Accessibility compliance in procurement

Ensuring accessibility for people with disability

Office of the Chief Advisor - Procurement



Accessibility compliance: Ensuring accessibility for people with disability

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Contact us

We are committed to continuous improvement. If you have any suggestions about how we can improve this guide, or if you have any questions, contact us at betterprocurement@hpw.qld.gov.au.

Disclaimer

This document is intended as a guide only for the internal use and benefit of government agencies. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

The Department of Housing and Public Works disclaim all liability that may arise from the use of this document. This guide should not be used as a substitute for obtaining appropriate probity and legal advice as may be required. In preparing this document, reasonable efforts have been made to use accurate and current information. It should be noted that information may have changed since the publication of this document. Where errors or inaccuracies are brought to attention a reasonable effort will be made to correct them.

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Introduction

The guide is designed to assist Queensland Government agencies understand and implement their obligations under the *Disability Discrimination Act 1992* (Cth) (DDA) and take responsibility for being inclusive of all abilities when designing, planning and delivering procurement outcomes.

The Queensland Government is committed to undertake procurement with integrity, ensuring probity and accountability for outcomes. Clause 3.1 of the Queensland Procurement Policy (QPP) requires that all agencies observe applicable legislation including the DDA, policies, agreements and industrial instruments.

Australia's legislative and policy frameworks promote the inclusion of people with disability and provides legal provision for protection from discrimination on the basis of disability.

The DDA is the key legislative instrument which supports the rights of people with disability to live without discrimination. It provides discrimination protection across all areas of public life, including employment, education, public access and health.

Disability standards support the implementation of the DDA for education, premises (i.e. buildings) and public transport.

Why is accessibility important?

When we think about accessibility we are thinking about a large portion of our population who are directly or indirectly impacted by systems, processes and attitudes that affect their ability to participate fully in our community.

It's not just physical...

- Over 4 million people experience some form of disability
- 3.4 million people have a physical disability
- 1 in 6 Australians are affected by hearing loss
- 357,000 Australians are blind or have low vision
- 700,000 Australians live with intellectual disability
- 10 per cent experience some form of learning disability¹.

What is disability discrimination?

People with disability have a history of experiencing discrimination and prejudice based on a 'perceived' difference. The DDA clearly states that this discrimination is unlawful and protects individuals against both direct and indirect discrimination.

Direct discrimination occurs when a person is treated less favourably than a person without a disability would be treated under the same circumstances (e.g. procuring professional services or goods manufacturing).

 $[https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4430.0Main\%20Features12015?opendocument\&tabname=Summary\&prodno=4430.0\&issue=2015\&num=\&view=\]\ (ABS\ 4430.0\ 2015).$

¹ 2015 Survey of Disability, Ageing and Carers

Indirect discrimination occurs when a condition or requirement is imposed which is the same for everyone but which unfairly excludes or disadvantages a person with disability (e.g. accessing buildings, public transport, housing accommodation or health and hospital services).

To be disability compliant in all your procurement processes, it is important to remember that disability discrimination can occur at any stage of the procurement process and extends to many aspects of government service delivery.

Therefore, the agency approach to ensuring accessibility in procurement activities requires a combination of three key attributes:

- 1. Robust process delivers **good procurement practice** which can avoid non-compliance with accessibility requirements, maintain probity, transparency and integrity of decision making and enable **early and continuing engagements** with relevant disability stakeholders.
- 2. Maturing capability delivers access to **available training and resources** to develop procurement capability and professionalise the workforce.
- 3. Continued awareness delivers **understanding of responsibilities** under the DDA and associated standards, to achieve fully accessible government services.

Your agency's obligations

To enable disability compliance, government agencies need to integrate accessibility requirements into procurement planning and decision making. However, ensuring compliance requires further knowledge, including:

- an understanding of the consequences of non-compliance
- knowing where to seek specialist advice as needed
- well skilled procurement officers capable of advising the business and applying a robust process
- internal and external stakeholder awareness regarding disability requirements.

