

## **Explanatory Statement**

Issued by the Authority of the Attorney-General

*Disability Discrimination Act 1992*

*Disability (Access to Premises—Buildings) Standards 2010*

### ***Authority***

1. Subsection 31(1) of the Disability Discrimination Act (DDA) provides that the Minister may, by legislative instrument, formulate standards in relation to any area in which it is unlawful to discriminate against another person on the ground of a disability of the other person under Part 2 of the Act.
2. Section 23 of the DDA (a provision of Part 2) makes it unlawful to discriminate against another person on the ground of the person's disability in relation to a number of aspects of access to, or use of, premises. Other areas of public life protected by Part 2 against unlawful discrimination on the basis of disability may also require access to premises to be provided, including in employment, education, the provision of goods, services and facilities, accommodation, membership of clubs and unincorporated associations, and in the administration of Commonwealth laws and programs.

### ***Introduction***

3. In 2001 the Australian Building Codes Board (ABCB) was asked to develop a proposal for technical requirements which could form the basis of the Disability (Access to Premises — Buildings) Standards (Premises Standards). This followed requests for improved certainty under the DDA in satisfying its requirements for non-discriminatory access to premises. A proposal was presented by the ABCB to the then Government in mid 2005, followed by further advice on costs and benefits of the proposals in early 2006. A reference group to advise further on a range of unresolved matters was subsequently formed and provided its report to the Government in mid 2008. The Attorney-General referred draft Premises Standards to the House of Representatives Standing Committee on Legal and Constitutional Affairs (the Committee) in December 2008, for its review and inquiry. The Committee reported to Parliament on 15 June 2009 in a report titled *Access All Areas*. These Standards incorporate changes to the draft to implement those drafting aspects of the Government's response to the Committee's *Access All Areas* report.

### ***Purpose of the Premises Standards***

4. The purpose of the Premises Standards is to provide:
  - a nationally applicable set of provisions that detail what must be done to provide for non-discriminatory access to public buildings for people with disability

- the first and perhaps the most significant step in the development of consistent and uniform requirements for non-discriminatory building access — bringing together the access requirements under the DDA and building law, and
  - a range of improvements in the requirements for the provision of non-discriminatory access that are currently in place under building law.
5. This purpose was noted in part by the Committee’s report *Access All Areas* on the draft standards. At paragraphs 1.6 and 1.7 the Committee wrote:
 

Premises Standards would harmonise the requirements of the Building Code and the Disability Discrimination Act in relation to access to buildings through incorporation of the Access Code into the Building Code. The Access Code forms Schedule 1 of the Premises Standards and contains its technical requirements.

The Premises Standards would provide greater access to buildings for people with a disability and would also provide certainty to the building industry by establishing building standards which comply with the Disability Discrimination Act.
  6. The Committee also noted that the complaint-based approach of the DDA had not significantly improved building accessibility, pointing to the need to put in place a regulatory arrangement.
  7. The Premises Standards undertakes this (as noted by the Committee in relation to the draft Standards) by partially codifying the requirements of Part 2 of the DDA — setting detailed requirements for the provision of non-discriminatory access to publicly accessible premises. These Standards are applied in relation to, and limited to the scope of those aspects of the built environment that are governed by the Building Code of Australia (BCA). This linkage to the BCA will enable consistency between the two sets of requirements. It is intended that the requirements set out in Schedule 1 to the Premises Standards (the Access Code for Buildings, hereafter referred to as the ‘Access Code’) will be considered by the Australian Building Codes Board, an intergovernmental body, in its next annual review of the BCA. It is anticipated that they will be adopted as an amendment to the BCA.
  8. In turn, the BCA is implemented through building regulation laws in each of the States and Territories to provide a uniform building code for Australia. It is also anticipated that the States and Territories will adopt or apply similar application provisions to those in Parts 1-4 of these Standards.
  9. This will lead to an essentially uniform set of requirements that will apply both in relation to non-discriminatory access under the DDA and in relation to the requirements for access that must be complied with in order to obtain a building approval under building law and be compliant with that regulatory scheme.
  10. Schedule 1 to the Premises Standards provides for a range of improvements and modifications of the requirements currently in the BCA. These improvements address calls for improved access for people with a disability in the context of a mix of measures that take into account the views of, and costs to, those whose responsibility it is to provide or ensure non-discriminatory access.
  11. By providing a detailed, coherent set of requirements, consistent with those applied by building law, and administered and enforced in that context, the Premises Standards will lead to far greater availability of accessible buildings in Australia, as buildings are constructed,

renewed and upgraded. The Premises Standards are a measure that facilitates Australia being a more inclusive society that treats all its citizens, including those with a disability, with dignity and respect. This is something to which the Government is committed, including through its ratification of the *Convention on the Rights of Persons with Disabilities*.

12. This is reflected in the objects of the Premises Standards, which are set out at section 1.3. The objects make it clear that the Premises Standards are intended to strike a balance between the right of people with a disability to dignified and equitable access to buildings and practical considerations of cost-effectiveness, achievability, and certainty.

### ***Structure***

13. The Premises Standards consist of:
  - six initial Parts setting out the legal application of the Premises Standards, and
  - an Access Code at Schedule 1, which provides the technical requirements of the Premises Standards.
14. Consistent with the general operation of the BCA, the Access Code sets out Performance Requirements that must be met. These requirements are expressed in relatively broad terms. The Access Code then sets out detailed ‘Deemed-to-Satisfy Provisions’ which, if met, are taken to be compliance with the Performance Requirements.

### ***Operation of the Premises Standards***

#### ***Prospective application***

15. The Premises Standards apply prospectively. The Premises Standards, when commenced, will apply to all new buildings of the specified classes. In addition, upon commencement, where new work is undertaken on an existing building, such as an extension or renovation, the new or modified part of the building will be required to comply with the Premises Standards. In most circumstances it will also be necessary to provide an accessible path of travel from the principal public entrance to the new or modified part of the building (affected part).
16. Except in existing public transport buildings, the Premises Standards do not apply to any part of an existing building until work requiring the approval of a building regulator is undertaken. Specific access requirements are not imposed on existing buildings outside the area of the new work subject to building approval and the affected part.
17. In existing public transport buildings, requirements for access are imposed by the timetable for compliance set out in subsection 3.1(3) of the Premises Standards. This timetable preserves the timetable for compliance set out in the *Disability Standards for Accessible Public Transport 2002* (Transport Standards).
18. Under the provisions of these Standards, new work on existing buildings will not give rise to the application of the Premises Standards to an entire building unless modifications are being undertaken to the whole building.
19. The provisions of the Premises Standards will not apply to existing buildings unless they are undergoing new work, except for public transport buildings.

20. The application of the Premises Standards is set out in more detail in the description of section 2.1, below.

### *Scope*

21. The Premises Standards partially codify the requirements of Part 2 of the DDA in relation to unlawful discrimination in the provision of access to premises.
22. Section 34 of the DDA provides that if a person acts in accordance with a disability standard, Part 2 does not apply to that act. Building certifiers, developers, and managers will be protected from complaints of unlawful discrimination under the DDA in relation to acts done in compliance with the Premises Standards.
23. Conversely, section 32 of the DDA provides that it is unlawful for a person to contravene a disability standard. Failure to comply with the Performance Requirements of the Premises Standards will thus be unlawful under the DDA unless unjustifiable hardship is established under the Standards.
24. The access requirements of Part 2 of the DDA apply to a wide range of public places. For example, section 4 of the DDA defines 'premises' as follows:

#### *premises includes:*

- (a) a structure, building, aircraft, vehicle or vessel; and
  - (b) a place (whether enclosed or built on or not); and
  - (c) a part of premises (including premises of a kind mentioned in paragraph (a) or (b)).
25. Part 2 of the DDA extends well beyond the scope of the BCA to include areas such as parkland, playgrounds, and other non-building facilities. The Premises Standards, however, only apply to structures governed by the BCA, that is, to buildings using the categories and classification of buildings adopted in the BCA.
26. The Premises Standards thus do not codify all requirements of the DDA in relation to access to premises. Access requirements which are beyond the scope of the Premises Standards include:
  - existing buildings, except in areas which are the subject of a building upgrade or extension and the path of travel to that area, or where compliance is required by the compliance timetable for existing public transport buildings
  - access requirements for certain types of premises, classes of buildings and particular areas of some classes of buildings, such as parkland, Class 1a buildings, Class 1b buildings other than 'specified Class 1b buildings', and the internal areas of sole occupancy units in Class 2 buildings to the extent that the DDA is applicable, and
  - access requirements not governed by the BCA, such as building fit out or discriminatory management practices.
27. To the extent that Part 2 of the DDA would require non-discriminatory access in relation to these matters, the general requirements of Part 2 will continue to apply. It will continue to be the case that complaints of unlawful discrimination in relation to these matters can be made under the DDA.

28. For example, complaints of unlawful discrimination will still be possible under the DDA in relation to existing buildings that are not undergoing an upgrade or change of use and are not within the scope of Premises Standards.

#### *Relationship with the State and Territory law — the Building Code of Australia*

29. As noted, the Premises Standards are intended to harmonise the requirements of the DDA with the cooperative scheme of building regulation that applies in each State and Territory.
30. The requirements of the Access Code within the Premises Standards are intended to be substantially equivalent to those in the next edition of the BCA. Annual amendments of the BCA are adopted by reference in each State and Territory on 1 May of each year.

#### *Relationship with the Transport Standards*

31. Standards have also been formulated under section 31 of the DDA in relation to access for people with disability to public transport. The Transport Standards came into effect on 23 October 2002. The Transport Standards apply to operators and providers of public transport services, and set out requirements for accessibility of the premises, conveyances and infrastructure that are used in the provision of these services.
32. To avoid overlap and duplication of requirements for public transport buildings between the two Standards, relevant requirements for public transport ‘premises’ previously covered by the Transport Standards have been transferred into the Premises Standards. These requirements are set out in Part H2 of the Access Code. The compliance timetable applying to transport buildings under the Transport Standards is set out in subsection 3.1(3) of the Premises Standards. The timetable will only apply to existing public transport buildings. It does not affect new public transport buildings, or buildings which are not used for the purposes of public transport.
33. Hence *new* public transport buildings will be wholly governed by the Premises Standards. The Transport Standards will continue to apply to conveyances (buses, trains, trams, etc).
34. Complementary amendments to the Transport Standards have been made to align with these changes.

#### *Classes of buildings covered*

35. Section 23 of the DDA provides that it is unlawful to discriminate in relation to access to, or use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not). Other sections of the DDA require the non-discriminatory provision of accommodation, goods and services, and employment. The Premises Standards rely on all the provisions of Part 2 of the DDA as noted at paragraphs 96–100 below.
36. The DDA does not, however, apply to private residences *per se*, although such a residence may be covered if, for example, it is used or associated with the provision of facilities or offered for short-term rent.
37. Excluded from the scope of the Premises Standards therefore are those BCA building classes which are ordinarily reserved for private residential uses. No requirements are imposed on Class 1a buildings (generally detached private residences), Class 2 buildings which are not

used for short-term rent (generally apartment blocks and flats), or Class 4 buildings (private residences attached to buildings of different classifications, such as a caretaker's residence).

38. The Premises Standards apply to most other BCA building classes, including specified Class 1b buildings, and Class 3, 5, 6, 7, 8, 9, or 10 buildings, and new Class 2 buildings used for short-term rent.

#### *Persons with responsibilities under the Standards*

39. The Premises Standards apply to people with responsibility for, or control over:
- the building approval process for a building
  - the design or construction of the building, or
  - any of the matters in the Access Code that apply to the building other than matters relating to the design or construction of the building.
40. These groups of people are referred to in the Premises Standards as the 'building certifier', 'building developer', and 'building manager' respectively.

#### *Substantive requirements of the Premises Standards*

41. As noted above, the Access Code provides the substantive requirements that must be complied with where the Premises Standards apply.
42. The Access Code sets out:
- (a) in Part A — general provisions, including definitions of terms and building classifications used in the Access Code, and a list of Australian Standards referred to by the Access Code
  - (b) in Parts D, E and F — Performance Requirements, and
  - (c) in Parts D, E, F and H — Deemed-to-Satisfy Provisions.
43. The Premises Standards specify Performance Requirements, in the Access Code, applicable to certain classes or types of buildings and parts of buildings. The Performance Requirements are expressed broadly. For example, Clause DP9 provides that:
- An inbuilt communication system for entry, information, entertainment, or for the provision of a service, must be suitable for occupants who are deaf or hearing impaired.
44. The Performance Requirements are the mandatory provisions of the Access Code.
45. A building covered by the Premises Standards can meet the Performance Requirements, and therefore comply with the Premises Standards by:
- (a) complying with the relevant Deemed-to-Satisfy Provisions of the Access Code, or
  - (b) formulating an Alternative Solution to the Deemed-to-Satisfy Provisions that satisfies the Performance Requirements of the Access Code, or can be shown to be at least equivalent to the Deemed-to-Satisfy Provisions of the Access Code.

