

The Building Code of Australia (BCA):

In NSW the *Environmental Planning and Assessment Act* (EP & A Act) contains the legislation applicable to the development of buildings. The EP & A Act applies the *Building Code of Australia* (BCA) as the technical requirements to be met in:

- new buildings; and
- new building work only.

It does NOT apply the BCA retrospectively to existing buildings.

The BCA provides a set of measurable construction standards to be used in design and construction of new building work.

In addition to the requirement for new work to comply with the BCA, in cases of existing buildings undergoing alterations and/or additions, some discretion is available for councils to require upgrading of the existing part of the building to meet the BCA, based on either fire safety or volume of work only.

(The EP & A Act has no provision under which councils can require the upgrade of the existing part of a building on the basis of the provision of access only.)

This means:

- for an existing building **where no work is being proposed**, that the building **IS NOT SUBJECT TO THE BCA** and therefore, is not required by legislation to be upgraded whenever the BCA is amended;
- For an existing building **undergoing alterations and/or additions**, that the new work must comply with the BCA and the existing part of the building is subject to a discretion under which council **MAY** require upgrading **ONLY** on the basis of a **FIRE SAFETY MATTER OR DEVELOPMENT INVOLVING MORE THAN 50% OF THE BUILDING**.

The Disability Discrimination Act (DDA):

To paraphrase, the *Disability Discrimination Act* (DDA) makes it illegal to discriminate against a person on the basis of their disability.

It is not specifically about buildings, however it has an effect on buildings in which the design and construction prevents access by people with a disability, as the owners of those buildings are deemed to be discriminating against people on the basis of a disability.

The DDA is philosophical in approach and:

- is complaints based;
- has no construction standards;
- applies to actions of discrimination wherever they occur;
- therefore, can apply retrospectively to both new and existing buildings, wherever the discrimination occurs.

The 'access to buildings component' of the DDA is applied **only** to buildings that are available for the general public to enter and use - as employees, patrons, customers or the general public.

Application of the DDA includes:

- hospitality/accommodation buildings (hostels, B & Bs, hotels, motels, etc);
- commercial buildings (office buildings, shopping centres, factory/warehouses etc);
- health and aged care buildings (hospital, nursing home, aged care building etc);
- assembly buildings (theatre/cinemas, places of worship, libraries, halls, courts etc)

Application of the DDA does not include:

- a private dwelling house;
- individual flats/units/apartments in a block of residential dwellings or a caretakers flat.

Combining BCA and DDA

It must also be explained that even though the DDA includes the approval process and councils that undertake approvals, as co-respondents in the discrimination when a new building or new building work is involved, neither the Local Government Act nor the Environmental Planning and Assessment Act, which regulate Councils and Accredited Certifiers, grant any power for either in their role as Certifying Authorities (who issue Construction Certificates) to make requirements of a building that are outside of the BCA.

This means that :

- Construction Certificates (CCs) cannot require a building to be upgraded to meet the DDA when that is over and above BCA requirements - unless it is on the basis of a planning policy of the council to which the applicant is subject to comply with for their DA. The CC must then reflect the DA condition.
- Compliance with the DDA is often a decision of the building owner, in order to provide equitable access to their building, to avoid a complaint or in response to a complaint. In this case, as no construction standards are contained in the DDA, the owner must make informed decisions on the type and extent of work required to meet the DDA's requirement for non-discrimination, or may have a conciliated outcome with HREOC or a court for the provision of access. In such cases, the BCA and/or Australian Standards may be used or required to be used as the basis of the work required.
- While the current BCA cannot be relied upon to provide compliance with the DDA, the Australian Building Codes Board (ABCB) who coordinate the development of the BCA, is involved in a project to align the BCA/DDA so that the access provisions of the BCA will be accepted as a Premises Standard under the DDA. On completion of the project, compliance with the BCA will be deemed to be compliance with the DDA.