

The Disability (Access to Premises – Buildings) Standards 2010 (“Premises Standards”) which came into operation on 1 May 2011 can mean a potential blow out of your fit out budget if you are not careful.

### **WHICH BUSINESSES ARE AFFECTED**

Cafés, restaurants, kiosks, hairdressing salons, showrooms, service stations, yoga/fitness studios or other retail business of goods and services.



### **HOW AND WHEN DO THEY APPLY**

#### **Fitting Out Existing Premises**

If you intend to carry out any fitout works that require a building permit which do not fall within the exemptions set out in [Schedule 8 of the Building Regulations](#) the Premises Standards apply to your premises.

Where you are seeking to change the use of the premises for your purposes, for instance, from a warehouse use to a retail use, you will require a building permit for the works regardless of whether the works fall within the Schedule 8 exemptions. You will need a Certificate of Occupancy from your building surveyor before you can commence trading.

#### ***Practical Tip***

*Ensure that your building surveyor works in conjunction with your architect, builder and designer from day 1 and everyone is informed of the compliance options.*

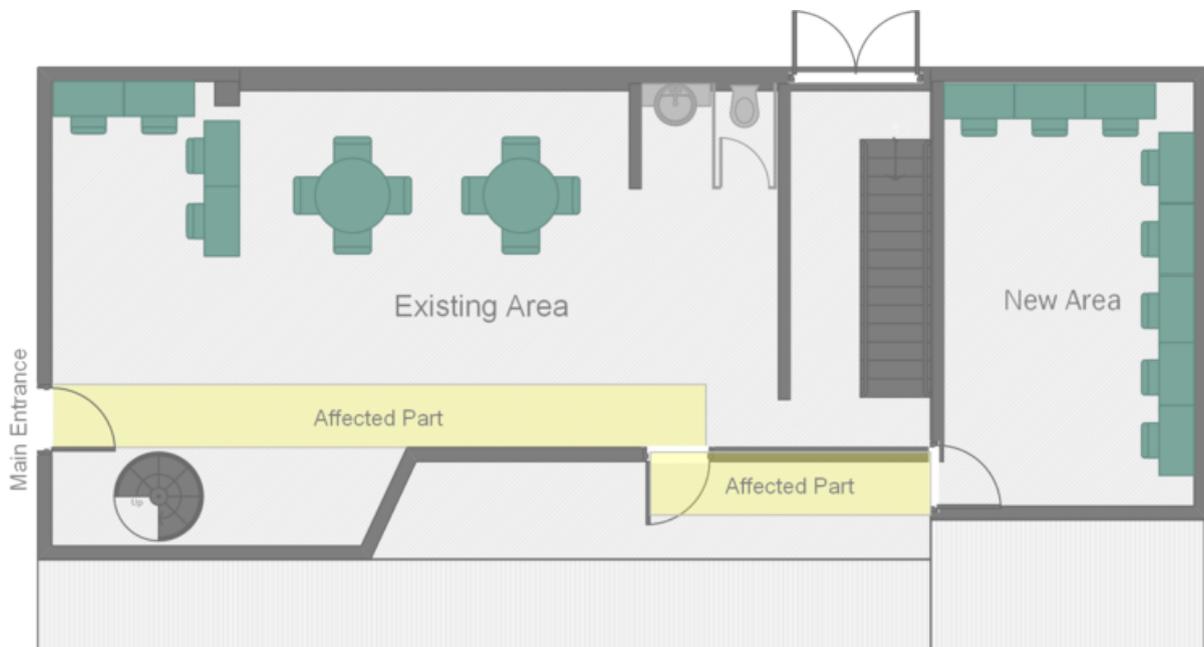
*In this instance, care must be taken when budgeting for the build to include compliance works referable to the Premises Standards.*

### **Extending Or Modifying Existing Building**

Works on an existing building, whether extending or modifying all or parts of it will require a building permit if they are not exempted under Schedule 8 referred to above.