46. The Deemed-to-Satisfy Provisions are prescriptive technical requirements within the Access Code that describe one way to satisfy the Performance Requirements. In many cases, they refer for technical details to Australian Standards such as AS 1428.1, which is the primary Australian Standard relating to building access for people with a disability.
47. **Requirements for public transport buildings:** These requirements reflect the slightly different arrangements and specifications applied by the Transport Standards. These requirements are additional to those in the rest of the Access Code. Where these requirements are inconsistent, Part H2, which sets out these additional or differing requirements, prevails.
48. An exception from the provisions of Part H2 is provided by subclause H2.1(3) for airports that do not accept regular public transport services. These buildings were excluded from the special requirements of the Transport Standards, and so are excluded from the application of the requirements in Part H2. They remain subject to the rest of the Premises Standards.
49. **Premises Standards provide minimum standards:** The Premises Standards do not prohibit someone from providing a *greater* degree of access than stipulated in the Deemed-to-Satisfy Provisions. For example, a building developer or manager may provide more accessible rooms in a motel, or accessible car parking spaces in a car park than required, or may decide to install a fixed hearing augmentation system in a room that does not have an inbuilt public address system.
50. **Innovation beyond the Premises Standards:** The Premises Standards allow for and encourage innovative solutions to meet the Performance Requirements through the development of new technologies and through the use of Alternative Solutions, so long as the proposed solution provides equivalent or better access than the Deemed-to-Satisfy solutions. For example, although the Premises Standards only refer to specific editions of AS 1428.1 and other Australian Standards, the Australian Standards are regularly updated to take account of new technologies and new ways of doing things. While the Premises Standards only require compliance with the specific editions of Australian Standards referenced in the Access Code, this does *not* prevent a building owner from complying with a newer Australian Standard if to do so would satisfy the Performance Requirements of the Access Code.
51. **Maintenance and management of buildings:** Obligations for provision of access for people with a disability continue past the construction of the building. If a building or part of a building becomes inaccessible as a result of any acts or omissions of the building manager, the building manager may be liable to a complaint of unlawful discrimination.
52. For example, if a building owner or occupier allows a unisex accessible toilet to be used as a storage area, thereby reducing circulation space, there may be grounds for a complaint of unlawful discrimination, even though the toilet was built to the specification required by the Premises Standards.
53. Similarly, if a building owner or occupier allows overgrown trees or advertising material to impede an accessway, this may also be found to constitute unlawful discrimination.<sup>1</sup>

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<sup>1</sup> NB: there must first be an attempt at conciliation before legal action for unlawful discrimination can be commenced under the DDA.

### *Exceptions and concessions*

54. The Premises Standards provide a number of exceptions and concessions. These include a limited exemption in cases of unjustifiable hardship, an exemption for acts done under statutory authority, and concessions in cases of existing accessible lifts, sanitary facilities, and where the application for building approval is submitted by a lessee of the premises.
55. An exemption is provided for unjustifiable hardship to preserve the exemptions provided by sections 21B and 29A of the DDA (see the description of section 4.1 of the Premises Standards, below).
56. An exemption is also provided to preserve section 47 of the DDA, which provides an exemption for acts done under statutory authority.
57. Concessions are provided to recognise cases where it has been decided that it would be unreasonable to require full compliance with the requirements of the Premises Standards. These relate to:
  - lessees (section 4.3)
  - existing accessible lifts (section 4.4), and
  - existing accessible toilets (section 4.5).
58. Finally, the Australian Human Rights Commission (AHRC) is provided with power to grant temporary exemptions in relation to public transport buildings (Part 5) from some or all of the requirements of Part H2 of the Access Code.

### *Review*

59. Section 6.1 of the Premises Standards provides that the Minister for Industry, Innovation, Science and Research, in consultation with the Attorney-General, must commence a review of the effectiveness of the Standards within four years of the commencement of the Standards. The review must be completed within five years of commencement. Further reviews must be carried out every five years after the completion of the previous review.

### *Documents incorporated by reference*

60. The Premises Standards incorporate a number of Australian Standards by reference. In general, these Australian Standards are referred to in order to provide further technical detail to support the provisions of the Access Code. These references are consistent with current practice in the BCA.
61. If there is a difference between the technical requirements of the Access Code and any document referenced in the Access Code, including Australian Standards, the Access Code takes precedence.
62. The Premises Standards only require compliance with the specific editions of Australian Standards referenced in the Access Code. Later and earlier versions of those Australian Standards are not recognised.

63. However, this would not prevent a building owner from complying with a newer Australian Standard as an Alternative Solution if to do so would satisfy the Performance Requirements of the Access Code.
64. Australian Standards may be obtained from Standards Australia. More information can be found at <<http://www.standards.org.au>>.
65. The documents incorporated by reference are summarised at clause A3.1 of the Access Code, and are as follows:

<b>Standard</b>	<b>Date</b>	<b>Title</b>	<b>Relevant provisions of the Premises Standards</b>
<i>AS 1428</i>		<i>Design for access and mobility</i>	
Part 1	2009	General requirements for access — New building work	A1.1, D3.1, Table D3.1, D3.3, D3.6, D3.8, D3.11, Spec D3.10, F2.4
Part 1	2001	General requirements for access — New building work	H2.7, H2.8, H2.10, H2.15
Part 1 (Supplement 1)	1993	General requirements for access — Buildings — Commentary	H2.2
Part 2	1992	Enhanced and additional requirements — Buildings and facilities	H2.2, H2.3, H2.4, H2.5, H2.7, H2.10, H2.11, H2.12, H2.13, H2.14
Part 4	1992	Tactile ground surface indicators for the orientation of people with vision impairment	H2.11
<i>AS/NZS 1428</i>		<i>Design for access and mobility</i>	
Part 4.1	2009	Means to assist the orientation of people with vision impairment – Tactile ground surface indicators	D3.8
<i>AS 1735</i>		<i>Lifts, escalators and moving walks (SAA Lift Code)</i>	
Part 1	2003	Lifts, escalators and moving walks	Table E3.6 (a)
Part 2	2001	Passenger and goods lifts — Electric	Table E3.6 (a)
Part 3	2002	Passenger and goods lifts — Electrohydraulic	Table E3.6 (a)
Part 7	1998	Stairway lifts	Table E3.6 (a), Table E3.6 (b)
Part 8	1986	Inclined lifts	Table E3.6 (a)

Part 12	1999	Facilities for persons with disabilities, Amendment 1	Table E3.6 (b), H2.6
Part 14	1998	Low-rise platforms for passengers	Table E3.6 (a), Table E3.6 (b)
Part 15	2002	Lifts for people with limited mobility — Restricted use — Non-automatically controlled	Table E3 .6 (a), Table E3.6 (b)
Part 16	1993	Lifts for persons with limited mobility — Restricted use — Automatically controlled	Table E3 .6 (a), Table E3.6 (b)
<i>AS/NZS 2890</i>		<i>Parking facilities</i>	
Part 6	2009	Off-street parking for people with disabilities	D3.5

### ***Consultation***

66. The Premises Standards have been produced after several rounds of significant consultation.
67. The details of this consultation process are provided in the Regulation Impact Statement at pages 108–119.
68. Development of the Premises Standards has involved two major public consultation processes: one in 2004 as part of the initial development of the Premises Standards, the other by the Committee in 2009 as part of its inquiry into the draft Premises Standards. There has also been extensive consultation with stakeholders through the work of the Australian Building Codes Board; by Standards Australia in the development of revised Australian Standards relating to disability access to premises and disability parking; and by the Government with numerous disability groups and industry associations, and State and Territory officials during the entire developmental phase of the Premises Standards.

### ***Regulation Impact Statement***

69. A Regulation Impact Statement has been prepared and tabled together with this Explanatory Statement. The Regulation Impact Statement has been prepared by the Office of the Australian Building Codes Board having regard to the proposals implemented in these Premises Standards.

## *Charts*

70. The following two charts, adapted from the *Access All Areas* report and used with grateful acknowledgement to the Committee, provide a diagrammatic representation of the scope and application of the Premises Standards. They are provided for information and do not displace the written explanation of the operation of the Premises Standards provided in this Explanatory Statement.

**Chart 1: Application of the Premises Standards to new and existing buildings**

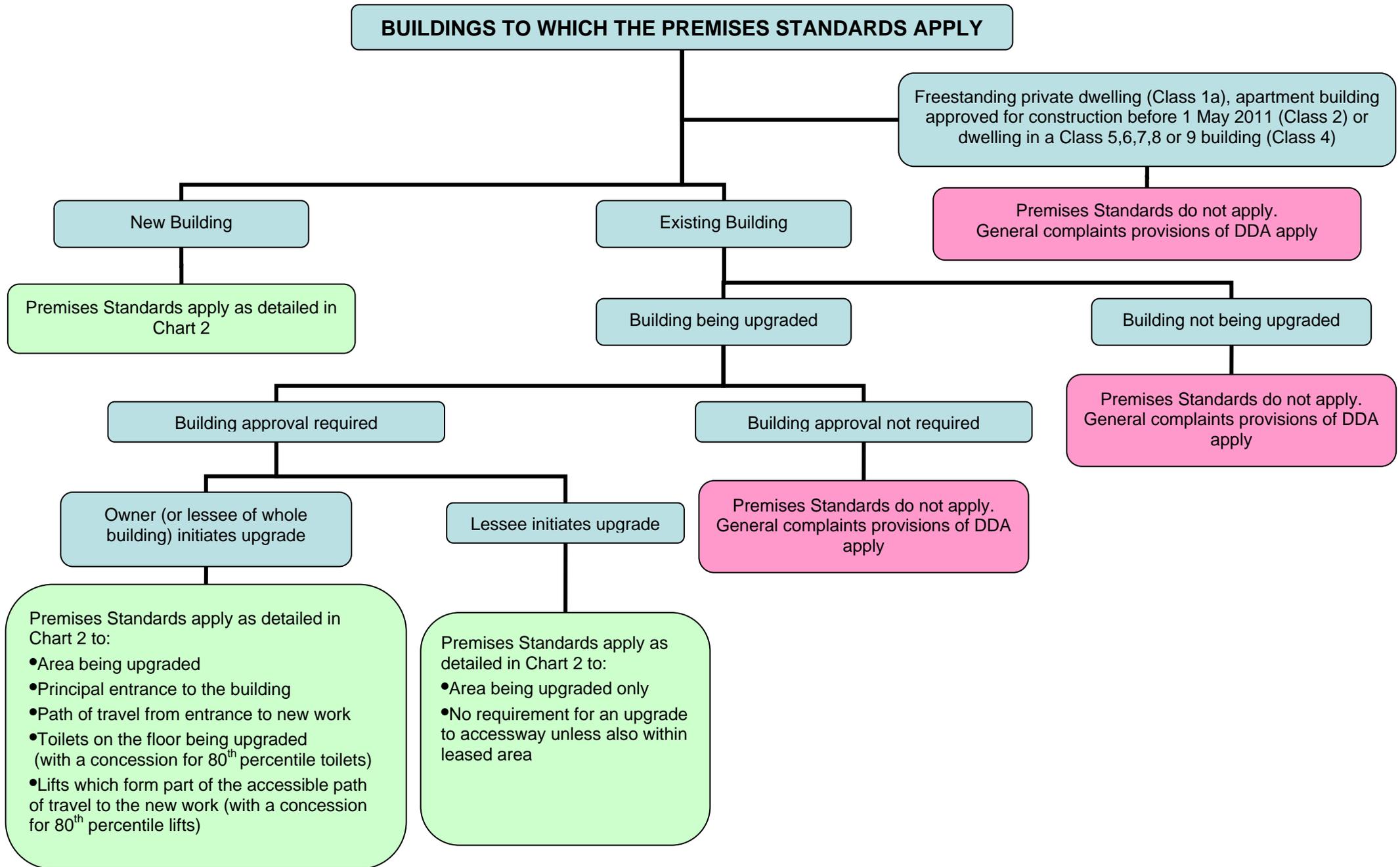
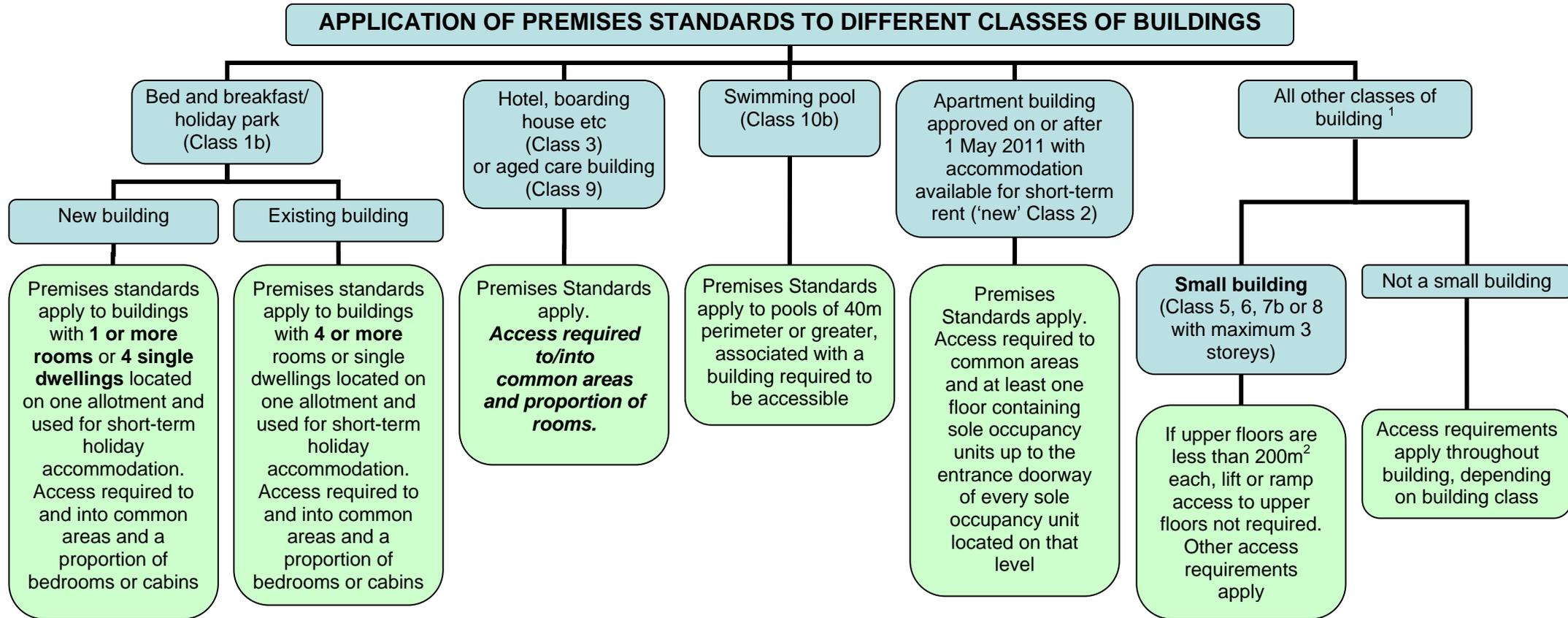


