**AccessibilityOz**

Accessibility requirements

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# Accessibility

## What is Accessibility?

Online accessibility is the ability for someone with any kind of disability to access a web site, intranet, extranet or web application. It is specifically restricted to the requirements of people with disabilities.

The following are examples of disabilities that people may have that could affect their ability to use a web site:

* Vision impairments, such as blindness, colour blindness, glaucoma and cataracts;
* Cognitive impairments, such as reading disabilities, Attention Deficit Disorder and Dyslexia;
* Physical impairments, such as quadriplegia, Parkinson’s Disease, Huntington’s Disease and Repetitive Strain Injury; and
* Hearing impairments, such as deafness and being hard of hearing.

## Legislation Covering Accessibility

Under Australian law (the Disability Discrimination Act), it is unlawful to discriminate against a person because of their disability. This extends to the online domain. The Disability Discrimination Act (DDA) is administered by the Australian Human Right Commission and contains a section specific to online accessibility called the “Web Advisory Notes”. These notes specify that (emphasis added):

###### Equal Access is Required by Law

**The provision of information and online services through the web is a service covered by the DDA. Equal access for people with a disability in this area is required by the DDA** where it can reasonably be provided. This requirement applies to any individual or organisation developing a website or other web resource in Australia, or placing or maintaining a web resource on an Australian server. **This includes web pages and other resources developed or maintained for purposes related** to employment; education; provision of services including professional services, **banking, insurance or financial services**, entertainment or recreation, telecommunications services, public transport services, or **government services**; sale or rental of real estate; sport; activities of voluntary associations; or **administration of Commonwealth laws and programs**. All these are areas specifically covered by the DDA.

In addition to these specific areas, **provision of any other information or other goods, services or facilities through the internet is in itself a service**, and as such, discrimination in the provision of this service is covered by the DDA. The DDA applies to services whether provided for payment or not.

<http://www.hreoc.gov.au/disability_rights/standards/www_3/www_3.html>

Accessibility is also deemed a human right (emphasis added):

###### Equal Access is a Right

In December 2006, the United Nations adopted the Convention on the Rights of Persons with Disabilities (CRPD, hereinafter referred to as “the Convention”). The Convention asserts a range of fundamental rights and freedoms that people with a disability enjoy as members of society. Article (4)(1)(g) of the Convention calls on parties to “**Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet**”.

Article 21 requires that States Parties 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”** …

Australia was one of the first signatories to the Convention, and it subsequently ratified it in July 2008. While the Australian Government has primary responsibility for meeting Australia’s obligations under the Convention, **all sections of society, including industry, educational institutions, and community organisations, must play an active role in upholding the rights established by the Convention. Accordingly, any failure to provide full access to the web and other internet-based technologies for people with a disability may be seen as a violation of human rights**.

<http://www.hreoc.gov.au/disability_rights/standards/www_3/www_3.html>

As a further requirement, the Web Advisory Notes recommends that all Australian Government websites comply with the Web Accessibility National Transition Strategy (NTS) (emphasis added):

###### Transitioning to WCAG 2.0

The Commission has given careful consideration to the most effective strategies for implementing WCAG 2.0 in the Australian context, and our advice is as follows:

* **All Australian government websites should comply with the timelines and conformance requirements of the NTS, whether or not they are specifically mandated to do so.** In particular, state and territory governments are strongly encouraged to comply with the AA conformance level that applies to Commonwealth Government websites;

<http://www.hreoc.gov.au/disability_rights/standards/www_3/www_3.html>

In addition to the Web Advisory Notes, the Australian Government Information Management Office released their “Web Accessibility National Transition Strategy”, which affords Commonwealth Authorities and Companies agencies to opt-in (emphasis added):

###### Authority

**At the end of 2009, the Secretaries’ ICT Governance Board endorsed the Australian Government’s transition to WCAG 2.0. The endorsement requires all Australian Government websites to implement WCAG 2.0 to meet the middle level of conformance (Double A) over a four-year period.** The Governance Board’s authority applies to agencies managed under the *Financial Management and Accountability Act 1997* (FMA Act). Agencies managed under the *Commonwealth Authorities and Companies Act 199*7 (CAC Act) are encouraged to opt-in to the National Transition Strategy as a demonstration of their commitment to accessible websites.

<http://www.finance.gov.au/publications/wcag-2-implementation/introduction.html>

## Ministerial endorsement

In November 2009 the Online and Communications Council (OCC) agreed to standardise ICT performance measurement across government (federal, state, territory and local) commencing with a progressive implementation of a common ICT taxonomy, including an endorsement of the Web Content Accessibility Guidelines, Version 2.0.

