



Submission to the Review of the Disability (Access to Premises – Building) Standards 2015

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Executive summary

- The Registered Accommodation Association of Victoria (RAAV) is an industry association whose members play a vital role in meeting the needs of low income residents and those residents who generally require medium term and long term accommodation or those in housing crisis.
- RAAV estimates that the number of registered rooming houses owned and/or operated by RAAV's 82 members is over 300 which is about a quarter of the 1,300 registered rooming houses in Victoria.
- Rooming houses are private homes of the residents and are a principal place of residence as opposed to holiday style accommodation. They are not open to the public and are subject to the Residential Tenancies Act (1997) as a registered rooming house. In fact they are no different to living in a class 1a premise that is not required to be compliant under the disability access provisions of the BCA, now NCC.
- Rooming houses are usually confined to single room accommodation and residents have exclusive right to their room and the premises offer shared access to common facilities.
- Persons with a disability, restricted to wheel chairs, are not the usual occupants of rooming houses. The usual profiles of occupants in rooming houses are able bodied persons because disabled persons would reside in a "Special Accommodation Premises" and not a rooming house.
- We believe that the changes to class 1b premises for disability were not intended to capture the medium to long term residential accommodation, e.g. rooming houses that are provided to lower socioeconomic and tertiary homeless people through class 1b rooming houses. It is clear reading through the "Regulatory Impact Statement" (RIS) proposing introduction of the regulations and the "Access All Area" report that these changes were targeted at the tourism industry. The examples given (both from Industry and advocates of disability access) discuss "bed and breakfasts" and "holiday accommodation".
- Almost all privately run rooming houses which are converted from existing class 1a buildings to class 1b's will need to be compliant for disability and that the cost is much higher than predicted in the "Access All Areas" report. This impost by itself goes a long way to help explain why the growth of the rooming house industry to meet the growing demand by the disadvantaged and homeless persons, has been so devastated by this change.
- Government reports issued at the time the legislation was proposed do not support class 1bs being included in the regulations. These documents consistently refer to class 1b properties as "bed and breakfasts, holiday cottages, guest houses, eco-lodges," but not to 1b rooming houses. Rooming houses provide accommodation that is not open to the general public, do not offer services, are not run on a short term commercial basis and are most definitely not "Holiday Accommodation".
- The Explanatory Statement and the RIS make it clear that the focus of the Disability (Access to Premises — Buildings) Standards 2010 was to ensure that public buildings are subject to the standards. The way specified class 1b buildings have been defined in the Standards, they rope in all class 1b buildings - not just ones used for public buildings (i.e. short term holiday accommodation).
- **Rooming houses are not public buildings.**
- RAAV's submission outlines many unintended consequences of the current Disability (Access to premises – Buildings) Standards which are supported by case studies and comments from RAAV's members including a growth in unregistered rooming houses who have gone under the radar to avoid compliance with Victoria's legislation.
- A building permit triggers disabled access requirements on existing buildings with owners being forced to retrospectively provide disability access facilities on rooming houses that were in existence prior to 1st May 2011.

- RAAV surveyed its members and received 58 responses, an encouraging 70% response. These 58 members own or operate 167 registered rooming houses with 1,314 residents and highlighted the effect that the introduction of disability access provisions for class 1b's is having:
 - Only 6 members had received a total of 7 requests to provide disabled access facilities;
 - 52 members reported that they had not received a request for providing disabled facilities;
 - Based on the industry average of 5 enquiries per room in the rooming houses surveyed, 26,280 enquiries were received. The percentage of requests for disability access rooms over the 4 years was 0.0266% or less than three out of every 10,000 enquiries;
 - 204 class 1b rooming houses were deferred or cancelled with 1,605 people remaining homeless;
 - 244 new class 1b rooming houses would be opened if the legislation is rescinded accommodating a further 1,865 people

- ***Based on the supporting information in this submission, RAAV recommends:***

That Class 1b rooming houses and shared accommodation be exempted from the disability accessibility requirements under the National Construction Code because they are residential premises and not public buildings.

1. The Registered Accommodation Association of Victoria Ltd (RAAV)

RAAV is an industry association that brings together privately owned and operated registered rooming houses. RAAV's members assist in meeting the needs of low income residents and those residents who generally require medium term and long term accommodation.

RAAV is an active voice on behalf of its members. The Organisation's core activity is to promote minimum and acceptable standards in operating registered accommodation and raise the image and performance of all privately owned rooming houses.

RAAV encourages private rooming house owners and operators to adopt Best Practice Guidelines to assist in the good conduct of business, to meeting their obligations and the wellbeing of residents in rooming houses and other registered accommodation.

RAAV'S other core activities include:

- Making RAAV's members aware of the legislative requirements in operating registered accommodation;
- Providing information and assistance to Governments in the operation of rooming houses;
- Encouraging un-registered rooming house operators to adopt best Practice in operating their rooming houses and to seek registration.

RAAV's membership numbers 82 registered rooming house owners and operators. They typically operate several rooming houses with a number responsible for 10 or more properties.

Consequently, RAAV estimates that the number of registered rooming houses represented by RAAV's members is over 300.

2. The Rooming House sector

Rooming houses play a vital role by accommodating members of the community who might otherwise be homeless. They are private homes of the tenants used as a principal place of residence. The tenants' privacy is protected by Victoria's Residential Tenancies Act (1997).