Integrating accessibility requirements into procurement

Accessibility principles

Seven design principles help to guide decisions around whether a product, service or environment is universally accessible. Agencies that incorporate these design principles into their procurement processes and evaluation frameworks can greatly reduce the risk of non-compliance with the DDA and standards. Think about the following, does the design allow for:

- 1. equitable use is useful and marketable to people of all abilities (e.g. public transport)
- 2. flexibility in use accommodates a wide range of individual preferences and abilities (e.g. office chairs)
- **3. simple and intuitive use** is easy to understand (e.g. visual vs written, plain English, multiple languages)
- **4. perceptible information** communicates necessary information effectively (e.g. signage, website colour contrasts)
- **5. tolerance of error** minimises hazards and adverse consequences of accidental or unintended actions (e.g. flooring)
- **6. low physical effort** can be used efficiently and effectively with ease (e.g. multi-latch, heavy doors)
- 7. size and space for approach and use offers appropriate room for use and movement regardless of body size or mobility (e.g. building doorways, public toilets, libraries).

By referencing these design principles when planning a procurement, agencies will be more likely to meet the diverse needs of people who use and interact with government infrastructure, systems and services (both in the workplace and publicly).

Web accessibility is key to contemporary communication...

- Web Content Accessibility Guidelines (WCAG) are developed to provide a single shared standard for web content accessibility that meets the needs of individuals, organisations, and governments internationally.
- WCAG 2.0 was published on 11 December 2008. WCAG 2.1 was published on 5 June 2018.
- You are encouraged to use the most recent version of the WCAG when developing or updating content for use on the web.

Applying an integrated approach to your procurement

Accessibility needs to be a part of all procurement planning and decision making, regardless of the assessed level of risk or value. The approach taken to integrate accessibility requirements into your procurement process will vary from activity to activity. However, action can be undertaken at all stages of the procurement process to ensure universal access to goods, services and infrastructure. This includes:

- procurement planning
- tender specifications
- going to market documentation
- evaluation criteria
- contract formation and management.

Stage	Recommended actions			
Planning	Planning may take the form of either: (1) inclusion in the significant procurement plan; and/or (2) representation of a person with disability on the procurement or project team, or both.			
	Planning needs to:			
	 identify relevant legislation and any applicable standards assess the best approach for early and/or continual engagement with the disability sector in the pre-planning phase establish a co-design engagement approach with the disability sector including level of participation and frequency (in major public infrastructure projects and all other projects determined to be applicable) include disability compliance as part of the risk assessment process – identify any mitigation measures that may be needed (e.g. multiple touch points with the sector by engaging early, initial planning, evaluation of tenders, product 			
	testing phase).			
	The planning process should be used to inform specification development, evaluation criteria and subsequent measures to afford relevant rigor around DDA compliance in the evaluation of tender submissions.			
Tender	Tender The specification needs to be:			
specifications	 based on, and require compliance with, relevant legislation and disability standards 			
	 consulted with the disability sector as appropriate with user-testing signed off as compliant with the applicable legislation and disability standards. 			
Go to market	Tender documentation should include:			
	 a specification which is compliant with relevant legislation and standards an explicit statement that compliance is required and offerors are to provide either a demonstration of compliance or a demonstration of how equivalent access will be achieved (where applicable) demonstration of how minimum standards have been exceeded to achieve greater accessibility (e.g. records of user-testing prototypes). 			
Evaluation	Evaluation of tenders should include:			
	 making it a mandatory criterion (e.g. a yes or no response) that accessibility compliance is achieved (e.g. demonstrating use of universal design, disability legislation and standards compliance has been met, additional accessibility measures) an outline of how compliance will be evaluated, including how equivalent 			
	 arroutine of now compliance will be evaluated, including now equivalent access will be evaluated (e.g. records of disability consultation by tenderers) inclusion of a person/s with disability when evaluating tender submissions for accessibility compliance. 			
	The subsequent evaluation report should specifically cover disability compliance and the assessment undertaken. Where approvals are subsequently sought, explicit mention of the procurement solution's compliance with disability legislation needs to be made.			
Contract	The resulting contract should:			
formation	 include all relevant compliance undertakings made in the tender phase be clear on how disability compliance will be assessed and any decision 'gates' during any construction or build processes 			

