



Building in Whitehorse

UNDERSTANDING OBLIGATIONS AND PROMOTING ACCESS





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Building in Whitehorse: Understanding Obligations and Promoting Access

Whitehorse City Council aspires to be a healthy, vibrant, prosperous and sustainable community supported by strong leadership and community partnerships.

The introduction of the Disability Access to Premises – Building Standards (2010) and subsequent changes to the Building Codes of Australia and Australian Standards has seen significant change in the legislative requirements for access to new and upgraded buildings across Australia.

Promoting access to buildings, facilities and services ensures that all residents can move throughout the community and undertake the range of activities associated with life. Great access increases the opportunities for people with a disability, people with limited mobility, parents with prams, shoppers with trolleys or heavy packages to access buildings and the goods and services provided in the community.

Access throughout this document is used to describe 'a person's ability to enter, move around, use facilities and exit the premises'. Universal design principles underpin the changes to legislation, codes and standards. Universal design requires "the design of products, environments, programs and services to be usable by all people, to the greatest extent possible without the need for adaptation or specialised design. Universal design shall not exclude assistive devices for particular groups of persons with disabilities where this is needed" (United Nation Convention on the Rights of Persons with Disability).

For builders and developers this requires a commitment to ensuring what is built meets all legislative and regulatory requirements and that you have considered who might be using the building or property into the future.

This document will ensure that residents, businesses, contractors and developers have an overview of the legislative requirements regarding access with regard to:

- Council's role – planning and building;
- Understanding legislation:
 - *Disability Discrimination Act 1992*;
 - Disability Access to Premises Building Standards 2010;
 - *Victorian Charter of Human Rights and Responsibilities Act 2006* ;
 - Building Codes of Australia;
 - Australian Liveable Housing Design Guidelines; and
- Maintaining access and protecting Council property and amenity.

Information contained in this document is presented as a guide. To locate more detailed information, please refer to the website links throughout the document and resources list.

Council's Role in Planning and Building

Council has a very significant planning and building role; it implements, administers and enforces building legislation at a local level. The services provided through Council help protect the community from major risks to life and property. The operational functions of Council in relation to building and planning include:

- Providing planning and building information and advice to the community;
- Issuing planning, building and occupancy permits;
- Mapping hazard areas such as those subject to flooding;
- Maintaining a register of all building work in the municipality;
- Auditing the safety of places of public entertainment such as nightclubs;
- Checking that public buildings have essential fire safety measures in place;
- Investigating complaints;
- Issuing emergency orders in relation to dangerous buildings;
- Enforcement of the *Building Act 1993* and *Building Regulations 2006* and other relevant legislation; and
- Prosecuting for offences against the *Building Act 1993*.

Permits

There are a broad range of permits that relate to building works in the City of Whitehorse. As the property owner you are required to ensure that you have obtained the correct permits prior to the work commencing.

Planning, building and local law permit systems are very different and operate in accordance with separate legislation, although they often relate to each other.

To avoid fines you must obtain the relevant permits prior to any building work commencing.

Contact Council on 9262 6333 to discuss the work you wish to undertake.

Planning

Council's Statutory Planning Unit is responsible for ensuring that development in the municipality complies with relevant planning legislation. Staff also assess and determine planning applications under the Whitehorse Planning Scheme. This involves daily interaction with the community, through enquiries and notification of planning applications.

If residents or business owners in the municipality want to make changes to their property such as renovating, demolishing a structure, installing a fence, removal of trees, erecting advertising signage or converting a shop into a restaurant – they may need to obtain a planning and/or building permit before proceeding.



Building

Building law stipulates that all building work requires a building permit, unless the work is specifically exempted under the regulations. A building permit is written approval from a registered building surveyor certifying that your plans comply with the Building Regulations.

A building permit will be required for most commercial, industrial and residential development including new buildings, alterations and additions to factories, warehouses, shops, dwellings, sheds and in some cases fences and retaining walls. Building permits can be obtained from Council's Municipal Building Surveyor or a private building surveyor.

Protection of Council Assets

Under the *Local Government Act 1989*, councils have the ability to make local laws to protect infrastructure. Local Laws regulate activities that take place or impact on Council infrastructure or public places. Council aims to ensure that building works not only meet the legislative requirements but also limit the potential risk of injury to residents, and protect Council property.

