



Disability Standards for Access to Premises (Buildings) 200X

I, PHILIP MAXWELL RUDDOCK, Attorney-General, formulate these Standards under subsection 31 (1) of the *Disability Discrimination Act 1992*.

Dated 200X

[DRAFT ONLY - NOT FOR SIGNATURE]

Attorney-General

Part 1 Preliminary

1.1 Name of Standards

These Standards are the *Disability Standards for Access to Premises (Buildings) 200X*.

Note These Standards take effect as provided by subsections 31 (3) and (4) of the Act.

Formatted: Font: (Default)
Arial

Formatted: Font: (Default)
Arial, 11 pt

1.2 Objects of these Standards

The objects of these Standards are:

- (a) to identify ways of providing, for people with disabilities, access to buildings, and to facilities and services provided within buildings, that are reasonably achievable, equitable and cost-effective; and
- (b) to give certainty to building developers and building managers that, if access to buildings is provided in accordance with these Standards, the provision of access, to the extent covered by these Standards, will not be unlawful under the Act.

CONSULTATION DRAFT

1.3 Interpretation

- (1) In these Standards:

Access Code means the Access Code for Buildings set out in Schedule 1.

Note The Access Code is based on the provisions in the Building Code of Australia 1996 in the form it will take on [1 May 200X]. For further information about the relationship between the Access Code and the Building Code of Australia 1996, please see the *Disability Access to Premises (Buildings) Guidelines 200X*.

Act means the *Disability Discrimination Act 1992*.

affected part, of a building, has the meaning given by subsection 2.1 (5).

building developer has the meaning given by subsection 2.2 (2).

building manager has the meaning given by subsection 2.2 (3).

existing public transport building has the meaning given by subsection 2.1 (6).

new building has the meaning given by subsection 2.1 (3).

new part, of a building, has the meaning given by subsection 2.1 (4).

relevant building means a building, or a part of a building, to which these Standards apply under section 2.1.

Note Unless the contrary intention appears, a term that is used in these Standards and in the Act has the same meaning in these Standards as it has in the Act.

- (2) In these Standards, a reference to a class of building by a number, or by a number and letter, is a reference to a building of that class within the meaning of the Access Code.
- (3) For these Standards, a building is constructed, and building work is carried out, for or on behalf of the Crown, if the building is constructed, or the building work is carried out, for or on behalf of any of the following:
- the Commonwealth;
 - a State;
 - a Territory;
 - a public authority of the Commonwealth;
 - an instrumentality of a State.

Part 2 Scope of Standards

2.1 Buildings to which these Standards apply

- (1) Subject to subsection (2), these Standards apply to the following:
- a new building, to the extent that the building is a Class 1b, Class 2, Class 3, Class 5, Class 6, Class 7, Class 8, Class 9 or Class 10 building;

Deleted: DRAFT ONLY

-
- (b) a new part, and any affected part, of a building, to the extent that the part of the building is a Class 1b, Class 2, Class 3, Class 5, Class 6, Class 7, Class 8, Class 9 or Class 10 building;
 - (c) an existing public transport building that is still in use on the target date mentioned in an item in the table in section 3.1.
- (2) These Standards do not apply to the following:
- (a) the internal parts of a sole-occupancy unit (within the meaning of the Access Code) in a Class 2 building;
 - (b) a Class 10a building associated with a Class 1a or Class 4 part of a building.

Note Under subsection (1), these Standards do not apply to a Class 1a or Class 4 building.

- (3) A building is a **new building** if:
- (a) application for approval for its construction is submitted, on or after [1 May 200X], to the competent authority in the State or Territory where the building is located; or
 - (b) all of the following apply:
 - (i) it is constructed for or on behalf of the Crown;
 - (ii) the construction commences on or after [1 May 200X];
 - (iii) no application for approval for the construction is submitted, before [1 May 200X], to the competent authority in the State or Territory where the building is located.
- (4) A part of a building is a **new part** of the building if it is an extension to the building or a modified part of the building in relation to which:
- (a) application for approval for the building work is submitted, on or after [1 May 200X], to the competent authority in the State or Territory where the building is located; or
 - (b) all of the following apply:
 - (i) the building work is carried out for or on behalf of the Crown;
 - (ii) the building work commences on or after [1 May 200X];
 - (iii) no application for approval for the building work is submitted, before [1 May 200X], to the competent authority in the State or Territory where the building is located.
- (5) A part of a building is an **affected part** of the building if it is a part in relation to which building work is required to be carried out in order to obtain approval for building work in relation to a proposed new part of the building to which paragraph (4) (a) applies.
- (6) An **existing public transport building** is a building (other than a new building) that is the passenger use area of a Class 9b building used for public transport (being the whole or part of such a building).

Note An existing public transport building may be a building with or without any new part or affected part.

2.2 Persons to whom these Standards apply

- (1) These Standards apply to a building developer of a relevant building, and a building manager of a relevant building, to the extent that the building developer or building manager is responsible for, or has control over, any of the matters covered by the Access Code in relation to the building.