The Online Communications Council operated as the peak ministerial forum across governments for ICT issues of national importance. It was disbanded in accordance with a decision of the Council of Australian Governments in February 2011 to reform the ministerial council system. The e-government matters, including accessibility, which were part of the Online Communications Council agenda continue through the Cross-Jurisdictional CIO Committee (CJCIOC). The CJCIOC provides a cross-jurisdictional response to ICT issues that span jurisdictional boundaries, such as accessibility.

## Scope of Responsibility

Accessibility is not just a consideration for external web sites. Internal web sites such as extranets and web applications (such as leave systems) are also covered. The Web Advisory Notes states (emphasis added):

The provision of information and online services through the web is a service covered by the DDA. Equal access for people with a disability in this area is required by the DDA where it can reasonably be provided. **This requirement applies to any individual or organisation developing a website or other web resource in Australia, or placing or maintaining a web resource on an Australian server**.

<http://www.hreoc.gov.au/disability_rights/standards/www_3/www_3.html>

The Australian Government Information Management Office’s Web Accessibility National Transition Strategy provides some clarification (emphasis added):

For the purposes of the National Transition Strategy, a ‘government website’ is defined as one that:

* **is either fully or partly owned and/or operated by a government agency;**
* **is registered on a domain name, sub-domain or sub-directory; and**
* **has a distinct look and feel (design), audience and purpose.**

<http://www.finance.gov.au/publications/wcag-2-implementation/introduction.html>

In addition, it should be noted that third-party applications are also within scope (emphasis added):

Cross-jurisdictional or cross-portfolio websites, with more than one government agency owning or significantly contributing to the website, or websites created under public– private partnerships, should meet the mandated level of accessibility relevant to the main authoring agency, or the highest conformance level applicable to an authoring agency. **Government funded programs (including grants) or initiatives delivered through third-party providers should meet the endorsed accessibility requirements if the information provided is portrayed as, or is considered to be, ‘government information’**. This is especially important for entities that are funded for information dissemination.

<http://www.finance.gov.au/publications/wcag-2-implementation/introduction.html>

# Accessibility and your organisation

## What are your accessibility obligations?

#### Are you federal Government?

Your organization is specifically mandated to follow the Web Accessibility National Transition Strategy. These accessibility requirements are to meet Level A of the W3C Web Content Accessibility Guidelines, Version 2.0, by December 2012 and Level AA by December 2014.

It is important to note that it is your responsibility to ensure that its staff can access all your systems, whether they are external, internal or purchased from third-party sources. In the event that a person with a disability cannot access a system, they have the right to complain to the Australian Human Rights Commission under the Disability Discrimination Act.

#### Are you state, territory, local Government or CAC agency?

Although your organisation is not specifically mandated under the Web Accessibility National Transition Strategy to meet the AGIMO NTS, **your organisation is required to meet accessibility requirements under the Disability Discrimination Act: Web Advisory Notes**. These accessibility requirements are to meet Level A of the W3C Web Content Accessibility Guidelines, Version 2.0, by December 2012 and Level AA by December 2014.

Whether or not your organisation follows the specific requirements of the NTS (covering implementation and training phases) is an issue for you to decide.

It is important to note that it is your responsibility to ensure that its staff can access all your systems, whether they are external, internal or purchased from third-party sources. In the event that a person with a disability cannot access a system, they have the right to complain to the Australian Human Rights Commission under the Disability Discrimination Act.

#### Are you a corporate?

**Your organisation is required to meet accessibility requirements under the Disability Discrimination Act: Web Advisory Notes**. These accessibility requirements are to meet **Level AA of the W3C Web Content Accessibility Guidelines, Version 2.0, by December 2013**.

It is important to note that it is your responsibility to ensure that its staff can access all your systems, whether they are external, internal or purchased from third-party sources. In the event that a person with a disability cannot access a system, they have the right to complain to the Australian Human Rights Commission under the Disability Discrimination Act.

# Previous accessibility complaints

## Australia

#### Sydney Operating Commission for the Olympic Games

Many complaints have been made to the Australian Human Rights Commission; the most well-known being the complaint against the Sydney Operating Commission for the Olympic Games (SOCOG) about their Sydney Olympics web site. It is important to note that although the site was built by IBM, it was not IBM who was sued, but SOCOG. As a result of this complaint, SOCOG was fined by the federal court $20,000 (the judge deemed the cost of making the Sydney Olympics web site accessible would be $10,000 and he doubled the figure). However SOCOG’s legal costs were in excess of half a million dollars and they were on the front page of every newspaper in Australia. This is why the Melbourne 2006 Commonwealth Games Committee engaged AccessibilityOz to ensure their web site was accessible a full two years prior to the start of the 2006 Commonwealth Games.

In more recent years there have been numerous complaints, all mediated out before reaching court. However mediation is often costly as decisions often include a compensatory component as well as a stringent obligation to meet accessibility requirements. These obligations are often more stringent than is required by the Web Advisory Notes. Some examples of recent complaints include the following.