The protection of Council infrastructure is managed through the issuing of permits under Council's Local Laws. Permits are required to:

- Access drains, roads, footpaths, adjoining parks and any other assets under the management of Council;
- Establish vehicle crossings;
- Ensure that ratepayers do not bear the costs associated with damage to Council's assets due to work by others;
- Ensure footpaths and nature-strips are clear of obstructions associated with building activities; and
- Minimise damage to Council property and other public authority assets.

Council's Local Law requires all building works and storage of materials be fully contained on the building site.

Property owners/contractors are responsible for any repairs required to Council assets if damage occurs.

To discuss your building work and the required permits, please phone Council on 9262 6333. General information regarding building, planning and permit application documents is available on Council's website: www.whitehorse.vic.gov.au

Understanding Legislation

The introduction of the *Disability Access to Premises – Building Standards (Premises Standards)* has consolidated the relationship between rights-based legislation and building legislation.

The interaction between disability and building legislation is depicted in Diagram 1 with key legislation grouped into:

- Rights based legislation;
- Building legislation; and
- Local government legislation.

Local Laws are in place to identify and address gaps in state legislation at a local level. Local Laws complement rather than directly align to state and federal legislation. This is reflected in Diagram 1 through the use of broken lines to display the relationship.

After more than 10 years of consultation and negotiation, the *Premises Standards* were released under the *Disability Discrimination Act 1992 (DDA)*. The connection to the DDA enables people with a disability and their associates to lodge discrimination complaints regarding the built environment through the Australian Human Rights Commission and the Federal Court System.

The *Premises Standards* are referenced in the *Building Codes of Australia and Australian Standards* which means they are also contained in building legislation. This was a purposeful step to reduce confusion regarding access requirements.

Things to note:

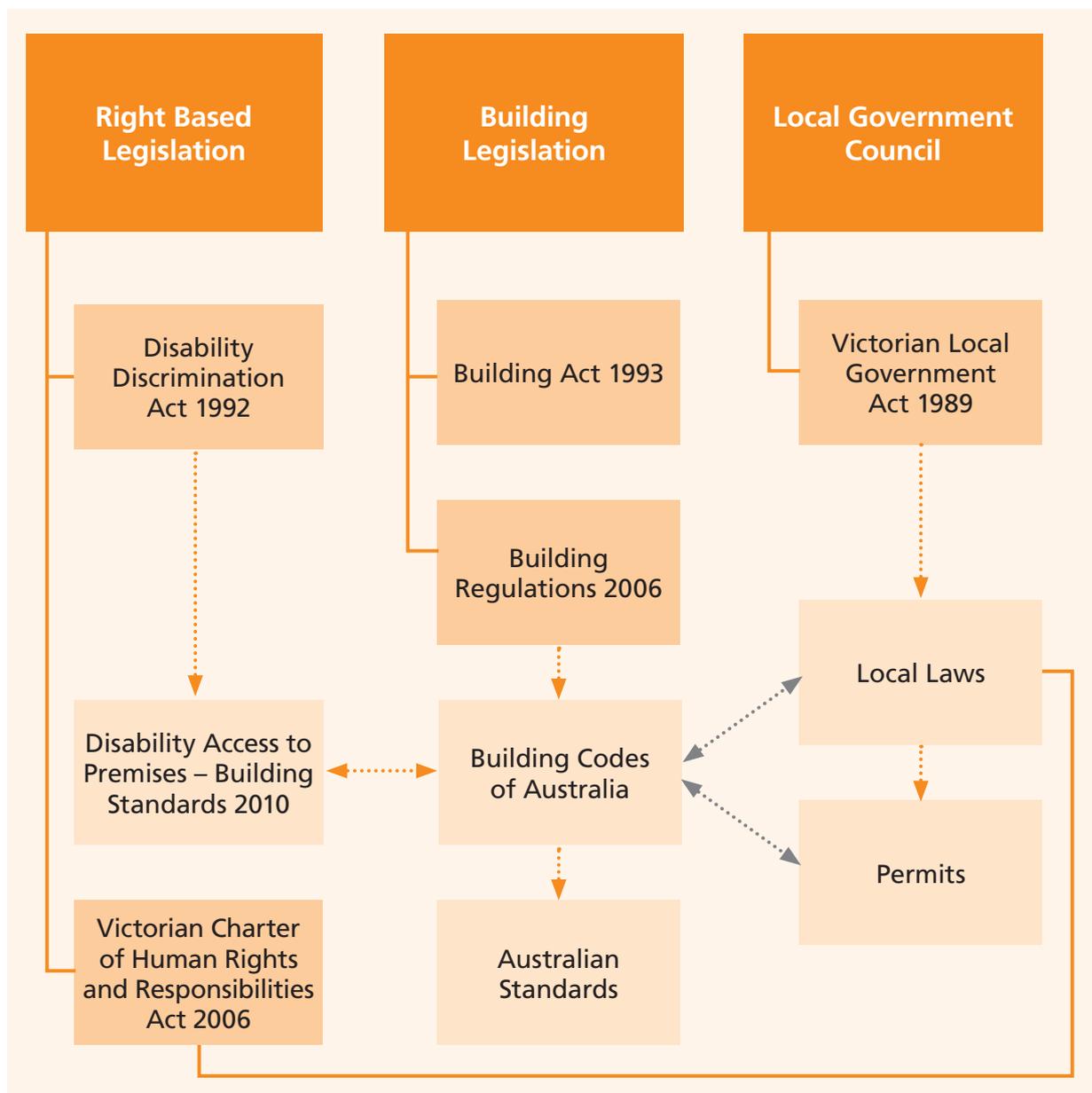
- The *Premises Standards* and *Australian Standards* contain **minimum requirements**. This means you can provide greater access such as wider corridors than stipulated but you cannot provide less;
- The *Premises Standards* are focused on specific aspects of buildings whilst the *DDA* has much broader application covering a range of areas that impact on a person's life – one of which is the built environment. This means that a builder or developer who meets the requirements of the *Premises Standards* and *Building Codes* will be protected from discrimination based legal action for the elements of the *DDA* that are covered by the *Premises Standards* and *Building Codes*; and
- Existing buildings that are not undergoing any renovation or change of use (which triggers the need for a planning and or building approval) will not be directly subject to the *Premises Standards* but will continue to be subject to the existing provisions of the *DDA* and will continue to be exposed to complaints if access is not provided.

