



Review of the (Access to Premises) Standards 2011

Submission by the Physical Disability Council of NSW

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The Physical Disability Council of NSW

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW.

Our core function is to influence and advocate for the achievement of systemic change to ensure the rights of all people with a physical disability are improved and upheld.

The objectives of PDCN are:

- To educate, inform and assist people with physical disabilities in NSW about the range of services, structure and programs available that enable their full participation, equality of opportunity and equality of citizenship.
- To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (i.e. self-advocate).
- To educate and inform stakeholders (i.e.: about the needs of people with a physical disability) so that they are able to achieve and maintain full participation, equality of opportunity and equality of citizenship.

Recommendations

Recommendation 1

That the guidelines developed by the Australian Human Rights Commission <https://humanrights.gov.au/our-work/disability-rights/guidelines-application-premises-standards> be promoted to all relevant stakeholders to increase knowledge and awareness of both the Standards and the Code.

Recommendation 2

That mandatory education and training be implemented to raise awareness and understanding of both the Premises Standards and the Code for building certifiers, building developers, and building managers.

Recommendation 3

That accessibility provisions relating to disability be consolidated into a single comprehensive standard to apply universally across all states and territories, and that the provisions of the NCC align with the premises standards to create greater certainty as to legal requirements.

Recommendation 4

That the scope of the premises standards be expanded to include private buildings.

Recommendation 5

That the provision of an accessible bathroom (if one is not otherwise reasonably able to be utilised) and egress to such facilities be mandated for buildings where bathroom facilities are otherwise provided.

Recommendation 6

That adult change facilities be mandated as a proportion of bathroom facilities in all public buildings where bathrooms are otherwise provided where occupancy is over a certain level – e.g. large scale shopping complexes and hospitals or where it is anticipated that those with need for adult change facilities will regularly frequent – e.g. group homes and aged care facilities.

Recommendation 7

That the ratios for accessible parking spaces be reviewed and expanded to better align with societal need. That consideration be given as to the inclusion of safe and accessible storage for motorised scooters and other such mobility aids as a feature of residential builds.

Recommendation 8

That the premise standards prescribe the placement of disabled parking spaces to be positioned as close to building entrances as possible.

Recommendation 9

That research be conducted into the most accessible design/s for paid parking, and that instruction be provided within the standards in regards to the construction of paid parking ticketing systems based on the findings of this research.

Recommendation 10

That consideration be given as to the provision of safe and accessible storage for motorised scooters, and other such vehicles, as a requirement of residential premises covered under the Standards.

Recommendation 11

That a permanent Access Institute be established to administer the Standards.

Recommendation 12

Compliance with the standards should be monitored, and longitudinal data collected to track progress towards meeting the Standards. Mechanisms for determining compliance need to be consistent across the states and territories.

Introduction

As the peak body representing the interests of people with physical disability within NSW, PDCN welcomes the opportunity to contribute to the statutory review of the *Disability (Access to Premises – Buildings) Standards 2010* (the Premises Standards). Access to premises is an inherent right within the United Nations Covenant on the Rights of Persons with Disability (the UNCRPD)¹, and is fundamental in ensuring that people with disability have the capacity to live independently and fully participate, on an equal basis, in all aspects of community life.

Within Australia, the right for people with physical disabilities to access various premises designated for public use, including public transport buildings and premises for the provision of short-term accommodation is protected at both state and federal levels under a number of legislative provisions – the most relevant of which is the *Disability Discrimination Act 1992* (Cth) (the DDA). Section 23 of the DDA, in particular, makes it unlawful to discriminate against a person with disability in relation to access to, or use of, premises, but the purpose of the DDA is not to specifically provide specifications in terms of design.²

The Premises Standards were developed as a way of providing guidance to the building and construction sector on how to meet the accessibility requirements of the Act specific to the construction and modification of public buildings. The guiding principles within the Standards are drawn directly from the DDA³ and the objectives are provided as follows:

'To ensure that dignified, equitable, cost effective and reasonably achievable access to buildings, and facilities and services within buildings, is provided for people with a disability; and

'To give certainty to building certifiers, building developers and building managers that, if access to buildings is provided in accordance with these Standards, the provision of that access, to the extent covered by these Standards, will not be unlawful under the Act.⁴

The Access Code for Buildings, which features as Schedule 1 of the Premises Standards,⁵ prescribes technical design aspects for premises which meet the minimum standard of accessibility anticipated under the DDA.

In preparation for this submission, PDCN has sought expert advice specific to building accessibility for people with disability. We have also considered the practical experience of our members when accessing various premises to which the Premises Standards should apply.

