

# LPA Guide

## Arts Access Information Kit

1 May 2011

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### Background: Live Performance and Catering for People with a Disability

In 1993 the Australian Bureau of Statistics (“ABS”) found that one in six Australians had a disability.

<sup>1</sup> By 2003, the figure had risen to one in five. <sup>2</sup>

In the 2003 survey, 43% of people with a disability reported attending a cinema. By comparison, only 25% reported attending a theatre or concert.

The reasons for this low attendance rate are likely to be various, and certainly warrant further investigation. If people with a disability constitute 20% of the population, then arguably they represent a potential (and potentially underserved) audience that is simply too large to ignore.

One of the major factors influencing attendance is the inconvenience of physically attending arts venues, or the lack of services provided for those with a hearing or vision disability. In some cases, the perception that the venue will be too ‘difficult’ may not reflect the reality – yet that perception can be enough to keep potential customers away.

This perception has persisted despite the *Disability Discrimination Act 1992 (Cth)* (“DDA”), which since 1993 has made it unlawful to discriminate against people with a disability on the grounds of access. Under the DDA, any venue that fails to provide adequate access to people with a disability is open to a discrimination claim. Complicating this issue is the fact that the DDA itself does not set out specifications that meet the requirements for non-discrimination. This gap has been met by the Building Code of Australia (“BCA”), but there has never been real certainty that the technical specifications of the BCA were adequate to meet the broad obligation created by the DDA. Accordingly, venues have remained open to potential discrimination claims – even if they did meet the requirements of the BCA.

It is good news, then, that new *Disability (Access to Premises – Buildings) Standards 2010* (“Premises Standards”) will come into effect on 1 May 2011, and will be incorporated into the BCA as a new Access Code. Compliance with the Premises Standards legally meets the anti-discrimination obligation of the DDA, so the uncertainty that has existed to this stage will be removed.

Over time, and with other strategies, this may help shift the perception that going out to a live performance is too difficult for those with a disability. Throughout the development of the Premises Standards Minister Bill Shorten repeatedly emphasised the right of people with disabilities to attend live entertainment and other cultural events. Perhaps the new standards provide an opportunity for the live performance industry to make its case – and pitch its tent – to capture more of this large audience segment?

Of course, physical access is not the only barrier to participation. People with a disability indicate that the attitude of venue staff can sometimes be more prohibitive than physical barriers<sup>3</sup>, and in the UK, 41% of people with a disability value a positive attitude from staff above value for money. <sup>4</sup> On the face of it, venue staff training may be the simplest way to improve the experience of live performance for people with disabilities, and therefore boost audience attendance.

<sup>1</sup> ABS Survey of Disability, Aging and Carers – 1993.

<sup>2</sup> ABS Survey of Disability, Aging and Carers -2003.

<sup>3</sup> Australia Council, “Access All Areas”, p. 18.

<sup>4</sup> Meeting and Events Australia, “Accessible Events – A Guide for Organisers”, p. 18.

Despite this, there can be no doubt that venue design is a central and often threshold consideration for many people with a disability when deciding if they will attend a show.

The legal framework surrounding disability access for public buildings (and how they are to be newly implemented) is set out in more detail below.

Following the section on the new access regulations, this kit provides a brief overview of the Companion Card Scheme, and other information that venues may find useful in enhancing their accessibility to people with a disability.

## Part One: Building Access

### 1.1 A legal obligation to provide access: *The Disability Discrimination Act*

It is unlawful in Australia to fail to provide disability access to a public building – including theatres, galleries and concert halls - and failure to do so can result in a discrimination claim being lodged with the Australian Human Rights Commission (“AHRC”).

This legal obligation stems from section 23 of the *Disability Discrimination Act 1992* (Cth) (“DDA”).

Section 23 states:

*“It is unlawful for a person to discriminate against another person on the ground of the other person’s disability:*

*(a) by refusing to allow the other person access to, or 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); “*

Despite setting out this broad requirement, the DDA does not set design specifications which would be deemed adequate to provide appropriate access.

### 1.2 Technical building requirements: *The Building Code of Australia*

Instead, Australian design specifications and technical building requirements are set by the Building Code of Australia (“BCA”). The BCA is administered by the Australian Building Codes Board (“ABCB”), acting on behalf of the Commonwealth Government, and all State and Territory Governments. The BCA is a binding national building code – all states and territories have given the BCA the legal status of building regulations.

Since the DDA came into effect in 1993, the BCA has sought to meet the obligation set out by section 23 by incorporating Australia Standard 1428: *“Design for access and mobility”*. There has been no certainty, however, that the provisions of the BCA were sufficient to satisfy the anti-discrimination requirements of the DDA. This has led to uncertainty for builders and venue operators. Theoretically, it was possible to comply with the BCA – yet still be found to have discriminated against people with a disability under the DDA.

### 1.3 New laws to take effect on 1 May 2011: *The Premises Standards*

To address this issue, a ten year process was undertaken to develop a “missing link” between the DDA and the BCA.

