

References

	Title in text	Content				
1	The Building Code of Australia (BCA)	<p>The Building Code of Australia (BCA) is:</p> <ul style="list-style-type: none"> • Referenced in all State & Territory building legislation • A comprehensive statement of the technical requirements for the design & construction of buildings to ensure an adequate level of health, safety, amenity & sustainability performance of buildings • Applies to building work on new & existing buildings • Contains specific provisions in relation to the use of buildings for people with specific access requirements 				
	<i>Additional Resource</i>	<p>Australian Building Codes Board: http://www.abcb.gov.au/</p>				
2	The purpose of the Disability (Access to Premises-Buildings) Standards (2010) is:	<p>(a) to ensure that reasonably achievable, equitable & cost – effective access to buildings, & facilities & services within buildings, is provided for people with disabilities; and (b) to give certainty to building certifiers, building developers & building managers that, if access to buildings is provided in accordance with these Standards, the provision of access, to the extent covered by these Standards, will not be unlawful under the Act</p> <p>It is unlawful to contravene the Premises Standards The Premises Standards specify how the objects of the DDA are to be achieved in the provision of accessible buildings The Premises Standards prescribe national requirements for new buildings & where new building work is being undertaken in existing buildings in order to comply with the DDA in the areas & for the buildings covered by these standards. The technical specifications of the Premises Standards & the BCA are identical, & therefore Section D of the BCA concurrently notes:</p> <p>(a) provide people with safe, equitable & dignified access to: a building; & the services & facilities within a building and (b) safeguard occupants from illness or injury while evacuating in an emergency</p>				
	<i>Additional Resources</i>	<p>Attachments:</p> <ul style="list-style-type: none"> • Premises Standards 2010 • Premises Standards FAQ • Guidelines to the Application of the Premises Standards. Australian Human Rights Commission 				
3	Timeline for the development of the Premises Standards	<table border="1"> <tr> <td>2001</td> <td>The Australian Government approached the Australian Building Codes Board (ABCB) to develop a proposal to develop a standard in relation to access to public buildings. This was in response to the observed gap between how the Building Code of Australia (BCA) ensures that public buildings satisfy the general non – discrimination requirements of the DDA. The Building Access Policy Committee (BAPC) was formed</td> </tr> <tr> <td>2005</td> <td>The ABCB present an initial proposal, which was then further developed through 2006</td> </tr> </table>	2001	The Australian Government approached the Australian Building Codes Board (ABCB) to develop a proposal to develop a standard in relation to access to public buildings. This was in response to the observed gap between how the Building Code of Australia (BCA) ensures that public buildings satisfy the general non – discrimination requirements of the DDA. The Building Access Policy Committee (BAPC) was formed	2005	The ABCB present an initial proposal, which was then further developed through 2006
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		2006	A reference group formed to address issues where consensus was unable to be formed within the BAPC process	
		2008	The reference group provided a report to government mid year IN December 2008, the Attorney-General referred a draft Disability Standard for Premises to the House of Representatives Standing Committee on Legal & Constitutional Affairs for review & enquiry	
		2009	A report titled Access All Areas presented to Parliament on 15 June 2009	
		2010	After further revisions based on the Access all Areas report, the final Disability (Access to Premises-Buildings) Standards 2010 (Premises Standards) was tabled in Parliament on 15 March 2010	
		1 st May 2011	The Premises Standards become law.	
4	Objectives of the Disability Discrimination Act (DDA), relevant to the Premises Standards:	<p>(a) Eliminate, as far as possible, discrimination against persons on the grounds of disability in the areas of work, accommodation, education, public transport, access to premises, clubs & sport, & with regard the provision of goods, facilities, services & and</p> <p>(b) Ensure, as far as practicable, that persons with a disability have the same rights to equality before the law as the rest of the community; and</p> <p>(c) Promote recognition & acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community</p>		
	<i>Additional Resource</i>	<p>Attachments</p> <ul style="list-style-type: none"> Disability Discrimination Act 1992 		
5	Discrimination	<p>The Disability Discrimination Act (DDA) states that it is unlawful to discriminate against people with a disability in a wide range of contexts, including:</p> <ul style="list-style-type: none"> the provision of employment education access to premises provision of goods transport services, facilities & accommodation <p>Section 23 of the DDA refers specifically to access to premises: <i>“it is unlawful to discriminate against a person with a disability in relation to provision of access to premises other than where providing the required access would cause ‘unjustifiable hardship’.”</i></p> <p>1.5 Direct disability discrimination</p> <p>(1) For the purposes of this Act, a person (the <i>discriminator</i>) <i>discriminates</i> against another person (the <i>aggrieved person</i>) on the ground of a disability of the aggrieved person if, because of the disability, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the disability in circumstances that are not materially different.</p> <p>(2) For the purposes of this Act, a person (the <i>discriminator</i>) also <i>discriminates</i> against another person (the <i>aggrieved person</i>) on the</p>		

