

A submission to the National Children's Commissioner regarding Australia's progress fulfilling obligations under the UN Convention on the Rights of the Child

Centre for Inclusive Design

May 2018

Submitted by:

Manisha Amin
Chief Executive
Centre for Inclusive Design
Phone: 02 9212 6242

1. About Centre for Inclusive Design

Centre for Inclusive Design is a centre of excellence for inclusive design in Australia. Our network of industry experts and global partners bring innovation and global best practice ID so everyone has the opportunity to connect and be a part of our society. CFID delivers innovation and insight, events and partnerships and a practice that helps people reach you.

We build inclusive platforms to create more value for industry, government and most importantly meaningful connection for and with the people who are marginalised.

Centre for Inclusive Design, formerly Media Access Australia (MAA), has a rich history in the traditional disability sector both advocating and providing solutions for over 35 years. MAA was formed out of the Australian Caption Centre (ACC), a not-for-profit organisation founded in 1982. The ACC aimed to promote and produce captioning for deaf or hearing impaired Australians. In 2005, the ACC sold its commercial operations including the captioning services, and formed Media Access Australia.

As MAA, the focus broadened to those disadvantaged in access to media. In the digital age, the role of media and communication grew to include accessibility across digital communication as well as traditional communication. MAA focussed strongly on advocating and providing digital accessibility for Australia in websites, documents and videos. As the role of technology in our lives has grown, MAA realised they needed to tackle design issues in the conception stage and thus created Centre for Inclusive Design.

2. Executive summary

This submission discusses issues related to the cluster of articles under the heading ‘Disability, basic health and welfare’, and in particular “measures taken to ensure dignity, self-reliance and active participation in the community for children with disabilities (art. 23).”

Its key findings are:

- The adoption of inclusive design principles is essential to ensure the full participation of children with disability in education, leisure, social and cultural activities.

Australian children with disability face barriers to accessing online information due to the Australian government’s failure to fully implement the W3C Web Content Accessibility Guidelines (WCAG) 2.0.

- The introduction of a regular audio description service on Australian television and/or online video services would significantly improve social inclusion and educational outcomes for blind and vision impaired children.
- Amendments to Australian captioning legislation to increase captioning levels (particularly on children’s programs) would improve social inclusion and educational outcomes for Deaf and hearing impaired children.

The requirement to make all online learning platforms compliant with international standards will ensure curriculum and online learning information is accessible for all children. Including children and other stakeholders in the development, provision and delivery of products, services, policies and the built environment would eradicate these issues of exclusion.

Note, it’s our strong criteria that the notion of disability in this context follows the social model of disability ie; a mismatch between a person and the ability to access services/education etc. Rather than a medical model, especially in the context of children and learning.

3. What is inclusive design?

Inclusive design is the practice of incorporating diverse people, their needs and perspectives into the design and production of services, products, policies and the built environment. It embraces diversity and recognises that the 'average' cannot be used as the rule for design and development.

The methodology for inclusive design employs three very practical dimensions¹.

1. Recognise diversity and uniqueness: People with different abilities will provide insights far beyond a perceived 'average' and mass produced solution. Identify the possibilities of a 'one size fits one' solution through personalisation, flexible configuration and adaption and include perspectives from the 'outliers' or those with diverse experiences and views, including non-users.
2. Inclusive process and tools: Include people from diverse groups, with diverse needs and perspectives into product and service design. Included in a meaningful way, this acts on the edict, 'nothing about us without us' in the form of co-production.
3. Broader beneficial impact: Take into consideration context and environment, and seeks solutions that benefit everyone through flexibility, adaption and personalisation. This process is normally completed iteratively and works to produce a virtuous cycle of inclusion.

Underpinning the inclusive design dimensions are principles and standards, such as the World Wide Web Consortium's (W3C) Web Content Accessibility guidelines (WCAG) 2.0² that help to benchmark and track progress of accessibility and inclusion.

