

DISABILITY (ACCESS TO PREMISES — BUILDINGS) AMENDMENT (2024 MEASURES NO 1) STANDARDS 2024

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Disability Discrimination Act 1992

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Disability (Access to Premises — Buildings) Standards 2010* (Premises Standards), made on 15 March 2010, is a legislative instrument made by the Attorney-General under section 31 of the *Disability Discrimination Act 1992* (DDA).

This instrument amends the Premises Standards following the *Premises Standards Review 2021* (Review). The amendments respond to the Review by amending references to the Australian Standard 1428.1 *Design for access and mobility, Part 1: General requirements for access – New building work* contained in the Premises Standards to reflect 2021 updates to the Australian Standard.

Australian Standard 1428.1 was updated to improve its clarity. Amending references to Australian Standard 1428.1 (2009 to 2021 edition) contained in the Premises Standards to reflect this update will:

- increase consistency between the Premises Standards and other disability related standards
- provide further technical clarity to ensure the Premises Standards are up to date
- have positive impacts for building professionals and owners who are responsible for compliance with the Premises Standards, and for people with disability seeking access to public buildings.

These amendments align with the objects of the DDA and Australia's international obligations with respect to promoting dignity, equality and independence for people with disabilities under the Convention on the Rights of Persons with Disabilities.

Authority

Subsection 31(1) of the DDA provides that the Minister may, by legislative instrument, 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.

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.

This instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* (AIA), which provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Consideration of comments from State and Territory Ministers

Subsection 31(3) of the DDA requires that, before making a disability standard, the Minister administering the DDA (currently being the Attorney-General) must take into consideration any comments made to the Minister by a Minister of a State or Territory who is responsible for matters relating to disability discrimination.

On 13 July 2023, the Attorney-General wrote to State and Territory Ministers responsible for matters relating to disability discrimination seeking comments on the making of this instrument. The relevant State and Territory Ministers supported the amendments. Two jurisdictions provided additional comments on potential further amendments to the Premises Standards which will be considered as part of the next statutory review and future reforms.

These comments were taken into consideration by the Attorney-General before making this instrument. Accordingly, the requirements of subsection 31(3) of the DDA have been met.

Exemption from sunseting

This instrument and the Premises Standards are exempt from sunseting due to subsection 54(2) of the *Legislation Act 2003* read together with item 23 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The exemption reflects that the Premises Standards require a more regular statutory review process than sunseting (section 6.1 of the Premises Standards requires the Premises Standards to be reviewed every 5 years) and facilitates greater commercial certainty.

Purpose of the Premises Standards

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

The Premises Standards apply to buildings and parts of buildings set out in clause 2.1 of the Standards. Broadly, this includes buildings of certain types built from 1 May 2011, certain parts of existing buildings of certain types that are extended or modified from 1 May 2011, and ‘existing public transport buildings’ built before 1 May 2011 that are still in use on the target date set out in clause 3.1 of the Premises Standards.

The Premises Standards partially codify the requirements of Part 2 of the DDA in relation to unlawful discrimination in the provisions of access to premises.

The Access Code (Schedule 1 to the Premises Standards) sets out the Performance Requirements and optional Deemed-to-Satisfy Provisions that must be met to satisfy the DDA.

The Access Code is replicated in the access provisions of the National Construction Code (NCC), which is developed by the Australian Building Codes Board (ABCB). This ensures consistency between the DDA and the NCC in relation to access to buildings.

The NCC is given legal effect by the relevant building, plumbing and related legislation of each State and Territory, ensuring a consistent approach to disability access to premises across Australia.

The Australian Government Department of Industry, Science and Resources (the Department) and the Attorney-General's Department share policy responsibility for the Premises Standards.

Review of the Premises Standards

Under Part 6 of the Premises Standards, the effectiveness of the Premises Standards in achieving its objectives must be reviewed at least every 5 years by the Minister administering the *Industry Research and Development Act 1986* (or substitute Minister at the relevant point in time, applying section 19 of the AIA), in consultation with the Attorney-General.

The second statutory review of the Premises Standards was completed in September 2021. The Review found that the Premises Standards are achieving their objectives in making it easier for people with disability to access premises.

The Review identified opportunities for action across the areas of regulatory reform, information sharing and governance.

In relation to governance, the review found that consistency across all disability standards and other regulatory mechanisms interacting with the Premises Standards are important. One aspect of this included a lack of alignment between the Premises Standards and Australian Standards (7.6 percent of all Submissions).

