



26 March 2021

Premises Standards Review Team

Department of Industry, Science, Energy and Resources,  
GPO Box 2013,  
CANBERRA ACT 2601

Dear Review Team,

**RE: Property Council of Australia response to ongoing review of the Disability (Access to Premises – Building) Standards 2010.**

The Property Council welcomes the opportunity to provide feedback to the second review of the *Disability (Access to Premises – Building) Standards 2010 (Premises Standards)* **noting that far greater coordination of government and related processes is urgently needed.**

The Property Council is the leading advocate for the property industry. Our members are the largest owners of, and investors in the building that comprise our cities. They strive for safer, more comfortable and easier to access to the built environment for all Australians at all stages of life.

The Property Council supports a more accessible built environment. We contribute to the leadership and governance of Livable Housing Australia (LHA) and we also support the development of national solutions to universal design through the Commonwealth's National Dialogue on Universal Housing Design. We are also founding members of the National Affordable Housing Alliance which seeks additional funding from all levels of government for social and affordable housing.

The following processes will impact each other significantly

1. consideration of housing accessibility provisions in the National Construction Code (NCC)
2. the review of the AS1428 suite of Australian Standards and
3. the review of the Premises Standards.

**It is essential that government takes immediate action to set a clear vision and coordinated workplan considering these three streams of work.**

The Premises Standards provide an essential pathway for the property sector to meet their obligations under the *Disability Discrimination Act 1992*. Continual effort is required to ensure they are an effective solution unhindered by legislative misalignment. The Premises Standards must urgently be

harmonised with the NCC and improved with best practice frameworks for governance, proposals for changes and future reviews.

The submission that follows outlines our immediate priorities in relation to the *Review of Premises Standards*, including:

1. Developing guiding principles for coordinated data collection, analysis and audits to best identify areas for improvement in the built environment.
2. Reviewing and aligning the requirement from the Premises Standards with the National Construction Code.
3. Equipping the Premises Standards with an improved governance model.
4. Defining and clearly communicating a process for proposing changes to the Premises Standards.
5. Ensuring the Premises Standards have adequate coverage to limit legal exposure for owners and deliver improved outcomes for people with a disability.
6. Providing and disseminating guidance and educational materials to industry stakeholders.
7. Establishing a National Deliberation Panel for rulings on the application of the Premises Standards.

If you would like to discuss this submission in more detail, we would welcome your office coordinating through Tim Wheeler, our Policy Manager at [twheeler@propertycouncil.com.au](mailto:twheeler@propertycouncil.com.au) or +614 9173 1496.

Kind regards,

A handwritten signature in black ink, appearing to read 'Mike Zorbas', with a horizontal line underneath.

Mike Zorbas  
Group Executive, Policy and Advocacy  
Property Council of Australia

## Attachment A – Detailed Recommendations on the ongoing review of the Premises Standards

### **The need for research and data-gathering.**

The definition of disability in the parent legislation of the Premises Standards, *the Disability Discrimination Act (DDA) 1992*, is extremely broad and covers most conditions for an individual that ‘*presently exist, previously existed or may exist in the future due to a genetic predisposition*’ within the Australian population. This definition is comprehensive in terms of its application to existing disabilities within our population and their interaction with the building types captured by the Premises Standards.

In order to ensure the Premises Standards are meeting their objectives of catering to all Australians with a disability, their requirements must address the diverse needs of affected groups. For example, a person who is wheelchair-bound will have very different needs to a person with a visual or hearing impairment. In the residential parts of Class 3 buildings, owners put in place different access measures for differing needs. While all types of disability should be addressed, the proportion of measures that should be allocated to each need must be established.

*There is a profound lack of government-provided, purposeful guiding data that would aid the delivery of built environment access for the greatest number of Australians with a disability.*

Data delivered by the ABS under the *Disability, Aging and Carers* (2018) dataset is the most comprehensive source of information available today. The dataset however breaks disabilities down by severity rather than types and this does not provide actionable information to include in the provisions of the Premises Standard.

