

Buildings that must be accessible for people with disabilities

The Building Act 2004 defines the buildings that must be accessible for people with disabilities. It refers to buildings to which 'members of the public are to be admitted, whether for free or on payment of a charge'. Defined in section 118(1) of the Act, it applies but is not limited to Schedule 2.

The Schedule gives a list of buildings that must be accessible. Schedule 2 contains almost the same list of buildings as section 47A(4) of the 1991 Act. It includes almost all buildings other than private houses, private apartments and small industrial buildings.

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Upgrading existing buildings

The Building Act 1991 contained a number of specific provisions relating to access for people with disabilities in buildings. Sections 38 and 46 dealt with the upgrading of existing buildings when they were undergoing an alteration or a change of use. They required the access provisions in the whole building to be upgraded "as nearly as is reasonably practicable, to the same extent as if it were a new building". When checking a proposal to alter or change the use of a building, the territorial authority applied this test to the particular building and its features.

The Building Amendment Act 2005 amended the wording of several of the sections relating to access for people with disabilities.

Alterations

Section 112(1) covers alterations and now states "comply, as nearly as is reasonably practicable, with the provisions of the Building Code that relate to access and provisions for persons with disabilities". The words "to the same extent as if it were a new building" in the 1991 Act in section 38 are not repeated as they were unnecessary.

Change of use

The upgrading needed when a building undergoes a change of use is covered by section 115(b)(i) and it has been amended in a similar manner to section 112(1).

Upgrading

The third upgrading section is section 116(2)(a), which deals with subdivisions. The new section 116A means that access, fire and protection of other property must all comply with the Building Code as nearly as is reasonably practicable when a subdivision takes place under section 224(f) of the Resource Management Act. This is the same requirement as under section 46 of the 1991 Act.

Waivers and modifications

The Building Amendment Act also clarified section 67(3) dealing with waivers. The new section 67(3) states:

“The territorial authority cannot grant an application for a building consent subject to a waiver or modification of the Building Code relating to access for people with disabilities.”

This section is now effectively the same as section 34(7) of the 1991 Act.

Fire and access upgrading

There is a new requirement in section 112(2) of the Building Act 2004 that affects access for people with disabilities. Its intention is to allow upgrading of fire safety or of the provisions for access that would otherwise not take place, provided that the improvements “outweigh any detriment that is likely to arise”. For example, section 112(2) could allow a building consent to be issued for a new accessible ramp to be constructed into a building without the need to upgrade its fire safety systems.

Conclusion

The Building Amendment Act makes clear that the Building Act 2004 has essentially the same requirements for access for people with disabilities as the Building Act 1991. This result is particularly important in regard to alterations and changes of use of buildings.

Territorial authorities, architects and designers have built up a good deal of expertise in evaluating “reasonably practicable” upgrading of buildings and that expertise can continue to be applied. It is a practical and flexible method of decision-making. A similar method is likely to be adopted in Australia, which has not had a systematic means of upgrading access in existing buildings. We continue to discuss these and other matters with its Access Advisory Panel, which was established in November 2004.

There have been a number of determination decisions made on access issues by MBIE and the former Building Industry Authority. These can be used for guidance in implementing the access provisions of the new Act, particularly the 'reasonably practicable' decision.

[Determinations \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/) includes past decisions that relate to accessibility.

All guidance related to D1 Access Routes (<https://www.building.govt.nz/building-code-compliance/d-access/d1-access-routes/>)

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