4. Benefits and importance of inclusive design

Barriers to education, leisure, social and cultural activities arise when services, products, policies and the built environment have not been designed and developed with inclusion in mind. Children are broadly and adversely impacted and excluded when experiences are not accessible to them. Exclusion can occur at an early age and can have detrimental effects on well-being and impact to opportunities later in life. There are approximately 93-150 million children aged between 0-18 years living with disability³ of various severities.

A playground that doesn't consider children with disabilities will affect a child's ability to participate in play, a key aspect for early learning and social development. Additionally, with the exponential growth of technology in education and curriculum delivery, students with disabilities are experiencing difficulties accessing devices, platforms and the content on them that have not been built for their needs.

By including children and other stakeholders in the design process, designers gain unique insights into their abilities, opinions and experiences. Furthermore, by including children with diverse needs – with disabilities, different cultural and linguistic backgrounds and geographies, new and different insights may be gained and applied creating more inclusive experiences catering to a greater diversity of need.

¹ Centre for Inclusive Design. <http://centreforinclusivedesign.org/about-us/why-inclusive-design/>

² Web Content Accessibility Guidelines (WCAG) 2.0. <https://www.w3.org/TR/WCAG20/>

³ Children and Young People with Disabilities: Fact Sheet (2013) Unicef. https://www.unicef.org/disabilities/files/Factsheet_A5_Web_NEW.pdf

Successful inclusive design in any setting will create multiple ways and alternatives for activities to be achieved. This approach recognises the diversity in users and allows for the broadest possible audience.

5. Accessibility of online content

A child with disability's right to seek, receive and impart information (article 13), including the ability to access international sources (Article 17) with a rewarding and fulfilling life (Article 23) depends heavily on the provision of access to online content. However, in Australia the provision of accessible digital content remains a critical barrier for children with disability.

Approximately 7% of 0-14 year olds in Australia have some form of permanent disability⁴, or approximately 1.3% of the total population. In relation to the provision of information online, a report produced by the Australian Communications and Media Authority (ACMA) regarding the online habits of children⁵ indicated that "Australia's teenagers are using a range of devices to access the internet, in proportions almost identical to the adult population." According to the report, in 2015 80% of teenagers used a smartphone and this number is likely to be higher today. To explain the significance of access to online information by children, the report summarised the usage by stating that:

"The internet is an integral part of the lives of young people in Australia, with most going online regularly to learn, keep in touch with friends and have fun. Born into an already web-connected world, many teens will have been using the internet for most of their lives and fear not having access to the digital environment."

It is therefore critical that children with disability have the same ability to access online information.

In Australia there is limited support for the online needs of children with disability. To explain this in detail, it is first necessary to highlight how children with disability experience information through the web and how that experience differs from other children. As noted by the World Wide Web Consortium (W3C)⁶, children with disability:

- may not be able to see, hear, move, or may not be able to process some types of information easily or at all
- may have difficulty reading or comprehending text
- may not have or be able to use a keyboard or mouse
- may have a text-only screen, a small screen, or a slow Internet connection
- may not speak or understand fluently the language in which the document is written
- may be in a situation where their eyes, ears, or hands are busy or interfered with
- may have an early version of a browser, a different browser entirely, a voice browser, or a different operating system.

⁴ Australian Bureau of Statistics

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Jun+2012>

⁵ Australian Communications and Media Authority. <https://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Aussie-teens-and-kids-online>

⁶ W3C. <https://www.w3.org/WAI/people-use-web/>

The significance of ensuring that all people with disability, including children, are supported in their access to ongoing information is discussed in Article 9 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)⁷:

“To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”

Given the widespread and critical nature of online information usage, it is vital that Australia meets its UN obligations both for the rights of children as it relates to the requirements for ICT provision for disability more broadly as outlined in the UNCRPD.

The global international standard designed to ensure that children with disability are able to access online information effectively is the W3C Web Content Accessibility Guidelines (WCAG) 2.0, published in 2008⁸ with an update to WCAG 2.1 due shortly⁹, providing additional support to the use of the online content on mobile devices. The purpose of the WCAG standard is to ensure that online content is created in a way that supports the different ways in which people with disabilities use content, associated assistive technologies and ultimately provide support to the disability-related scenarios as discussed above.

