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

# Submission Form

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This form has 57 questions. You do not need to answer all the questions in Sections 2, 3, 4 or 5.

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## Privacy Statement

The Department of Industry and Science (the Department) is bound by the Australian Privacy Principles (APPs) outlined in [Schedule 1](http://www.comlaw.gov.au/Details/C2014C00076/Html/Text#_Toc382303234) of the Privacy Act 1988 (Cth) (Privacy Act) which regulates how entities may collect, use, disclose and store personal information. Information is being collected to enable and assist the Department review the effectiveness of the Disability (Access to Premises – Buildings) Standards 2010 (the Standards).

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 Submissions marked as confidential will not be published.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

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

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 Contact information such as email address will not be published however, upon your agreement it can be used to provide you with updates and developments on the Standards.

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

Personal information obtained will be stored and held in accordance with the Department’s obligations under the Archives Act 1983 (Cth). Personal information obtained will only be used and disclosed for the purposes outlined above and will not be otherwise used or disclosed without your consent, except where authorised or required by law. For further information, please refer to the Department’s [Privacy Policy](http://www.industry.gov.au/Pages/PrivacyPolicy.aspx).

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

Do you agree with the privacy statement above?

Yes, I agree

Yes, I agree and want to make a confidential submission

No, I do not agree

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

## Section 1: Personal Details

1. Name *(Required)*: Caleb Rook
2. Email (*Required)*: crook@qdn.org.au
3. Would you like to receive email alerts about the Premises Standards Review?  Yes  No
4. What state or territory do you live in? *(Required)*

(Please check only one box)

Australian Capital Territory

New South Wales

Northern Territory

Queensland

South Australia

Tasmania

Victoria

Western Australia

1. What best describes the location where you live? (Please check only one box)

City

Regional

Remote

1. Are you make this submission as:

An individual / individuals OR  On behalf of an organisation

1. If you are making this submission on behalf of an organisation, what is the name of the organisation? Queenslanders with Disability Network
2. What best describes your interest in making a submission? (Please check only one box)

I am a person with disability or carer of a person with disability

I am an advocate for people with disability

I work for an industry representative body such as an industry association

I am a building certifier (private certifier, government employed certifier)

I am a building manager (property owner or lessee, project manager, operational staff)

I am a building developer (property developer, property owner, building designer, builder, project manager, property lessee)

I am an accessibility consultant

I am a government official

Other. Please Describe:

1. If you are a government official, what level of government do you work for:

Local Government

State or Territory Government

Australian Government

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## Section 2: General View of the Premises Standards

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

1

2

3

4

5

Not Applicable

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

1

2

3

4

5

Not Applicable

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## 

## Section 3: Provisions of the Premises Standards

### 3.1 Accommodation Buildings

The Premises Standards apply to the following accommodation buildings:

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

#### Specified Class 1b Buildings

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

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

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

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

#### Class 3 Buildings

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

*Access All Areas* acknowledged the concerns raised by representatives of the tourism and accommodation industry that the increased room ratio was not required. However, it did note the lack of evidence provided to support this position and, as a consequence, no recommendation was made in relation to the room ratio[[1]](#footnote-1).

#### Questions – 3.1 Accommodation Buildings

1. Is the bedroom/dwelling threshold for specified Class 1b buildings appropriate?

Yes. Please explain your answer:

No. Please explain your answer: All Class 1b, new or existing, should have the same threshold. This should be as per new constructions. Unjustifiable hardship can cover any problems in meeting this for existing.

Not applicable / No comment

1. Has the bedroom/dwelling threshold had any effect on the construction of new specified Class 1b buildings and/or the conversion of existing buildings to specified Class 1b buildings since May 2011?

Yes. Please explain your answer:

No. Please explain your answer: No effect that QDN is aware of. Certain Class 1bs such as caravan parks and boarding houses are in decline for other reasons, but certainly not as a result of the Premises Standard.

Not applicable / No comment

1. Is the accessible room ratio for Class 3 buildings (for example, hotels and motels) appropriate?

Yes. Please explain your answer:

No. Please explain your answer: The percentage of accessible rooms should be the same regardless of the number of rooms overall. Ten percent seems a reasonable figure given 18% of the population report a disability.