It is our view that whilst the Premises Standards have made improvements in terms of providing people with disability with dignified access to public buildings, and provided more certainty in

¹ United Nations, *United Nations Covenant on the Rights of People with Disability*, Article 9 <https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf> accessed 30/11/2020, p. 8.

² *Disability Discrimination Act 1992* (Cth) <<https://www.legislation.gov.au/details/c2013c00022>> accessed 30/11/2020, s. 23 – it is noted that denial of access to a premises can form a part of other causes of action under the DAA, such as a claim of discrimination in relation to employment.

³ DDA (insert principles here)

⁴ *Disability (Access to Premises – Buildings) Standards 2010* (Cth) <<https://www.legislation.gov.au/Details/F2010L00668>> accessed 25/11/2020, Part 1, Prov 1.3. note – the standard refers to the Disability Discrimination Act 1992 (Cth).

⁵ *Ibid.*, sch 1.

regards to the legal requirements in terms of disability access under the DDA, there are a number of issues which need to be addressed to make the standards more effective.

In reviewing the Premises Standards, we propose the following be considered:

Knowledge of the Premises Standards appears lacking across society

Despite the Standards having applied to new and upgraded builds since 2011, we are concerned that many publicly accessible premises remain either partially or completely inaccessible to people with disability as highlighted in the 2019 report '*Disability Rights Now 2019*' -Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019.⁶

Given that many public-use premises do not meet the Standards, we are concerned that this indicates that either there is either a lack of knowledge regarding the existence of the premises standards, confusion regarding their application across the building and construction industry or that provisions around unjustifiable hardship are interpreted too broadly, allowing for non-compliance.

We note that there is already information relating to the Premises Standards available – in particular, we note that the Australian Human Rights Commission has developed guidelines to assist both the building and construction industry and those concerned with access to understand how the Standards operate in relation to public buildings⁷. We endorse these guidelines as they not only set out the minimum legal requirements, but also provide recommendations as to “good practice” which, whilst not legally required, improve the usability of these buildings for our members.

We would advocate for greater promotion for both this resource, and other equivalent resources, both within the building and construction industry as well as the wider community. It is important that those to which the Premises Standards will have the most benefit – people with disability and their families, understand that the Standards exist and that they can expect a basic level of accessibility across public buildings. As part of any promotion of the Standards, information around complaint mechanisms should be provided.

We also call for enhanced education and training on the Premises Standards across the building industry. Given that the Standards are legal requirements, we would strongly recommend that training be mandatory for all building certifiers, developer and building managers.

Recommendation 1:

⁶ Australian Federation of Disability Organisations, et al, *Disability Rights Now 2019 Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019* <<https://www.afdo.org.au/wp-content/uploads/2019/08/CRPD-Shadow-Report-2019-English-PDF.pdf>> accessed 26/11/2020 at p. 20.

⁷ Australian Human Rights Commission, *Guidelines on Application of the Premises Standards*, version 2, Feb 2013 <<https://humanrights.gov.au/our-work/disability-rights/guidelines-application-premises-standards>> accessed 30/11/2020.

That the guidelines developed by the Australian Human Rights Commission <https://humanrights.gov.au/our-work/disability-rights/guidelines-application-premises-standards> - be promoted to all relevant stakeholders to increase knowledge and awareness of both the Premises Standards and the Code.

Recommendation 2:

That mandatory education and training be implemented to raise awareness and understanding of both the Premises Standards and the Code for building certifiers, building developers, and building managers.

There should be standardisation across states and territories, between the NCC, buildings covered under the transport standards and buildings under the Premises Standards

We are concerned that there are various instruments prescribing aspects of building accessibility and that it can be difficult for developers to understand which standards to build to, in order to be compliant with the DDA.

Whilst the NCC and the Premises Standards apply federally, states and territories also have their own standards, which creates a lack of clarity. There are also circumstances where the standard which needs to apply to a particular build may not be intuitive – buildings designated for public transport purposes, may have to meet accessibility requirements both under the Premises Standards *and* the Transport standards, for example.

PDCN would like to see a harmonisation across all standards relating to disability accessibility. We would recommend that a working group be established to conduct a review of all relevant standards currently in force, with a view to ensuring that there is consistency across these instruments and investigating the potential for amalgamating the standards into a single comprehensive national framework.

We also consider that it is important that there is consistency, to the extent that the National Construction Code (the NCC) covers the same content as the Premises Standards.

Recommendation 3:

That accessibility provisions relating to disability be consolidated into a single comprehensive standard to apply universally across all states and territories, and that the provisions of the NCC align with the Premises Standards to create greater certainty as to legal requirements.

