

Exposure Draft for public consultation – April 2024

# Guidelines on equal access to digital goods and services

## About

This is a **draft revision** of the Australian Human Rights Commission’s (the Commission) [World Wide Web Access: Disability Discrimination Act Advisory Note ver 4.1 \(2014\)](#). This revision builds upon the previous iterations of the Commission’s Advisory Note to reflect changes in technology, its role within society, as well as national and international standards and policies that define how technology provides equitable or equal access for people with disability.

It is anticipated the final version will be published in HTML with downloadable versions in DOCX, PDF, EPUB formats and other accessible formats.

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# 1. Introduction

Digital technologies are ubiquitous, and the use of technology is now required to participate in almost every aspect of individual and community life. Digital technologies are an integral part of how we live, learn and work. From connecting with family and friends, participating in education, working in hybrid workplaces, engaging with movies and music, through to cooking a meal, seeking medical services, paying bills and shopping.

As a result, the enjoyment of our human rights can often depend on being able to access and use technology. Everyone has a right to obtain goods, services, and facilities via technology platforms as well as to use goods, services and facilities that operate on a particular technology. Unfortunately, many people with disability face barriers to participating in those activities due to a lack of inclusive design. In many cases, the barriers faced are not due to the nature of a person's disability. Rather the barriers are created by way of the decisions made when designing, developing and/or procuring digital goods and services. The impact of those decisions is what excludes and discriminates against people with a disability. This can look like a loss of independence and reduced participation in society, which in turn can lead to less choice and opportunity to fulfil other ambitions in life.

Since the *Disability Discrimination Act 1992* (Disability Discrimination Act) became federal legislation in 1992, the ways in which digital goods and services are accessed has continued to change as technology evolves. Both national and international accessibility standards have evolved as well. Irrespective of the technological change, the constant and fundamental questions under the Disability Discrimination Act are:

- Does the way in which the good or service is provided discriminate against people with disability?
- What actions have been taken to minimise any discrimination?

These Guidelines seek to assist with answering the above questions in the context of the provision of digital goods and services in all areas of public life. The Guidelines are intended to assist individuals and organisations involved in the development, procurement and ownership of digital goods and services, by clarifying the requirements of the Disability Discrimination Act in this area and explaining how compliance can be best achieved.

The Guidelines aim to provide advice on:

- **what** are digital goods or services
- **what** is equal access of use in relation to digital goods or services

- **why** it is important to create, procure and implement digital goods and services that provide equal access
- **how** to measure the capacity of a digital good or service to provide equal access
- **how** to consistently provide equal access to digital goods and services.

## 1.1 United Nations Convention on the Rights of Persons with Disabilities

The United Nations' Convention on the Rights of Persons with Disabilities (CRPD) is the principal binding international human rights instrument that explicitly addresses disability. Australia ratified the CRPD in 2008, accepting the obligation to protect and promote the rights of people with disability in domestic laws and policies.

Article 3 of the CRPD sets out general principles, including non-discrimination and equality of opportunity, and Article 4 sets out general obligations to 'ensure and promote the full realization of all human rights and fundamental freedoms without discrimination on the basis of disability.'<sup>1</sup> The following sub-sections of Article 4 are particularly related to the topic of digital accessibility:

- f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.

Article 9 (Accessibility) specifically articulates obligations to ensure people with disability have equal access to places, facilities and services provided to the public. It outlines that State Parties must take appropriate measures to identify and eliminate barriers to people with disability accessing technology, including by implementing minimum accessibility standards, and promoting the design and development of accessible technology.<sup>2</sup>

Article 21 requires States Parties to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.<sup>3</sup>

This includes:

- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities.

Accessibility is an enabling right that is critical to the enjoyment of a range of other civil, political, economic, social, and cultural rights. A digital good or service that fails to provide equal access of use not only impinges on the right to accessibility, but it also constrains rights in many other aspects of life.

While the Australian Government has primary responsibility for meeting Australia's obligations under the CRPD, all sections of society play an active role in upholding the rights established by the CRPD. Any failure to provide equal access to digital goods and services for people with disability may be seen as a violation of human rights.

## 1.2 About these Guidelines

These Guidelines will be issued under section 67(1)(k) of the *Disability Discrimination Act 1992* (Cth) (the Disability Discrimination Act) and section 11(1)(n) of the *Australian Human Rights Commission Act 1986* (Cth). The Guidelines are not legally binding and should be read in conjunction with the Disability Discrimination Act.

The Guidelines are prepared in consultation with advisory groups made up of technical subject matter experts, users, and disability representative organisations.

The ubiquitous nature of digital goods and services, and how integral they are to active participation in society, means that the Guidelines are applicable to a broad audience.

