



Australian
Human Rights
Commission

Advisory Note on streetscape, public outdoor areas, fixtures, fittings and furniture

8 FEBRUARY 2013

ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

Table of Contents

1	Introduction.....	4
2	Acknowledgments	5
3	Legal responsibility to not discriminate.....	5
4	Legal status of this advice	6
5	Consultation with people with disabilities and access experts.....	6
6	Structure of the Advisory Notes	6
7	Referenced documents	7
7.1	<i>Australian Standard AS 1428.2:1992 – Design for access and mobility Part 2: Enhanced and additional requirements-Buildings and facilities</i>	7
7.2	<i>Australian Standard AS 1428.1:2009 – Design for access and mobility Part 1: General requirements for access – New building work.....</i>	7
7.3	<i>Australian Standard AS 1428.4.1:2009 Design for access and mobility Part 4.1: Means to assist the orientation of people with vision impairment – Tactile ground surface indicators.....</i>	7
7.4	<i>Australian Standard AS/NZS 2890.6:2009 Parking facilities Part 6: Off-street parking for people with disabilities.....</i>	8
7.5	<i>Australian Standard AS 1428:2010 Design for access and mobility – Communication for people who are deaf or hearing impaired.....</i>	8
7.6	<i>Disability (Access to Premises – buildings) Standards 2010 (Premises Standards).....</i>	8
7.7	<i>Americans with Disabilities Act Standards for Accessible Design 2010 (ADA Standards).....</i>	8
7.8	<i>USA Draft Final Accessibility Guidelines for Outdoor Developed Areas</i>	9
7.9	<i>USA Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way</i>	9
7.10	<i>USA Access Board A Summary of Accessibility Guidelines for Play Areas</i>	9
7.11	<i>FaQ on the DDA and footpath use</i>	10
7.12	<i>Guideline for promoting compliance of bus stops with the Disability Standards for Accessible Public Transport 2002 (Accessible bus stop guideline)</i>	10
8	Advisory Notes on fittings, fixtures, furniture, infrastructure and public space	10
8.1	<i>Interpretation of key terms</i>	10
8.2	<i>Continuous accessible path of travel.....</i>	10
	<i>Reference points and notes.....</i>	11
8.3	<i>Carparks.....</i>	11
8.4	<i>Stairways along footpaths and in outdoor areas</i>	12
8.5	<i>Approaches, entrances and doorways.....</i>	12
8.6	<i>Controls</i>	12
8.7	<i>Streetscape.....</i>	13
8.8	<i>Public outdoor areas.....</i>	14
	<i>Reference points and notes.....</i>	14
8.9	<i>Fixtures, fittings and furniture</i>	15

	<i>Reference points and notes</i>	15
9	Discrimination arising from management and maintenance practices	16
10	Discrimination by staff	17
11	Use of chemicals and materials	17
	Appendix A	18
	A.1 <i>The Disability Discrimination Act</i>	18
	A.2 <i>Examples of discrimination</i>	20
	A.3 <i>Unjustifiable hardship</i>	20
	A4 <i>Action plans</i>	21

Advisory Notes on streetscape, public outdoor areas, fixtures, fittings and furniture

1 Introduction

Many of the access issues addressed in these *Advisory Notes on streetscape, public outdoor areas, fixtures, fittings and furniture* originally formed part of the *Advisory Notes on Access to Premises* first issued by the Australian Human Rights Commission in 1997.

In publishing the *Advisory Notes on Access to Premises* the Commission was responding to requests from people who design, build, own, manage, lease, operate, regulate and use premises for information about their responsibilities and rights under the *Disability Discrimination Act 1992* (DDA) and in particular under section 23 Access to Premises.

The *Advisory Notes on Access to Premises* were not mandatory, but aimed to:

- provide a checklist of all the issues (or elements) the Commission believed should be considered in the design, construction and operation of a building and the built environment outside of buildings to ensure access for people with disability
- provide a number of technical 'Reference points and notes' to assist people who are responsible for premises to achieve better access.

In May 2011 the *Disability (Access to Premises – buildings) Standards 2010* (Premises Standards) came into force. The Premises Standards include an *Access Code for buildings* (Access Code) which sets out a number of mandatory Performance Requirements and provides minimum 'deemed-to-satisfy' technical specifications as one means of meeting the Performance Requirements for buildings.

Compliance with these minimum deemed-to-satisfy requirements ensures compliance with the general non-discrimination requirements of the DDA on those matters covered by the Premises Standards.

