



## **Human Rights and Technology**

Submission by the Australian Communications Consumer Action Network to the Australian Human Rights Commission

5 October 2018

## About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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# 1. Executive Summary

ACCAN thanks the Australian Human Rights Commission (AHRC) for the opportunity to provide a response to its Human Rights and Technology Issues paper. We commend the AHRC's project for rightly framing technology as a human rights issue, and offer our response based on the position that full and equal access to technology is a human right.<sup>1</sup> Without access to technology, people with disability are unable to enjoy their human rights on an equal basis with people without disability. As outlined in the Convention on the Rights of Persons with Disabilities (CRPD), people with disability must be ensured equal access to information and communications technology (ICT), systems and products.<sup>2</sup>

In our response, we limit our scope to the consultation questions directly relating to the experiences of consumers with disability. We first note that despite the opportunities afforded to people with disability by accessible technology, ACCAN remains concerned by the numerous challenges and barriers that people with disability experience when engaging with various forms of technology. People with disability in Australia continue to experience barriers and shortcomings when using both accessible and inaccessible technology. We offer comment on the ways in which government and industry can promote and embed more accessible technology – through legislation, policies, standards and regulation – in order to uphold and protect the human rights of all people, and the rights of people with disability in particular.

## 1.1. List of recommendations

Recommendation 1: ACCAN recommends, as per the Web Content Accessibility Guidelines (WCAG) 2.1,<sup>3</sup> the use of multiple forms of CAPTCHA, to ensure that people with disability have different options available to them.

Recommendation 2: ACCAN recommends that Australian businesses make information about the accessibility of their goods and services available and accessible to consumers, as per section 24 of the Disability Discrimination Act 1992 and the CRPD.

Recommendation 3: ACCAN recommends that the AHRC work with government to encourage broad implementation of article 9(2)(h) in Australia, to ensure that people with disability can access affordable technology that meets their needs.

Recommendation 4: ACCAN recommends that free-to-air television broadcasters be required to provide the same quota of captioning across all channels (not just primary channels), and that these broadcasters additionally increase the hours of captioning to a full 24-hour viewing day.

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<sup>1</sup> See for instance Brewer, J. 2017. 'Chapter 1: Standards Bodies, Access to Information Technology, and Human Rights', in J. Lazar and M. A. Stein (eds) *Disability, Human Rights, and Information Technology*, University of Pennsylvania Press, Philadelphia, p13; and Kaplan, D. 'Chapter 5: Public Financing of Information Technology and Human Rights for People with Disabilities', in J. Lazar and M. A. Stein (eds) *Disability, Human Rights, and Information Technology*, University of Pennsylvania Press, Philadelphia, p73.

<sup>2</sup> As articulated in article 9(1)(b) of the CRPD.

<sup>3</sup> Available: <https://www.w3.org/TR/WCAG21/>

Recommendation 5: ACCAN recommends that the government introduce reform similar to that offered by the 21<sup>st</sup> Century Communications and Video Accessibility Act in the United States,<sup>4</sup> to require access features for video content across all forms of video distribution in Australia.

Recommendation 6: ACCAN recommends that the Broadcasting Services Act be amended to mandate the inclusion of audio description across all free-to-air broadcasters, starting at a minimum of 14 hours of audio description per week, with mandatory annual increases.

Recommendation 7: ACCAN recommends that the video relay service offered by the National Relay Service be offered on a 24/7 basis, to ensure people whose first or preferred language is Auslan have access to telecommunication services on an equal basis with people without disability.

Recommendation 8: While recognising the continuing work of the emergency services working committee, ACCAN recommends that the accessibility of emergency services, and the disproportionate safety risks experienced by people with disability as a result of this inaccessible service, remain a top priority for government.

Recommendation 9: ACCAN recommends that the AHRC, as an integral part of its work on human rights and technology, advocates for the NRS to include consumers with intellectual disability, consumers from culturally and linguistically diverse communities, and consumers who are Deafblind.

Recommendation 10: ACCAN recommends that the Commonwealth government immediately implements AS EN 301 549 (Accessibility requirements suitable for public procurement of ICT products and services) in all federal procurement of ICT.

