

Decision-Making Tools and Techniques

Building Asset Compliance

DPTI Asset Brief



Legislation, Codes and Standards

A clear understanding of legislative requirements – including approval processes – is an essential element of asset management. The mechanisms to manage the risks associated with planning, buying and building assets are contained in a range of Acts, Regulations, Standards and Codes. They may be used to modify, reduce or eliminate risk altogether – from planning through operation to long-term management.

Key legislation applying to building design, construction and management includes:

- ❖ Development Act 1993 (will be repealed by Sect 6 cl 2 of Planning, Development and Infrastructure Act 2016)
- ❖ Work Health and Safety Act 2012
- ❖ Environment Protection Act 1993
- ❖ South Australian Public Health Act 2011
- ❖ Disability Discrimination Act 1992
- ❖ Heritage Places Act 1993 (previously titled Heritage Act 1993)
- ❖ Dangerous Substances Act 1979

The legal authority for specific regulations and codes such as the Building Code of Australia (BCA), Australian Standards, codes of practice and guidelines is derived from these Acts.

Key Responsibilities

The key responsibilities in complying with building legislation include:

- ❖ Awareness of legislative requirements
- ❖ Awareness of the legislative obligations that come with controlling building assets
- ❖ The requirement to:
 - identify and assess risks,
 - prepare action plans, and
 - monitor their implementation

For example, in line with Government policy on asset management, agencies are expected to identify requirements by undertaking reviews and adopting defined processes and to identify the most appropriate way to meet the community's service needs.

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Where a review identifies a potential need for new assets because of a mismatch between demand and the capacity of existing assets to meet that demand, Demand Management should be carried out. This will either identify other mechanisms for matching needs and resources or confirm the need to invest in new assets.

Degree of Compliance

It cannot be expected that an existing building will fully comply with current standards and requirements applicable to new buildings. This may not be practicable. The essential requirement is that the risks associated with an agency or owner's buildings are identified, assessed, given priority and managed within their financial resources.

The Government and its agencies must be able to show that "reasonable and practicable" steps have been taken to deal with risks, although this does not necessarily mean upgrading to current standards. In many instances, a negotiated position may be reached in consultation with relevant authorities to serve as an appropriate benchmark.

Risk management/action plans should be prepared as part of management planning for asset portfolios and individual sites. Therefore, compliance with the objects of legislation can be achieved by adopting a risk management approach.

❖ Development Act 1993

The Development Act deals with development approval matters such as:

- Use and location of buildings
- Environmental impact
- Appearance
- Landscaping
- Parking

It includes requirements for the maintenance of "essential safety provisions" such as fire extinguishers, hose reels, hydrants and fire doors.

New projects and significant alterations to existing buildings may require development approval from the Development Assessment Commission, plus Certification by a government or registered private certifier that they comply with the Building Rules, including the Building Code of Australia (BCA).

The main aim of the BCA is to safeguard public safety. It sets out standards for:

- Structural safety
- Fire safety
- Health and amenity
- Disability access

The new, performance-based BCA is a key factor in developing innovative and cost-effective solutions – especially for major and complex projects. This demands a high degree of expertise by designers and facility managers.

❖ Work Health and Safety Act 2012

The primary aims of this Act are to:

- Secure the health, safety and welfare of persons at work
- Eliminate risks to persons work
- Protect the public from risks arising from the activities of persons work

The risk management principles of hazard identification, risk assessment, and risk control underpin the Work Health and Safety Act (see Division 2.3). These reflect Common Law principles and 'Due Diligence'.

The legal liability of Government agencies, companies and individuals with responsibility to comply with the Act and Regulations is complex, particularly where responsibilities overlap.

Because of this, Agencies and their managers should be aware of:

- Their personal responsibilities under the legislation
- Penalties for Infringements and negligence

Issues required to be addressed include:

- Provision of amenities
- Maintenance access – e.g. fragile roofing
- Fire prevention and evacuation
- Lighting and ventilation
- Electrical installations
- Noise issues
- Demolition procedures
- Safety of plant
- Hazardous substances – e.g. asbestos

The Act is supported by:

- Regulations which detail the compliance requirements and specific responsibilities;
- Approved codes of practice (including specific Australian Standards).

'Duty of Care' and 'Due Diligence'

These principles are embodied in Common Law. Use of the risk management approach, accompanied by appropriate records, can demonstrate adherence to these principles.

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❖ Disability Discrimination Act 1992

The Disability Discrimination Act (DDA) aims to provide safe, equitable and dignified access to a building, its services, and its surrounds/grounds.

Where such access has not been provided, people with disabilities are entitled to complain to the Human Rights and Equal Opportunity Commission (HREOC).

Encompassing more than wheelchair-bound persons, the definition of 'disability' includes those with hearing, visual, or intellectual impairments, and medical conditions.

It should be noted that meeting the requirements of the BCA is not always sufficient to meet the requirements of the DDA.

DDA Action Plans

Action Plans are an integral part of complying with the Act. They should show how premises might be modified and where management practices are to be changed over time to achieve equity and to eliminate discriminatory practices.

Each agency should develop an Action Plan that takes into account:

- Legislated requirements
- Operations of the agency
- Options for managing access within the legislative framework.

Implementing the Action Plan is a significant step towards reducing discrimination and deterring complaints to owners, managers and occupiers of buildings. The Action Plan may serve as a defence in the case of a complaint under the DDA, especially if lodged with HREOC.

HREOC has produced a range of publications to assist people in understanding the DDA. These include:

- Disability Discrimination Act Action Plans – a Guide for Business
- Disability Discrimination Act Action Plans – a Guide for State and Territory Government Departments and Agencies

The Action Plan process as it applies to asset management is similar to the risk management planning process. The essential steps are:

- Review the asset portfolio
- Devise policies and programs
- Set goals, targets and time frames
- Devise evaluation strategies
- Appoint people to implement the Plan
- Communicate the Plan to people within the Agency

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Unjustifiable Hardship

The principle of “reasonableness” also underpins this Act, as reflected in its objects: to eliminate, as far as possible, discrimination on the grounds of disability to ensure, as far as practicable, that persons with disabilities have the same rights as the rest of the community.

Section 23 of the Act allows discrimination where to do otherwise would impose “unjustifiable hardship” on a service provider, and Section 11 defines these circumstances.

In some circumstances a defence of unjustifiable hardship may be available to the building owner.

These may include instances of excessive cost in providing access – e.g. the cost of providing a lift in a small two-storey building – which may be unjustifiable.

However, it should be noted that some government agencies have had difficulty supporting claims of unjustifiable hardship.

How the Department of Planning, Transport and Infrastructure assists Agencies

DPTI provides professional advice on:

- Interpreting legislative requirements
- The statutory approvals process during the planning and design phases – including document certification
- Risk assessment and legislative compliance for existing buildings –including prioritised programs for upgrading work and negotiating agreements with relevant authorities
- Applying standards to meet the unique needs of people with disabilities.

It links this advice to asset management plans and programs to meet legislated requirements.