This means that for those matters covered in both the *Advisory Notes on Access to Premises* and the Premises Standards, such as the design and construction of ramps and stairways, accessible toilets, circulation space requirements and hearing augmentation systems the appropriate reference point to meet minimum requirements in relation to buildings is now the Premises Standards.

As a result the Commission has decided to withdraw the *Advisory Notes on Access to Premises* from circulation to avoid confusion in relation to those matters covered by both documents.

However, the *Advisory Notes on Access to Premises* covered a broader range of access issues than those covered by the Premises Standards which is largely limited to the design and construction of the basic building structure.

For example, many issues that may give rise to barriers to access within buildings, such as some fitout features, fixtures and furnishings and discrimination by staff are not covered by the Premises Standards.

Similarly infrastructure such as public footpaths, outdoor areas such as parks and playgrounds, landscaping and road crossings are not covered by the Premises Standards.

Those access issues not addressed in the Premises Standards continue to be subject to possible discrimination complaints by people with disability if they experience an access barrier.

As a consequence the Commission has issued this *Advisory Notes on streetscape, public outdoor areas, fixtures, fittings and furniture* to assist those responsible for premises who are seeking to improve access on matters not covered by the Premises Standards.

2 Acknowledgments

The Commission would like to acknowledge John Deshon, Architect, Brisbane for his assistance in the development of the initial *Advisory Notes on Access to Premises* and Michael Small small.consulting@bigpond.com for his work in developing these Advisory Notes.

3 Legal responsibility to not discriminate

Section 23 *Access to Premises* of the DDA makes it unlawful to discriminate against people with a disability, or their associates, in relation to access to, and use of, premises that the public is allowed to enter or use.

Premises is defined very broadly to include structures, buildings and places (whether enclosed or built on or not). This would include, for example, public parks, playgrounds, streetscapes, outdoor areas and road crossings.

Similarly, section 24 *Goods, services and facilities* makes it unlawful for a person, or organisation, to discriminate against people with disability in the way they provide goods or services or make facilities available.

Similar provisions can be found in state and territory anti-discrimination laws.

People who discriminate against people with disability are faced with the possibility of a complaint being made against them. It is possible to defend a complaint by showing that providing equal access would result in an unjustifiable hardship.

For more information on the DDA, 'unjustifiable hardship', examples of discrimination complaints and Action Plans see Appendix A.

If a complaint of discrimination is made under the DDA the Commission would attempt to conciliate an agreement between the two parties. If the complaint is not resolved or is discontinued for some other reason, the complainant would have 60

days from when the Commission finalises the complaint to make an application to the Federal Magistrates Court or the Federal Court of Australia to seek a formal determination on whether or not discrimination had taken place and whether or not the respondent had a defence of unjustifiable hardship.

4 Legal status of this advice

Matters not covered by the Premises Standards, such as those addressed in these Advisory Notes, remain covered by the general non-discrimination complaints provisions of the DDA.

Individual complaints must be dealt with on a case-by-case basis with courts making final determinations on whether or not unlawful discrimination has occurred. Because of this the Commission can only offer advice about what levels of access may reduce the chances of a successful complaint being made.

These advisory notes are issued by the Australian Human Rights Commission under section 67(1)(k) of the *Disability Discrimination Act 1992*.

The Advisory Notes represent views about the meaning and application of section 23 *Access to Premises* and 24 *Goods, services and facilities* of the DDA. Although prepared with advice from people with expertise in access issues, the notes should not be taken to represent the views of any person or organisation other than the Commission.

These Advisory Notes are not mandatory and do not have the force of law. They have been prepared by the Commission to assist people to understand their already existing responsibilities and rights under the DDA and to assist in identifying areas of possible discrimination complaint.

5 Consultation with people with disabilities and access experts

Consultation with people with disability, their representative organisations and access experts is an essential part of achieving the objects of the DDA. These Advisory Notes should be seen as complementing appropriate consultation processes.

6 Structure of the Advisory Notes

Each section of these Advisory Notes identifies an issue (or element), such as infrastructure, furniture and fitments or discrimination by staff that should be considered by people who design, build, own, lease, operate or manage premises when providing access for people with disability.

The first part of each section states a broad outcome that people should be trying to achieve if they wish to provide equitable access to all users.

The second part of each section, under the heading 'Reference points and notes', provides information on a range of specifications that should be considered when trying to achieve equitable access.

