

Agents and contractors: Questions and Answers for State Government and local government contract managers

Is the inclusion of the Special Condition mandatory in contract documents?

Yes. The Special Condition is mandatory for State Government agencies and it is highly recommended for local governments.

(The Special Condition is included in the guide for contract managers on the Disability Services Commission's web site at www.disability.wa.gov.au)

Where in the Act is there a definition for 'agent and contractor'?

While there is no definition, the Act clearly states that the implementation of Disability Access and Inclusion Plans (DAIPs) relates to the provision of services to the public. It is not unusual for legislation to omit definitions, as this means that the intent of the legislation is not limited when changes in use of the terms occur over time.

The intent of the Act is that where contractors are used as a go-between in the provision of a service to the community for the public authority, that the contractor takes into account the needs of people with disability.

For the purposes of DAIPs, the 'public' is anyone accessing or seeking to access the public functions of that public authority.

For the Special Condition to apply to a contractor the following must be present:

- A new (or varied) written agreement between the public authority and the contractor
- The provision of a service to the public by the contractor.

Is there a minimum contract value that is covered by the DAIP requirements for contractors?

No, there is no minimum contract value.

What are some examples of the types of contracts that are covered by the DAIP requirements?

Contracts covered are those that include the provision of services directly to the public. In doing so, contractors must ensure that the requirements of people with disability are taken into account, so that all people can access the information, buildings, facilities and services of public authorities and be able to participate in community life.

In other situations it might be a question of whether the project being undertaken encroaches on, or intersects with the public. That is, whether the scope of the works has the potential, directly or indirectly, to impact on public access (for

example, the installation of drainage pipes resulting in temporary footpath closure).

In cases such as these, the contractor should make every effort to communicate the impact of the work through information dissemination prior to project commencement. As well there should be clear signage of the closure on site and advising of an alternative safe, accessible path of travel for people (this benefits all people including people with disability).

For infrastructure projects (for example, providing an alternative path of travel during drainage works) the public authority can include them in their annual report under 'agents and contractors' as progressing a DAIP outcome (usually Outcome 2) without expecting the contractor to provide a report.

What Standards/Codes does the Commission consider to have enough information or precedence included in them so that a DAIP inclusion is NOT required within a contract, for example, the Australian Building Code; and

If disability access requirements are already built into design plans for a building then is the contractor required to comply with the DAIP requirement?

Yes. Standards on access don't necessarily cover a range of finer details in the construction of facilities such as appropriate fittings and effective signage for people with disability.

Referencing your public authority's DAIP can also be viewed as a community education exercise whereby contractors are made aware of the range of access needs of people with disability.

What about situations where a business comes in and pays to use a Council's facilities (for example, a business pays the Council to use the main hall for an exhibition event)?

Where an organisation pays a public authority to use their facilities they are not considered to be an agent or contractor of the public authority as they are not providing a service on behalf of that public authority. However, it would be useful for any agreement about the use of the facilities that will involve the community to encourage consideration of the needs of people with disability in the planning of any event, and thereby help avoid a complaint under the Disability Discrimination Act 1992. The hire of the facilities can be an opportunity to promote good practice through providing a link to the DAIP and access resources such as the accessible events checklist on the Commission's website. There is at least one local Council which makes compliance with its DAIP a condition of funding for community organisations and groups.

Some contractors have numerous contracts. What is the process for public authorities checking the progress of contractors in relation to DAIP outcomes?

It is suggested that public authorities consider using the processes which they might already have in place for contractors to report on their activities.

The contractor report in Appendix 1 of the Commission's guides for contract managers is not mandatory. It is up to each public authority to determine the best way to collect the information within the systems already used.

Where public authorities are fully aware of their agent's and contractor's activities, the public authority might be able to compile the information for the Commission without requiring a formal report from the contractor. For example, it might be recognised that a specific contractor undertook activities during the year which furthered the outcomes of the DAIP. In these situations, it might be more straightforward to count those easily recognisable contracted activities under the relevant DAIP outcomes rather than pursue a specific report from the contractor. This approach might be useful for public authorities with high volumes of contracts for activities which can be readily identified as having been undertaken in a manner consistent with the public authority's DAIP.

In the case of more complex contracted activities a report from the contractor might be necessary to capture the possible range of DAIP outcomes furthered by the particular service or event. For example, if the contracted service involved a consultant doing community consultation on behalf of the Council, then the outcomes reported on could include Outcome 2 (meetings conducted in accessible venues); Outcome 3 (providing accessible information); Outcome 4 (disability awareness training to appropriately engage with people with various communication requirements) and Outcome 6 (participation in the consultation).

Where contracted organisations are delivering community services on behalf of a government agency, a report on the extent to which the service provider implemented the Principal's DAIP is required as per Clause 5 of the 'General Provisions for the Purchase of Community Services by Government Agencies - 2008 Edition'. Where more than one contract is in place with the service provider, the report needs to consider how each contract addressed any of the DAIP outcomes during the year in question.