

## Building Practice Note AC-01: Access to buildings for people with a disability

This Practice Note provides guidance on the application of disability access requirements under the Building Regulations 2018.

The content below provides guidance on the following matters:

- Buildings to which the provisions apply
- Concessions
- Compliance pathways

### Abbreviations & Definitions

The abbreviations and definitions set out below are for guidance only. They are not intended to vary those set out in the Building Act 1993 (Act), Building Regulations 2018 (Regulations), the Building Code of Australia Volume One (BCA) or other legislation.

- **Access Code** – the *Access Code for Buildings*, prepared by the Office of the Australian Building Codes Board, as set out in Schedule 1 of the Premises Standards.
- **Accessible** – having features to enable use by people with a disability
- **Act** – Building Act 1993
- **AHRC** – Australian Human Rights Commission
- **AS** – Australian Standard
- **BAB** – Building Appeals Board
- **BCA** – Building Code of Australia Volume One
- **DDA** – Disability Discrimination Act 1992
- **DTS** – provisions which are deemed-to-satisfy the Performance Requirements of the BCA
- **EOA** – Equal Opportunity Act 2010
- **Performance Requirement** – means a requirement which states the level of performance which a Performance Solution or Deemed-to-Satisfy Solution must meet
- **Performance Solution** – means a method of complying with the Performance Requirements other than by a Deemed-to-Satisfy Solution
- **Premises Standards** – Disability (Access to Premises – Buildings) Standards 2010
- **Regulations** – Building Regulations 2018
- **RBS** – Relevant Building Surveyor
- **Section** – section of the Building Act 1993

- **SOU** – sole occupancy unit, means a room or other part of a building for occupation by one or joint owner, lessee tenant, or other occupier to the exclusion of any other owner, lessee, tenant, or other occupier
- **VCAT** – the Victorian Civil and Administrative Tribunal

## Buildings to which the access provisions apply

Section 23 of the DDA makes it unlawful to discriminate against another person on the ground of the person's disability in relation to access to, or use of, premises. As a result, any new and existing buildings undergoing building work must comply with the Access Code in Schedule 1 of the Premises Standards.

The Premises Standards aims to ensure that dignified, equitable, cost-effective and reasonably achievable access to and within buildings is provided for people with a disability. These obligations under the Premises Standards are given effect by the DDA. The DDA is complaints-based legislation. If a person does not meet these obligations, they may be the subject of a complaint to the AHRC, under the EOA to the Victorian Equal Opportunity and Human Rights Commission or VCAT. This may result in fines, penalties and potential enforcement action to rectify non-compliant building work.

An access provision is defined in regulation 236 as a Performance Requirement contained in Section D, Part E3 and Part F2 of the BCA for which there is an equivalent Performance Requirement in the Access Code. The relevant Performance Requirements are: DP1, DP4, DP6, DP7, DP8, DP9, EP7.4 and FF2.1.

It is important for building owners, designers, developers, builders, building managers, lessees and building practitioners to ensure that building work complies with the Access Code. The Access Code has been incorporated in the BCA to ensure consistency with the requirements of the Access Code.

The access provisions apply to the following types of building work in certain Class 1b buildings, the common areas of certain Class 2 buildings, Class 3 buildings, Class 5 to 9 buildings, and certain Class 10a and 10b buildings:

- a new building (a building that is new and not part of an existing building);
- a new part of an existing building (a part of that building that is to be altered, including an extension to the building), where an application for a building permit is made on or after 1 May 2011; and
- an affected part of an existing building (in relation to a building that is to contain a new part), including:
  - the principal pedestrian entrance of the building; and
  - any part of an existing building that is necessary to provide a continuous accessible path of travel from the entrance to the proposed new part.

A part of a building can only become an affected part when work requiring a building permit is proposed to be undertaken. The affected part must be upgraded to comply with the access provisions subject to any exceptions or concessions. The affected part of the building does not include:

- existing parts of a building outside the area of the new work and the affected part upgrade; and
- an access way from the allotment boundary, from any accessible car parking space on the allotment or between other buildings on the allotment.

