



Submission

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This submission has been written on behalf of Disabled People's Organisations Australia (DPO Australia) by Samantha French and Jane Flanagan and on behalf of Disability Voices Tasmania by the Disability Voices Tasmania Board.

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1. About us

DPO Australia

Disabled People's Organisations Australia (DPO Australia) is an alliance of four national DPOs in Australia. DPOs are organisations that are governed, led by and constituted of people with disability.

The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities.

DPO Australia is made up of four national population specific and cross-disability DPOs that have been funded by the Australian Government to represent the views of people with disability and provide advice to Government/s and other stakeholders.

The four DPO Australia members are: Women With Disabilities Australia, First Peoples Disability Network Australia (FPDNA), People with Disability Australia (PWDA) and National Ethnic Disability Alliance (NEDA).

Disability Voices Tasmania

Disability Voices Tasmania is a cross-disability organisation building the collective voice of Tasmanians with disability. Our purpose is to advance a Tasmanian community in which people with disability understand their rights, and the equal and inherent dignity of people with disability are respected and promoted. Disability Voices Tasmania is funded by the Commonwealth Government to deliver projects aimed at capacity building for people with disability.

2. Introduction

- Disabled Peoples Organisations Australia (DPO Australia) and Disability Voices Tasmania welcome the opportunity to provide this joint submission to the second review of the Disability (Access to Premises – Building) Standards 2010 (Premises Standards) and would also welcome further opportunities for ongoing involvement in reviewing the Standards.
- We strongly reaffirm our support of the Premises Standards and believe in the integrity of the legislation, which we note was developed through a rigorous process of research and negotiations involving all relevant parties. The introduction of the Premises Standards in 2011 represented the beginning of significant and widespread potential for improvement in the lives of people with disability. Improved access to premises positively impacts a person’s opportunities to gain employment, access health care, pursue education, vote, participate in recreational and sporting activities, travel, and access goods and services. Breaking down barriers to access brings greater opportunities for people with disability to exercise their economic, social, cultural, civil and political rights.
- Further, the Premise Standards provides an important mechanism through which Australia can fulfil its obligations under Article 9 ‘Accessibility’ in the Convention on the Rights of Persons with Disabilities (CRPD); Priority Area 1 ‘Inclusive and Accessible Communities’ of the National Disability Strategy (NDS); the Objects of the National Disability Insurance Scheme (NDIS) Act 2013; and the Disability Discrimination Act (Cth) 1992 (DDA).
- This second review provides an important opportunity to increase consistency of application, deliver greater compliance, and to minimise ambiguity about how the Premises Standards work in relation to other legislation, policies and frameworks in Australia.

3. General Comments on Overarching Issues

DPO Australia and Disability Voices Tasmania wish to make the following general comments on key overarching issues which need to be addressed in the second review of the Premises Standards:

- The review of the Premises Standards must lead to significant improvement to access to premises for people with disability - any action taken as a result of this review must progressively eliminate discriminatory practices, increase accessible provisions, and raise minimum standards. This will require considerable and ongoing support and advice to all stakeholders through further development of practice guidelines, increased access to training and skills development, and the availability of professional advice where needed.
- The Premises Standards must be accessible to people with disability - people with disability must have access to the Premise Standards in accessible and alternate formats, coupled with ongoing training and education for the disability sector to ensure people with disability are aware of their rights under the Standards, including how to exercise their rights through lodging complaints to the appropriate state or Commonwealth body (such as the Australian Human Rights Commission).
- The Government must address the lack of adequate data on implementation and effectiveness of the Premises Standards - processes need to be established for the systematic and coordinated collation and analysis of data and research on implementation of the Premises Standards. This should include rigorous consultation with people with disability on the barriers they face in accessing premises; effective evaluation of the implementation of the Standards and improved monitoring – all of which can inform future reviews. The Premises Standards have no mandatory compliance or data gathering measures which severely hampers the ability for parties to review, evaluate and implement improvements and good practices in a consistent manner. At the time the Premises Standards came into force, it was recommended that an audit be undertaken prior to the commencement of each review. This was never undertaken for the first or current review and has led to significant gaps in information and a lack of useable information for robust analysis as part of the second review.
- There needs to be a commitment to providing increased guidance and support to implement the Premises Standards as there continues to be significant lack of understanding of the practical application and requirements of the Premises Standards - it has become increasingly apparent that many concerns and issues raised by people with disability and their representative organisations regarding implementation of the Standards arise from a lack of information and consistency in applying the legislation. The problems in implementing the Premises Standards are not about its objectives and content so much as about the mechanisms put in place

