

Capital Works Management Framework

Non-discriminatory building accessibility

Roles and responsibilities of Queensland Government departments

Current Australian and Queensland legislation places an obligation on building owners and managers to ensure that they treat people with a disability no less fairly than they treat others when providing for building accessibility. The challenge for Queensland Government is to meet this obligation across its significant building asset portfolio.

This policy advice note informs departments of their responsibilities with respect to providing non-discriminatory access to and within buildings.

What is non-discriminatory 'building accessibility'?

Non-discriminatory building accessibility is about providing the means and appropriate facilities to allow all people within the community safe, dignified and equitable access to, and use of, buildings and the services they provide. For people with a disability, this needs to include being able to access and use the site on which the building is located, the building and its facilities and services in the same, or as similar as possible, manner as anyone else.

For the purposes of this policy advice note, a 'building' can be taken to mean any premises including the site (or part thereof) that the general public or a section of the public (including staff) is entitled or allowed to enter or use.



Applicable legislation

The principal pieces of legislation protecting the rights of people with a disability are the *Disability Discrimination Act 1992* (Cwlth) (the DDA) and the *Anti-Discrimination Act 1991*(Qld) (the ADA).

Under the DDA, complaints relating to disability access may be lodged with the Australian Human Rights Commission, while the Anti-Discrimination Commission Queensland (ADCQ) is responsible for dealing with complaints made under the ADA. In Queensland a person can lodge a complaint with either the Australian Human Rights Commission or the ADCQ, but not with both jurisdictions simultaneously.

The *Disability (Access to Premises - Buildings) Standards 2010* (Premises Standards) of the DDA:

- set overarching performance requirements and provide references to technical specifications to facilitate safe, dignified and equitable access to, and use of, buildings for people with a disability
- provide greater certainty for building owners and managers and other building industry stakeholders by clarifying the general non-discrimination provisions of the DDA in relation to the design, construction and management of buildings
- provide a practical and ongoing means to achieve improved building accessibility by requiring that all new buildings, together with modifications of existing buildings that require a building approval, meet the Standards
- apply to building work where the construction of that work commences after 1 May 2011.

What should departments do?

The impact of the DDA and ADA is that, with few exceptions, new buildings should be designed to be accessible to people with a disability and, where necessary, existing buildings should be upgraded over time to facilitate improved compliance with the prevailing disability access provisions.

New buildings

Departments should ensure that appropriate non-discriminatory access provisions are incorporated into the design and documentation for new buildings. With the imminent introduction of the Premises Standards on 1 May 2011, it is essential that buildings currently being designed or documented comply with the Premises Standards, and any other relevant Australian Standards referenced in the Premises Standards.

Existing buildings

Where an extension or alteration is proposed to an existing building with construction to commence after 1 May 2011 and the work requires *Building Act 1975* (Qld) assessment, the Premises Standards are also expected to apply.



In these circumstances, it is strongly suggested that such building work be designed, documented and constructed to comply with the Premises Standards, and any other relevant Australian Standards referenced in the Premises Standards.

At the same time, departments should consider developing Action Plans to address accessibility issues in other buildings under their control where there are no particular plans for a significant extension or alteration to the buildings. Developing and implementing such Action Plans is a voluntary, proactive approach to achieving DDA compliance, which has benefits for departments and people with a disability that may wish to access the buildings.

Action Plans should include strategies for modifying building elements that could be considered discriminatory by people with a disability. These Plans can be lodged with the Australian Human Rights Commission and represent a commitment to undertake improvements within a particular timeframe.

Action Plans may include:

- building audit reports and recommendations
- assessment of compliance with technical specifications
- operational plans for rectification work
- complaint procedures
- a communication strategy, including consultation processes and documentation of outcomes
- building management practices, including staff awareness training
- processes for effective monitoring, evaluating and reviewing against performance criteria.

The DDA makes discriminatory access to public premises unlawful except where the provision of non-discriminatory access would involve unjustifiable hardship for the owner. Under Section 11 of the DDA, decisions by the Australian Human Rights Commission on issues of unjustifiable hardship are to take into account all relevant circumstances of a particular case including:

- the benefit or detriment to any persons concerned
- the effect of the disability on any person concerned
- financial circumstances of, and estimated expenditure by, the person/owner claiming unjustifiable hardship
- the availability of financial and other assistance to the person/owner claiming unjustifiable hardship
- an Action Plan which is provided by a building owner/manager to the Commission.

The ADA also allows an exemption from providing non-discriminatory access on the grounds of unjustifiable hardship. Under Section 5 of the ADA, a determination of unjustifiable hardship depends on all relevant circumstances of a particular case.

Consultation

For both new and existing buildings, focused and productive consultation is crucial to achieving a successful outcome. This should involve the disability sector, government organisations and other stakeholders with interests in access requirements.



The consultation process should be established at the earliest opportunity so that the views of all stakeholders can be considered in the design process for new buildings or significant extension or alterations to existing buildings or in the preparation of Action Plans to address existing buildings.

Building users likely to be affected by building elements or design features should be consulted and in this regard, the establishment of a reference group is recommended. The reference group should preferably include persons (or representatives of persons) who:

- use a wheelchair (whether manual or motorised)
- have any condition that limits their mobility
- use a pram, stroller, scooter or walker
- are an amputee (hand or leg)
- are blind or have a vision impairment
- are deaf or have a hearing impairment
- are aged or have medical conditions affecting their ability to walk long distances
- have a mental illness
- have a neurological impairment such as an intellectual disability or an acquired brain injury
- have a special cultural requirement.

Departments with large building portfolios may consider a standing community reference group arrangement as used by many local governments. Such a group may meet regularly or as required to review design documentation and/or Action Plans and to advise the department about the content and direction of such documentation and/or Action Plans.

Representation from the disability sector in such a consultative group could include, but should not be limited to, persons from any of the following organisations:

- Disability and Community Care Services
- the Paraplegic and Quadriplegic Association of Queensland
- the Physical Disability Council of Queensland

In certain circumstances, it may be appropriate to engage consultants who specialise in disability access and who offer independent facilitation on consultation processes.

An effective consultation process has the potential to provide better outcomes for all stakeholders.

References

Disability Discrimination Act 1992 (Cwlth)
<http://www.comlaw.gov.au>

Disability (Access to Premises - Buildings) Standards 2010
<http://www.comlaw.gov.au>

Anti-Discrimination Act 1991(Qld)
http://www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm



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