

NORTHERN TERRITORY OF AUSTRALIA

BUILDING AMENDMENT (DISABILITY ACCESS AND OTHER MATTERS) ACT 2012

Act No. 5 of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 5 of 2012

An Act to amend the *Building Act*

[Assented to 27 April 2012]
[Second reading 23 February 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Building Amendment (Disability Access and Other Matters) Act 2012*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Building Act*.

4 Section 4 amended

Section 4

insert (in alphabetical order)

access modification decision, for Part 10A, see section 129G(2).

alternative solution decision, for Part 10A, see section 129E(2).

applicant, for Part 10A, see section 129A.

deemed to satisfy provisions, in relation to disability access provisions, see section 129B(2)(a)(ii).

disability access decision, for Part 10A, see section 129A.

disability access provisions, for Part 10A, see section 129B.

performance requirements, in relation to disability access provisions, see section 129B(2)(a)(i).

5 Section 16 amended

After section 16(1)

insert

(1A) If the Practitioners Board has imposed conditions on the registration of a building practitioner under section 24FAB:

- (a) the conditions must be included in the entry for the building practitioner in the register; and
- (b) if the building practitioner is the nominee of a corporation registered as a building practitioner – the conditions must also be included in the entry for the corporation in the register.

6 Section 19 amended

(1) After section 19(1)(ab)

insert

- (ac) to determine appeals relating to decisions by the Advisory Committee under section 53(1) about the accreditation of a building product, construction method, design, component or system; and

(2) Section 19(1)(b)

omit

appeals

insert

applications

7 Section 24D amended

- (1) Section 24D, before "Subject"

insert

- (1)

- (2) After section 24D(1)

insert

- (2) A regulation may extend beyond 2 years the period for which registration is renewed if the following circumstances apply:
- (a) the registration is renewed on application under section 24E that is accepted by the Practitioners Board on or after the day on which this subsection commences (the ***commencement day***);
 - (b) the application is for renewal of registration in the category of building contractor;
 - (c) the building contractor was first registered in that category between 1 July 2006 and 30 June 2007.
- (3) However, the regulation may extend only the first period of renewed registration that comes into force after the commencement day.
- (4) Without limiting subsection (2), the regulation may extend the period for which registration is renewed by reference to the date of a particular occurrence relevant to a building contractor to whom the regulation applies.

8 Section 24FAB inserted

After section 24FA

insert

24FAB Practitioners Board may impose conditions on registration

- (1) If the Practitioners Board decides under this Division to register a person as a building practitioner, or renew the registration of a person as a building practitioner, the Board may impose conditions on the registration as the Board considers appropriate.
- (2) However, the conditions must not be inconsistent with this Act, the Regulations or a determination in force under section 24G.

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- (3) A registered building practitioner who has conditions imposed on the practitioner's registration must comply with the conditions.

Maximum penalty: 40 penalty units.

9 Section 24FB amended

After section 24FB(3)

insert

- (4) If the decision is to register the person or renew the person's registration and the Board has imposed conditions on the registration under section 24FAB:
- (a) the imposition of the conditions is taken to be part of the decision; and
 - (b) the reasons for imposing the conditions must be set out in the notice of the decision.

10 Section 53 replaced

Section 53

repeal, insert

53 Accreditation of building products and other things

- (1) The Advisory Committee, or a person or body prescribed for this section (a *prescribed entity*), may accredit a building product, construction method, design, component or system for this Act.
- (2) An accreditation by the Advisory Committee or a prescribed entity:
- (a) is subject to any conditions or variations imposed by the Committee or entity; and
 - (b) remains in force:
 - (i) for the period prescribed by regulation; or
 - (ii) until revoked by the Committee or entity in a circumstance prescribed by regulation.
- (3) A regulation may provide for matters relating to an accreditation under this section.

(4) Without limiting subsection (3), a regulation may provide for the following:

- (a) particular building products, construction methods, designs, components or systems that may be accredited;
- (b) the circumstance under which this section does not apply to particular building products, construction methods, designs, components or systems;
- (c) the issuing of certificates of accreditation.

11 Section 59 amended

After section 59(1C)

insert

- (1CA) A building certifier must not grant a building permit for building work to which an access modification decision under section 129G(2)(b) relates if the work may not comply with the modifications recommended in the decision.

12 Part 10A inserted

After section 129

insert

Part 10A Appeals Board and disability access decisions

Division 1 Preliminary matters

129A Definitions

In this Part:

applicant means a person:

- (a) who applies for a disability access decision; or
- (b) on whose behalf an agent applies for a disability access decision.

disability access decision means an access modification decision or alternative solution decision.