Not applicable / No comment

1. Are there other issues with accommodation buildings you think should be addressed?

Yes. Please explain your answer: Residences are not covered, whether units or houses. This is a major ommission as a person's home is vital to their very existence. Regulation of all residential accommodation via the Premises Standards is an absolute neccessity if people with disabilities are to be housed safely and with any dignity.

No. Please explain your answer:

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### 3.2 Accessible Sanitary Facilities

The Premises Standards state that suitable sanitary facilities for personal hygiene must be provided in a convenient location within, or associated with, a building, to the degree necessary, appropriate to[[2]](#footnote-2):

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

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

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

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

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

#### Questions – 3.2 Accessible Sanitary Facilities

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

Yes. Please explain your answer: Locked accessible toilets are a feature of many multiple tenancy premises. There will sometyimes be a sign informing that the key can be picked up "from the chemist" or whoever has it. At other times they are simply locked with no direction to the holder of the key.

No. Please explain your answer:

Not applicable / No comment

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

Yes. Please explain your answer: Large shopping centres may have the correct proportion number of accessible toilets but if located in a few large blocks rather than spread over the premises in numerous smaller blocks. there may be a considerable distance between them.

No. Please explain your answer:

Not applicable / No comment

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

Yes. Please explain your answer: None that QDN is aware of. Unjustifiable hardship can cover any situations in existing buildings where full provision is impossible.

No. Please explain your answer:

Not applicable / No comment

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

Yes. Please explain your answer: Many QDN members have high personal support needs and cannot use accessible toilets. Changing Places toilets that meet British Standard BS 8300-2009 'Design of buildings and their approaches to meet the needs of disabled people – Code of practice' (http://changingplaces.org.au/) can solve their access problems. These Changing Place toilets should be installed in any premises that experiences high volumes of people passing through or which can accommodate a large number of occupants.

No. Please explain your answer:

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### 3.3 80th and 90th Percentile Wheelchair Dimensions

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

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

Concerns were raised during the *Access All Areas* inquiry on the relevance of the current 80th and 90th percentile dimensions which were based on research undertaken in 1983[[3]](#footnote-3),[[4]](#footnote-4).[[5]](#footnote-5).

*Access All Areas* recommended that the Australian Government provide funding for new research within 12 months of *Access All Areas* release, to determine the sizes of wheelchairs and the dimensions of building features necessary to accommodate them. In its response to this recommendation, the Australian Government saw merit in such a study but considered that this should be undertaken once the Standards had been operation for two years so that developments to that time could be taken into account[[6]](#footnote-6).

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

A copy of the research report is available through [ABCB’s website](http://www.abcb.gov.au/work-program/access-for-people-with-a-disability.aspx).

#### Questions – 3.3 80th and 90th Percentile Wheelchair Dimensions

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

Yes. Please explain your answer: To not include scooters in the data for determining 80th or 90th percentile was to exclude the mobility aid used by so many of our members. QDN would expect a 90th percentile based on combined scooter and wheelchair data sets rather than just a data set based on wheelchairs.

No. Please explain your answer:

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### 3.4 Passenger Lifts

Some types of passenger lifts, most particularly unenclosed lifts, must be locked off and/or controlled by constant pressure devices[[7]](#footnote-7). These restrictions mean they cannot be used independently by a person with disability without a key, or in some cases cannot be used by all people with disability given the need to apply constant pressure to the operational controls. For stairway platform lifts, the Premises Standards state that they can only be used in situations in which they are the only practical accessibility option.

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

#### Questions – 3.4 Passenger Lifts

1. Have you had issues using lifts which are locked off and/or controlled by a constant pressure device?

Yes. Please explain your answer: Many of our members do not have the dexterity to operate constant pressure controls independently, though pressing buttons is achievable. Keys can likewise be difficult to manipulate for many of our members. If keys are kept remotely to the lift as is often the case, there is not always information provided as to how to obtain them. In some instances there is not even a call button at the lift to ask for assistance. Needless to say these 'compliant' outcomes make the premises inaccessible to many of our members.

