

Requirements for the Provision of Access and other Facilities

For People with a Disability in Defence

Introduction

1. Australian Government agencies must meet their obligations under the Disability Discrimination Act 1992 (DDA) by removing barriers which prevent people with a disability from having access to buildings, programs and services. The Commonwealth Disability Strategy (CDS) was introduced in 1994 as a planning framework to assist with implementation of the DDA requirements.
2. The Defence Disability Action Plan (DAP) aims to develop an inclusive work environment that enables staff with a disability to contribute to Defence goals. It sets eight key objectives for promoting employment of people with a disability.
3. Whilst the DDA is reactive legislation, it requires building owners to implement reasonable adjustments. In support of DAP objective 5 and with an aim of meeting the above policy framework, it is a Defence requirement to construct and certify Defence buildings and infrastructure – including leased premises – according to the requirements of the Building Code of Australia (BCA) and the Disability (Access to Premises – Buildings) Standards 2010. Further guidance on compliance requirements is provided as follows:
 - a. Defence Instructions (General) ADMIN 20-26, Defence Manual of Fire Protection Engineering (MFPE) and Departmental Personnel Instruction No 2/2002 require compliance with the BCA. The BCA that is applicable for any project is to be the one that is adopted by the Australian Government at the time of building approval.
 - b. The Disability (Access to Premises – Buildings) Standards 2010 has been developed 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”*. The flowcharts copied from Reference (e) that are located at Annex A and B provide a diagrammatic representation of the scope and application of the Disability (Access to Premises – Buildings) Standards 2010. They have been provided for information and do not displace the written explanation of the operation of the Disability (Access to Premises – Buildings) Standards 2010.

Aim

4. The aim of this policy is to detail the means by which Defence Support Group (DSG), as the owner and manager of Defence buildings, is able to meet its obligations under the DDA and DAP. The policy also provides guidance on Defence buildings which, because of their occupancy profile, would be suitable for alternative solution consideration under the BCA, while still meeting the intent of the DDA.

References

5. Reference is necessary to current issues of the following documents:
 - a. Manual of Fire Protection Engineering (MFPE);
 - b. Building Code of Australia (BCA);
 - c. Disability Discrimination Act 1992 (Commonwealth) (DDA);
 - d. Disability (Access to Premises – Buildings) Standards 2010 (Premises Standards);

- e. Explanatory Statement – Issued by the Authority of the Attorney-General;
- f. Commonwealth Disability Strategy (CDS) 2000 (currently under review);
- g. Defence Disability Action Plan (DAP);
- h. Departmental Personnel Instruction No 2/2002: *Department of Defence Access and Disability Policy*;
- i. Departmental Personnel Instruction No 6/2004: *Procedures for the Provision of Assistive Technical Office Equipment for the Department of Defence Employees with Disabilities*; and
- j. Better Physical Access Guide (Commonwealth).

Existing Buildings

6. It is not financially viable to upgrade all existing buildings to provide access for people with a disability on a "just in case" basis, however, reasonable adjustments must be made to existing buildings on an "as required" basis. Generally, the core strategy of the DAP requires that requests for reasonable building modifications be actioned expediently, such as the provision of access, sanitary facilities, facilities for hearing and sight impaired.

New and Refurbished Buildings

7. For new Defence buildings, new Defence leased buildings or buildings undergoing refurbishment, the full requirements of the BCA Part D3 (Access for People with a Disability) and the Disability (Access to Premises – Buildings) Standards 2010 shall apply, unless an alternative solution is approved in accordance with the requirements of MFPE Chapter 26. The building shall also be fitted with disabled facilities as identified by the users and which are not the responsibility of Defence Assistive Technology Program (DATP). Refer to Annexes A and B.

Alternative Solutions

8. The requirements of the BCA are met by demonstrating compliance with the performance requirements. This is achieved by either complying with the deemed-to-satisfy provisions of the BCA, by developing an alternative solution, or by a combination of both methods.