ground of a disability of the aggrieved person if:

- (a) the discriminator does not make, or proposes not to make, reasonable adjustments for the person; and
 - (b) the failure to make the reasonable adjustments has, or would have, the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the disability would be treated in circumstances that are not materially different.
- (3) For the purposes of this section, circumstances are not *materially different* because of the fact that, because of the disability, the aggrieved person requires adjustments.

1.6 Indirect disability discrimination

(1) For the purposes of this Act, a person (the *discriminator*) *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:

- (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
- (b) because of the disability, the aggrieved person does not or would not comply, or is not able or would not be able to comply, with the requirement or condition; and
- (c) the requirement or condition has, or is likely to have, the effect of disadvantaging persons with the disability.

(2) For the purposes of this Act, a person (the *discriminator*) also *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:

- (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
- (b) because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator made reasonable adjustments for the person, but the discriminator does not do so or proposes not to do so; and
- (c) the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.

(3) Subsection (1) or (2) does not apply if the requirement or condition is reasonable, having regard to the circumstances of the case.

(4) For the purposes of subsection (3), the burden of proving that the requirement or condition is reasonable, having regard to the circumstances of the case, lies on the person who requires, or proposes to require, the person with the disability to comply with the requirement or condition.

15 Discrimination in employment

(1) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the ground of the other person's disability:

- (a) in the arrangements made for the purpose of determining who should be offered employment; or

		<p>(b) in determining who should be offered employment; or</p> <p>(c) in the terms or conditions on which employment is offered.</p> <p>(2) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee's disability:</p> <p>(a) in the terms or conditions of employment that the employer affords the employee; or</p> <p>(b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or</p> <p>(c) by dismissing the employee; or</p> <p>(d) by subjecting the employee to any other detriment.</p> <p>(3) Neither paragraph (1)(a) nor (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's disability, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.</p>	
	<i>Additional Resource</i>	Australian Human Rights Commission web link Premises Standards: http://www.hreoc.gov.au/disability_rights/buildings/access_to_premises.html	
6	Disability	<p>The Disability Discrimination Act (1992) defines the term "disability" as a person who has:</p> <p>(a) total or partial loss of the person's bodily or mental functions; or</p> <p>(b) total or partial loss of a part of the body; or</p> <p>(c) the presence in the body of organisms causing disease or illness; or</p> <p>(d) the presence in the body of organisms capable of causing disease or illness; or</p> <p>(e) the malfunction, malformation or disfigurement of a part of the person's body; or</p> <p>(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or</p> <p>(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;</p> <p><i>and</i> includes a disability that:</p> <p>(h) presently exists; or</p> <p>(i) previously existed but no longer exists; or</p> <p>(j) may exist in the future (including because of a genetic predisposition to that disability); or</p> <p>(k) is imputed to a person.</p> <p><i>To avoid doubt,</i> a <i>disability</i> that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.</p>	
7	Technical provisions of the Premises Standards	<p>The Premises Standards consists of:</p> <p>Parts 1-6 sets out the legal application of the Premises Standards</p> <p>Schedule 1 outlines an Access Code for Buildings, containing Performance Requirements & Deemed – to – Satisfy Provisions</p> <p>The Deemed – to – Satisfy Provisions refer in many cases to technical details in</p>	