Recommendation 11: ACCAN recommends that the AHRC advocates for the government to focus on human rights and accessible technology during their term on the UN Human Rights Council.

Recommendation 12: ACCAN recommends that the DDA be reformed to allocate sufficient power to the AHRC to perform more effective compliance monitoring, and to ensure that systemic discrimination against people with disability is adequately investigated and remedied. Such reform must ensure that the DDA completely complies with the obligations outlined in the CRPD.

Recommendation 13: ACCAN recommends that the government research the economic benefits of accessible ICT in Australia.

Recommendation 14: ACCAN recommends that the government encourage stronger relationships between the private sector and civil society, to support and protect the human rights of people with disability through providing accessible technology.

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<sup>4</sup> Available: <https://www.fcc.gov/consumers/guides/21st-century-communications-and-video-accessibility-act-cvaa>

## 2. Responses to the Human Rights and Technology Issues Paper

### 2.1. Response to question 8

Access to technology can offer expanding opportunities to people with disability. With greater access to accessible technology comes greater inclusion within society and more equal enjoyment of human rights, including for instance more inclusive workplaces,<sup>5</sup> better access to education (including lifelong learning),<sup>6</sup> and greater participation in cultural life, in recreation activities, leisure and sport.<sup>7</sup> People with disability may (and should) also be extended opportunities to be directly involved in the design and development of accessible technology.<sup>8</sup> In addition, technology can offer people with disability increased opportunities to actively participate in political and public life, through more accessible voting procedures, facilities and registration processes,<sup>9</sup> which may in turn lead to greater representation of people with disability in all levels of government. It is obvious that functionally equivalent access to technology is directly related to the equal enjoyment of human rights for all.

However, while we acknowledge the various benefits that technology can and does bring to people with disability, numerous challenges, barriers and shortcomings continue to be experienced by people with disability when accessing technology. Accessibility can still be quite inconsistent,<sup>10</sup> leading to greater inequalities for people with disability.

#### 2.1.1. Access to information

When considering the abovementioned opportunities that more inclusive technology can afford people with disability, it is worthwhile considering how many of these opportunities would be possible without equal access to information. Access to information is vital – not only as a means of achieving equality,<sup>11</sup> but also as a core human right, explicitly articulated in article 21 of the CRPD, that must be actively upheld in a technological age. The ability to obtain, communicate and distribute information on an equal basis with others is central to the protection of a variety of other human rights.<sup>12</sup> This includes, but is not limited to, the right to education, work and employment, social inclusion, political participation, access to justice and freedom from violence, abuse and neglect.

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<sup>5</sup> As articulated in article 27 of the CRPD.

<sup>6</sup> As articulated in article 24 of the CRPD.

<sup>7</sup> As articulated in article 30 of the CRPD.

<sup>8</sup> Brewer, op cit., p18.

<sup>9</sup> Lord, J. E. 2017. 'Chapter 2: Accessible ICTs and the Opening of Political Space for Persons with Disabilities', in J. Lazar and M. A. Stein (eds) *Disability, Human Rights, and Information Technology*, University of Pennsylvania Press, Philadelphia, pp24-25.

<sup>10</sup> Brewer, op cit., p13.

<sup>11</sup> Jaeger, P. T., Wentz, B. and J. C. Bertot, 2017. 'Chapter 4: The Intersection of Human Rights, Social Justice, the Internet, and Accessibility in Libraries: Access, Education, and Inclusion', in J. Lazar and M. A. Stein (eds) *Disability, Human Rights, and Information Technology*, University of Pennsylvania Press, Philadelphia, p58.

<sup>12</sup> Ibid pp60-62.



technology in today's society.<sup>19</sup> ACCAN is deeply concerned about the inequalities exacerbated by the unaffordability of technology that people with disability and low-income Australians experience. From what we have heard anecdotally, it appears that financial support for accessible technology has not been forthcoming for people with disability. For instance, we are aware that some people with disability have attempted to obtain accessible technological devices through the National Disability Insurance Scheme (NDIS). We have heard however, that the NDIS, which aims to ensure people with disability get the supports they need, has rejected these funding applications because these devices are not considered 'disability specific'. This further entrenches inequality and increases the reliance of people with disability on disability specific devices and technologies, essentially removing some of the impetus to address accessibility within the private sector.