No. Please explain your answer:

1. Is there an alternative option to locking off some types of lifts?

Yes. Please explain your answer: QDN does not believe that locking of lifts is justified under any circumstances and that during open hours all paths of travel shall be accessible to our members.

No. Please explain your answer:

Not applicable / No comment

1. Have there been any issues satisfying the restriction on the installation of stairway platform lifts?

Yes. Please explain your answer:

No. Please explain your answer: The platform lifts do not belong in the Premises Standards. Their platforms are too small for some of our members' mobility aids to even fit on. They might be regarded as an unjustifiable hardship solution where no other option was possible but otherwise are for domestic use only.

Not applicable / No comment

1. Are there other issues with passenger lifts you think should be addressed?

Yes. Please explain your answer: Our members are frequently marooned at rail stations, bus stations, on footpaths outside older buildings and in other outdoor places due to lift breakdown. Stricter standards of weather protection and maintenance are needed for lifts outdoors.

No. Please explain your answer:

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### 3.5 Swimming Pools

The Premises Standards describe the requirements for accessibility to and from swimming pools. According to the Premises Standards, access to and from swimming pools is required if[[8]](#footnote-8):

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

Access All Areas recommended the five-year review consider whether the 40-metre perimeter threshold was exempting too many swimming pools from accessibility requirements[[9]](#footnote-9).

#### Questions - 3.5 Swimming Pools

* + - 1. Is the 40 metre perimeter threshold appropriate?

Yes. Please explain your answer:

No. Please explain your answer: Spa pools can have a hoist access so why not swimming pools of any size?

Not applicable / No comment

* + - 1. Have there been any issues satisfying the requirements for swimming pools?

Yes. Please explain your answer:

No. Please explain your answer: None that QDN is aware of.

Not applicable / No comment

* + - 1. Are there other issues with the swimming pool provisions you think should be addressed?

Yes. Please explain your answer: Change rooms are frequently not accessible to many of our members, especially those with high support needs. The ceiling hoists and change table provided in Changing Places toilets will solve that issue. Change rooms should incorporate a Changing Places toilet and shower.

No. Please explain your answer:

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### 3.6 Accessible Carparking

According to the Premises Standards[[10]](#footnote-10), accessible carparking must be provided in:

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

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

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

Access All Areas recommended the five-year review consider the adequacy of accessible carparking[[11]](#footnote-11).

#### Questions - 3.6 Accessible Carparking

1. Has the availability of accessible carparking for people with disability changed with the introduction of the Premises Standards in May 2011?

Yes. Please explain your answer: The number of accessible parking spaces has increased under the Premises Standards. Whether the number is yet sufficient is another matter. Five percent minimum should be considered rather than the current 2%.

No. Please explain your answer:

Not applicable / No comment

1. Have there been any issues satisfying the requirements for accessible carparking?

Yes. Please explain your answer: Accessible car parking spaces are frequently much steeper than the AS2890.6-2009 permits and other dimensions are often similarly compromised, despite their being no major barrier to full compliance. A more rigorous approch to ensuring full accessible provision is required.

No. Please explain your answer:

Not applicable / No comment

1. Are there other issues with accessible carparking provisions you think should be addressed?

Yes. Please explain your answer: Accessible parking spaces can be located impossibly far from an accessible building entrance. They should be required to be immediately adjacent to accessible entrances.

No. Please explain your answer:

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### 3.7 Public Transport Buildings

TheDisability Standards for Accessible Public Transport 2002 (Transport Standards) placed accessibility requirements on public transport buildings. To preserve this, aspects of the Transport Standard, within scope of the NCC, were transferred to Part H2 of the Premises Standards[[12]](#footnote-12). These deemed-to-satisfy provisions are additional to, and take precedence over, those required for Class 9b and Class 10 public transport buildings outlined elsewhere in the Premises Standards.

At present, the Transport Standards and the Premises Standards are not identical in their requirements mainly because the Transport Standards reference older Australian Standards, for example, AS 1428.1‑2001 rather than AS 1428.1‑2009. These inconsistencies were not deliberate, but were the result of the timing of the two Standards. The Transport Standards were enacted in 2002 with the first review commencing in 2007 prior to the release of AS 1428.1‑2009. The [second review](http://www.infrastructure.gov.au/transport/disabilities/review/2012.aspx) is currently underway.