		<p>Australian Standards (eg: AS1428.1 2009)</p> <p>When the Premises Standards apply (with some specific exemptions):</p> <p>All new buildings within specified classes</p> <p>All new work to existing building where a building / construction approval is required to be lodged, & where a responsible person will be required to provide an assurance that the planned work complies with the Premises Standards</p> <p>An accessible Path of Travel from the Principle Public Entrance to the new or modified (“affected part”) of the building.</p> <p>In most instances, the Access Code overrules in any difference arising between it & any other Standard, Rule, Specification, or Provision.</p> <p>The Access Code incorporates a number of Australian Standards by reference. Compliance is required to the specific edition that is referenced, with earlier & versions not recognised. Likewise, while Australian Standard adopted subsequent to any revision of the Access Code will not have immediate legal requirement to be adopted, it would represent best practice & would be encouraged to be adopted.</p>
8	Australian Standards	<p>There are a number of Australian Standards that relate to access to Premises (as Premises are defined in Section 4 of the DDA).</p> <p>The objective of a standard is to provide building or facility owners with the minimum design requirements to enable access for people with disabilities. A range of data is provided that allows for some flexibility for design within overall governing specifications.</p> <p>Normative data: refers to an integral part of a Standard, providing <u>mandatory</u> requirements to meet the requirements of the Standard.</p> <p>Informative data: provides information & guidance, for example enhanced provisions.</p> <p>The BCA & Premises Standards define where access for people with a disability is required to be referenced within a number of Australian Standards to provide technical solutions to meet Deemed – to- Satisfy provisions.</p>
9	Access	<p>The Webster dictionary describes “access” in part as:</p> <p><i>permission, liberty, or ability to enter, approach, or pass to and from a place or to approach or communicate with a person or thing</i></p> <p>The Independent Living Centre of NSW describes an accessible environment as an environment:</p> <p><i>That can be utilised by all people, in an equitable, dignified, and amenable way. This includes people with a temporary or permanent disability, people with age related disabilities, as well as people with temporary restriction of their mobility, eg people on crutches, or people pushing prams.</i></p> <p>An accessible environment is therefore:</p> <ul style="list-style-type: none"> • Inclusive for the person with the disability or restriction, as well as their family & friends • safer, easier & more enjoyable for all people to use. • Likely to be relevant for many people at some point in their lives • A legal right outlined in the Disability Discrimination Act (1992), & enforceable under Australian law.
10	Definition of Premises (Section 4 of the DDA)	<p>a) A structure, building, aircraft, vehicle or vessel; and</p> <p>b) A place (whether enclosed or built on or not); and</p> <p>c) A part of a premises (including premises of a kind mentioned in paragraph (a) or (b)).</p>

		The DDA definition of premises extends well beyond the scope of the BCA, which is preliminary concerned with the construction & safety of buildings. The DDA includes areas such as parklands, playgrounds, transport vehicles, & in some instances fixtures & fittings.
11	Legal obligations under the Disability Discrimination Act (1992):	<p>Section 32: contravention of any Disability Standards formulated under the DDA is unlawful</p> <p>Section 34: compliance with a relevant standard is sufficient to satisfy the DDA duty not to discriminate in relation to the subject area covered by the Standards.</p> <p>Complaints may still be lodged to the Australian Human Rights Commission. Compliance with the Standards would be a complete defence to any such complaint.</p>
12	Australian Human Rights Commission	<p>The Australian Human Rights Commission can investigate complaints of discrimination, harassment and bullying based on a person's:</p> <ul style="list-style-type: none"> • <u>sex</u>, including pregnancy, marital status, family responsibilities and sexual harassment • <u>disability</u>, including temporary and permanent disabilities; physical, intellectual, sensory, psychiatric disabilities, diseases or illnesses; medical conditions; work related injuries; past, present and future disabilities; and association with a person with a disability • <u>race</u>, including colour, descent, national or ethnic origin, immigrant status and racial hatred • <u>age</u>, covering young people and older people • <u>sexual preference</u>, <u>criminal record</u>, <u>trade union activity</u>, <u>political opinion</u>, <u>religion</u> or <u>social origin</u> (in employment only) <p>It is against the law to be discriminated against in many areas of public life, including <u>employment</u>, education, the provision of goods, services and facilities, accommodation, sport and the administration of Commonwealth laws and services.</p>
	<i>Additional Resource</i>	AHRC homepage: http://www.hreoc.gov.au/
13	Australian Building Codes Board final Regulation Impact Statement in October 2009	Attachment: Final Regulation Impact Statement Disability Access to Premises Standards