

Guidance on the regulatory documents for disability access for premises and their application

Revised legal requirements regarding disability access to premises have applied since 2011. This advice provides revision of some basic information, including identification of the relevant regulatory documents that are to be considered by building professionals in the design and construction of buildings so as to comply with required access provisions.

Compliance

The building surveyor will have to reject an application for a Certificate of Likely Compliance if the design process had not considered disability access to premises requirements, as the application would then not be in accordance with the *Building Act 2000*.

Know the different Disability Access to Premises documents

Which Access to Premises documents should an Accredited Building Practitioner be familiar with?

Designers, builders and assessors of building work should become familiar with the following regulatory documents to ensure compliance with access to premises requirements.

1. National Construction Code (NCC)

The National Construction Code (Volume One of the Building Code of Australia series) is the legal standard for the design of building work on any Class 2 – 9 buildings in Tasmania. Since its 2011 edition, the NCC in Part D3 has incorporated revised access provisions that are almost identical to the provisions in the *Disability (Access to Premises – Buildings) Standards 2010*.

- Part D3 of Volume One contains the provisions for access for persons with a disability.
- The Tasmania Appendix to Volume One, Section D, Access and Egress, includes the Tas Performance Requirements and at Tas D3, Deemed-to-Satisfy Provisions.

The following three documents (Nos. 2 -4) are also “referenced” in the Tasmanian Appendix to the NCC:

2. Disability (Access to Premises – Buildings) Standards 2010

The Disability (Access to Premises – Buildings) Standards 2010 is subordinate legislation (regulations) made under the Commonwealth’s Disability Discrimination Act 1992. It covers general building access requirements. It is referenced in the Tasmania Appendix to the NCC as a document to:

- assist in the interpretation of the provisions in NCC Part D3; and
- provides for any exemptions or concessions in the Access to Premises Standards to apply to building work in Tasmania.

The Access to Premises Standards is available from the Commonwealth Attorney -General’s Department website: [Australian Attorney-General](#) or from the Australian Human Rights Commission (AHRC) website: [Human Rights Australia](#)

3. Disability Discrimination Act 1992

Section 3 of this Commonwealth Act states the objectives of the Act as the basic principles to be achieved in eliminating discrimination and providing equal access to premises for persons with a disability. The Act is referenced in the Tasmanian Appendix to volume one of the NCC to allow, in some circumstances, for a clearer interpretation of the NCC or the Access to Premises Standards by reference to those objectives. This Act is available from the Commonwealth Attorney-General's Department website: [Australian Attorney-General](#) or from a link from the AHRC website: [Human Rights Australia](#)

4. Australian Standard AS 1428.1: 2009

This Australian Standard covers general technical requirements for the design for access and mobility. Because AS 1428.1 is referenced in the NCC and in the Disability (Access to Premises – Buildings) Standards 2010, compliance with its provisions satisfies compliance with NCC Volume One Part D3. Australian Standards are available for purchase from [SAI Global](#)

Other guidance document:

Guideline on the application of the Premises Standards

This is a guidance document (but not a regulatory document) written for building professionals and those concerned with access requirements, to better understand how the provisions of the Access Premises Standards are applied to new or existing buildings. It is published by the Australian Human Rights Commission and a new version was released in March 2013. This Guideline is available from the AHRC website: [Human Rights Australia](#)

Application of access to premises requirements

New buildings

Consideration of the requirements for disability access is required for all new buildings, other than for a Class 1a and for nearly all types of Class 10 buildings. If a Class 10a building is to be used as sanitary facilities, then disability access requirements *will apply* to that building.

New building work on existing buildings

Where new work is undertaken on an existing building, such as an extension, alteration, addition or renovation, the new or modified part of the existing building will be required to comply with the disability access requirements.

The access requirements of the NCC, by reference to the Premises Standards, require in some circumstances that it is also necessary to provide an accessible path of travel from the principal public entrance to the new or modified part of the building.

If the nature of the work to be undertaken *requires a building permit*, then that part of the building will be required to be upgraded to comply with *all current NCC requirements including disability access provisions*.

