

Client Update

Hospitality Bulletin

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THE EFFECT OF THE DISABILITY DISCRIMINATION ACT ON HOTELS

Any hotelier considering alterations or additions to their hotels should be aware of the impact of the Disability Discrimination Act 1992 (Cth) ("DDA").

In the decision of *Cooper v Holiday Coast Cinema Centres Pty Ltd* (unreported HREOC 96/157,29/8/97) a determination was made that the cinema operators had behaved in an unlawfully discriminatory manner in breach of Section 23 of the DDA, by only providing access to a cinema via a substantial flight of stairs.

The existing cinema complex was accessed via three separate stair flights. It was proposed to alter the existing complex to comprise three theatres. The new theatre would be accessed via a fourth flight of stairs. The cinema was prepared to upgrade all stairways for access but would not consider a lift installation or "stair inclinators". They took this attitude due to the complexity of the building floor plan, the minimal usage of a stair inclinators chair system and because the cost [being approximately \$100,000.00 for an inclinators system or a lift] would be disproportionate to the cost of building alterations. The cinema operators relied on the defence of "unjustifiable hardship" which, when established, excuses a building owner from having to provide disability access to its premises.

The Human Rights & Equal Opportunity Commission ("HREOC") found that this was an unacceptable situation having regard to the provisions of the DDA, because the building could be altered to provide access without breaching the provisions of the Building Code of Australia ("BCA") and, although the required work would cost in the order of \$100,000.00 and the cinema in question was currently engaged in a "price war" with a major cinema chain, unjustifiable hardship to the operator was not demonstrated as the complex was refurbished every seven years at an average cost of \$400,000.00. The expenditure that would be needed to install platform stairlifts was not so massive in comparison. HREOC found it appropriate to order that suitable access be provided by the cinema operators in the form of wheelchair platform stair lifts.

It was worth noting that separate action was brought against the Local Council who had approved the alterations without requiring compliance with the access requirements of DDA. It was held that the Council's action was unlawful.

Disability Standard for Access to Premises

In addition to the above case law, guidance as to how the DDA operates in relation to access to new or existing buildings is provided by the Standard made under the DDA. At this stage the Standard is only in draft form and is thus not legally operative but is likely to come into operation in the near future.

The Standard and revised BCA will apply to the construction of new buildings, new building work in existing buildings and in some cases where a change of building use is occurring.

A building which is not the subject of any new work is not required to comply with the Standard or the BCA but will still be covered by the general provisions of the DDA.

Conclusion

n An owner of hotel premises seeking to extend buildings will have to seriously consider including disability access in the plans, or runs the strong risk of a complaint of disability discrimination;

n A hotel without disability access and not planning building works would probably not have to take positive steps to provide disability access until new building works are planned. n

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