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

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

#### Questions – 3.7 Public Transport Buildings

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

Yes. Please explain your answer: The different technical requirements create confusion and act as a 'get of jail free' card for designers. The lesser dimension or requirement will often be the one provided.

No. Please explain your answer:

Not applicable / No comment

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

Yes. Please explain your answer: QDN expects consistency between the two Standards as our members requirements of a premises do not alter just because it has a transport or other function. The more generous provision of either Standard should be the minimum. New research on wheelchair AND scooter dimensions should determine circulation space requirements for both Standards.

No. Please explain your answer:

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### 3.8 Wayfinding

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

The Premises Standards include some wayfinding requirements such as:

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

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

#### Questions – 3.8 Wayfinding

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

Yes. Please explain your answer:

No. Please explain your answer: Wayfinding provisions are inadequate for our members with vision, cognitive and intellectual disabilities. QDN requests a comprehensive research project into the wayfinding needs of all our members. This research can then inform Premises Standards requirements (but read response to Q 35).

Not applicable / No comment

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

Yes. Please explain your answer: The few that are in there are frequently misapplied. TGSIs are often laid out in a bizzare fashion and signs can be cunningly hidden.

No. Please explain your answer:

Not applicable / No comment

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

Yes. Please explain your answer: it is very difficult to change the Premises Standards. Any wayfinding provisions such as those requested in the response to Q 33 will quickly be out of date, because technology is improving rapidly. Australian Standards are reviewd at least quarterly and so the Premises Standards should reference an Australian Standard on way finding, without restricting it to a particular date.

No. Please explain your answer:

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### 3.9 Emergency Egress

Emergency egress refers to the way a person can exit a building during an emergency. Emergency egress is not specifically dealt with in the Premises Standards. The Premises Standards (Section A2.4) reference the fire safety provisions in the NCC[[13]](#footnote-13).

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

Some changes were made to the NCC in 2013 to improve the accessibility of thresholds, handrails, door hardware and Braille and tactile signage for fire-isolated exits. In addition, a non-mandatory Handbook, *‘*[*Lifts Used in Evacuation*](http://www.abcb.gov.au/education-events-resources/publications/abcb-handbooks.aspx)*’*, and associated new Performance Requirement in the NCC, were introduced.

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

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

As a consequence of available evidence at the current time, the final RIS released this year supported the development of a non-regulatory handbook where the proposals outlined in Option 1 will be documented for reference and available for use on a case-by-case basis by governments and the building industry. Further information on emergency egress is available on the [ABCB’s website](http://www.abcb.gov.au/en/work-program/Emergency%20Egress%20for%20All%20Occupants.aspx).

#### Questions – 3.9 Emergency Egress

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

Yes. Please explain your answer: While a handbook is informative it is not a compliance requirement. There are no deemed-to-satify requirements currently in the Premises Standard for emergency egress. As a result, QDN's member do not report that emergency egress in any of the buildings that they use is particularly good. Rather, if any provisions are made they will be based on staff assisting people rather than on fire rated lifts, visual alarms, or accessible refuges connected to access paths. Emergency egress will only be provided uniformly and reliably when it is incorporated into the Premises Standards.

No. Please explain your answer:

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### 3.10 Small Building Exemption

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

The inclusion of a small building exemption in the Premises Standards was justified on the basis of cost. It was considered the cost of providing access to upper floors of small buildings would trigger the unjustifiable hardship provision of the Premises Standards[[14]](#footnote-14).

Access All Areas recommended the exemption be reconsidered during the five-year review to determine if an exemption based on cost was still appropriate[[15]](#footnote-15).

#### Questions – 3.10 Small Building Exemption

1. Is the small building exemption still appropriate?

Yes. Please explain your answer:

No. Please explain your answer: QDN does not think so. Since the original RIS for the Premises Standards is over a decade out of date we believe that it is no longer applicable. The cost of lifts as a proportion of the construction has dropped so far as we are aware and therefore the non provision of lifts in any building of more than one level should only be on the grounds of unjustifiable hardship as they apply now, not 12 years ago.