Building work that does *not require a building permit* is either:

1. exempted from requiring a permit by regulation (4) of the *Building Regulations 2014*. (The Regulations provide for particular buildings and structures of a minor nature that do not require a building permit. These also include repairs or maintenance if

the work is done for maintenance purposes, using similar materials, fixtures, installations and components to those being replaced); or

2. a building surveyor has determined that it is either a minor repair or a minor alteration of that existing building. (A building surveyor may only determine that work is a minor repair or minor alteration if it if the cost of the work is under \$5000 and it meets criteria in the Building Regulations. Refer to section 60(2) of the *Building Act 2000* and regulation 6 of the *Building Regulations 2014*).

Note that generally:

- extensions and additions to a building are not exempt from a permit as they are **new** building work; and
- work such as painting and decorating, joinery and installing shop furniture and fittings are not building work, do not require a building permit and would not trigger application of access to premises requirements.

Do disability access considerations also apply to a “minor alteration or a minor repair”?

Yes, as what the building surveyor is actually deciding under section 60(2) of the Building Act is whether the proposed alteration or repair is sufficiently “minor” for the owner not to need a building permit. They are not deciding on the standard of the work to be applied. The *Building Act 2000* section 55(1) provides that all building work and the use and maintenance of buildings are to comply with the NCC and the Act. Where the relevant building surveyor is assessing work to give their opinion under s.60 (2) of the Building Act, that the work consists of “minor alterations” or “minor repairs”, they are then exercising an “approval” function as the competent authority.

Hence, under section 55(1) of the Building Act the NCC is the standard for all new building work including minor alterations. An owner may not have to obtain a building permit, but the actual work performed must comply with the NCC. That will include those provisions in Part D3 of the NCC for disability access for that particular alteration.

Examples of where a proposed “minor alteration” should give rise to access considerations are:

- moving office partitions or changing doors;
- “modernising” the door furniture latches with new fittings;
- replacing a non-compliant hinged door at the main entry point of the building.

Change of use of a building

If a change of use of a building (including a change from one Class to another) *requires* that building work is to be done, then a building permit must be obtained. The work is to comply with current NCC access provisions. If the change of use does not require building work, then a new occupancy permit is required. That new occupancy permit would not require the building to be upgraded to current NCC requirements.

Alternative Solutions for disability access

While the Deemed-to-Satisfy (DTS) is one way of meeting the NCC performance requirements, the other is by an alternative solution. Some design and assessment practitioners have however taking a view that compliance with AS 1428 is the only practical method and an alternative solution proposal that is not exactly the same as the standard would never be compliant. This view is incorrect and fails to properly consider the guidance in the NCC and other documents as to what an alternative solution is meant to achieve.

Reference is made to page 15 of the Guideline on Application of the Premises Standard (published by the Australian Human Rights Commission and updated February 2013) at clause A.9.1 “Alternative Approaches”):

“The Premises Standards allows for innovative solutions to meet the Performance Requirements of the Access Code ... so long as the proposed solution satisfies the Performance Requirements of the Access Code”.

Reference is also made to NCC Volume One, Parts AO.8 (Assessment Methods) and AO.9. (Performance Requirements). Part A0.9 provides four methods of assessment that may be used to determine compliance with the performance requirements.

In A0.9 the assessment method at clause (d) allows the use of expert judgement to assess whether a building solution complies with the performance requirements. If an access consultant is used as an expert, then they can give advice according to the relevant performance requirements that are relevant to the alternative solution. If the alternative solution complies with the performance requirements then it can be accepted by the building surveyor. Access consultants therefore may be used as advisors (experts) to establish what are the relevant performance requirements and why the alternative solution complies with them.

It is the role of the building surveyor to consider alternative solutions. A building surveyor cannot issue a Certificate of Likely Compliance if not satisfied that it will be likely to comply with the NCC (either under DTS or as an alternative solution). They should reject that design until it is modified so that they are satisfied that it is likely to comply.

Exemptions and concessions

The objectives supporting laws for access to premises allow, as far as possible, for equal and dignified access for persons with a disability to all types of commercial buildings. For any new building work, meeting this obligation falls on a building developer (owner or a lessee) a building certifier (a building surveyor, a building surveyor limited and a permit authority) and a building manager (refer to *Disability (Access to Premises – Buildings) Standards 2010*).

