremonial entrance, particularly in buildings such as hotels and theatres.

### **Note on principal pedestrian entrance**

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There is no definition in the Premises Standards or BCA on what constitutes the 'principal pedestrian entrance' to a building. There will be times where it will be necessary to pick one of several entrances that may have equal status. This has always been the case under building law.

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### **Note on location of ramps, lifts and stairs**

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While not specified in the Access Code designers should consider the proximity of ramps or lifting devices to stairs or steps at an entrance.

People who require a ramp or lifting device at an entrance should not have to travel significantly greater distances to use the entrance than people without disability.

Similarly, for convenience, the ramp or lifting device should be located as close as possible to any vehicular drop-off point or taxi rank servicing a building entrance.

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### **Subclause D3.2(3)**

This subclause covers entrances where there are multiple doorways at an entrance as illustrated in Figure D3.2.

Where an entrance has multiple doorways, the Access Code (and the BCA) does not require all of them to be accessible.

If there are two or three doorways at one entrance then at least one of the doorways must be accessible.

If there are more than three doorways at one entrance 50% of the total number of those doorways must be accessible.

### **Note on features of accessible doors and doorways**

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An accessible doorway is described in AS 1428.1–2009 and includes features such as luminance contrast, clear opening door widths, circulation space, door controls design, forces required to open, swing and hold open and the location of power-operated controls if used.

Luminance contrast is the amount of light reflected from one surface or component, compared to the amount of light reflected from the background or surrounding surfaces. Specifying a minimum luminance contrast between surfaces assists people with low vision in finding and accessing features.

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### **Note on revolving doors**

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A revolving door cannot form part of a continuous accessible path of travel (as described in AS 1428.1–2009) even if it has the capacity to be slowed down. Revolving doorways are difficult to use for people who are blind, including those with assistance animals, and people with mobility difficulties. An accessible doorway must be provided at the same point if a revolving doorway is used at an entrance. If an accessible doorway next to a revolving doorway is locked off or only usable by those with a building security card, while the revolving door is usable by people without a security card, the building manager may be subject to a complaint under the DDA if this results in a barrier for a person with disability.

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#### **Subclause D3.2(4)**

This subclause clarifies that an accessible entrance with multiple doorways is one where all the doorways at that entrance serve the same part of the building and the distance between each doorway is not more than the width of the widest doorway at that entrance.

The subclause states also that a doorway is considered to be a clear unobstructed opening of one or more leaves.

Figure D3.2 Doorways and pedestrian entrances for access purposes illustrate this.

#### **Subclause D3.2(5)**

This subclause states that if an entrance doorway has multiple leaves and is manually operated, the minimum dimensions required to provide access (850 mm) must be provided by the opening of a single leaf, so that a person with disability only has to negotiate their entry through one door leaf.

If the doorway opens automatically, the minimum dimension can be provided using two simultaneously opening leaves.

### **Clause D3.3 Parts of buildings to be accessible**

Clause D3.3 sets out the requirements of the Access Code for buildings required to be accessible.

While there is no specific single clause that states that an accessible building meeting the Deemed-to-Satisfy Provisions is one that complies with AS 1428.1 it is implicit and, in some instances, explicit throughout the Access Code 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.

*Accessible* is defined in the Access Code as 'having features to enable use by people with disability' and an *accessway* is defined as 'a continuous *accessible* path of travel (as defined by AS 1428.1) to, into and within a building'.

AS 1428.1 forms part of the Deemed-to-Satisfy Provisions necessary to enable use by people with disability<sup>9</sup>.

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<sup>9</sup> Earlier editions of the BCA specifically referenced AS 1428.1 compliance in relation to general access, finishes and fittings, including passageways, ramps, step ramps, signs, doorways and other parts of the building. Clause D3.3 of the Premises Standards should be interpreted in this broad sense to be consistent with the objects of the DDA.

In most buildings, accessways must be provided to all parts of the building normally used by the occupants, with the exception of areas exempted by Clause D3.4.

However, it is not intended that accessways be provided for people who use wheelchairs or other mobility aids within sanitary facilities or SOUs that are not required to be accessible.

**Paragraph D3.3(a)**

This paragraph sets out the specific requirements for ramps and stairways.

*Ramps:* All ramps in a building required to be accessible, other than fire-isolated ramps, must comply with Clause 10 of AS 1428.1 which covers issues such as gradients, width, crossfall, use of tactile ground surface indicators (TGSIs), handrails, landings and kerb rails.

*Stairways:* While stairs cannot form part of a continuous accessible path of travel as described in AS 1428.1, they are allowed on other paths of travel.

The specified provisions of AS 1428.1 provide technical information on how stairs are to be made safe and accessible for people with an ambulant disability and people who are blind or have low vision.

All stairways in a building required to be accessible, other than fire-isolated stairways, must comply with Clause 11 of AS 1428.1, which covers issues such as the use of opaque risers, luminance contrast nosings, handrails and the use of TGSIs.

It is important to note that different requirements are specified for fire-isolated stairs. They are only required to have luminance contrast nosings as set out in AS 1428.1 Clause 11.1 (f) and (g).

**Note on use of fire-isolated stairways for movement between floors**

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If a designated fire-isolated stairway is occasionally used as a means of moving from one level to another, that would not trigger the need for that stairway to be a fully accessible stairway complying with all Clause 11 requirements other than Clause 11.1(f) and (g).

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**Paragraph D3.3(b)**

This paragraph states that every passenger lift must comply with Clause E3.6 of the Access Code, which sets out the features of an accessible lift and the limitations on use of specific types of lift.

### **Subparagraph D3.3(c)(i)**

This subparagraph states that accessways must have passing spaces every 20 m to ensure that a person using a mobility aid such as a wheelchair is not required to retrace their journey for an unreasonable distance to pass another person if the accessway is not sufficiently wide for passing to occur at any point.

Passing spaces are only required, however, where there is no direct line of sight to the end of the accessway along a corridor.

### **Note on direct line of sight**

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D3.3(c)(i) requires passing spaces along corridors 'where a direct line of sight is not available'. This may be as a result of a bend or turn, but could also arise as a result of there being a closed solid door with no glass panels to see through along a corridor that is greater than 20 m in length.

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The minimum dimensions for a passing space are contained in AS 1428.1.

### **Subparagraph D3.3(c)(ii)**

This subparagraph states that accessways must have turning spaces to ensure that a person does not have to reverse for an unreasonable distance if they encounter a dead-end, such as a locked office door, or need to retrace their journey.

The minimum dimensions for a turning space are contained in AS 1428.1.

Turning spaces are required within 2 m of the end of an accessway if it is not possible to continue to travel along the accessway, and at least every 20 m along an accessway whether or not there is a direct line of sight.

### **Paragraph D3.3(d) and (e)**

These paragraphs state that a passing space may also serve as a turning space and the circulation space required at an intersection of accessways is sufficient for passing or turning to occur. In this situation, a dedicated passing or turning space would not be required at those locations.

### **Paragraph D3.3(f)**

This paragraph sets out an exemption from the requirement to provide accessible lifts and ramps to the upper storeys of small buildings of specific classes.

This exemption applies only to Class 5, 6, 7b and 8 buildings with two or three storeys (that is a building with one or two storeys in addition to the entrance

level). This could be a building with one or two storeys above the entrance level or below it.

The exemption states that if the floor area of each storey (other than the entrance level) is less than 200 m<sup>2</sup>, access via a passenger lift or ramp complying with AS 1428.1 is not required to the other levels.

This means that if the floor area of either of the upper stories is over 200 m<sup>2</sup>, access in the form of a ramp or lift must be provided to all levels.

Example 1: If the entrance level to a three-storey building was 600 m<sup>2</sup>, the first storey was also 600 m<sup>2</sup> and the second storey was only 150 m<sup>2</sup>, access would be required via a passenger lift or ramp complying with AS 1428.1 to all levels.

Example 2: If the entrance level was 3000 m<sup>2</sup> and the two other storeys were 180 m<sup>2</sup> access would only be required to the entrance level.