Stage	Recommended actions	
	 ensure, where possible, that a single agreed specification is used by the successful offeror (which is DDA compliant). 	
Contract management	 In this stage: the contract needs to be proactively managed with checks done at each decision 'gate' acceptance of any good or service needs to verify that compliance (or equivalent access) has been obtained. Acceptance of goods or service should not occur until verification is provided. 	

Refer to the suite of <u>procurement guidance resources</u> [https://www.forgov.qld.gov.au/procurement-guides] for detailed processes relating to these stages.

Areas to go for specialist advice

Category council leads

Agency-led category councils oversee and direct procurement activities for each category group (e.g. ICT, Medical). The category council governs the category strategy for the spend profile and endorses related category plans.

Category councils:

- Building Construction and Maintenance Department of Housing and Public Works
- General Goods and Services Department of Housing and Public Works
- Information and Communication Technology Department of Housing and Public Works
- Medical Goods and Services Department of Health
- Social Services Department of Communities, Disability Services and Seniors
- Transport Infrastructure and Services Department of Transport and Main Roads.

Industry Reference Group disability representatives

Each council has an associated Industry Reference Group (IRG) to facilitate a coordinated and consultative approach when dealing with industry. IRGs have disability representatives appointed to ensure perspectives and input from the disability sector are included.

The IRG disability representative will be your initial contact in the pre-planning stage to seek advice on early engagement with a disability specialist for your desired procurement activity. You can contact the appropriate IRG member through the category council lead agency.

Disability sector organisations

After consideration of category council lead or IRG member advice, you may wish to obtain additional sector input or be connected to specific technical expertise. A number of organisations exist in Queensland to support individual, systems and legal advocacy (refer to **Appendix 1** for a list of organisations)². The capacity of these organisations can be limited and consultation services may attract a fee, which should be factored into your planning.

² Please note, this is not an exhaustive list of all the organisations that may be available to provide linking to people with disability for consultation purposes, or for engaging specialist advice or training. The Department of Housing and Public Works does not endorse or take responsibility for the information contained on the organisation's websites.

Consequences for non-compliance

As a government buyer, non-compliance with discrimination legislation or associated standards can result in poor procurement outcomes and wasted resources. This can be avoided by understanding the significance of actions undertaken that directly contribute to DDA non-compliance.

There are a number of mechanisms established to investigate and respond to complaints regarding disability discrimination as a result of a procurement process.

Complaints are encouraged to be resolved with the procuring agency first. The <u>Complaints Management (PDF, 145KB)</u>[https://www.hpw.qld.gov.au/SiteCollectionDocuments/ProcurementGuideComplaints.pdf] guide describes how agencies can develop an effective complaints management process.

Challenges can also be made by anyone in the form of a written complaint to the <u>Queensland Human Rights Commission</u>[http://www.qhrc.qld.gov.au/] (formerly Anti-Discrimination Commission Queensland). The Commission's role as an independent party is to try to resolve complaints through a conciliation process. The Commission is not a court and cannot decide if discrimination or another breach of the DDA or *Anti-Discrimination Act 1991* has happened.

If no agreement is reached and further negotiations are unable to resolve the complaint, the complainant has the option to escalate the complaint for a public hearing with the <u>Queensland Civil and Administrative Tribunal[https://www.qcat.qld.gov.au/]</u>, where any determination made is binding on all parties.

Are there instances of exemption?