129B Disability access provisions

- (1) The *disability access provisions* are provisions of a code or other document:
 - (a) adopted by regulation; and
 - (b) prescribed by regulation for this Part.
- (2) A regulation may prescribe provisions of a code or other document to be disability access provisions only if:
 - (a) the provisions impose:
 - (i) requirements or standards relating to providing persons with disabilities access to buildings or to facilities and services inside buildings (*performance requirements*); and
 - (ii) ways in which those requirements or standards may be achieved (*deemed to satisfy provisions*); and
 - (b) there are equivalent performance requirements and deemed to satisfy provisions in the Access Code, as defined in the *Disability (Access to Premises – Buildings) Standards 2010* (Cth) as in force from time to time.

129C Application of Part 11

Part 11, other than sections 132 to 135 and 143 to 149, does not apply in relation to a disability access decision.

Note for section 129C

The specified sections deal with the general procedures of the Appeals Board.

**Division 2 Alternative solution decisions and access
modification decisions**

129D Application for alternative solution decision

- (1) Any of the following persons may apply to the Appeals Board for an alternative solution decision in relation to the design of a building specified in the application:
 - (a) the owner of:
 - (i) the building; or
 - (ii) the land on which the building is to be constructed;
 - (b) the agent of an owner mentioned in paragraph (a);

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- (c) the building certifier for the building work proposed to be carried out on the building.
 - (2) The application must be in the approved form and accompanied by the prescribed fee.

129E Alternative solution decision

- (1) The Appeals Board may, on application, make an alternative solution decision relating to the building specified in the application.
- (2) An ***alternative solution decision*** is a decision that, in the opinion of the Appeals Board, the design of the building:
 - (a) complies with the performance requirements of the disability access provisions; or
 - (b) does not comply with those performance requirements.
- (3) To achieve compliance with the performance requirements of the disability access provisions, the design of the building must provide a level of access that is at least equivalent to the level specified in the deemed to satisfy provisions for the performance requirements.

129F Application for access modification decision

- (1) Any of the following persons may apply to the Appeals Board for an access modification decision in relation to a building or land on which a building is to be constructed:
 - (a) the owner of the building or land;
 - (b) a lessee of the building:
 - (i) on whose behalf the owner of the building proposes to have building work carried out; and
 - (ii) who has the written permission of the owner to make the application;
 - (c) the agent of a person mentioned in paragraph (a) or (b), who must not be the building certifier for the building work proposed to be carried out.
- (2) The application may be made only on the ground that compliance with the disability access provisions specified in the application would impose unjustifiable hardship on the applicant.
- (3) The application must be in the approved form and accompanied by the prescribed fee.

129G Access modification decision

- (1) The Appeals Board may, on application and subject to section 129H, make an access modification decision relating to the building or land specified in the application.
- (2) An ***access modification decision*** is a decision that, in the opinion of the Appeals Board, a particular disability access provision:
 - (a) applies to the specified building or specified land without modifications because it does not impose unjustifiable hardship on the applicant; or
 - (b) applies to the specified building or specified land with the modifications recommended by the Board so as to avoid imposing unjustifiable hardship on the applicant; or
 - (c) does not apply to the specified building or specified land because it would impose unjustifiable hardship on the applicant.
- (3) An access modification decision mentioned in subsection (2)(b) must provide for compliance with the disability access provisions to the maximum extent not involving unjustifiable hardship.
- (4) For this section, unjustifiable hardship is to be interpreted and applied having due regard to the rights and interests of all relevant parties.

129H Circumstances to be taken into account for access modification decision

- (1) In considering an application for an access modification decision, and deciding whether compliance with a particular disability access provision would impose unjustifiable hardship on the applicant, the Appeals Board must take into account all circumstances relevant to the application.
- (2) Without limiting subsection (1), circumstances relevant to the application may include any of the following:
 - (a) any additional capital, operating or other costs, or loss of revenue, that would be directly incurred by, or reasonably likely to result from, compliance with the disability access provision;
 - (b) any reductions in capital, operating or other costs, or increases in revenue, that would be directly achieved by, or reasonably likely to result from, compliance with the disability access provision;