It is important to remember that not all elements of the DDA are contained in the Premises Standards or Building Codes. The DDA has much broader application.



The information provided in the following section should not be seen as exhaustive of legislation that relates to discrimination or building but rather a guide as to how the *Premises Standards* relate to the *Australian Building Codes* and Local Government.

Diagram 1: Legislation Pathways





Disability Discrimination Act 1992 (DDA)

The DDA extends well beyond the built environment. The DDA does not provide technical specification about how to provide access rather it provides a legal framework to address discrimination.

The objectives of the DDA are:

- a. To eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
 - i. Work, accommodation, education, access to premises, clubs and sport;
 - ii. The provision of goods, facilities, services, land;
 - iii. Existing laws;
 - iv. The administration of Commonwealth laws and programs;
- b. To ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and
- c. To promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

With specific regard to the built environment Section 23 of the DDA outlines the following:

Access to premises:

It is unlawful for a person to discriminate against another person on the grounds of their disability:

- a. By refusing to allow the other person access to, or the 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); or
- b. In the terms of condition on which the first mentioned person is prepared to allow the other person access to, or the use of, any such premises; or
- c. In relation to the provision of means of access to such premises; or
- d. By refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
- e. The terms or conditions on which the first mentioned person is prepared to allow the other person the use of any such facilities; or
- f. By requiring the other person to leave such premises or cease to use the facilities.

The DDA defines premises as:

- A structure, building, aircraft, vehicle or vessel; and
- A place (whether enclosed or built on or not); and
- A part of premises (including premises of a kind referred to in paragraph (a) or (b)).



**More detailed information about the DDA can be found through this link:
www.austlii.edu.au/au/legis/cth/consol_act/dda1992264**

Disability Access to Premises – Building Standards (Premises Standards)

The *Disability (Access to Premises – Buildings) Standards 2010 (Premises Standards)* are Standards formulated under the *DDA*.