The <u>Australian Human Rights Commission</u>[https://www.humanrights.gov.au/] (AHRC) may grant temporary exemption (up to 5 years) for some aspects of the DDA. Any exemptions **would not be granted** for new products or services and are subject to rigorous conditions as prescribed by the AHRC. Guidelines on how to apply for an exemption are available on the <u>AHRC website</u> [https://www.humanrights.gov.au/our-work/legal/exemptions], however **exemption should not be considered a preferable or alternative option** in lieu of appropriate planning and consultation.

Disability discrimination happens...

- Almost 1 in 12 Australians with disability reported they had experienced discrimination or unfair treatment because of their disability
- 323 complaints were received about disability discrimination in the provision of goods, services and facilities³.

Examples of issues raised in complaints⁴

The AHRC investigates complaint allegations relating to non-compliance with the DDA and highlights other human rights systemic issues and legislative responsibilities. A number of complaints could have been addressed in the initial procurement and establishment of public goods, services and facilities. The following real-life examples have been categorised into the responsible procurement category to show how development decisions can have unintended discriminatory impacts.

Information accessibility – Information and Communication and Technology

Unable to access product assistance:

³ Access for all: improving accessibility for consumers with disability. Australian Human Rights Commission (2014-15 data).

⁴ Access for all: improving accessibility for consumers with disability. Australian Human Rights Commission.

A woman with a hearing impairment complained that when she sought help from an information technology company in relation to a recently purchased product, she was told that assistance was only available over the phone. The company said that the complainant had received incorrect advice. The company did provide online product assistance and assistance via TTY (teletypewriter) relay services. The company apologised for what had happened and offered the complainant 12 months free access to a service upgrade.

Accessible premises and events - Building Construction and Maintenance

Barriers at entrances and items in aisles:

A woman who uses a wheelchair complained that she had difficulty shopping in her local supermarket due to such things as turnstiles at the entrance and displays and goods being placed in the aisles. The complaint was resolved when the supermarket agreed, among other things, to remove turnstiles at the entrance and convey instructions to staff about keeping passages clear and remodel displays to ensure aisles are kept clear.

Lack of lift access:

A man who uses a wheelchair complained that a publicly funded arts facility did not have public lift access. This meant that patrons who could not use stairs had to use the goods lift and be accompanied by staff through otherwise 'off limit' areas of the building. The complaint was resolved with an agreement that the arts centre would install an appropriate public lift.

Lack of audio loop:

A man who has a hearing impairment said he attended a lecture series at a public venue but was unable to hear the content as the theatre did not have an audio loop. The complaint was resolved on the basis of an agreement to provide the man with an apology, refund the fee he had paid and install an audio hearing loop in the theatre.

Accessible transport – Transport and Infrastructure Services

Lack of ramps for buses:

A man who uses a wheelchair complained that ramps on the accessible buses in his area were frequently out of order for long periods. The complaint was resolved when the bus operator confirmed that the ramps had been repaired and arrangements made to ensure the workshop gave priority attention to ramp maintenance and repairs in the future.

Web accessibility – Information and Communication Technology

Problems with online banking:

A woman who has a vision impairment complained that she could not access her credit union's online banking service because the security features that had been installed to verify identify were not accessible to her. The complaint was resolved when the credit union agreed to upgrade its site to provide an accessible method for verifying a person's identity.

Complaints and the QPP Compliance Unit

The Queensland Procurement Policy Compliance Unit (QPP Compliance Unit)(PDF, 1MB)

[https://www.hpw.qld.gov.au/SiteCollectionDocuments/ComplianceInformatioGovernmentBuyers.pdf] was introduced in July 2018 as an additional assurance measure for procurement related complaints. It operates a referral model which provides an avenue for complaints to be received about suppliers, agencies or application of the QPP itself, relating to government procurement activities. The unit liaises with procuring agencies, managing an outcome-driven process for complaints received.

Building capability

Professionals in procurement

Training and professional development plays an integral role in establishing and maintaining good procurement practices and supporting continuous learning for new and existing staff.