Chart 2: Application of the Premises Standards to different Classes and types of buildings



**Unjustifiable hardship and Standards:**

Section 32 of the DDA makes it unlawful to contravene a provision of a disability standard. However, a builder/owner would have recourse to a defence under the Premises Standards if complying with the Standards would cause unjustifiable hardship. The provision in the Standards relating to unjustifiable hardship would also allow a court to take into account a decision of an access panel in the matter (see below). The decision of an access panel would also be a relevant consideration in determining unjustifiable hardship under section 11 of the DDA.

**Access Panels:**

If a builder/owner is unable to comply with the Standards, then that person can approach an access panel to request approval for an Alternative Solution under the BCA. The decisions of this access panel could be taken into account by a court if the person argues unjustifiable hardship under the Standards.

**Note 1:**

All other classes of buildings include: commercial accommodation such as hotels; office blocks; shops, restaurants, retail etc; carparks; warehouses, factories; hospitals, nursing homes and health clinics; aged care; toilet blocks and public shelters.

## ***Provisions***

### *Part 1 — Preliminary*

#### Section 1.1 Name of Standards

71. Section 1.1 of the Premises Standards provides that the Standards are to be known as the *Disability (Access to Premises — Buildings) Standards 2010*.

#### Section 1.2 Commencement

72. Section 1.2 of the Premises Standards provides that the Standards commence on 1 May 2011. This aligns with the anticipated commencement of amendments to the BCA, which are expected to incorporate the provisions of the Access Code.

#### Section 1.3 Objects

73. Section 1.3 of the Premises Standards sets out the objects of the Standards: to ensure that dignified, equitable, cost-effective and reasonably achievable access to buildings, and facilities and services within buildings, is provided for people with a disability. The objects also set out that the Standards are intended to give certainty to building certifiers, developers and managers that if the Standards are complied with they will not be subject to complaint under the DDA. These objects reflect the objects of the DDA, set out in section 3, to amongst other things, ‘eliminate, as far as possible, discrimination against persons on the ground of disability in the area of access to premises’. The reference to dignified access also reflects the need to ensure proper and appropriate respect is afforded to people with a disability in the solutions providing access.
74. The objects provided by section 1.3 will provide guidance to interpretation of the Premises Standards. In accordance with the requirement of section 15AA of the *Acts Interpretation Act 1901* (which applies to legislative instruments because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*), where there is ambiguity an interpretation which would promote the object and purpose of a law should be preferred to an interpretation that would not promote that object and purpose.
75. This is consistent with Australia’s commitment to people with disability including through Australia’s ratification of the *Convention on the Rights of Persons with Disabilities*.

#### Section 1.4 Interpretation

76. Section 1.4 of the Premises Standards sets out definitions for the purposes of the Premises Standards. Subsection 1.4(3) makes provision for determining when a building or building work is carried out on behalf of the Crown. This restates the existing state of the law and is provided for greater certainty. Subsection 1.4(4) provides that the Access Code found at Schedule 1 to the Premises Standards is taken to be part of the Standards.

## Part 2 — Scope of Standards

### Section 2.1 Buildings to which Standards apply

77. Section 2.1 of the Premises Standards sets out the buildings and parts of buildings to which these Standards apply. In general, the Premises Standards will apply to the whole of new buildings and to a new part or an affected part (path of travel) in an existing building and existing public transport buildings of the classes specified in subsections 2.1(1) and (2).
78. **Classes of buildings covered:** The Premises Standards differentiates between three types of buildings: new buildings, new parts and affected parts of buildings, and existing public transport buildings.
79. Paragraph 2.1(1)(a) provides that the Premises Standards apply to new buildings, to the extent that the building is:
- a specified Class 1b building as defined in section 1.4 of the Premises Standards
  - a Class 2 building that has accommodation available for short-term rent, or
  - Class 3, 5, 6, 7, 8, 9 and 10 buildings.
80. Paragraph 2.1(1)(b) provides that the Premises Standards apply to a new part, and any affected part of a building, to the extent that the part is:
- a specified Class 1b building
  - part of a Class 2 building which has been approved for construction after the commencement date of the Premises Standards (1 May 2011) and which has accommodation available for short-term rent, or
  - Class 3, 5, 6, 7, 8, 9 and 10 buildings.
81. Paragraph 2.1(1)(c) imposes access requirements on existing public transport buildings that are still in use on the relevant target date provided by section 3.1. A definition of ‘existing public transport building’ is provided by subsection 2.1(6).
82. Subsection 2.1(2) provides that the Premises Standards do not apply to the internal parts of a sole-occupancy unit in a Class 2 building, or to Class 10 buildings or parts of them which are associated with a Class 1a building or a Class 4 part of a building.
83. These building classes are defined by clause A4.1 of the Access Code. They are consistent with the equivalent BCA classifications.
84. **New buildings:** The term ‘new building’ is defined in subsection 2.1(3) to mean any building for which an application for approval of construction is submitted after 1 May 2011 and which is not part of an existing building. If a building is constructed for or on behalf of the Crown and no application for building approval is submitted, the Standards will apply if construction commences on or after 1 May 2011.
85. **Existing buildings:** The term ‘new part’ is defined in subsection 2.1(4). It means any extension to, or modification of, an existing building for which an application for building work is submitted on or after 1 May 2011, to the relevant State or Territory authority. If the building work is carried out for or on behalf of the Crown and no application for building

approval is submitted, the Standards apply if the building work is commenced on or after 1 May 2011.

86. The term ‘affected part’ is defined in subsection 2.1(5). It means the principal pedestrian entrance to the building and any part of the building that is necessary to provide a continuous accessible path of travel from the principal pedestrian entrance to a new part of the building. Providing an accessible path of travel may involve upgrading the access features of the lift such as Braille and tactile lift buttons, removing a step into the building at the entrance, upgrading handrails on a ramp, or a combination of such measures. Toilets on the path of travel need not be upgraded unless they are within the ‘new part’ of the building. Paragraph 2.1(5)(b) makes it clear that the path of travel is only required in an existing building that contains a new part, that is, where new work requiring a building approval is undertaken in an existing building. The requirement for a path of travel is limited in some circumstances by the lessee concession in section 4.3, which is described below.
87. Taken together, these provisions mean that in existing buildings of most classes, any renovations or extensions requiring a building approval will be required to comply with the Premises Standards. This will trigger a requirement for an accessible path of travel between the new work and the principal pedestrian entrance to the building (subject to the lessee concession). The Premises Standards will *not* apply to any existing buildings until an application for approval of building work is submitted, except where the work is carried out for or on behalf of the Crown.
88. As the ‘new part’ and the ‘affected part’ are the only portions of an existing building within the scope of the Premises Standards, there is no requirement imposed by the Standards to upgrade or modify any other portions of the building in order to comply other than in existing public transport buildings (see also paragraph 18).
89. **Additional work on new Class 2 buildings:** The Premises Standards do not impose access requirements on Class 2 buildings constructed prior to the commencement of the Premises Standards. Building approval applications for renovation or extension of Class 2 buildings constructed prior to the commencement of the Premises Standards will not trigger the application of access requirements. However, where additional work is proposed on a Class 2 building which was approved for construction on or *after* 1 May 2011, the effect of subparagraph 2.1(1)(b)(ii) is that the new parts and affected parts of that Class 2 building is within the scope of the Premises Standards.
90. **Public transport buildings:** An ‘existing public transport building’ is defined by subsection 2.1(6) to mean a building (other than a new building) that is the passenger use area of a Class 9b or Class 10 building used for public transport (being the whole or part of a building). From 1 May 2011, all new public transport buildings are required to comply fully with the Access Code. Existing public transport buildings will be required to comply with the Access Code in accordance with the timetable set out in the table at section 3.1 of the Premises Standards.

## Section 2.2      Persons to whom Standards apply

91. Section 2.2 sets out the persons who must comply with the requirements of the Premises Standards.

92. Subsection 2.2(1) provides that building certifiers, building developers and building managers are required to comply with the Access Code to the extent that they are responsible for, or have control over, matters in the Access Code. Persons who do not have responsibility for or control over aspects of a building governed by the Access Code do not have responsibilities imposed on them by the Premises Standards.
93. **Building certifiers:** Subsection 2.2(2) defines ‘building certifier’ for the purposes of the Premises Standards as a person who has responsibility for, or control over, the building approval process for a building. The classes of persons or organisations who may have control over the building approval process differs between States and Territories. The examples of approval authorities provided in the subsection are not intended to be exhaustive. They include private certifiers, building surveyors and local councils.
94. **Building developers:** Subsection 2.2(3) defines ‘building developer’ for the purposes of the Premises Standards as a person with responsibility for, or control over, its design or construction. The person or persons who have responsibility or control over the design or construction of a building is a question of fact to be determined on a case-by-case basis. A number of examples are provided of persons who may fall within this definition. However, it is possible that in some cases other persons, such as access consultants, may have responsibilities imposed on them by subsection 2.2(3). The examples in this provision include: property developers, property owners, building designers, builders, project managers and property lessees.
95. **Building managers:** Subsection 2.2(4) defines ‘building manager’ as a person who has responsibility for, or control over, any of the matters in the Access Code that apply to a building other than matters relating to the design or construction of the building. The non-exhaustive list of examples of persons who could be building managers includes: property owners, property lessees, property managers and operational staff.