The *Premises Standards* set performance requirements and provide references to technical specifications to ensure dignified access to, and use of, buildings for people with a disability. They clarify the general non-discrimination provisions of the *DDA* in relation to the design, construction and management of buildings.

Complying with the *Premises Standards* satisfies the *DDA* non-discrimination requirement for matters covered by the Standards. Contravention of any *Disability Standards* formulated under the *DDA* is unlawful (Section 32: *DDA*).

The *Premises Standards* are referenced in *Australian Building Codes and Australian Standards*.

The objectives of the Premises Standards are:

- 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; and
- To give certainty to building certifiers, building developers and building managers that, if access to buildings is provided in accordance with these Standards, the provision of that access, to the extent covered by these Standards, will not be unlawful under the Act.

The Premises Standards apply to:

- Subject to subsection (2), these Standards apply to the following:
 - a. A new building, to the extent that the building is:
 - i. A specified Class 1b building; or
 - ii. A Class 2 building that has accommodation available for short-term rent; or
 - iii. A Class 3, 5, 6, 7, 8, 9 or 10 building;
 - b. A new part, and any affected part, of a building, to the extent that the part of the building is:
 - i. A specified Class 1b building; or
 - ii. A Class 2 building that:
 - (A) Has been approved on or after 1 May 2011 for construction; and
 - (B) Has accommodation available for short-term rent; or
 - iii. A Class 3, 5, 6, 7, 8, 9 or 10 building;
 - c. An existing public transport building that is still in use on the target date mentioned in an item in the table in section 3.1.

- These Standards do not apply to the following:
 - a. The internal parts of a sole-occupancy unit (within the meaning of the Access Code) in a Class 2 building;
 - b. A new Class 10 building, a new part of a Class 10 building, or an affected part of a Class 10 building if it is associated with:
 - (i) A Class 1a building; or
 - (ii) A Class 4 part of a building.



More detailed information about the Premises Standards can be found through these links:

Legislation: www.comlaw.gov.au/Details/F2010L00668/Download

Human Rights:

www.hreoc.gov.au/disability_rights/buildings/access_to_premises.html





Victorian Charter of Human Rights and Responsibilities Act 2006

The Victorian Charter of Human Rights and Responsibilities Act 2006 (the Charter) sets out the basic rights, freedoms and responsibilities of all people in Victoria.

Councils are required to promote and protect human rights. This is achieved by considering human rights in the development of policies, making laws, delivering services and making decisions. By understanding and promoting human rights, Councils can help build a culture of human rights within the community.

It is important to think about human rights in relation to building works to identify and resolve limitations that may be placed on a person's ability to enact their human rights.

Consider this example:

The design of a building prevents people with mobility aids from entering and moving around the building in the same way as all other people who use the building. A person using a mobility aid such as scooter or wheelchair may have to enter from a side or rear door while colleagues arriving with the person enter from the front.

The person may feel:

- They are being treated unfairly, less favourably because of their disability;
- Humiliated because have to do something different from their colleagues; and
- Their movement into the building has been restricted.

If the principal pedestrian entry is not accessible, a DDA complaint may be lodged with the Australian Human Rights Commission. The Charter may be used to strengthen the complaint with reference to the following rights protected under the Charter.

The following three of 20 fundamental human rights protected in *the Charter* link to the above example:

Recognition and equality before the law (Section 8)

Everyone is entitled to equal and effective protection against discrimination and to enjoy their human rights without discrimination

Protection from torture and cruel, inhumane or degrading treatment (Section 10)

People must not be treated or punished in a cruel, inhumane or degrading way. This includes protection from treatment that humiliates a person.

Freedom of Movement (Section 12)

People can move around freely within Victoria and choose where they live.



More detailed information about the Victorian Charter of Human Rights and Responsibilities Act 2006 can be found through these links:

Legislation: www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433

Human Rights: www.hreoc.gov.au/disability_rights



Building Codes and Standards

The goal of the *Building Codes (BCA)* and *Australian Standards (AS)* is to achieve nationally consistent, minimum necessary standards of relevant, health, safety (including structural safety and safety from fire), amenity and sustainability.

The construction of all new buildings and renovations to existing buildings are controlled through the BCA. The states and territories have given the BCA the status of the building regulations. For example in Victoria, *Regulation 109 of the Building Regulations 2006* incorporates the BCA.