ACCAN believes that if the government implemented a procurement policy for accessible ICT, its substantial purchasing power would improve the affordability and availability of accessible technology for people with disability in Australia. The merits of an explicit procurement policy in relation to accessibility will be discussed in more detail in response to question 9, taking into consideration the human rights imperative for such a policy and the likely impact this would have on the lives of consumers with disability.

**Recommendation 3:** ACCAN recommends that the AHRC work with government to encourage broad implementation of article 9(2)(h) in Australia, to ensure that people with disability can access affordable technology that meets their needs.

### 2.1.3. Equal inclusion in cultural life

Unequal access is also pervasive when it comes to broadcast television and video on demand services. These services are inaccessible due to two key human rights violations: firstly, the lack of standards and implementation of audio description on free-to-air (FTA) and subscription TV (STV) broadcast, as well as video on demand or catch up services; and secondly, limited quotas for captioning across FTA and STV, and no requirement for captions to be made available on catch up TV services. These critical issues have been discussed at length by ACCAN and disability advocates such as Vision Australia, Blind Citizens Australia, Deafness Forum and Deaf Australia.<sup>20</sup> The unequal access caused by the lack of audio description and the limitations placed upon captioning prevents the full enjoyment of the right of people with disability to participate in cultural life, performances and services on an equal basis with others.<sup>21</sup>

**Recommendation 4:** ACCAN recommends that free-to-air television broadcasters be required to provide the same quota of captioning across all channels (not just primary channels), and that these broadcasters additionally increase the hours of captioning to a full 24-hour viewing day.

**Recommendation 5:** ACCAN recommends that the government introduce reform similar to that offered by the 21<sup>st</sup> Century Communications and Video Accessibility Act in the United States,<sup>22</sup> to require access features for video content across all forms of video distribution in Australia.

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<sup>19</sup> Contravening article 5 of the CRPD and other human rights instruments (such as, for instance, articles 2 and 26 of the ICCPR, and article 2 of the ICESCR).

<sup>20</sup> For more information see: ACCAN, 2016. 'Accessible programming on TV', available: <https://accan.org.au/our-work/policy/1233-accessible-programming-on-tv>

<sup>21</sup> As articulated in article 30 of the CRPD.

<sup>22</sup> Available: <https://www.fcc.gov/consumers/guides/21st-century-communications-and-video-accessibility-act-cvaa>

**Recommendation 6:** ACCAN recommends that the Broadcasting Services Act be amended to mandate the inclusion of audio description across all free-to-air broadcasters, starting at a minimum of 14 hours of audio description per week, with mandatory annual increases.

Barriers to full and equal participation in cultural life remain for people with disability, and indeed continue to be introduced as new inaccessible ICT emerges.<sup>23</sup> Improvements in mainstream technology can create barriers to accessibility, as evidenced by the introduction of touchscreen EFTPOS technology, for instance.<sup>24</sup> Furthermore, people with disability currently do not have access to functionally equivalent telecommunications services.<sup>25</sup> Despite updates, improvements and additions to the National Relay Service,<sup>26</sup> gaps remain. These limitations result in consumers who are deaf, or have hearing or speech impairment not having equal access to telecommunications services.<sup>27</sup> Not only does this impede their equal participation in cultural and public life, this also infringes the equal rights of people with disability to work and employment, to education, to freedom of expression and opinion, and to be included in the community. In addition, consumers who are Deaf or have hearing or speech impairments do not have equal access to emergency services from mobile devices. As ACCAN has articulated previously alongside disability advocates,<sup>28</sup> this results in a huge safety concern not only for consumers with disability, but for members of the wider community as well.<sup>29</sup>

**Recommendation 7:** ACCAN recommends that the video relay service offered by the National Relay Service be offered on a 24/7 basis, to ensure people whose first or preferred language is Auslan have access to telecommunication services on an equal basis with people without disability.