### Section 2.3      Actions to which Standards apply

96. Section 2.3 provides that the Premises Standards apply to actions concerning the provision of access to relevant buildings, and facilities and services within them, to the extent that the provision of access relates to an area to which it is unlawful to discriminate against another person on the ground of a disability of the other person, under Part 2 of the DDA, and is a matter covered by the Access Code.
97. Part 2 of the DDA makes discrimination unlawful in the following areas :
- Employment (section 15)
  - Education (section 22)
  - Access to premises that are publicly accessible (section 23)
  - Provision of goods, services and facilities (section 24)
  - Provision of accommodation (section 25)
  - Land (section 26)
  - Clubs (section 27)
  - Sport (section 28), and
  - Administration of Commonwealth laws and programs (section 29).

98. Discrimination is defined in sections 5 and 6 of the DDA, and includes circumstances where a person fails to make reasonable adjustments which result in a person with a disability being treated less favourably than a person without a disability (subsection 5(2)).
99. In most cases, the Premises Standards will apply to the actions of a building developer, certifier or manager because of the requirement in section 23 that access be provided to premises that are accessible by the public. Where premises would not be required to be accessible by section 23 (for example, because they are not open to the public), the Premises Standards will nevertheless apply if access would be required by another ground in Part 2. For example, provision of access in compliance with the Premises Standards is required throughout Commonwealth Government buildings in order to avoid discrimination in the administration of Commonwealth laws and programs, and against employees of the Commonwealth.
100. The practical effect of this provision is that the Premises Standards will apply to actions in relation to almost all buildings of the classes specified in section 2.1. However, if the DDA would not have required access to be provided to premises, for example to the internal parts of a privately owned Class 2 sole-occupancy unit, the Premises Standards will not apply.

#### Section 2.4 Construction of Standards

101. Subsection 2.4 of the Premises Standards provides that the Standards must be construed within the power conferred by the DDA. As indicated by the note to this section, provisions of the Premises Standards which cannot be construed as entirely within the power conferred by the Act have effect to the extent that the provisions are within the power.
102. For example, subsection 31(1) grants to the Minister a power to formulate standards ‘in relation to any area in which it is unlawful under [Part 2 of the DDA] for a person to discriminate against another person on the ground of a disability of the other person’. Any elements of the Premises Standards which purport to impose requirements in areas where it would *not* be unlawful under Part 2 of the DDA to discriminate should be read down accordingly.

### *Part 3 — Requirements of Standards*

#### Section 3.1 Building certifiers, developers and managers to ensure buildings comply with the Access Code

103. **General requirement:** Section 3.1 of the Premises Standards requires building certifiers, building developers, and building managers (as defined in section 2.2) of buildings within the scope of these Standards (as set out in section 2.1) to ensure that the building complies with the Access Code.
104. **Existing public transport buildings:** Subsections 3.1(2) and (3) of the Premises Standards provide a separate scheme for the application of the Access Code to existing public transport buildings. This will apply to building certifiers, developers and managers of an existing public transport building (as defined in subsection 2.1(6)) if they are an operator or provider within the meaning of the Transport Standards, and the existing public transport building, provided by them for passenger use as part of a public transport service, is still in use at a target date set out subsection 3.1(3). Subsection 3.1(3) provides a timetable for compliance with the requirements of the Access Code for existing public transport buildings.

105. The need for special provision for existing public transport buildings arises from the fact that such buildings have, to date, had additional requirements imposed on them as part of the Transport Standards. In some cases, these conflict with the previous requirements of the BCA, and the general requirements of the Premises Standards. To ensure a regime for public transport buildings that is consistent with the requirements applicable generally to transport infrastructure, these additional provisions are retained (see Part H2 of the Access Code).

### Section 3.2 Compliance with Access Code

106. The principal obligations in the Access Code are set out in Performance Requirements DP1, DP4, DP6, DP8, DP9, EP3.4, and FP2.1. Section 3.2 sets out the circumstances in which a building certifier or developer is taken to have ensured that the building complies with these requirements. Two methods are provided: compliance with Deemed-to-Satisfy Provisions of the Access Code, and Alternative Solutions.
107. **Compliance with Deemed-to-Satisfy Provisions:** The ordinary means by which building certifiers or developers will demonstrate compliance with the requirements of the Access Code is by complying with the Deemed-to-Satisfy Provisions. Subsection 3.2(1) provides that if a certifier or developer complies with the Deemed-to-Satisfy Provisions in clauses D3.1 to D3.12, E3.6, F2.2, F2.4, and for public transport buildings, Part H2, then they will be taken to have ensured compliance with the Access Code.
108. **Alternative solutions:** As the BCA is a performance-based code, building certifiers and developers may comply with the Code by means other than the Deemed-to-Satisfy Provisions provided that they satisfy the Performance Requirements. Subsection 3.2(2) provides that alternative means to those set out in subsection (1) may be used to satisfy applicable Performance Requirements.
109. In addition, subsection 3.2(3) provides that, without limiting the Alternative Solutions which may be adopted under subsection (2), a building complies with the Access Code if the building as a whole provides a level of access that is not less than the level that the building would have provided if it had complied with the Deemed-to-Satisfy Provisions in subsection (1).
110. This approach, which is adopted generally within the BCA, is intended to enable flexible mechanisms associated with the building itself, to meet the access requirements.

### *Part 4 — Exceptions and concessions*

#### Section 4.1 Unjustifiable hardship

111. The primary avenue for approval of access solutions other than those specified in the Deemed-to-Satisfy Provisions would be the use of Alternative Solutions, which are recognised in subsection 3.2(2).
112. There may, in exceptional circumstances, be some practical constraints on the extent to which a building standard can account for all possible situations. In some circumstances it may be unreasonable to require full compliance, particularly when undertaking new work on existing buildings.

113. Sections 21B and 29A of the DDA provide an exception to the DDA's requirements where avoiding discrimination would impose an unjustifiable hardship on the discriminator. Section 4.1 of the Premises Standards provides for such an exception in the Premises Standards itself and provides additional guidance as to how unjustifiable hardship should be determined in the context of access to premises.
114. There is no mechanism in the DDA or the Premises Standards for anyone to give prior approval for non-compliance with any part of the Premises Standards on the ground of unjustifiable hardship. Unjustifiable hardship cannot be determined without reference to the particular facts of a case. The presence or absence of unjustifiable hardship can therefore only be conclusively determined by a Court.
115. A finding of unjustifiable hardship may not relieve the building certifier, developer or manager of all responsibilities under the Premises Standards. Compliance with the Premises Standards is still required to the maximum extent not involving unjustifiable hardship (subsection 4.1(2)). The Performance Requirements of the Access Code must be complied with to the maximum extent possible.
116. For example, while enlarging a lift shaft may not be possible, it may be possible to improve access by upgrading the lift controls and providing announcements in lifts. While it may be too difficult to provide access to a small heritage listed building through the front door, it may be possible to design easier access for all visitors through a rear or side door.
117. Subsection 4.1(3) of the Premises Standards provides that in determining whether unjustifiable hardship applies to a particular case, all the relevant circumstances of the particular case are to be taken into account, and identifies 16 factors which are relevant to this determination. The list of factors provided in paragraphs 4.1(3)(a)–(p) is not exhaustive; no individual factor is intended to be conclusive of the presence of unjustifiable hardship in a particular case.
118. The factors include:
- Increases in costs or loss of revenue likely to result from compliance (paragraph (a))
  - Decreases in costs and increases in revenue likely to result from compliance (paragraph (b))
  - The extent to which construction has been or will be financed by government funds (paragraph (c))
  - The extent to which the building is used for public purposes and has a community function (paragraph (d))
  - The financial position of the person required to comply and the effect that compliance is likely to have on the financial viability of that person (paragraphs (e) and (f))
  - Any exceptional technical factors (paragraph (g))
  - Resources available to the person required to comply (paragraph (h))
  - Whether the cost of alterations to make a premises accessible is disproportionate to the value of the building, taking into account the improved value that would result from the alterations (paragraph (i))

- Benefits which would accrue from compliance to people with a disability and other building users, and detriments which would result from non-compliance (paragraph (j))
  - The detriment likely to be suffered as a result of compliance by the building certifier, developer or manager, or by people with a disability and other building users (paragraph (k))
  - The effect of compliance on the heritage significance of the building (paragraph (l))
  - Evidence of efforts made in good faith by a person to comply with the Standards, including consulting access consultants and building certifiers (paragraph (m))
  - The terms of any action plan that a person may have given to the AHRC, and any evidence about its implementation (paragraph (n))
  - The nature and results of any consultation about means of achieving compliance with the requirement (paragraph (o)), and
  - Any decisions of a State or Territory body established to make recommendations to building authorities about access matters (paragraph (p)).
119. **Heritage significance:** Paragraph 4.1(3)(l) of the Premises Standards provides that one factor which may be relevant to a determination of unjustifiable hardship is evidence that compliance would detrimentally affect heritage features of the building that are essential to the heritage significance of the building. The intention of this provision is to allow claims of unjustifiable hardship where compliance would substantially detract from the heritage significance of the building by modifying or destroying features of essential heritage significance to the building. However, the fact that compliance will detrimentally affect elements of the building which are ‘merely incidental’ to the heritage significance of the building is not intended to give rise to a claim of unjustifiable hardship
120. Assessment of unjustifiable hardship in relation to heritage buildings will in part turn on the reasons for the heritage significance of the building. If the building’s heritage significance relates primarily to the architectural features of the building (for example, because of a particularly unusual style, or because it is an exemplar of a particular historical style), it is more likely that modification of building elements that are crucial to that architectural style will affect the heritage significance of the building as a whole. However, if the heritage significance of the building relates to the historical circumstances surrounding the building (such as an important historical event which occurred at the building, or the residence of a significant historical figure in the building), it is less likely that modification of building features to provide access will detrimentally affect the heritage significance of the building.
121. Acceptance of a claim of unjustifiable hardship because of the heritage features of a building may not excuse provision of no access features at all. Access will still be required to the maximum extent possible without giving rise to unjustifiable hardship.
122. **Action plans:** Part 3 of the DDA provides that a person who is prohibited from discriminating under Part 2 of the Act, may prepare and implement an action plan (DDA sections 59 and 60). Action plans are required by section 61 of the DDA to address a number of matters, including:
- The devising of policies and programs to achieve the objects of the DDA
  - Communication of these policies and programs

- Review of practices to allow the identification of discriminatory practices
  - Setting of goals and targets against which the success of the plan may be assessed
  - Other means for evaluating policies and programs set out in the action plan, and
  - The appointment of persons to implement the provisions of the action plan.
123. They may also contain other provisions that are not inconsistent with the objects of the DDA (DDA, section 62). An action plan complying with these requirements may be given to the AHRC. Action plans which have been provided to the AHRC are relevant to the determination of unjustifiable hardship (see DDA section 11).
124. Paragraph 4.1(3)(n) ensures that action plans will also be relevant to determination of unjustifiable hardship for the purposes of the Premises Standards.
125. **Consultation:** Paragraph 4.1(3)(o) provides that the outcomes of consultation between building certifiers, developers and managers and people with a disability are relevant to a determination of unjustifiable hardship. It is intended that the consultation should be directed at identification of practical means of achieving full compliance with the Premises Standards, or, where that is not practicable, other means of achieving the maximum possible access for people with a disability.
126. **Access Panels:** Paragraph 4.1(3)(p) of the Premises Standards provides that any decision of a State or Territory body established to make recommendations to building authorities about building access matters is a relevant consideration in determining a claim of unjustifiable hardship. This paragraph is intended to provide a mechanism for the recognition of decisions of specialist Access Panels established in States and Territories to advise building authorities on whether to accept claims of unjustifiable hardship from building developers and on whether proposed Alternative Solutions provide adequate access. State and Territory administrations are not required to establish such panels. However, the Commonwealth has encouraged the States and Territories to do so and issued guidelines on their composition and operation to facilitate uniform implementation. Where Access Panels are established, it is anticipated that they will provide expert advice on solutions in cases where the Deemed-to-Satisfy solutions are impractical or would impose unjustifiable hardship. This provision recognises that Access Panels would play an important and meaningful role in guiding a court about the existence of unjustifiable hardship in the event of a complaint.
127. The factors make it clear that the cost to the developer and technical difficulty of providing access are not the sole determining factors in a case of unjustifiable hardship. Unjustifiable hardship must be assessed in the wider context of benefits and detriments to all parties concerned, including any benefits that the developer might accrue from provision of improved access (such as increases in sales revenue from people with a disability), the detriment that may be suffered by people with a disability if access is not provided, benefits to the community as a whole from improved access, and whether public funding is being used for the building project. This approach is consistent with case law under the DDA which demonstrates that it is not enough for the purposes of the DDA to demonstrate hardship — hardship must be *unjustifiable* in order to fall within the section 21B exception (*Access For All Alliance (Hervey Bay) v Hervey Bay City Council* [2004] FMCA 915).
128. **Additional factors which must be considered where a substantial issue of unjustifiable hardship is raised:** If, after assessment of the factors in paragraphs 4.1(3)(a) to (p), a

substantial issue of unjustifiable hardship has been raised, subsection 4.1(4) provides additional factors which must be considered in determining whether unjustifiable hardship exists. These are:

- the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with these Standards, and
- any measures undertaken, or to be undertaken by, or on behalf of, or in association with, a person or organisation to ensure substantially equal access.