The intended audiences for these Guidelines are people and organisations who have a duty under the Disability Discrimination Act to not discriminate in the provision of goods and services. This includes any agency along the 'accessibility chain' who has responsibilities in the broad areas of creation, procurement, and governance. These are known as the 'duty holders' and include:

- creators of digital goods and services such as designers, developers, publishers and educators
- user content hosts such as social media platforms
- suppliers or companies who build or sell digital goods and services
- procurers of digital goods and services such as procurement professionals
- employers who deploy digital technologies for use by staff
- digital accessibility practitioners
- ICT professionals and leaders
- C-suite executives who are accountable for the quality of digital goods and services
- organisation leaders such as managers, principals, Boards / Directors
- compliance professionals – generalists and specialists such as Data Privacy, Corporate Affairs, Information Security and Human Resources.

The audience for these Guidelines also includes people with disability and their representative organisations, disability peak bodies and advocates. The Guidelines will assist with understanding and exercising their rights in the digital world.

### 1.3 Why is providing equal access important?

Governments, businesses, education, not-for-profit and other organisations in Australia use telecommunications to provide the public, or sections of the public, with access to digital goods and services in a timely and cost-effective way.

Availability of digital goods and services via the internet and other telecommunication networks has the potential to provide equal access for people with disability, and to provide access more broadly, more economically and more quickly than is possible using other delivery mechanisms. However, by itself, the presence of a good or a service via these communication mediums does not guarantee accessibility. Nor does every new technology provide equal access by default. When a digital good or service does provide equal access of use, it can become an enabler of autonomy and lifestyle, as well as lead to greater equality of access to services such as health, education, and employment.

### 1.4 Universal design

Universal Design is about designing products so that they can be accessed, understood, and used to the greatest extent possible by all people. There are seven principles underpinning universal design to guide the design of environments, products and communications. They are:

1. Equitable Use – the design is useful and marketable to people with diverse abilities
2. Flexibility in Use – the design accommodates a wide range of individual preferences and abilities
3. Simple and Intuitive Use – use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level
4. Perceptible Information – the design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities
5. Tolerance for Error – the design minimizes hazards and the adverse consequences of accidental or unintended actions
6. Low Physical Effort – the design can be used efficiently and comfortably and with a minimum of fatigue
7. Size and Space for Approach and Use – appropriate size and space is provided for approach, reach, manipulation, and use regardless of user's body size, posture, or mobility.<sup>4</sup>

These principles overlap with the Web Content Accessibility Guidelines and the Australian standard for accessible ICT introduced later.

## 2. Glossary and definitions

Assistive Technology – equipment or devices that increase or maintain the functional capabilities of people with disability. In the context of digital access, it is hardware, software, and peripherals that assist people with disability in accessing computers or other information technologies. Some examples include screen readers, alternative keyboards and mice, screen magnification and voice recognition.

AS EN 301549 (Australian Standard for ICT accessibility) – an Australian standard adopted from Europe as a consistent framework to guide the development and procurement of accessible digital content and equipment. The capability of a digital good or service to provide an equally accessible experience can thereby be measured. It encompasses the requirements of the Web Content Accessibility Guidelines (WCAG) but extends to a wider range of products. The features of that digital good or service must meet overarching functional performance statements over and above the technical requirements of WCAG.

Convention on the Rights of Persons with Disabilities (CRPD) – an international instrument which codifies the rights people with disability should be able to expect wherever they live in the world. Countries which have ratified the CRPD are expected to reflect these rights in domestic legislation. Australia ratified the CRPD in 2008.

Digital products – websites, apps, software, digital documents and any product with a digital interface.

ICT (Information and Communications Technology) – the diverse set of technological tools and resources used to transmit, store, create, share or exchange information. ICT covers all technical means used to handle information and aid communication. This includes both computer and network hardware, as well as their software.

Internet – the network that connects computers and devices all over the world. It can run over wires and over radio waves. The Web is one system that uses the internet along with email and mobile apps.

Platform as a Service (PaaS) – a type of cloud-based service where a third-party provider delivers operating system, coding environments, software, and services to users over the internet.

Software as a Service (SaaS) – cloud-based service delivered over the internet providing office productivity suites, online or remote meetings, digital libraries, streaming services, video, and music authoring as well as simple engagement with social media platforms.

Web Content Accessibility Guidelines (WCAG) - the applicable international standard for web accessibility; it is also applicable to non-web documents, apps, software and digital interfaces. WCAG it updated from time-to-time and it is important to meet the requirements of the latest published version.

### 3. The Disability Discrimination Act

The *Disability Discrimination Act 1992* (Cth) (Disability Discrimination Act) is a federal law that makes discrimination on the ground of disability unlawful in areas of public life. It aims to eliminate discrimination, as far as possible, against people with disability, ensuring people with disability have the same rights of equality before the law, and promoting acceptance and recognition that they have the same fundamental rights as others in the community.

