

Commercial Property

Disabled by a sleeper

LEGAL MATTERS

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THE Disabled Discrimination Act 1992 is a little-known piece of legislation with far reaching applications for property owners and building professionals.

The Act is somewhat of a sleeper which has caught out companies and statutory bodies.

It is a federal Act of Parliament that requires buildings constructed after 1992 to comply with the DDA as well as the Building Code of Australia (BCA).

The building must provide access to people with a disability in order to comply with the Act.

There is, however, a provision that allows for exemption if a particular access regime is likely to cause "unjustifiable hardship".

Having to take into account all circumstances is defined as an "unjustifiable hardship" under the act.

It also considers the nature of the benefit or detriment that would be suffered by a building's accessibility plus the effect of the disability and the financial impost that would be brought to bear by accessibility.

A popular misconception is that if a building is built in accordance with the BCA, then that is a complete defence.

Wrong. The BCA is called up by a state Act — the Building Act 1993. A federal Act overrides a state Act and where there is a higher standard, in the federal Act the federal Act will apply.

Just because a building complies with the current BCA does not mean it complies with the DDA.

The problem with the definition of "unjustifiable hardship" is that it is a fluid definition and it is difficult to know whether one comes within its ambit.

In the case of Ian Cooper on behalf of North Coast Dial Inc v Coffs Harbour City Council the council tried to establish that alterations to a cinema would cause "unjustifiable hardship" to the operator.

The Commissioner found that the "unjustifiable hardship" criteria had not been established.

Help might be on the way, on the 1 May 2007 the BCA will be calling up a new "premises standard". The standard will attempt to clarify access requirements. Any conflict between the BCA and the DDA will be removed.

This has to be a good thing, because uncertainty leads to either over design or under design.

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