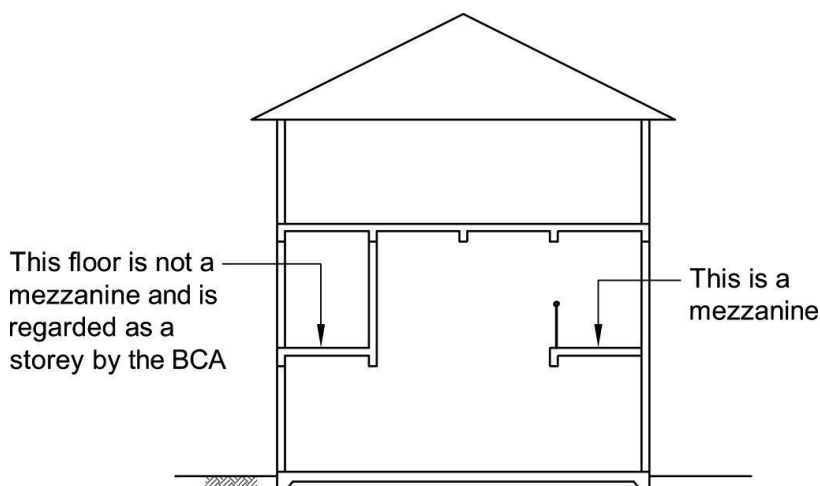
This exemption reflects the assessment made, following the consultation and impact assessment undertaken in developing the Premises Standards, that requiring access to every level of small buildings might cause unjustifiable hardship in many instances.

### Note on mezzanines

The Premises Standards does not define mezzanine, however, the BCA defines mezzanine as 'an intermediate floor within a room' and the Guide to the BCA states:

A 'mezzanine' must be part of a room. If an intermediate floor is enclosed by a wall it is no longer within another room, and is therefore no longer a mezzanine. Such rooms are sometimes called 'mezzanines' by the layperson. This does not mean they are classified as such by the BCA. See Figure A1.1(ME) (*Guide to the BCA 2012*)

Figure A1.1 (ME)



In order to maintain consistency with the BCA this Guideline adopts the same meaning.

Where, for example, a building consists only of a large entrance level and a mezzanine (within the same room) over 200 m<sup>2</sup> the mezzanine would not be considered to be a separate storey and access would therefore not be required to the mezzanine.

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### **Note on classes of building not covered by the ‘small building’ exemption**

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This exemption does not apply to specified Class 1b buildings (eg bed and breakfast or short-term holiday buildings), Class 2 buildings (eg apartments), Class 3 buildings (eg hotels/motels), or Class 9 buildings (eg schools, universities, theatres, health-care or aged-care buildings), although these classes of building may not be required to provide access to upper floors of two and three storey buildings if the limits in Table D3.1 or the exemptions of D3.4 apply.

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### **Note on application of D3.3(f) in relation to upgrades of existing buildings**

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Where, for example, new work on a 400 m<sup>2</sup> upper storey of an existing two storey building triggers the ‘affected part’ upgrade, but the area on the upper storey subject to new work is less than 200 m<sup>2</sup> access to the upper storey must be provided unless unjustifiable hardship is relevant. This is because D3.3(f) refers to the ‘floor area of each storey’ and not to the area of new work on a storey.

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### **Note on other access features to and on levels not required to be accessible under D3.3(f)**

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Although paragraph D3.3(f) states that access via a ramp or lift is not required to certain storeys, other accessible features required by the Access Code, such as features on stairways, door circulation space, door hardware, doorway luminance contrast requirements, corridor widths and required signage, (except accessible unisex sanitary compartments and accessible unisex showers (see Clause F2.4(i)), are required to and on the non-entrance levels.

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### **Note on achieving better access than the minimum requirements**

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There is, however, nothing to stop any developer from providing access to the upper floors of small buildings that might fit the criteria for this exemption.

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### **Paragraph D3.3(g) and (h)**

An amendment to D3.3 has been made to cover carpet pile heights on an accessible path of travel to reflect a change in the BCA. The amendment states:

- (g) clause 7.4.1(a) of AS 1428.1 does not apply and is replaced with ‘the pile height or pile thickness shall not exceed 11 mm and the carpet backing thickness shall not exceed 4 mm’; and
- (h) the carpet pile height or pile thickness dimension, carpet backing thickness dimension and their combined dimension shown in figure 8 of AS 1428.1 do not apply and are replaced with 11 mm, 4 mm and 15 mm respectively.

This means that compliance with the Access Code in relation to carpet pile heights can be achieved by complying with this requirement rather than the requirements in AS 1428.1.

### **Clause D3.4 Exemptions**

This clause sets out some general exemptions from the requirement to meet the Deemed-to-Satisfy Provisions of the Access Code and provides details on buildings or parts of buildings not required to be accessible under the Premises Standards (and BCA).

#### **Paragraph D3.4(a)**

Paragraph D3.4(a) states that accessways are not required to certain areas within buildings where providing access would be ‘inappropriate’ because of the nature of the area or the tasks undertaken in that area.

#### **Paragraph D3.4(b)**

Paragraph D3.4(b) states that areas that would impose a health or safety risk for people with disability are also not required to be accessible.

These areas could include cleaners store rooms, commercial kitchens, staff serving areas behind bars, cool rooms, rigging lofts, waste-containment areas, foundry floors, abattoir animal processing areas, railway shunting yards, electrical switch rooms, chemical and hazardous materials store areas, loading docks, fire lookouts, plant and equipment rooms and other similar areas.

Assessment of application of this general exemption to specific areas will need to be made on a case-by-case basis. Care needs to be taken, however, to ensure that any assessment of the need to utilise this exemption is not based on assumptions about the ability of people with disability or people with a particular type of disability to undertake work in those settings.

For example, while it may be the case that most workers using a particular area are required to have high levels of mobility and strength someone with a disability without the same levels of mobility and strength might undertake a range of activities in that area without risk or difficulty.

While this clause allows developers to propose, and certifiers to approve that some areas should not be required to be accessible, nothing in the Premises Standards (or the BCA) prevents a developer from providing access to those areas should they wish to do so for commercial or other reasons.

Any decision to utilise this clause should be documented with information from the building owner or manager about the role of personnel to be admitted to the areas, security arrangements for independent movement of non-authorised personnel, activities of the workers using the spaces, and occupational health and safety (OH & S) restraints.

**Paragraph D3.4(c)**

Paragraph D3.4(c) clarifies that any path of travel to an area exempted by this clause does not have to be accessible. This includes the ‘affected part’ of existing buildings if that part leads only to an exempted area and the exempted area is the only new work being undertaken.

**Clause D3.5 Accessible carparking**

This clause sets out the requirements of the Access Code in relation to accessible carparking.

**Paragraph D3.5(a)**

This paragraph states that accessible carparking spaces must be provided in a Class 7a building (carpark) and in a carparking area on the same allotment as a building required to be accessible.

If a building is required to be accessible by Table D3.1 of the Access Code accessible carparking spaces must be provided in a carpark building or carparking area associated with the building if on the same allotment.

**Paragraph D3.5(b)**

This paragraph states that accessible carparking spaces need not be provided where a carparking service is provided, such as a valet service, where direct access to the carpark is not available to the public.

**Paragraph D3.5(c)**

This paragraph states that the specifications for accessible carparking spaces are contained in AS/NZS 2890.6. These specifications aim to maximise the area available to people with disability to get into and out of their vehicles.

### **Note on AS/NZS 2890.6**

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AS 2890.6 requires a bollard be placed to prevent cars from blocking a shared area at an accessible carparking space. While the standard specifies the location of the bollard it does not include specifications on matters such as height, diameter or luminance contrast. Developers should consider these issues to ensure visibility and to ensure bollards do not encroach on space required by someone getting into or out of their car. Flexible bollards might be considered to reduce the chances of damage to cars.

As with all other areas of compliance achieving Deemed-to-Satisfy compliance with AS 2890.6 in existing buildings may on occasion be difficult because of the existing carpark layout. Suitable Alternative Solutions might be developed to meet the Performance Requirement.

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### **Paragraph D3.5(d)**

This paragraph states that while at least one carparking space complying with AS 2890.6 is required in any carpark covered by D3.5, signage and markings designating an accessible carparking space are only required in a carpark with more than a total of five spaces.

### **Table D3.5 Carparking spaces for people with a disability**

Table D3.5 provides details of the number of accessible carparking spaces required in a carpark depending on the classification of the building and based on the ratio to the total number of carparking spaces provided.