7 Referenced documents

The Advisory Notes reference a number of technical and scoping documents that provide further information on how to achieve better access for people with disability.

7.1 Australian Standard AS 1428.2:1992 – Design for access and mobility Part 2: Enhanced and additional requirements- Buildings and facilities

This Australian Standard provides technical details of elements such as reach ranges, furniture and fittings, gateways and checkouts, telephones, and street furniture.

This standard is currently under review by Standards Australia following the introduction of the Premises Standards. It is anticipated a revised edition will focus on fixtures and fittings for accessible buildings. While this standard is over 20 years old it remains a valuable resource.

AS 1428.2 can be purchased from <http://www.saiglobal.com>

7.2 Australian Standard AS 1428.1:2009 – Design for access and mobility Part 1: General requirements for access – New building work

This Australian Standard provides technical details of elements such as circulation space requirements on corridors and around doorways, ramps, access features on stairways, floor or ground surfaces, signage and accessible sanitary facilities.

AS 1428.1 is the primary deemed-to-satisfy technical document referenced in the Premises Standards for the design and construction of buildings.

While these Advisory Notes are primarily concerned with access issues not covered by the Premises Standards and access issues outside of buildings AS 1428.1 remains a relevant reference for elements such as ramps, stairways and circulation in public outdoor areas and infrastructure.

AS 1428.1 can be purchased from <http://www.saiglobal.com>

7.3 Australian Standard AS 1428.4.1:2009 Design for access and mobility Part 4.1: Means to assist the orientation of people with vision impairment – Tactile ground surface indicators

This Australian Standard provides technical details in relation to the design and use of tactile ground surface indicators (TGSIs).

While specific clauses of AS 1428.4.1 are referenced in the Premises Standards this Australian Standard provides considerably more guidance in relation to the use of TGSIs in the broader environment.

AS 1428.4.1 can be purchased from <http://www.saiglobal.com>

7.4 Australian Standard AS/NZS 2890.6:2009 Parking facilities Part 6: Off-street parking for people with disabilities

This Australian Standard provides technical details in relation to off-street parking but also includes design information for parallel parking along a roadway.

AS/NZS 2890.6 can be purchased from <http://www.saiglobal.com>

7.5 Australian Standard AS 1428:2010 Design for access and mobility – Communication for people who are deaf or hearing impaired

This Australian Standard provides technical details to assist those responsible for buildings to provide and maintain effective hearing-augmentation systems.

AS 1428.5 can be purchased from <http://www.saiglobal.com>

7.6 Disability (Access to Premises – buildings) Standards 2010 (Premises Standards)

While the Premises Standards is concerned primarily with the design and construction of buildings these Advisory Notes on occasion refer to them as relevant references.

The Premises Standards can be found at <http://www.ag.gov.au/PremisesStandards>

A Guideline on the application of the Premises Standards prepared by the Commission can be found at
http://www.hreoc.gov.au/disability_rights/buildings/access_to_premises.html

7.7 Americans with Disabilities Act Standards for Accessible Design 2010 (ADA Standards)

The ADA Standards set minimum requirements – both scoping and technical -- for newly designed and constructed or altered State and local government facilities, public buildings, and commercial facilities in the USA.

They include a broader scope of elements than the Premises Standards including dressing and fitting rooms, work-surfaces and benches, recreational facilities such as amusement rides, fishing piers, play areas for children and drinking fountains.

While some of these elements are addressed in AS 1428.2 some are not, and while the ADA Standards may differ from AS 1428.2 in some respects they offer some useful references.

These Advisory Notes recommend that where there is a difference between the Premises Standards/Australian Standards and USA Standards or guidelines the higher levels of access be adopted.

The ADA Standards can be found at www.ada.gov/2010ADASTandards_index.htm

7.8 USA Draft Final Accessibility Guidelines for Outdoor Developed Areas

While not finalised the Access Board in the USA has issued draft Accessibility Guidelines for Outdoor Developed Areas covering areas including camping facilities, picnic facilities, viewing areas, outdoor recreation access routes, trails, and beach access routes that are constructed or altered by or on behalf of the Federal government.

These Advisory Notes recommend that where there is a difference between the Premises Standards/Australian Standards and USA Standards or guidelines the higher levels of access be adopted.

