

December 2010

Implementing new nationwide disability access standards in NSW

From 1 May 2011, the Commonwealth's *Disability (Access to Premises - Buildings) Standards* (the Premises Standards) made under the *Disability Discrimination Act 1992* (DDA) will apply to all new building work and to "affected parts" of existing buildings.

The Premises Standards, which establish new requirements for access to buildings, will be incorporated into the Building Code of Australia (BCA), also from 1 May 2011.

The Building Professionals Board and Department of Planning are currently reviewing the Premises Standards to determine whether amendments to NSW legislation are required to implement them.

How the Premises Standards will apply

The Premises Standards will apply to building work for which an application for a construction certificate or complying development certificate is lodged from 1 May 2011. They will apply to most BCA building classes, except the majority of those ordinarily reserved for private residential uses; Crown development; and most existing public transport buildings.

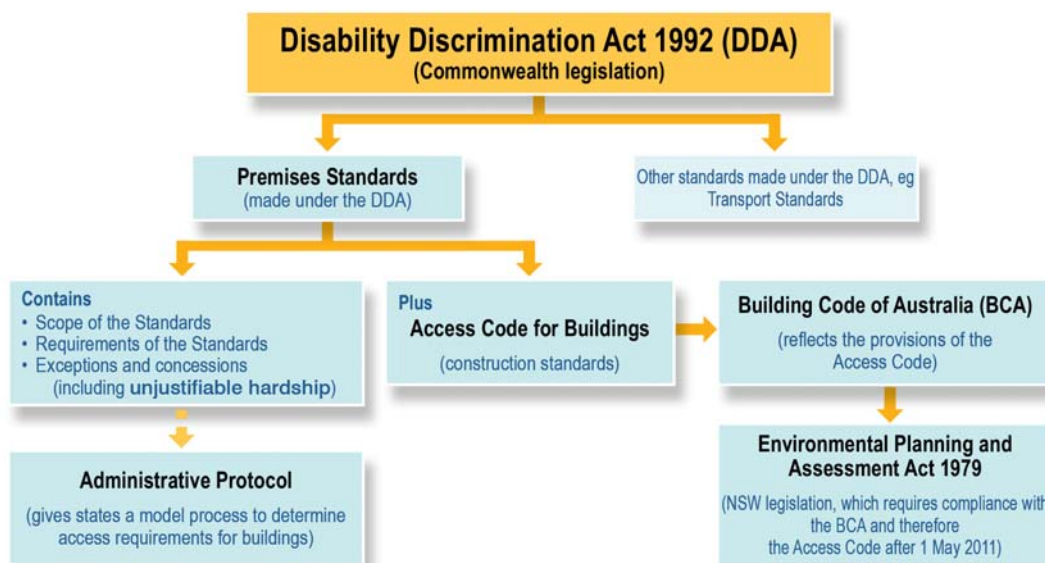
The Standards contain an Access Code of construction that will be mirrored in the access provisions of the BCA. New work must comply with the Access Code in the same manner as complying with the BCA by meeting deemed-to-satisfy provisions or by adopting an alternative solution that achieves the relevant performance requirements.

The Premises Standards also require the **affected part** of an existing building to comply with the Access Code where new building work requiring approval is proposed. The affected part of a building is defined as:

- (a) *the principal pedestrian entrance of an existing building that contains a new part; and*
- (b) *any part of an existing building, that contains a new part, that is necessary to provide a continuous path of travel from the entrance to the new part.*

Compliance will be determined by councils or building certifiers acting as the certifying authority. Building developers and building managers are also responsible for ensuring that compliance is achieved.

A general exemption to compliance with the Premises Standards is provided where compliance would cause **unjustifiable hardship**. Compliance with the Premises Standards is still required to the maximum extent not involving unjustifiable hardship. Another exemption excludes lessees from compliance with the requirement to upgrade the affected part of the building if they do not lease the whole building.





Issues already identified

- It is yet to be determined whether work to a new part of an existing building should be complying development where the work also requires upgrading of an affected part or involves a question of unjustifiable hardship.
- There is currently no ability to take into account unjustifiable hardship issues under the NSW *Environmental Planning and Assessment Act 1979*.
- Clarity is needed around who should determine whether compliance with the Premises Standards would impose unjustifiable hardship – whether councils should have this role or whether NSW should set up a State Access Panel.
- NSW does not currently accredit access consultants and there is no national qualification for these practitioners.
- Solutions are required to account for Crown building work that commences after 1 May 2011. A process is also needed to recognise existing exemptions for state facilities such as police stations or schools.
- Identifying the “affected part” of an existing building and determining compliance of work to the affected part with the Premises Standards may not be straightforward.

Actions that need to take place now

Specifically, as well as familiarising themselves with the Premises Standards:

- **Building designers, architects, draftspersons, building owners, developers and builders** need to be aware of the new access requirements and ensure that proposals for new building work after 1 May 2011 comply with these standards, or, where an exemption is to be sought, that the reasons for the exemption are well documented to enable assessment by the relevant certifying authority. It may also be appropriate to enlist the services of a qualified person, e.g. an access consultant, to assist in preparing such documentation.
- **Building certifiers** (councils and private certifiers) should familiarise themselves with the changes proposed to the BCA. Depending on the extent of legislative change in NSW, certifiers may be required to consider alternative solutions relating to the new access requirements and requests for exemptions from the requirements as part of their certification assessment processes.
- **State agencies** must consider the impacts of the Premises Standards for their areas of responsibility, and adopt design processes that adequately address the Standards in a similar manner to architects and building designers.

Remember: the Standards will apply to work requiring a construction certificate or complying development certificate from 1 May 2011.

Have your say

The Building Professionals Board and Department of Planning have released an issues paper to encourage feedback and discussion on options for determining unjustifiable hardship claims under the Standards. The issues paper is available at www.bpb.nsw.gov.au.

Comment must be provided **by 28 February 2011** to bpb@bpb.nsw.gov.au.

More information

Further information is available at:

- [Australian Attorney-General's Department](#)
- [Australian Human Rights Commission](#)
- [Australian Building Codes Board](#)

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Level 3, 10 Valentine Avenue Parramatta NSW 2124 www.bpb.nsw.gov.au

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