The BCA and AS contain technical specifications for the design and construction of buildings and other structures, covering matters such as structure, fire resistance, access and egress, services and equipment and energy efficiency as well as certain aspects of health and amenity.

As a builder, developer, manager or owner you may decide to do more than meet the minimum requirement set out in the BCA and AS such as making corridors wider, or having a larger accessible toilet space than what is stipulated however you cannot provide less than what is regulated.

Table 1: Overview of access elements included in the Australian Standards

STANDARD	INCLUDES
AS 1428.1	General requirements for access – new building work
AS 1428.2	Enhanced and additional requirements – buildings and facilities
AS 1428.3	Requirements for children and adolescents with physical disabilities
AS 1428.4	Tactile ground surface indicators for orientation for people with vision impairment
AS 1735.12	Lifts, escalators and moving walks, facilities for people with a disability
AS 2890	Off street parking facilities
AS 4299	Adaptable houses



More information regarding the Australian Standards can be located through these links:

Standards Australia – for information www.standards.org.au

SAI Global – manage the publication and sale of Australian Standards
www.infostore.saiglobal.com/store

Varying Design Requirements

Where a design cannot meet the specific design requirements, an alternative solution may be appropriate. Varying a design requires that the proposed alternative meets the intent of all relevant legislation. In such cases it is important to liaise with a recognised professional group or access consultant. Formal written approval is required from the relevant Building Surveyor prior to commencing work.



Australian Liveable Housing Design Guidelines

The Australian Liveable Housing Design Guidelines were released in 2012. The guidelines assist residential building, property industry and governments better understand how to incorporate easy living features into housing design and construction.

The guidelines highlight the following changing market forces that underpin the need for a new design approach:

- There is a significant ageing baby boomer population that represents a growing market for age-friendly, liveable housing design.
- One in five Australians currently report having a disability.
- Research indicates a 60 per cent chance that a house will be occupied by a person with a disability at some point over its life.
- 62 per cent of all falls and slip-based injuries occur in the family home.
- Including key liveable housing design features when building a house is 22 times more cost efficient than retrofitting when an unplanned need arises.

A liveable home is designed to be easy to enter, easy to navigate in and around, be capable of easy and cost effective adaptation if needed and be responsive to the changing needs of the home occupants.

Based on universal access and premises standards these guidelines provide specifications for the following 16 elements:

Dwelling access	Toilet	Kitchen space	Flooring
Dwelling entrance	Shower	Laundry space	Window sills
Internal doors and corridors	Reinforcement of bathroom and toilet walls	Ground/entry level bedroom space	Family /living room space
Car parking	Internal stairways	Switches and power points	Door and tap hardware.



More information on liveable housing design is available through this link
www.livablehousingaustralia.org.au

Maintaining Access During Building Works

Whilst the majority of legislation relates to the actual building, Council through Local Laws and Asset Protection Permits also aims to protect the amenity of the area and Council assets.

Council regularly receives calls from residents concerned about the condition of building sites, the blocking of pathways and roads and damage to footpaths. Maintaining access during building works is critical to ensuring public safety and the safety of workers in the area.

As a builder, contractor, renovator, property manager or owner you should to be aware of your potential liabilities in relation to fines, repairs and injury claims.

The following provides some guidance:

- During building works you must maintain clear unhindered access to the pathway for all pedestrians including; the elderly, people with a disability, people who use mobility aids and people who use prams.
- The footpath and nature strip should be free of dirt, mud, cables and cords, vehicles, waste collection bins, rubbish or any other obstruction.
- The footpath and nature strip should not be left with holes or uneven surfaces and made safe at all times during building works.
- People who work on or from the footpath are seen to be blocking access to the pathway. This includes people building a fence, cutting construction material or using other equipment or materials on or from the footpath.





- Footings that support gantries, hoardings or barriers may pose a trip hazard; ensure the footings are not on the path of travel.
- During building works all barriers, signs, lights etc should be erected in accordance with legislative requirements and Code of Practice for Worksite Safety – Traffic Management.
- If redirection of access is required, you will need appropriate signage and traffic management.
- You need to advise contractors and or employees not to park across the path or block crossings such as driveways.
- A wire fence is often difficult for people with vision impairment to see. Place some signage such as the name of your company or line the barrier with a coloured plastic to provide visual cues.
- Accessible car parks are not to be used for the location of contractor equipment, construction material or rubbish bins.

