

Section Two – Legislation, Codes and Standards

This section covers:

1. WA Disability Services Act 1993 (amended 2004)
2. WA Equal Opportunity Act 1984 (amended 1988)
3. Commonwealth Disability Discrimination Act (1992)
4. Convention on the Rights of Persons with Disabilities
5. Building Code of Australia, Australian Standards, Access to Premises Standard
6. Resources

The accompanying resource for this section is a PowerPoint, which could be used as part of a workshop / presentation.

Key legislation

Major legislative changes have occurred throughout Australia during recent years, aimed at improving services for people with disabilities. Below is a summary of the key pieces of legislation which impact on the provision of accessible information, services and facilities for people with disabilities.

1. Western Australian Disability Services Act

The Western Australian Disability Services Act 1993, (amended 2004) requires public authorities (State Government agencies and Local Governments) to develop and implement a Disability Access and Inclusion Plan (DAIP) that will further both the principles and the objectives of the Act. This essentially means planning to ensure that people with disabilities can access services provided by public authorities in Western Australia. Please refer to the section on Disability Access and Inclusion Plan requirements for further information.

The Act states that a person with a disability has the right to be respected for their human worth and dignity and has the same human rights as other community members, regardless of the degree and nature of their disability.

2. Western Australian Equal Opportunity Act

The Western Australian Equal Opportunity Act 1984 (amended 1988) recognises that people with disabilities require and are entitled to the same level of service as is available to other members of the community.

The Act makes it unlawful for a person to discriminate against any person on the grounds of impairment. Under the legislation, an action is regarded as being discriminatory if a person with an impairment is treated less favourably than others in the same or similar circumstances.

Discrimination can be alleged in the following areas:

- employment;

- education;
- access to places and vehicles;
- goods, services and facilities;
- accommodation;
- sport;
- clubs and incorporated associations;
- qualifying bodies;
- partnerships; and
- professional or trade organisations.

If a person with a disability believes that they have been discriminated against by a public authority because of their impairment, in one or more of the areas outlined above, they have the right to complain to the Commissioner of Equal Opportunity in Western Australia. For further information on the Equal Opportunity Commission and the processes undertaken please refer to www.equalopportunity.wa.gov.au

3. Commonwealth Disability Discrimination Act (DDA)

The Disability Discrimination Act 1992 (DDA) seeks to provide uniform cover for everyone in Australia against discrimination based on disability.

The DDA makes it unlawful for a person with a disability or a person who is the associate of a person with a disability (for example spouse, carer, business partner) to be discriminated against in the following areas:

- employment;
- education;
- access to premises;
- accommodation;
- buying or selling land;
- activities of clubs and incorporated associations;
- sport;
- administration of Commonwealth laws and programs; and the
- provision of goods, services and facilities.

In addition, Section 31(1) of the DDA allows for the formulation of “disability standards” in relation to public transport, education, accommodation, employment and Commonwealth programs. Once a disability standard has been approved it is unlawful for a person to contravene it. Disability Standards are a way of providing a greater level of specificity, and therefore a greater level of certainty, about the requirements of the Act in these particular areas.

Where a person believes they have been discriminated against in breach of the DDA they may make a complaint to the Australian Human Rights Commission about the person or organisation (including a public authority) alleged to have behaved in a discriminatory manner. For further information on the Australian Human Rights Commission and the processes undertaken please refer to www.hreoc.gov.au/disability_rights

Heritage buildings and the Disability Discrimination Act.

The report, ‘Access to Heritage Buildings for People with Disabilities’, states “the view of the Human Rights and Equal Opportunity Commission is that the Disability Discrimination Act 1992 will override Commonwealth / State / Territory heritage legislation in the event of any inconsistencies”. The report

concludes that there is ample scope for the DDA and the Australian Heritage Commission Act 1995 each to operate without conflict and gives many practical case studies of how this can occur.

4. Convention on the Rights of Persons with Disabilities

Australia was one of the first signatories to the United Nations Convention on the Rights of Persons with Disabilities on 30 March 2007.

Australia ratified the Convention on 18 July 2008 and it became applicable in Australia on 17 August 2008.

The aim of the Convention is to ensure that people with disabilities internationally have the same rights as the rest of the community.

There are 33 Articles in the Convention which include:

- equality and non-discrimination;
- awareness raising; accessibility;
- equal recognition before the law;
- access to justice;
- freedom from exploitation, violence and abuse;
- personal mobility;
- participation in political and public life;
- participation in cultural life, recreation, leisure and sport;
- respect for family and home;
- health;
- work and employment; and
- adequate standard of living and social protection.

5. Building Code of Australia, Australian Standards, Access to Premises Standards

The Disability Discrimination Act (DDA) and the Access to Premises Standards

The Australian Human Rights Commission released Advisory Notes on Access to Premises Standards. They do not have the force of law, however they are currently under consideration for adoption. They have been prepared by the Commissioner to assist people to understand their already existing responsibilities and rights under the DDA. It is recommended that all those responsible for the design and construction of building works follow the advisory notes. For copies of the Access to Premises Standards and to ascertain what their current status please refer to the Australian Human Rights Commission at www.hreoc.gov.au/disability_rights.

Building Code of Australia (BCA)

The Building Code of Australia (BCA) references various Australian Standards and Codes to provide technical building requirements. Standards referenced by the BCA have legal application to ensure that minimum requirements for health, safety and amenity in relation to buildings are maintained. Part D3 of the BCA, titled "Access for People with Disabilities", determines which

buildings must comply with the access requirements currently referenced by the BCA.

The BCA is a performance-based code. Both the BCA and the Australian Standards on access are currently being updated so that they will be consistent with the access requirements of other legislation, particularly the Commonwealth DDA.

Public authorities should be aware that changes are being made and currently a building that meets the BCA access requirements may still be the subject of a successful complaint to the Australian Human Rights Commission under the Commonwealth DDA.

Until these reviews are completed, it is strongly recommended that the developers of buildings and facilities consult the Australian Human Rights Commission's "Advisory Notes on Access to Premises" as well as the BCA. These documents reference the Australian Standards in Access.

Australian Standards on access and mobility

The main Australian Standard that relates to the provision of Disability Access is the Australian Standard AS1428.

AS1428 comprises four parts:

Part 1: General Requirements for Access - New Building Works. It provides a minimum level of access that is currently mandatory and is referenced in the BCA.

Part 2: Enhanced and Additional Requirements - Buildings and Facilities. This includes references to many standard items used in our everyday environment which are not covered in Part 1. Therefore, Part 2 provides a level of access above that which is required in Part 1. Agencies are encouraged, where possible, to use the enhanced measurements of Part 2.

Part 3: Requirements for Children and Adolescents with Physical Disabilities. This part refers to dimensions required for children and adolescents, and should be referred to, particularly when designing facilities for younger age groups.

Part 4: Tactile Ground Surface Indicators for the Orientation of People with Vision Impairment. This includes sections that are mandatory, with the remainder being increasingly used in the development of public facilities.

There are other Australian Standards which also relate to access, please refer to the Australian Standards for further standards and for up-to-date information.

6. Resources

Australian Human Rights Commission - www.hreoc.gov.au/disability_rights

State Law Publisher - www.slp.wa.gov.au

Legislation on Access

Provides the three significant pieces of legislation that are relevant to access for people with disabilities - www.disabilitywa.gov.au