9. Any alternative solution is to be structured in accordance Part A of the BCA where:

- a. The departure to the deemed-to-satisfy provision of the BCA is identified;
- b. The relevant performance requirement is identified; and
- c. The assessment methodology is identified.

10. Alternative solutions may be put forward where the occupancy profile would dictate that only able bodied personnel could occupy the facility. The alternative solution report must be prepared by an appropriately qualified access consultant. The alternative solution must include assessment of whether:

- a. The building will be occupied only by able-bodied Australian Defence Force (ADF) personnel (the nature of activities required in the facility would preclude people with a permanent disability); or
- b. Any Defence civilians and/or Commonwealth public servants, are due to their nature of employment required to be able bodied or not have a disability that would pose a health or safety risk in carrying out their duties.

11. Statements in the form of a Minute or letter are to be included in the alternative solution report confirming that the key stakeholders either support or have no issue with the alternative solution proposal. The key stakeholders include but are not limited to the following:

- a. Authority responsible for the personnel that occupy the building – i.e. Commanding Officer (CO);
- b. Defence support operations regional Manager Estate Facilities Services (MEFS);
- c. Comprehensive Maintenance Services (CMS) Manager; and
- d. Garrison Support Services (GSS) Contractor.

12. Consultation with the Director of Estate Engineering Policy (DEEP) must be sought at early design stage and prior to completion of alternative solutions and dispensation requests. Formal written Defence approval of the alternative solutions and dispensations must be obtained at the design stage – refer to paragraph 13 below and Chapter 26 of the MFPE.

Dispensation process

13. All alternative solutions addressing departures from the deemed-to-satisfy provisions of the BCA must be approved in accordance with the process detailed in Chapter 26 of the MFPE. This includes the preparation and submission of a dispensation request for support by DEEP and approval by the Assistant Secretary Estate Policy and Environment (ASEPE). The alternative solution is to form the supporting evidence to the dispensation request.

14. A dispensation request and alternative solution will not be accepted unless the Base/Establishment, Defence Estate Management System (DEMS) Identification Number and DEMS Building Number are provided.

User Requirements Brief

15. Although the BCA requirements for access for people with a disability are to be provided in all Defence buildings – except those which have an approved alternative solution and dispensation in accordance with the requirements detailed above – other facilities for people with a disability that would not normally be provided to comply with the BCA need to be considered. Specific need must be identified in the User Requirements Brief or by subsequent formal notification by the Project Sponsor. For this reason, all User Requirements Briefs are to have a section headed “Disabled Facilities to be Provided”. This section shall:

- a. State whether disabled access is required in accordance with this policy or whether an alternative solution and dispensation will be sought;
- b. Identify any staff, who would require aids to be provided as part of the building to assist staff with disabilities. Equipment such as visual warning devices to augment aural alarms in building Emergency Warning Systems to warn hearing impaired, should be identified in this section so that the equipment can be correctly specified, integrated, commissioned and certified;
- c. This section should also identify any function performed by the user which may require staff, contractors or public with disabilities, to enter, work, receive training or counselling, etc in the building, and the nature of disabilities likely to be encountered as a result of this function.

16. DSG Project Directors are to ensure that user groups are made aware of this policy and that User Requirements Briefs contain the “Disabled Facilities to be Provided” section. Due cognisance shall be taken of the costs of providing facilities for the disabled in the preparation of the Capability Submission (Estate)/New Facilities Proposal.

17. When a requirement is identified for modification to an existing building to accommodate a person with a disability, the appropriate Peak Disability Body – refer to Reference g – should be consulted to ensure that the correct facilities are provided.