There is no one rooming house model. Nevertheless, a rooming house, which is sometimes referred to as a 'boarding house' in other States usually have some or most of the following characteristics:

- They are a principal place of residence as opposed to holiday style accommodation;
- They are not open to the public and are subject to the Residential Tenancies Act (1997) as a registered rooming house;
- They do not include a reception area;
- There is usually no on-site management and the owner and their family generally do not live on the premises;
- They are usually confined to single room accommodation and residents have exclusive right to their room;
- The premises offer shared access to common facilities, such as bathrooms, kitchens, laundries and living areas whilst some premises may have self-contained facilities;
- They are increasingly used by long-term homeless people or those in housing crisis;
- Other low rent occupants are accommodated; e.g. students.

Persons with a disability, restricted to wheel chairs, are not the usual occupants of rooming houses. The usual profiles of occupants in rooming houses are able bodied persons because disabled persons would reside in a “Special Accommodation Premises” and not a rooming house and they often require accommodation for a carer.

There are over 1,300 registered rooming houses in Victoria with around one quarter operated by RAAV’s members. The majority (around 85%) are class 1b who are approved to house up to 12 residents and are less than 300 sqm floor area. The remainder are Class 3 properties which exceed 300 sqm floor area and are approved to house over 12 residents.

The investment in the rooming house industry in Victoria is in the order of \$700 million at today’s prices. The average size of a rooming house is larger than the average house.

The profile of rooming houses in Victoria has changed over the last eight to nine decades. In the 1920’s and 1930’s around 10% of Melbourne’s population resided in rooming houses. These rooming houses were traditionally located in the inner suburbs with easy access to public transport. The increasing gentrification of the rooming house population and new requirements for student accommodation contributed to many of these iconic rooming houses closing and new ones starting up in less expensive outer suburbs.

Many rooming house owners and operators comprise various ethnic and socio economic backgrounds. English is often not their first language. Consequently, many owners and operators do not understand how and where to obtain information about rooming house best practice and regulatory requirements.

Some of Victoria’s most vulnerable and disadvantaged citizens are housed in this accommodation and it is important that any proposal for legislative change is informed and enables effective management to ensure objectives are achieved without having unintended detrimental consequences.

3. Unintended consequences of the current Disability (Access to premises – Buildings) Standards

We believe that the changes to class 1b premises for disability were not intended to capture the medium to long term residential accommodation that is provided to lower socioeconomic and near homeless people through class 1b rooming houses. It is clear reading through the Regulatory Impact Statement (RIS) which proposes introduction of the regulations and the Access All Area report that these changes were targeted at the tourism industry. The examples given (both from Industry and advocates of disability access) discuss “bed and breakfasts” and “holiday accommodation”.

We have cited many examples below from the literature that will help to prove this point. The reality of the disability access change is that the ability of our Industry to respond to the ever growing need for affordable accommodation has been severely hampered with existing operators crimping plans for growth and others being prevented from entering. While the operators have been disadvantaged, the greatest burden of this change has been the disadvantaged and homeless who have lost the ability to find affordable accommodation.

RAAV's own research has shown that the average rooming house in Victoria has 7 to 8 residents which is required for a rooming house to be financially viable given all the associated costs and management involved. This fact ensures, given the 4 bed minimum for the disability access to be triggered, that almost all privately run rooming houses which are converted from existing class 1a buildings to class 1b's will need to be compliant for disability. The means that since the change on 1st May 2011 that required all new building permits to meet disability access requirements, operators have had to incur a 32.9% increase in set up costs based on the figures presented in the Access All Areas report.

We at RAAV believe, based on operator experience and feedback, that the cost is much higher. This impost by itself goes a long way to help explain why the growth of our industry to meet the growing demand by the disadvantaged and homeless persons, has been so devastated by this change.

The impact of this legislation has been to put a stop to the creation of new rooming houses in Victoria. Summaries of three case studies are included in Section 5 from RAAV members and are typical examples. The full case studies have been included in the Appendices.

As existing rooming houses close and new ones are not being created, we are seeing a reduction in affordable housing stock in Victoria, which is forcing more people into homelessness.

3.1 Government reports do not support class 1bs being included in the regulations

We have reviewed the following documents:

- "Access All Areas Report";
- The Regulatory Impact Statement for the new disability access requirements introduced in May 2010;
- Explanatory Statement to Disability (Access to Premises — Buildings) Standards 2010;
- The Government's response to the "Access All Areas" report.

These documents consistently refer to class 1b properties as "bed and breakfasts, holiday cottages, guest houses, eco-lodges," but not to 1b rooming houses. As discussed, rooming houses provide medium to long term residential accommodation at an affordable price. This accommodation:

- is not open to the general public;
- no services are offered;
- is not run on a commercial basis; and
- is most definitely not "Holiday Accommodation".

In fact it is no different to living in a class 1a premise that is not required to be compliant under the disability access provisions of the BCA.

The Explanatory Statement and the RIS make it clear that the focus of the Disability (Access to Premises — Buildings) Standards 2010 was to ensure that public buildings are subject to the standards.

We believe that private buildings were not intended to be included in the Standards. (eg. Class 1a houses and internal of Class 2 apartments). However the way specified class 1b buildings have been defined in the Standards, they rope in all class 1b buildings - not just ones used for public buildings (i.e. short term holiday accommodation).

Some relevant references from these documents are shown below.

3.1.1 “Access All Areas” report:

- **3.2** “Particular focus was given to Class 1a (residential), class 1b (bed and breakfast or holiday cottage) ...”
- **3.5** “The Premises Standards would not apply to class 1a buildings at all. This is because private homes are not open to the public and do not come within the access to premises provisions of the Disability Discrimination Act.”
- **3.12** “The Australian Human Rights Commission acknowledged that access to housing was an important issue which needed to be addressed, but told the Committee that access to class 1a buildings had never been part of the Premises Standards project, and that in their view the Premises Standards were not the appropriate instrument to address the problem.
The Attorney-General’s Department agreed, and told the Committee that the Australian Government’s current focus was on providing access to accommodation provided as a service, rather than residential accommodation”.
- **3.40** “Class 1b buildings are, by and large, smaller buildings used for short-term accommodation, such as boarding or guest houses, bed and breakfasts and eco-lodges”.