The Premises Standards reference a number of Australian Standards, including Australian Standard 1428.1, to provide further technical detail to support the Deemed-to-Satisfy Provisions of the Access Code within the Premises Standards. Misalignment between the Premises Standards and updated published Australian Standards can create confusion for building professionals and owners in meeting their obligations, and barriers for people living with disability, including confusion about which Standard should be used to support access.

The instrument therefore updates the previous references in the Premises Standards to the 2009 version of Australian Standard 1428.1 to refer to the 2021 version of Australian Standard 1428.1 as it relates to general requirements for access - new building work. The 2021 update of Australian Standard 1428.1 responded to feedback from key stakeholders who identified a number of errors and ambiguities. The update corrected these errors and ambiguities to improve the clarity of Australian Standard 1428.1, which included the alignment of the Standard with existing practices of building professionals.

DOCUMENTS INCORPORATED BY REFERENCE

As this instrument is an amending instrument, it does not itself incorporate any documents by reference. However, it amends the Premises Standards to incorporate (among other documents) relevant parts of Australian Standard 1428.1 (2021) *Design for access and mobility, Part 1: General requirements for access – New building* to provide further technical detail to support the provisions of the Access Code. The Australian Standard 1428.1 (2021) specifies the design requirements for new building work to provide access for people with disabilities. Particular attention is given to continuous accessible paths of travel and circulation spaces for people who use wheelchairs, access and facilities for people with ambulatory disabilities, and access for people with sensory disabilities. The Access Code in the Premises Standards sets out the Performance Requirements and optional Deemed-to-Satisfy Provisions that must be met in order to satisfy the DDA (see clause A3.1). 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 (see clause A2.3).

The Premises Standards incorporate Australian Standards in reliance on section 14 of the *Legislation Act 2003*, which relevantly provides that enabling legislation which enables provision to be made in relation to any matter by legislative instrument may make provision for, or in relation to, that matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or in writing as in force or existing at or before the time the incorporating legislative instrument commences.

The *Legislation Act 2003* and the DDA do not authorise the incorporation of material ‘as in force from time to time’. The Premises Standards only require compliance with the specific versions of Australian Standards referenced in the Access Code (see clause A2.2). However, this would not prevent a building professional or owner from complying with newer Australian Standards as an alternative solution, if it would also satisfy the Performance Requirements of the Access Code.

As noted, the update of Australian Standard 1428.1 in 2021 responded to feedback from key stakeholders, which was received at a public consultation forum concerning the 2009 edition of the Standard held by Standards Australia in 2014. Following the identification of a number of errors and ambiguities in Australian Standard 1428.1, it was updated to correct those errors and improve its clarity. With the correction of errors and ambiguities, users of the Australian Standard 1428.1 will be better able to apply the requirements of the Standard and deliver its intent in practice. Amending the Premises Standards to reference these updates will result in improved building outcomes and safer and more equitable access for people with disabilities.

Overall, the changes to Australian Standard 1428.1 (between the 2009 and 2021 versions), as they relate to the Premises Standards, are relatively marginal in practice. The changes between the versions of Australian Standard 1428.1 reflect a number of clarifications and corrections, including a number of editorial changes. There are some reductions in stringency that do not impact access to premises for people with disability, and some very minor increases in stringency that often reflect current practice of building professionals.

There is no, or minimal, expected cost impact to building professionals and owners stemming from this instrument as changes to Australian Standard 1428.1 made in 2021 were not significant in practice.

Amendments or revisions to existing Australian Standards are developed when members of the public and/or stakeholders representing committee member organisations identify that these are required to ensure standards are fit for purpose.

A proposal for a revision or amendment is submitted to Standards Australia by the proponent for approval. Project Proposals are only approved when they are supported by stakeholders/industry and the submission includes a net benefit case. Information on the procedures for proposal and net benefit cases is available on the Standards Australia website at www.standards.org.au.

The recent revision to AS 1428.1 was based on identified concerns raised over a number of years from stakeholders, and the organisations that they represent, relating to some concerns about achieving consistent built outcomes from the application of some clauses within Australian Standard 1428.1.

The overarching committee responsible for making AS 1428.1 (the ME-064 committee) includes representation from industry groups and the disability sector, as well as representatives from government departments. Committee work is developed through consensus and all committee members were provided with the opportunity to provide input into the development of the revision to the Standard.