Not applicable / No comment

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

Yes. Please explain your answer:

No. Please explain your answer:

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### 3.11 Lessee Concession

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

Access All Areas recommended the five-year review consider whether the lessee concession was being used by building owners to avoid compliance with the Premises Standards[[16]](#footnote-16).

#### Questions – 3.11 Lessee Concession

1. Is the lessee concession being used appropriately?

Yes. Please explain your answer:

No. Please explain your answer: QDN believes that this concession is routinely abuse when lessees may occupy the larger part of a floor, several floors, or almost the entire building. In effect it renders the 'affected part' provisions redundant. The concession should should recognise the area of the leased space as a trigger rather than simply exempt lesees from full compliance with the 'affected part' component of the Premises Standard.

Not applicable / No comment

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

Yes. Please explain your answer: Does the 'leased to one person' in Section 4.3 of the Premises Standards let companies off the hook? If it does it might need to be changed.

No. Please explain your answer:

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### 3.12 Unjustifiable Hardship

It is not unlawful to fail to comply with the Premises Standards if, and to the extent that, compliance would impose unjustifiable hardship on a person or organisation. However, compliance is required to the maximum extent possible not involving unjustifiable hardship[[17]](#footnote-17).

Only a court can conclusively determine whether or not a defence of unjustifiable hardship is available. But the Premises Standards state that any decision of a state or territory body, such as an Access Panel, established to make recommendations to building approval authorities about building access matters, is a relevant consideration in assessing a claim of unjustifiable hardship[[18]](#footnote-18). Access Panels advise, or make recommendations on, whether to accept claims from building developers that the full application of the Premises Standards would be too onerous and likely result in unjustifiable hardship. The Premises Standards in Part 4.1 outline the unjustifiable hardship exception including the circumstances that should be taken into account when Access Panels consider whether a case of unjustifiable hardship exists[[19]](#footnote-19).

#### Questions – 3.12 Unjustifiable Hardship

1. Is the unjustifiable hardship exception operating appropriately?

Yes. Please explain your answer:

No. Please explain your answer: There is no consistent approach to defining what an unjustifiable hardship actually is as no responsible body oversees unjustifiable hardship applications. This invites a 'risk management' approach based on liklihood of complaint rather than a rights based approach.

Not applicable / No comment

1. Are the arrangements for identifying and responding to questions of unjustifiable hardship adequate?

Yes. Please explain your answer:

No. Please explain your answer: QDN sees no appropriate mechanism in place that determines the liklihood of an unjustifiable hardship existing prior to DDA complaint. Only a complaint that led to a Federal Court hearing can actiually determine this currently. The Australian Human Rights Commission or another Commonwealt body needs to be funded and resourced to deliver this service.

Not applicable / No comment

1. Is the guidance available for people considering cases of unjustifiable hardship consistent and transparent?

Yes. Please explain your answer:

No. Please explain your answer: The Human Rights Commission's 'Guidelines to the Premises Standards' are comprehensive but still leave many detailed questions unanswered. Industry forums and journals seem silent on the issue.

Not applicable / No comment

1. Do you have other comments you would like to make on unjustifiable hardship?

Yes. Please explain your answer: Publications on how to maximise accessibility in situations where full compliance is not possible are needed. These can provide detailed case studies to offer industry practical guidance.

No. Please explain your answer:

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

The Premises Standards are designed to:

* clarify the accessibility requirements under the DDA; and
* harmonise the requirements of the NCC and the DDA in relation to access to buildings through incorporation of the *Access Code* in the NCC[[20]](#footnote-20)*.*

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

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

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

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

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

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

1. Has aligning the provisions in Parts 1 to 4 of the Premises Standards with state and territory building regulations led to any inconsistencies?

Yes. Please explain your answer: The States each have different triggers for the Premises Standards when it comes to refurbishment.

No. Please explain your answer:

Not applicable / No comment

1. Are there any outstanding matters you think need to be addressed?

Yes. Please explain your answer: The introduction to the Premises Standard could stress that the Standards are not a replacement for the DDA in the built environment but rather that the DDA was applicable in premises in all areas not covere by the Premises Standards.