The Disability Discrimination Act defines discrimination as when someone is disadvantaged or treated unfavourably because of their own disability, or because of the disability of someone they are associated with. There are two types of unlawful discrimination.

- ‘Direct’ discrimination happens if a person is treated less favourably because of their disability. For example, if an employee was excluded from a team social activity because they have a vision impairment.



- ‘Indirect’ discrimination occurs when there is an unreasonable rule or policy that is the same for everyone but has an unfair effect on people with disability. For example, if the only way to enter a government building is through a set of stairs which prevents people with a physical disability from accessing the building.

The Disability Discrimination Act applies to disability that a person currently has, once had, may have in future, or is assumed to have. This protection is also extended to friends, family and carers of a person with disability, and people who have an assistance animal or disability aid.

Under the Disability Discrimination Act, it is against the law to discriminate against a person because of their disability in:

- employment
- education
- access to premises used by the public
- provision of goods, services and facilities
- accommodation
- buying land
- activities of clubs and associations
- sport
- administration of Commonwealth Government laws and programs

The Disability Discrimination Act also requires businesses to make reasonable adjustments to enable a person with disability to access goods, services or facilities. Failure to make such adjustments itself may constitute discrimination. The aim of imposing a duty to make all reasonable adjustments is to eliminate, to the extent possible, the discriminatory treatment of persons with disability. An adjustment to be made by a duty holder consistently with achieving this aim is a reasonable adjustment unless making the adjustment would involve an unjustifiable hardship on the provider.

Section 11 of the Disability Discrimination Act says that unjustifiable hardship is determined when all relevant circumstances of the case are taken into account. These include:

- a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
- b) the effect of the disability of any person concerned;

- c) the financial circumstances, and the estimated amount of expenditure required to be made, by the person or organisation;
- d) the availability of financial and other assistance to the person or organisation;
- e) any relevant action plans given to the Commission under section 64.

It is important to note that the burden of proof lies with the person or organisation claiming unjustifiable hardship and not with a person with disability or organisation working on their behalf. In other words, the person or organisation claiming unjustifiable hardship must prove that this would occur: they cannot just say that it would.

Unjustifiable hardship is increasingly difficult to prove, particularly in the provision of digital goods and services. This is due to such factors as:

the array of national and international standards on digital accessibility that have been in place and updated since 1999

- widespread availability of practical advice from industry experts on creating and or procuring accessible digital goods and services
- growth of mainstream tools that have the capacity to assist in the creation of accessible goods and services
- growth of mainstream devices that include accessibility features as part of the operating system.

The best way to avoid discrimination remains being inclusive by design and accessible by default. These Guidelines are intended to assist in achieving that objective.

### 3.1 What digital products are covered by the Disability Discrimination Act?

Section 24 of the Disability Discrimination Act specifically relates to the provision of goods and services or availability of facilities. It also covers the terms and conditions under which, and the manner in which, goods and services are provided.

‘Services’ is defined in the Disability Discrimination Act as including:

- a) services relating to banking, insurance, superannuation and the provision of grants, loans, credit or finance; or
- b) services relating to entertainment, recreation or refreshment; or
- c) services relating to transport or travel; or
- d) services relating to telecommunications; or

- e) services of the kind provided by the members of any profession or trade; or
- f) services of the kind provided by a government, a government authority or a local government body.

Any digital good or service created for people to consume, engage with and/or control, must be designed to provide equal access of use by all. These include:

- internet-based technologies, non-internet technologies and hybrids that use both
- digital content, applications, systems, and services.

In practical terms, this includes but is not limited to the following types of ICT:

- websites, including intranets
- digital documents, books, and learning materials
- emails and attachments to emails
- Software as a Service (SaaS) or what are commonly known as portals
- Platform as a Service (PaaS) which are another type of cloud-based service
- software and mobile applications
- gaming (including online gaming)
- artificial intelligence (AI)-generated services, including the AI platform itself
- facial recognition and other biometric technologies used to gain access to services
- Extended Reality (XR) including Virtual and Augmented Reality (VR & AR)
- digital wallets and payment systems
- digital wayfinding including mapping
- digital interfaces to physical objects including digital kiosks, office printers, automated teller machines (ATM), household appliances, environment controls, lift controls and wearables
- digital interfaces to the Internet of Things (IoT) including physical objects embedded with sensors, software, and other technologies for the purpose of connecting and exchanging data with other devices and systems over the internet.

Further to these specific areas covered by the Disability Discrimination Act, provision of any other goods, services or facilities through telecommunications is defined as a 'service', and as such, discrimination in the provision of that service is unlawful under the Disability Discrimination Act.

Section 15 of the Disability Discrimination Act makes it unlawful for an employer to discriminate against a person on the grounds of disability.<sup>5</sup> This includes in the employee's access, or limiting their

access, to opportunities for promotion, transfer, or training, or to any other benefits associated with employment.