If the carpark serves a multi-classified building and there are differences in the ratio of accessible carparking spaces required, the number of accessible carparking spaces required should be calculated by determining the number of spaces serving each of the classifications if possible. If this is not possible, the higher ratio of the classification applicable to the relevant building should be adopted.

While a carpark associated solely with a Class 2 building is not required to have accessible carparking spaces under Table D3.5 if the building also contained leased premises such as Class 5 or 6 the car spaces associated with those leased premises would be required to provide the relevant number of accessible spaces.

### **Note on location of car parking spaces**

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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.

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.

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### **Note on achieving more than the minimum requirements**

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While the minimum ratio of accessible carparking spaces is set out in Table D3.5, there is nothing in the Premises Standards (or the BCA) to prevent a developer or manager from providing a greater ratio than required, should they wish to do so for commercial or other reasons.

Some local council's may have policies in place requiring more accessible carparking spaces than the minimum or requiring them where they are not required by the Access Code, for example, in Class 2 buildings.

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### **Clause D3.6 Signage**

This clause clarifies the signage requirements of the Access Code to assist people with disability to easily identify certain facilities, services and features provided in a building.

The Access Code covers only some aspects of signage that might be found in a building, such as signage relating to sanitary facilities and the presence of hearing-augmentation systems.

### **Note on signage and wayfinding information not covered by the Access Code**

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Other signage that might be found in a building such as tenants' board information, room numbers or directions to particular spaces are not covered by the Access Code (or the BCA) and remain open to complaint under the DDA should a person with disability believe they experience discrimination through the lack of accessible signage.

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### **Subparagraph D3.6(a)(i)**

This subparagraph states that all sanitary facilities, except those within a sole-occupancy unit of a Class 1b or Class 3 building, must be identified by braille

and tactile signage compliant with Part D4 of the Access Code, which sets out Deemed-to-Satisfy Provisions for braille and tactile signs (identified as Specification D3.6 in the BCA) and in accordance with AS 1428.1 Clause 8.

This subparagraph also requires that all accessible unisex sanitary facilities must have the international symbol of access and information on whether the facility allows for left- or right-handed transfer (see D3.6(c)).

### **Note on amendment to AS 1428.1:2009**

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**Amendment 1 to AS 1428.1:2009 makes some corrections to clause 8.**

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#### **Subparagraph D3.6(a)(ii)**

This subparagraph states that any space required (by D3.7) to have a hearing-augmentation system must be identified by braille and tactile signage compliant with Part D4 of the Access Code, which sets out Deemed-to-Satisfy Provisions for braille and tactile signs (identified as Specification D3.6 in the BCA).

It also requires that the facility must also be identified by the international symbol of deafness, in accordance with AS1428.1. This signage would generally be outside the room in which the hearing-augmentation system is available.

#### **Paragraph D3.6(b)**

This paragraph states that signage, including the international symbol of deafness in accordance with AS 1428.1 clause 8 and braille and tactile signage, must also be provided within a room containing a hearing-augmentation system.

This signage must indicate the type of hearing-augmentation, and the area of the room covered. Signage must also indicate if personal receivers are used in the room, and where they may be obtained if this is the case.

#### **Paragraph D3.6(c)**

This paragraph states that signage for accessible unisex sanitary facilities (including braille and tactile signage), in accordance with AS 1428.1 clause 8, must identify whether the facility is suitable for left- or right-handed transfer. This is required because some people transfer to a pan from their wheelchairs from the right-hand side and some from the left.

#### **Paragraph D3.6 (d)**

This paragraph states that signage (including braille and tactile signage), in accordance with AS 1428.1 clause 8, must also identify any ambulant-

accessible sanitary facilities and must be located on the door of the ambulant-accessible compartments.

**Paragraph D3.6(e)**

This paragraph states that directional information, including the international symbol of access, must be provided at any pedestrian entrance that is not accessible.

The directional information must identify where the nearest accessible entrance or accessible sanitary facility can be found. Because D3.6(a) only refers to the need for braille and tactile signage in relation to ‘sanitary facilities’ and ‘hearing-augmentation’ systems, directional information in relation to entrances does not have to be provided in braille and tactile format.

**Paragraph D3.6(f)**

This paragraph states, that directional information, including braille and tactile signage and the international symbol of access, must be provided at any bank of sanitary facilities that does not include a unisex accessible sanitary facility.

The directional information must identify where the nearest accessible sanitary facility can be found.

**Note on location of braille and tactile signs**

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Part D4.2 provides details of the location of braille and tactile signs when required by D3.6. For example, signs should be between 1200 mm and 1600 mm above the floor and placed on the wall on the latch side of the door in all cases other than ambulant-accessible sanitary facilities.

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**Clause D3.7 Hearing-augmentation**

This clause sets out the requirements of the Access Code aimed at assisting people with a hearing impairment to access communications associated with a building's use.

There are a number of hearing-augmentation systems available including Hearing Loop systems, FM systems and Infrared systems. A decision on which system to use will depend on a number of factors, such as the preference of likely users, confidentiality implications, size and use of the space, external interferences and building materials used.

Hearing-augmentation is not required to cover 100% of the floor area of rooms because such coverage could spill over into adjoining rooms and affect the operation of any system installed in those rooms, and because design

considerations such as interference and room layout mean that it is difficult to ensure complete coverage in every room.

### **Note on new technical standard addressing communication for people who are deaf or hearing impaired**

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While not referenced in the Premises Standards, a new Australian Standard *AS 1428.5, Design for access and mobility – Communication for people who are deaf or hearing impaired 2010* is available and those responsible for buildings are encouraged consider its content. This may assist those responsible for buildings to provide and maintain effective hearing-augmentation systems (see SAI Global <http://infostore.saiglobal.com/store/>). Building managers in particular need to ensure any hearing-augmentation system provided is properly maintained and appropriate staff training is provided to ensure effective operation.

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#### **Subclause D3.7(1)**

This subclause states that a hearing-augmentation system must be provided *where an inbuilt amplification system is provided* (other than one only used for emergency warning):

- in a room in a Class 9b building that is an assembly building such as a school, university or trade workshop
- in rooms such as auditoriums, theatres, cinemas, conference rooms, meeting rooms, chapel/spiritual centre or rooms used for judicial purposes, and
- at ticket offices, teller's booths, reception areas and similar areas *where the public is screened from the service provider*.

If there is no inbuilt amplification system in a room then a hearing-augmentation system is not required by the Premises Standards.

### **Note on inbuilt amplification system**

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There is no definition in the Premises Standards (or BCA) on what constitutes an inbuilt amplification system, however, facilities such as a video conferencing screen used by staff in a meeting room would not generally be considered to be an inbuilt amplification system. It is anticipated that what constitutes an 'inbuilt amplification systems' will be clarified at the first review of the Premises Standards.

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### **Note on providing a hearing augmentation system in areas that do not have an inbuilt amplification system**

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There is nothing in the Premises Standards to stop a developer from providing a hearing-augmentation system in a room that does not have an inbuilt amplification system, but which is used for events such as public meetings, lectures or community activities and which may from time to time use portable amplification systems. People organising events such as a public meeting or lecture in rooms that do not have a built-in amplification system would continue to be vulnerable to discrimination complaints if a person with hearing impairment was not able to access the event.

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#### **Subclause D3.7(2)**

This subclause sets out requirements for hearing-augmentation systems where they are required under D3.7(1).

Requirements for hearing augmentation can be met by use of either an induction loop or receivers, or similar systems.

Where an induction loop is provided, it must cover at least 80% of the floor area of the room or space that is served by the inbuilt amplification system.

For hearing-augmentation systems using audio receivers, the system must cover at least 95% of the floor area of the room or space served by the inbuilt system, and a minimum number of receivers must be provided in a ratio depending on the number of people who may be accommodated in the room.

#### **Subclause D3.7(3)**

This subclause states that the number of people a room can accommodate can be calculated according to clause D1.13 in the BCA. Clause D1.13 of the BCA provides information on how to calculate the anticipated number of persons accommodated in a building or part of a building based on classification and use.

#### **Subclause D3.7(4)**

This subclause states that screens or scoreboards associated with a Class 9b building that are capable of displaying public announcements, such as at a sports venue, must be capable of supplementing any public address system (other than a public address system used for emergency warning purposes only).



### **Clause D3.8 Tactile indicators**

This clause sets out the requirements of the Access Code to assist people who are blind or are vision impaired to avoid hazardous situations by the use of tactile ground surface indicators (TGSIs).