**Recommendation 8:** While recognising the continuing work of the emergency services working committee, ACCAN recommends that the accessibility of emergency services, and the disproportionate safety risks experienced by people with disability as a result of this inaccessible service, remain a top priority for government.

**Recommendation 9:** ACCAN recommends that the AHRC, as an integral part of its work on human rights and technology, advocates for the NRS to include consumers with intellectual disability, consumers from culturally and linguistically diverse communities, and consumers who are Deafblind.

The challenges and barriers that we have outlined here are but a few ways in which the human rights of people with disability are being contravened in relation to access to technology. Evidently there is a vital need to overcome the existing barriers to the full and equal enjoyment of human rights in relation to technology for people with disability, while ensuring that new technologies also appropriately promote and protect the human rights of all.

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<sup>23</sup> Brewer op cit. p11.

<sup>24</sup> The Senate Community Affairs References Committee, 2017. *Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities*, Commonwealth of Australia, Canberra, p41.

<sup>25</sup> ACCAN, 2017. *Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities: Submission to the Senate Standing Committees on Community Affairs*, available: <https://accan.org.au/files/Submissions/ACCAN%20submission%20NDS%20outcomes%202017.docx>

<sup>26</sup> <http://relayservice.gov.au>

<sup>27</sup> ACCAN 2017 op cit., p5.

<sup>28</sup> Position statement, 2011. *Access for people with disability to emergency calls*, available: <https://accan.org.au/our-work/policy/379-access-for-people-with-disability-to-emergency-calls>

<sup>29</sup> ACCAN 2017 op cit., p5.

## 2.2. Response to question 9

### 2.2.1. Procurement policy for accessible ICT

Australia must actively research, promote and procure accessible technology for people with disability.<sup>30</sup> As per article 9 of the CRPD, Australia must promote access for people with disability to information and communications technologies and systems. ACCAN believes that this can be achieved through a transparent and explicit procurement policy for accessible ICT.<sup>31</sup> A strong, whole-of-government commitment to accessibility in procurement would bring substantial benefits to people with disability, and indeed the broader society and economy.<sup>32</sup> For instance, this policy would contribute to greater opportunities for Australians with disability to economic, social and community participation, higher rates of employment (in the public but also private sector), and greater choice of accessible products and services.<sup>33</sup>

Explicitly mentioning accessibility within the government's procurement policy would clearly signify that accessibility, and upholding the rights of people with disability, is a key priority for the government.<sup>34</sup> By setting such clear expectations and priorities around accessibility, Australia could position itself as a world leader in relation to accessibility, technology and human rights. It could in turn use its current position on the UN Human Rights Council to promote this work and could provide Australia with the platform to support other countries to better support the human rights of all people with disability through technology. Additionally, by making explicit reference to accessibility requirements throughout procurement policies, the government will provide a model of accessibility for the private sector.<sup>35</sup> This would help to address the market failure of private companies not adequately addressing accessibility.<sup>36</sup>

**Recommendation 10:** ACCAN recommends that the Commonwealth government immediately implements AS EN 301 549 (Accessibility requirements suitable for public procurement of ICT products and services) in all federal procurement of ICT.

**Recommendation 11:** ACCAN recommends that the AHRC advocates for the government to focus on human rights and accessible technology during their term on the UN Human Rights Council.

### 2.2.2. Reform of the Disability Discrimination Act (1992)

The Disability Discrimination Act 1992 (DDA) aims to eliminate discrimination on the ground of disability, and promote equal opportunity and access. However, people with disability continue to

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<sup>30</sup> As articulated in article 4 of the CRPD.

<sup>31</sup> ACCAN, 2016. Accessible ICT procurement, available: <https://accan.org.au/our-work/policy/1234-accessible-ict-procurement>, see also: Australian Human Rights Commission, 2016. *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, pp 258-259, available: <https://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination>

<sup>32</sup> ACCAN 2017 op cit., p9.

<sup>33</sup> ACCAN 2016 op cit.

<sup>34</sup> Kaplan op cit., p77.

<sup>35</sup> Ibid p75.

<sup>36</sup> Ibid p74.

experience high levels of discrimination and lack of access in their everyday lives.<sup>37</sup> For instance, while standards may exist espousing the accessibility of online content, information or other technology, people with disability continue to experience inaccessible content, devices and services.