Many barriers related to a digital good or service used in the workplace can be easily and systemically removed by employers through creating and/or procuring digital goods or services that meet known accessibility standards. Other barriers may be removed through making changes to a work process, procedure, or environment. The changes, known as ‘reasonable adjustments,’ enable people with a disability to work in a safe environment and perform to the best of their ability.

Failure to provide reasonable adjustments for people with disability at work can be discrimination under the Disability Discrimination Act. It can create workplace health and safety risks, if people with disability are:

- required to use digital goods and services that do not comply with accessibility standards
- exposed to undue fatigue or stress
- unable to access instruction or warning that relate to workplace / occupational health and safety.

It is noted that the Federal Government can provide financial assistance for workplace adjustments for people with a disability through the Australian Government’s Job Access program.<sup>6</sup>

## 4. Equal access to digital products/goods and services

Australia has an obligation under the CRPD to ensure people with disability access on an equal basis with others. The Disability Discrimination Act makes it unlawful to discriminate against a person on the basis of their disability by refusing to provide or make available goods or services, in the terms or conditions on which the goods or services are provided, or in the way the goods or services are provided.<sup>7</sup> These requirements apply to any individual or organisation developing or providing digital goods and services in Australia, whether paid or not.

Beyond the non-discrimination requirements of the Disability Discrimination Act, there are other standards that can assist with ensuring equal access.

### 4.1 Australian standards for digital accessibility requirements

Australia has always followed the Worldwide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG)<sup>8</sup> ever since the first version was released in 1999. In fact, the applicability of WCAG under the Disability Discrimination Act was upheld in the *Bruce Lindsay Maguire v Sydney Organising*

Committee for the Olympic Games (SOCOG) hearing in 2000 which stated that ‘the provision of an accessible web site which complied with W3C Guidelines’ should have been considered during the organisation of the Sydney Olympic Games.<sup>9</sup>

WCAG is the applicable international standard for web accessibility; it is also applicable to non-web documents, apps, software and digital interfaces. WCAG has been updated several times since 1999 and is required by government and non-government sectors alike. WCAG has four principles that serve as the foundation for web services. According to these principles, web services should be:

1. **Perceivable** - Information and user interface components must be presentable to users in ways they can perceive.
  - This means that users must be able to perceive the information being presented (it can't be invisible to all of their senses)
2. **Operable** - User interface components and navigation must be operable.
  - This means that users must be able to operate the interface (the interface cannot require interaction that a user cannot perform)
3. **Understandable** - Information and the operation of user interface must be understandable.
  - This means that users must be able to understand the information as well as the operation of the user interface (the content or operation cannot be beyond their understanding)
4. **Robust** - Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies.
  - This means that users must be able to access the content as technologies advance (as technologies and user agents evolve, the content should remain accessible)

The current version of WCAG version 2.2, has three levels of conformance. A minimum of level AA is expected to be adopted; later versions of WCAG may have different conformance levels and these Guidelines will be updated to provide advice if this occurs.

In 2016 Standards Australia adopted the European Standard for ‘Accessibility Requirements for ICT Products and Services’ (Australian Standard for ICT accessibility).<sup>10</sup> This standard has also been adopted by many other countries including Canada. This standard embeds WCAG alongside an integral set of functional accessibility requirements; it also references the need to apply the W3C’s Authoring Tool Accessibility Guidelines (ATAG) to any software that can be used to create or modify content.

The Australian Standard for ICT accessibility provides a framework by which the capability of a digital good or service to provide an equally accessible experience can be measured. The features of that digital good or service must meet two overarching functional performance statements over and above the technical requirements of WCAG:

- The digital product, similarly to the WCAG principles, enables users to locate, identify, understand and operate functions in digital technologies.
- Any accessibility features within the good or service maintains the privacy of people using those features at the same level as other users.

In practical terms, the Australian Standard for ICT accessibility requires that digital goods and services must be able to be used equally and independently by people:

- with no or limited vision
- with no or limited perception of colour
- with no or limited hearing
- with no or limited vocal capability
- with limited manipulation or strength
- with limited reach
- with photosensitivity seizure triggers
- with limited cognition, language, or learning.

When the digital good or service achieves the functional performance, it exhibits three distinct qualities:

- **Perceivability:** People can use either their sight, hearing, or touch to perceive all content and controls
- **Simplicity:** People can easily understand and use all content and controls. They provide familiar, consistent interactions that make complex tasks simple and straightforward to perform
- **Personalisation:** People can interact with all content and controls on the same basis using assistive technologies and/or personal device preferences such as dynamic text, screen orientations and colour changes.