129. This provision emphasises that the purpose of the Premises Standards is to provide the best possible level of access to people with a disability without imposing unjustifiable hardship. The factors are relevant both to the determination of whether unjustifiable hardship exists, and in determining what compliance would nevertheless be required by subsection 4.1(2) in the event of such a finding. Measures that would, for example, provide some level of accessibility but which do not require structural adjustment of premises may be considered and utilised under this provision.
130. The provision emphasises that consideration of the greatest possible provision of access is an integral part of assessing whether the strict requirements of the Premises Standards would impose unjustifiable hardship.
131. **Interpretation of unjustifiable hardship:** Subsection 4.1(5) provides that the unjustifiable hardship provisions in section 4.1 must be interpreted and applied in a manner which is consistent with the scope and objects of the DDA, and in particular the object of removing discrimination as far as possible. Interpretation must also take account of the rights and interests of all relevant parties.

#### Section 4.2 Acts done under statutory authority etc

132. Section 4.2 preserves in relation to the Premises Standards the exemption from the operation of the DDA in section 47 of the DDA for acts done under statutory authority.

#### Section 4.3 Lessees

133. Where an existing building is upgraded or extended, the Premises Standards will impose access requirements on the ‘affected part’ of the building — that is, they will require an accessible path of travel to be provided between the principal pedestrian entrance and the new part of the building (see section 2.1).
134. Section 4.3 of the Premises Standards provides a limited concession from this requirement. Where an application for approval of building work is made by a lessee for work on the area of the building that they lease, there is no requirement on the lessee or any other person to provide an accessible path of travel to the part of the new work which the person leases. If the building application extends beyond the area of the building leased by the applicant, the concession will not apply to the path of travel to those areas.
135. For example, if a lessee applies for an approval for a renovation of the sixth level of an existing multi-storey building, and this approval triggers the application of the Premises Standards, then the lessee would only need to upgrade the area subject to the building approval. That is, the lessee would not need to provide an accessible path of travel from the entrance to the building to the sixth floor.

136. However, if the application for the renovation of the sixth floor included renovation of the toilets within the leased area, the lessee would be required to upgrade those toilets to meet the Premises Standards requirements (subject to any other concession which might apply).
137. This concession recognises that the lessee generally has no control over those parts of a building which they do not lease, such as the common areas of a building. The concession will not apply if the building with the new part is leased to only one person.
138. Within the leased area all of the requirements of the Premises Standards will apply to the new part of the building.

#### Section 4.4 Lift concession

139. Section 4.4 provides a concession from the requirements of Table E3.6(b) of the Access Code in relation to lift dimensions for existing lifts. Where an existing lift travels more than 12 metres and has a lift floor of not less than 1100 mm by 1400 mm (that is, if it complies with access requirements imposed by the BCA prior to the commencement of the Premises Standards) it does not have to meet the usual Premises Standards requirements. The Premises Standards would otherwise require the floor space of a lift which travels more than 12 metres to be a minimum of 1400 mm by 1600 mm.
140. This concession recognises that the earlier access requirements for lifts under the BCA only required floor dimensions of 1100 mm by 1400 mm and that rebuilding a lift shaft to house the larger lift floor dimensions could impose an unreasonable cost.
141. Other access features on a lift undergoing upgrade required by Table E3.6(b), such as requirements accessible lift controls, are not affected by this concession and must be provided.

#### Section 4.5 Toilet concession

142. Section 4.5 provides a concession for existing accessible sanitary compartments. The concession provides that the requirements of paragraphs F2.4(c) and (e) of the Access Code to comply with AS 1428.1—2009, *Design for access and mobility, Part 1: General requirements for access—New building work* do not apply to certain existing sanitary compartments. The concession is available where an existing sanitary compartment complies with the requirements of AS 1428.1—2001 (that is, if it complies with the requirements imposed by the Building Code prior to the commencement of the Premises Standards), and is in a new part, or an affected part, of a building.
143. This concession recognises that the significant cost of upgrading the circulation space in existing sanitary facilities would not be justified where those facilities meet previous accessibility requirements.

### *Part 5 — Commission exemptions*

#### Section 5.1 Commission may grant exemptions

144. Section 5.1 of the Premises Standards provides a mechanism for the AHRC to grant temporary exemptions from some requirements of the Access Code. The provisions are modelled on the powers of the AHRC to grant exemptions from the requirements of

provisions of Division 1 and 2 of the DDA provided by sections 55–58 of the DDA. They apply only in relation to the public access areas of public transport buildings — substantially replicating and mirroring the provisions in relation to transport infrastructure in the Transport Standards.

145. **Who may apply for an exemption:** Subsection 5.1(1) allows a person to apply for an exemption in relation to the Premises Standards. The applicant can apply either on their own behalf, on behalf of themselves and another person or persons, or only on behalf of another person or persons. Paragraph 5.1(1)(b) allows multiple parties to apply jointly.
146. **Permissible scope of exemptions:** Subsection 5.1(2) provides that after receiving an application for an exemption, the AHRC may grant an exemption from compliance with some or all of Part H2 of the Access Code (that is, from the additional access requirements for public transport buildings). Exemptions may not be granted from the general access provisions of the other Parts of the Premises Standards. Public transport buildings enjoying an exemption under section 5.1 are still required to comply with the general access provisions.
147. **Further exemptions:** Subsection 5.1(3) provides that the AHRC may grant a further exemption from compliance on the same terms as the requirements of a previous exemption granted under subsection 5.1(2), if a person to whom the previous exemption related makes an application before the expiry of the previous exemption.
148. **Consultation requirements:** Paragraph 5.1(4)(a) provides that the AHRC *must* consult with the Accessible Public Transport Jurisdictional Committee before granting an exemption under subsection 5.1(2) or (3). Paragraph 5.1(4)(b) allows (but does not require) the AHRC to consult with any other body or person that it considers appropriate to consult.
149. **Period of exemptions:** Subsection 5.1(5) provides that exemptions granted under subsection 5.1(2) or (3) must not be granted for a period of more than five years.

## Section 5.2      Content of exemptions

150. Section 5.2 provides for the content and scope of an exemption granted by the AHRC under section 5.2(1). This includes a requirement for the decision to be in writing; to state if the exemption is for all or some of the requirements of Part H2 of the Access Code, and if it applies to only some of the provisions of Part H2, specify which provisions; and, the period of the exemption. Where relevant, the exemption must also state any terms or conditions on which it is granted, the circumstances or activities to which the exemption is limited, and if it is a further exemption.

## Section 5.3      Effect of exemption

151. Section 5.3 provides that in relation to the person granted an exemption, or those employed by them or under their direction and control, there is no contravention of the Premises Standards for their failure to comply with the Premises Standards, if their failure to comply is in accordance with an exemption granted under section 5.1. Contravention of the Premises Standards would otherwise be unlawful under section 32 of the DDA.

#### Section 5.4      Review of exemptions by Administrative Appeals Tribunal

152. Section 5.4 provides that a person may apply to the Administrative Appeals Tribunal (AAT) if they are dissatisfied with the AHRC's decision under section 5.1. The *Administrative Appeals Tribunal Act 1975* contains provisions relating to AAT's jurisdiction.

#### Section 5.5      Publication of notice of decision

153. Section 5.5 obliges the AHRC to publish the reasons for its decisions made under section 5.1. It stipulates that decision records should be published within one month in the *Gazette*. The provision requires that the AHRC state in the publication its findings on material questions of fact; the evidence on which those findings were based; and set out its reasons. This clause also requires the AHRC to produce a statement outlining appeal rights to the AAT.

154. However, subsection 5.5(2) makes it clear that a failure to comply with any of these requirements does not affect the validity of the decision.

### *Part 6 — Review*

#### Section 6.1      Timetable for review

155. Subsections 6.1(1) and (2) provide a timetable for review of the Premises Standards. The section provides that the Minister for Innovation, Industry, Science and Research, in consultation with the Attorney-General must commence a review of the effectiveness of the Premises Standards within four years of their commencement. The review must be completed within five years of the commencement of the Premises Standards. Subsequent reviews must be conducted every five years after the conclusion of the previous review.

156. Subsection 6.1(3) provides that the review must include the identification of any necessary amendments to the Premises Standards.

157. It is intended that any review conducted under section 6.1 would cover a wide range of issues relating to the implementation of the Premises Standards, including matters such as:

- The scope of the Premises Standards including the inclusion of any classes or subsets of classes of buildings
- the operation of the small building exemption provided by clause D3.3(f)
- the effect of the lessee concession provided by section 4.3 on upgrades of common areas in buildings containing multiple lessees
- the application of the exemptions in Clause D3.4 and their effect on building access
- the adequacy of dimensions required by the Premises Standards
- the necessity of practices such as the locking off of lifts
- the adequacy of provisions for accessible toilets
- the application of the Premises Standards to swimming pools
- the adequacy of provisions for accessible car parking
- whether further provisions for way finding could be incorporated in the Premises Standards

- whether any additional provisions in relation to emergency egress could be included in the Premises Standards, and
- the application of the Premises Standards to public transport buildings.

### *Schedule 1 — Access Code for Buildings*

158. Schedule 1 of the Premises Standards sets out the Access Code for Buildings, which provides the Performance Requirements of the Premises Standards and the Deemed-to-Satisfy Provisions. The Access Code is prepared by the Office of the Australian Building Codes Board in consultation with the Attorney-General’s Department and reflects requirements proposed to be set out in the BCA.

#### *Part A1 — Interpretation*

##### Clause A1.1 Interpretation

159. Clause A1.1 defines the meaning of key words and expressions for the purposes of the Access Code. Words and expressions defined in A1.1 are shown in italics when used in the Access Code, to indicate that the defined term applies. For some words and expressions that are used in the Access Code and the BCA, reference is made to the definitions in the 2009 edition of the BCA.

##### Clause A1.2 Language

160. This clause provides that when the Access Code refers to a building, that reference is to either the whole or any part of the building, as the case may be.

#### *Part A2 — Adoption of Standards etc*

##### Clause A2.1 Adoption of Standards and other references

161. Clause A2.1 specifies the elements of a document that are not included when the document is referenced in the Access Code. Contractual matters or provisions defining responsibilities of various parties including manufacturers, suppliers, purchasers, tradespersons, engineers and architects, are excluded amongst others. This clause also excludes certain other matters in Australian Standards or other documents that are not appropriate for adoption in the Access Code if referenced in a Deemed-to-Satisfy Provision, namely requirements relating to required approvals, and rules relating to discretions and arrangements between manufacturers and purchasers.

##### Clause A2.2 Referenced Standards etc

162. Clause A2.2 specifies that the editions or versions of referenced documents adopted by the Access Code are those identified in Clause A3.1. Clause A3.1 lists the specific edition of a document adopted by the Access Code, including any amendments considered appropriate. Other editions of, or amendments to, the referenced document are not adopted and have no standing in respect of compliance with the Deemed-to-Satisfy Provisions. Reference to further documents are as they exist at the time of publication of the document listed in Clause A3.1.

163. Without this provision, confusion may exist as to which version of a referenced document should be used for compliance with the Deemed-to-Satisfy Provisions of the Access Code.

#### Clause A2.3 Differences between referenced documents and the Access Code

164. Clause A2.3 clarifies that the provisions of the Access Code take precedence over any referenced document. This provision is necessary to resolve any differences that may exist between the Access Code and the documents it references.

#### Clause A2.4 Fire safety

165. This clause refers the reader to the BCA fire safety provisions relating to the construction of buildings in respect of egress for people with a disability. Compliance with the BCA fire safety provisions thus constitutes compliance with the Premises Standards requirement.