No. Please explain your answer:

Not applicable / No comment

1. Do you have other comments you would like to make regarding the interaction of the Premises Standards with state and territory regulations?

Yes. Please explain your answer:

No. Please explain your answer:

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

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

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

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

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

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

* + - 1. Are the Premises Standards easy to understand and use?

Yes. Please explain your answer: QDN believes so, with the exeption of the confusion between the public transport buildings and other buildings.

No. Please explain your answer:

Not applicable / No comment

* + - 1. Is there sufficient training and professional guidance on the application of the Premises Standards for the building industry?

Yes. Please explain your answer:

No. Please explain your answer: From the evidence of the often poor new and refurbished building outcomes with which QDN's members must cope, there would seem to be plenty of room for improvement in the performance of designers, certifiers, DDA consultants and others. Premises Standards competence should be part of a tertiary course delivered by a university or TAFE that all in the industry must pass before getting their qualifications.

Not applicable / No comment

* + - 1. Do you use training and guidance material?

Yes. Please describe the material you use:

No. Please explain your answer: QDN is a network of people with a disability rather than part of the building industry.

* + - 1. Is there evidence of any inconsistent and incorrect application of the deemed-to-satisfy provisions in the Premises Standards?

Yes. Please explain your answer: A volume of evidence exists which includes but is not confined to:

\* accessible parking spaces that are too steep and not well connected, or connected at all, to accessible entrances,

\* accessible entrances with no connection to the property boundary (connects to car park only),

\* constant pressure and key operated platform lifts,

\* doors with ridiculously heavy opening pressure,

\* wayfinding signs located poorly or simply not installed,

\* Braille / tactile toilet signs located inappropriately,

\* audio induction loops not installed, but auditoria signed as though they are,

\* accessible toilets being all of the one hand,

\* controls for accessible facilities, such as power operated doors, being poorly or inaccessibly located,

\* toilet grabrails at incorrect heights or not provided,

\* little understanding of what constitutes luminance contrast and no idea of how to test for it,

\* door circulation space being inadequate as only corridor width is provided rather than correct circulation space,

\* TGSIs being over or under used and often inappropriately located,

\* access paths being difficult to identify as they are seperated from the principal public paths of travel.

A further problem with the deemed-to-satisfy requirements is that they are interpreted as the only means of compliance with no improved alternative being compliant.

No. Please explain your answer:

Not applicable / No comment

* + - 1. Are the deemed-to-satisfy provisions sufficiently clear for practical application by the building industry?

Yes. Please explain your answer: QDN believes that with the exception of the transport / other building confusion the deemed-to-satisfy requirements are clear enough.

No. Please explain your answer:

Not applicable / No comment

* + - 1. Are there any impediments to using Alternative Solutions?

Yes. Please explain your answer:

QDN notes that except for a few notable innovators the building industry has little or no confidence in applying alternative solutions. Some certifiers, designers and DDA access consultants will even go so far as to disqualify quite functional alternative solutions as 'non compliant'. Rather than meeting the Performance Requirements of the Premises Standards as they should, these people reduce building access to a box ticking exercise in how well the deemed-to-satisfy provisions have been met. Their training and skills are clearly not sufficient to deliver on the Objects of the DDA.

No. Please explain your answer:

Not applicable / No comment

* + - 1. Do the unjustifiable hardship provisions have an impact on building work?

Yes. Please explain your answer: They do when they are used as an excuse to provide nothing, rather than provide the best solution given the circumstances.

No. Please explain your answer:

Not applicable / No comment

* + - 1. Does the building industry make adequate use of independent expertise to assist in assessing compliance with the Premises Standards?

Yes. Please explain your answer:

No. Please explain your answer: QDN has no doubt that consultation occurs but the quality of the advice would seem to be questionable given the multitude of poor outcomes that our members report. Lack of competent industry practioners, independent advisers and statutary advisory bodies is a major impediment to the Premises Standards.

Not applicable / No comment

* + - 1. Do you have other comments on inconsistencies in the interpretation and application of the Premises Standards you would like to make?

Yes. Please explain your answer: Until the skills, understanding and experience of the industry are lifted considerably QDN expects more poor outcomes for its members. The 'risk management to the client' mind set of project managers must change to a 'rights of the public to access' approach.