## 4.2 Measuring equal access

A digital good or service provides equal access of use when it delivers the two key functional performance standards of the Australian Standard for ICT accessibility. How that functional

performance is delivered is set out in functional accessibility requirements outlined in the Australian Standard for ICT accessibility, which makes it possible to measure how well it has been achieved. Equal access is delivered and measured through:

- 1) Conformance with current technical standards (latest WCAG for web and apps or AS EN 301 549 for other digital products)
- 2) Confirmation of functional accessibility (latest AS EN 301 549)
- 3) Evidence of equal access (for example usability testing).

#### **4.2.1 Conformance with current technical standards**

Digital goods or services must conform to the accessibility requirements contained within the most relevant and current accessibility standard that applies. As a minimum requirement, the screen based component of a digital good or service must conform to the relevant accessibility requirements within the current version of WCAG, as the Australian Standard for ICT accessibility lags in its incorporation of best practice standards in this regard. This requirement supersedes any other organisational or industry-specific guidance that recommends lower levels of accessibility conformance.

As discussed, the Australian Standard for ICT accessibility covers a range of internet-based technologies, non-internet technologies and hybrids that use both. The nature of the digital good or service determines which accessibility requirements within the WCAG or the Australian Standard for ICT accessibility must be complied with.

The Australian Standard for ICT accessibility strengthens and extends the Commission's long-standing advice that all digital goods and services must achieve a *minimum* of Level AA conformance with *current* version of WCAG to be consistent with the aims and objects of the Disability Discrimination Act.

It cannot be assumed that just because a digital good or service achieves technical conformance in one context of use it automatically achieves technical conformance in all contexts. This is no different from various safety standards where products are deemed safe within certain weight or use limits but not in others. Examples of context dependence in digital accessibility include:

- **Portable Document Format:** in general, appropriately designed PDFs can achieve high levels of conformance with WCAG. There is also an Australian Standard, 'Document management applications — Electronic document file format enhancement for accessibility, Part 1: Use of ISO 32000-1 (PDF/UA-1)'<sup>11</sup> commonly referred to as PDF/UA that should be applied to the creation of PDF files to provide an accessible experience.

- **Audio and videos:** Both the media and the media player used to present the audio or video must conform with current accessibility standards. One without the other results in non-conformance.

Certain goods and services may not have kept pace with accessibility standards and may no longer be fit for purpose or only in certain contexts. Like other standards, such as building standards and car safety, accessibility standards continue to evolve as technology, materials, usage and societal expectations change. As an example, cars that achieved a 5-star safety rating a decade ago might only achieve a 1-star rating under current safety standards. Likewise, digital goods and services that may have achieved conformance with earlier versions or interpretations of accessibility standards may not achieve conformance with current versions or may only be capable of achieving conformance in restricted use cases.

It is also worth noting that technical standards are the minimum or baseline and going beyond them improves the experience. For example, AS 1428.1, the 'Design for access and mobility, Part 1: General requirements for access - New building work', specifies that generally 1:14 is the maximum gradient for a ramp. However, a shallower gradient will always make life easier for most wheelchair users and others who prefer a ramp to stairs. Applying the minimally acceptable standard does not always meet people's needs.

Decisions related to creation or procurement of digital goods or services must conform to the accessibility requirements contained within the most relevant and current accessibility standard that applies.

Similarly, in certain instances the pace of technological innovation may outstrip the capacity of accessibility standards to respond quickly. What remains unalterable is the requirement for the features of that digital good or service to meet two key functional performance statements of equal access.

#### **4.2.2 Confirmation of functional accessibility**

Conformance with technical standards is only part of demonstrating whether a digital good or service provides equal access of use. This is because conformance evaluations can only deliver part of the evidence. The second integral part of the evidence of equal access is confirmation of the functional accessibility of the digital good or service. As outlined in the Commission's *Human Rights and Technology Final Report* (2021), "functional accessibility needs to be incorporated in the design of both



the hardware and software, and in any updates or new iterations, of goods, services and facilities that use Digital Communication Technologies.”<sup>12</sup>

Functional accessibility means that the digital good or service is both accessible and usable by people with disability and by all users. Functional accessibility testing should be undertaken as part of any usability and/or quality assurance testing process to confirm that the digital good or service is both accessible and usable. The digital good or service must pass the relevant technical accessibility requirements and functional accessibility requirements to be deemed fit for purpose. Confirmation of functional accessibility involves testing using a range of input methods, device settings and assistive technologies such as a screen reader. It is best conducted with people with disability and older users to identify issues that are not discovered by technical conformance evaluation alone. Intentionally including people with a disability and older users in the usability and/or quality assurance testing process also aligns with industry best practice and W3C advice.<sup>13</sup>

It is important to avoid assuming that input from one person with a disability is representative of all people with disability. People with disability access and use digital goods or services in different ways, depending on their individual needs and preferences. Some will configure standard software and hardware according to their needs, whilst others will use specialised software and hardware that help them perform certain tasks.