There are two types of TGSIs used in the built environment, warning TGSIs and directional TGSIs. The Access Code only requires the use of warning TGSIs and only for specific hazard identification in those areas identified within D3.8.

#### **Paragraphs D3.8(1)(a), (b), (c) and (d)**

These paragraphs specify where TGSIs must be located including at the top and bottom of stairways (other than fire-isolated stairways), ramps (other than fire-isolated ramps, step ramps, kerb ramps or swimming pool ramps), escalators, and moving walkways.

TGSIs are not required on a path only leading to areas exempted under D3.4.

#### **Paragraph D3.8(1)(e)**

This paragraph states that where there is an overhead obstruction less than 2 m above the floor along the pathway, TGSIs are required prevent a person from hitting the overhead obstruction, unless there is suitable barrier such as an enclosed area, rail or other suitable fixture or fitting.

This paragraph also states that where an accessway meets a vehicular way adjacent to any public entrance to a building, TGSIs are required unless there is a kerb or kerb ramp at that point.

#### **Subclause D3.8(2)**

This subclause states that where TGSIs are required they must comply with sections 1 and 2 of AS/NZS 1428.4.1, which sets out the design and positioning requirements of TGSIs.

#### **Note on TGSIs on landings**

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AS/NZS 1428.4.1 does not require TGSIs on a landing of a stairway or ramp if it is an enclosed landing with no entrance/exits onto or off the landing and where the landing is less than 3 m deep with a continual handrail around the outer edges (see figure 2.2(B) of AS/NZS 1428.4.1).

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#### **Subclause D3.8(3)**

This subclause permits raised dome buttons on handrails as an alternative to the use of TGSIs in some aged-care buildings.

Raised domes are not required if TGSIs are used.

### **Clause D3.9 Wheelchair seating spaces in Class 9b assembly buildings**

This clause sets out the requirements of the Access Code in relation to the provision of wheelchair seating spaces in Class 9b assembly buildings with fixed seating.

This includes the number of wheelchair seating spaces to be provided in theatres, cinemas, auditoriums and the like, their positioning within the general seating area and how they are to be grouped with other seats or wheelchair spaces.

The dimensions of wheelchair seating spaces must comply with AS 1428.1 clause 18.

#### **Note on amendments to AS 1428.1**

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Amendment 1 to AS 1428.1–2009 makes some corrections to clause 18.

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#### **Note on removable seats in Class 9b buildings**

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There is nothing in the Premises Standards to stop those responsible for Class 9b buildings from having removable seats so that if the wheelchair spaces are not required, seats for other patrons can be installed in those locations.

Building managers, however, would need to ensure that management practices in relation to removable seating do not discriminate. For example, if removable seating were in place and could not be removed immediately on request if there were seating spaces still available at the start of a performance and someone required a wheelchair seating space this may result in discrimination.

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#### **Paragraph D3.9(a)**

This paragraph states that the number and groupings of wheelchair-seating spaces that varies according to the number of fixed seats in the room or space, is provided in Table D3.9.

#### **Paragraph D3.9(b)**

This paragraph imposes additional requirements on wheelchair-seating spaces in cinemas. In cinemas of less than 300 seats, wheelchair-seating spaces must not be provided in the front row of seats. In cinemas with more than 300 seats, not less than 75% of required wheelchair-seating spaces must be located in rows other than the front row.

The clause also states that the location of wheelchair-seating spaces must be representative of the range of seating provided in order to ensure similar degrees of choice available to other patrons.

### **Table D3.9 Number of wheelchair seating spaces**

This Table sets out the number of wheelchair-seating spaces required depending on the number of fixed seats in the building. It also sets out the groupings of spaces and the need for a variety of locations representative of the range of seating provided in larger assembly buildings with over 800 seats.

### **Clause D3.10 Swimming pools**

This clause sets out the requirements of the Access Code in relation to access provided to certain public swimming pools such as a health-centre or gymnasium pool, Council pool or a common-use pool associated with a hotel/motel.

#### **Subclause D3.10(1)**

This subclause states that at least one means of access to and from a swimming pool associated with a building required to be accessible by Table D3.1 must be provided. Table D3.1 specifies the Class of buildings to which this applies and that access is only required to public swimming pools with a total perimeter greater than 40 m.

Private household swimming pools do not need to be accessible.

#### **Subclause D3.10(2)**

This subclause sets out the way access may be provided into and out of a swimming pool. This includes:

- a fixed or movable ramp and an aquatic wheelchair
- a zero-depth entry with a maximum gradient of 1:14 along with an aquatic wheelchair (this is the type of entry often found in 'wave pool' type swimming pools)
- a platform swimming pool lift along with an aquatic wheelchair, or
- a sling-style swimming pool lift.

Details of the Deemed-to-Satisfy Provisions for these methods of providing access can be found in Part D5 of the Access Code (identified as Specification D3.10 in the BCA).

#### **Note on use of TGSIs on swimming pool ramps**

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Subclause D3.8(1)(d) of the Access Code states that ramps used into swimming pools do not require TGSIs.

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### **Subclause D3.10(3)**

This subclause states that where a swimming pool that is required to be accessible by Table D3.1 is greater than 70 m in perimeter entry must be provided by at least one of:

- a fixed or movable ramp and an aquatic wheelchair,
- a zero-depth entry and an aquatic wheelchair, or
- a platform-style swimming pool lift and an aquatic wheelchair.

Accordingly, only swimming pools of less than 70 m in perimeter may provide a sling-style swimming pool lift as the sole means of water entry and exit.

Sling-style lifts do not provide the most dignified means of achieving access, but are permitted in smaller swimming pools (with a perimeter between 40 m and 70 m) where the relative cost of the swimming pool and methods of achieving access warrants their use.

### **Subclause D3.10(4)**

This subclause states that, for safety reasons, latching devices on gates and doors that form part of a swimming pool safety barrier need not comply with AS 1428.1, which generally requires a height of between 900 mm and 1100 mm for such controls.

## **Clause D3.11 Ramps**

This clause sets out a limit to the maximum distance of vertical rise for ramps allowable under the Access Code.

Ramps may be used as part of an accessway where there is a change in level and must comply with the requirements specified in AS 1428.1 including a maximum gradient, landings, TGSIs, handrails and kerbing.

This clause states that a series of ramps cannot be used on an accessway to connect one level to another if the vertical rise is greater than 3.6 metres.

This is to ensure that the overall distance required to negotiate a series of ramps does not cause undue fatigue for a user to the point where the ramp becomes unusable.

This clause also states that a required landing for a step ramp must not overlap another landing for a step ramp or ramp. This requirement aims to ensure that where 2 step ramps converge in a high traffic area, sufficient space is provided to enable manoeuvring without requiring people to wait on the ramp. It also aims to limit the likelihood of 2 step ramps being installed where a fully compliant ramp would provide for better access (in this case the use of 2 step

ramps would require a 1200 mm landing at the bottom of the first step ramp, a 2400 mm landing in-between the first and second step ramp and a 1200 mm landing at the top of the second step ramp).

Where a ramp is installed on a path of travel used solely for servicing an area exempted under D3.4 of the Access Code this limit is not mandatory.

### **Note on vertical rise limit in relation to transport-related buildings**

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The limit to the vertical rise of ramps in D3.11(a) does not apply to transport-related buildings covered by Part H2.

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### **Clause D3.12 Glazing on an accessway**

This clause sets out the requirements of the Premises Standards in relation to the use of a contrasting strip, chair rail, handrail or transom across all frameless or fully glazed doorways and surrounding glazing capable of being mistaken for an opening.

The purpose of this requirement is to assist people with vision impairment to be able to identify the presence of the glazing and avoid injury caused by accidental contact with the glazing.

The contrasting strip must comply with AS 1428.1 clause 6.6 *Visual indicators on glazing*, which includes a requirement that the strip be not less than 75 mm deep extending the whole width of the glazing panel with a 30% luminance contrast when viewed against the floor surface or surfaces within 2 m of the glazing on the opposite side.

### **Note on 'solid' strip**

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Amendment 1 2010 to AS 1428.1 clarifies that the strip must be solid and non-transparent.

