



# Fact Sheet – Building Access Requirements

## Introduction

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. The National **Disability Strategy** 2010-2020 took over from the CDS and sets out a ten year national policy framework for improving the lives of Australians with **disability**. Defence aims to develop an inclusive work environment that enables staff with a disability to contribute to Defence capability.

## Building and infrastructure requirements

The DDA requires building owners to implement reasonable adjustments. It is a Defence requirement to construct and certify Defence buildings and infrastructure – including leased premises – according to the requirements of the National Construction Code – Building Code of Australia (NCC) and the Disability (Access to Premises – Buildings) Standards 2010. Further guidance on compliance requirements is provided as follows:

- a. The Defence Building Works Manual (BWM) requires compliance with the NCC. As per the BWM, the NCC 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

The aim of this guide is to detail the means by which Estate & Infrastructure Group (E&IG), as the owner and manager of Defence buildings, is able to meet its obligations under the DDA and other relevant legislation including the Disability (Access to Premises – Buildings) Standards 2010, the NCC, along with individual State and Territory legislation. The guide also provides guidance on Defence buildings which, because of their occupancy profile, would be suitable for performance solution consideration under the NCC, while still meeting the intent of the DDA.



## References

Reference is necessary to current issues of the following documents:

- a. Defence Building Works Manual (BWM);
- b. National Construction Code, Volume One – Building Code of Australia (NCC);
- 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. National Disability Strategy (NDS) 201-2020 (Commonwealth); and
- g. Better Physical Access Guide (Commonwealth).

## Existing buildings

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, including but not limited to the provision of access and modifications, sanitary facilities, facilities for hearing and sight impaired.

## New and refurbished buildings

For new Defence buildings, new Defence leased buildings or buildings undergoing refurbishment, the full requirements of the NCC part D3 (Access for People with a Disability) and the Disability (Access to Premises – Buildings) Standards 2010 apply, unless an exemption is applied under NCC clause D3.4 or a performance solution is approved in accordance with the requirements of BWM chapter 8. The building is also to 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.

## NCC clause D3.4 exemption

NCC clause D3.4 grants concessions for buildings containing areas that are not required to be accessible. The project team is to liaise with the relevant stakeholders to determine whether the concessions under NCC clause D3.4 can be applied. The key stakeholders include but are not limited to the following:

- a. Project team;
- b. Building surveyor;
- c. Authority responsible for the personnel that occupy the building – i.e. Base Manager (BM); and
- d. Defence support operations regional Director Service Delivery (DSD).

The project team is to ensure that the stakeholder process is documented, recorded on the project file, and retained with the project documents.

In the event the exemption cannot be applied, then to meet the performance requirements of the NCC, a deemed-to-satisfy solution applies or a performance solution must be sought.

## Performance solutions

Any performance solution is to be prepared in accordance with chapter 8 of the BWM.

The performance solution report must be prepared by an appropriately qualified access consultant that has been deemed as a competent person by the building surveyor in accordance with the BWM.

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

- a. Project team;
- b. Building surveyor;
- c. Authority responsible for the personnel that occupy the building – i.e. Base Manager (BM);  
and
- d. Defence support operations regional Director Service Delivery (DSD).

Consultation with the key stakeholders must be sought at early design stage and prior to completion of performance solutions requests. Formal written Defence approval of the performance solutions must be obtained at the design stage – refer to paragraph below and chapter 8 of the BWM.

## Performance solution process

All performance solutions addressing departures from the deemed-to-satisfy provisions of the NCC must be approved in accordance with the process detailed in chapter 8 of the BWM. This includes the preparation and submission of a request for performance solution for support. The performance solution is to form the supporting evidence to the request.

A performance solution will not be accepted unless the Base/Establishment, Garrison & Estate Management System (GEMS) identification (building number) is provided.

Guidelines for certification, performance solutions and dispensations are available at the [Building Works Section](#) page of the Defence Estate Quality Management System (DEQMS) website.