### **4.2.3 Evidence of equal/equitable access**

Testable and verifiable evidence is required to demonstrate that the digital good or service has achieved the function performance statements outlined in how equal access is defined. Verifiable evidence of conformance and confirmation evaluation is required in both the creation and procurement of digital goods and services. It builds transparency, consistency, and trust. The evidence allows both the creators and buyers of the digital good or service to make an informed decision about whether the function performance statements of equal access have been achieved. Evidence collected in the:

- **development cycle** identifies potential accessibility errors and usability barriers that need to be addressed.
- **procurement process** allows procurement officers and teams to make informed decisions about the capacity of the digital goods and services being assessed to deliver essential accessibility features.

Verifiable conformance and confirmation data also supports the governance of accessibility within an organisation. The evidence is a proof point that action has been taken. Verifiable evidence builds transparency, reliability, and trust.

Consistent with W3C advice, currently, no single accessibility evaluation tool can identify and evaluate all potential accessibility errors in a digital good or service. A balanced approach is recommended involving evaluation tools, manual review of code and design elements as well as manual testing using typical input methods and assistive technologies such as a screen reader.

An essential evidence document is an Accessibility Conformance Report (ACR) based on the US Information Technology Industry Council's (ITI) Voluntary Product Accessibility Template (VPAT) or equivalent. VPATs are a leading global reporting format for assisting buyers and sellers in identifying accessibility features of a digital good or service. The ACR has preferably been created by a third party rather than the vendor.

In addition to an ACR, other forms of supplementary evidence are recommended. The findings of each type of evidence type should correlate with the other. Examples include:

- a practical demonstration of how the functional performance is met. It is strongly recommended that people with disability who are users of assistive technologies be included in this evidence type
- user manuals or help files which provide practical advice on how people with disability can use the good or service regardless of physical, cognitive, or sensory abilities
- reports exported by accessibility evaluation tools (recognising that these tools cannot test all the technical accessibility requirements).

## 5. Advice on delivering equal access of use.

There is a considerable body of international evidence which highlights the economic, social, and personal benefits of providing equal access. The W3C's 'The Business Case for Digital Accessibility' outlines the key benefits, as well as the risks of not addressing accessibility adequately.<sup>14</sup> The key points are supported by industry case studies.

This is reinforced by the Centre for Inclusive Design's (CID) 2019 report '[The Benefit of Designing for Everyone](#)',<sup>15</sup> which states;

Inclusively designed products and services that have edge users in mind, can reach and benefit up to four times the size of the intended audience and enable organisations to increase their revenue by growing the size of their target markets.<sup>16</sup>

As noted by then Chief Economist at PwC Australia at the launch of the CID report.

Inclusive design is a no-regrets process that creates significant benefits which are currently being left on the table. It is an overlooked step in maximising the potential of business and ensuring a more productive nation. Designers, companies, and government all have a role to play, by designing, investing, and legislating with difference in mind, so that a design process that is inclusive becomes standard practice.<sup>17</sup>

Advice from the W3C highlights that there are significant benefits in involving people with disability early and throughout different phases of research, designing, building, procuring or implementing digital goods and services.<sup>18</sup> Early involvement of people with disability in the discovery, design, or procurement of a new or upgraded digital good or service:

- provides invaluable insights into people’s needs and current barriers they face
- informs thinking about including features that are essential for equal access and useful for all.
- enables organisations to reach a wider audience from the beginning.

The National Institute of Standards and Technology (NIST) released a report in 2002 that confirms that it is more costly to repair any defect later in the development life cycle.<sup>19</sup>

*Table 1 Relative Cost to Repair Defects When Found at Different Stages of Software Development (Example Only)*

*X is a normalized unit of cost and can be expressed terms of person-hours, dollars, etc.*

Requirements Gathering and Analysis/ Architectural Design	Coding/Unit Test	Integration and Component/RAISE System Test (including ‘ease of use’)	Early Customer Feedback/Beta Test Programs	Post-product Release
1X	5X	10X	15X	30X

## 5.1 Implementing a strategic approach to providing equal access

Improving accessibility within the development cycle and/or procurement process is fundamental to delivering digital goods and services that provide equal access of use. Organisations that do so in a

consistent and sustainable manner have implemented a strategic approach which embeds accessibility into business-as-usual practices and good governance practices.

A strategic approach requires organisations to examine how their other systems intentionally support or unwittingly hinder accessibility. Organisation policies, key business processes, organisational culture, and management structures need to work in a consistent, coherent, repeatable, and measurable fashion for accessibility to become sustainable and seen as business as usual.

To intentionally embed equal access, it is recommended that organisations begin by adopting an accessibility maturity model such as the W3C's Accessibility Maturity Model.<sup>20</sup> The use of maturity models provides a consistent framework that organisations of any size can utilise to evaluate, benchmark, and improve their business processes to produce or procure digital goods and services that are accessible to people with a disability be they staff, visitors or customers.