The Office of the Chief Advisor – Procurement manages *Skills2Procure*, supporting agencies to build capability for staff undertaking procurement and contract management-related roles and tasks.

Skills2Procure

Skills2Procure is the whole-of-government training and development initiative for people involved in all or parts of the procurement process, including procurement and contract management staff, support staff and agency executives.

Skills2Procure provides a suite of informal and formal training and development opportunities, including the Procurement Certification Program (PCP). The PCP leads to a range of formal qualifications, professionalising the way your agency staff implement your procurement processes. It is regularly updated with information and examples that reflect real-life procurement scenarios at each competency level.

The Level 1 Procurement Fundamentals, Level 2 Intermediate Procurement and the Level 3 Diploma of Government (Procurement and Contracting) certifications have been updated to include references to the DDA (online and face to face) and exploring a specific case study procurement example (face to face).

For more information, contact: skills2procure@hpw.qld.gov.au.

Understanding inclusion

Disability awareness and understanding barriers to inclusion is a first step to ensuring procurement of universally accessible goods, services, buildings and infrastructure.

Accessibility and inclusion increases the social and economic participation of Queenslanders with disability, carers, families with small children and our aging population.

Accessibility impacts...

- 1 in every 5 Queenslanders have a disability
- 2 in 5 Australians with disability are aged over 65 years
- 2.7 million Australians provide informal care

There are a number of free resources available to support professional development in disability awareness, understanding disability discrimination in business and the fundamentals of universal design (refer to **Appendix 2** for a list of resources).

This information can assist you to establish a foundation of knowledge that will support an accessibility compliant procurement process.

Appendix 1: Disability sector organisations

After consideration of prior category council lead or IRG member advice, you may wish to obtain additional sector input or be connected to specific technical expertise. A number of organisations exist in Queensland to support individual, systems and legal advocacy⁵.

Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI)[https://qai.org.au/] is an independent, community-based, individual, systemic and legal advocacy organisation for people with disability in Queensland, Australia.

Phone: (07) 3844 4200 or 1300 130 582 or email: qai@qai.org.au.

Queenslanders with Disability Network

Queenslanders with Disability Network (QDN)[https://qdn.org.au/] is a state-wide organisation of people with disability. They can provide engagement links to their extensive membership network for the purposes of obtaining advice on how services or products can be accessible and inclusive.

Phone: (07) 3252 8566 or 1300 363 783.

Blind Citizens Australia

<u>Blind Citizens Australia (BCA)</u>[https://www.bca.org.au/] represents the interests of people who are blind or vision impaired at the national, state and local levels. It has grown to an organisation of 3000 individual members and seven affiliated organisations.

Phone: (03) 9654 1400 or 1800 033 660 or email: bca@bca.org.au.

Spinal Life Australia

<u>Spinal Life Australia</u>[https://www.spinal.com.au/] supports people with spinal cord damage to live an accessible, equitable and empowered life. Services include accessing the latest equipment, aids and technology, along with assessments for home modifications and driving.

Phone: 1300 774 625.

DiversiCare

<u>DiversiCare</u>[http://www.diversicare.com.au/] is a provider of culturally appropriate community care to aged and disability clients from over 65 different ethnic backgrounds representing over 45 different languages.

Phone: 1300 348 377 or email: info@diversicare.com.au.

MS Queensland

MS Queensland[https://www.msqld.org.au/] is a registered non-profit organisation that is the first-choice for MS information, education, treatment, care and support across Queensland.

Phone: (07) 3840 0888 or email: hello@msqld.org.au.

Deaf Services Queensland

<u>Deaf Services Queensland</u>[https://www.deafservices.org.au/] is a not for profit organisation working with the community to enhance services and programs that benefit deaf and hard of hearing adults and children across Australia.

⁵ Please note, this is not an exhaustive list of all the organisations that may be available to provide linking to people with disability for consultation purposes, or for engaging specialist advice or training. The Department of Housing and Public Works does not endorse or take responsibility for the information contained on the organisation's websites.