The request for performance solution must be submitted to the Building Works Section of the Estate Engineering Policy Directorate in accordance with chapter 8 of the BWM.

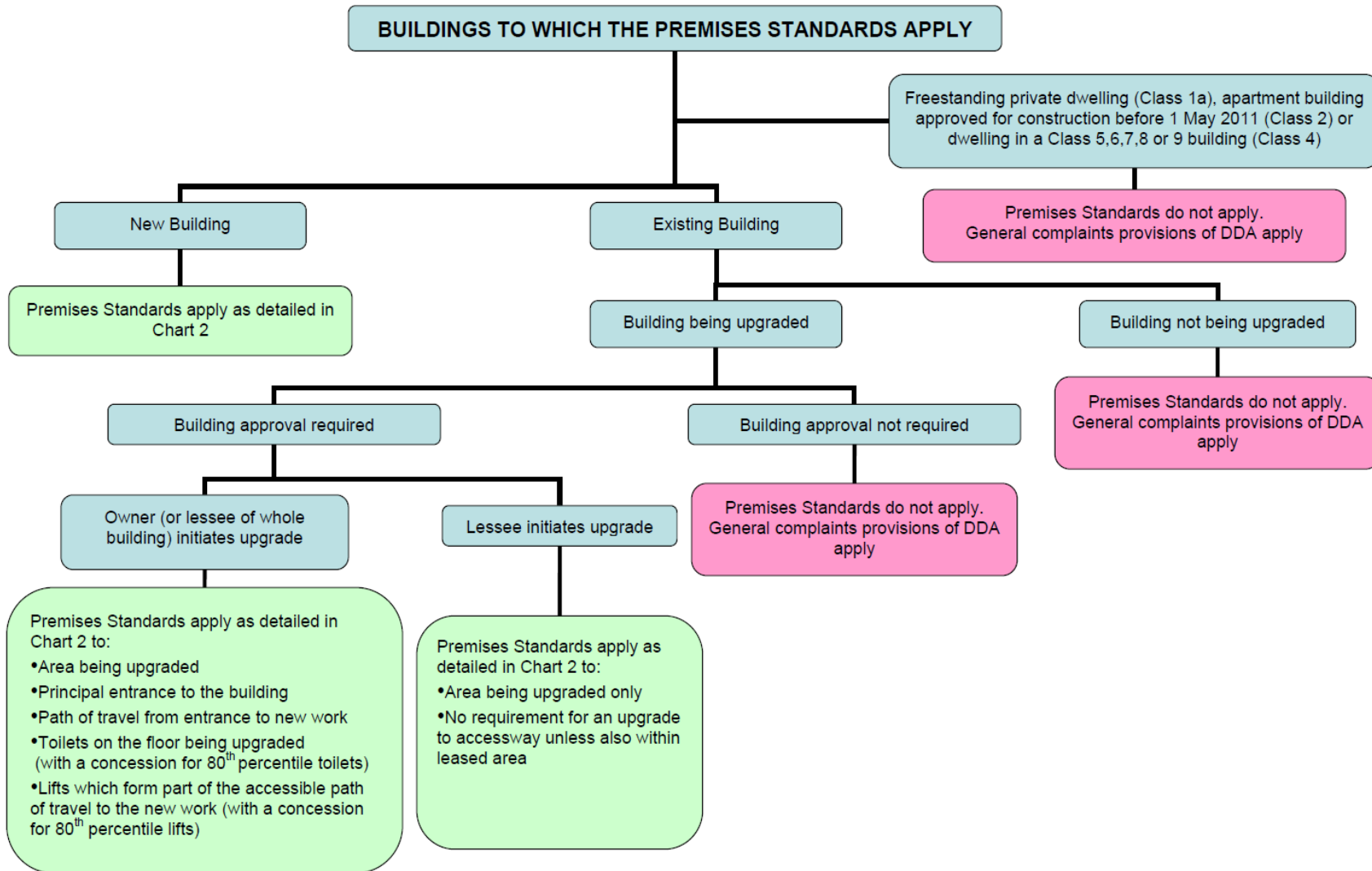
## User Requirements Brief

Although the NCC requirements for access for people with a disability are to be provided in all Defence buildings – except those which have an exemption under NCC clause D3.4 or an approved performance solution – other facilities for people with a disability that would not normally be provided to comply with the NCC 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 exemption under NCC clause D3.4, or a performance solution 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.