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A contrasting strip with a series of dots, unconnected patterns or shapes that do not provide high levels of contrast would not meet the requirements of this provision. The use of a deeper strip that incorporated, for example, a company logo, might meet the Performance Requirement relevant to this building element.

## **PART D4 BRAILLE AND TACTILE SIGNS**

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This Part sets out the requirements of the Access Code in relation to specifications for the design and installation of braille and tactile signs.

#### **Clause D4.1 Scope**

This clause clarifies that these requirements apply to braille and tactile signs required by D3.6 of the Access Code.

#### **Clause D4.2 Location of braille and tactile signs**

The correct design and placement of braille and tactile signs is important in ensuring that they can be used. This clause describes where required signs are to be located accounting for the range of a person's reach. This includes a requirement that signs should be located on the wall on the latch side of the door between 1200 mm and 1600 mm above the floor or ground surface.

Signage placed below 1200mm would be hard to use by a person who requires braille or tactile elements as such signage is usually read with the finger-tips. Signage below 1200mm is difficult and painful to read for the majority of users.

Wherever possible signs should not be placed on doors (other than on the doors of sanitary facilities suitable for use by people with ambulant disabilities – see D3.6(d)), to avoid the hazard of a door being opened onto a person attempting to read the sign.

#### **Clause D4.3 Braille and tactile sign specification**

This clause provides specifications for braille and tactile signs to ensure a consistent approach is used and to ensure that the signage is usable.

#### **Clause D4.4 Luminance contrast**

This clause provides requirements for luminance contrast for braille and tactile signs.

Luminance contrast is the amount of light reflected from one surface or component, compared to the amount of light reflected from the background or surrounding surfaces. Specifying a minimum luminance contrast between signs and the surface they are mounted on and between a sign and its characters, assists people with low vision in finding and accessing information on signs.

#### **Clause D4.5 Lighting**

This clause states that illumination of signs must be available to ensure that the level of luminance contrast is achieved at times when the sign is required to be read. This does not require the sign to be internally illuminated; the illumination source may be external to the sign.

#### **Clause D4.6 Braille**

This clause provides further specifications for braille used on signs to ensure a consistent standard of manufacturing to ensure the signage is usable.

Generally speaking the supply of braille and tactile signs is contracted out to specialist suppliers who would need to be made aware of these requirements.

## **PART D5 ACCESSIBLE WATER ENTRY/EXIT FOR SWIMMING POOLS**

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This Part sets out the requirements of the Access Code in relation to specifications for the provision of swimming pool access.

### **Clause D5.1 Scope**

This clause states the scope of the Part (which is identified as Specification D3.10 in the BCA).

### **Clause D5.2 Fixed or moveable ramp**

This clause provides the specifications for fixed and moveable ramps, which are allowed as a method of water entry and exit by D3.10(2)(a), in conjunction with an aquatic wheelchair as described in Part D5.6 below.

### **Clause D5.3 Zero-depth entry**

This clause provides the specifications for zero depth entry means of entering the water, which are allowed as a method of water entry and exit by D3.10(2)(b), in conjunction with an aquatic wheelchair as described in Part D5.6 below.

The term 'zero-depth entry' is used to describe entry into a pool that provides a gentle gradient into the water not exceeding 1:14.

### **Clause D5.4 Platform swimming pool lift**

This clause provides specifications for platform swimming pool lifts, which are allowed as a method of water entry and exit by D3.10(2)(c), in conjunction with an aquatic wheelchair as specified in subclause D5.6 below.

A platform swimming pool lift consists of a platform onto which a person using an aquatic wheelchair is wheeled. The platform is then raised, positioned over the water, and then lowered into the water.

### **Clause D5.5 Sling-style swimming pool lift**

This clause provides the specifications for sling-style swimming pool lifts, which are allowed as a method for water entry and exit by D3.10(2)(d), but which may only be the sole method of water entry for swimming pools with a perimeter of less than 70 m (D3.10(3)). Part 5 also includes diagrams (Figure D5.7) showing the clear pool-surround space required for a sling lift.

A sling-style swimming pool lift is used to assist in transferring a person directly from their wheelchair. The person in the wheelchair may position themselves into the sling when it is detached from the lifting device. This allows the person to transfer by the poolside or in the privacy of a changing area.

The sling is then attached to the lifting device and the person is transferred into the pool without their wheelchair.

#### **Clause D5.6 Aquatic wheelchair**

This clause provides specifications for aquatic wheelchairs to ensure their suitability for use for water entry and exit. An aquatic wheelchair is used in conjunction with a fixed or movable ramp, a zero-depth entry and a platform swimming pool lift.

An aquatic wheelchair is designed to be used and immersed in water and is usually constructed of plastic or a similar material that does not react adversely when exposed to water.

### **PART E3 LIFT INSTALLATIONS**

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Part E3 provides information on limitations to the use of various types of passenger lifts in certain situations.

It also provides information on the size of lift cars and platforms, the application of features such as lighting, door opening widths, handrails and audible and visual information to specific lift types. (Part E3 is identified as Part E3.6 in the BCA.)

#### **EP3.4 Performance Requirement**

This clause provides the general Performance Requirements in relation to lifts and states that where a passenger lift is provided in a building required to be accessible by Table 3.1, it must be suitable for use by people with disability.

#### **Clause E3.0 Deemed-to-Satisfy Provisions**

This clause states that the Performance Requirement is met if the lift complies with clause E3.6 below or, in the case of lifts in a transport building, if it complies with Part H2 of the Access Code, which references AS 1735.12.

#### **Clause E3.6 Passenger lifts**

The Access Code (and the BCA) introduces a range of different types of passenger lifts that could be used in certain situations. This will allow for more cost-effective means of providing vertical transport. This clause describes, in



Table E3.6(a), limitations to the use of various types of passenger lifts in certain situations.

It also provides information in Table E3.6(b) on the size of lift cars and platforms, the application of features such as lighting, door opening widths, handrails and audible and visual information and emergency hands-free communications to specific lift types.

The floor plate size of low-rise lifts travelling less than 12 m is generally 1100 mm x 1400 mm apart from a stairway platform lift which may be 810 mm x 1200 mm applicable Australian Standard and generally are 810 mm x 1200 mm. (These dimensions are width and depth respectively).

Lifts that can travel beyond 12 m are required to have a larger lift floor plate size of 1400 mm x 1600 mm although this requirement is limited in some situations by the concession for existing buildings detailed in Section 4.4 of the Premises Standards.

Details of the specifications for various lifts are found in a suite of AS 1735 standards referenced in Part A3.1 of the Access Code.

Some types of lifts must not be used in high-traffic public-use areas of certain buildings. For example, an AS 1735.15 lift must not be used at the entry to a theatre.

However, this type of lift may be used to provide access to the stage in a theatre because the access to the stage is not considered to be a high traffic public-use area.

### **Note on use of stairway platform lifts**

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There are a number of limitations on the use of stairway platform lifts (AS 1735.7) because of concerns over their reliability, usability and the dignity of people who use them.

One restriction is that they must not 'be used where it is possible to install another type of passenger lift'.

Their use, particularly in new buildings, should be the option of last resort. Decisions about whether or not an alternative type of lift could be used would have to take into consideration factors listed in Section 4.1 Unjustifiable hardship of the Premises Standards.

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### **Note on use of stairway transfer chairlifts**

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While commonly used in private housing the use of stairway transfer chairlifts is not permitted on continuous accessible paths of travel in public buildings. These devices require a person using a wheelchair to transfer from their chair onto the chairlift and as a result their wheelchair is left at the bottom of the stairway.

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## **PART F2 SANITARY AND OTHER FACILITIES**

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This Part sets out the requirements of the Access Code in relation to the provision of sanitary facilities suitable for use by people with disability. Not only must people with disability be able to access a building's sanitary facilities, those facilities must be usable by them.

### **FP2.1 Performance Requirement**

This clause provides the general Performance Requirements in relation to sanitary facilities provided in a building.

It states that suitable sanitary facilities must be provided in convenient locations and that the provision of sanitary facilities should take account of the function or use of a building, the number and gender of occupants and the needs of occupants including people with disability.

### **Clause F2.0 Deemed-to-Satisfy Provisions**

This clause states that the Performance Requirements of FP2.1 in relation to facilities suitable for use by people with disability are met by complying with clause F2.2 and F2.4 below.

