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Dear Ms Holliday,

## Access to Premises Discussion Paper (December 2010)

The Housing Industry Association (HIA) welcomes the opportunity to comment on the *Access to Premises Discussion Paper – options for determining unjustifiable hardship relating to applications for construction*.

As Australia's peak residential building industry association, HIA is well positioned to comment on the Discussion Paper on behalf of the residential construction industry. HIA represents over 40,000 members nationally, with 15,000 members in NSW. HIA members including, builders, designers, manufacturers and suppliers of building materials will need to familiarise themselves with the new Standards to ensure compliance where necessary.

HIA made a comprehensive submission on the Draft Disability (Access to Premises – Buildings) in March 2009 which supported the Commonwealth Government's aim to apply the Disability Discrimination Act 1992 through the introduction of the Premises Standard, however, sought clarification as to who is ultimately responsible for making a determination of unjustifiable hardship and how this process will work. Therefore, HIA welcomes the NSW Government's examination of options for determining the circumstances where compliance with the Premises Standard is not required on the grounds of unjustifiable hardship.

HIA supports the NSW Government's commitment to introduce an efficient and effective process for dealing with unjustifiable hardship when dealing with the upgrading of an 'affected part' of an existing building.

HIA believes that it is important that the applicant is notified of an exemption to the Standard at the earliest point in the development approval process. It would be frustrating for an applicant to receive a development approval followed by an exemption to the Standard at the construction certificate stage. This process may require the applicant to lodge a Section 96 (modification of consent) application in order to amend the approved plans to incorporate the changes as a result of the exemption.

The Discussion Paper outlines six options to allow prior approval for non-compliance with any part of the Premises Standards on unjustifiable hardship grounds. HIA considers Option 1 is the most practical within the current NSW approval framework however it would require some modifications to ensure the most efficient and effective approach is established.

**Option 1**

*“This option would require matters relating to unjustifiable hardship being assessed on a case by case basis by councils as part of the development application assessment process. Developments involving unjustifiable hardship could not be determined as complying development and certifying authorities would not generally be required to consider the issue at the construction certificate stage of the approval”.*

To assist local councils in making these determinations, the NSW Government, in consultation with the Commonwealth Attorney-General and Australian Human Rights Commission, urgently needs to develop guidelines on the matters to consider when assessing a request for unjustifiable hardship. For example, at what point is the cost and construction adjustments required to install a lift not considered significant and what options may be provided for a staged redevelopment of a building, similar to the current process for ‘fire upgrading’ plans that are agreed between local councils and building owners.

HIA’s support for this option is based on the current lack of any recognised adjudication process, apart from the Land & Environment Court, to determine matters of contention. NSW has elected not to implement a structure for this purpose that sits between the local consent authority and the Court, such as the Victorian Building Appeals Board, that can consider building related matters such as alternative solutions. Given this, HIA does not see that establishing such an authority or panel would be practical in the current timeframes.

HIA is not opposed to the establishment of a State-Based Access Panel to assist councils in determining complex applications for unjustifiable hardship for an initial transitional period. The establishment of a Panel would be supported only on the basis of it being having a limited period of operation to establish some case outcomes that set the benchmarks. By setting precedence, these would act as a guide to councils for future applications.

Any consideration of a longer term role for such a Panel needs to have regard to the fact that the decisions of a Panel would need to be binding and give protection to the building owner from any action under the Disability Discrimination Act. If such protection cannot be assured through this process, then it would add little value to an approach which relies on local councils to make the determination.

If you would like to organise a meeting or require any further information in relation to this submission, please do not hesitate to contact Ms Clare Larkin on 9978 3389 or [c.larkin@hia.com.au](mailto:c.larkin@hia.com.au)

Yours sincerely  
HOUSING INDUSTRY ASSOCIATION LIMITED



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