

Accessibility compliance in procurement: Ensuring accessibility for people with disability guide



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Contact us

We are committed to continuous improvement. If you have any suggestions about how we can improve this document, 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 disclaims all liability that may arise from the use of this document. This document 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.

Administration

Version 1.2 of this document replaces all previous versions of this document and takes effect immediately.

Table of Contents

Introduction	4	
Why is accessibility important?	4	
What is disability discrimination?		
Your agency's obligations	5	
Integrating accessibility requirements into procurement		
Accessibility principles		
Applying an integrated approach to your procurement	6	
Areas to go for specialist advice	8	
Consequences for non-compliance	9	
Examples of issues raised in complaints		
Building capability	11	
Professionals in procurement	11	
Understanding inclusion	11	
Appendix 1: Disability sector organisations		
Appendix 2: Disability awareness and accessibility resources	14	

Introduction

The Accessibility compliance in procurement: Ensuring accessibility for people with disability guide aims to assist Queensland Government agencies understand and implement their obligations under the *Disability Discrimination Act 1992* (Cth) (the 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.

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.

Refer to section 4(1) of the DDA for the definition of 'disability'.

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.

According to the 2022 Survey of Disability, Ageing and Carers

[https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release]:

- 1. 5.5 million Australians (21.4%) had disability, up from 17.7% in 2018.
- 2. 15.0% of people aged 0-64 years had disability, compared with 52.3% of people aged 65 years and over.
- 3. Disability prevalence was similar for males (21.0%) and females (21.8%).
- 4. 7.9% of all Australians had a profound or severe disability.

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).

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 desks)
- **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 spatial requirements 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:

- 1. 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.
- 2. WCAG 2.1 was published on 5 June 2018.

3. 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 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 specifications	 The specification needs to be: 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 including the DDA 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	making it a mandatory criterion (e.g. a yes or no response) that accessibility compliance is achieved (e.g. demonstrating use of universal design, the DDA and Disability Standards compliance has been met, additional accessibility measures) an outline of how compliance will be evaluated, including how 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 formation	The resulting contract should: • 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	In this stage:	
management	 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</u> [https://www.forgov.qld.gov.au/finance-procurement-and-travel/procurement/procurement-resources/procurement-guidance] 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 Customer Services, Open Data and Small and Family Business
- Medical Goods and Services Queensland Health
- Social Services Department of Families, Seniors, Disability Services and Child Safety
- Transport Infrastructure and Services Department of Transport and Main Roads.

Industry Reference Group disability representatives

Each category 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 disability representative on the relevant IRG 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)¹. The capacity of these organisations can be limited and consultation services may attract a fee, which should be factored into your planning.

¹ 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.

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 several 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 guide</u> [https://www.forgov.qld.gov.au/finance-procurement-and-travel/procurement/procurement-resources/search-for-procurement-policies-resources-tools-and-templates/complaints-management] 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/] (the Commission). 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</u> [https://www.qcat.qld.gov.au/], where any determination made is binding on all parties.

Exemption examples

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 an **exemption should not be considered a preferable or alternative option** in lieu of appropriate planning and consultation.

According to the 2022 Survey of Disability, Ageing and Carers

[https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release], in 2022 among people with disability aged 15 years and over (living in households):

- 1. one in ten (9.9%) had experienced discrimination.
- 2. one in ten females (10.6%) and one in eleven males (9.1%) experienced discrimination.
- 3. almost one in five young people aged 15-34 years (17.6%) experienced discrimination, compared with 3.9% of those aged 65 years and over.
- 4. LGB+ people with disability were almost three times more likely to experience discrimination compared with heterosexual people with disability (27.7 % compared with 8.7%).

9

Examples of issues raised in complaints²

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:

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.

² <u>Access for all: improving accessibility for consumers with disability</u>, Australian Human Rights Commission [https://humanrights.gov.au/our-work/employers/access-all-improving-accessibility-consumers-disability].

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.

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.

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 advocacy³.

Queensland Advocacy for Inclusion

Queensland Advocacy for Inclusion (QAI) [https://qai.org.au/] advocates for the protection and advancement of the needs, rights and lives of people with disability in Queensland.

