



## D27 Access (Disabled)

Accessibility for people with Disabilities: General application of the Premises Standards and Building Code of Australia (BCA);

### How do I ensure my building complies?

Your building must meet the following:

- a) Complying with the relevant Deemed-to-Satisfy Provisions of the Access Code (Premises Code subsection 3.2(1)), or
- b) Proposing an alternative to the Deemed-to-Satisfy Provisions that satisfies the Performance Requirements of the BCA and Premises Code (subsections 3.2(2) and (3)), or
- c) A combination of a) and b).

### Why do we need disabled access?

To provide for equitable and dignified access to new buildings and those areas of existing buildings that undergo renovation or upgrade that requires a building approval.

Section 23 of the Disability Discrimination Act (DDA) covers access to premises and makes it unlawful to discriminate against a person with disability in relation to access to, or use of, premises.

While section 23 of the DDA states it is unlawful to discriminate it does not provide information to people responsible for buildings to assist them to design, construct or manage buildings in ways that do not discriminate. To help assist in the design of accessible buildings a Premises Standard has been introduced.

### What is the purpose of the Premises Standard?

If a building complies with the Premises Standards those responsible for the building cannot be subject to a successful complaint of unlawful discrimination under the DDA in relation to the matters covered by the Premises Standards.

### When do I have to provide disabled access?

Since 1 May 2011, any new work that requires building approval including those undertaken on an existing building, an extension or modification of the building must comply with the Access Code found in Schedule 1 of the Premises Standards.

### When don't I need to provide disabled access?

Only new buildings and existing buildings that undergo building work that involves extensions to, or modifications of the building where a building or construction approval is required.

This means that there are a number of situations where the Premises Standards are either not triggered or do not apply, including **but not exclusive to**:

- Existing buildings – those buildings that existed before the Premises Standards came into force (or where an application for building/construction approval was sought before the Premises Standards came into force) and are not undergoing any building work.
- Fit-out features of a building for which Building Rules Consent is generally not required – this might include reception desks, drink fountains, removable workstation partitions, change rooms in clothes shops, moveable furniture, fixtures and fittings.
- Some short-term holiday accommodation buildings such as those bed and breakfast facilities or holiday cabins that are specifically excluded from the Premises Standards (see discussion under Part D3 of the Access Code below).
- Access to private residences (Class 1a buildings) and the accessibility of the internal parts of flats or apartments (Class 2 buildings) are generally not subject to the DDA and are therefore not addressed by the Premises Standards. Only common areas of class 2 buildings are required to comply ( not applicable to Class 2 Buildings built prior to 1 May 2011)
- Some upgrades or improvements to buildings such as re-wiring, painting, replacement of heating or air conditioning systems or general maintenance are unlikely to require building approval and hence the Premises Standards would not apply in those cases.
- Specific access requirements are not imposed on existing buildings outside the area of the new work, except in some cases to provide for an accessible path of travel to the new or modified part of the building
- Except in public transport buildings, the Premises Standards do not apply to any part of an existing building until work requiring the approval of a building regulator is undertaken.

### **What areas of the building require disabled access?**

Areas such as access to and within sanitary facilities, paths of travel in buildings, lifts, ramps, hearing augmentation systems and signs, and are covered by the Building Code of Australia are required to have disabled access.

### **What building work does this legislation effect?**

Where the new part of an existing building is required to comply with the Access Code, it is limited to the actual work identified in the building application and does not extend to other parts of the building or other parts of the level on which the new part is located (subject to the 'affected part' requirements below).

For example, if the modification to an existing building includes the relocating of a doorway or the construction of extended office space the access requirements only apply to the new part identified in the building application and do not extend to other parts of the building or other areas or facilities on the floor such as toilets, if they are not the subject of the building application.

In most circumstances it is also necessary to provide an accessible path of travel from the principal pedestrian entrance of an existing building to the new or modified part of that building. This is referred to in the Premises Standards as the 'affected part' of a building. (For more information on the 'affected part' of a building see below:

### **Do I need to upgrade the entire building when doing minor alterations?**

When alterations or renovations take place in an existing building and a Building Rules Consent is required, the DDA requirements for upgrading access are limited to the area of new work (affected part). Eg. while the Premises Standards will apply to the area of new work and the 'affected part' of the building they will not apply to the other areas that are not being extended or modified.

### **Are there any concessions and what are they?**

The following concessions apply:

- **small buildings:** accessible ramps and lifts will not need to be provided in certain classes of small buildings. A 'small building' for this purpose is a building of 3 storeys or less, the upper storeys of which are each less than 200m<sup>2</sup>.
- **lessees:** lessees are only obliged to comply with the Premises Standards for the portion of a building that they lease. Neither they nor the building owner will be required to provide an accessible path of travel from the principal entrance to new work being undertaken by a lessee (unless the lessee leases the whole building)
- **existing accessible lifts:** existing lifts travelling more than 12 metres that conform to the floor space requirements of the Building Code of Australia prior to the commencement of the Premises Standards will not need to be enlarged, and
- **existing accessible toilets:** existing accessible toilets that conform to the floor space requirements of the Building Code of Australia prior to the commencement of the Premises Standards are not required to be upgraded.

### **Are there any exemptions?**

Yes. Unjustified hardship exceptions (e.g. unjustifiable costs of retrofitting a lift into a pre-existing building).

#### **Unjustifiable hardship**

Sections 21B and 29A of the DDA allow for an exception to the requirement to not discriminate in situations where avoiding discrimination would impose an unjustifiable hardship

- A general exemption is provided for unjustifiable hardship. A claim of unjustifiable hardship will be available in circumstances where it is unreasonable to require full compliance with the Premises Standards. For further information see the next question '*What is 'unjustifiable hardship'?*'

- There is also an exemption for acts done under statutory authority. For instance, actions taken in compliance with a court order or industrial instrument will not be subject to the Premises Standards.
- There is also a general exemption for areas where providing access would be inappropriate because of the purpose for which the area is used (e.g. a fire lookout tower), or to areas that would pose a health or safety risk for people with a disability.

### **What is ‘unjustifiable hardship’?**

Without limiting what is meant by the term, it demands an inquiry of what is fair and reasonable in the circumstances. It effectively places the onus on an applicant to establish that it would be unfair and unreasonable for them to comply in regard to particular requirements in the Premises Standards.

- In some circumstances it may be unreasonable to require full compliance, particularly when undertaking new work on existing buildings.
- Unjustifiable hardship under the Premises Standards has the same broad approach as in the DDA itself. ‘Unjustifiable hardship’ is not defined but a list of factors provide guidance as to what is relevant in reaching a conclusion that it would impose or would have imposed unjustifiable hardship on the person seeking a building approval, or defending a complaint of non-compliance with the Standards.
- Compliance with the Premises Standards is still required to the maximum extent not involving unjustifiable hardship.

NOTE: Existing buildings not undergoing new work are still subject to Disability Discrimination Act complaint.

The majority of the information you will be required to document with regard to DDA requirements will be found in BCA volume one part D3 and the Australian Standard 1428 series.