**Recommendation 1:** The Property Council urges the Federal government to urgently work in a nationally collaborative manner with state and territory governments and industry to develop guiding principles for coordinated data collection, analysis and audits. This information will enable monitoring and reporting for future reviews.

### **Aligning the requirement from the Premises Standards with the National Construction Code.**

Property industry practitioners will increasingly rely on clear and unambiguous nationally harmonised legislation to deliver a built environment that is accessible to all Australians. However, the current legislative arrangements are not conducive to this outcome.

This issue is caused by:

- (a) Different Minsters and or associated Departments responsible for each one (refer governance comment below)
- (b) an ongoing misalignment between the timeframes and scopes of reviews of the National Construction Code (every three years – next review 2022) and the Premises Standard (every five years – next review 2025).
- (c) Outstanding recommendations from the first Premises Standard Review that are yet to be actioned.

Both documents are intended to host identical information but due to the different review cycles and different approaches to the review, this is not always the case. This disconnect is leading to an inconsistent approach to accessible provisions within the built-environment and must be addressed

as a matter of priority. In the short term, it would be useful to deliver some guidance on which legislation takes precedence in the event of a contradiction (presumably the Federal level Premises Standards over the State enacted NCC), but this must be clarified in a more substantive way going forward. Given the range of issues included within the NCC, it would be more practical to align the review cycle of the Premises Standard to the NCC.

**Recommendation 2:** The government should review existing legislation for duplication and inconsistency and take action to rectify inconsistencies where they arise. Further, action should be taken to align the review cycles of the NCC and the Premises Standards to ensure inconsistent or contradictory provisions are removed. This will ensure a single source of guidance for practitioners to implement accessibility requirements within new buildings and refurbishments that trigger the provisions of the Premises Standards.

#### **A better governance model and established processes for review.**

Currently, it is unclear if the responsibility for updating the parallel content of the Premises Standards and Parts D3, E4 and F2 of the NCC *Access for people with a disability* rests with the Australian Building Codes Board (through the BMF) or the Attorney-General's Department. Each organisation has independent jurisdiction over the content of their documents which can lead to confusion when updating or amending their content.

The subject matter of the Premises Standards is, by definition, multi-disciplinary. It involves both legal expertise to ensure the objectives of the DDA are met and a good understanding of construction and the built environment to set realistic parameters around what can be achieved. There is a need to bring together legal and built-environment experts and form a single governance body to conduct future reviews of the Premises Standards.

Further, it is unclear what processes should be followed to put forwards proposals for amendments and updates to the Standards. The ABCB follows a *Proposal for Change* (PFC) process to consider technical proposals to change the NCC. The PFC process is consistent with the Council of Australian Governments (COAG) best practice regulatory principles to ensure appropriate rigour is used in the assessment of proposals. There does not appear to be an easily identifiable means of proposing changes to the Premises Standards outside of the five-yearly review. Government should address this issue by providing a simple pathway for stakeholders to lodge change proposals.

**Recommendation 3:** Establish a governance structure to oversee a forward work program. This governance structure should include:

- Shifting responsibility for updating of the Premises Standards to the Building Ministers Forum given their sector-specific understanding of matters relating to the built environment.
- A best-practice governance model that will deliver a competent steering committee, align strategies with goals, deliver accountability, display a high level of ethics and integrity, define roles and responsibilities, and manage risk effectively for all stakeholders. The NABERS governance model has widely been accepted as one of the most successful collaborations between industry and government and could be used as a template for the Premises Standards.
- A steering committee comprising members of Industry Representative Bodies, Government Departments (DISER, AGD and DSS) to oversee the work.
- Several expert advisory groups to provide technical advice and guidance on relevant matters.

**Recommendation 4:** Establish a clear process for proposing updates to the Premises Standards. This process should:

- Be aligned with the OBPR (or COAG) best practice regulatory principles to ensure adequate rigour in the assessment of new proposals for amendment.
- Be easily accessible to members of the public and industry through the use of templates and guiding documentation to clearly lay out requirements.
- Require a level of evidence proportionate to the size of the proposed change or its potential impacts.