Phone: (07) 3892 8500

Email: dsq@deafservices.org.au

Arthritis Queensland

<u>Arthritis Queensland</u>[https://www.arthritis.org.au/] is an organisation aimed at improving the lives of Queenslanders with arthritis by providing information, resources, support and advice to people with arthritis and health professionals.

Phone: (07) 3857 4200 or 1800 011 041

Email: admin@arthritis.org.au

First Peoples Disability Network

<u>First Peoples Disability Network</u>[https://fpdn.org.au/] is a national organisation of and for Australia's First Peoples with disability, their families and communities. The organisation is governed by First Peoples with lived experience of disability.

Phone: (02) 9267 4195

Email: enquiries@fpdn.org.au.

LifeTec

<u>LifeTec</u>[https://lifetec.org.au/] provides you with specialist information, advice, support and consultation services from health professionals to maximise your independence and safety through assistive technology.

Phone: 1300 543 383.

Vision Australia

<u>Vision Australia</u>[https://www.visionaustralia.org/] is a leading national provider of blindness and low vision services in Australia.

Phone: 1300 847 466

Email: info@visionaustralia.org

AMPARO Advocacy Inc.

AMPARO Advocacy[http://www.amparo.org.au/] is a non-profit community organisation which provides independent individual and systemic advocacy on behalf of vulnerable people from Culturally and Linguistically Diverse (CALD) backgrounds with disability.

Phone: (07) 3354 4900

Email: info@amparo.org.au

Dementia Australia

<u>Dementia Australia</u>[https://www.dementia.org.au/] advocates for the needs of people living with all types of dementia, and for their families and carers, and provide support services, education and information.

Phone: (07) 3895 8266 or email: qld.general@dementia.org.au

Better Hearing Australia Inc.

<u>Better Hearing</u>[http://www.bhabrisbane.org.au/] is delivers services to people that experience hearing loss or impairment.

Phone: (07) 3844 5065 (Brisbane) Email: info@bhabrisbane.org.au

Appendix 2: Disability awareness and accessibility resources

Good practice, good business factsheets - Australian Human Rights Commission:

• https://www.humanrights.gov.au/our-work/employers/good-practice-good-business-factsheets

Access for all: improving accessibility for consumers with disability – Australian Human Rights Commission:

https://www.humanrights.gov.au/our-work/employers/access-all-improving-accessibility-consumers-disability

Statistics - Australian Bureau of Statistics:

2015 Survey of Disability, Ageing and Carers (ABS 4430.0 2015)⁶
[https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4430.0Main%20Features12015?opend ocument&tabname=Summary&prodno=4430.0&issue=2015&num=&view=]

Tailored training packages – Queensland Human Rights Commission:

https://www.qhrc.qld.gov.au/training

Queensland Public Sector: Disability awareness online program (for Queensland Government employees):

<u>Disability Awareness: Inclusion is within everyone's ability</u>
 [https://dccsds.cls.janisoncloud.com/scormproxy/uploads/dccsdsadmin/Scorm/dc-dst-disability-awareness-online-program-v17/index.html]

Disability Awareness – Online training modules (publicly available):

Disability Awareness – An Introduction to Disability[https://disabilityawareness.com.au/]

Universal design:

- The 7 Principles[http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/]
- The 8 Goals[http://idea.ap.buffalo.edu/about/universal-design/]
- <u>Design resources[http://idea.ap.buffalo.edu/resources/]</u>

Queensland Government web accessibility requirements:

- Websites policy[https://www.qgcio.qld.gov.au/documents/websites-policy-is26]
- Consistent user experience standards[https://www.forgov.qld.gov.au/cue]

⁶ <u>2015 Survey of Disability, Ageing and Carers</u> [https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4430.0Main Features12015?opendocument&tabname=Summary&prodno=4430.0&issue=2015&num=&view=] (ABS 4430.0 2015).