In the case of sanitary facilities in the public part of a transport building, however, FP2.1 Performance Requirements are met if the sanitary facilities comply with Part H2 of the Access Code, which references *AS 1428.1–2001 clause 10*.

### **Clause F2.2 Calculation of number of occupants and fixtures**

This clause provides a reference to clause D1.13 of the BCA for assistance in calculating the number of occupants of a building. This information is necessary in order to determine how many sanitary facilities are needed for a particular building.

The BCA specifies in F2.3 and Table F2.3 the number of sanitary facilities required dependent on the Class of building and the number of occupants.

### **Note on accessible unisex toilet counting as 1 male and 1 female pan**

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The BCA under F2.2(c) states that a unisex facility for people with disability can be counted as a facility for both a male and a female.

For example, if there is a requirement for a toilet block to contain ten toilets for males and ten toilets for females (a total of 20 toilets), they may be provided as a total of 19 toilets, ie:

- nine male,
- nine female, and
- one unisex toilet for people with disability.

In another case where there is a requirement for one toilet for males and one toilet for females, providing a single unisex facility may satisfy this requirement.

In addition F2.3(b) of the BCA states 'If not more than ten people are employed, a unisex facility may be provided instead of separate facilities for each sex.'

Taken together as a general rule of thumb this means that a single unisex accessible sanitary facility might satisfy the requirements of a small business or service provider employing ten or less people in a building.

Those responsible for buildings should refer to the BCA for clarification.

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### **Clause F2.4 Accessible sanitary facilities**

This clause provides details of the requirements for accessible sanitary facilities in buildings required to be accessible.

#### **Paragraph F2.4(a)**

This paragraph refers to Table F2.4(a) to determine the number of accessible unisex sanitary compartments (accessible toilets) that must be provided in parts of a building required to be accessible. Where there are toilets provided in buildings or parts of buildings not required to be accessible by D3.4 or the small building concession in D3.3 of the Access Code applies, accessible unisex sanitary compartments would not be required.

#### **Paragraph F2.4 (b)**

This paragraph refers to Table F2.4(b) to determine the number of accessible unisex showers that must be provided in parts of a building required to be accessible. Where there are showers provided in buildings or parts of buildings not required to be accessible by D3.4 or the small building concession in D3.3 of the Access Code applies or where the BCA does not require showers to be provided, accessible unisex showers would not be required.

### **Paragraph F2.4(c)**

This paragraph states that where there are more standard sanitary compartments (toilets), in addition to a required accessible unisex sanitary compartment at any bank of toilets, a compartment suitable for use by a person with an ambulant disability, must also be provided.

### **Note on ‘bank of toilets’**

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A ‘bank of toilets’ is not defined in the Premises Standards, however, it should be considered to be a set of sanitary compartments for use by males and females.

Generally a bank of toilets would consist of separate male and female compartments or blocks.

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.

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.

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.

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.

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 occupants such as a waiting area. In this case the multiple toilets servicing the same area might be considered to be the bank.

The trigger for the requirement for a compartment suitable for use by a person with an ambulant disability is where there is a separate bank of sanitary compartments for use by males and females in addition to a required unisex accessible sanitary compartment. In such situations each gender-specific sanitary compartment must include a compartment suitable for use by people with an ambulant disability.

If the additional sanitary compartment provided is a compartment consisting of a single closet pan and washbasin for use by either sex, it must be a compartment suitable for use by people with an ambulant disability.

Specifications for a compartment suitable for use by a person with an ambulant disability are found in AS 1428.1 clause 16 and include the need for grabrails, signage, coat hook and minimum clear circulation spaces.

This Guideline cannot provide detailed guidance addressing every possible variation in the design and location of sanitary facilities. As with other areas of building law building professionals will on occasion have to exercise professional judgement about how to apply the requirements to specific situations.

A few examples, however, may assist in identifying general principles.

#### *Example 1*

If a building was required by the BCA to provide ten toilet pans for occupants and all were located in the same part of the building as separate male/female facilities, this requirement might be met by providing:

- an accessible unisex sanitary compartment (which can count as one male and one female pan)
- a female facility with four closet pans, and
- a male facility with four closet pans (and urinals)

In this case, because there are a number of male and female closet pans in addition to the accessible unisex sanitary compartment, one of the closet pans in the male block and one closet pan in the female block would need to comply with AS 1428.1 clause 16 and provide a compartment suitable for use by a person with an ambulant disability.

#### *Example 2*

If a building were only required by the BCA to provide one male and one female closet pan and this was achieved through the provision of a single accessible unisex sanitary compartment (which counts as 1 male and 1 female pan) this would meet all the requirements of the BCA and Premises Standards because there would be no toilets in addition to the required accessible unisex sanitary compartment.

#### *Example 3*

If a multi-storey building provided alternating male and female sanitary compartments on each floor the male on one floor and the female on the next floor together constitute a bank of toilets. In this situation while an accessible unisex sanitary compartment would only be required on one of the floors a compartment suitable for use by a person with an ambulant disability should be provided at both the male and female compartments on each floor.

### **Note on concession where there are multiple banks on a storey**

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Table F2.4(a) states that if there are multiple banks of toilets containing male and female sanitary compartments on a storey in a Class 5, 6, 7, 8 or 9 building (except for within a ward area of a class 9c health-care building), only 50% of those banks of toilets need have an accessible unisex sanitary compartment.

Where this concession applies the bank of toilets that is not required to have an accessible unisex sanitary compartment would also not be required to have compartments suitable for use by a person with an ambulant disability. This is because the current wording of F2.4(c) stipulates a compartment suitable for use by a person with an ambulant disability is only required where there are sanitary facilities in addition to an accessible unisex sanitary compartment.

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### **Paragraph F2.4(d)**

This paragraph states that an accessible unisex compartment must include a closet pan, washbasin, a shelf or bench top and adequate means of disposing of sanitary towels.

These facilities must be inside the accessible unisex compartment and not outside in a public area.

### **Note on fixtures and fittings**

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F2.4(d) specifically mandates the need for certain fixtures and fittings and F2.4(e) requires them to comply with AS 1428.1. If other fixtures and fittings are also provided, such as mirrors, soap dispensers, towel dispensers or similar and clothes-hanging devices, they must also comply with the relevant provisions of AS 1428.1. Note also that if a mirror is provided, AS 1428.1 clause 15.4.1 notes it should not be tilted but should extend between 900 mm and 1850 mm from the floor.

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### **Note on use of toggle switches**

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AS 1428.1 Clause 14.2 requires the use of the larger rocker and toggle type switches (30 mm x 30 mm), but only in accessible sanitary facilities (including ambulant accessible toilets) and accessible SOUs in Class 3 buildings.

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### **Paragraph F2.4(e)**

This paragraph states that circulation spaces, and fixtures and fittings of all accessible sanitary facilities where required or provided, must comply with AS 1428.1 clause 15 as appropriate.

**Paragraph F2.4(f)**

This paragraph clarifies that an accessible unisex toilet or shower must be ‘stand alone’ and access to it must be possible without the need to cross an area reserved for one sex only. In other words an accessible unisex facility cannot be placed within a facility reserved for one sex only.

**Paragraph F2.4 (g)**

This paragraph states that where two or more accessible unisex toilets are provided in a building, the number of left- and right-hand mirror image facilities must be provided as evenly as possible.

Where a person is seated on the toilet and facing forward and the grabrail is on the right hand side, the cubicle is set up for a right-hand transfer.

This is required because some people transfer to a pan from their wheelchairs from the right-hand side and some from the left.

**Paragraph F2.4(h)**

This paragraph states that where male and female sanitary facilities are provided at separate locations, such as on different levels or at opposite sides of a floor, accessible unisex sanitary facilities are only required at one of those locations. So, for example, if male toilets are located on level three and female toilets are located on level five of a building an accessible unisex toilet is only required at one location.

**Paragraph F2.4(i)**

This paragraph states that accessible unisex sanitary facilities are not required in an area that is not required to be accessible because of the concession found in D3.3(f) (Note that an amendment was made to this paragraph to replace the reference to D3.3(g) with D3.3(f)).

**Table F2.4(a) Accessible unisex sanitary compartments**

This table provides minimum requirements for the provision of accessible unisex sanitary compartments.

Accessible unisex sanitary compartments are required on each storey where there are blocks of toilets (subject to the concession of F2.4(h) above).

