Legislation - Australia

Relevant Acts

The Disability Discrimination Act 1992 (DDA) is the main legislation that drives digital accessibility compliance, through prohibiting discrimination against people with disabilities. The DDA prohibits discrimination against disabled individuals through limiting their access to goods and services, education and the workplace, alongside other areas.

It is supported by the Australian Human Rights Commission (AHRC) Guidelines (The Guidelines) on equal access to digital goods and services which describes digital accessibility requirements. The AHRC Guidelines are not legally binding, whereas the DDA is. The Guidelines help organisations to meet their obligations under the DDA and are considered to the minimum acceptable standards. However, meeting the requirements of the Guidelines will not provide full legal protection from claims of discrimination.

Within Chapter 3 of The Guidelines there is some information about digital accessibility recommendations. It suggests, rather than mandates, this list of actions:

1. Recognising people with disability as part of the audience and users for all digital products or services
2. When procuring a digital product or service, including design and development services, include accessibility in the tender documentation
3. When developing a digital product or service, include accessibility considerations throughout the project and especially during design (consider co-design with people with disability), development and testing
4. Applying the relevant Australian Standards such as the Web Content Accessibility Guidelines or other standards listed in Chapter 3
5. Testing the digital product or service with a range of people with disability, including people who rely on assistive technologies
6. Providing an accessibility statement that explains how standards have been met
7. Providing accessible means for people with disability to get in touch with your organisation if they encounter difficulties accessing your digital product or service
8. Ensuring that accessibility is maintained over time within any changes or enhancements to your digital product or service
9. Developing a Diversity and Inclusion Plan for your organisation and ensuring digital accessibility is part of that plan.

Interpretation of whether these acts apply to small publishers and eBooks

The DDA is quite universal and applies to all sectors, whether paid for or free, and to any type of goods or services. While there are further guidelines based on government information and services, such as the National Transition Strategy (NTS) and whether an action plan is mandatory, this does not apply to the whole public sector.

This does not constitute legal advice.

More information about legislative requirements:

Australian Inclusive Publishing Initiative (AIPA)

AIPA - Inclusive Publishing in Australia

Standards referenced in these acts and how they are audited

Web Content Accessibility Guidelines (WCAG) 2.2 AA

There is no routine monitoring, but organisations may be subject to claims at any time through complaints made to the AHRC.

Accessibility Statements

The Guidelines recommend ‘Providing an accessibility statement that explains how standards have been met’.

The DDA also describes ‘Action Plans’, which are not mandatory (only strongly encouraged) country wide, but some states and territories mandate them for government organisations. Rather than a statement on the accessibility of products and services, the action plan is more of a roadmap or strategic plan. There is no set template for this, but there is some nationwide guidance.

More information about action plans:

AHRC - Disability Action Plan Guide

AHRC - Register of Disability Discrimination Act Action Plans

Exemptions

Unjustifiable Hardship

The DDA is focused on avoiding discrimination, and so unjustifiable hardship is framed in the sense of reasonable adjustments. Meeting the minimum digital accessibility requirements can be seen as a reasonable adjustment, except where it creates an unjustifiable hardship for the organisation.

The burden of proof that an adjustment causes unjustifiable hardship is on the organisation. The DDA specifies the following things that must be provable by an organisation should they be challenged on discrimination:

- the nature of the benefits and hardships for both the disabled person and the organisation
- the financial situation surrounding making content accessible
- what financial and other help is available to achieve accessible content

Temporary Exemptions

The DDA also allows for applications for temporary exemptions of up to 5 years while an accessibility issue is rectified. These are considered on a case by case with terms and conditions of the exemption to be agreed.

More information about exemptions:

AHRC - Exemption applications under the Disability Discrimination Act 1992

AHRC - Temporary exemptions under the Disability Discrimination Act 1992

Copyright Legislation

Copyright in Australia is covered by the Copyright Act 1968. Exceptions to copyright are required under international legislation covered by the Marrakesh Treaty for print disabled/visually impaired people. Australian legislation has adopted this through the Copyright Amendment (Disability

Access and Other Measures) Bill 2017.

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