The proposed revisions to the Standard were subject to public consultation and all comments were reviewed by the committee. The committee members vote on the final proposed revision that is a result of this consultation process.

Australian Standards may be obtained from Standards Australia on a user-pays basis, and from public and some university libraries. Consumers who have complex needs or issues are able to contact the Department of Industry, Science and Resources to seek advice and assistance to access referenced Australian Standards on a case by case basis. There is a substantial amount of guidance material available to assist builders and people living with disability to understand the requirements under the NCC and Premises Standards. More information can be found at the Standards Australia website (www.standards.org.au).

In its *Distribution and Licensing Policy Framework* (November 2019), Standards Australia outlined a commitment to make Australian Standards for personal, domestic or household use available at no cost to end users. In August 2023, Standards Australia launched the Reader Room platform, which offers free read-only access for non-commercial (personal, domestic, or household) use to Australian Standards' publications, including AS 1428.1.

The Premises Standards can be obtained free of charge from the Federal Register of Legislation (www.legislation.gov.au).

CONSULTATION

An extensive consultation process was undertaken as part of the second review of the Premises Standards, including with the disability sector, access consultants, the building industry, and government.

The Attorney-General's Department and the ABCB were also consulted in the course of preparing the amending instrument.

As noted above, comments from State and Territory disability discrimination Ministers were sought, and were taken into consideration by the Attorney-General prior to the making of this instrument, as required by subsection 31(3) of the DDA.

REGULATION IMPACT STATEMENT

The Office of Impact Analysis within the Department of the Prime Minister and Cabinet has confirmed that a Regulation Impact Statement is not required for the proposed amendments (OBPR21-01038).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Disability (Access to Premises – Buildings) Amendment (2024 Measures No. 1) Standards 2024

These Standards are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Disability (Access to Premises – Buildings) Amendment (2024 Measures No. 1) Standards 2024* (Amendment Standards) amend the *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards) to give effect to changes recommended by the *Premises Standards Review 2021* (Review).

The purpose of the Premises Standards is to provide a nationally applicable set of provisions that detail what must be done to provide people with disability non-discriminatory access to public buildings. The Premises Standards contain an Access Code with which certain buildings must comply. The Premises Standards reference a number of Australian Standards, including Australian Standard 1428.1 *Design for access and mobility, Part 1: general requirements for access – New building work* (Australian Standard 1428.1), to provide further technical detail to support the Deemed-to-Satisfy Provisions of the Access Code within the Premises Standards.

The Australian Standard 1428.1 specifies design requirements for new building work to provide access for people with disabilities. Particular attention is given to continuous accessible paths of travel and circulation spaces for people who use wheelchairs, access and facilities for people with ambulatory disabilities, and access for people with sensory disabilities.

The effect of these amendments is to update references to Australian Standard 1428.1. Specifically, references to the 2009 version of Australian Standard 1428.1 are updated to the 2021 version as it relates to general requirements for access – new building work.

Following the identification of a number of errors and ambiguities in Australian Standard 1428.1, it was updated to correct those errors and improve its clarity. With the correction of errors and ambiguities, users of the Australian Standard 1428.1 will be better able to apply the requirements of the Standard and deliver its intent in practice. Amending the Premises Standards to reference these updates will result in improved building outcomes, and safer and more equitable access for people with disabilities.

Human rights implications

The Amendment Standards engage a number of rights and freedoms under the *Convention on the Rights of Persons with Disabilities* (CRPD):

- *Equality and non-discrimination – Article 5*
- *Accessibility – Article 9*
- *Living independently and being included in the community – Article 19*

Right to equality and non-discrimination

Article 5(1) of the CRPD recognises that all persons are equal before and under the law, and are entitled without any discrimination to the equal protection and benefit of the law. As a party to the CRPD, Australia is required by Article 5(3), in order to promote equality and eliminate discrimination, to take all appropriate steps to ensure that reasonable accommodation is provided for persons with disabilities.

The Amendment Standards promote this right by ensuring that the practical effect of the technical specifications for public buildings align with the needs of persons with disability, thus ensuring that public buildings are accessible and accommodating.

Summary

The Amendment Standards engage and promote the right to equality and non-discrimination enshrined in Article 5 of the CRPD.

Accessibility

Article 9 of the CRPD recognises the right for persons with disabilities to live independently and participate fully in all aspects of life. As a party to the CRPD, Australia is required by Article 9 to (among other things) take appropriate measures to ensure that persons with

disabilities have access, on an equal basis with others, to facilities open and provided to the public.