### *Part A3 — Access Code — documents adopted by reference*

#### Clause A3.1 Documents adopted by reference

166. This clause lists the specific edition of a document adopted by the Access Code, including any amendments considered appropriate. Other editions of, or amendments to, the referenced document are not adopted and have no standing in respect of compliance with the Deemed-to-Satisfy Provisions.
167. Clause A3.1 lists multiple editions of some referenced documents. For example, both the 2001 and 2009 editions of AS 1428.1 are listed. This occurs as a result of transferring the existing premises provisions contained in the Transport Standards to the Premises Standards. The 2001 edition of AS 1428.1 is used for public transport buildings when referred to in Part H2 of the Access Code and the 2009 edition is used when referred to in other provisions of the Access Code. The 2001 version also applies in regard to the toilet concession dealt with in section 4.5. Table 1 of the Access Code identifies which clauses apply the different editions of referenced documents.

### *Part A4 — Building classifications*

#### Clause A4.1 Classifications

168. Clause A4.1 provides the definitions of each class of building in exactly the same form as used for the rest of the BCA. This clause sets out the definition of each of the ten classes of buildings.
169. The use of a building determines its classification. Use is determined on the basis of its design, construction or adaptation.
170. The Access Code contains different requirements depending on the classification of a building. The classification of a building, therefore, assists owners/operators to identify what responsibilities they have for providing access in regard to the class of building being constructed or modified.
171. It is possible for a single building to have parts with different classifications, such as a theatre (Class 9b) with a number of retail shops (Class 6) on the road frontage. A part of a building

can also have more than one classification, such as a hotel (Class 6) used as a nightclub (Class 9b). Where there is any doubt about what access requirements a particular part of a building should comply with, the more stringent requirement applies.

#### *Part D — Access and egress*

172. Part D of the Access Code sets out the general Performance Requirements and Deemed-to-Satisfy Provisions relating to the provision of access to buildings, safe egress from buildings, carparking and inbuilt communication systems.
173. The Premises Standards only require compliance with Performance Requirements for the classes of buildings, and parts of buildings, which are within the scope of the Premises Standards as specified in section 2.1 (see paragraphs 77–90 above). Examples of buildings which are not within the scope of the Premises Standards include residences (Class 1a) and residences attached to a commercial building (Class 4), bed and breakfast type buildings (Class 1b) other than ‘specified Class 1b buildings’, the internal parts of sole-occupancy units in apartment blocks (Class 2), and non-habitable buildings (Class 10) associated with residences (Class 1a) or residences attached to a commercial building (Class 4).

#### Performance Requirement DP1

174. This Performance Requirement establishes the performance to be met in providing access to and within a building. Compliance with DP1 is achieved by complying with the clauses identified in clause D3.0.

#### Performance Requirement DP4

175. This Performance Requirement establishes the performance to be met in providing egress from a building. Compliance with DP4 is achieved by complying with the clauses identified in clause D3.0.

#### Performance Requirement DP6

176. This Performance Requirement establishes the performance to be met in providing access to exits within a building. Compliance with DP6 is achieved by complying with the clauses identified in clause D3.0.
177. The Performance Requirement does not apply to bed and breakfast type buildings (Class 1b) or non-habitable buildings (Class 10), or to the internal parts of a sole-occupancy unit in an apartment block (Class 3). It should also be noted that the Premises Standards do not apply to sole-occupancy units in a Class 2 building (see paragraph 2.1(2)(a) of the Premises Standards).

#### Performance Requirement DP8

178. This Performance Requirement establishes the performance to be met in providing carparking spaces for use by people with a disability. Compliance with DP8 is achieved by complying with the clauses identified in clause D3.0.
179. The Performance Requirement does not apply to a building where a parking service is provided, and direct access to carparking spaces by the general public or occupants is not available.

## Performance Requirement DP9

180. This Performance Requirement establishes the performance to be met in providing communication systems suitable for occupants who are deaf or hearing impaired. Compliance with DP9 is achieved by complying with the clauses identified in clause D3.0.
181. The Performance Requirement does not apply to an inbuilt communication system that is only used for emergency warning purposes.

### *Part D3 — Access for people with a disability*

#### Clause D3.0 Deemed-to-Satisfy Provisions

182. Clause D3.0 links the Performance Requirements and the Deemed-to-Satisfy Provisions. It specifies the Performance Requirements which are satisfied by the Deemed-to-Satisfy Provisions (ie Clauses D3.1–D3.12, and Part H2 in relation to public transport buildings).

#### Clause D3.1 General building access requirements

183. In general terms the object of the Premises Standards is to ensure that relevant parts of a building and associated buildings are connected by accessways suitable for use by people with a disability in a dignified and equitable manner (see section 1.3).
184. Section 1.3 of the Premises Standards also provides that the access provided should be cost effective and reasonably achievable. Limits to the extent of access required depend on the classification of the building. This clause sets out these requirements in Table D3.1 and stipulates that the requirements of the table must be complied with unless exempted by Clause 3.4. Table D3.1 provides most of the detail of what parts of buildings need to be accessible depending on their classification. In addition, Clause D3.4 provides exemptions to the requirement for access.

#### Table D3.1 Requirements for access for people with a disability

185. **Class 1b buildings:** While the Premises Standards do not apply to Class 1a buildings, (typically a detached house, town house or terrace house), they do apply to certain specified Class 1b buildings used for short-term accommodation such as cabins in caravan parks, tourist parks, farm stay, holiday resorts and similar tourist accommodation. This accommodation itself is typically rented out on a commercial basis for short periods and generally does not require the signing of a lease agreement. Short-term accommodation can also be provided in a boarding house, guest-house, hostel or the like. This type of accommodation can often be provided as part of a private dwelling, as with bed and breakfast accommodation.
186. Where four or more dwellings used for short-term holiday accommodation on the same allotment are constructed or upgraded, a ratio of accessible dwellings is required. Where there is a newly constructed single Class 1b building, the Premises Standards require that access be provided to and within at least one bedroom, at least one of each type of room or space for use in common by residents, and to and within all rooms or spaces for use in common by floors served by a lift or ramp. Where the single Class 1b building is an existing building, access is only required when there are four or more bedrooms made available for short-term accommodation.

187. **Class 2 buildings:** A Class 2 building is typically a block of residential flats or apartments. While the Premises Standards do not apply to the internal parts of sole occupancy units (SOUs), they do require that any common areas available for use by all residents be accessible in buildings where one or more SOUs are made available for short-term rent. Those areas that could be covered include the common areas of Class 2 buildings where one or more SOUs are rented out for short-term use as holiday units, serviced apartments or time share facilities. The Premises Standards require that the common areas on one floor containing SOUs and at least one of each type of common area such as a games room or gymnasium be accessible. Where a lift or accessible ramp serves other levels, common areas on the levels served are to be accessible. There is no requirement to make private areas provided for the exclusive use of a limited number of residents accessible. For example, a roof top tennis court or spa that is only available to the penthouse suite would not be required to be accessible.
188. **Class 3 buildings:** A Class 3 building is typically a hotel, motel, or a larger boarding house or hostel. The Premises Standards require that the common areas on one floor containing SOUs be accessible. Where a lift or accessible ramp serves other levels, common areas on the levels served must also be accessible. The Premises Standards also require access to be provided to at least one of each type of room or space used in common by the residents, such as TV lounges and dining rooms. For example, a two storey Class 3 building need not have the upper storey accessible so long as there is no unique room or space available to all residents on the upper storey and that upper storey is not served by a lift or accessible ramp. Where more than 2 accessible SOUs are required in a Class 3 building, they are to be representative of the range of rooms available, taking into account amenity and pricing. For example, in a large hotel required to have 10 accessible rooms, the rooms must be distributed to provide a variety of views, proximity to features and price ranges. No more than 2 accessible SOUs can be located adjacent to each other. When there is more than one accessible SOU, alternate left and right-handed sanitary facilities must be provided in the accessible SOUs. This ensures the availability of choice for people who, for example, need to transfer from a wheelchair from one side or the other.
189. **Class 5, 6, 7b, 8 and 9a buildings:** These classifications typically include offices, shops, cafes, libraries, factories, showrooms and service stations. The Premises Standards require that access be provided to all areas and levels within the building normally used by the occupants, with the exception of those areas that are exempted by Clause D3.4. The term “occupants” refers to any person using the building including visitors, employees, employers and owners.
190. **Class 7a carpark:** Access must be provided to any level containing accessible carparking spaces.
191. **Class 9b buildings:** A Class 9b assembly building includes a theatre, concert hall, school, and university or trade workshop. Access must be provided to all areas normally used by the occupants with the exception of those areas that are exempted by Clause D3.4. In an assembly building other than a school or an early childhood centre, access need not be provided to tiers or platforms containing seating areas if no wheelchair seating spaces are provided on those levels. Wheelchair seating spaces must be provided in locations that are representative of the fixed seating locations provided. Wheelchair seating spaces must be located to take into account amenity, proximity to facilities, available sightlines and pricing. It would not be acceptable in any Class 9b building in which fixed seating is provided to have all wheelchair seating spaces provided in a single location. In the case of assembly buildings such as theatres and concert halls, areas used by the occupants include change rooms, offices,

orchestra pits, stages or the like. Some Class 9b buildings may be public transport buildings. The passenger use areas of these buildings may be subject to Part H2 in addition to the general provisions in the Access Code.

192. **Class 9c buildings:** A Class 9c building is an aged care building. The Premises Standards and AS 1428.1 are focused on the needs of people with a disability and not specifically aged persons. For this reason, the access provisions of AS 1428.1 have not been applied to all SOUs in Class 9c buildings but only to those specific rooms that are required to be provided for people with a disability. The extent of access to be provided in Class 9c aged care buildings is similar to that for Class 3 buildings.
193. **Class 10 buildings:** A Class 10a building is typically a toilet block in a park, a structure for the purpose of providing shelter, or change rooms associated with a sports field. These Class 10a buildings are required to be accessible if they are located in an accessible area. Generally, these facilities would be close to a carpark or at the beginning of a walkway. However, in some circumstances, a Class 10a building may be a considerable way into a bush walk where it may not be possible to provide an accessible path of travel. In such cases the Class 10a buildings need not be accessible. A Class 10b structure includes a swimming pool. Where a swimming pool is a public pool such as a health centre pool, Council pool or a common use pool associated with a Class 3 building, and has a perimeter measured at the water's edge of more than 40 metres, the Premises Standards require at least one form of entry for people with a disability be provided. Methods for accessing a swimming pool can be found in Clause D3.10. Some Class 10 buildings may be public transport buildings (for example an open railway platform). The passenger use areas of these buildings may be subject to Part H2 in addition to the general provisions in the Access Code.

#### Clause D3.2 Access to buildings

194. Subclause D3.2(1) specifies that accessways are to be provided to buildings required to be accessible from the main points of a pedestrian entry at the allotment boundary and from any accessible car parking space or accessible associated buildings connected by a pedestrian link.
195. Subclause D3.2(2) provides that the principal pedestrian entrance is to be accessible in all cases and not less than 50% of all pedestrian entrances, including the principal pedestrian entrance, are to be accessible. In buildings with a total floor area more than 500 m<sup>2</sup>, an inaccessible pedestrian entrance cannot be more than 50 m from an accessible pedestrian entrance. This ensures that situations where people have to travel an unreasonable distance between entrances are avoided. An entrance that serves only an area exempted by Clause D3.4 need not be accessible.
196. The principal pedestrian entrance is required to be accessible in all cases because it would be the most commonly used entrance by all building users. This is particularly important in public buildings where the principal entrance is often used as a focus for events or as a ceremonial entrance, particularly in hotels and theatres.
197. Subclauses D3.2(3) and (4) provide that where a single entrance has multiple doorways, not all of them are required to be accessible.
198. Subclause D3.2(5) provides that if an entrance doorway is manually operated, the minimum dimensions required to provide access must be provided by the opening of a single leaf, so that a person with a disability only has to negotiate their entry through one door leaf. If the

doorway is automatically operated, the minimum dimension can be provided using two leaves.