The Code should be expanded in terms of scope

The Code should extend to premises for private use

Access to buildings, both public and private, is essential to provide people with disability with the capacity to participate across all aspects of community life, including education, employment, leisure, and more.

We note that there is growing recognition of the fact that ensuring the inclusion of people with disabilities is a responsibility that should be borne across the whole of society. We welcome this shift in attitude, since it is essential in ensuring that inclusion is provided as a “*whole of life*”

experience for people with physical disability. Including buildings built for private purposes within the scope of the Premises Standards (and including minimum accessibility standards within the National Construction Code) ensures seamless integration across public and private spaces.

Currently the premises standards apply only to buildings that are designated for public use. We advocate for an expansion of the Premises Standards across *all* new builds and redevelopments *both public and private* on the basis that, people with disabilities should have equal access to all premises.

Recommendation 4:

That the scope of the Premises Standards be expanded to include private buildings.

Where appropriate, the Code should provide for accessible bathroom facilities in addition to egress in upgrades to older premises

The Premises Standards apply only to works identified within a specific building application *plus egress*. This means that, in the case of upgrades to existing premises, situations may develop where upgraded parts are accessible, but where corresponding aspects of accessibility, which one would expect to find within that particular type of building, are not available.

Part 2.1 of the Standards provide that the standard will apply to:

(b) *a new part, and any affected part, of a building, to the extent that the part of the building is:*

- (i) *a specified Class 1b building; or*
- (ii) *a Class 2 building that:*
 - (A) *has been approved on or after 1 May 2011 for construction; and*
 - (B) *has accommodation available for short-term rent; or*
- (iii) *a Class 3, 5, 6, 7, 8, 9 or 10 building;*

(c) *an existing public transport building that is still in use on the target date mentioned in an item in the table in section 3.1.*

And that an affected part of a building is:

We understand this to mean that it is possible for a person with disability to be able to enter a building and access parts of the building that have been built to the Standard, but to not be able to access bathroom facilities.

Being able to access an appropriate bathroom is fundamental to being able to use and enjoy a variety of buildings. It is also inherent in being able to use premises with dignity, which relates back to the guiding principles of both the Premises Standards and the DDA.

We would advocate that the provision of an accessible bathroom (if one is not otherwise reasonably able to be utilised) and an accessible way of reaching this bathroom should be mandated in the same way that egress to upgraded aspects of a building is required.

Recommendation 5:

That the provision of an accessible bathroom (if one is not otherwise reasonably able to be utilised) and an accessible egress to such facilities be mandated for buildings where bathroom facilities are otherwise provided.

Adult changing facilities should be included within the Code

We note that, as part of the previous review of the Premises Standards, many stakeholders, raised the issue that accessible adult changing facilities were not specifically referenced as a building requirement within the Code.

There are scarce numbers of adult change facilities available within public buildings across Australia, which means that people with more complex disabilities often do not have access to suitable toilet facilities when accessing public spaces. Adult changing facilities should be mandated in public buildings of over a certain occupant capacity, for example, shopping malls, and within public buildings where it is anticipated that people with disabilities will frequent, such as hospitals and aged care facilities.

Recommendation 6

That adult change facilities be mandated as a proportion of bathroom facilities in all public buildings where bathrooms are otherwise provided where occupancy is over a certain level – e.g. large scale shopping complexes and hospitals or where it is anticipated that those with need for adult change facilities will regularly frequent – e.g. group homes and aged care facilities.

Ratios for accessible parking spaces should be reviewed

PDCN considers that the ratios for accessible parking spaces and accessible bathrooms are too low. We note that there is a ratio of 1 disabled carparking space per 100 carparking spaces allocated to the residential part of a school, accommodation for the aged, disabled or children, residential part of a health care building which accommodates members of staff or the residential part of a detention centre.

Similarly, nursing homes are only required to provide 1 space per 100 allocated car spaces and hospitals (non-outpatient areas). We note the words of Mr Mark Relf, specific to the issue of carparking spaces in the 2015 review, who at that time stated:

It is evident that 1% to 2% of spaces required by Table D3.5 of the BCA and Premises Standards Access Code to be accessible in 2015 is grossly inadequate.

Concerns were also raised as to the ability of the Premises Standards to meet increased need for such spaces into the future. Given that demand is currently not being sufficiently met and in consideration of a forecast exponential increase in persons aged 65 years and over as a

proportion of the overall population⁸, the provisions relating to accessible parking should be addressed and readjusted as a matter of priority.

We appreciate that investigations into the suitability of the current disabled parking ratios has been attempted previously through consideration of the number of disability parking permits issued per jurisdiction, but it was found that this data was not consistently available.