The Amendment Standards promote this right by ensuring that the practical effect of the technical specifications for public buildings align with the needs of people with disability to live independently and participate in all aspects of community life. It does this by amending the Premises Standards to reference the 2021 version of Australian Standard 1428.1, which corrected a number of errors and ambiguities contained in the 2009 version. These corrections mean users of Australian Standard 1428.1 are better able to apply its requirements and deliver its intent in practice. This will result in improved building outcomes, and safer and more equitable access for people with disabilities.

Summary

The Amendment Standards engage and promote the rights enshrined in Article 9 of the CRPD.

Right to live independently and be included in the community

Article 19 of the CRPD recognises the equal right of all persons with disabilities to live in the community, with choices equal to others, and to full inclusion and participation in the community. As a party to the CRPD, Australia is required by Article 19 to (among other things) take appropriate measures to ensure that community facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

The Amendment Standards promote this right by ensuring that the practical effect of the technical specifications for public buildings align with the needs of people with disability to live independently and be included in the community.

Summary

The Amendment Standards engage and promote the right to live independently and be included in the community enshrined in Article 19 of the CRPD.

These changes support the aims of the CRPD to further enable independent living and full participation in all aspects of life for people with disabilities.

Conclusion

The Amendment Standards are compatible with the human rights because they promote the protection of human rights.

NOTES ON SECTIONS

Section 1 – Name of Standards

1. This section provides that the name of the instrument is the *Disability (Access to Premises – Buildings) Amendment (2024 Measures No. 1) Standards 2024* (the Amendment Standards).

Section 2 – Commencement

2. This section provides that the Amendment Standards commence on the day after they are registered on the Federal Register of Legislation.
3. However, in accordance with subsection 31(4) of the *Disability Discrimination Act 1992*, the Amendment Standards do not take effect before the end of the period in which they could be disallowed in either House of Parliament. This is reflected by the second note to the commencement table in subsection (1).

Section 3 – Authority

4. This section provides that the Amendment Standards are made under subsection 31(1) of the *Disability Discrimination Act 1992*.

Section 4 – Schedules

5. This section is a machinery clause that provides for each instrument specified in a Schedule to the Amendment Standards to be amended or repealed as set out in the applicable items in the Schedule, and for the Schedule to otherwise have effect according to its terms. The Amendment Standards contain one Schedule which amends the *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards).

SCHEDULE 1 – AMENDMENTS

Disability (Access to Premises – Buildings) Standards 2010

Item 1 – Subsection 4.5(1)

6. Section 4.5 of the Premises Standards provides a concession for existing accessible sanitary compartments or existing sanitary compartments suitable for use by people with a disability from paragraphs F2.4(c) and (e) of the Premises Standards, to the extent that those paragraphs require compliance with the specified Part of AS 1428.1—2009.

7. This item amends subsection 4.5(1) to update the reference to AS 1428.1—2009 to AS 1428.1—2021, as a consequence of the amendments made by item 2.
8. This amendment does not change the substantive operation of section 4.5 of the Premises Standards that continues to provide a concession for existing accessible sanitary compartments that are included in an application for new building work. The concession recognises that there is a significant cost of upgrading existing sanitary facilities that meet the previous accessibility requirements set out in the 2001 version of Australian Standard 1428.1.

Item 2 – Clause A3.1 of Schedule 1 (table 1)

9. Table 1 in clause A3.1 of the Premises Standards sets out the versions of various Australian Standards which are taken to be referenced in specified clauses throughout the Access Code.
10. This item replaces table 1 in order to update the reference in the table to the 2009 version of Australian Standard 1428.1 to the 2021 version for the purposes of general requirements for access – new building work. This has the effect that references to Australian Standard 1428.1 for the provisions of the Access Code set out in that row of table 1 (clauses A1.1, D3.1, D3.2, D3.3, D3.6, D3.9, D3.10, D3.12, D5.2, D5.3, F2.4) will be taken to be to the 2021 version.
11. The amendments to table 1 (as well as items 3, 4 and 6) result in a number of changes to the operation of the Premises Standards following updates to Australian Standard 1428.1 (2009 to 2021 edition). These reflect a number of changes that vary from editorial changes to clarifications and corrections. In some cases the clarifications do affect the operation of the provisions, but the impact of changes in practice is not significant. There are some reductions in stringency that do not impact access to premises for people with disability, and some very minor increases in stringency that often reflect the current practice of building professionals.
12. The amended table also removes the reference to clause D3.8 (which covers tactile indicators) from the list of Access Code provisions that currently refer to Australian Standard 1428.1—2009. Since the Premises Standards were made, the details for raised dome-buttons (a form of tactile indicator) were relocated from Australian Standard 1428.1 to Australian/New Zealand Standard 1428.4. Clause D3.8 was previously amended by the *Disability (Access to Premises – Buildings) Amendment Standards 2020* to reflect this change, and table 1 was amended to include a reference to this clause against Australian/New Zealand Standard 1428.4. However, the reference to clause D3.8 against Australian Standard 1428.1—2021 was not removed. This item removes that redundant cross-reference.