It has been recognised during the development of these laws that in certain circumstances full compliance cannot be warranted or is unduly onerous. The NCC, Access to Premises Standards and the *Building Act 2000* therefore provide for some limited exemptions or concessions from access to premises provisions that can apply to building work in Tasmania.

NCC exemptions or concessions

Small building exemption

NCC clause D3.3(f) clause sets out an exemption from the requirement to provide accessible lifts and ramps to the upper storeys of small buildings of specific classes. This exemption reflects the assessment made when developing the Access to Premises Standards, that requiring access to every level of small buildings might cause unjustifiable hardship. The exemption applies only to Class 5, 6, 7b and 8 buildings with two or three storeys (that is a building with one or two storeys in addition to the entrance storey or level). This could be a building with one or two storeys above the entrance storey or below it.

This exemption *does not* apply to:

- Specified Class 1b buildings (guest house, bed and breakfast or short-term accommodation type buildings)
- Class 2 buildings (sole occupancy units and apartments)
- Class 3 buildings (hotels, motels, hostels or similar accommodation) or

- Class 9a and Class 9b buildings (schools, universities, theatres, health-care or aged-care buildings) although these classes of building may not be required to provide access to upper floors of two and three storey buildings if the limits in Table D3.1 or the exemptions of D3.4 apply.

The exemption states that for a building containing not more than three storeys, if the size of an upper or lower storey (excluding the entrance storey) is less than 200 m², access via a passenger lift or ramp complying with AS 1428.1 is not required to the other storeys. This means that if either of the upper (or lower) storeys is over 200 m², access in the form of a ramp or lift must be provided to all storeys.

- Example 1: If the entrance storey of a three-storey building was 3000 m² and the two other storeys were 180 m² access would only be required to the entrance storey.
- Example 2: If the entrance storey of a three-storey building was 600 m², the first storey was also 600 m² and the second storey was only 150 m², access would be required via a passenger lift or ramp complying with AS 1428.1 *to all levels*. (That is because the first storey of 600 m² is larger than the 200 m² specified by that clause).

Although paragraph D3.3(f) states that access via a ramp or lift is not required to certain storeys or levels, all other accessible features required by the NCC, such as features on stairways and required signage, (except accessible unisex sanitary compartments and accessible unisex showers (see Clause F2.4(i)), are required on the non-entrance storey or levels.

Inappropriate to access an area

NCC clause D3.4 provides for a limited exemption from the general requirement that all parts of a building are to be accessible to persons with a disability:

- due to the nature or use of the building, where a person's work duties or right of entry, would not allow them access to an area; or
- a building or part of a building is too dangerous to provide access to a person with a disability. Examples could include plant or machinery rooms.
- any paths of travel to these inappropriate areas are also exempt.

Access to Premises Standards exemptions or concessions

The referencing of the *Disability (Access to Premises – Buildings) Standards 2010* in the Tas Appendix to the NCC also allows the exemptions or concessions only found in the Access Standards (and not in the NCC) to be applied in Tasmania. These concessions are:

Lessees

Section 4.3 provides a concession for a building that is leased to *more than one tenant* and the proposed building work is wholly contained within the area that is leased. The “affected part” of the leased building is not required to be upgraded if a lessee undertakes the work. To require a tenant to carry out other building work to provide an accessible access from the main entrance to their tenancy, or to upgrade the other tenancies, would be impracticable and financially onerous.

The application of disability access requirements to strata title properties is unclear. One owner in a stratum titled building may only have control of the part or lot that they own. They may have no legal authority over other lots or parts, or of the common areas and may argue that they cannot be expected to upgrade them to ensure accessibility of those other

parts. While that situation may be similar to being a lessee, a strata title scheme is a type of ownership and is not “leased”.

Lift concessions for existing buildings

Section 4.4 provides a concession from the requirements of NCC Table E3.6(b) in relation to lift dimensions for existing lifts.

Sanitary facilities

Section 4.5 provides a concession for existing accessible sanitary compartments.