Upgrade works that may be necessary for an affected part include:

- access provision to upper floors to provide access to new work;
- providing lift access features such as braille or tactile buttons;
- signage;
- removing a step at a building entrance;

- upgrading handrails on a ramp;
- minimum width requirements of doorways or passageways, including passing and turning spaces.

### **Class 9b and Class 10 – Existing public transport buildings (includes bus interchanges, railway stations, airports or ferry terminals)**

Under the Premises Standards, existing public transport buildings provided for passenger use as part of a public transport service have, since 1 May 2011, been required to progressively upgrade to comply with certain provisions of the Access Code. That timetable is now in its last phase, ending on 31 December 2022, by which date all aspects of those existing public transport buildings are required to be fully compliant with the Access Code. The AHRC can grant exemptions from the requirements in certain circumstances outlined in Part 5 of the Premises Standards.

## **Concessions**

Regulation 236 outlines the requirements in the BCA relating to access to buildings for persons with disabilities and provides several concessions that apply to certain buildings and building work. These concessions and exceptions are clarified below:

### **Class 1b**

Reg 236(3)(a) provides that an access provision does not apply to a new part of a Class 1b building that has fewer than four bedrooms that are used for rental accommodation and that was either constructed before 1 May 2011 or an application for a building permit was made before 1 May 2011.

This exemption applies to a single Class 1b building and does not apply to a Class 1b building that comprises 4 or more single dwellings on the same allotment used for short-term holiday accommodation. It should be noted that 3 or less single dwellings on the same allotment used for short-term holiday accommodation are Class 1a buildings and do not have to comply with the access provisions.

### **Class 2**

Regulation 236(3)(b) provides that an access provision does not apply to a Class 2 building that was constructed before 1 May 2011 or for which an application for a building permit for construction was made before 1 May 2011.

Regulation 236(3)(c) provides that an access provision does not apply to the internal parts of an SOU in a Class 2 building.

### **Class 4**

Regulation 236 (3)(d) provides that an access provision does not apply to a Class 4 building.

### **Class 10**

Regulation 236(3)(e) provides that an access provision does not apply to a Class 10 building associated with a Class 1a or Class 4 part of a building.

### **Lessees – concessions regarding an affected part**

Subject to regulation 234, regulation 236(4)(a) provides that an access provision does not apply to an affected part of an existing building if:

- parts of the existing building are leased to different persons; and
- one of the persons is responsible for building work to be carried out in respect of the new part of the building; and
- the new part of the building is leased to that person.

### Lift concession

In relation to the requirements for passenger lifts in an accessible building, regulation 236(4)(b) provides that the requirement in the access provisions for a lift to have a floor dimension of not less than 1400mm x 1600mm under BCA clause E3.6(b) does not apply to an existing passenger lift that is in a new part, or an affected part, of a building, if the lift:

- travels more than 12 metres; and
- has a lift floor not less than 1100mm by 1400mm (i.e. it is accessible in accordance with the earlier standard).

If the building is not the subject of the lessee concession and the new part is on a floor other than the ground floor, the affected part upgrade will require that the path of travel, from the principal public entrance to the new part be by way of an access ramp or passenger lift.

A ramp or lift to provide access to upper levels of a building is not required to serve a storey or level other than the entrance storey in a Class 5, 6, 7b or 8 building containing not more than three storeys, where the floor area of each storey other than the entrance storey does not exceed 200m<sup>2</sup>. This concession is contained in Clause D3.3(f) of the BCA.

### Toilet concession

Regulation 236(4)(c) provides that it is not necessary to upgrade an existing accessible sanitary compartment (to comply with clauses F2.4(c) and F 2.4(e) of the BCA) located within a new or affected part of an existing building, provided the existing sanitary compartment complies with AS 1428.1 — 2001 Design for access and mobility—General requirements for access—New building work.

Toilets that are within the 'new part' or the 'affected part' of the building that do not comply with this edition of the Australian Standard will need to be upgraded. Toilets adjacent to the affected part do not have to be upgraded. However, any proposed new toilets must comply with the access provisions.

## Compliance pathways

The Premises Standards recognise that there may be exceptional circumstances where there are practical constraints making compliance with the access provisions difficult. If the concessions or exceptions are not applicable, then the following compliance pathways may be applicable on a case-by-case basis.