3.1.2 Regulatory Impact Statement (RIS) supporting the changes to the Disability Access requirements:

- **5.2.1** “Access requirements are to apply for the first time to class 1b buildings. Class 1b buildings are smaller boarding houses, cabins, guest houses, hostels and the like”.
- **7.4.1** “Under the 2008 proposal, the coverage of access requirements under the BCA would be extended in two main areas. These are class 1b buildings used for short-term holiday accommodation and swimming pools. ...”The definition of class 1b dwellings in the RIS also classifies them as “short term holiday accommodation” and includes the BCA definition (in part) as “a boarding house, guest house, hostel or the like. ...”

RAAV’s comment: Rooming houses do not provide a “service” as indicated in 3.12 nor do they generally provide meals and other facilities which would classify them as boarding houses. As stated earlier, rooming houses are not public buildings.

3.1.3 Government’s response to the “Access All Areas” Report:

- **Paragraph 2 notes the following comment on public buildings:**

“The Premises Standards will further the Commonwealth Government’s social inclusion agenda by progressively ensuring that people with disability and the ageing population have better access to a wide range of public buildings. Improved building access will afford older people and people ...”.

3.2 Growth in unregistered rooming houses

Another unintended consequence arising from the introduction of the disability access provisions for class 1b rooming houses from 1st May 2013 has been a significant fall off of unregistered rooming houses seeking registration. The unregistered rooming houses are the ones usually with few or no safety measures in place. They often ignore health and wellbeing requirements placing residents in jeopardy as they are not compliant with Government regulations

RAAV has been conducting information sessions and Forums over the past 4 years promoting rooming house best practice. By implementing the Best Practice Program, RAAV has been encouraging unregistered rooming house operators to become registered and comply with the relevant legislation.

At these information sessions and Forums, dozens of potential investors and unregistered rooming house operators have raised the issue of the cost of compliance with the disability access provisions. Almost all have indicated that they will not proceed with their plans to provide class 1b type of accommodation. They are being driven away as the disability access provisions are a deterrent.

In fact, we believe that their reluctance to incorporate the disability access provisions has seen many unregistered operators go further under the radar to avoid compliance with Victoria's legislation. Consequently, it is usually difficult to identify unregistered rooming houses.

3.3 The building permit trigger for disabled access is too onerous on existing buildings

Consider the current scenario forcing owners into retrospective disability access.

Our research indicates that almost 100% of class 1b rooming houses in existence today existed prior to 1/5/2011. We know this from the lack of new registered rooming houses since 1/5/2011.

Building permits serve many functions and one of those functions is to provide a degree of "insurance" or "confidence" that proposed works are compliant. It would be fair to say that if contemplating a minor internal \$10,000 alteration then an extra \$1,000 invested into the building permit is a worthwhile expenditure for the likely benefits it would provide, and only adds 10% to the overall cost.

Increasingly we are finding that necessary maintenance, amenity and safety upgrades are being avoided for fear of triggering a building permit in class 1bs which have been in existence prior to 1/5/2011.

There are very tight guidelines for exemptions under item 4 of schedule 8 in the building regulations. To make matters more uncertain we understand there is a strict attitude held by the building appeals board that a "lay" owner of a class 1b is not qualified to decide when an exemption would be allowed and the effect that this has on an owner's decision is that a permit is always required, no matter how minor the work is.

We now have multiple reports that owners are being forced to retrospectively provide disability access facilities in the case that they have added a smoke detector to improve occupant safety, or made a similar safety improvement to an Essential Safety Measure.

In these cases a \$50 smoke alarm is installed by an electrician for \$150 and this vastly improves the safety for only \$200.

The unintended consequence is that upon annual inspection by higher authorities, the owner is then forced to seek a building permit and then either attempt to provide disability access for a cost of around \$45,000, or close the property. In this scenario the building permit “insurance” premium is no longer adding only 10% to the project cost. As this is now happening our members have quickly realised the ironic danger of contemplating safety improvements to class 1bs which existed prior to 1/5/2011.

RAAV suggest that under this current scenario that the threat of retrospective disability access to existing buildings jeopardises the future safety of all existing rooming houses. We believe that the need to provide disability access in existing class 1b’s should not be triggered by an alteration requiring a building permit.

4. Results of member surveys – what has happened since the current provisions were introduced

4.1 Survey questions

RAAV has 82 members who operate around 300 registered rooming houses, around a quarter of the registered rooming houses in Victoria. RAAV sent a questionnaire to these members and received 58 replies which is a credible 70% response. These 58 members own or operate 167 registered rooming houses. The response reflected the concern in the private rooming house sector about the effect that the introduction of disability access provisions for class 1b rooming houses is having.

The following information was requested in the survey:

4.1.1 Questions

1. How many class 1b rooming houses do you operate?
2. How many tenants/residents are in your class 1b rooming houses?
3. Do you use residential tenancy leases?
4. Whether you have disability access or not, over the last 4 years since the disability access legislation came into effect, have you been asked to provide rooms with disability access facilities? If yes, how many times?
5. Have you cancelled or deferred any plans to start up or purchase any new class 1b rooming houses as a result of the legislation being introduced? If yes, how many additional class 1b rooming houses would you have opened in the last 4 years?
6. If the legislation was rescinded, how many class 1b rooming houses will you build or convert in the next 3 years?