The issue in Australia is that the implementation of WCAG, while incorporated in policy, is rarely implemented. As a result, children with disability continue to struggle with access to information as outlined in Articles 13, 17 and 23.

The relevant Australian legislation for the provision of information access is the *Disability Discrimination Act 1992*. As stated by Dr. Scott Hollier of Edith Cowan University¹⁰:

“Currently there is no reference to anything related to Information and Communications Technology (ICT), computers, the Internet or anything that could specifically address a person with a disability that cannot access online information in the DDA.”

To address this, an advisory note published in 2014 by the AHRC¹¹ was created to explain that Section 24 can apply. This relates to the provision of information, although not specifically to ICT. The problem with relying on an advisory note to meet UN obligations is that in order for an issue to be addressed, a complaint must be made to the AHRC. As a result, a child is reliant on a parent to lodge such a complaint. Due to the challenging processes faced by children with disability in seeking improvement to access, such cases rarely occur and there is little motivation for content producers to meet the WCAG standard as they are unlikely to face prosecution for a lack of compliance.

This issue was highlighted by the Maguire V SOCOG case. In 2000, a blind man took SOCOG to the then-named Australian Human Rights and Equal Opportunity Commission (HREOC) due to the Sydney 2000 Olympics website being inaccessible, making it impossible to

⁷ United Nations. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-9-accessibility.html>

⁸ W3C. <https://www.w3.org/TR/WCAG20/>

⁹ W3C. <https://www.w3.org/TR/WCAG21/>

¹⁰ Hollier, Scott. <http://www.hollier.info/fixthedda/>

¹¹ Australian Human Rights Commission. <https://www.humanrights.gov.au/world-wide-web-access-disability-discrimination-act-advisory-notes-ver-41-2014#required>

purchase tickets and keep up with the Games activities for assistive technology users. While Maguire ultimately won the case, it took a significant toll on his life. The Olympics highlights the issues for children as it is generally promoted as a global family-friendly event that is embedded into school programmes. The Maguire case highlighted that access to such important global content was not only an issue for Maguire, but for the children with disability simply seeking to join in their class education or participate in social conversation with their peers. Although Maguire ultimately won his case, 18 years later there is still little WCAG compliance due to the DDA not having any specific reference to ICT and little in the way of penalties for non-compliance.

6. Lack of audio description in Australia

Audio description is the descriptive narration of the visual elements of a television program, film, theatrical performance or other media, allowing full access for blind or vision impaired consumers. For television, it is an optional secondary audio track which can be activated by the user. It is available on television in the United Kingdom (where most channels must audio describe 20% of their content, and the description is also available on catch-up services), the United States, Canada (which had an accessible channel on which all content is audio described), many European countries, South Korea and New Zealand (where it was introduced in 2011).

The Australian government has long held out hope to the blind and vision impaired community in Australia that a regular audio description service will be introduced here. In 2012, following the recommendations from a review into accessibility in electronic media, it funded a 12-week trial of audio description on the ABC, which involved transmitting 14 hours of described programs per week, including children's programs. The trial showed that many television models available in Australia were capable of receiving the audio description track, and was hailed as a great success by consumers and blindness advocacy groups. The ABC delivered a report on the trial to the Department of Communications, and it was expected that this would be followed by meetings with stakeholders about the introduction of a regular service, but these did not take place.

A second audio description trial began in April 2015, again lasting 12 weeks. This time the audio description was available on the ABC's catch-up online service, iview, and could be accessed on iPads and iPhones, Android devices and FreeviewPlus. Again, the trial was hailed as a success by advocacy groups, and again, there was no immediate follow-up.¹²

In 2017, the Australian Communications and Media Authority (ACMA) convened a series of meetings with blindness advocacy groups, free-to-air and subscription TV providers and access suppliers, to look at options for delivering audio description in Australia. A report was completed and sent to the Department of Communications, but it has not been released to the public yet.

Audio description is an essential service for people who are blind or have vision impairment, and is particularly important for children. It allows them to watch the same TV programs as their sighted peers, so aids social development and participation. It is also important in the context of education. In Australia, as in other countries, videos are increasingly used as teaching materials in classrooms. Audio described videos allow blind and vision impaired students to participate in classroom discussions and demonstrate their knowledge. The only videos available here with audio description, however, are a small number of DVDs.