In its current form, the DDA requires the AHRC to investigate and act as a conciliator for discrimination complaints. However, the AHRC currently has no power to enforce compliance, and it is very rare that the AHRC imposes penalties or consequences for respondents that don't engage with conciliation processes. This leads to many cases not being successfully mediated, and the onus being put back onto the individual complainant for further action. The process of taking the case to the Federal Court or Federal Circuit Court, to defend their fundamental right to live free from discrimination, is likely to have a significant emotional, social and financial cost on the complainant. This consumer driven process must be amended to extend the AHRC additional regulatory powers.

**Recommendation 12:** ACCAN recommends that the DDA be reformed to allocate sufficient power to the AHRC to perform more effective compliance monitoring, and to ensure that systemic discrimination against people with disability is adequately investigated and remedied. Such reform must ensure that the DDA completely complies with the obligations outlined in the CRPD.

## 2.3. Response to question 10

As already outlined, a clearly articulated accessible public procurement policy would go some way to incentivising the private sector to use and develop accessible and inclusive technology. The government can be a very profitable market for the private sector, and so if the government were to include accessibility as a core requirement for all new products in Australia, this may lead to the private sector in turn embedding accessibility standards throughout their own work, in order to demonstrate their ability to meet the needs of the government.<sup>38</sup> This approach, however, assumes that the private sector is not particularly invested in making the accessibility changes that individuals themselves may require.

Training, awareness raising or other outreach activity could be performed to further educate the private sector about the human rights rationale for accessibility. Provided that sufficient industry buy-in was obtained, work could be performed to encourage the private sector to fill this gap themselves. Government could incentivise the private sector to work alongside civil society, such as disability advocacy and representative organisations, to ensure that the experiences and voices of consumers with disability are embedded in the work of these companies. This could include not only commenting on specific accessibility questions, but also contributing to the development and regulation of industry best practice guidelines in relation to accessibility or universal design.

However, industry buy-in may be quite difficult to obtain. It is perhaps more likely that a solution framed around the buying power of consumers with disability might resonate more strongly with the private sector. There is a clear economic incentive to sell accessible products,<sup>39</sup> and universal design must be seen as the way forward. In order to cement this logic within the private sector, research must be performed around embedding accessibility in new products from the design stage, rather

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<sup>37</sup> Drummond, S. 2018. 'It's time to strengthen our disability discrimination laws', SBS, available: <https://www.sbs.com.au/topics/life/culture/article/2018/03/13/its-time-strengthen-our-disability-discrimination-laws>

<sup>38</sup> Kaplan op cit., p75.

<sup>39</sup> Ibid p74.

than retrofitting accessibility at a later stage.<sup>40</sup> Indeed, as per article 9(2)(h) of the CRPD, there is a human rights imperative for Australia to encourage the private sector towards accessibility from the initial stages of design and development. Finally, a cost benefit analysis could be performed to outline the potential increase in market share that companies may secure with a move to designing, producing and distributing more accessible ICT.

**Recommendation 13:** ACCAN recommends that the government research the economic benefits of accessible ICT in Australia.

**Recommendation 14:** ACCAN recommends that the government encourage stronger relationships between the private sector and civil society, to support and protect the human rights of people with disability through providing accessible technology.

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<sup>40</sup> It has been found, for instance, that incorporating accessibility when originally authoring documents is the most effective and least costly method of ensuring accessibility. For more information see Kaplan op cit., p82.

### 3. Conclusion

As we've outlined in our response, people with disability encounter many challenges and barriers in relation to technology. In today's technological age, access to technology is undoubtedly a human right – one that should be enjoyed equally by all, and one that can promote and protect the full and equal enjoyment of all other rights. It is therefore vital that the human rights of people with disability are kept front of mind when engaging in discussions around technology in Australia.

In closing, ACCAN would like to again thank the AHRC for the opportunity to contribute to this important project. We are keen to see the practical recommendations and pathways forward that will emerge from this project, to ensure that the human rights of people with disability are appropriately protected and promoted in relation to technology.