Can your organisation risk the cost associated with fines, repairs and potential legal action relating to personal injuries?



Useful Resources and Links

A number of organisations provide information relating to access, buildings, and in addition to services that provide specialist disability advice. The following list is provided to connect you with organisations that can provide you with further advice regarding access.

Archicentre

Address: Collins Street East – Melbourne
Phone: 1300 134 513
www.archicentre.com.au

Association of Access Consultants (ACAA)

Address: 326 Autumn St., Herne Hill, VIC, 3218
Phone: 5221 2820
www.access.asn.au

Australian Building Codes Board

Address: SAP House – Level 12,
Corner Bunda and Akuna Street, Canberra
Phone: 1300 134 631
www.abcb.gov.au

Australian Human Rights Commission

Address: Level 3, 175 Pitt Street, Sydney
Phone: 9284 9600 or 1300 369 711
www.humanrights.gov.au

Blind Citizens Australia

Phone: 9654 1400 or 1800 033 660
TTY: 9376 9275
www.bca.org.au

Building Commission

Address: Goods Shed North,
733 Bourke Street, Docklands
Phone: 9285 6400 or 1300 815 127
www.buildingcommission.com.au

Deaf Victoria

Address: Ground Floor, 340 Albert Street,
East Melbourne (VICDEAF Building)
Phone: 0431 476 721 (SMS only)
www.deafvictoria.org.au

Department of Planning and Community Development

Address: 1 Spring Street, Melbourne
Phone: 9208 3333
www.dpcd.vic.gov.au

Disability Online

www.disability.vic.gov.au

Liveable Housing Australia

C/O Property Council of Australia
Address: Level 1, 11 Barrack Street, Sydney
www.livablehousingaustralia.org.au

Property Council of Victoria

Address: Level 1 Barrack Street, Sydney
Phone: 9650 8300
www.propertyoz.com.au

SAI Global

Standards and Technical Information
Phone: 131 242
www.infostore.saiglobal.com

Standards Australia

Address: Level 10, The Exchange Centre,
20 Bridge Street, Sydney
Phone: 1800 035 822
www.standards.org.au

The Centre for Universal Design

Based in America, this organisation provides an array of useful information available through the publications link on the website.
www.design.ncsu.edu/cud

Victorian Human Rights and Equal Opportunity Commission

Address: Level 3, 204 Lygon Street Carlton
Phone: 1300 891 848
www.humanrightscommission.vic.gov.au

Vision Australia

Address: 454 Glenferrie Road Kooyong
(Melbourne Head Office)
Phone: 1300 847 466
www.visionaustralia.org.au

Whitehorse City Council

Address: 379-397 Whitehorse Road,
Nunawading
Phone: 9262 6333
www.whitehorse.vic.gov.au

Access Symbols

There are a range of international and nationally used symbols to indicate access. It is important the colour, location and imagery meets legislative requirements contained in the AS 1428 suite and are consistently applied to ensure recognition for people with limited literacy skills.

Access symbols and signage in Australia use the white image on a blue background.