Space was provided on the survey form to make additional comments.

4.2 Results from survey

The 58 members operate 167 rooming houses which cater for 1,314 residents. Only 6 members had received a total of 7 requests for providing disabled access facilities whilst 51 members reported that they had not received a request for providing disabled facilities. Based on the industry average of 5 enquiries per room in the rooming houses surveyed, the percentage of requests for disability access rooms over the 4 years was 0.0266% or three per 10,000 enquiries.

These 58 RAAV members reported that they had deferred or cancelled opening 204 class 1b rooming houses in the 4 years since the disability access provisions came into effect which caused up to 1,605 persons remaining homeless. These members stated that they would open 237 new class 1b rooming houses if the legislation was rescinded. At an average of 7.87 residents per rooming house, this means that 1,865 homeless or disadvantaged people could be accommodated if the access requirements are removed. This would have a significant effect in providing affordable accommodation for the growing numbers of homeless and disadvantaged persons in Victoria.

Table 1

Number of survey responses	58			
Number of class 1b Rooming Houses	167			
Number of Residents	1,314		Average number of residents per rooming house <i>** This is consistent with the average of 7.5 persons per room reported in RAAV's submission to Consumer Affairs Victoria on the Regulatory Impact Statement for the minimum standards introduced in March 2013</i>	7.87 **
Total number of requests for disabled accommodation	7 (six respondents)		Percentage of requests for disability access rooms <i>** Based on 5 enquiries received per room per year. This is a conservative number given the high turnover of rooms in some metropolitan areas</i>	0.0266%
Number of respondents who have never been asked for disability access	52		Percentage of respondents never asked for disability access	89.66%
Number of class 1b rooming houses deferred or cancelled in the last 4 years	204		Number of people remaining homeless	1,605
Number new class 1b rooming houses in the next 3 years if the legislation is rescinded	237		Number of homeless people accommodated if the access requirement is removed	1,865

4.3 RAAV's members' comments

In addition to the statistics provided by the 58 members, 23 members provided RAAV with additional comments. A sample of the typical responses received is:

- In the last 4 years I have taken 507 new tenants in long term private residential accommodation under lease agreements in which tenants are given keyed access to an exclusively private residence - some would consider it unusual that such accommodation is captured by disability access legislation from now on purely because of a classification technicality which puts these properties in the same boat as short term public holiday stay B&Bs and public hostels for travellers.
- In the last 4 years I have received 1,534 enquires for accommodation. In each case I ask if the applicant has any disabilities and have summarised the results below:
 - has disability - 0.
 - does not have disability - 1,534
- The disability access provisions have prevented housing being provided to disadvantaged people while not meeting the needs of other disadvantaged people.

The comments received from 23 members are included in Appendix 2.

4.4 Comments from investors

RAAV also contacted some investors about their attitude towards the disability access provisions and the effect they were having on providing new class 1b rooming houses. Responses were received from 10 investors who are known to be interested in providing class 1b rooming houses.

Whilst this is a small survey, given the little time available to undertake a comprehensive survey, the results are indicative of the effect that the regulations are having on providing additional low cost accommodation.

Over the last 4 years, the 10 investors postponed or cancelled the construction of 20 class 1b rooming houses and stated that they would build 41 new class 1b rooming houses if the legislation is rescinded.

At an industry average of 7.87 rooms per class 1b rooming house, a further 157 homeless or disadvantaged people could have been accommodated over the last 4 years. These 10 investors estimate that a further 322 persons would be accommodated if the regulations are rescinded. Consequently almost 500 disadvantaged or homeless people are affected by these regulations.

The results of the investors' survey are shown in Table 2. Comments from the investors are shown below.

- All this requirement is doing is adding to the number of unregistered rooming houses which increases the risks to those properties' residents. At best the level of accessibility should be at an ambulatory level.
- The issue with converting existing housing is that the floor plan and doorways make it difficult to comply with Disability access. Whilst it is able to be designed in to the new built housing, the existing housing should have some softening.

Table 2 below has the results of the survey of the investors.

Table 2 Results of investors' survey

	Have you converted or built any Class 1b rooming houses since the Disability Access Standards were introduced in May 2011?	Have you cancelled or deferred any plans to start up or purchase any new Class 1b rooming houses as a result of the legislation being introduced? If yes, how many additional Class 1b rooming houses would you have opened in the last 4 years?	If the legislation was rescinded, how many Class 1b rooming houses would you build or convert in the next 4 years?
1	Yes	2	5
2	Yes	4	8
3	No	1	3
4	Yes	5	10
5	No	0	1
6	No	1	1
7	No	2	8
8	No	0	2
9	No	0	1
10	No	5	2
	3 yes, 7 no	20	41

5. Case studies – Inconsistencies in the Interpretation and Application of Premises Standards

We have included four Case studies as further support for our claim that Disability Access Provisions for 1b Rooming Houses have:

1. Crippled the provision of new registered class 1b Rooming Houses in our State.
2. Encouraged the running of illegal Rooming Houses to keep up with demand.
3. Been more than adequately covered by the small number of disabled people seeking accommodation in the already existing class 1b's.
4. Led to counter productivity; an inflated rent to meet the regulation costs, placing the 1b beyond the reach of those that need it the most.
5. Challenging consequences; you would need to call on a team of experts before you even get started, making this economically unsound, as class 1b houses are not large enterprises with fat profit margins.
6. Ignored the unique nature of the class 1b as being no different to a private residence and are not public buildings.

These case studies are included in the Appendix and are summarised below.