**Note on directional signage to accessible toilets**

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If there are multiple banks containing male and female sanitary compartments on a storey in a Class 5, 6, 7, 8 or 9 building (except for within a ward area of a class 9c health-care building), only 50% of those banks of toilets need have an accessible unisex compartment.

However, note also that paragraph D3.6(f) of the Access Code requires that clear directional signage (incorporating the international symbol of access in accordance with AS 1428.1) about the location of the closest accessible unisex facilities must be provided at those blocks where there is no accessible unisex toilet.

For example, if a large theatre, shopping centre or sports stadium has a number of toilet blocks on any one level only 50% of the toilet blocks need have an accessible unisex toilet. Blocks without an accessible unisex toilet must have directional information about the location of the closest accessible unisex toilet.

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#### **Table F2.4(b) Accessible unisex showers**

This table provides minimum requirements for the provision of accessible unisex shower facilities in Class 1b (where required to be accessible), Class 2 (common areas showers), Class 3 (in accessible SOUs), Class 9c aged-care buildings (in accessible SOUs) and Class 10a buildings, such as the change rooms associated with a swimming pool or sports venue where showers are made available.

#### **Note on accessible unisex showers**

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In class 5, 6, 7, 8 and 9 buildings, accessible showers are only required where the BCA requires showers to be provided in the first place. For those classes, the BCA only requires showers in Class 9b theatres and sporting venues. If showers are provided voluntarily in other buildings, e.g., in an office building, F2.4 does not require accessible showers to be provided, but developers are encouraged to do so.

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#### **Note on use of accessible unisex toilets to co-locate non-required showers**

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On occasion developers place non-required showers in an accessible unisex toilet, for example in an office block. While there is nothing in the Premises Standards to stop this from being done care must be taken to ensure this does not infringe on required circulation space. Consideration should also be given to the effect this would have on people with disability wishing to use of the accessible toilet having to wait while others use the shower.

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## **PART H2 PUBLIC TRANSPORT BUILDINGS**

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### **Introduction**

The Transport Standards set out the requirements for providing accessible public transport, including requirements in relation to the passenger-use areas



of buildings used for the delivery of public transport such as bus interchanges, railway stations and airports.

Generally such buildings or structures are either Class 9b or Class 10 buildings. Since 2002 all new public transport buildings have been required to comply with the Transport Standards that demanded higher levels of access than the BCA at that time.

In addition, the passenger-use areas of existing transport-related buildings are subject to a timetable for upgrade of buildings to meet the requirements of the Transport Standards over time.

In order to maintain these mandatory upgrade timetable requirements and maintain continuity of requirements for the passenger areas of transport-related buildings the relevant parts of the Transport Standards covering passenger-use areas of transport-related buildings have been removed from the Transport Standards and placed in Part H2.

### **Differences in Deemed-to-Satisfy Provisions**

This transposition of the building requirements for passenger-use areas of transport buildings from the Transport Standards means that the Deemed-to-Satisfy Provisions for the passenger areas of public-transport-related buildings are in some instances different from the general Deemed-to-Satisfy Provisions of other parts of the Access Code and refer to different Australian Standards or editions of Australian Standards applicable at the time the Transport Standards were developed.

Specifically, Part H2 references AS 1428.1–2001, AS 1428.1: Supplement 1–1993, AS 1428.2–1992, AS 1428.4–1992 and AS 1735.12–1999.

Where the requirements of the Access Code refer to Deemed-to-Satisfy Provisions that are different to those referenced in H2, then H2 takes precedence.

For example, under the Access Code generally the Deemed-to-Satisfy requirement for the minimum width of accessible paths of travel is 1000 mm (AS 1428.1–2009) whereas Part H2 refers to AS 1428.2–1992, which requires 1200 mm minimum width. In this example, H2 takes precedence in relation to the passenger-use areas of transport-related buildings.

This is true for all matters covered under Part H2 for both new and upgraded passenger-use areas of public-transport-related buildings including:

- accessways (H2.2)

- manoeuvring areas (H2.2)
- passing areas (H2.2)
- ramps (H2.3)
- surfaces (H2.2)
- handrails and guardrails (H2.4)
- doorways and doors (H2.5)
- lifts (H2.6)
- stairways (H2.7)
- toilets (H2.8-H 2.9)
- symbols and signs (H2.10)
- TGSIs (H2.11)
- lighting (H2.12)
- controls (H2.15)
- hearing augmentation (H2.13)
- emergency warning systems (H2.14)

### **Note on best practice**

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While compliance with H2 fulfils responsibilities in relation to passenger-use areas of public-transport-related buildings, there is nothing in the Premises Standards to stop developers from applying levels of access found in other parts of the Access Code if they are higher.

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### **Additional requirements for passenger-use areas of new transport-related buildings**

As a general rule for new public transport buildings, if there is a matter covered in the Access Code, but not addressed at any level in H2, the additional requirements of the Access Code must be met in order to address Deemed-to-Satisfy Provisions.

For example, the Premises Standards introduce new requirements for toilets suitable for use by people with an ambulant disability in some situations (see Paragraph F2.4(c)). This requirement was not covered by the Transport Standards when developed and consequently is not included in Part H2 of the Access Code.

In this situation, toilets suitable for use by people with ambulant disabilities must be provided in all new transport buildings.

### **Note on provision in upgraded transport related buildings**

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While this requirement may not apply to upgrades of existing buildings, there is nothing in the Premises Standards to stop developers from providing such facilities in buildings that are undergoing upgrades.

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### **Additional requirements in Transport Standards**

There are some parts of the Transport Standards, however, that have not been imported into Part H2. This is because, while they are important aspects of the delivery of accessible public transport, they are not matters generally requiring building approval.

Those responsible for public transport services will, therefore, continue to need to refer to the Transport Standards for non-building aspects of transport services if associated with a building including:

- conveyances, such as buses, ferries and aircraft
- infrastructure such as bus stops and waiting areas
- resting points
- waiting areas
- boarding
- allocated space
- furniture and fittings
- street furniture
- gateways
- vending machines
- passenger information, and
- food and drink services

### **Timetable for full upgrade of existing transport-related buildings**

The timetable for upgrade of existing transport-related buildings can be found in subclause 3.1 of the Premises Standards.

Transport service providers will have developed their own schedule for upgrading passenger areas of public-transport-related buildings to meet the timetable for upgrading existing buildings. Where overall they are meeting that timetable (for example 55% of railway stations have to be upgraded to meet the requirements of the timetable in subclause 3.1(3) by 2012), they are fulfilling their responsibilities under the Premises Standards.

Building certifiers are not responsible for monitoring or reporting on whether or not a transport service provider or operator is meeting the timetable for upgrading the passenger-use areas of transport-related buildings.

### **Equivalent access**

While the provisions relating to equivalent access found in the Transport Standards have not been moved into Part H2 of the Premises Standards, there may be situations where providing equivalent access may form part of proposed Alternative Solutions. The relevant provisions in the Transport Standards are found in Part 33 and are as follows:

#### **33.3 Equivalent access**

- (1) Compliance with these Standards may be achieved by:
  - (a) applying relevant specifications in these Standards before the target dates; or
  - (b) using methods, equipment and facilities that provide alternative means of access to the public transport service concerned (but not using separate or parallel services) with equivalence of amenity, availability, comfort, convenience, dignity, price and safety.
- (2) This may include direct assistance over and above that required simply to overcome discrimination.

#### **33.4 Consultation about proposals for equivalent access**

The operator or provider of a public transport service must consult with passengers with disabilities who use the service, or with organisations representing people with disabilities, about any proposal for equivalent access.

#### **33.5 Equivalent access without discrimination**

Operators and providers must be able to demonstrate that equivalent access provides public transport without discrimination 'as far as possible'.

#### **33.6 Direct assistance**

- (1) Nothing in these Standards prevents operators or providers from offering assistance directly to passengers.
- (2) If these Standards have not been fully met, direct assistance may be a means of providing equivalent access.
- (3) In addition to compliance with other provisions of these Standards, direct assistance to passengers is required if:
  - (a) it is necessary to provide equivalent access to a service; and
  - (b) direct access can reasonably be provided without unjustifiable hardship.

## Exemptions

Part 5 of the Premises Standards allows the Australian Human Rights Commission to grant exemptions from compliance with some or all of Part H2. This exemption power only applies to the passenger-use areas of transport-related buildings and structures.

