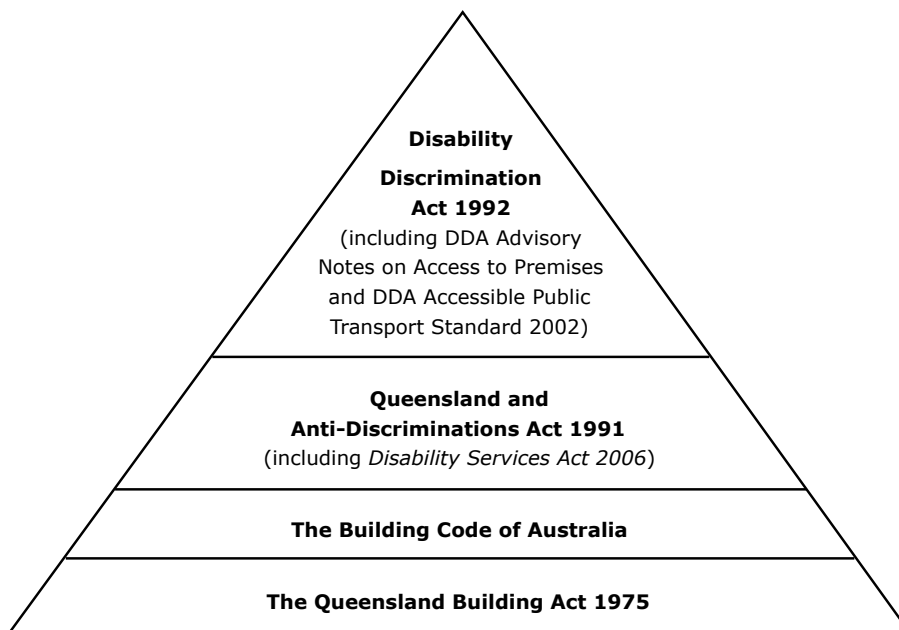


# Accessible Tourism - Legal Context

In the current legal and social climate it is important for businesses to ensure their dealings with consumers are fair and not discriminatory. There has been a number of court decisions across Australia, including in Queensland, confirming that businesses must offer each consumer the same level of service and experience in all dealings and not discriminate based on race, sex, religious beliefs, age or ability. The laws that apply to discrimination can be best understood in order of primacy in a Hierarchy of Law.

## THE HIERARCHY OF LAW

A hierarchy of law applies in Australia in relation to the built environment and provision of services, including all tourism infrastructure and services. The hierarchy is lead by the Commonwealth Disability Discrimination Act 1992 which has primacy above all other laws, as per the diagram below.



### The Disability Discrimination Act 1992 (DDA)

The DDA is a fundamental law of the Commonwealth. As far as it deals with access to, and use of, public buildings, it is entitled to primacy over any conflicting state or territory laws. The Act is administered by the Human Rights and Equal Opportunity Commission, Sydney.

Similar legislation is in place in each of the States and Territories. For example, Queensland has its own Anti Discrimination Act (see below).

### DDA Advisory Notes on Access to Premises

In a built environment context, the Disability Discrimination Act is interpreted through the DDA Advisory Notes on Access to Premises. The Human Rights and Equal Opportunity Commission produced the Notes to inform and educate the community about the requirements of the legislation in the hope people would understand their rights and responsibilities. Legal jurisdictions use the Notes (25 pages) to determine outcomes when dealing with complaints.

Please note the DDA overrides the Building Code of Australia when the two do not align on a particular issue.

### **The DDA Accessible Public Transport Standard 2002**

This Standard is significant in its prescription for pedestrian access and way finding where transport and transport infrastructure is involved.

### **Queensland Anti-Discrimination Act 1991 (QADA)**

This Act also prohibits discrimination on any grounds. The Act is administered by the Anti Discrimination Commission of Queensland, Brisbane, with offices in Cairns, Townsville and Rockhampton. The Commission has excellent information references and has produced helpful booklets dealing with Goods and Services, Accommodation, Employment and Education.

### **The Building Code of Australia (BCA)**

The Building Code of Australia, (BCA) in conjunction with the DDA, applies to new buildings and buildings undergoing refurbishment or change of use. The BCA is a comprehensive statement about minimum technical requirements relevant to the design and construction of buildings and other related structures. Please note, in its 1996 amendments, the BCA advises the DDA takes precedence in law when the two do not align.

### **The Queensland Building Act 1975**

The Queensland Building Act (QBA) 1975, requires that all new building work and all alterations to existing buildings must be compliant with the Standard Building Regulation - 1993, of which the Building Code of Australia (BCA) is a part.

### **New legislation in the making**

A draft DDA Access to Premises Standard which seeks to align the Disability Discrimination Act and the Building Code of Australia is being reviewed and is expected to be presented to Federal Parliament for legislation in 2008. The Standard is expected to embody the existing DDA Advisory Notes on Access to Premises.

### **Clarification of Australian Standards**

Australian Standards are not pieces of law and have no legal standing. They are opinions, best described as informative. When they are called up by a referencing authority, for example, the DDA or the BCA, only then do they have legal standing – standing that is equal to the referencing authority. Further, it is essential to note that one cannot simply select the latest (chronologically speaking) Standard put out by the publishing house, Standards Australia: one must identify the Standard specified by the referencing authority, e.g. DDA, BCA, to meet each individual design requirement.

Please note that Standards Australia identifies in particular Standards their prescribed design outcome meets a minimum requirement only. Users are entitled to deliver better than minimum.