The draft Guidelines can be found at <http://www.access-board.gov/outdoor/draft-final.htm>

7.9 USA Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way

The Access Board in the USA has issued the proposed accessibility guidelines for the design, construction, and alteration of pedestrian facilities in the public right-of-way. The guidelines aim to ensure that sidewalks, pedestrian street crossings, pedestrian signals, and other facilities for pedestrian circulation and use constructed or altered in the public right-of-way by state and local governments are readily accessible to and usable by pedestrians with disability.

These Advisory Notes recommend that where there is a difference between the Premises Standards/Australian Standards and USA Standards or guidelines the higher levels of access be adopted.

The proposed guidelines can be found at <http://www.access-board.gov/prowac/>

7.10 USA Access Board A Summary of Accessibility Guidelines for Play Areas

This summary of accessibility features of play areas provides ideas on making children's play areas accessible.

The summary can be found at <http://www.access-board.gov/play/guide/intro.htm>

A web-search on 'accessible play areas' will provide access to other resources.

7.11 FaQ on the DDA and footpath use

This Frequently asked Question provides advice on the accessibility of footpaths and their repair and maintenance.

This FaQ can be found at

http://www.humanrights.gov.au/disability_rights/faq/Access/access.html#footpath

7.12 Guideline for promoting compliance of bus stops with the Disability Standards for Accessible Public Transport 2002 (Accessible bus stop guideline)

The 'Accessible bus stop guideline' was published by the Commission in December 2010. It provides information on the interpretation of the *Disability Standards for Accessible Public Transport* as they relate to bus stops and shelters.

The Guideline can be found at

http://www.hreoc.gov.au/disability_rights/standards/AHRC_Bus_Stops_Guidelines_November_2010.htm

8 Advisory Notes on fittings, fixtures, furniture, infrastructure and public space

8.1 Interpretation of key terms

Accessible

Accessible means having features to enable use by people with disability.

Continuous accessible path of travel

These Advisory Notes define a continuous accessible path of travel as an uninterrupted route to and within premises providing access to all features, services and facilities. It should not incorporate any step, stairway, turnstile, revolving door, escalator, hazard or other impediment which would prevent it from being safely negotiated by people with disability.

Premises

The definition of premises in the DDA extends to the whole of the built environment. It includes:

- existing buildings, including heritage buildings;
- new or proposed buildings;
- transport systems;
- car parks, sports venues, pathways, public gardens and parks.

8.2 Continuous accessible path of travel

8.2.1 People who design, build, own, lease, operate or manage premises should achieve equitable access for people with disability by ensuring all parts of premises

to which the public is entitled or allowed to enter or use are connected by a network of continuous accessible paths of travel.

8.2.2 A continuous accessible path of travel should extend to all amenities and areas to which the public (including employees) is entitled or allowed to enter or use.

8.2.3 A continuous accessible path of travel should be the most commonly used and direct path of travel. If for any reason this is not possible clear signage of the alternative route should be provided.

8.2.4 Features such as stairways, escalators, street furniture, landscaping and moving pathways, where they exist, should be located adjacent to and should not obstruct a continuous accessible path of travel.

8.2.5 Managers and operators of premises should ensure management practices are in place to maintain a continuous accessible path of travel.

Reference points and notes

8.2.6 Note that the DDA requires access be provided to and within all premises unless doing so would impose an unjustifiable hardship. See Appendix A for further discussion on unjustifiable hardship.

8.2.7 Clearly natural topographical features will reduce the capacity to achieve a continuous accessible path of travel in public premises such as pedestrian footpaths or bush walking tracks.

8.2.8 For information on design features relating to a continuous accessible path of travel, people who are responsible for premises should consider the specifications covering aspects of a continuous accessible path of travel in the Premises Standards and AS 1428.1.

8.2.9 For specifications relating to design features to ensure safe movement and access along footpaths and in public spaces for blind people or people who have a vision impairment, including the use of TGSi, consider AS 1428.4.1 in conjunction with AS 1428.2 Clause 18.1. (The forward to AS 1428.4.1 notes that the use of TGSi will not correct bad design or make an unsafe environment safe and that good design will minimise the need for the use of TGSi. TGSi should be used to provide guidance and/or warning of an obstruction or hazard where there is insufficient alternative or 'natural' tactile cues).

8.2.10 Note that passing spaces should be provided on a continuous accessible path of travel when that path is not wide enough to allow for people to pass as indicated in AS 1428.2 Clause 6.5a. The frequency of provision of passing spaces should be considered in the context of the location and purpose of the path.