Clause D3.3 Parts of buildings to be accessible

199. Clause D3.3 contains the requirements for accessways within buildings required to be accessible.
200. In most buildings, access is to be provided to all parts of the building normally used by the occupants, with the exception of areas exempted by Clause D3.4. However, it is not intended that access for people who use wheelchairs be provided within non-accessible sanitary facilities or non accessible SOUs.
201. Similarly, although stairs are not allowed on an accessway, they are allowed on other paths of travel. The specified provisions of AS 1428.1 provide technical information on how stairs and ramps are to be made safe and accessible for people with an ambulant disability or vision impairment. It is important to note that different requirements are specified for fire-isolated stairs and other stairs.
202. Paragraph D3.3(b) provides that every passenger lift must comply with Clause E3.6.
203. Subparagraph D3.3(c)(i) provides that accessways must have passing spaces to ensure that a person does not have to retrace their journey for an unreasonable distance to pass another person if the accessway is not sufficiently wide for passing to occur at any point. The minimum dimensions for a passing space are contained in AS 1428.1. Space for passing to occur need only be provided where there is not a direct line of sight to the end of the accessway.
204. Subparagraph D3.3(c)(ii) provides that accessways must have turning spaces to ensure that a person does not have to reverse for an unreasonable distance if they encounter a dead-end or need to retrace their journey. The minimum dimensions for a turning space are contained in AS 1428.1. Turning spaces are required within 2 meters of the end of an accessway if it is not possible to continue to travel along the accessway, and at least every 20 meters along an accessway whether or not there is a direct line of sight.
205. Paragraphs D3.3(d) and (e) provide that a passing space may also serve as a turning space and the circulation space required at an intersection of accessways is sufficient for passing or turning to occur. In this situation a dedicated passing or turning space would not be required at those locations.
206. Paragraph D3.3(f) provides an exemption from provision of accessible lifts and ramps in relation to the upper storeys of certain small buildings. It provides that some storeys or levels, other than the entrance storey, in certain small buildings are not required to be provided with access via a passenger lift or a ramp complying with AS 1428.1. This exemption applies only to Class 5, 6, 7b and 8 buildings with 2 or 3 storeys (that is a building with 1 or 2 storeys in addition to the entrance level). This could be a building with 1 or 2 storeys above the entrance level or below it. The exemption states that if the size of each storey (other than the entrance level) is less than 200 m<sup>2</sup> access via a passenger lift or ramp complying with AS 1428.1 is not required to the other levels. However, if the entrance level to a 3 storey building was 600 m<sup>2</sup>, the first storey was also 600 m<sup>2</sup> and the second storey was only 150 m<sup>2</sup>, access would be required via a passenger lift or ramp complying with AS 1428.1 to all levels.

207. Although paragraph D3.3(f) provides that access via a ramp or lift is not required to certain storeys or levels, all other accessible features required by the Access Code, 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 levels.

#### Clause D3.4 Exemptions

208. Clause D3.4 provides details on buildings or parts of buildings not required to be accessible under the Premises Standards because to do so would be inappropriate due to the nature of the area or the tasks undertaken, or because the area would pose a health and safety risk for people with a disability. These areas could include rigging lofts, waste containment areas, foundry floors, loading docks, fire lookouts, plant and equipment rooms and other similar areas. Assessment of these areas is on a case-by-case basis.

#### Clause D3.5 Accessible carparking

209. Clause D3.5 provides that accessible carparking spaces must be provided in accordance with Table D3.5 in Class 7a buildings which are required to be accessible, and for carparking areas on the same allotment as a building which is required to be accessible. However, accessible car parking spaces are not required in a carpark where carpark users do not park their own vehicles, such as a carpark that has a valet parking service.
210. The specifications for accessible carparking spaces, contained in AS 2890.6, aim to maximise the area available to people with a disability to get into and out of their vehicles. While at least one carparking space complying with AS 2890.6 is required in any carpark covered by the Premises Standards, signage and markings designating an accessible carparking space are only required in a car park with more than a total of 5 spaces.
211. Table D3.5 provides details of the number of accessible carparking spaces required in a carpark, depending on the classification of the building and based on a ratio of the total number of carparking spaces provided.

#### Clause D3.6 Signage

212. Clause D3.6 provides requirements for signage in buildings required to be accessible by the Premises Standards. Signage is only required by the Premises Standards in particular situations.
213. Paragraph D3.6(a) provides that all sanitary facilities, except those within a sole-occupancy unit of a Class 1b or Class 3 building, must have Braille and tactile signage compliant with the specifications in Part D4 and AS 1428.1. In addition all accessible unisex sanitary facilities must have the international symbol of access and information on whether the facility allows for left or right handed transfer (paragraph D3.6(c)). Signage in accordance with AS 1428.1 must identify any ambulant accessible sanitary facility on the door of the facility. It should be noted that the internal parts of a sole-occupancy unit in a Class 2 building do not have requirements imposed on them by the Premises Standards (see paragraph 2.1(2)(a)).
214. Any space with a hearing augmentation system must have Braille and tactile signage as well as the international symbol for deafness at the entry to the space.
215. Paragraph D3.6(b) provides that signage including the international symbol for deafness in accordance with AS 1428.1 must be provided in a room with a hearing augmentation system.

The signage must indicate the type of hearing augmentation, and the area of the room covered. Signage must also indicate if receivers are used in the room, and where they may be obtained if this is the case.

216. Paragraphs D3.6(e) and (f) provide that directional information including the international symbol for access must be provided at any pedestrian entrance that is not accessible or a bank of sanitary facilities that does not include a unisex accessible sanitary facility. The directional information must identify where the nearest accessible entrance or accessible sanitary facility can be found.

#### Clause D3.7 Hearing augmentation

217. Clause D3.7 provides requirements for provision of hearing augmentation systems in accessible buildings. There are a number of hearing augmentation systems available. A decision on which system to use will depend on a number of factors, such as the size and use of the space, external interferences and building materials used.
218. Hearing augmentation coverage is not required to 100% of the floor area of rooms because such coverage could spill over into adjoining rooms and affect the operation of the system installed in those rooms, and because design considerations such as interference and building design mean that it is difficult to ensure complete coverage in any room.
219. Subclause D3.7(1) provides that hearing augmentation systems must be provided where an inbuilt amplification system is provided (other than one for emergency warning) in a room in a Class 9b building, in certain types of rooms such as auditoriums, conference rooms, and other, and at ticket offices, teller's booths, reception areas and similar areas where the public is screened from the service provider.
220. Subclause D3.7(2) sets out requirements for hearing augmentation systems where they are required under subclause (1). Requirements for hearing augmentation can be met by use of either an induction loop, or the use of receivers or similar systems. Where an induction loop is provided, it must cover at least 80% of the floor area of the room or space that is served by the inbuilt amplification system.
221. For hearing augmentation systems using audio receivers, the system must cover at least 95% of the floor area of the room or space served by the inbuilt system, and a minimum number of receivers must be provided in a ratio depending on the number of people who may be accommodated in the room (calculated by reference to Clause D1.13 of the BCA).
222. Subclause D3.7(4) provides that screen or scoreboards associated with a Class 9b building which is capable of displaying public announcements must be capable of supplementing any public address system (other than a public address system used for emergency warning purposes only).

#### Clause D3.8 Tactile indicators

223. Clause D3.8 provides requirements for Tactile Ground Surface Indicators (TGSIs) in buildings required to be accessible.
224. Subclause D3.8(1) provides areas in which TGSIs must be provided for specific hazard identification. This includes at the top and bottom of certain stairs, escalators and ramps except those only leading to areas exempted under Clause D3.4. It excludes the need for

tactile indicators on fire-isolated stairways, fire-isolated ramps, kerb ramps, step ramps and swimming pool ramps. TGSIs must also be provided where there is an overhead obstruction less than 2 m above the floor along the pathway, in the absence of a suitable barrier that would prevent a person from hitting the overhead obstruction.

225. Subclause D3.8(2) provides that TGSIs must comply with the specifications in sections 1 and 2 of AS 1428.4.1.
226. Subclause D3.8(3) permits raised dome buttons on handrails as an alternative to TGSIs in some aged care buildings. The reason for the alternatives in aged care buildings is that ground surface indicators may hinder people using walking frames or the like.
227. TGSIs are not required on enclosed landings between flights of stairs where no other entrance/exit leads onto/off the landing.

#### Clause D3.9 Wheelchair seating spaces in Class 9b assembly buildings

228. Clause D3.9 provides requirements for provision of wheelchair seating spaces in Class 9b assembly buildings. This includes the number of wheelchair seating spaces to be provided in theatres, cinemas and the like, their positioning within the general seating area and how they are to be grouped with other seats or wheelchair spaces. The dimensions of wheelchair seating spaces must comply with AS 1428.1.
229. Table D3.9 provides requirements relating to the number and permissible grouping of wheelchair seating spaces, depending on the number of fixed seats in the room or space. Grouping all wheelchair spaces together potentially limits the seating options for family or friends accompanying a person using a wheelchair, so requirements are included that spaces be provided both singly and in groups. Wheelchair seating spaces may be provided by having removable seats so that, if the wheelchair spaces are not required, seats for other patrons can be installed in those locations. However, building managers would need to ensure that management practices in relation to removable seating do not discriminate.
230. Paragraph D3.9(b) imposes additional requirements on wheelchair seating spaces in cinemas. In cinemas of less than 300 seats, wheelchair seating spaces must not be provided in the front row of seats. In cinemas with more than 300 seats, not less than 75% of required wheelchair seating spaces must be located in rows other than the front row. The location of wheelchair seating spaces must be representative of the range of seating provided.

#### Clause D3.10 Swimming pools

231. Clause D3.10 provides the requirements for making swimming pools accessible to people with a disability. Swimming pools, required by Table D3.1 to be accessible, must provide not less than one means of accessible water entry and exit in accordance with Part D5 of the Access Code. Table D3.1 requires that swimming pools with a perimeter greater than 40 m be accessible if they are associated with a building required to be accessible. Private swimming pools are not required to be accessible.
232. Subclause D3.10(2) provides the means by which accessible water entry and exit may be provided. Subclause D3.10(3) provides that where a swimming pool has a perimeter of more than 70 m, entry must be provided by at least one of a fixed or movable ramp and an accessible wheelchair, a zero depth entry and an aquatic wheelchair, or a platform style

swimming pool lift. Accordingly, only swimming pools of less than 70 m in diameter may provide a sling-style swimming pool lift as the sole means of water entry and exit.

233. Subclause D3.10(4) provides that latching devices on gates and doors which form part of a swimming pool safety barrier need not comply with AS 1428.1.

#### Clause D3.11 Ramps

234. Clause D3.11 provides requirements for ramps on an accessway. Ramps may be used as part of an accessway where there is a change in level. The ramp must comply with the requirements specified in AS 1428.1 including where relevant a maximum gradient, landings, TGSI, handrails and kerbing, as applicable for the type of ramp. Where a ramp is installed on a path of travel used solely for servicing an area exempted under D3.4 the requirements of AS 1428.1 need not be complied with.
235. Paragraph D3.11(a) provides that a ramp cannot be used on an accessway to connect one level to another if the vertical rise is greater than 3.6 metres. This is to ensure that the ramp does not cause undue fatigue for a user to the point where the ramp becomes unusable.
236. Paragraph D3.11(b) provides that a landing for a step ramp must not overlap a landing for another step ramp or ramp.

#### Clause D3.12 Glazing on an accessway

237. Clause D3.12 requires there to be a contrasting strip, chair rail, handrail or transom across all frameless or fully glazed doorways and surrounding glazing capable of being mistaken for an opening. The purpose of this requirement is to assist a person who has a vision impairment to be able to identify the presence of the glazing and avoid injury caused by contact with the glazing. A contrasting strip with a series of dots, unconnected patterns or shapes that do not form a solid contrasting line would not meet the requirements of this Clause.

### *Part D4 — Braille and tactile signs*

#### Clause D4.1 Scope

238. Clause D4.1 provides that the purpose of Part D4 is to set out the requirements for the design and installation of Braille and tactile signage.

#### Clause D4.2 Location of Braille and tactile signs

239. Clause D4.2 provides requirements for the location of Braille and tactile signs. The correct placement of Braille and tactile signs is important in ensuring that they are able to be used. Clause D4.2 describes where required signs are to be located accounting for the range of a person's reach and sight lines. Where possible, signs are not to be placed on doors, to avoid the hazard of a door being opened onto a person attempting to read the sign.

#### Clause D4.3 Braille and tactile sign specification

240. Clause D4.3 provides specifications for Braille and tactile signs to ensure a consistent approach is used and to ensure that the signage is usable.

#### Clause D4.4 Luminance contrast

241. Clause D4.4 provides requirements for luminance contrast for Braille and tactile signs. Luminance contrast is the amount of light reflected from one surface or component, compared to the amount of light reflected from the background or surrounding surfaces. Specifying a minimum luminance contrast between signs and the surface they are mounted on and between a sign and its characters assists people with a vision impairment in finding and accessing information on signs.