Item 3 – Subparagraph D3.3(a)(i) of Schedule 1

13. Item 3 updates a specific reference in subparagraph D3.3(a)(i) of Schedule 1 to the Premises Standards to a clause of Australian Standard 1428.1 so that it reflects the relevant clause in the 2021 version of Australian Standard 1428.1. This follows a change in numbering of Australian Standard 1428.1 from the 2009 to 2021 version. For the purposes of subparagraph D3.3(a)(i), the Access Code requirements for ramps (excluding fire-isolated ramps) are set out in clause 7 of the 2021 version of Australian Standard 1428.1, instead of clause 10 in the 2009 version.

Item 4 – Subparagraph D3.3(a)(ii) of Schedule 1

14. Item 4 updates a specific reference in subparagraph D3.3(a)(ii) of Schedule 1 to the Premises Standards to a clause of Australian Standard 1428.1 so that it reflects the relevant clause in the 2021 version of Australian Standard 1428.1. This follows a change in numbering of Australian Standard 1428.1 from the 2009 to 2021 version. For the purposes of subparagraph D3.3(a)(ii), the Access Code requirements for stairways (except a fire-isolated stairway) are set out in clause 8 of the 2021 version of Australian Standard 1428.1, instead of clause 11 in the 2009 version.

Item 5 – At the end of Subparagraph D3.3(a)(ii) of Schedule 1

15. Item 5 inserts the word ‘and’ after the semi-colon at the end of subparagraph D3.3(a)(ii) of Schedule 1 to the Premises Standards. Item 5 is a technical amendment that takes account of current drafting practices, but does not otherwise affect the substance or operation of the provision.

Item 6 – Subparagraph D3.3(a)(iii) of Schedule 1

16. Item 6 updates a specific reference to a clause of Australian Standard 1428.1 so that it reflects the relevant clause in the 2021 version of Australian Standard 1428.1. This follows a change in numbering of Australian Standard 1428.1 from the 2009 to 2021 version. For the purposes of subparagraph D3.3(a)(iii), the Access Code requirements for a fire-isolated stairway are set out in clauses 8.1(f) and (g) of the 2021 version of Australian Standard 1428.1, instead of clause 11.1(f) and (g) in the 2009 version.

Item 7 – At the end of subparagraph D3.3(a)(iii) of Schedule 1

Item 8 – At the end of paragraph D3.3(b) of Schedule 1

Item 9 – At the end of sub-subparagraph D3.3(c)(ii)(B) of Schedule 1

Item 10 – At the end of paragraphs D3.3(d) and (e) of Schedule 1

17. As with item 5 above, items 7-10 insert the word ‘and’ after the semi-colon at the end of the provisions mentioned in the item headings. Again, these are technical

amendments that take account of current drafting practices, but do not otherwise affect the substance or operation of the provision.

Item 11 – Subparagraph D3.3(f)(ii) of Schedule 1

Item 12 – Paragraphs D3.3(g) and (h) of Schedule 1

18. Item 12 repeals paragraphs D3.3(g) and (h) of Schedule 1 to the Premises Standards, which disapplied the Australian Standard 1428.1—2009 in relation to carpet pile height, carpet pile thickness and related dimensions, and specified replacement dimensions that were to apply instead. The 2021 version of Australian Standard 1428.1 adopted (at clauses 4.3.1(a) and (b)) the same dimensions for carpet pile height, thickness and related dimensions as were previously substituted in the Access Code by these paragraphs. Accordingly, paragraphs D3.3(g) and (h) are now redundant.
19. Item 11 makes a consequential amendment to replace the punctuation at the end of subparagraph D3.3(f)(ii), as it is now the final subparagraph of clause D3.3 following the repeal of paragraphs D3.3(g) and (h).