Case study 1: Disability access provisions shelves building nine new Class 1b rooming houses

“In 2011 I had bank funding approved to add nine new rooming house properties to my existing eleven already operating in Carlton, Fitzroy, Brunswick and East Melbourne. These projects were planned to be completed over a 2 year period. Unfortunately the new (disability) laws meant that I had to shelve my plans.

“The funding would have allowed me to take 10 – 20 year leases over 9 properties and provide housing for 108 people in around 80 – 90 rooms. This however did not eventuate as it is not commercially viable to spend some \$100,000 - \$140,000 per project, to comply with the disability access requirements. All of the proposed projects were based on converting existing class 1A terraces to 1B rooming houses, thus the much higher cost of introducing disability facilities.

“As part of my negotiations with prospective landlords, I would have needed to convince them to take the properties off the market and hold them available for me (having signed a lease that includes a condition of permits being obtained) for six to twelve months. I would not be able to guarantee the outcome and during this period there would be no rent payable to the owners. There is no need to explain further as to why I was unable to convince anyone to enter such an arrangement and as such, I have not been able to go ahead with any of the projects. The bank approval lapsed.

“I will be undertaking major works which are required in the future to update my existing class 1b buildings. Building Permits will be required to complete the works which will trigger the disability access requirements at each existing property. In most cases, this will most likely mean the closing down of each respective property as a rooming house and converting it back to a normal 1A residence. These closures would be in addition to the nine properties which were not constructed.

“The irony is that I have two properties which have disability facilities which I have been operating since 2006. Not once in this time have I had so much as an enquiry about disability access facilities or providing a room with disabled access, nor having someone requiring these facilities actually staying at one of my properties”.

Case study 2: Views from an architect dealing daily with disabled access regulations.

“To apply the regulations to class 1b private rooming houses does not make sense and has in effect put an end to new class 1b rooming houses being provided. The regulations have caused the drop off for three reasons:

- It is more often than not physically impossible to reach the regulation requirements when retrofitting an existing and otherwise suitable (class 1A) property. I have tried and failed.
- To do it in a financially viable manner is impossible as class 1b houses are not large enterprises with fat profit margins. I have tried and failed.
- To build a new building specifically to be a class 1b rooming house under today’s regulations makes no financial sense given the small profits involved. Regulations make it a case of ‘go big or go home’.

“The demand is still there, however the ability to reach that demand has been so heavily hampered by the regulations.

“Applying the regulations to class 1b rooming houses is no different to applying the regulations to private residences. It simply does not make sense to apply the regulations for the following reasons:

- class 1b residents are more often than not long term – this is their home. This is no different from people living in their own private homes.
- class 1b residents are often in need of very affordable accommodation that is flexible due to their predicaments.
- There is a steady persistence of illegal rooming houses that undermine those running legitimate ones. I believe that the regulations are further contributing to this. When the regulations are unrealistic and unachievable, unfortunately many people will by-pass them when they might otherwise comply.

“The compliant class 1b rooming houses already comfortably cover the small number of disabled people who might seek rooming house accommodation.

“The regulations need to be applied with intelligence”.

Case study 3: Houses empty for 70% of the year are more economically viable than meeting the cost of disable access provisions and regulation for a 1b providing all year round accommodation.

“I have 3 holiday houses (all potential 1b's to service an accommodation need in the area) but prefer to keep them empty for 70% of the year rather than spending an enormous amount of money to convert them to class 1b's because of having to provide disable access.

“Recently, I tried to apply for a \$500 grant for one of my holiday houses from a community facilitator working for the Council and in charge of a project funded by the Building Disability Inclusive Businesses and Community Organisations. The project officer came to inspect my property and stated that the plans I provided did "not show how compliance to AS1428.1 (2009) and the BCA is possible". Furthermore, as compliance was not met "I cannot recommend it for approval from management". The end result was that I missed out on the grant.

“The project officer also added ‘This does not mean that the proposed works are not possible, it just means that they do not comply with the requirements of the funding opportunity. You would need to work with your builder, a building surveyor and a qualified draftsman in order to assess how to go forward’.

“To avail myself of that grant I would now need to have an additional \$18,000 and that is just to pay for all these experts. I still have the homes but have no choice but to leave them empty.”

Case study 4: Financial hardship was not an option for exemption

Some RAAV members have appealed to the Building Codes Board for exemption from providing disability access to existing class 1b buildings. With very few exceptions, these appeals have been rejected. A typical example from one member is shown below which resulted in the cancellation of providing class 1 b rooming houses.

“We opened a Class 3 Rooming House which is on a sloping site with no wheelchair access and a gravel footpath and road. We spent the next 8 months in negotiations with VBA. It has financially hurt us. Not just in time but the renovations and access required. 17 homeless people waited for this.

“We were asked to put in a lift from the bottom floor which had a higher ceiling than the top floor which meant breaking through the roof on the second floor, even though access to the site was impossible. An application for financial hardship were rejected after a 32 page submission, 200 levels of the site and surrounds and 30 photos showing common sense, was responded with one word – Refused.

“We also bought a house to convert to a 1b but because of this legislation we will renovate it and sell it as a home instead of a Rooming house. No consideration is taken into the site when disabled access is forced upon all houses. So therefore no one will get accommodation in this home. We will stick to building multi units for general public instead and the homeless will have to find other accommodation. The four we could have opened by now were sold as family homes”.

6. Conclusions

RAAV believes that the changes to class 1b premises, i.e. rooming houses, is an unintended consequence of the new Standards which were not intended to capture the medium to long term residential accommodation that is provided to lower socioeconomic and near homeless people through class 1b rooming houses.

We believe that the Government reports quoted in this submission supports RAAV’s view that the changes were targeted primarily to “bed and breakfasts” and “holiday accommodation.