Acts done under statutory authority

Section 4.2 provides a concession for a requirement done under legal authority. This could possibly include the performance of any work required by a building order or an emergency order issued by a building surveyor or by a General Manager.

Conversion of an existing building to Class 1b accommodation

Because of the definition of a “Specified Class 1b building” in the *Disability (Access to Premises – Buildings) Standards 2010* there is also effectively a concession for the conversion of an existing building (including a Class 1a house) into a guest house, boarding house etc. (to become a Class 1b) if it will have *no more than three bedrooms available to let*. Where an existing building is being converted to offer this type of accommodation, disability access is not required to that converted building. See the Access Standards definition of “Specified Class 1b building” and the Access Standards Guidelines.

Human Rights Commission exemption (Public Transport Buildings)

As the *Disability (Access to Premises – Buildings) Standards 2010* provides for an application to be made to the Human Rights Commission specifically in relation to Public Transport Buildings, this avenue for granting an exemption would also be available for that type of work in Tasmania.

Note that neither the Australian Human Rights Commission nor the Tasmanian Anti-Discrimination Commissioner have any general powers to “exempt” any other types of building work from compliance with mandatory disability access requirements in the NCC or Access to Premises Standards.

Building Act 2000 - Determination of unjustifiable hardship on the applicant

There is no mechanism provided in the NCC or the Premises Standards for the prior approval of any work that will be in non-compliance with any of the access to premises provisions. That process has been left to state Access Panels to decide for each individual application. Therefore the *Building Act 2000* was amended in 2012 by the insertion of section 218A. It provides that an application may be made to the Tasmanian Resource Management and Planning Appeals Tribunal (RMPAT) (acting as an Access Panel) for a determination that an access provision of the NCC:

1. does not apply; or
2. applies with modifications or variations as specified in the application.

The application to the RMPAT may be made by the building owner or the lessee having the building work performed. The grounds for making this application for a determination are

that compliance with the access provisions of the NCC would impose an “unjustifiable hardship” on the applicant. This is a high barrier to overcome and potential extra expense or inconvenience to the applicant is not sufficient reasons. Factors that are relevant to consideration of what can amount to unjustifiable hardship can be found in Section 218A(5) (these factors are also referenced in Part 4 of the Access Standards). They include:

- the financial position of the applicant;
- the extent to which the use of the building is for public or community purposes;
- whether the cost of alterations to make the premises accessible is disproportionate to the value of the building, taking into account an improved value resulting from the proposed alterations.
- etc.

There are 15 individual considerations in Section 218A(5).

The applicant must attempt to comply with the NCC requirements to the maximum extent that they can, short of any unjustifiable hardship. An application to the RMPAT would need to be made at an early stage of the development (e.g. during the preliminary design process and well before any application is made for a Certificate of Likely Compliance (CLC) or a building permit).

Any determination that is made by the RMPAT on the grounds of “unjustifiable hardship” is to be taken into account by the relevant building surveyor for their consideration of the CLC for that project.

See section 218A of the *Building Act 2000*. Legislation is available from [The Law](#)

Contact details of the [RMPAT](#) are: Phone (03) 6165 6794. Email rmpat@justice.tas.gov.au
Address: Level 1, 144-148 Macquarie St, Hobart.

Maintenance of the accessible features or measures in buildings

The *Building Regulations 2014* (Part 7) and the Director’s Specified List (Schedule 6) require building owners or occupiers to maintain any feature or measure in, or associated with, a building that has been provided to make that building accessible to persons with a disability.

Examples of problems caused by poor maintenance by building owners or managers include:

- accessible sanitary facilities abused as the cleaner’s storeroom
- ramps, handrails or door furniture removed or replaced by non-compliant fittings
- furniture incorrectly placed in corridors, negating construction of required wheelchair passing bays.

The minimum level for the *required maintenance* is that any such accessible features or measures must perform to the same standard as when originally installed or provided.

Under the *Building Regulations 2014* the requirement for maintenance of any prescribed features or measures applies to all buildings (with the exception of all Class 1a and associated Class 10) regardless of their original date of construction.

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