



Legislation and Disability in Australia (for State Government) – Part 4

Legislation and access

Major legislative changes have occurred throughout Australia in recent years, aimed at improving services for people with disabilities. Three key pieces of legislation impact on the provision of accessible information, services and facilities for people with disabilities. They are:

- The Disability Services Act 1993 (Western Australia, amended 2004)
- The Commonwealth Disability Discrimination Act (1992)
- The Equal Opportunity Act (Western Australia, amended 1988)

The Disability Services Act 1993 (Western Australia, amended 2004)

This is the legislation which makes Disability Access and Inclusion Plans (DAIPs) mandatory, and guides their development, implementation and reporting.

This Act states that a person with a disability has the right to be respected for their human worth and dignity and has the same human rights as other community members, regardless of the degree and nature of their disability.

The Act requires Western Australian State and Local Governments to develop and implement a DAIP (previously known as a Disability Service Plan). This means planning to ensure that people with disability can access services provided by public authorities in Western Australia.

Under the Disability Services Act (Part 1) “disability” means a disability:

- which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments
- which is permanent or likely to be permanent
- which may or may not be of a chronic or episodic nature
- which results in:
 - a substantially reduced capacity of the person for communication, social interaction, learning or mobility
 - a need for continuing support services.

Part 5 of the **Disability Services Act 1993** outlines requirements of public authorities for DAIPs. Information from Part 5 of the Act is available from the [State Law Publisher website](http://www.slp.wa.gov.au) (www.slp.wa.gov.au).

Further information about legislation for DAIPs is from the **Disability Services Regulations 2004**, which came into operation as part of the Disability Services Amendment Act 2004. This includes information about consultation, reporting and publication of DAIPs, as well as Schedule 2 (Standards for disability access

and inclusion plans) and Schedule 3 (Desired outcomes of disability access and inclusion plans).

Please note amendments were made to the Disability Service Regulations in June 2013.

The following extracts are reprinted from the State Law Publisher website (May 2006). For full information about the Disability Services Act 1993 and the Disability Services Regulations 2004 visit the [State Law Publisher website](http://www.slp.wa.gov.au) (www.slp.wa.gov.au).

Disability Services Act 1993: Part 5: Disability access and inclusion plans by public authorities

28. Disability access and inclusion plans

- 1) Each public authority must have a disability access and inclusion plan to ensure that in so far as its functions involve dealings with the general public, the performance of those functions furthers the principles in Schedule 1 and meets the objectives in Schedule 2.
- 2) A disability access and inclusion plan must meet any prescribed standards.
- 3) A public authority must lodge its disability access and inclusion plan with the Commission:
 - a) if the authority was established before the commencement of the Disability Services Amendment Act 2004, without delay
 - b) if the authority is established after the commencement of the Disability Services Amendment Act 2004, within 12 months after the day on which it is established.
- 4) A public authority may amend its disability access and inclusion plan at any time.
- 5) A public authority may review its disability access and inclusion plan at any time.
- 6) After reviewing its disability access and inclusion plan, a public authority must lodge a report of the review with the Commission in accordance with subsection (7).
- 7) Not more than five years is to elapse:
 - a) between the day on which a public authority first lodges its disability access and inclusion plan with the Commission and the day it lodges a report of a review of the plan with the Commission or
 - b) between the lodgement of the report of one review of a plan and the lodgement of the report of another review of the plan.

- 8) After reviewing its disability access and inclusion plan, a public authority may amend the plan or prepare a new plan.
- 9) If at any time a public authority amends its disability access and inclusion plan or prepares a new plan, whether after a review or not, it must lodge the amended or new plan with the Commission as soon as practicable after doing so.
- 10) A public authority must undertake public consultation in accordance with the procedure specified in the regulations when preparing, reviewing or amending a disability access and inclusion plan.