Where a building permit is required for new works to be done on an existing building, the Premises Standards' application applies to the new part of the existing building as well as the "affected part" of an existing building.

As an example:



The 'affected part' within a building includes the main entrance of the building and associated paths of travel from the principal entrance of the building within the entry level to the 'new part'.

This means that where works are planned on upper levels within a building, the affected part would also include any existing passenger lifts and paths of travel from the passenger lift to the new parts.

### **Practical Tip**

*Care must be taken to consider whether any affected areas require upgrading works as these can have the potential to blow out construction costs, making the project non-viable.*

### **No Renovations, Just Taking Over Existing Premises**

If, prior to your occupation, the premises had undergone building works (which would have required a building permit but none had been applied for or a Certificate of Occupancy was never issued pursuant to an existing building permit) after the commencement of the Premises Standards on 1 May 2011, you need to be aware that:

- It is your responsibility to ensure that the premises comply with all building regulations which includes the Premises Standards.
- The fact that you obtained a transfer of the premises from the previous tenant when you purchased the business does not absolve you from these obligations.
- As business owner, you are required to ensure that your business and the business premises comply with all applicable laws.
- Failure to do so will not only be a contravention of the Building Code but will also most likely trigger a default under your lease with the landlord.
- It is usually a condition under a commercial lease that it is the lessee's obligations to ensure that the business complies with all legislative requirements and regulations.

**IF THE PREMISES STANDARDS APPLY, YOUR NEXT STEPS ARE TO ASCERTAIN COMPLIANCE REQUIREMENTS AND THE AVAILABILITY OF CONCESSIONS.**

Plan ahead before submitting an application for a building permit as an application for a building permit will trigger the application of the Premises Standards. Have round table meetings with your architect, designer, structural engineer (where applicable), building surveyor and builder so that all parties involved in the fitout works are aware of your intended outcome, taking into account the building regulations and structural requirements.

In essence, the following should be covered in such meetings:

- The design and build of the premises which take into account the Premises Standards
- Advice from the building surveyor and the builder (informed by the architect) as to whether compliance should take the form of a Deemed to Satisfy Solution (1), a Performance Solution (2) or a combination of both
- The likely costs, pros and cons of the various compliance options

- Whether there are exceptions and concessions set out in the Building Act 1993 that are applicable to your circumstances.
- 1. *A Deemed-to-Satisfy Solution includes prescriptive examples of materials, products, design factors, construction and installation methods, which if followed in full, are deemed to comply with the Performance Requirements of the Building Code.*
- 2. *A Performance Solution is any solution that can meet the Performance Requirements, other than a Deemed-to-Satisfy Solution.*

### **Unjustifiable Hardship Is A Concession**

Even though there is no pre-approval for non compliance on the ground of unjustifiable hardship, the Premises Standards set out a list of factors that should be taken into account when considering this defence.

In the event that your building experts made the decision to proceed in contravention of the Premises Standards on grounds of unjustifiable hardship, there is a risk that you may be subject to a Disability Discriminatory Act complaint if subsequently someone with a disability experienced discrimination as a result of the non compliance.

### **WHAT ALL THESE MEAN FOR BUSINESS OWNERS**

- Engage experienced building practitioners and surveyors to ascertain how the Premises Standards may apply to your fit out works and your business premises
- Allow for possible time delays with construction due to the additional compliance works
- Be mindful that it is not unusual for the planning and building permit applications process to take up to 5 months even without having to deal with objections and appeals to the AAT
- Ensure that your architect and designer are aware of the compliance parameters and work within such parameters to avoid having to go back to the drawing board after having spent tens of thousands on designing fees
- When negotiating lease terms, be mindful of the application of the Premises Standards and the likely compliance costs. Build in a clause in the lease to enable you to withdraw in the event that the required planning and building permits cannot be issued within a specified timeframe.

*Note: The information contained in this article and on [www.laulegal.consulting](http://www.laulegal.consulting) website is general information only and does not constitute legal or compliance advice.*

**NOT SURE HOW TO NAVIGATE THE PREMISES STANDARDS?**

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