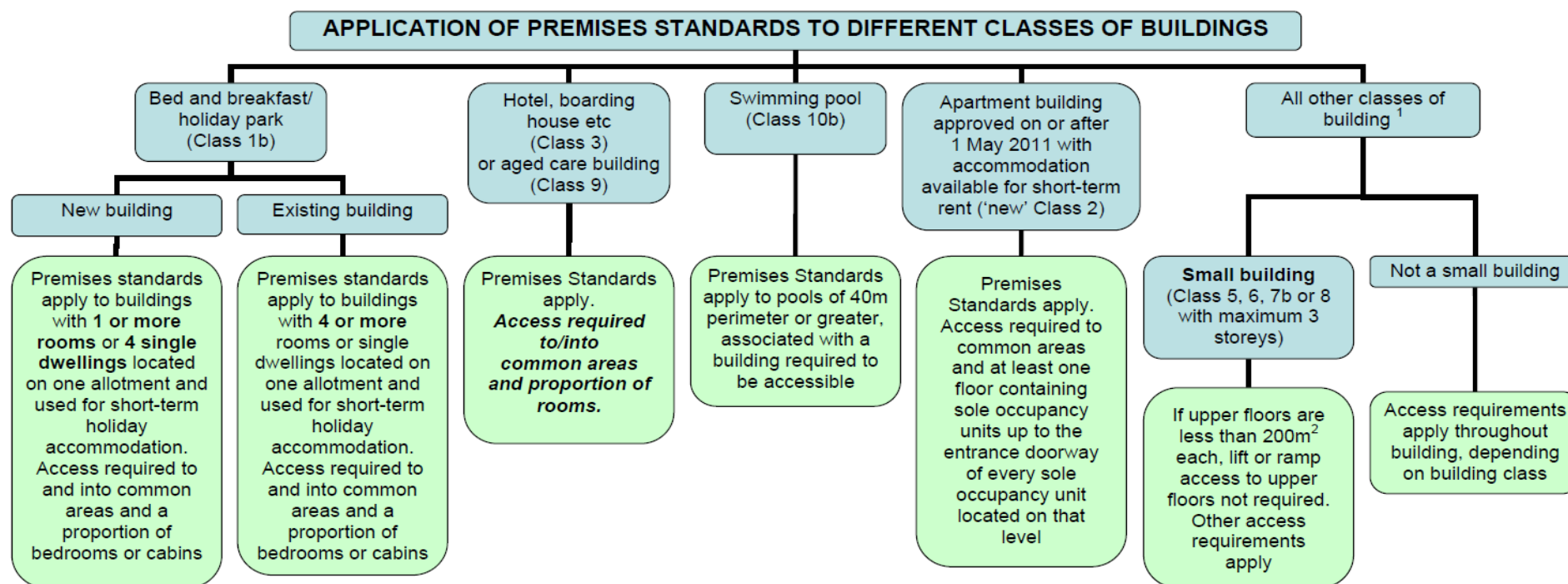
Estate & Infrastructure Group (E&IG) Project Directors are to ensure that user groups are made aware of this policy and that User Requirements Briefs contain the ‘Disabled Facilities to be Provided’ section. Due cognizance shall be taken of the costs of providing facilities for the disabled in the preparation of the Capability Submission (Estate)/New Facilities proposal.

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.