Reprinted from the State Law Publisher website (May 2006)

29. Report about disability access and inclusion plan

- 1) A public authority that has a disability access and inclusion plan must, if required to report under section 66 of the Financial Administration and Audit Act 1985, include in such report, a report about the implementation of the plan.
- 2) A local government or regional local government that has a disability access and inclusion plan must include in its annual report prepared under section 5.53 of the Local Government Act 1995 a report about the implementation of the plan.
- 3) A public authority that:
 - a) has prepared or amended a disability access and inclusion plan in a year ending 30 June and
 - b) is not required to report under subsection (1) or (2), must make a report about the implementation of the plan to the Commission within 2 months after the end of that year.
- 4) The regulations may prescribe information that must be included in a report under subsection (1), (2) or (3) about the implementation of a disability access and inclusion plan.

29A. Disability access and inclusion plans to be made available

A public authority that has a DAIP must ensure that the plan is made available to people with disability and the public generally, by publication in the prescribed manner.

29B. Public authorities to ensure implementation of a disability access and inclusion plan

A public authority that has a DAIP must take all practicable measures to ensure that the plan is implemented by the public authority and its officers, employees, agents or contractors.

29C. Annual report by Commission about plans

- 1) As soon as practicable after each 1 July the Commission must give the Minister a report on the effectiveness of disability access and inclusion plans, and the extent to which they have been complied with, during the year that ended on the preceding 30 June.
- 2) The Minister must cause the report received under subsection (1) to be laid before each House of Parliament within 14 sitting days after the Minister receives it.

Reprinted from the State Law Publisher website (May 2006)

Schedule 1: Principles applicable to people with disability

- 1) People with disability have the inherent right to respect for their human worth and dignity.
- 2) People with disability whatever the origin, nature, type or degree of disability, have the same basic human rights as other members of society and should be enabled to exercise those basic human rights.
- 3) People with disability have the same rights as other members of society to realise their individual capacities for physical, social, emotional, intellectual and spiritual development.
- 4) People with disability have the same right as other members of society to services which will support their attaining a reasonable quality of life in a way that also recognises the role and needs of their families and carers.
- 5) People with disability have the same right as other members of society to participate in, direct and implement the decisions which affect their lives.
- 6) People with disability have the same right as other members of society to receive services in a manner that results in the least restriction of their rights and opportunities.
- 7) People with disability have the same right as other members of society to pursue any grievance concerning services.
- 8) People with disability have the right to access the type of services and supports that they believe are most appropriate to meet their needs.
- 9) People with disability who reside in rural and regional areas have a right, as far as is reasonable to expect, to have access to similar services provided to people with disabilities who reside in the metropolitan area.
- 10) People with disability have a right to an environment free from neglect, abuse, intimidation and exploitation.

Reprinted from the State Law Publisher website (May 2006)

Disability Services Regulations 2004

8. Information in reports about disability access and inclusion plans (section 29)

For the purposes of section 29(4) of the Act, a report about a disability access and inclusion plan must include information relating to:

- a) progress made by the relevant public authority and any agents and contractors of the relevant public authority in achieving the desired outcomes specified in Schedule 3 and
- b) the strategies implemented by the relevant public authority to inform its agents and contractors of its disability access and inclusion plan.

9. Publication of disability access and inclusion plans (section 29A)

For the purposes of section 29A, a public authority must publish its disability access and inclusion plan in a document that is made available:

- a) on request, at the offices of the authority:
 - i. in an electronic format
 - ii. in hard copy format in both standard and large print and
 - iii. in an audio format on cassette or compact disc
- b) on request, by email and
- c) on any website maintained by or on behalf of the authority, and notice of which is given in a newspaper circulating throughout the State or, in the case of a local government, the district of that local government under the Local Government Act 1995.

