



# **Building Commission**

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## **BCA 2011 - Disability Access Provisions and the Premises Standards**

The Building Code of Australia 2011 (BCA 2011) introduces new disability access provisions, based largely on 'Schedule 1 – Access Code for Buildings' of the Commonwealth Government's *Disability (Access to Premises – Buildings) Standards 2010* (also known as the Premises Standards).

The following information is provided to assist local governments and the building industry when dealing with a number of administrative matters.

### **Responsibilities**

From 1 May 2011 a building certifier, building developer or building manager of a relevant building (these are defined terms under the Premises Standards) must ensure that the building complies with the Access Code of the Premises Standards.

Where the requirements of the Premises Standards and the *Building Regulations 1989* are different, compliance with the higher standard is required.

### **The triggering of access requirements**

A building or structure that requires a building licence under the *Building Regulations 1989* must comply with the relevant access provisions of the BCA.

However any relevant building or structure that requires a building licence, must also comply with the requirements of the Premises Standards.

### **'New parts' and 'affected parts'**

Part 2 of the Premises Standards states which buildings must comply with the Premises Standards. Included in this Part are access requirements for 'new parts' and 'affected parts' of an existing building. The Premises Standards defines what these terms mean.

The *Building Regulations 1989* and the BCA do not contain the terms 'new part' or 'affected part'.

A building certifier, building developer or building manager of an existing building that is undergoing any work that requires a building licence, has a responsibility under the Premises Standards to ensure that all relevant parts of that existing building i.e. any new and affected parts, comply with the Premises Standards.

### **Unjustifiable hardship**

The term “unjustifiable hardship” is something that exists only under the *Disability Discrimination Act 1992* (DDA) and associated Premises Standards. It should be noted that the provision of unjustifiable hardship in that legislation, is not an excuse to provide no access to or within a building. Compliance is required to the maximum extent not involving unjustifiable hardship.

However, in Western Australian (and many other states and territories) building law **does not** recognise the concept of unjustifiable hardship. Owners and developers must comply with the requirements of the BCA and the *Building Regulations 1989*. Where a building licence application fails to comply with those requirements, a building licence will not be issued by the local government.

Under Section 39 of the proposed Building Act, the Building Commissioner can make a declaration that permits the modification of building standards for a specific building. This would allow modification of building standards so that they were consistent with the Premises Standards and allow the consideration of the unjustifiable hardship provisions in some cases.

However, there are strict criteria surrounding when such a declaration can be made. The Building Commissioner can only make a declaration where he or she is satisfied that the declaration would not result in an increased risk to people, property or the environment and that making the declaration is in the public interest or is consistent with the purpose of any other written or Commonwealth law. The process for seeking such declarations will be finalised in the new building regulations.

### **Access Panel**

The Building Commission is regularly asked if Western Australia will be setting up an access panel.

An access panel is not mandatory for State and Territory governments. Access panels were only intended to make ‘recommendations’ in relation to access-related matters, such as alternative solutions. It does not provide protection or immunity from a complaint of discrimination. At this stage, there are no plans for the Building Commission to have an access panel.

## Transition Period

In Western Australia, local governments have discretion under regulation 6(2) of the Building Regulations to provide a 12 month transition period when new provisions of the BCA are introduced.

However, the Premises Standards contain no such transition period. From 1 May 2011 a building certifier, building developer or building manager of a relevant building must ensure that the building complies with the Access Code of the Premises Standards.

During the transition period a local government (at its discretion) may consider the unjustifiable hardship provisions of the Premises Standards and if satisfied, permit the use of BCA 2010 provisions that are consistent with Premises Standards.

A local government that chooses to allow provisions of BCA 2010 to be used during the next 12 months should ensure that the access related provisions are not less than those required under the Premises Standards. Otherwise the local government may be breaching its responsibilities under the DDA and Premises Standards.



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