Frequently Used Symbols



International Symbol of Access



International Symbol for Deafness



Accessible Toilet



Unisex Accessible Toilet



**Unisex Accessible Toilet with right hand transfer
(this indicates the location of handrails)**



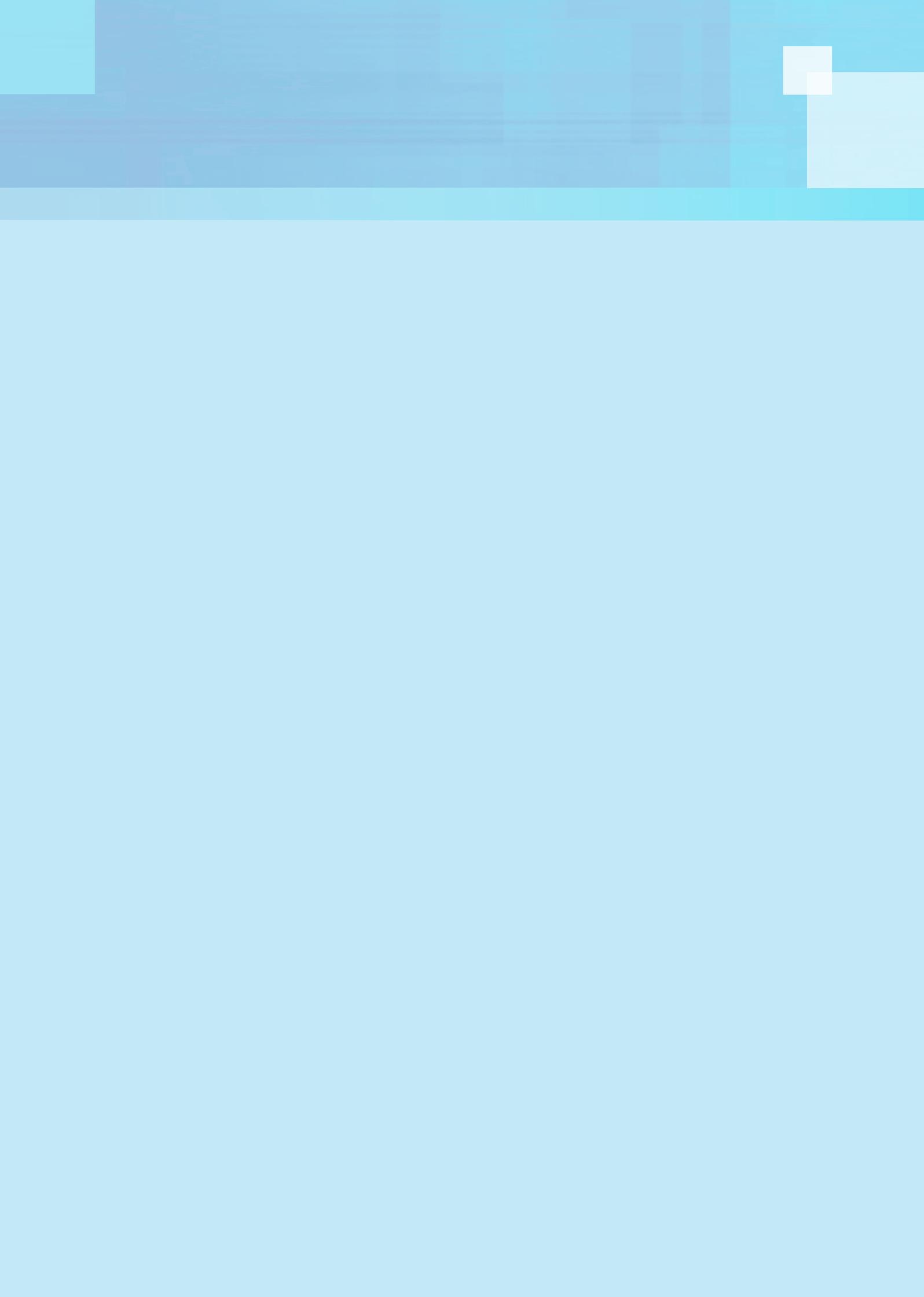
Unisex Ambulant Toilet



Male Ambulant Toilet



National Interpreter Sign



CITY OF



WHITEHORSE

Acknowledgement of Country

In the spirit of reconciliation, Whitehorse City Council acknowledges the Wurunderjeri people as the traditional owners of the land now known as Whitehorse and pays respects to its elders past and present.

Contacting Council

Postal Address

Whitehorse City Council
Locked Bag 2
Nunawading Delivery Centre 3131
Telephone: 9262 6333
Fax: 9262 6490
TTY: 9262 6325
(Service for people who are deaf or have a hearing impairment)
TIS: 131 450
(Telephone Interpreter Service – call and ask to be connected to Whitehorse City Council)

Email

customer.service@whitehorse.vic.gov.au

Website

www.whitehorse.vic.gov.au

Service Centres

Whitehorse Civic Centre

379-397 Whitehorse Road
Nunawading 3131

Box Hill Service Centre

Box Hill Town Hall
1022 Whitehorse Road
Box Hill 3128

Forest Hill Service Centre

Level 2 (T275),
Forest Hill Chase Shopping Centre
Canterbury Road
Forest Hill 3131

Sustainable and Proud of It

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