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

Queenslanders with Disability Network

Queenslanders with Disability Network (QDN) [https://qdn.org.au/] is a state-wide organisation of, by, and for people with diverse disability. QDN leads, informs, connects and influences to empower people with disability to be fully included as citizens in the social, economic, digital and political life of the community.

Phone: (07) 3252 8566 or 1300 363 783 or email: qdn@qdn.org.au

Blind Citizens Australia

<u>Blind Citizens Australia (BCA)</u> [https://www.bca.org.au/] is the national representative organisation of people who are blind or vision impaired. BCA informs, connects and empowers Australians who are blind or vision impaired and the broader community.

Phone: 1800 033 660 or email: bca@bca.org.au

Spinal Life Australia

<u>Spinal Life Australia</u> [https://www.spinal.com.au/] provides professional allied health and therapy services to support people with spinal cord damage on their journey towards improved mobility, independence, and quality of life.

Phone: 1300 774 625 or email: enquiries@spinal.com.au

DiversiCare

<u>DiversiCare</u> [http://www.diversicare.com.au/] is a division of the Ethnic Communities Council of Queensland, and provides care and support to people 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 leading provider of holistic services for people living with a neurological condition. MS Queensland is committed to ensuring people with neuro conditions can live better lives and discover new possibilities, by building community and human connection, driving neuro wellness, raising awareness, and delivering integrated services to support health, wellbeing and education.

Phone: 1800 177 591 or email: hello@msqld.org.au

³ 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.

Deaf Connect

<u>Deaf Connect</u> [https://deafconnect.org.au/] is the largest, whole-of-life service provider and social impact organisation for Deaf, deafblind and hard of hearing Australians. Deaf Connect focuses on community and empowerment, supporting Deaf Australians and their families to make choices and actions to thrive in life.

Phone: 1800 893 855 or email: info@deafconnect.org.au

The Arthritis Movement

<u>The Arthritis Movement</u> [https://www.arthritis.org.au/] supports every person impacted by arthritis to live life to the fullest through programs, education, resources, and advocacy. The Arthritis Movement supports innovation and research to find better ways to prevent, treat and ultimately cure arthritis.

Phone: 1300 275 826 or 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 or email: enquiries@fpdn.org.au

LifeTec

<u>LifeTec</u> [https://lifetec.org.au/] is a social enterprise that provides dedicated assistive technology services. LifeTec aims to enable people of all ages and abilities to actively engage in home, work, school and community life.

Phone: 1300 543 383 or email: mail@lifetec.org.au

Vision Australia

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

Phone: 1300 847 466 or email: info@visionaustralia.org

AMPARO Advocacy Inc.

AMPARO Advocacy Inc. [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 or email: info@amparo.org.au

Dementia Australia

<u>Dementia Australia</u> [https://www.dementia.org.au/] is the national peak body supporting people living with dementia, their families and carers.

Phone: (07) 3895 8200 or email: gld.admin@dementia.org.au

Better Hearing Australia

<u>Better Hearing Australia</u> [http://www.bhabrisbane.org.au/] offers services and supports which help improve the experience for everyone living with or affected by hearing loss.

Phone: (07) 3844 5065 or email: info@bhabrisbane.org.au

Appendix 2: Disability awareness and accessibility resources

Resources to help prevent discrimination, respect human rights and promote diversity in the workplace – Australian Human Rights Commission:

https://humanrights.gov.au/education/employers

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

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

2022 Disability, Ageing and Carers, Australia: Summary of Findings – Australian Bureau of Statistics:

• https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release

Tailored training packages - Queensland Human Rights Commission:

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

Disability inclusive workplaces - Queensland Government:

• https://www.forgov.qld.gov.au/pay-benefits-and-policy/culture-and-inclusion/workplace-inclusion-and-diversity/disability-inclusive-workplaces

Online training modules – Disability Awareness:

https://disabilityawareness.com.au/

Universal design:

- https://universaldesign.ie/about-universal-design/the-7-principles
- http://idea.ap.buffalo.edu/about/universal-design/
- https://idea.ap.buffalo.edu/resources/

Queensland Government web accessibility requirements:

- https://www.forgov.qld.gov.au/information-and-communication-technology/qgea-directions-and-guidance/qgea-policies-standards-and-guidelines/digital-service-standard/make-digital-services-accessible
- https://www.forgov.qld.gov.au/cue