to resolve issues and the lack of flexibility to deal with different situations that arise. The Government needs to ensure all future guidelines, publications and materials about the Premises Standards or information regarding the creation of accessible buildings, provide examples of, and make reference to, best practice guidelines in addition to the 'deemed to satisfy' criteria.

- Ensure continued meaningful engagement with key stakeholders – we support the ongoing operation of an Expert Advisory Group to facilitate ongoing discussion and to provide guidance on any recommendations that come out of the second review of the Premises Standards. Utilising such a group is an accessible and effective approach for many people with disability and their representative organisations as it provides an opportunity to meet with other key stakeholders and work through issues in an open forum, with guidance from those with technical expertise. Furthermore, it is a pragmatic approach to addressing differences of opinion in cases of limited data to provide informed and considered answers.
- Ensure opportunity for meaningful input from people with disability and their representative organisations into current and future reviews - people with disability have the right under Article 4 of the Convention on the Rights of Persons with Disabilities (CRPD) to be closely consulted with and actively involved in the 'development and implementation of legislation and policies... and in other decision-making processes concerning issues relation to persons with disabilities'¹. This obligation is also reflected as a core principle of the National Disability Strategy (NDS), which requires that people with disability are central to the evaluation of policies, programs and services which impact on their lives². Consequently, this review should seek to maximise input by people with disability as it is an invaluable opportunity to gain insight into the functional needs and accessibility requirements needed by people with disability.

¹ United Nations, *Convention on the Rights of Persons with Disabilities*, Article 4, www.un.org/disabilities/convention/conventionfull.shtml

² Council of Australian Governments, *National Disability Strategy 2010-2020*, page 23, https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf

4. Specific Comments Relating to the Content, Scope and Implementation of the Premises Standards

4.1 New buildings

In general, the introduction of the Premises Standards has significantly improved the opportunity for many people with disability to enter, move around in and use the facilities and services available in new buildings. Over time this will improve opportunities for people with disability to engage in the social, economic, cultural and political life of the community and give people with disability confidence they can enjoy equitable access within the community.

There are, however, a number of limitations and failures in relation to improvements in new buildings including:

- Despite clear obligations and associated technical specification material designers and builders regularly misinterpret or mis-apply the technical requirements. This may be minor non-compliances in relation to circulation space around doors, grabrails located too high, soap dispensers located too close to an inner corner, tactile ground surface indicators with less than minimum luminance contrast or glazing decals that do not ensure safe movement around a building. Many of these issues might be considered minor, but they will affect the amenity and safety of a building for some people and all constitute non-compliance. Addressing this non-compliance requires an investment in new guidance material, targeted training around areas of common non-compliance and the use, in each building control jurisdiction, of their power to selectively audit new developments to identify common non-compliance issues. Most important would be the establishment of a centre for access excellence such as the Access Board³ in the US or the Centre for Excellence in Universal Design⁴ in Ireland.
- While the content and scope of the Premises Standards under section 23 of the DDA could be very wide, the scope is limited to, and reflects, the scope of the National Construction Code (NCC) which focuses largely on access for people with mobility disability. There is little, or in many cases nothing in the Premises Standards to address broader access issues, such as for people with chemical sensitivity, people who are blind or deaf, people who are neuro-diverse and people with cognitive disability. Limiting the scope of the Premises Standards to that of the NCC was understood by the disability community to be a reasonable starting point when the Premises Standards were being negotiated, however, ten years on it is

³ <https://www.access-board.gov/>

⁴ <http://universaldesign.ie/home/>

time to re-visit this approach. For example, buildings that serve important community functions such as sports stadiums, airports, theatres and swimming complexes could provide quiet spaces or rooms for people who are neuro-diverse or who have psycho-social disability.