#### Clause D4.5 Lighting

242. Clause D4.5 provides that sufficient illumination of signs must be available to ensure that the level of luminance contrast is achieved at times when the sign is required to be read.

#### Clause D4.6 Braille

243. Clause D4.6 provides specifications for Braille used on signs to ensure a consistent approach is used and to ensure the signage is usable.

### *Part D5 Accessible water entry/exit for swimming pools*

#### Clause D5.1 Scope

244. Clause D5.1 provides that the purpose of Part D5 is to specify requirements for the types of accessible water entry and exit methods which may be used for swimming pools. Part D5 must be read in conjunction with Clause D3.10.

#### Clause D5.2 Fixed or moveable ramp

245. Clause D5.2 provides specifications for fixed and moveable ramps, which are allowed as a method of water entry and exit by paragraph D3.10(2)(a), in conjunction an aquatic wheelchair as described in Clause D5.6.

#### Clause D5.3 Zero depth entry

246. Clause D5.3 provides specifications for zero depth entries, which are allowed as a method of water entry and exit by paragraph D3.10(2)(b), in conjunction with an aquatic wheelchair as described in Clause D5.6. The term 'zero depth entry' is used to describe entry into pools that provides a gentle gradient into the water not exceeding 1:14.

#### Clause D5.4 Platform swimming pool lift

247. Clause D5.4 provides specifications for platform swimming pool lifts, which are allowed as a method of water entry and exit by paragraph D3.10(2)(c), in conjunction with an aquatic wheelchair as specified in Clause D5.6. A platform swimming pool lift consists of a platform onto which an aquatic wheelchair is wheeled. The platform is then raised, positioned over the water and then lowered into the water.

#### Clause D5.5 Sling-style swimming pool lift

248. Clause D5.5 provides specifications for sling-style swimming pool lifts, which are allowed as a method for water entry and exit by paragraph D3.10(2)(d), but which may only be the sole

method of water entry for swimming pools with a perimeter of less than 70 m (Subclause D3.10(3)). A sling-style swimming pool lift is used to assist in transferring a person directly from their wheelchair. The person in the wheelchair may position themselves into the sling when detached from the lifting device. This allows the person to transfer by the poolside or in the privacy of a changing area. The sling is then attached to the lifting device and the person is then transferred into the pool without their wheelchair.

#### Clause D5.6 Aquatic wheelchair

249. Clause D5.6 provides specifications for aquatic wheelchairs to ensure their suitability for use for water entry and exit. An aquatic wheelchair is used in conjunction with a fixed or movable ramp, a zero depth entry and a platform swimming pool lift. An aquatic wheelchair is designed to be used and immersed in water and is usually constructed of plastic or a similar material that does not react adversely when exposed to water.

#### Figure D5.7 Clear pool surround space for sling lift

250. Figure D5.7 illustrates the requirements for clear spaces around sling-style swimming pool lifts.

### *Part E3 — Lift installations*

#### Performance Requirement EP3.4

251. Performance Requirement EP3.4 establishes the performance to be met by passenger lifts. Compliance with Performance Requirement EP3.4 is achieved by complying with the clauses identified in Clause E3.0.

#### Clause E3.0 Deemed-to-Satisfy Provisions

252. Clause E3.0 provides a link between Performance Requirement EP3.4 and the Deemed-to-Satisfy Provisions by specifying the Deemed-to-Satisfy Provisions which may be used to satisfy the requirement. This link is useful where an Alternative Solution is proposed.

#### Clause E3.6 Passenger lifts

253. Clause E3.6 and Tables E3.6(a) and (b) contain requirements on and limitations to the use of various types of passenger lifts in certain situations. It also specifies the size of lift cars and platforms, the application of features such as lighting, door opening widths, handrails and audible and visual information to specific lift types.

254. The floor plate sizes of low-rise lifts are limited to those sizes specified in the applicable Australian Standard and generally are 810 mm x 1200 mm or 1100 mm x 1400 mm depending on the type of lift.

255. New lifts that can travel beyond 12m are required to have a larger lift floor plate size of 1400 mm x 1600 mm.

256. There are a number of limitations on the use of stairway platform lifts (AS 1735.7) including that they must not be installed if it is possible to use another type of passenger lift described in E3.6. For the purposes of this provision, establishing that installation of a lift other than a

stairway platform lift would impose unjustifiable hardship, is sufficient to demonstrate that it is *not* possible to install such a lift.

## *Part F2 — Sanitary and other facilities*

### Performance Requirement FP2.1

257. Performance Requirement FP2.1 establishes the performance to be met by sanitary and other facilities, and recognises that the number, type and location of sanitary facilities are dependent on what the building is used for and the number, gender and needs of the occupants. Compliance with Performance Requirement FP2.1 is achieved by complying with the clauses identified in Clause F2.0.

### Clause F2.0 Deemed-to-Satisfy Provisions

258. Clause F2.0 provides a link between Performance Requirement EP2.1 and the Deemed-to-Satisfy Provisions by specifying the Deemed-to-Satisfy Provisions which may be used to satisfy the requirement. This link is useful where an Alternative Solution is proposed.

### Clause F2.2 Calculation of number of occupants and fixtures

259. Clause F2.2 provides that the number of occupants accommodated must be determined by reference to Clause D1.13 of the BCA. The total number of sanitary facilities required to be provided, and hence the number of accessible facilities, is based on the number of occupants of a building.

### Clause F2.4 Accessible sanitary facilities

260. Clause F2.4 refers to Tables F2.4(a) and F2.4(b) to determine the numbers of accessible sanitary facilities, and Australian Standard AS 1428.1 for details of the construction of accessible facilities. Facilities such as washbasins, a shelf or bench top and adequate means of disposing of sanitary towels must be inside the unisex toilet compartment and not outside in a public area. This clause also requires sanitary compartments suitable for use by a person with an ambulant disability to be provided in certain circumstances, in addition to compartments for use by a person using a wheelchair. Where two or more of each type of unisex accessible sanitary facilities are provided in a building, the number of left and right handed mirror image facilities must be provided as evenly as possible. This is required because some people transfer from their wheelchairs from the right hand side and some from the left.

### Table F2.4(a) Accessible unisex sanitary compartments

261. Table F2.4(a) provides minimum requirements for the provision of accessible unisex sanitary compartments, commonly referred to as unisex accessible toilets. Unisex accessible sanitary compartments are required on each storey where sanitary compartments are provided. If the male or female toilets are located separately and not in a single bank then the unisex accessible toilet is only required at one of those banks. However, clear directional information about the location of the closest unisex accessible toilet must be provided. If there are multiple banks containing male and female sanitary compartments on a storey, there must be a unisex accessible sanitary compartment at not less than 50% of those banks.

### Table F2.4(b) Accessible unisex showers

262. Table F2.4(b) provides minimum requirements for the provision of accessible unisex shower facilities in buildings where showers are required to be provided.

### *Part H2 — Public transport buildings*

263. Part H2 specifically relates to buildings associated with public transport services, such as railway stations, bus interchanges, airports and ferry terminals. These requirements were previously located in the Transport Standards and have now been transferred into the Premises Standards. Some versions of Australian Standards referred to in Part H2 may be different to those referred to in the remainder of the Access Code. The correct version of the Australian Standard to be used can be determined by reference to Clause A3.1, Table 1 of the Access Code.

### Clause H2.1 Application of Part

264. Subclause H2.1(1) provides that the Deemed-to-Satisfy Provisions of Part H2 apply to the passenger use areas of Class 9b or Class 10 buildings used for public transport. Class 9b and Class 10 public transport buildings must also satisfy the Deemed-to-Satisfy Provisions of Parts D3, E3 and F2 (see Clauses D3.0, E3.0 and F2.0).

265. Subclause H2.1(2) provides a rule for resolving inconsistencies between these requirements imposed on public transport buildings by providing that the Deemed-to-Satisfy Provisions of Part H2 take precedence where there is a difference.

266. Subclause H2.1(3) provides that, as under the Transport Standards, certain of the requirements in this Part will not apply to 'airports that do not accept regular public transport services' as defined in the Transport Standards.

267. Subclause H2.1(4) provides that subclause A3.3(a)(i) of the BCA does not apply to Part H2.

### Clause H2.2 Accessways

268. Clause H2.2 provides requirements for accessways in public transport buildings, including requirements for:

- accessways which branch into 2 or more parallel tracks – subclause H2.2(2)
- minimum unobstructed width of accessways – subclause H2.2(3)
- potential obstructions of accessways – subclause H2.2(4)
- luminance contrast of obstacles abutting an accessway – subclause H2.2(5)
- manoeuvring areas – subclause H2.2(6)
- passing areas – subclause H2.2(7), and
- ground and floor surfaces – subclause H2.2(8).

269. Access paths and manoeuvring areas may be for other purposes, such as standing areas, but it is expected that passengers will be able to transit them and that they remain available for use by people with disabilities when required.

270. Operators should avoid hazards created by poles, columns, stanchions, bollards and fixtures alongside access paths. For example, operators and providers should avoid the use of short posts to prevent delivery vehicles from driving onto parts of pedestrian areas. Similarly, they should avoid having commercial signs projecting from walls or portable ‘sandwich’ advertising boards.
271. Subclause H2.2(9) provides that the requirements of subparagraph D3.3(c)(ii) (in relation to turning spaces on accessways) do not apply to Class 9b or Class 10 public transport buildings.

#### Clause H2.3 Ramps

272. Clause H2.3 provides requirements for accessible ramps in public transport buildings. Ramps forming part of an accessway must comply with clause 8 of AS 1428.2.
273. Subclause H2.3(2) provides that the requirements of paragraph D3.11(a) (which limits the combined vertical rise of connect ramps to 3.6 m) do not apply to Class 9b or Class 10 public transport buildings.

#### Clause H2.4 Handrails and grabrails

274. Clause H2.4 provides requirements for handrails and grabrails in public transport buildings. Subclause H2.4(2) provides that handrails must be placed along an accessway to assist wherever passengers are likely to require additional support or guidance, such as changes of level, ramps, a narrowing or a change of direction of an access path. Subclause H2.4(4) provides, in particular, that a grabrail or handrail must be provided at fixed locations where passengers are required to pay fares.
275. Subclauses H2.4(1) and (3) provide that handrails must comply with clause 10.1 of AS 1428.2, and grabrails must comply with clause 10.2 of AS 1428.2 respectively.

#### Clause H2.5 Doorways and doors

276. Clause H2.5 provides that doorways and doors must comply with clause 11 (except clause 11.5.2) of AS 1428.2. The Access Code allows for doors that are automatic, power assisted or manual. Automatic doors are preferable along an access path.

#### Clause H2.6 Lifts

277. Clause H2.6 provides that lift facilities must comply with AS 1735.12.

#### Clause H2.7 Stairways

278. Clause H2.7 provides specifications for accessible stairways in public transport buildings.
279. The requirement for an access path under the Premises Standards means that stairs cannot be the sole means of access in premises or infrastructure. However, stairs are acceptable as an optional route on an access path.

#### Clause H2.8 Unisex accessible toilet

280. Clause H2.8 provides that if toilets are provided, at least one unisex accessible toilet must be provided in accordance with AS 1428.1 clause 10, sanitary facilities.

Clause H2.9 Location of accessible toilets

281. Clause H2.9 provides that accessible toilets must be provided in the same location as other toilets.

Clause H2.10 Symbols and signs

282. Clause H2.10 provides requirements for symbols and signs, including where signs should be provided, and the specifications that the signs must comply.

Clause H2.11 Tactile Ground Surface Indicators

283. Clause H2.11 provides that TGSIs must be installed to define key areas on an accessway for people with vision impairment. TGSIs must comply with AS 1428.4 and must indicate changes in direction in accordance with clause 18.1 of AS 1428.2.

Clause H2.12 Lighting

284. Clause H2.12 provides that any lighting provided must comply with the minimum levels of maintenance illumination specified in the notes to clause 19.1 of AS 1428.2.

Clause H2.13 Hearing augmentation

285. Clause H2.12 provides that if a public address system is installed, it must comply with clause 21.1 of AS 1428.2.

Clause H2.14 Emergency warning systems

286. Clause H2.14 provides that specifications for emergency warning systems. Subclause H2.14(2) provides that in the event of an emergency, provision must be made for people with vision impairment to locate the exit path.

Clause H2.15 Controls

287. Clause H2.15 provides that controls must comply with clause 11 of AS 1428.1.