8.3 Carparks

8.3.1 Carparks and on-street parking should contain car parking space(s) designated for vehicles used by people with disability.

8.3.2 There should be adequate signage to identify the accessible space.

8.3.3 There should be a continuous accessible path of travel from each such space to the closest accessible entrance to facilities or the footpath.

Reference points and notes

8.3.4 For specifications relating to accessible car spaces, including vertical clearance specifications consider AS/NZS 2890.6.

8.3.5 Note that provision should be made to ensure adequate vertical clearance from the street, through the entrance to the carpark and to any accessible parking spaces within a carpark.

8.3.6 Note that the minimum percentage of designated spaces for vehicles used by people with disability in a carpark associated with a building is one of the issues addressed in the Premises Standards. These percentages should be considered for carparks not associated with a building.

8.4 Stairways along footpaths and in outdoor areas

8.4.1 Stairways should have accessible features to ensure safe use for all those people who wish to and are permitted to use them.

8.4.2 Stairways, where they exist, should not be part of a continuous accessible path of travel and should be located adjacent to the continuous accessible path of travel.

Reference points and notes

8.4.3 For specifications relating to stairways consider AS 1428.1 Clauses 11.

8.4.4 Note that open risers should not be used on a stairway.

8.5 Approaches, entrances and doorways

8.5.1 Entrances to public spaces or facilities should be accessible to all users.

Reference points and notes

8.5.2 Consideration should also be given to the design features and specifications covering aspects of approaches, entrances and doorways in the Premises Standards and AS 1428.1.

8.6 Controls

8.6.1 All users should be able to access and use any controls used by the public, such as door handles, power switches, card slots, keys pads and buttons.

Reference points and notes

8.6.2 For specifications relating to controls consider AS 1428.2 Clause 23.

8.7 Streetscape

8.7.1 Elements in the streetscape, including those at the property alignment/boundary, should be designed to allow for equitable use and arranged to ensure a continuous accessible path of travel.

8.7.2 These elements include:

- public footpaths
- ramps including kerb ramps and step ramps
- gutter crossings
- pedestrian street crossings
- road cambers
- footpath crossfalls
- gradient of path of travel
- street furniture including seating
- hazards obstructing the path of travel, including overhead obstacles
- surfaces
- bus stops and shelters
- signage and directional information
- warnings

Reference points and notes

8.7.3 Note that the responsibility for most public infrastructure such as pedestrian footpaths rests with a public authority. It is, however, increasingly common for developers to be required to install or renew infrastructure.

Whoever is responsible for the construction and/or management of an infrastructure element is likely to be responsible for its accessibility.

8.7.4 For information relating to the design and use of public footpaths see the Commission's *FaQ on the DDA and footpath use*.

8.7.5 For specifications relating to ramps, step ramps, transition ramps and kerb ramps consider AS 1428.1 Clause 10 and AS 1428.4.1.

8.7.6 For specifications relating to the provision of resting places and seating along continuous accessible paths of travel consider the note attached to AS 1428.2 Clause 7(e).

8.7.7 Note that the needs of ambulant people with mobility disability who require public seating higher than the general 450 mm should also be addressed. See AS 1428.2 Clause 27.2 Note 1 which refers to a preferred height of 520 mm.

8.7.8 For specifications relating to street furniture and possible obstructions to an accessible path of travel consider AS 1428.2 Clause 27.1 and AS 1428.4.1.

8.7.9 For specifications relating to ground and floor surfaces on a continuous accessible path of travel consider AS 1428.2 Clause 9 and AS 1428.1 Clause 7.

8.7.10 For specifications relating to symbols and signs consider AS 1428.2 Clauses 16 and 17. (Excessive use of signs at every minor change in direction such as entry to individual offices spaces is not considered appropriate).

8.7.11 Note the need for 30% luminance contrast in signs and warnings.

8.7.12 For specifications relating to street crossings and the provision of TGSIs consider AS 1428.4.1 in conjunction with relevant parts of AS 1428.2 Clause 18.1.

8.7.13 For information relating to bus stops and shelters consider the *Accessible bus stop guideline*.

8.7.14 Specifications for many of these elements can also be found in the *USA Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way*

8.8 Public outdoor areas

8.8.1 All users should be able to access public outdoor areas including camping facilities, picnic facilities, children's playgrounds, viewing areas, fishing platforms, outdoor recreation areas such as parks, trails and beaches and outdoor events such as festivals and agricultural shows.