We note that New Zealand has slightly higher ratios (as provided under NZS 4121) than the prescribed ratios in the current Australian premises standards: not less than 1 disabled parking space for every 20 parking spaces allocated, not less than 2 spaces for between 21-50 and not less than 1 space for every additional 50 parks.⁹

We suggest that the most equitable way to determine the number of spaces to be allocated for a particular building would be through applying a ratio system based on most recent census data relating to age and disability status across jurisdictions and that it may be possible to cross tabulate census data in such a way as to get a decent estimation of demand.

It is also anticipated that the census figures would also capture situations in which people identify as having a disability but may not have a disabled parking permit, for example, those who rely on ride share services to travel to premises.

In addition, we would advocate for a common sense approach in terms of allocation, whereby a greater number of accessible parking spaces is prescribed for premises people with physical disability regularly frequent, such as medical surgeries, nursing homes, retirement villages and schools for children with disabilities and consider current ratios cited for premises where people with disability could be expected to frequent are grossly inadequate.

The NZ standards are more prescriptive in terms of the design and location of disabled parking spaces – providing that the parking space should be located as close to the building entranceway as possible.¹⁰ PDCN advocates for a similar prescription within the Australian standards and note this was recommended across several submissions in the 2015 review.¹¹

Paid parking systems need to be considered within the Code

⁸ Australian Bureau of Statistics, *Population Projections*, 22/11/2018 < <https://www.abs.gov.au/statistics/people/population/population-projections-australia/latest-release#national> > accessed 25/11/2020

⁹ New Zealand Government, Ministry of Business, Innovation and Employment, *Building Performance – Car parks and the New Zealand Access Standard – NZS 4121* < <https://www.building.govt.nz/building-code-compliance/d-access/d1-access-routes/accessible-car-parking-spaces/what-does-the-d1-acceptable-solution-say-2/> > accessed 30/11/2020.

¹⁰ New Zealand Government, Ministry of Business, Innovation and Employment, *Building Performance – Key Features of an Off-Street Accessible Carpark* < <https://www.building.govt.nz/building-code-compliance/d-access/d1-access-routes/accessible-car-parking-spaces/key-features-of-an-off-street-accessible-car-park/> > accessed 29/11/2020.

¹¹ Australian Government, Department of Industry, Innovation and Science, *Review of the Disability (Access to Premises-Buildings) Standards 2010*, First Review, April 2016 < https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/review_of_the_disability_access_to_premises-buildings_standards_2010_report.pdf?acsf_files_redirect > accessed 29/11/2020, p. 35.

Another aspect of carparking which is problematic for our membership is the boom gate system/ticketing system for large scale car parking for buildings such as shopping centres and hospitals. As there are no longer staffed ticking booths, people with disability are required to operate boom gate controls and pay machines which may be physically difficult. It also requires people to validate tickets at ticket machines which may be inconveniently located. We note the submission to the current review, by Mr Mark Relf, Access Consultant, who states:

'The biggest problem I experience is finding accessible parking and as nearly every parking station is no longer staffed then using boom gate controls and pay machines makes off street parking impossible. However, license plate recognition systems work really well at shopping centres when an initial 2-3 hour period is free and I can conduct my business within the free period and do not need to use payment devices'.

We agree with Mr Relf that license plate recognition is a much more equitable approach to managing paid parking. We would also suggest that a tap-and-go option to pay for extended parking at the boom gate itself would be the most accessible method to charge for parking.

Provision should be made for the secure storage of mobility devices within residential complexes

We would also advocate that, as part of the review of the Code, consideration be given as to the provision of safe and accessible storage for motorised scooters and other such vehicles as a requirement of residential premises covered under the Standards. This is to reflect the fact that motorised scooters require charging, do not require the same space as a standard vehicle, and are large enough to not easily be accommodated within homes.

Recommendation 7:

That the ratios for accessible parking spaces be reviewed and expanded to better align with societal need. That consideration be given as to the inclusion of safe and accessible storage for motorised scooters and other such mobility aids as a feature of residential builds.

Recommendation 8:

That the premise standards prescribe the placement of disabled parking spaces to be positioned as close to building entrances as possible.

Recommendation 9:

That research be conducted into the most accessible design/s for paid parking, and that instruction be provided within the standards in regards to the construction of paid parking ticketing systems based on the findings of this research.

Recommendation 10:

That consideration be given as to the provision of safe and accessible storage for motorised scooters, and other such vehicles, as a requirement of residential premises covered under the Standards.