The outcome of this process was the *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards). The Premises Standards expand upon and clarify the access requirements of the DDA, setting out clear technical requirements which will be deemed sufficient to meet the obligation to provide fair access.

The objects of the Premises Standards are:

“... ”

- (a) *to ensure that dignified, equitable, cost-effective and reasonably achievable access to buildings, and facilities and services within buildings, is provided for people with a disability; and*
- (b) *to give certainty to building certifiers, building developers and building managers that, if access to buildings is provided in accordance with these Standards, the provision of that access, to the extent covered by these Standards, will not be unlawful under the Act.”*

The Premises Standards will take legal effect on 1 May 2011.

At the same time, amendments which mirror the Premises Standards will come into effect in the BCA. These will be known as the Access Code.

This means that from 1 May 2011 onwards, compliance with the BCA, (including the Access Code), will ensure that the access requirement of the DDA are legally met. This will provide higher standards of access for people with a disability, and legal certainty for those building and operating venues.

Below are some frequently asked questions concerning the implementation of the Premises Standards.

#### 1.4 Frequently Asked Questions

- ***Which buildings do the Premises Standards apply to?***

The Premises Standards will apply to all new buildings which are approved for building after 1 May 2011. They will also apply to renovations to existing buildings which require building approval, where that approval is gained after 1 May 2011.

This does not include improvements which do not require building approval (eg. re-wiring, replacing air-conditioning etc).

- ***What aspects of a building do the Premises Standards cover?***

The Premises Standards introduce some new requirements, and significantly improve some that already exist. Changes that are of particular relevance to venues include:

- Increases in the number of accessible entrances and doorways to buildings.
- Increases in circulation space requirements such as in lifts, accessible toilets and at doorways.
- Signage in relation to accessible features.
- The introduction of a requirement for passing and turning spaces on passageways in some situations.
- Increases in the areas covered by hearing augmentation systems in rooms with a built in PA system.

- The types of lifts and access features within lifts.
  - The number and distribution of accessible spaces in theatres.
  - Increases in the number and location of unisex accessible toilets and the introduction of ‘ambulant accessible cubicles’ in standard toilets.
- ***Do existing venues have to comply with the Premises Standards?***

No. The Premises Standards apply to new buildings, and new renovations to existing buildings which require building approval.

That being said, existing buildings will continue to be subject to the legal obligation set out by section 23 of the DDA – as they have been since 1993.

- ***Where can I find out more about the Premises Standards?***

The Premises Standards can be downloaded from the [Federal Attorney General's Department web-site](#).

And more information can be found at the Australian [Human Rights Commission](#) (AHRC) web-site.

The AHRC have also developed a web-cast explaining the Premises Standards, which can be downloaded [here](#).

The ABCB web-site can be found [here](#).

In Victoria, the Building Commission of Victoria is holding a series of seminars covering changes to the BCA, including the introduction of the Access Code. For those wishing to attend, bookings can be made [here](#).

## Part Two: The National Companion Card Scheme and other access to the arts initiatives

### 2.1 What is the National Companion Card Scheme?

The National Companion Card Scheme (“Scheme”) was launched in December 2009. The Scheme brings together Companion Card programs run in the various States and Territories and allows national organisations (e.g. the AFL, Tennis Australia, Australian Rugby Union, etc.) to become national affiliate organisations. National affiliate organisations will accept Companion Cards at their venues nationwide, unless stated otherwise.

The Companion Cards themselves remain the responsibility of various State and Territory agencies. So there is no “National” Companion Card per se – Companion Cards are still issued by State and Territory bodies - but they are accepted nationwide, so the Scheme is considered national.

Over 4200 organisations have now registered with the Scheme.

The Scheme web-site can be found at: <http://www.companioncard.gov.au/>

### 2.2 What is the Companion Card, and how is it used?

The Companion Card entitles the carer or attendant, (i.e. companion), of a person with a severe disability to accompany the person with the disability into an entertainment venue, free of charge. Although the card is used to gain entry for the companion, the person with the disability is the cardholder. The person with the disability must apply for and qualify for the card, and they can use the card to gain entry for their nominated companion - who can change from event to event.

The Companion Card does not have legislative force, but it did evolve in response to anti-discrimination legislation. The first Companion Card program commenced in Victoria in 2003, and was then mirrored in other jurisdictions. LPA’s guide to the original Victorian Companion Card, prepared in 2002, is available on the LPA Member’s web-site in the ‘Resources’ section.

Federal and State and Territory legislation makes it illegal in Australia to discriminate against any person on the basis of a disability. It is arguable that it is discriminatory to ask a person with a severe disability, (who requires the assistance of a constant companion), to pay for an admission ticket for that companion. This is because the person with the severe disability effectively has to pay for two tickets, while most other people only have to pay for one. The Companion Card negates this form of discrimination by entitling the companion to a free ticket.

Because Companion Cards are issued by various State and Territory authorities, application forms and qualification criteria do vary slightly. The specific forms, processes and qualification requirements of each jurisdiction can be found via the links provided below.