Furthermore, rooming houses are used primarily as the private and primary residences of the occupants and are not public buildings. They are no different to class 1a dwellings. The Explanatory Statement in the Regulatory Impact Statement (RIS) makes it clear that the focus of the Disability (Access to Premises – Buildings) Standards was to ensure that public buildings are subject to the Standards.

The Government’s response to the “Access All Areas” report notes that “The Premises Standards will further the Commonwealth Government’s social inclusion agenda by progressively ensuring that people with disability and the ageing population have better access to a wide range of public buildings (RAAV’s emphasis). Improved building access will afford older people and people ...”

The way that specified class 1b buildings have been defined in the Standards has roped in all class 1b buildings – not just ones used for public buildings, i.e. short term holiday accommodation.

The growing homelessness problem which has been gradually developing in Victoria is a result of the impact of Disability (Access to Premises – Buildings) Standards 2010 which introduced disability access provisions in class 1b rooming houses. This is supported by a survey on 58 of RAAV’s members who represent 167 registered rooming houses who reported that the provision of 204 class 1b rooming houses had been deferred or cancelled since the new regulations were introduced resulting in 1,605 persons remaining homeless.

These 58 RAAV's members also stated that if the disability access requirements are removed, 1,866 homeless and disadvantaged persons would be provided with affordable accommodation through the provision of an additional 237 class 1b rooming houses.

The disability access provisions are also affecting investors providing new accommodation for homeless and disadvantaged persons. A snapshot survey of 10 investors reported that a further 20 class 1b rooming houses had been cancelled and that they would build 41 new class 1 rooming houses if the legislation is rescinded.

This would provide accommodation for around another 300 persons.

Rooming houses are not the preferred accommodation for persons with disabilities. As indicated in the survey, only 6 of 58 RAAV's members had received 7 requests from potential residents seeking disability facilities in the last 4 years. From an estimated 26, 280 enquiries made to these members, this represents less than 3 requests in 10,000 enquiries.

The removal of the disability access regulations in class 1b rooming houses with is a significant factor in the private sector in providing more accommodation for homeless and disadvantaged persons and addressing this growing social problem.

7. RAAV's recommendation

RAAV's recommendation is:

That Class 1b rooming houses and shared accommodation be exempted from the disability accessibility requirements under the National Construction Code because they are residential premises and not public buildings.

This would mean the only reference would be to short term and holiday-like accommodation and will exclude the medium to long term residential and affordable accommodation, e.g. rooming houses, currently caught under the legislation.

Appendices

Appendix 1

Case studies and what has happened since the current provisions were introduced.

Case Study 1: Disability access provisions shelves building nine new Class 1b rooming houses

The following case study has been received from a foundation member of RAAV.

“In 2011, I had bank funding approved to add nine new rooming house properties to my existing eleven already operating in Carlton, Fitzroy, Brunswick and East Melbourne. These projects were planned to be completed over a 2 year period. Unfortunately the new (disability) laws meant that I had to shelve my plans.

“The funding would have allowed me to take 10 – 20 year leases over 9 properties and provide housing for 108 people in around 80 – 90 rooms. This however did not eventuate as it is not commercially viable to spend some \$100,000 - \$140,000 per project, to comply with the disability access requirements. All of the proposed projects were based on converting existing class 1A terraces to 1B rooming houses, thus the much higher cost of introducing disability facilities. This outlay is in addition to the \$200,000 to \$240,000 I had budgeted per property to update internal facilities such as kitchens, bathrooms, flooring, compliance with all the other 1B requirements and furnishing of the house.

“These new disability access requirements caused a further issue in addition to the prohibitive establishment costs. The demand for this type of housing is highest in the suburbs immediately surrounding the CBD. These suburbs all have Heritage overlay provisions and the application process to alter the facades, to allow for disability provisions to be added, means that it will take 6-12 months for the planning process to take its course. Of course there is no guarantee that the planning permit will be granted as advertising the intended alterations will open up the issue for objections from the neighbours.

“From previous experience, neighbours will seize the opportunity to object to this type of housing being established in their neighbourhood under the guise of heritage issues. If it was not for having to comply with the disability access requirements, a planning permit would otherwise not be required, so the Building Permits required would restrict dealings to the relevant government authorities.

“As part of my negotiations with prospective landlords, I would have needed to convince them to take the properties off the market and hold them available for me (having signed a lease that includes a condition of permits being obtained) for six to twelve months. I would not be able to guarantee the outcome and during this period there would be no rent payable to the owners. There is no need to explain further as to why I was unable to convince anyone to enter such an arrangement and as such, I have not been able to go ahead with any of the projects. The bank approval lapsed.

“Since 2012, I have been able to develop two properties in Carlton from my own cash-flow. These two would have been in addition to the nine I had bank funding for. One was already operating as student accommodation and the building already had class 1b building permits. I converted it to general rooming house usage, utilising these existing permits. If the building did not have the existing permits, that project would not have been possible. I did not really create any new rooms of this type in the area. The building was already servicing a ‘share type’ arrangement for the community.

“The other property was out of the ordinary in three ways. For one, the owner had undertaken a complete renovation of the property. Hence the cost of works could be built into the renovation works at a far lesser level than otherwise. The disability works only added around \$45,000 to the project. Second, the house is on a corner with a high fence, which hides the courtyard area and as such we were able to build a ramp and entry from the side, thus avoiding Planning approval requirement. Third, because we accessed the property from the side, we were able to build an outside disability bathroom, access the kitchen, lounge / dining and create a new door to a bedroom all by widening just one existing door. **If we had to enter from the front the costs would have been much higher as significant modifications would need to be made to allow for wheelchair access and required turning circles.**

“I will be undertaking major works which are required in the future to update my existing class 1b buildings. Building Permits will be required to complete the works which will trigger the disability access requirements at each existing property. In most cases, this will most likely mean the closing down of each respective property as a rooming house and converting it back to a normal 1A residence. These closures would be in addition to the nine properties which were not constructed.