- Wayfinding for people with vision impairment or cognitive disability is almost non-existent in the Premises Standards and needs to be more thoroughly addressed. Doing this may well result in some tension between designers and developers in terms of the use of prescribed design solutions such as luminous and tactile cues, but alternatives to traditional approaches such as tactile ground surface indicators and the use of wayfinding apps, need to be pursued further.
- As expected, the minimum requirements of the Premises Standards have become the maximum level of provision in almost all cases. This means that, for example, critical community focused buildings used by significant numbers of people who use mobility devices such as scooters, are built to minimum levels of circulation, which in many cases is not amenable to all. Similarly, where the use of a building indicates a ramp with less gradient than 1 in 14 would be more amenable to users those developments still provide a 1 in 14 ramp. A universal design approach to the design to public buildings would ensure new buildings are fit-for-purpose rather than just compliant.
- The inconsistent uptake and reflection of the various triggers and concessions in the Premises Standards by state and territory governments continues to lead to confusion for the building sector and people with disability. The Commonwealth and state and territory governments need to agree on a consistent way of adopting the various triggers and concessions in the Premises Standards to allow the building sector, local government, developers and people with disability to fully understand the provisions of the Premises Standards.
- The lack of free availability of associated technical specifications in Australian Standards means it is extremely difficult for people with disability, local government advisory groups and community organisations to assess developments and challenge non-compliance. Australia needs to follow the approach of countries such as the US, Canada, the UK, Ireland and European countries to make available all relevant technical material referred to in the Premises Standards, including in accessible formats.
- While the state and territory building approval processes should effectively ensure there is also a compliance mechanism for the Premises Standards, this mechanism is reliant on the knowledge and professionalism of (largely) private building certifiers. Building certifiers have to assess a very wide range of issues relating to building design and construction and in many areas, such as structural engineering and fire safety, they rely on reports and certifications provided by other

professionals who are recognised by state and territory building authorities. In the area of access, there is no recognised authority to rely on and as a result, compliance is often wholly reliant on the knowledge and experience of building certifiers. Recognition of the expertise of appropriately qualified Access Consultants would improve compliance. Requiring Access Consultant input into public buildings of defined size, cost or function would also improve compliance.

- Occasionally with new buildings the design team and developer look to adopt a Performance Solution approach rather than a Deemed-to-Satisfy approach. While this is welcomed by the disability community there is currently no mechanism to ensure the views and experience of the disability community are integrated into the process of developing the preferred approach. Work in the area of the Transport Standards has supported the development of guidance on the co-design approach to the adoption of alternative ways of meeting legal obligations. A similar approach should be adopted to major public building projects under the Premises Standards. The disability community recognise such an approach would be limited to particular developments above a specified size, cost or purpose.
- The new provisions to be adopted in the Premises Standards for adult change facilities is welcomed by people with disability. The triggers for when an adult change facility is required in a new building relate to the use of the building and the size. For example, a new sports stadium with a seating capacity of over 35,000 will be required to have an adult change facility. In some small states and territories the threshold is so high compared to the population and size of developments that it is unlikely there will ever be a mandatory adult change facility. Either the Premises Standards should be changed to recognise this problem of scale or governments should provide specific funding (as occurred in Victoria) to support local governments and specific building owners to provide adult change facilities.
- The only mechanism currently available to people with disability to raise concerns about non-compliance with the Premises Standards is through a complaint of discrimination, which can be complex, long, costly and confronting. If the Commissioners of the various Commonwealth and state and territory anti-discrimination bodies could pursue inquiries themselves rather than rely on individuals to pursue formal complaints, this would shift the onus from individuals. In addition, while not a Premises Standards issue, work should be done on clarifying whether or not under each state and territory building law the Director of Building Control (or equivalent) has the power to audit new buildings to determine if the design and certification process has resulted in an access compliant building. If this authority exists throughout Australia, states and territories should be encouraged to use this authority to assist in identifying frequent compliance gaps.