A governance structure must be established to administer the Standards

We are also concerned that there is no robust administrative mechanism to drive uptake of the standards across States and Territories. We note with interest the proposal by Mr Mark Relf, that a permanent Access Institute be established to work across governments "to initiate and direct other agencies for project specific tasks". We see significant merit in such a proposal and would advocate

that such an agency should also have monitoring and compliance responsibilities – please see point 5 below.

Recommendation 11:

That a permanent Access Institute be established to administer the Standards.

Data relating to compliance and effectiveness of the Standards needs to be tracked and a strategy developed to push an ‘agenda of accessibility’

Currently we have no capacity to accurately assess levels of compliance with the Standards, or whether the standards sufficiently address the requirements of those with physical disability. Until such data is available, we must rely on anecdotal information and/or complaints by individuals to understand how well the Standards are working in practice.

Compliance should be monitored, and longitudinal data should be available to track progress towards meeting the Standards. Mechanisms for determining compliance need to be consistent across the states and territories.

At the same time, we hope to see an overarching national strategy developed with a goal of 100% compliance across all new public builds and redevelopments within the foreseeable future. Such a strategy should address issues of public awareness, education and training, designate responsibilities and prove goals and benchmarks to be achieved over the life of the strategy.

We would advocate that tracking compliance, monitoring progress and steering the development such a strategy towards 100% compliance could be the responsibility of the proposed governance body referred to above.

Recommendation 12:

Compliance with the standards should be monitored, and longitudinal data collected to track progress towards meeting the Standards. Mechanisms for determining compliance need to be consistent across the states and territories.

Concluding comments – accessibility needs to both promoted and prioritised

The latest statistics indicate that there are approximately 5.3 million people across Australia who require mobility assistance on a day to day basis.¹²

The ability to access public buildings will only become more necessary over the next few decades. We are an increasingly ageing population - and have been for some time¹³. Projections by the Australian Bureau of Statistics indicates that the proportion of people aged 65 years has been steadily increasing and is expected to increase to as much as 23% of the overall population by 2066. As people live, and work, longer, we can expect to see higher levels of aged-related physical disability. PDCN sees now as the time to address both the access needs of those with physical disability today, and proactively work towards addressing escalating access needs in the future.

It is not acceptable that a decade after the introduction of the Premises Standards, the Standards are still not universally recognised across society or understood consistently across the building and construction industry. It is also disappointing that people with disability and other stakeholders themselves have limited awareness of the Standards and are therefore not able to assert their rights regarding the public premises they access.

Equally concerning, is the fact that the Premises Standards, like many other legislative instruments which have been created to import the principles of the UNCPRD into Australian society, lacks the force necessary to ensure compliance. The Standards provide too much opportunity to circumvent adherence to the Code by failing to provide for any type of governance structure, and instead relying on individuals to raise complaints about specific buildings.

Based on what we understand about the use of complaint mechanisms by people with disability generally, we believe that non-compliant developers have, and will continue to do as they please, especially when the temptations are there to avoid the greater effort, time, and cost that may be involved in meeting the Standards.

There is insufficient knowledge of the Premises Standards across society – those affected are not aware that they can challenge non-compliance, but even if they are, many are unlikely to either have the means or the stamina to do so effectively. It is unfortunate that people with physical disability so often have no choice but to be pragmatic and choose alternative options, even when extra effort is required on their part, rather than pursue their basic rights.

In moving forwards, it is imperative that there is commitment at both National and State level towards prioritising building accessibility via the establishment of a national regulatory body,

¹² Australian Bureau of Statistics, *Disability, Ageing and Carers – Australia – Summary of findings 2018, Table 12.1 – All persons with disability, living in households, assistance needed, received and extent to which needs met, by disability status 2018 – estimate* – please note, this figure was calculated in relation to persons identifying as having profound and severe core activity limitation who require mobility assistance. It is likely that the actual figure of persons requiring accessibility standards is significantly higher when considering those who are self-mobile but experience mobility difficulties.

¹³ Australian Bureau of Statistics, *Population Projections, 22/11/2018* < <https://www.abs.gov.au/statistics/people/population/population-projections-australia/latest-release#national> > accessed 25/11/2020

investment in broadscale education and training, and comprehensive data collection and monitoring.

People with disability should not bear the bulk of responsibility for enforcing legal requirements relating to accessibility. We encourage Government, as always, to continue to engage directly with those with lived experience of disability, their advocates and Disabled Persons Organisations (DPO's) to ensure that the Premises Standards accurately reflect the accessibility needs of the community and that they operate as an effective tool both in realising Article 9 of the UNCRPD and the legal requirements of the DDA.