Maturity models align with and are supported by the implementation of several Australian and international standards that either relate to accessibility or to organisational governance. These include:

- AS ISO/IEC 30071.1:2022 (Code of practice for creating accessibility ICT products and services) which outlines requirements and recommendations for organisations on embedding the consideration of accessibility decisions through the entire process of developing, procuring, installing, operating, and maintaining ICT systems, and documenting these choices.<sup>21</sup>
- AS EN 301 549 (Accessibility for ICT products) which provides a consistent framework for the development and procurement of accessible digital goods and services.<sup>22</sup>
- AS ISO 31000:2018 (Risk management) which can help organisations increase the likelihood of achieving objectives, improve the identification of opportunities and threats and effectively allocate and use resources for risk treatment.<sup>23</sup>
- AS ISO 373001:2021 (Compliance Management Systems) which 'enables an organization to demonstrate its commitment to comply with relevant laws, regulatory requirements, industry codes and organizational standards, as well as standards of good governance, generally accepted best practices, ethics and community expectations.'<sup>24</sup>

The implementation of the W3C Accessibility Maturity Model and these Australian Standards all directly support and strengthen the Commission's existing advice on developing Action Plans under the Disability Discrimination Act that promote more accessible and inclusive workplaces, businesses and communities. Most importantly, the adoption of these standards supports Disability Action Plans progressing from intentional to deliverables.

## 5.2 Importance of seeking expert advice

As individuals and organisations seek to improve the accessibility of the digital goods and services, they have responsibility for, it is encouraged to seek expert advice and up to date information when:

- embedding accessibility within the development cycle
- including accessibility within the procurement process
- developing and implementing a strategic approach to providing equal access.

Such advice can improve agility of adoption and implementation of mindsets and methods that consistently deliver digital goods and services that are inclusive by design and accessible by default. As part of developing policies, goods, services, and review mechanisms, it is recommended to always co-design with the people who are most affected by the work being done: people with a disability. The goal is for organisations to have processes and practices that are designed to deliver a consistently accessible and inclusive experience for employees, customers, and stakeholders.

## 5.3 Guidance on accessibility within the development cycle

Technical advice on delivering digital goods and services that provide equal access will continue to change due to ongoing technical innovations as well as the evolution of standards such as the W3C Accessibility Standards and the Australian Standard for ICT accessibility. For individuals and organisations wishing to enhance their skills, it is recommended to begin by utilising the free resources provided by W3C. These include:

- [accessibility fundamentals](#) and in particular [how people with disability use the web](#)
- [guidance for writing, designing, and developing](#) for accessibility
- [digital accessibility foundations online course](#) which builds the foundations needed to make your digital technology accessible
- [resources to help evaluate accessibility](#) conformance to determine how well content, application or service meet accessibility standards.

The W3C's guidance can and should be extended upon through establishing personal and organisational accessibility learning pathways that incorporate:

- joining local digital accessibility community groups
- attending web and digital accessibility conferences and other events
- following accessibility discussions on social media

- leveraging the free advice many major technology companies provide on how to provide equal access of use utilising their products.

## 5.4 Guidance on accessibility within the procurement process

Procurement is another key aspect of accessibility. Whether created or purchased, the digital good or service must deliver equal/equitable access of use. Governments around the world recognise this and are striving to achieve their social and economic objectives by ensuring the goods and services purchased are accessible by design, where possible, so that people with a disability can use them without adaptation. Examples of action taken by governments include U.S. Federal accessibility standard Section 508 and the European Union's harmonised European standard EN 301 549. Australia, Japan and others have adopted the EN 301 549.

Comparison of these standards highlights consistency of global expectations for

- vendors to deliver accessibility in their goods and services by default,
- organisations procuring digital goods and services, to embed accessibility requirements in the procurement process.

Many individuals and organisations have also recognised the significant benefits of embedding accessibility in the procurement process. These benefits include:

- attracting the best possible talent from the widest possible field
- retaining existing staff as their abilities change with age, illness, or accident
- engaging with the customers they wish to reach and serve through a barrier free experience
- managing risks through achieving compliance with obligations under relevant standards and legislation.

It is recommended that organisations include an accessibility requirement as an integral element in all new procurements of digital goods or services or when negotiating a renewal of an existing contract. This particularly applies to the procurement of any digital goods and services that have a user interface or control mechanism as well as digital content. Accessibility requirements should be viewed and addressed at the same level and manner as privacy and security requirements in the procurement process.

To encourage the practical implementation of accessibility requirements in the procurement of technology, the Commission notes:

1. Major professional bodies and not-for-profits around the world including Australia are providing free advice. Individuals and organisations alike can freely access these resources. Some examples include:
  - CAUDIT's [accessible ICT procurement implementation guide](#). Whilst the guide was originally designed for use in higher education, the guide is highly relevant and applicable to any organisation undertaking ICT procurement
  - The Global Initiative for Inclusive Information and Communication Technologies' [Buy ICT 4 All Portal](#)
  - The Information Technology Industry Council's [Voluntary Product Accessibility Template \(VPAT\)](#)
  - Disability:IN's [Accessible Procurement Toolkit](#) is designed to help companies purchase and sell technology products and services that are accessible.
  