4.2 Existing buildings

People with disability report that the Premises Standards has had very little effect on the pace of change for access to existing buildings and how and when improvements are required is still the source of much confusion.

While the application to the Premises Standards offers significant opportunities for people with disability to benefit from access to new buildings, addressing the inaccessibility of existing buildings is predominantly driven by individuals with disability creating change through personal and costly complaints.

Improving access to existing buildings (other than through complaints) is triggered in a limited number of circumstances:

- i. When the owner/operator decides to extend the building or modifies the building. In this case the new building work (extension or modification) is required to meet current accessibility requirements. If the building owner undertakes this work or the tenant, who is the only tenant in the building, undertakes this work then there is also a requirement to make the path of travel from the entrance to the building to the new work an accessible path. If the tenant is one of a number of tenants in the building, they are not required to improve the path of travel from the entrance. This path of travel is called the 'affected part' in the Premises Standards. No other part of the building is required to be upgraded to improve access and as a result the pace of change for existing buildings is far too slow.
- ii. When the owner/operator changes the use of the building which results in a change in classification. In this situation the building as a whole may be required under state and territory building law to upgrade access to current requirements.
- iii. When the owner/operator undertakes extensive upgrade of the building covering more than 50% of the building then the whole building would need to be upgraded. This is triggered by state or territory building law, however, it only applies in some states and territories.

In all three circumstances people with disability have identified there are inconsistencies and misunderstandings on how these triggers are applied. The definition of extension and modification is unclear, the term 'change of use' is unclear (does it mean changing from a grocery shop to a butcher shop for example) and the 50% rule is not applied throughout Australia. In addition 2 out of 3 are driven not by the Premises Standards, but by building law. This needs to be addressed in a future Premises Standards.

There are some clear unforeseen consequences in the concession area of the Premises Standards that are limiting the outcomes sought. Most notably the concession on 'affected part' paths of travel in existing buildings with multiple tenants that are undergoing new work or upgrades. The current concession would allow for a tenant, who is one of a

number of tenants in a building, to spend hundreds of thousands of dollars for a new fitout of their tenancy but avoid the need to remove a small step at the entrance to their tenancy which fronts onto the public footpath. This concession needs to be changed.

When existing buildings are extended or modified the disability community understands that sometimes the structure and history of the building means that following a technical compliance path may not be possible or feasible and that an alternative approach might be adopted to providing the best access possible. The people who propose and approve these alternative approaches are usually the designers and the building certifier who sometimes ask for advice and reports from Access Consultants. At no stage are the views of people with disability sought and disability organisations are rarely asked to comment on or contribute to finding the best solution. Where alternative approaches to providing access are being considered for significant public buildings, the Premises Standards should require a co-design process involving people with disability.

Consideration needs to be given to adopting a timetable for access improvements to key existing community buildings including: sports stadiums, theatres and cinemas, medical and GP centres, hospitals, government information centres, local government offices, shopping centres and neighbourhood or community centres. This would follow the approach taken in the Transport Standards by setting dates by which improvements must occur.

5. Consistency of Disability Standards

There are currently two major review and renewal processes taking place in the areas of premises and transport.

While the Transport Standards Taskforce has a clear human-rights focus and extensive buy-in by all stakeholders with a high-level principles approach, this has not been apparent in the Premises Standards area.

There is a need to develop a mechanism that will ensure consistency between the two Standards and their renewal that is driven by a human rights perspective.

6. Conclusion

- DPO Australia and Disability Voices Tasmania welcome the second Review of the Premises Standards and it is evident that further opportunities to discuss and evaluate the practical application of the Standards will be necessary to ensure the Premises Standards work in coordination with other Australian legislation and frameworks.
- People with disability face restricted access to participation in all aspects of life as a direct result of inaccessibility of the built environment. Whilst the Premises Standards have made a significant impact in ameliorating many barriers, there is considerable room for the Standards to be strengthened and applied more robustly.
- DPO Australia and Disability Voices Tasmania thanks the Department for the opportunity to contribute to this Inquiry and we welcome further consultation on any of the matters raised in this submission.