Where an exemption has been granted covering a particular building or part of a building, certifiers, developers and managers are not required to ensure compliance with the Premises Standards in relation to those things covered by the exemption for the time period of the exemption.

Information on current exemptions can be found at [http://humanrights.gov.au/disability\\_rights/exemptions/exemptions.html](http://humanrights.gov.au/disability_rights/exemptions/exemptions.html)

## New work on transport buildings not scheduled for full upgrade

On occasion, new work on existing buildings might be necessary on public-transport-related buildings that are not scheduled by the transport service provider for full upgrades in compliance with the timetable in clause 3.1(3).

Ordinarily under the Premises Standards such new work on existing buildings might trigger an upgrade of the 'affected part' of the building, ie, the path of travel from the principal pedestrian entrance to the new work.

Similarly, certifiers might view an application for new work on an existing public transport related building as triggering a full upgrade of the building in accordance with subclause 3.1.

An application should not be interpreted as requiring this if it would result in additional work outside the scheduled timetable for full upgrade of the building established by the transport service provider.

Subclause 3.1 of the Premises Standards requires a building certifier, developer or manager who is an owner or operator of a public transport service to ensure that a public-transport-related building that is upgraded to meet the timetable complies with the various elements listed.

It is not intended that occasional necessary upgrades to elements of a public-transport-related building outside the scheduled upgrade timetable should necessarily trigger a full upgrade.

For example, if some minor work was necessary on a toilet block at a railway station that was not yet scheduled for a full upgrade, this minor work will not trigger a full upgrade (including an upgrade of the 'affected part' of the building) of the railway station. Certifiers responsible for approving the minor new

building work would not face possible liability other than in relation to requirements that are as applicable to existing public-transport buildings.

It is clear from section 3.1(1) that the compliance required for existing public transport buildings is compliance with the timetable in section 3.1(3) and section 3.2(1)(b) stipulates that these requirements are set out in Part H2.

There are at least two ways that transport service providers might address any concerns of certifiers when faced with this situation.

Firstly, the service provider might provide information on its upgrade schedule and progress towards meeting the timetable. This may take the form of an Action Plan or Building Upgrade Plan (see the note on Action plans/Building upgrade plans in section 4.1 of the Premises Standards above). Such a plan would indicate to a certifier that an upgrade of the building was not required at that time.

Second, Part 5 of the Premises Standards allows for the Australian Human Rights Commission to grant exemptions to a transport service provider in relation to passenger areas of transport-related buildings.

If any transport service provider has been granted such an exemption in relation to specific existing buildings then certifiers responsible for approving new building work can have confidence that upgrades to the 'affected part' of a building or the whole building are not required at that time.

Information on current exemptions in place can be found at [http://humanrights.gov.au/disability\\_rights/exemptions/exemptions.html](http://humanrights.gov.au/disability_rights/exemptions/exemptions.html)

In some situations developers might consider referring such issues to Access Panels or equivalent, where they exist, if the certifier is concerned about their responsibilities under the BCA or state and territory building law in relation to this matter.

### **Clause H2.1**

This clause sets out the application of Part H2

#### **Subclause H2.1 (1)**

This subclause clarifies that this Part provides the Deemed-to-Satisfy Provisions in relation to the passenger areas of Class 9b or Class 10 buildings used for public transport.

### **Subclause H2.1 (2)**

This subclause clarifies that where there are differences between these Deemed-to-Satisfy Provisions and the general Deemed-to-Satisfy Provisions in Parts D3, E2 and F2 of the Access Code these Provisions take precedence.

For example, Part H2.2 (1) references AS 1428.2 in relation to accessways which requires a minimum width of 1200mm for the width of a path of travel whereas the Access Code generally references AS 1428.1 – 2009 which requires 1000mm for the minimum width of a path of travel. In this example H2.2 (1) takes precedence.

### **Subclause H2.1 (3)**

This subclause clarifies that, as under the Transport Standards, only certain of the requirements in Part H2 apply to ‘airports that do not accept regular public transport services’ as defined in the Transport Standards.

### **Subclause H2.1 (4)**

This subclause states that A3.3(a)(i) of the BCA does not apply to Part H2 because the application of this provision to Part H2 could result in a different outcome to what would have been achieved under similar provisions that existed in the Transport Standards.

Under A3.3(a)(i) of the BCA, if 10% or less of the floor area of a storey is used for a purpose which could be classified differently to the remainder of that storey, that part may be classified as being the same as the remainder.

### **Clause H2.2**

The requirements for accessways in H2.2 were previously located in the Transport Standards.

Accessways and manoeuvring areas may be used for other purposes, such as standing areas, but it is expected that public transport passengers will be able to transit them and that they remain available for use by people with disability when required.

Deemed-to-Satisfy Provisions in subclause H2.2 cover:

- accessways which branch into 2 or more parallel tracks – subclause H2.2(2)
- minimum unobstructed width of accessways – subclause H2.2(3)
- potential obstructions of accessways – subclause H2.2(4)
- luminance contrast of obstacles abutting an accessway – subclause H2.2(5)
- manoeuvring areas – subclause H2.2(6)
- passing areas – subclause H2.2(7), and

- ground and floor surfaces – subclause H2.2(8).

Subclause H2.2(9) clarifies that the provision of turning spaces as required by subclause D3.3(c)(ii) of the Access Code which deals with turning spaces do not apply to public transport buildings. This is because H2.2(7) requires passing spaces every 6 meters and a passing space may serve as a turning space.

### **Clause H2.3**

This clause states that ramps in public transport forming part of an accessway must comply with clause 8 of AS 1428.2–1992<sup>10</sup>.

It also states that D3.11(a), which limits the combined vertical rise of connected ramps to 3.6 m, does not apply to buildings covered by Part H2.

### **Clause H2.4**

This clause states that handrails and grabrails complying with clause 10.1 and 10.2 of AS 1428.2 respectively must be placed along an accessway to assist wherever passengers are likely to require additional support or guidance.

This might include points such as changes of level, ramps, a narrowing or a change of direction of an access path.

Subclause H2.4 (4) states, in particular, that a grabrail or handrail must be provided at fixed locations where passengers are required to pay fares.

### **Clause H2.5**

This clause states that doorways and doors must comply with clause 11 (except clause 11.5.2) of AS 1428.2–1992. The Access Code allows for doors that are automatic, power assisted or manual. Automatic doors allow for greater access along an accessway.

### **Clause H2.6**

This clause states that lifts used in transport related buildings must comply with AS 1735.12.

### **Clause H2.7**

The requirement for an accessway under the Premises Standards means that stairs cannot be the sole means of access in premises or infrastructure. However, stairs are acceptable as an optional route on a path of travel. This

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<sup>10</sup> Note that Transport Standards Part 6.5 states that ramps connecting pontoon wharves need only meet the slope requirements of AS 1428.2 for 80% of the high and low tide levels.



clause provides references to specific clauses in AS 1428.1–2001 and AS 1428.2–1992 that must be complied with.

**Clause H2.8**

This clause states that if toilets are provided, at least one unisex accessible toilet must be provided in accordance with AS 1428.1–2001 clause 10.

**Clause H2.9**

This clause states that where an accessible toilet is required it must be in the same location as other toilets.

**Clause H2.10**

This clause states the requirements for symbols and signs, including where signs should be provided, and the specifications that the signs must comply with.

**Clause H2.11**

This clause states that TGSIs must be installed to define key areas on an accessway for people with vision impairment. TGSIs must comply with AS 1428.4–1992 and must indicate changes in direction in accordance with clause 18.1 of AS 1428.2–1992.

**Clause H2.12**

This clause states that any lighting provided must comply with the minimum levels of maintenance illumination specified in the notes to clause 19.1 of AS 1428.2–1992.

**Clause H2.13**

This clause that if a public address system is installed, it must comply with clause 21.1 of AS 1428.2–1992.

**Clause H2.14**

This clause states that provides specifications for emergency warning systems and references AS 1428.2–1992 clauses 18.2 (1, 2 and 3).

The clause also states that in the event of an emergency, provision must be made for people with vision impairment to locate the exit path.

**Clause H2.15**

This clause states that controls must comply with clause 11 of AS 1428.1–2001 which covers door handles and hardware, switches and general purpose outlets (power points) and water taps.