No. Please explain your answer:

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## Section 6: Other Issues

* + - 1. Is there anything else you would like to tell us about the Premises Standards?

Yes. Please explain your answer:  Too much of the built environment is outside the scope of the PremisesStandards. Residential accomodation is not covered. Buildings may be accessible but the public streets and footpaths connecting them are not. Open spaces such as squares and parks arenot covered. Light switches, reception desks, work stations and other fit out are not covered. These should all form part of the Premises Standards.

No. Please explain your answer:

Thank you for completing this submission form.

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

Once completed you may email this form, and any attachments, to [PremisesStandardsReview@industry.gov.au](mailto:PremisesStandardsReview@industry.gov.au)

or post to:

Premises Review Team

Sectoral Growth Policy Division

Department of Industry and Science

GPO Box 9839

CANBERRA ACT 2601.

End of form.

1. Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives’ Standing Committee on Legal and Constitutional Affairs, 2009, pp. 96-99 [↑](#footnote-ref-1)
2. Disability (Access to Premises – Buildings) Standard 2010, Part F2.1 Sanitary and other facilities, p.48 [↑](#footnote-ref-2)
3. Bails, J.H. (1983). Project report on the field testing of the Australian standard 1428-1977 part 1—Recommended amendments and index to part 2 detailed reports. Adelaide South Australia, Public Buildings Department. [↑](#footnote-ref-3)
4. Bails, J.H. (1983). Project report on the field testing of the Australian standard 1428-1977 part 2—Details of field testing of AS1428. Adelaide South Australia, Public Buildings Department. [↑](#footnote-ref-4)
5. Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives’ Standing Committee on Legal and Constitutional Affairs, 2009, pp. 80-87 [↑](#footnote-ref-5)
6. Government Response to Access All Areas, 2009, p.6 [↑](#footnote-ref-6)
7. Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives’ Standing Committee on Legal and Constitutional Affairs, 2009, pp. 92-5 [↑](#footnote-ref-7)
8. Disability (Access to Premises – Buildings) Standard 2010, Table D3.1, pp. 28-31 [↑](#footnote-ref-8)
9. Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives’ Standing Committee on Legal and Constitutional Affairs, 2009, pp.99-102 [↑](#footnote-ref-9)
10. Disability (Access to Premises – Buildings) Standard 2010, Section D3.5 Accessible carparking, pp.34-35 [↑](#footnote-ref-10)
11. Disability (Access to Premises – Buildings) Standards 2010, Part 6 Review, pp. 112-116 [↑](#footnote-ref-11)
12. Disability (Access to Premises – Buildings) Standard 2010, Part H2 Public transport buildings, p. 51 [↑](#footnote-ref-12)
13. Disability (Access to Premises – Buildings) Standard 2010, Part A2.4 Fire safety, p. 21 [↑](#footnote-ref-13)
14. Disability (Access to Premises – Buildings) Standards 2010, Part 4, Section 4.1 Unjustifiable hardship, pp. 11-12 [↑](#footnote-ref-14)
15. Access All Areas, Report of the Inquiry into Draft Disability (Access to Premises – Buildings) Standards, House of Representatives’ Standing Committee on Legal and Constitutional Affairs, 2009, p. 57 [↑](#footnote-ref-15)
16. Disability (Access to Premises – Buildings) Standards 2010, Part 6 Review, pp.69-71 [↑](#footnote-ref-16)
17. Disability (Access to Premises – Buildings) Standard 2010,Part 4.1 Unjustifiable hardship, p.11 [↑](#footnote-ref-17)
18. Disability (Access to Premises – Buildings) Standards 2010*,* Section 4.1 (3)(p) Unjustifiable hardship, p. 12 [↑](#footnote-ref-18)
19. Disability (Access to Premises – Buildings) Standards 2010,Part 4, Section 4.1 Unjustifiable hardship, pp. 11-12 [↑](#footnote-ref-19)
20. In 2014, the BCA was incorporated into the *National Construction Code* (NCC). The BCA comprises Volumes 1 and 2 of the NCC. The *Plumbing Code of Australia* (PCA) comprises Volume 3. [↑](#footnote-ref-20)