By way of broad summary, though, applicants are required to show that they are unable to attend events and venues without care and support, and that their need for such care and support is likely to be life-long. In terms of showing that they need care and support, it is generally necessary to show support is required in at least two of the following areas:

- **Self care and management:** This includes, but is not limited to, ensuring a person is not exposed to abuse, exploitation or potential harm from other people that they may encounter, in either a physical, psychological, or monetary sense.



- **Mobility:** Including moving from one area to another, walking, navigating a wheelchair, sighted guiding and finding their way around.
- **Communication:** Including purchasing tickets/refreshments/merchandise, verbal descriptions or explanations of visual arts, asking for assistance with finding the right seat/facilities etc.
- **Learning/cognition:** Includes reinforcing where the person is and what the person is doing there, helping the person adapt to a new environment, including familiarising them with key areas/events on arrival and reassurance.

It is best practice to accept Companion Cards at all performances and in all price reserves. However, there is no obligation to treat a Companion Card holder with more preferential treatment (e.g. by providing them with a wheelchair accessible seat, when those seats are already occupied by other patrons in wheelchairs, or by providing additional seats when a performance has sold out).

### 2.3 State and Territory contacts for Companion Card applications/further information

The following links and phone numbers are taken from the National Companion Card Scheme website. The links direct users to the State and Territory agencies responsible for issuing Companion Cards - application forms and other documents can be found through the links.

[Australian Capital Territory](#) Phone: (02) 6207 1086

[New South Wales](#) Phone: 1800 893 044

[Northern Territory](#) Phone: 1800 139 656

[Queensland](#) Phone: 131304

[South Australia](#) Phone: 1800 667 110

[Tasmania](#) Phone: 1800 009 501

[Victoria](#) Phone: 1800 650 611

[Western Australia](#) Phone: 1800 617 337

### 2.4 Other initiatives for disability access to the arts

In addition to making venues physically accessible and accepting Companion Cards, venues can provide many other services to enhance the live performance experience for people with a disability. When providing these services, it is important to provide clear signage that they are available – this is one of the simplest ways of promoting the accessibility of a venue to people with a disability. Where applicable, the recognised symbols for different services are shown below.

Some of these services are;

- **Theatre captioning**

Theatre captioning involves the display of dialogue on a large screen close to the stage as it is spoken, to enable people who are hearing impaired, deaf or who speak a language other than English to better enjoy live theatre.

More information about theatre captioning, (including a listing of captioned performances by state), can be found at: [www.theatrecaptioning.com.au](http://www.theatrecaptioning.com.au).

The official symbol for theatre captioning is:



- **AUSLAN interpreters**

Auslan (Australian Sign Language) is a visual language comprised of hand movements or 'signs', facial expressions, and other body language. It is a recognized language of Australia's deaf community. AUSLAN interpreters can represent dialogue being spoken on stage as it occurs.

Like theatre captioning, AUSLAN interpreted live performances allow deaf audience members to enjoy live performances, including comedy. More information, and contact details for interpreters, can be obtained from Deaf Australia at: [www.deafau.org.au](http://www.deafau.org.au).

The official symbol for AUSLAN is:



- **Audio description**

Audio description is the verbal narration of visual aspects of live theatre, which is accessed by listeners through a small radio receiver and single earpiece as it is performed. Commentary is provided by trained volunteers.

The service includes pre-show descriptions of program details, as well as costumes and stage settings.

The service is provided for sight impaired or blind patrons, and is co-ordinated by Vision Australia.

More information can be found at: [www.visionaustralia.org.au](http://www.visionaustralia.org.au).

The official symbol for Audio description is:



- **Tactile tours**

Prior to the commencement of a performance, 'tactile tours' can be provided to sight impaired or blind patrons, to enable them to form a mental picture of the stage and set, so as to better visualise the action as the show progresses.

- **Accessible programs**

Programs provided with Braille print, or audio programs provided on iPods or other MP3 players, (or even through free downloadable pod casts) are useful ways to provide program information for blind and/or deaf patrons.

- **Hearing loops**

Hearing loops are loops of cable that can be installed in a venue, generating a magnetic field that is picked up by hearing aids. This allows hearing impaired patrons who have a hearing aid to effectively 'tune in' to the loop, and provides clearer sound than they otherwise may receive. Hearing loops have a limited range, so patrons must be advised which seats receive the loop.

The official symbol for a hearing loop is:



- **Visual content**

In some cases, the visual aspect of a performance will be very high. Providing an indication of this can be useful in itself. The official symbols to indicate visual content are:



### Further contacts and resources

For more information on catering for people with a disability at arts events, the Australia Council's 1999 report, "[Access All Areas](#)", remains a useful resource.

In a similar vein, Meetings and Events Australia have developed a document titled "[Accessible Events – A Guide for Organisers](#)".

Finally, [Arts Access Australia](#) is a national body representing a network of State and Territory arts and disability organisations, dedicated to improving access to the arts for people with a disability.

A listing of the various State and Territory organisations represented by Arts Access Australia can be found [here](#).