Reference points and notes

8.8.2 Note that the DDA requires access be provided to and within all premises unless doing so would impose an unjustifiable hardship. See Appendix A for further discussion on unjustifiable hardship.

8.8.3 Clearly natural topographical features and the nature and use of some outdoor areas will limit the capacity to provide access, for example, throughout the length of a bush walking track. However, the DDA requires every effort be made to provide to provide access short of unjustifiable hardship.

8.8.4 For specifications relation to outdoor areas consider the *USA Draft Final Accessibility Guidelines for Outdoor Developed Areas*.

8.8.5 For a summary of accessible children's play areas consider the *USA Access Board A Summary of Accessibility Guidelines for Play Areas*.

8.8.6 For further advice on outdoor events such as festivals and agricultural shows see *Accessible events – a guide for organisers* available from Meetings Events Australia at <http://www.meetingsevents.com.au/downloads.php>

8.9 Fixtures, fittings and furniture

8.9.1 All users should be able to access and use fixtures, fittings and furniture.

8.9.2 Note that the following list is only a guide - not necessarily inclusive - to fixtures, fittings and furniture which may be found in a building or the surrounding built environment, such as in parks, to which access should apply:

- reception counters and customer service counters
- gateways and checkouts
- ticket windows
- public telephones
- drinking fountains
- food service areas
- vending machines (including automatic teller machines)
- tea and coffee making facilities
- work, reading and writing surfaces
- chairs and seating
- bedroom circulation in hotels/motels
- security devices
- turnstiles and ticket validation gateways
- fitting rooms in retail outlets
- built-in computerised information systems
- library shelves
- lighting
- symbols and signs
- information display boards and racks
- lecterns
- planter boxes
- public BBQ's areas and picnic tables
- post boxes
- refuse receptacles
- background sound levels

Reference points and notes

8.9.3 For specifications relating to reach ranges, controls, built-in furniture and fitments, viewing ranges, gateways and checkouts, circulation space around beds, post boxes and public telephones consider AS 1428.2 Clauses 22, 23, 24, 28, 29, 30 and 31.

8.9.4 Where an element of built in furniture or fitment is not specifically identified, consider the requirements of AS 1428.2 for similar built-in furniture and fitments.

8.9.5 Specifications for many of these elements can also be found in the *ADA Standards*.

8.9.6 Note that in premises such as shops and supermarkets management practices could be introduced to ensure people with disabilities can access stock normally kept on higher shelves.

8.9.7 Note that where facilities such as telephones are provided consideration should be given to ensuring access to sound amplification capacity.

8.9.8 For specifications relating to gateways and checkouts along a continuous accessible path of travel consider AS 1428.2 Clause 28 and the *ADA Standards*.

8.9.9 Note the need to ensure where fixed tables and seating is provided in parks or around picnic areas space is provided for people using wheelchairs to access the table.

8.9.10 For specifications relating to lighting consider AS 1428.2 Clause 19.

8.9.11 Note that lighting that tends to flicker should be avoided.

8.9.12 Note that to facilitate lip reading and/or interpreting clear, even illumination is required for the faces of both the speaker and the interpreter.

8.9.13 For specifications relating to symbols and signs consider AS 1428.2 Clauses 16 and 17 and the *ADA Standards*. (Excessive use of signs at every minor change in direction such as entry to individual offices spaces is not considered appropriate).

8.9.14 Note the need for 30% luminance contrast of numbers, letters or symbols from their background.

8.9.15 For specifications relating to maximum background sound levels consider AS 1428.2 Clause 20.

8.9.16 For specifications relating to accessible ATMs see the Australian Bankers Associations industry standards at <http://www.bankers.asn.au/Industry-Standards/ABAs-Accessibility-of-Electronic-Banking->

9 Discrimination arising from management and maintenance practices

Inadequate or inappropriate management, maintenance and housekeeping practices can make otherwise accessible premises inaccessible. It is not enough to design and build for access, there are many instances where a failure to effectively manage and maintain access features can lead to significant discriminatory barriers. For example:

- use of accessible toilets as storage areas or multipurpose rooms where fixtures inhibit circulation space;
- allowing gradual deterioration of lighting levels;
- locking of accessible toilets or lifts at any time when premises are still in use;
- allowing shrubs beside pathways or overhanging trees to become overgrown;
- allowing surfaces to become dangerously worn or slippery;
- allowing signage to deteriorate

- constructing temporary displays that affect continuous accessible paths of travel.