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- (c) the extent to which the construction of the building has been, or will be, financed by government funding;
 - (d) the extent to which the building:
 - (i) is used for public purposes; and
 - (ii) has a community function;
 - (e) the financial position of the applicant;
 - (f) any effect that compliance with the disability access provision is reasonably likely to have on the financial viability of the applicant;
 - (g) any exceptional technical factors (such as the effect of load-bearing elements on the structural integrity of the building), or geographic factors (such as gradient or topography), affecting a person's ability to comply with the disability access provision;
 - (h) financial, staffing, technical, information and other resources reasonably available to the applicant, including any grants, tax concessions, subsidies or other external assistance provided or available;
 - (i) whether the cost of alterations to make any premises accessible is disproportionate to the value of the building, taking into consideration the improved value that would result from the alterations;
 - (j) benefits reasonably likely to accrue from compliance with the disability access provision (including benefits to persons with disabilities, building users and other affected persons) or detriment likely to result from non-compliance;
 - (k) if compliance with the provision is required – detriment reasonably likely to be suffered (including in relation to means of access, comfort and convenience) by any of the following:
 - (i) the applicant or building developer;
 - (ii) a building manager;
 - (iii) persons with disabilities and other people using the building;

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- (l) if detriment under paragraph (k) involves loss of heritage significance – the extent to which the heritage features of the building are essential, or merely incidental, to the heritage significance of the building;
 - (m) any evidence about efforts made in good faith by the applicant or a person required to comply with the disability access provision (including the relevant building certifier and any consulting access consultants);
 - (n) if the applicant has given an action plan to the Australian Human Right Commission under section 64 of the *Disability Discrimination Act 1992* (Cth) – the terms of the action plan and any evidence of its implementation;
 - (o) the nature and results of any processes of consultation, including at local, regional, State, national, international, industry and other levels, involving, or on behalf of, the applicant, a building developer, a building manager, the relevant building certifier or persons with disabilities, about means of achieving compliance with the disability access provision, including in relation to the factors listed in this subsection.
- (3) If a substantial issue of unjustifiable hardship is raised having regard to a factor mentioned in subsection (2), the Appeals Board must consider the following additional factors:
- (a) the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with the disability access provision;
 - (b) any measures undertaken (or to be undertaken) by, on behalf of, or in association with, a person or organisation in order to ensure substantially equal access.

- (4) In this section:

building developer means a person with responsibility for, or control over, the design and construction of a building.

building manager means a person with responsibility for, or control over, the management of a building.

Division 3 General matters

129J Notice and registration of disability access decision

- (1) The Appeals Board must give a notice of a disability access decision, and the reasons for the decision, to the following persons:
 - (a) the applicant for the decision;
 - (b) if the applicant is a building certifier – the person who has engaged the building certifier;
 - (c) if the applicant is a person other than a building certifier engaged for the building work to which the decision relates – the building certifier.
- (2) The disability access decision must be signed by one of the members of the Appeals Board involved in making the decision.
- (3) The Registrar must file a copy of the disability access decision in a register of those decisions.
- (4) A person may, on payment of the prescribed fee to the Registrar, inspect an alternative solution decision.
- (5) A person may apply in writing to the Chairperson of the Appeals Board for approval to inspect an access modification decision and the reasons for the decision and, if the application is approved, the person may inspect the decision on payment of the prescribed fee to the Registrar.

129K Effect of disability access decision

A disability access decision has effect subject to this Act and other laws in force in the Territory.

Note for section 129K

Decisions of the Appeals Board cannot override the requirements of Commonwealth legislation. Consequently, the making of a disability access decision does not prevent a person from making a claim under the Disability Discrimination Act 1992 (Cth) in relation to a contravention of a disability access provision.

13 Part 11 heading replaced

Part 11, heading

repeal, insert

**Part 11 Appeals and applications to Appeals Board
 generally**

14 Part 11, Division 1 heading replaced

Part 11, Division 1, heading

repeal, insert

Division 1 General matters

15 Section 130 amended

(1) Section 130(1)

omit

all words from "section 19(1)(a)" to "Director."

insert

section 19(1)(a) or (ac) may be made by:

- (a) a person involved in the dispute or in the application for accreditation (as relevant) or the person's agent; or
- (b) the Director.

(2) After section 130(2)

insert

- (3) A reference to a person in subsection (1) does not include a reference to a reporting authority.

16 Act further amended

The Schedule has effect.

Schedule Act further amended

section 16

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 35(b)	or 24C	
section 54, heading, at the end		of building products and other things
section 54(1)	(1)	
section 54	all words from "if" to "accreditation."	if: <ul style="list-style-type: none"> (a) the accreditation of the product or other thing is in force under section 53; and (b) the product or other thing complies with the accreditation.
section 54(2)	whole subsection	