#### A federal Government department

A federal Government department included their forms as PDFs only. A vision impaired user could not fill out the form due to his disability and was fined as a result. It should be noted that this Government department provided an ability to request accessible versions, but the Australian Human Rights Commission deemed that this was not sufficient. As a result the man received $25,000 in compensation from the Government department and the department had to convert **all their PDFs to HTML over a one year period at a cost of over $1 million.** Please note that the Australian Human Rights Commission allows Word as a sufficient alternative to PDF documents, but this Government department was ordered not to provide Word documents, but to instead provide HTML documents.

#### Victorian local council

A Victorian local council received a complaint from a vision impairment charity about the use of their PDFs. As a result they “donated” $20,000 to the charity and removed all PDFs from their site. This issue never reached the Australian Human Rights Commission.

#### Virgin Australia

Virgin Australia received a complaint from a vision-impaired man that their web site was not accessible (see: <http://www.theage.com.au/travel/virgin-blue-in-court-over-website-20090119-7kc1.html>). The complaint was settled before it reached court for an undisclosed sum.

#### Group of 8 University

An Australian University received a complaint about their student evaluation forms. The forms were in PDF and students could contact the Disability Unit if they had trouble accessing the form. A vision impaired student complained that in order to fill out the forms she would need to disclose that she had a disability. As a result the University built an in-house application to create accessible forms at a cost of $150,000.

## Overseas

#### Government of Canada

In November 2010 the Canadian Federal Court ruled that the Canadian Government make all its web sites accessible within 15 months. The ruling came as a result of a lawsuit filed by a visually impaired woman. The Government argued that web sites and other web services did not need to be accessible if there was an available alternative (such as phone, paper forms or visiting an office).

#### Target.com (America)

In America, a class action was brought against Target.com. The complaint regarded the inability of vision impaired users to purchase any products on the site. The case reached federal court and the court upheld the requirement that the site be accessible under both Californian law and the American with Disabilities Act (the American version of the Disability Discrimination Act). As a result of the settlement, Target established at $6 million fund to compensate members of the class action. Target also was responsible for all legal fees, which were in excess of $3.5 million. In addition Target pays a yearly sum in excess of $100,000 to the National Federation of the Blind to test their web site for accessibility compliance.

#### Netflix (America)

A lawsuit was brought against Netflix (an online streaming video service) for not providing captions of its videos. Netflix argued that it could not add captions due to copyright issues. The complainant won the case and received $795,000 in damages and the court ruled that Netflix must make captions available on all their streaming services within two years.

#### Department of Homeland Security (America)

In America, an employee of Department of Homeland Security’s Custom and Border Protection division filed a lawsuit alleging unlawful discrimination against him and other blind users due to the procurement of software that was inaccessible to him. As a result he was denied promotion. He argued that the Intranet, office email and telecommuting software was inaccessible to him. The case is ongoing.

#### Law School Administration Council (America)

The Law School Administration Council (LSAC) was sued by the National Federation of the Blind on behalf of three students attempting to apply to various law schools across the United States of America. It is important to note that law schools recommend applicants use the LSAC system, even though they do not have control over it. The law schools themselves and LSAC were sued. The settlement was for an undisclosed amount, but included LSAC paying NFB to monitor the ongoing accessibility of the site.

#### Pennsylvania State University

Penn State was sued by the National Federation of the Blind on behalf of future students, current students and staff. A settlement was reached that included:

* Accessibility audit of all electronic and information technology
* Policy statement on accessibility and implementing procedures, including the development of procedures, conducting of training and support
* Employment of one person per campus to monitor the accessibility policy and procedures
* Training of content authors in developing accessible content
* Presentations and workshops on accessibility to senior academic leaders
* Institution of procedures that require the university only to purchase electronic of information technology that meets accessibility requirements
* The Library web site meeting accessibility requirements and being tested monthly
* Implementation of an accessible search engine
* All content on web sites older than 2009 to be accessible
* Resources to authors of personal.psu.edu to make accessible content
* Selection of an accessible course management system
* Implementation of technical changes to allow a blind staff member to operate the classroom podiums and LCD equipment
* An accessible personal response system provided to blind students
* Bank web sites reported to be inaccessible be made accessible within three months
* All ATMs on all campuses to be voice-guided or be removed

It is not known if damages were also awarded.

#### Florida State University

Two blind students at Florida State University sued the institution arguing that the eLearning system was not accessible. In addition they argued that a remote control clicker - which was used to answer multiple choice questions in a lecture - could not be used by them. The court awarded each complainant $75,000 in damages and required that the university make its eLearning system accessible.

# Contacts

## AccessibilityOz

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