¹² Media Access Australia. <https://mediaaccess.org.au/tv-video/audio-description-on-tv>

The importance of audio description in an educational context is recognised by the United States Government. One of the objectives listed in the Department of Education's Strategic Plan for Fiscal Year 2007-2012 was to "Prepare adult learners and individuals with disabilities for higher education, employment, and productive lives."¹³ As part of this commitment, the Department of Education funds the Described and Captioned Media Program (DCMP) which is administered by the National Association for the Deaf. The DCMP maintains a library of 6,000 captioned and audio described online videos and DVDs which are available for free to families and schools. There is no equivalent program in Australia.

In addition to its benefits for children who are blind or vision impaired, audio description also benefits children on the autism spectrum. In 'Autistic Spectrum, Captions and Audio Description', Judith Garman notes that a feature of audio description is its clear descriptions of people's emotions. "Where this helps someone on the autistic spectrum is it identifies the emotion which may be difficult for them to pin down and it also provides another input track to reinforce the information. If the person is struggling to identify the different people in the scene, audio description names the person so the visuals and the audio help create a complete picture."¹⁴

7. Captioning levels in Australia

Captions for the Deaf and hearing impaired have been available on Australian television since 1982, but the levels continue to lag behind the United Kingdom, the United States and Canada, where mandatory caption levels for most channels have long been 100% across 24 hours.

The captioning obligations for Australian television providers are contained in the *Broadcasting Services Act*. Free-to-air channels must caption all programs on their primary channels broadcast from 6 am to midnight, but multi-channels (e.g. ABC Comedy, 7Two, 9Gem and Eleven) are exempt from these requirements. Instead, the only programs on multi-channels that have to be captioned are repeats that were originally screened with captions on the same network's primary channel.

This has particular implications for Deaf and hearing impaired children, as the free-to-air networks have now moved virtually all of their children's programs from their primary channels to their multi-channels. (For example, The ABC's children's programs are now screened on ABC Comedy and ABC Me, while the Nine Network's are screened on 9Go!) This means that few if any children's programs on free-to-air TV are currently required to be captioned.

A planned review of the multi-channel captioning rules was due to take place before the end of 2012, but never happened, and there has been no action by the Government since then, despite much lobbying by deafness advocacy groups.

The captioning regulations for subscription services are different. They are based on a complicated system where mandatory captioning levels vary according to a channel's genre (movies, general entertainment, news, sport and music), while within each genre levels are

¹³ United State Department of Education.

<https://www2.ed.gov/about/reports/strat/plan2007-12/2007-plan.pdf>

¹⁴ Garman, Judith. <http://mindfulresearch.co.uk/2011/08/29/autistic-spectrum-captions-and-audio-description/>

further split onto three categories. In 2017-2018, general entertainment channels (which include children's channels) are required to caption 70%, 60% or 40% of programs, depending on category.

In December 2015, the Department of Communications and the Arts released a 'Captioning regulatory framework policy consultation' paper. In its submission, Media Access Australia (now Centre for Inclusive Design) argued that this extremely complex system, which is very confusing to consumers, should be replaced by one in line with the captioning regulations in the United Kingdom and the United States, where free-to-air and subscription channels are treated in the same way, and caption quotas cover 24 hours. It was also recommended that quotas should be introduced for multi-channels which would be initially based on current captioning levels on them, then rise incrementally.

Australia's Deaf and hearing impaired children also suffer from low levels of captioning on online catch-up TV and video-on-demand (VOD) services. In the United States, the *21st Century Communications and Video Accessibility Act 2010* ensures that all programs broadcast on TV with captions must also be captioned when distributed over the internet. In the United Kingdom, there are high levels of captioning on VOD services, although the government has so far decided not to introduce legislation.

With no requirement to provide captions on catch-up and VOD services in Australia, caption levels are very patchy. The ABC provides high levels on iview, but the levels on Seven's and Nine's service are much lower, and there are no captions on Ten's service.