- (2) A **building developer**, in relation to a relevant building, is a person who has responsibility for, or control over, the design or construction of the building or a part of the building.

Example

The following persons could be building developers for the purposes of these Standards:

- (a) property developers;
- (b) property owners;
- (c) building designers;
- (d) builders;
- (e) project managers;
- (f) building certifiers and others involved in building approval processes;
- (g) property lessees.

- (3) A **building manager**, in relation to a relevant building, is a person who, otherwise than in relation to the design or construction of the building, has responsibility for, or control over, any of the matters covered by the Access Code in relation to the building.

Example

The following persons could be building managers for the purposes of these Standards:

- (a) property owners;
- (b) property lessees;
- (c) property managers;
- (d) operational staff.

2.3 Actions to which these Standards apply

These Standards apply to an action relating to the provision of access to a relevant building (and facilities and services provided within such a building), to the extent that provision of access to the building (and those facilities and services) is:

- (a) a matter to which any of paragraphs 31 (1) (a) to (f) of the Act applies; and
- (b) a matter covered by the Access Code.

Note These Standards are subject to section 12 of the Act. That is, the provisions of these Standards are limited application provisions within the meaning of that section.

Deleted: Comment: As discussed, I have not included any specific reference to airports that do not accept regular public transport service ('exempt airports'). As these airports are not exempted in relation to all aspects under the Transport Standards, Part H2 of the Access Code will still need to cover them. I understand that Part H2, which applies to the passenger use area of a Class 9b building used for public transport (which may include the passenger use area of an exempt airport), will be revised so that there will be no requirement under that Part for an exempt airport in relation to an aspect in relation to which it is currently exempted under the Transport Standards.¶

2.4 Acts outside the scope of these Standards

To avoid doubt, for section 34 of the Act, a person's act in relation to a building is not taken to be in accordance with these Standards if:

Formatted: Keep with next

- (a) the person is not a building developer or building manager of the building; or
- (b) the building is not a relevant building; or
- (c) the person's act is not an action to which these Standards apply.

Example

If a person acts in accordance with the Access Code in relation to a relevant building but acts in contravention of section 23 of the Act in relation to aspects of fit-out of the building not covered by the Access Code, the person cannot rely on section 34 of the Act and claim that section 23 of the Act does not apply to his or her action in relation to those aspects of fit-out, merely because he or she has acted in accordance with these Standards in relation to matters covered by the Access Code.

2.5 Construction of Standards

These Standards are intended to be within the power conferred by the Act, and are to be construed accordingly.

Note A provision that, despite this section, cannot be construed as being entirely within the power conferred by the Act has effect to the extent that the provision is within that power — see subsection 46 (1) of the *Acts Interpretation Act 1901*.

Part 3 Requirements of Standards

3.1 Building developers and building managers to ensure buildings comply with performance requirements

- (1) A building developer or building manager of a relevant building (other than an existing public transport building) must ensure that the building satisfies the applicable performance requirements set out in the Access Code.
- (2) A building developer or building manager of an existing public transport building must comply with subsection (3) if:
 - (a) the building developer or building manager is an operator within the meaning of the *Disability Standards for Accessible Public Transport 2002* (the **Transport Standards**); and
 - (b) any existing public transport building provided for passenger use as part of a public transport service provided by the building developer or building manager is still in use on the target date mentioned in an item in the table in this section.
- (3) For subsection (2), the building developer or building manager must ensure that, for each type of public transport service (within the meaning of the Transport Standards) provided by the building developer or building manager, the applicable performance requirements set out in the Access Code relating to each aspect mentioned in an item in the table in this section are, on and after the target date mentioned in the item, satisfied to

Deleted: in relation to each part of the building that is required to be accessible under the Access Code

Deleted: sub

Deleted: (3)

Deleted: following t

Deleted:

Deleted: DRAFT ONLY

at least the level mentioned in the item in relation to that aspect (expressed as a percentage of existing public transport buildings provided by the building developer or building manager for passenger use as part of that type of public transport service that are still in use on the target date).

(4) The requirement imposed by this section for a building to satisfy the applicable performance requirements set out in the Access Code applies only in relation to the parts of the building that are required to be accessible under clause D3.1 of the Access Code.

Formatted: Font: (Default)
Arial, 11 pt

Formatted: Font: (Default)
Arial, 11 pt

Item	Target date	Aspect	Level of compliance
1	31 December 2007	(a) symbols and signs (b) lighting (c) hearing augmentation (d) emergency warning systems	100%
		(e) accessways (f) manoeuvring areas (g) passing areas (h) ramps (i) doorways and doors (j) lifts (k) stairways (l) toilets (m) tactile ground surface indicators (n) controls	25%
2	31 December 2012	(a) surfaces (b) handrails and grabrails	100%
		(c) accessways (d) manoeuvring areas (e) passing areas (f) ramps (g) doorways and doors (h) lifts (i) stairways (j) toilets (k) tactile ground surface indicators (l) controls	55%

Deleted: DRAFT ONLY

Item	Target date	Aspect	Level of compliance
3	31 December 2017	(a) accessways (b) manoeuvring areas (c) passing areas (d) ramps (e) doorways and doors (f) lifts (g) stairways (h) toilets (i) tactile ground surface indicators (j) controls	90%
4	31 December 2022	all aspects applicable to public transport buildings	100%

3.2 Compliance with performance requirements

- (1) For section 3.1, a building developer of a relevant building is taken to have ensured that the building satisfies the applicable performance requirements set out in the Access Code if the building complies with the applicable deemed-to-satisfy provisions set out in the Access Code.