10. Procedure for public consultation by authorities (section 29E)

- 1) For the purposes of section 29E of the Act, a public authority is to undertake consultation in relation to its disability access and inclusion plan by calling for submissions either generally or specifically:
 - a) by notice in a newspaper circulating throughout the State or, in the case of a local government, the district of that local government under the Local Government Act 1995 and (Regulation 10 amended June 2013)
 - b) and on any website maintained by or on behalf of the public authority.
- 2) Nothing in sub regulation (1) prevents a public authority from also undertaking any other consultation.

Reprinted from the State Law Publisher website (May 2006)

Schedule 2: Standards for disability access and inclusion plans

- 1) A disability access and inclusion plan must provide a means of ensuring that people with disability have the same opportunities as other people to access the services of, and any events organised by, the relevant public authority.
- 2) A disability access and inclusion plan must provide a means of ensuring that people with disability have the same opportunities as other people to access the buildings and other facilities of the relevant public authority.
- 3) A disability access and inclusion plan must provide a means of ensuring that people with disability receive information from the relevant public authority in a format that will enable them to access the information as readily as other people are able to access it.
- 4) A disability access and inclusion plan must provide a means of ensuring that people with disability receive the same level and quality of service from the staff of the relevant public authority as other people receive from that authority.
- 5) A disability access and inclusion plan must provide a means of ensuring that people with disability have the same opportunities as other people to make complaints to the relevant public authority.
- 6) A disability access and inclusion plan must provide a means of ensuring that people with disability have the same opportunities as other people to participate in any public consultation by the relevant public authority.
- 7) A disability access and inclusion plan must provide a means of reducing barriers to people with disability obtaining and maintaining employment.
(Schedule 2 after item 6 amended June 2013.)

Schedule 3: Desired outcomes of disability access and inclusion plans

- 1) People with disability have the same opportunities as other people to access the services of, and any events organised by, a public authority.
- 2) People with disability have the same opportunities as other people to access the buildings and other facilities of a public authority.
- 3) People with disability receive information from a public authority in a format that will enable them to access the information as readily as other people are able to access it.
- 4) People with disability receive the same level and quality of service from the staff of a public authority as other people receive from the staff of that public authority.
- 5) People with disability have the same opportunities as other people to make complaints to a public authority.

- 6) People with disability have the same opportunities as other people to participate in any public consultation by a public authority.
- 7) People with disability have the same opportunities as other people to obtain and maintain employment with a public authority. (Schedule 3 after item 6 amended June 2013.)

Reprinted from the State Law Publisher website (May 2006)

Commonwealth Disability Discrimination Act (1992)

The Disability Discrimination Act 1992 (DDA) seeks to provide uniform cover for everyone in Australia against discrimination based on disability.

For the purposes of the Disability Discrimination Act 1992, disability means:

- a) total or partial loss of the person's bodily or mental functions or
- b) total or partial loss of a part of the body or
- c) the presence in the body of organisms causing disease or illness or
- d) the presence in the body of organisms capable of causing disease or illness or
- e) the malfunction, malformation or disfigurement of a part of the person's body or
- f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction or
- g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour

and includes a disability that:

- h) presently exists or
- i) previously existed but no longer exists or
- j) may exist in the future or
- k) is imputed to a person.

From 1 March 1993 the Disability Discrimination Act (1992) made it unlawful for a person with a disability or a person who is the associate of a person with a disability (for example spouse, carer, business partner) to be discriminated against in the following areas:

- employment
- education
- access to premises
- accommodation

- buying or selling land
- activities of clubs and incorporated associations
- sport
- administration of Commonwealth laws and programs
- the provision of goods, services and facilities.

In addition, Section 31(1) of the Disability Discrimination Act (1992) allows for the formulation of “disability standards” in relation to public transport, education, accommodation, employment and Commonwealth Programs. Once a disability standard has been approved it is unlawful for a person to contravene it. Disability standards are a way of providing a greater level of specificity, and therefore a greater level of certainty, about the requirements of the Act in these specific areas.