10 Discrimination by staff

Access to premises is not solely concerned with technical specifications. A failure on the part of staff to respond equitably and appropriately to the requirements of people with disability can lead to significant discriminatory barriers. If staff are not adequately trained in the management of premises or in customer relations they could act in a way that effectively denies a person with a disability access to, and use of, premises. This could result in complaints of discrimination being lodged.

People who own, lease, operate and manage premises may be liable if staff behave in a discriminatory way unless they can show they have exercised due diligence and taken reasonable precautions to avoid discrimination occurring. They should consider the following strategies for addressing possible discrimination by staff against people with disability:

- make all relevant staff aware of the need to avoid discrimination. Depending on the nature of the enterprise, this might include issuing a formal policy statement on compliance with anti-discrimination law and more direct advice to staff;
- take reasonable measures to give staff sufficient information and expertise to make services and facilities available in a non-discriminatory way. This may include the provision of formal training;
- establish and promote effective complaints handling procedures regarding discrimination and ensure that these complaint procedures are accessible to people with disability and appropriately advertised.

11 Use of chemicals and materials

Use of chemicals and materials

A growing number of people report sensitivity to chemicals used in the building, maintenance and operation of premises, in some cases to a level making the premises effectively inaccessible to them. People who own, lease, operate and manage premises should consider the following issues to eliminate or minimise reactions to chemicals::

- the selection of building, cleaning and maintenance chemicals and materials, in accordance with relevant environmental and occupational health and safety regulations and established standards;
- provision of adequate ventilation and ensuring all fresh air intakes are clear of possible sources of pollution such as exhaust fumes from garages;
- minimising use of air fresheners and pesticides.

Appendix A

A.1 The Disability Discrimination Act

The DDA is a Federal anti-discrimination law. Section 3 of the DDA sets out its objects:

- a. to eliminate, as far as possible, discrimination against persons on the ground of disability;
- b. to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and
- c. to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

The DDA covers a wide range of areas including employment, education, sport and recreation, the provision of goods, services and facilities, accommodation and access to premises. All levels of government, businesses, trade unions, non-government organisations and individuals have responsibilities under the DDA. The law seeks to stop discrimination against people with any form of disability including physical, intellectual, sensory, psychiatric, neurological, learning, disfigurement or the presence in the body of a disease causing organism.

Section 5 of the DDA expresses the general principle that discrimination occurs when a person with a disability is treated less favourably than a person without a disability would be treated in the same or similar circumstances. The DDA is concerned therefore with equity and human dignity.

Section 4 of the DDA provides the following definition:

"premises" includes:

- a. a structure, building, aircraft, vehicle or vessel; and
- b. a place (whether enclosed or built on or not); and
- c. a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

The DDA covers existing premises, including heritage buildings, those under construction and future premises. The definition includes not only buildings, but also anything in the built environment including car parks, sports fields, parks, pathways and transport systems.

People who believe they have been discriminated against because of their disability may make a complaint to the Commission. The Disability Discrimination Commissioner attempts to resolve these complaints by conciliation, however if conciliation is not possible a complaint may be referred to the Commission for a formal hearing and a decision.

Section 23 Access to Premises of the DDA states:

It is unlawful for a person to discriminate against another person on the ground of the other person's disability or a disability of any of that other person's associates:

- a. by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or
- b. in the terms or conditions on which the first-mentioned person is prepared to allow the other person access to, or the use of, any such premises; or
- c. in relation to the provision of means of access to such premises; or
- d. by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
- e. in the terms or conditions on which the first-mentioned person is prepared to allow the other person the use of any such facilities; or
- f. by requiring the other person to leave such premises or cease to use such facilities.

(2) This section does not render it unlawful to discriminate against a person on the ground of the person's disability in relation to the provision of access to premises if:

- g. the premises are so designed or constructed as to be inaccessible to a person with a disability; and
- h. any alteration to the premises to provide such access would impose unjustifiable hardship on the person who would have to provide that access.

Section 23 provides a defence of "unjustifiable hardship". A person or organisation may claim that providing a particular level of access would be technically impossible, impose major difficulties or involve unreasonable costs.

Section 24 Goods services and facilities of the DDA states:

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's disability:

- a. by refusing to provide the other person with those goods or services or to make those facilities available to the other person; or
- b. in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
- c. in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

Section 24 provides a defence of "unjustifiable hardship". A person or organisation may claim that providing a particular level of access would be technically impossible, impose major difficulties or involve unreasonable costs.