2. Successful procurement processes for digital goods and services exhibit similar features such as:
  - include accessibility requirements in Requests for Quote/Purchase (RFQ/P) that reflect the function performance statements in the Australian Standard. These statements are outlined in how equal access is defined
  - collect and compare verifiable evidence about how the digital good or service meets requirements
  - remove digital goods or services from the selection process that fail to meet core accessibility requirements. (Similar to removing goods or services that fail to deliver core cybersecurity requirements)
  - allocate a weighting or level of importance to accessibility as part of the overall procurement process
  - Include end users in the procurement decision making process
  - ensure buyers are aware of their rights under [Australian Consumer law](#) and more broadly, [the Competition and Consumer Act 2010](#) related to goods and services that are either not of acceptable quality, fail to match the provided description, or unfit for purpose.

3. In some situations, the procurements process may identify that none of the digital goods or services being assessed meet all [function performance statements](#). In these situations, it is recommended that a remediation procurement process is implemented. This involves:

- holding discussions with preferred vendors about their roadmap to address the accessibility gaps in the digital good or service
- identifying a vendor which agrees to resolve the accessibility gaps in their product within agreed timeframes
- implementing a phased payment schedule where payments are linked to delivery of the missing agreed accessibility features. This approach is like progress payments in the construction industry.



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<sup>1</sup> *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 3 and 4 ('CRPD').

<sup>2</sup> CRPD art 9.

<sup>3</sup> CRPD art 21.

<sup>4</sup> See Centre for Universal Design, *The Principles of Universal Design* (1997) < <https://design.ncsu.edu/research/center-for-universal-design/>>

<sup>5</sup> *Disability Discrimination Act 1992 (Cth) s15*.

<sup>6</sup> See Australian Government Job Access website < <https://www.jobaccess.gov.au/>>

<sup>7</sup> *Disability Discrimination Act 1992 (Cth) s24*.

<sup>8</sup> See Web Accessibility Initiative, WCAG Overview < <https://www.w3.org/WAI/standards-guidelines/wcag/> >

<sup>9</sup> *Bruce Lindsay Maguire vs Sydney Organising Committee for the Olympic Games* (2000).

<sup>10</sup> Australian Standards *AS EN 301 549:2020*.

<sup>11</sup> Standards Australia *Document management applications – Electronic document file format enhancement for accessibility, Part 1: Use of ISO 32000-1 (PDF/UA-1)*.

<sup>12</sup> Australian Human Rights Commission, *Human Rights and Technology Final Report (2021) Chapter 12 pp 145*

<sup>13</sup> See Web Accessibility Initiative, *Involving Users in Evaluating Web Accessibility* < <https://www.w3.org/WAI/test-evaluate/involving-users/>>

<sup>14</sup> Web Accessibility Initiative, *The Business Case for Digital Accessibility* (9 November 2018) < <https://www.w3.org/WAI/business-case/>>

<sup>15</sup> Centre for Inclusive Design, 2019.

<sup>16</sup> Centre for Inclusive Design, *The Benefit of Designing for Everyone* (May 2019) 1.

<sup>17</sup> Return on Disability “Insights: The disability market is larger than China and is emerging as other markets have in the past—1.85 billion people and \$1.9 trillion in annual disposable income”, <https://www.rod-group.com/insights> Accessed 18 May 2022.

<sup>18</sup> Web Accessibility Initiative *Involving Users in Web Projects for Better, Easier Accessibility* (9 January 2019) < <https://www.w3.org/WAI/planning/involving-users/>>

<sup>19</sup> National Institute of Standards & Technology (Program Office Strategic Planning and Economic Analysis Group) *Planning Report 02-3: The Economic Impacts of Inadequate Infrastructure for Software Testing* (May 2002).

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<sup>20</sup> W3C Editor's Draft *Accessibility Maturity Model* (01 April 2024) < <https://w3c.github.io/maturity-model/>>

<sup>21</sup> <<https://store.standards.org.au/reader/as-iso-iec-30071-1-2022?preview=1>>

<sup>22</sup> <<https://store.standards.org.au/product/as-en-301-549-2020>>

<sup>23</sup> <[https://www.intertekinform.com/en-au/Standards/AS-ISO-31000-2018-1134720\\_SAIG\\_AS\\_AS\\_2680492/](https://www.intertekinform.com/en-au/Standards/AS-ISO-31000-2018-1134720_SAIG_AS_AS_2680492/)>

<sup>24</sup> <<https://store.standards.org.au/product/as-iso-37301-2023>>