Note As the deemed-to-satisfy provisions are limited to matters relating to the design and construction of a building, this subsection applies only to building developers.

- (2) Subsection (1) is not intended to limit the way in which a relevant building may otherwise satisfy the applicable performance requirements.
- (3) Without limiting subsection (2), a relevant building is taken to satisfy the applicable performance requirements if the building provides a level of access that is not less than the level that the building would have provided if it had complied with the applicable deemed-to-satisfy provisions.

Deleted: ¶

Formatted: Font: (Default)
Arial, 11 pt

Formatted: Font: (Default)
Arial, 11 pt

Deleted: *Comment: This subsection has been drafted on the basis of your instructions that, although there might be performance requirements for which there are no deemed-to-satisfy provisions, satisfying all applicable deemed-to-satisfy provisions is taken to satisfy all applicable performance requirements.*¶

Part 4 Exceptions

4.1 Unjustifiable hardship

- (1) This section applies to the following relevant buildings:
- a new part, and any affected part, of a building (other than a new building);
 - an existing public transport building that is still in use on the target date mentioned in an item in the table in section 3.1.

Note This section does not apply to a new building or a new part of such a building.

Deleted: DRAFT ONLY

(2) These Standards do not render it unlawful for a person to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the person.

Deleted: *Comment: I have amended this subsection to state what buildings this section applies to, so that the references in the other subsections to 'new part' and 'existing public transport building' will make more sense.*

(3) However, these Standards apply to the maximum extent not involving unjustifiable hardship.

Example

While enlarging a lift may impose unjustifiable hardship, upgrading the lift controls panel to provide Braille and tactile buttons may not.

(4) In determining whether compliance with a requirement of these Standards would impose unjustifiable hardship on a person in relation to a building, all relevant circumstances of the particular case are to be taken into account including the following:

(a) any effect that compliance with the requirement is reasonably likely to have on the economic viability of developing a new part of the building and, in relation to an existing public transport building, providing the building for use as part of a public transport service, including:

- (i) any loss of occupiable or rentable area that is reasonably likely to result from compliance with the requirement; and
- (ii) in relation to developing a new part of the building — the cost that would be incurred in upgrading ancillary features (such as providing a path of travel to the new part or to facilities or services proposed to be provided in the new part) in relation to the overall cost of developing the new part; and
- (iii) the resources reasonably available to the person;

(b) the extent to which the building work concerned involves public funds, and consequently the extent to which it is expected that the building will be accessible to the public, including people with disabilities;

Deleted: *Comment: This paragraph has been expanded as discussed to cover existing public transport buildings.*

(c) the benefits that are reasonably likely to result from compliance with the requirement, including:

- (i) benefits relating to the type and use of the building, and the extent to which the building is intended to be used by the public; and
- (ii) the extent to which the building is used, or is intended to be used, for significant public purposes (such as, for electoral purposes or for holding public consultation by local government); and
- (iii) the extent to which the building has a significant community function (including serving the cultural, religious, artistic, sporting or educational needs of the community); and
- (iv) the extent to which alternative access to the building, or to services or facilities provided within the building, is available for people with disabilities;

(d) the significance of any heritage value attaching to the building, or a part of the building, that is reasonably likely to be affected by compliance with the requirement;

Deleted: DRAFT ONLY

-
- (e) any technical limits, topographical restrictions or other site constraints that affect the person's ability to comply with the requirement;
 - (f) any relevant health and safety factors.
- (5) Also, in determining whether compliance would impose unjustifiable hardship, due regard must be given to the objects of the Act (in particular, the object of eliminating discrimination as far as possible) and the rights and interests of all persons who are, or are reasonably likely to be, affected by compliance or non-compliance with the requirement.

4.2 Acts done under statutory authority, etc

These Standards do not render unlawful anything done in a circumstance mentioned in section 47 of the Act.

Part 5 Miscellaneous

5.1 Timetable for review

- (1) The Minister for Industry, Tourism and Resources is to, in consultation with the Attorney-General:
 - (a) review, within 5 years after these Standards commence, the effectiveness of these Standards in achieving their objects; and
 - (b) carry out a subsequent review every 5 years after the initial review.
- (2) A review includes identifying any necessary amendments to these Standards.

Schedule 1 Access Code for Buildings

(section 1.3)

Deleted: DRAFT ONLY