Sponsor

Any enquiries relating to this policy should be directed to:

Director Estate Engineering Policy (DEEP)

BP3-2-B049

Department of Defence

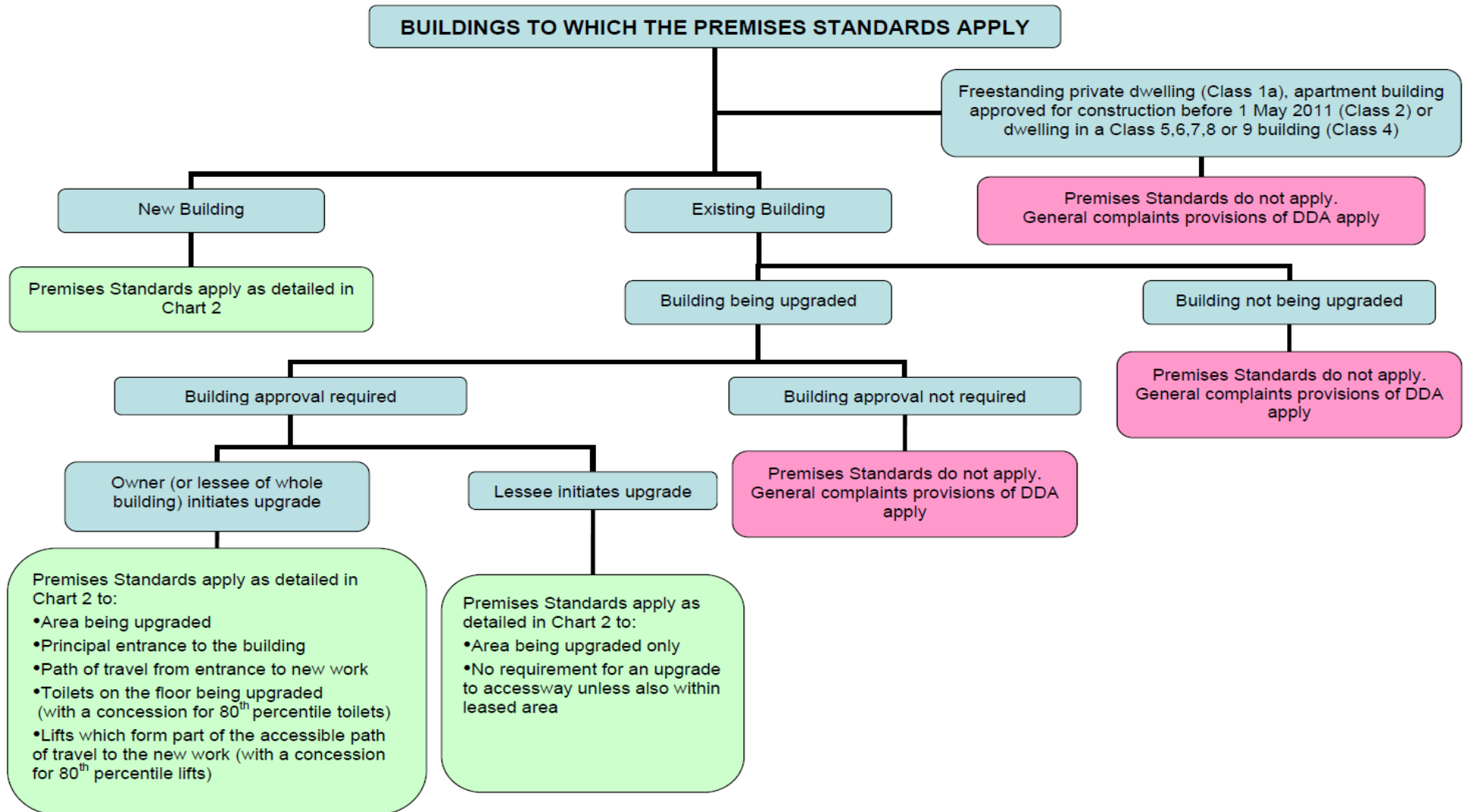
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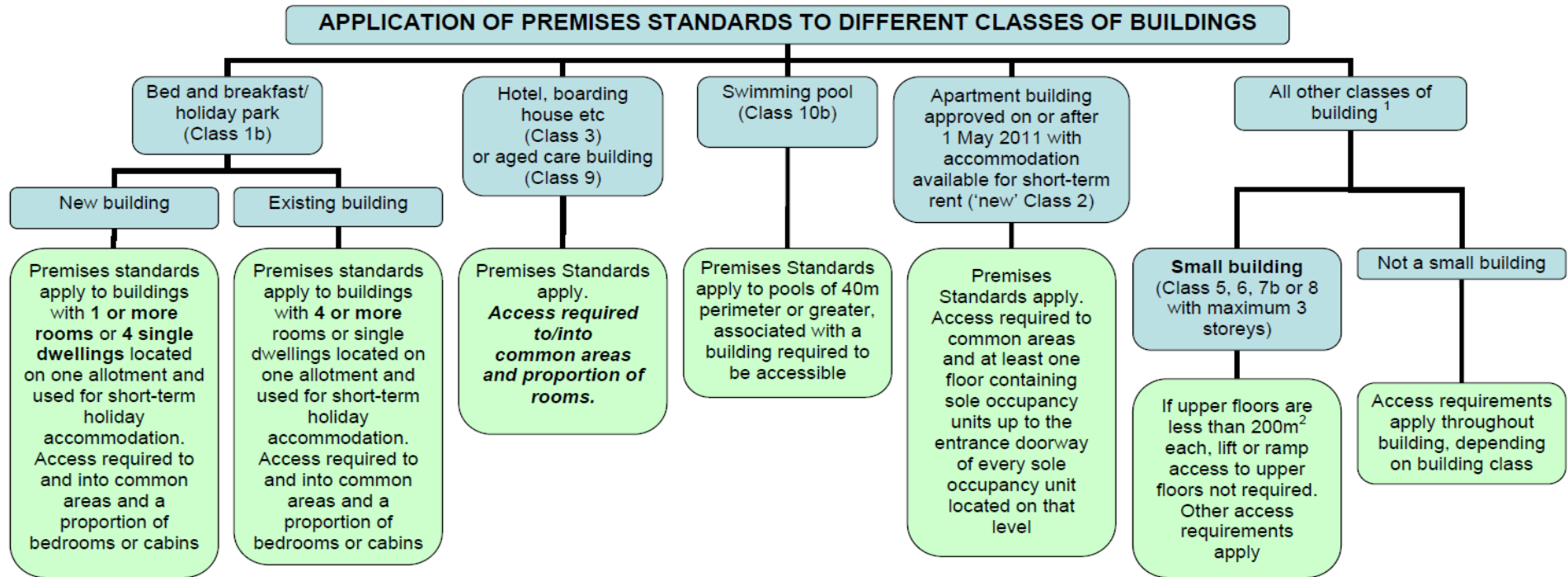
Dated: 12 September 2011

Chart 1: Application of the Premises Standards to new and existing buildings



Adapted from the House of Representatives Standing Committee on Legal and Constitutional Affairs' report Access all Areas, page 179

Chart 2: Application of the Premises Standards to different Classes and types of buildings

**Unjustifiable hardship and Standards:**

Section 32 of the DDA makes it unlawful to contravene a provision of a disability standard. However, a builder/owner would have recourse to a defence under the Premises Standards if complying with the Standards would cause unjustifiable hardship. The provision in the Standards relating to unjustifiable hardship would also allow a court to take into account a decision of an access panel in the matter (see below). The decision of an access panel would also be a relevant consideration in determining unjustifiable hardship under section 11 of the DDA.

Access Panels:

If a builder/owner is unable to comply with the Standards, then that person can approach an access panel to request approval for an Alternative Solution under the BCA. The decisions of this access panel could be taken into account by a court if the person argues unjustifiable hardship under the Standards.

Note 1:

All other classes of buildings include: commercial accommodation such as hotels; office blocks; shops, restaurants, retail etc; carparks; warehouses, factories; hospitals, nursing homes and health clinics; aged care; toilet blocks and public shelters.