A.2 Examples of discrimination

Examples of possible areas of discrimination that could result in a complaint by a person with a disability, their associates or representatives include:

- failure to provide equitable physical access to a premise
- inadequate signage for a person with a vision impairment using facilities within a premise
- failure to ensure facilities such as vending machines or counters within buildings are accessible or usable by people with a disability
- failure to provide suitable parking facilities for vehicles used by people with disabilities
- failure to provide a clear and safe access path in a building or on a pathway
- failure to provide equal amenity to people who have disabilities through inadequate management practices
- failure to provide non-discriminatory booking systems in theatres.

The Commission provides 'thumbnail' accounts of complaints it has dealt with at http://humanrights.gov.au/complaints_information/register/index.html

A.3 Unjustifiable hardship

As indicated earlier in these notes, sections 23 and 24 of the DDA allows discrimination where to do otherwise would impose unjustifiable hardship. Unjustifiable hardship is explained in section 11 of the DDA:

11. For the purposes of this Act, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:

- a. the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
- b. the effect of the disability of a person concerned; and
- c. the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and
- d. in the case of the provision of services, or the making available of facilities - an action plan given to the Commission under section 64.

Where equitable and dignified access to, and use of, premises has not been provided people with disabilities are entitled to complain. In those circumstances, a defence of unjustifiable hardship may be available to the respondent. Circumstances relevant to unjustifiable hardship may include:

- technical limits;
- topographical restrictions;
- the effect, both positive and negative, on other people of providing the required level of access, for example, people delivering goods, people with prams or trolleys and the staff;
- safety, design and construction issues;
- the benefit for people with disabilities; and

- the costs involved in providing access.

The Commission is from time to time asked for its opinion of what constitutes unjustifiable hardship. It is not possible to make a general statement about unjustifiable hardship that would apply in all cases. What would be an unjustifiable hardship to one person or organisation may not be for another.

The provisions of section 11 require assessment on a case-by-case basis and the Commission can only determine what amounts to unjustifiable hardship following a formal investigation into all relevant factors in the complaint handling process.

The best way to avoid complaints would be to attempt to ensure access issues are addressed as fully as possible from the design stage onwards. The advisory notes are intended to assist in achieving that objective.

A4 Action plans

The DDA provides for the development of an Action Plan which sets out how a service provider or employer may identify and deal with discrimination. An Action Plan could be developed which shows how premises might be modified and management practices changed over time to achieve equality. An Action Plan is one of the matters that must be considered by the Commission when a claim of unjustifiable hardship is assessed. Any service provider can choose to make an Action Plan under section 61 of the DDA and lodge it with the Commission. An Action Plan can be revised at any time and can establish priorities for change over a number of years.

The Commission recently received an application from an organisation for exemption from coverage by the DDA. In deciding not to grant the application the Commission stressed the relationship between an Action Plan and unjustifiable hardship. The Commission adopted the reasons of the Disability Discrimination Commissioner, who wrote:

"The best way of avoiding complaints of discrimination under the DDA is not to engage in unlawful discrimination. Recognizing, however, that our historical legacy of practices, buildings and laws often makes it difficult to avoid, or even to identify, discrimination, the DDA contains mechanisms for facilitating processes of change. People who use these processes receive statutory recognition for their efforts through the operation of section 11, which incorporates Action Plans as an element of unjustifiable hardship and can therefore contribute to a defence to a complaint. Of course, the defence is not automatic: it is the substance of an Action Plan, not the mere fact of its making that will contribute to deterring or defending a complaint. Nonetheless, for most service providers an Action Plan will be no less insurance against complaint than an exemption, without the need for discharging the burden of public interest that is required for an exemption application to succeed."

For owners, operators, managers and lessors of existing premises, an Action Plan could be a significant step in both reducing discrimination and deterring complaints.

The essentials of an Action Plan as set out in section 61 of the DDA are:

- policies and programs to achieve the objects of the DDA
- how these policies and programs to persons will be communicated to your staff
- a review that identifies any discriminatory practices
- reasonable goals against which the success of the action plan may be measured
- the way in which policies and programs will be evaluated
- appointment of persons within the service provider to implement the action plan.

A guideline on the development of Action Plans can be found at http://humanrights.gov.au/disability_rights/action_plans/Effective_Plan/effective_plan.html