“The irony is that I have two properties with disability facilities which I have been operating since 2006. Not once in this time have I had so much as an enquiry about disability access facilities or providing a room with disabled access, nor having someone requiring these facilities actually staying at one of my properties. If I received an enquiry today for such a room, I will point out that both of my disabled rooms are leased for 3 and 5 months respectively to able bodied residents. I would therefore have to turn away the disabled enquiry”.

Case study 2 Views from an architect dealing daily with disabled access regulations.

RAAV has received these comments from a member who operates registered rooming houses and highlights both sides of the coin.

“I deal with disabled access regulations on a daily basis and understand the extent of their requirements and the need for disabled access to create access for all. This is crucial in public buildings and is a great leap forward in developing our building stock and particularly so for new and existing public buildings.

“However, to apply the regulations to a class 1b private rooming houses does not make sense and has in effect put an end to new class 1b rooming houses being provided. The regulations have caused the drop off for three reasons:

- It is more often than not physically impossible to reach the regulation requirements when retrofitting an existing and otherwise suitable (class 1A) property. I have tried and failed.
- To do it in a financially viable manner is impossible as class 1b houses are not large enterprises with fat profit margins. I have tried and failed.
- To build a new building specifically to be a class 1b rooming house under today’s regulations

makes no financial sense given the small profits involved. Regulations make it a case of ‘go big or go home’.

“The demand is still there, however the ability to reach that demand has been so heavily hampered by the regulations.

“Applying the regulations to class 1b rooming houses is no different to applying the regulations to private residences. It simply does not make sense to apply the regulations for the following reasons:

- class 1b residents are more often than not long term – this is their home. This is no different from people living in their own private homes. If they could afford it, they would be in private residences which do not come under the regulations. This alone makes the regulation application here nonsensical.
- class 1b residents are often in need of very affordable accommodation that is flexible due to their predicaments. To meet the regulations, class 1b rooming house rents become inflated putting them beyond the reach of those needing the accommodation. It is counterproductive.
- There is a steady persistence of illegal rooming houses that undermine those running legitimate ones. I believe that the regulations are further contributing to this. When the regulations are unrealistic and unachievable, unfortunately many people will by-pass them when they might otherwise comply.

“I believe that the regulations should be upheld for class 3 rooming houses – particularly for new ones as it is financially viable as it spreads the cost across many more tenants. The compliant class 1b rooming houses already comfortably cover the small number of disabled people who might seek rooming house accommodation.

“The regulations need to be applied with intelligence or clearly a huge percentage of our building stock will be unusable for many functions, none the less so than affordable, flexible class 1b rooming housing that neatly integrates into the community in a way that larger and commercially driven rooming houses, backpackers or boarding houses cannot.

“In conclusion, class 1b rooming houses are a unique and vital part of our community and should be treated uniquely in the case of these particular regulations.”

Case study 3: Houses empty for 70% of the year are more economically viable than meeting the cost of disable access provisions and regulation for a 1b providing all year round accommodation.

“I have 3 holiday houses (all potential 1b's to service an accommodation need in the area) but prefer to keep them empty for 70% of the year rather than spending an enormous amount of money to convert them to class 1b's because of having to provide disable access.

“Recently, I tried to apply for a \$500 grant for one of my holiday houses from a community facilitator working for the Council and in charge of a project funded by the Building Disability Inclusive Businesses and Community Organisations. I used my old architectural drawings and spent countless hours accurately detailing what I intended to do and took two days off work.

"The project officer came to inspect my property and stated that the plans I provided did "not show how compliance to AS1428.1 (2009) and the BCA is possible". Furthermore, as compliance was not met "I cannot recommend it for approval from management". The end result was that I missed out on the grant.

"The project officer also added "This does not mean that the proposed works are not possible, it just means that they do not comply with the requirements of the funding opportunity. You would need to work with your builder, a building surveyor and a qualified draftsman in order to assess how to go forward". She also added that "town planning approval may also be required".

"Not that it was a huge grant! But to avail myself of that grant I would now need to have an additional \$18,000 and that is just to pay for all these experts.

"They also hinted I might need town planning. I only have 8 habitable rooms. How serious are all these people including grant givers about helping people who are displaced and without a roof over their heads. I am serious about providing more accommodation for disadvantaged persons but I cannot afford this expense. I still have the homes but have no choice but to leave them empty".

Case study 4: Financial hardship was not an option for exemption

This is included in full on page 14.