### Unjustifiable hardship

The DDA provides for an exception where avoiding discrimination would impose unjustifiable hardship. In Victoria, the BAB is the body that acts as an 'Access Panel' to hear matters related to unjustifiable hardship.

Under section 160B of the Act, an application can be made to the BAB seeking a determination that an access provision does not apply or applies with the modifications or variations specified in the application. An application under section 160B can only be made on the grounds of unjustifiable hardship. Section 160(4) prevents an application for a modification or variation of a building regulation relating to access provisions being made under section 160.

An applicant may make an application to the BAB for a determination that meeting a BCA Performance Requirement, or a component of a Performance Requirement would impose unjustifiable hardship on the person. However, the building should still comply with the access provisions to the maximum extent not involving unjustifiable hardship.

In considering an application based on unjustifiable hardship, the BAB must consider all matters set out in section 160B(3) to (7). Therefore, it is vital that all these matters are sufficiently detailed in the application.

Section 160B(4)(n) refers to an 'action plan'. Guidance on preparing an Action Plan under the DDA is available from the AHRC. An Action Plan must be lodged on the AHRC website. Although the BAB will not endorse an Action Plan, it may consider a lodged Action Plan as part of its deliberations.

For further information about applying to the BAB, refer to the BAB website:

<https://www.buildingappeals.vic.gov.au/>.

### Performance Solution

When using the Performance Requirements to develop a Performance Solution, it will be important to ensure that the Performance Solution meets each access provision.

An application may also be made to the BAB for a determination under section 160A that a Performance Solution meets the relevant Performance Requirements.

### Partial compliance

Under regulations 233 (Alteration to existing building) and 234 (Alterations affecting exits and paths to exits), the RBS has discretion to allow partial compliance in certain circumstances where the proposed building work relates to an alteration. An RBS would be acting unlawfully under the DDA by approving building work in relation to a new part and affected part of a building that does not comply with the access provisions.

Regulation 236(4) provides exemptions to the access provisions that relate to the new part and affected part. If compliance in accordance with regulation 233(1) or conformity in accordance with regulation 233(2) is required, then the exemptions provided under regulation 236(4) would still apply.

### Change of use – Combined allotments and subdivision of existing buildings

Regulations 64, 229, 230 and 231 provide further discretionary powers to the RBS to allow partial compliance, where existing allotments are treated as being combined, or there is a change of building use, or an existing building is subdivided. The RBS still has this discretionary power under the Regulations, but will be acting unlawfully under the DDA if they approve building work that does not comply fully with the access provisions.

### Historic and special buildings

Section 28 of the Act provides for buildings on the Heritage Register established under the Heritage Act 1995. Under section 28(1), the RBS has the discretion to issue a building permit which does not comply with the Regulations in relation to a building on the Victorian Heritage Register subject to the consent and report of the Executive Director under the Heritage Act 2017. An RBS who applies this discretion will be acting unlawfully under the DDA if they approve building work that does not fully comply with the access provisions.

Where a building has heritage significance and compliance with the access provisions would detrimentally affect the features of the building that are essential to its heritage, an application under section 160B based on unjustifiable hardship would need to be submitted for consideration by the BAB.

A determination by the BAB that compliance with the access provisions would result in unjustifiable hardship because of the heritage features of a building may not excuse the provision of no access features at all. Compliance with the access provisions is required to the maximum extent not involving unjustifiable hardship.

## Related Documents

- Building Act 1993
- Building Regulations 2018
- National Construction Code 2019
- AS 1428 Part 1 — 2001 Design for access and mobility—General requirements for access—New building work
- AS 1428 Part 1 — 2009 Design for access and mobility—General requirements for access—New building work
- Disability (Access to Premises - Buildings) Standards 2010 (Premises Standards):  
<https://www.legislation.gov.au/Details/F2020C00976>
- Guideline on the Application of the Premises Standards, Version 2, February 2013, Australian Human Rights Commission:  
<https://humanrights.gov.au/sites/default/files/document/page/PremisesStandardsGuidelineV2.pdf>
- Heritage Act 2017
- Practice Note - Performance Solution – PS-01 Documentation and Assessment

## Contact Us

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