The Disability Standards for Accessible Public Transport-2002 came into effect in November 2002. The full standards are available on the [Australian Human Rights Commission website](http://www.hreoc.gov.au) (www.hreoc.gov.au). The Building Code of Australia and the DDA are currently being aligned under the DDA Access to Premises Standard. This Standard became law in 2011. The full standards are available on the [Australian Human Rights Commission website](http://www.hreoc.gov.au) (www.hreoc.gov.au).

The Disability Standards for Education 2005 are also part of the Act, and apply to a broad range of education providers, including public providers that deliver education and training, community based not-for-profit providers and providers of adult and community education and higher education providers. The full standards are available on the [Australian Human Rights Commission website](http://www.hreoc.gov.au) (www.hreoc.gov.au).

Where a person believes they have been discriminated against in breach of the Disability Discrimination Act (1992), they may make a complaint to the Human Rights and Equal Opportunity Commission about the person or organisation (including a public authority) alleged to have behaved in a discriminatory manner.

Authorities have the option of developing and lodging an Action Plan describing how they are working to become more accessible and inclusive. This can provide some clarity during any disability discrimination proceedings. A DAIP will most likely satisfy the DDA’s requirements for Action Plans.

In the event that a complaint is made against a respondent who has lodged an action plan with the Human Rights and Equal Opportunity Commission, the plan may be relevant and considered by the Human Rights and Equal Opportunity Commission if the matter goes to formal hearing.

If the respondent defends the complaint by arguing that compliance with non-discriminatory policies would constitute an “unjustifiable hardship”, the Disability Discrimination Act (1992) says that the Human Rights and Equal Opportunity Commission must consider the plan in determining the issue of unjustifiable hardship.

People with disability can obtain information about the Disability Discrimination Act (1992) by contacting the Disability Discrimination Unit, the Sussex Street Community Law Service, East Victoria Park or telephoning 9470 2676, country callers 1800 642 791, TTY: 9470 2831.

More information about the DDA can be found on the [Australian Human Rights Commission website](http://www.hreoc.gov.au) (www.hreoc.gov.au).

The Equal Opportunity Act (Western Australia, amended 1988)

The Western Australian Equal Opportunity Act (1984) was amended in 1988, recognising that people with disability require and are entitled to the same level of service that is available to other members of the community.

The amendment to the Act makes it unlawful for a person to discriminate against any person on the grounds of impairment. Under the legislation, an action is regarded as being discriminatory if a person with impairment is treated less favourably than others in the same or similar circumstances.

Impairment in relation to a person means one or more of the following conditions:

- any defect or disturbance in the normal structure or functioning of a person's body
- any defect or disturbance in the normal structure or functioning of a person's brain
- any illness or condition which impairs a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour, whether arising from a condition subsisting at birth or from an illness or injury and includes an impairment which presently exists or existed in the past but has now ceased to exist, or is imputed to that person.

Discrimination can be alleged in the following areas:

- employment
- education
- access to places and vehicles
- goods, services and facilities
- accommodation
- sport
- clubs and incorporated associations
- qualifying bodies
- partnerships

- professional or trade organisations.

For the purposes of this Act, a person discriminates by treating a person with impairment less favourably than others in the same or similar circumstances because of their disability.

Discrimination can also occur if a person sets a requirement or condition:

- which a higher proportion of people without the impairment can meet
- which is not reasonable in the circumstances
- which the person with the impairment does not or cannot meet.

If a person with a disability believes that they have been discriminated against by a public authority because of their impairment they have the right to complain to the Commissioner of Equal Opportunity in Western Australia.

Further information about the Western Australian Equal Opportunity Act is available by contacting the Equal Opportunity Commission, Level 2, Westralia Square, 141 St Georges Terrace, Perth (enquiries: 9216 3900, Country callers: 1800 198 149, TTY: 9216 3936, email: eoc@eoc.wa.gov.au).

A copy of the Act may be obtained from the [State Law Publisher website \(www.slp.wa.gov.au\)](http://www.slp.wa.gov.au).