Appendix 2: Comments from RAAV members

27 RAAV members provided comments with their survey responses. A selection follows.

- I have received 1534 enquires for accommodation in the last four years. In each case I asked if the applicant has any disabilities and have summarised the results:
has disability - 0.
does not have disability – 1534
- I have taken 507 new tenants during the last 4 years in long term private residential accommodation under lease agreements in which tenants are given keyed access to an exclusively private residence - some would consider it unusual that such accommodation is captured by disability access legislation from now on purely because of a classification technicality which puts these properties in the same boat as short term public holiday stay B&Bs and public hostels for travellers.
- The disability access provisions have prevented housing being provided to disadvantaged people while meeting the needs of other disadvantaged people.
- We are designers and builders of class 1B rooming houses for numerous clients in Melbourne, Victoria. We build about 6 per year but would build at least 10 each year if the compulsory design of disabled bathrooms was relaxed under the building codes. The biggest problem we have is the stringent Australian Standard 1428.1 floor layout which could be much smaller in a class 1B. The ones you require are hospital sized. Over the last 8 buildings with 10 habitable rooms each.
- Town planning define a room with a kitchen as a separate dwelling therefore forcing the proposed development of a class 1B to go through the full planning application process as 10 dwellings which would otherwise not be required. Our investor clients refuse the 9 to 12 month delay without guarantee of success and opt for other development opportunities. We would build at least 10 to 15 extra each year in both Victoria and NSW if the planning requirements reflected the same definitions as the National Building Codes.
- No person wanting to rent a room has ever asked for a room with disabled access. No disabled people have every applied to any of my rooms. Not once.
- The legislation immediately put a stop to new rooming houses. No building surveyor will deal with you and if they do they will not use their powers of dispensation to make your rooming house viable. The costs of setting up rooming houses with disabled access is from \$50,000-\$100,000 depending on the building.
- The chances of an accessible room being vacant at the same time as a person with a disability applying for it are very slim to nil. In my experience people with mobility issues requiring ramps or wheel chair access do not apply for this kind of accommodation. They would usually have a higher priority for public housing and are not in need of short term accommodation, i.e. rooming houses.
- The money which I have invested in to conversions has not been enjoyed by a single person.
- The cost associated with converting 1a to 1b has been a deal breaker in many cases. I have since decided to design and build a new one instead, but this process is somewhat floored due to tight planning restrictions within councils.
- I strongly feel that the provision to provide disability access from class 1b buildings should be withdrawn. The operators of class 1b rooming houses are small investors and provision for disability access makes the project economically unjustified and more so when it comes to conversion of existing houses to class 1b rooming houses.

- There is currently NO market demand for disabled facilities within the 1b rooming house market place in Melbourne. In 4 years we have never even had a single inquiry and this is from THOUSANDS of inquiries each year. The closest we have had was 1 vision impaired resident (who lived with us for 6 months) and 1 hearing impaired who declined to move in. It is ABSOLUTELY RIDICULOUS for standard residential houses to be required to have disabled facilities.
- We also had heritage overlay conflict with the City Council restricting land usage to add 20 rooms.
- I believe that there should be a separate student rooming house class. We have quite different requirements than general rooming houses.
- The implementation of the disability access scheme has been one of the least thought out laws I've ever witnessed. The potential benefits are almost non-existent while the damage done to the registered accommodation industry has been crippling. Instead of encouraging people to register their rooming houses and incentivizing those who provide accommodation to those that need it most, it has pushed the entire industry underground. Furthermore, for existing houses that are not disabled friendly to start with, it is absurd to ask landlords to make extremely difficult and costly renovations in the case of things like adding an extra tenant or changing the set-up of the leases.
- This legislation discriminates against all persons who do not have a disability. For every one disabled person who might apply for accommodation and I have not had even one, many non-disabled persons can not be accommodated. This is because it is so unrealistic and expensive to modify a building to comply with this legislation. There are endless stories in the papers and on television about the large numbers of homeless people in our society, and everyone cries out about how totally unsatisfactory that is.

And the reason that is so, in large part, is because of this legislation. The number of disabled persons is so extremely small as compared to able-bodied persons that by trying not to discriminate against disabled persons causes an enormous discrimination to be carried out against able-bodied persons. It robs the homeless from a roof over their heads. I am sure this is a consequence which was never intended. This legislation is simply wrong and whoever dictates these matters must come to their senses and rescind it.

- The house was purpose built with disability access to one room. It has been running for 2 years. In that time I have never had any enquiry to rent from anyone requiring any access requirements.
- It seems a shame to deprive people of affordable and flexible accommodation options, for the people in our community most in need, only to supply an extra service (disability access) that isn't needed.
- The model for my business was based on sublease arrangements. Since the new laws the number of sites I operate has declined from 12 to 5 because as leases expire I would normally be able to replace them with new ones without much trouble but these new disability laws (and building alterations/modifications) not only makes it financially unfeasible for a short-term sublease arrangement it also immediately turns off any prospective landlords. The only option left is to purchase and modify properties but b/w stamp duty & modifications it will cost an extra \$100k.
- You are right to take on our over-governed state. This just has put an over-the-top cost and shortage of housing.
- I personally believe that the option of providing disability access should be left to the owner of rooming houses. It is not a social justice issue to be made the responsibility of the small business owner. It is too expensive, or may not even be feasible structurally for existing

rooming houses to be renovated for disability access. For new construction of Class 1B buildings, too much space will be required for building wider corridors and bigger bathrooms. Given that the limit of internal living space is restricted to 300 sq m, this will compromise on the size of each room. Blanket legislation seems to pass the buck from government to private rooming house operators. Even if the houses comply, there may not be demand from people in wheelchairs. So, the efforts are wasted.

- The legislation is not only economically unsound but also ridiculed by the so called experts in the field. Because you have disability access does not mean you will have a disable person come and stay with you; it just means that you have met regulation. People with disabilities prefer living with carers in specially custom built/ or retrofitted homes run by the Department of Human Services. How many owners of 1b's have disable people staying with them?
- We understand the need for those with disabilities to be given the opportunity for accommodation. However, in the last 4 years of operation we have not had 1 request for a room with disability access. We just think this blanket rule to introduce disability access provisions across ALL forms of prescribed accommodation unfairly ropes in class 1 b rooming houses which have seen no demand for disability access.
- The legislation is stopping us from adding / remodelling our 1B premises.
- We have to close our rooming house because of the disability access legislation and probably many more will go the same way, if it is not revoked, as the cost of it is too high.