**Limiting litigation by ensuring the Premises Standards have adequate coverage.**

The *Disability Discrimination Act 1992* makes it unlawful to discriminate against a person, in many areas of public life, including employment, education, and accessing public places, because of their disability. These requirements are met in the property sector by adhering to the Premises Standards. It is therefore important to provide comprehensive guidance to building owners and tenants on how to meet these obligations in practical terms.

Currently, there are significant gaps in the coverage of the Premises Standards. These include:

- **Provisions for the evacuation of people with a disability in the event of an emergency.** There are currently no technical provisions for a property owner to follow in this regard and while guidance / handbooks have been developed by the ABCB, our members would welcome further research including a review of overseas legislation for possible adoption locally.
- **Trigger provisions and thresholds for the application of the Premises Standards.** The Premises Standards apply to a range of projects some of which would require a development application; however, these can often be for small projects or ones that only affect a small part of a larger building. It can be unclear to what extent the Premises Standards would apply to the building as a whole.
- **Design elements within the fitout of the building.** While the Premises Standards cover items such as access and egress, hearing augmentation provisions, lighting and tactile ground surface indicators, they don't provide information on the design elements of interior fitout requirements. These could include areas such as communal kitchens or break out facilities.

These areas where the legislation remains silent create significant uncertainty for building owners and tenants and, in more extreme cases, open the door to litigation. To avoid costly and unnecessary litigation, the government should engage with industry to identify key areas that warrant further guidance from the Premises Standards. A balance must also be struck between providing the necessary information and stifling innovation by being overly prescriptive.

**Recommendation 5:** The Popery Council urges government to work with industry and state and territory regulators to conduct a review of key areas for the expansion of the Premises Standards. This is a key requirement to provide certainty to building owners and tenants while delivering optimal outcomes for people with a disability.

**Providing guidance and educational materials to industry.**

The property industry, in partnership with the disability sector, is committed to improving access and egress to its buildings for people with disabilities. While the Premises Standards provide a good initial step to the delivery of accessible buildings, some elements remain unclear and are susceptible to being overlooked or misunderstood by well-intentioned building industry professionals.

We encourage the government to improve education and develop training to raise awareness and understanding of the Premises Standards. Some key areas of confusion highlighted by Property Council members include improved marketing of accessible accommodation rooms in hotels, lift accessibility and the unjustifiable hardship exception.

**Recommendation 6:** The Property Council urges the government to develop guidelines to help stakeholders better appreciate the content and scope of the Standards. The government could partner with industry organisations that have educational branches to deliver training and improve the level of understanding within the property industry. This is particularly relevant following the review of the Premises Standards to ensure any changes are well understood and can be implemented by industry.

#### **Establishing a National Deliberation Panel for rulings on the application of the Premises Standards.**

The Premises Standards cover a broad range of initiatives that come at varying costs to the building owner or tenant. Signage and educational material are relatively inexpensive but other items such as widening corridors or retrospectively installing or modifying lifts can put undue financial burden on responsible parties. The Premises Standards do seek to address this issue through Section 4.1 on *unjustifiable hardship* which states that it is not unlawful for an owner to fail to comply with the Standards in certain circumstances that would lead to unjustifiably high expenditure.

To ensure that an owner is not overly exposed to litigation, they must obtain the decision of an Access Panel to determine whether or not an action would be considered an “unjustifiable hardship”. The benchmark to determine “unjustifiable hardship” is high and any submission to an Access Panel needs to be based on valid and robust grounds, as it will be heavily scrutinised by panel members. There are however issues with visibility and consistency between state and territory Access Panels which create uncertainty for many of our members who operate nationally.

**Recommendation 7:** The government should unite state and territory Access Panels into a single, national access panel. This panel should:

- be well-funded to ensure that it can issue deliberation in short time-frames and avoid setting up more barriers to productivity in a time when economy stimulus is needed.
- provide deliberation nationally and ensure that it applies consistency across its decision-making process. This will be essential to provide certainty to members who may be undertaking projects across several states and territories.
- be promoted by government to raise awareness of its scope of work to industry stakeholders (currently state Access Panels are relatively unknown within the industry).