

Submission

To	Attorney General's Department
Topic	Review of the Disability Discrimination Act 1992
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About

We are an inclusive not-for-profit organisation working alongside more than 80,000 South Australians each year and have been creating positive change for South Australian communities for more than 120 years. We advocate for systems change across diverse social justice issues to shape public and social policy that delivers better outcomes for marginalised communities.

We support those in need to find the courage to move forward through enriching their lives and uniting the communities in which they live. By tackling the deep-seated challenges that affect people's lives, we are working to create systemic change and brighter futures for all South Australians. Uniting Communities has extensive experience supporting people with a disability across a wide range of needs. Through programs such as:

[NDIS Support Services](#)

Uniting Communities offers personalised NDIS support through one-to-one services that help individuals build independence, engage with their community, and achieve personal goals. Support workers assist with daily living, social participation, and skill development, tailoring services to each person's unique needs and preferences.

[Individualised Living Options Service](#)

Uniting Communities' Individualised Living Service provides tailored support for people with disability to live independently in their own homes. The service is designed around each person's goals, preferences, and lifestyle, offering flexible assistance with daily routines, decision-making, and community engagement. It promotes autonomy and wellbeing through respectful, person-centred care.

[Disability Advocacy Service](#)

Uniting Communities' Disability Advocacy Service provides free, independent support to help people with disability understand and assert their rights. The service assists with NDIS-related issues, and access to essential supports, offering legal advice, advocacy, and referrals.

[Law Centre](#)

Uniting Communities Law Centre provides free legal help to people experiencing disadvantage across South Australia. We understand that dealing with the legal system can be confusing and daunting and staff in the [Uniting Communities Law Centre](#) assist people to work through these challenges. The qualified team provides support with information, advice, representation, referrals, or community legal education.

Submission on review of Disability Discrimination Act 1992

Uniting Communities thanks the Attorney Generals Department for inquiring into the *Disability Discrimination Act 1992 (DDA)*. A fundamental shift is required to improve how Australia responds to disability discrimination. While introducing changes to improve the clarity of the Act and a positive duty are needed, these changes alone will not create meaningful reform. We are of the view that the current legislative framework does not provide the foundations for an effective enforcement and implementation process, as the burden is on the person with a disability to drive enforcement. In practice, complainants are expected to challenge well-resourced defendants in the federal court before enforcement can occur; disregarding the very power imbalance this Act seeks to address. Amendments must be made to the legislation so that issues are dealt with in a timely and accessible format.

Our key recommendations:

- **Establish a statutory regulator with enforcement powers within the DDA.** This could be modelled on bodies like the Fair Work Commission or Aged Care Quality and Safety Commission, with powers to enforce the DDA, including issuing fines and enforceable compliance notices. A dedicated phone support line should offer real-time advocacy and guidance to address discrimination as it occurs.
- **Tribunal oversight is introduced.** Unresolved or recurring cases proceed to a specialist tribunal with authority to determine outcomes and impose remedies. This could involve expanding the jurisdiction and resourcing of an existing body (e.g. the Administrative Review Tribunal) or establishing a new tribunal focused on disability discrimination matters.
- **Clearly define the obligations of duty holders under the positive duty to prevent deflection of responsibility across departments.** For example, health, education, and NDIS sectors must not shift accountability for accessibility and inclusion between agencies when discrimination arises.
- **A nuanced framework is applied for reasonableness and proportionality tests,** factoring in organisational capacity rather than simplistic size metrics.
- **Strong whistleblower protections are embedded for workers that report discrimination** and investment in frontline staff education is introduced to foster safe, proactive reporting and shared accountability.
- **The proposed regulator be tasked with providing annual reports to the Attorney General** that identify patterns in disability discrimination complaints and prompt reform.
- **A stand-alone duty to make adjustments be introduced alongside a clear definition of 'reasonable adjustment' as one that does not impose unjustifiable hardship.**

Additional Comments

50. How can we ensure the Disability Discrimination Act remains fit for purpose into the future?

51. Are there any other issues with the Disability Discrimination Act that should be considered as part of this review?

Addressing the enforcement gap

Issues with the complaints process

There are several gaps with enforcement currently, including the absence of an intervention before conciliation, the lack of power to enforce legislation (without taking the issue to the federal court) and the absence of an independent regulator, and tribunal alternative. The current process is solely dependent on the person with a disability (who may be experiencing disadvantage) taking on the responsibility and the risk of not only reporting discrimination but taking matters to the federal court before enforcement can occur in practice.

Conciliation with the Human Rights Commission often occurs months after discrimination has occurred, participation is voluntary, and no penalties can be imposed as a result. During conciliation the complainant is up against significant opposition, the respondent is often large companies or government departments who attend conciliation backed by multiple lawyers. There have been cases where a complainant accepts a small compensation from the respondent during conciliation that is not reflective of the offence committed nor does it act as a deterrence for non-compliance going forward. When resolution cannot be reached during conciliation, the federal court is the next step, which is rarely an option for complainants, as the court is inaccessible, costly, time consuming and intimidating, deterring complainants from proceeding. As a result, the DDA is not being applied effectively in practice due to these legislative and structural issues.

A better complaints pathway – standalone regulator

Amendments could be made to the DDA to allow for the creation of a standalone statutory regulator with a similar structure to the Fair Work Commission or Aged Care Quality and Safety Commission, with the primary responsibility (and powers) to enforce the DDA. Alternatively, a dispute resolution scheme similar to the Australian Financial Complaints Authority (AFCA) could be introduced with the necessary regulatory and enforcement powers.

Practically this enforcement process could involve:

- **Step 1: Internal Resolution.** A person with disability, employee, etc. raises a complaint directly with the person, organisation or business involved. The respondent is expected to address the issue promptly.
- **Step 2: Escalation to Independent Regulator.** If unresolved, the matter is referred to a dedicated statutory regulator with compliance powers — including the ability to issue fines, enforceable undertakings and compliance notices. A dedicated phone support line could provide real-time advocacy and guidance to ensure discrimination is addressed as it occurs.
- **Step 3: Tribunal Oversight.** Where issues remain unresolved or involve repeat breaches, the case proceeds to a specialist tribunal with authority to determine outcomes and impose remedies.

We recommend this process is embedded within the legislation, like the *Fair Work Act 2009* which embeds a staged enforcement model within the Act. This process would help to resolve issues within a reasonable time frame, by attempting to resolve issues as they occur. Many instances of disability discrimination involve urgent needs, such as hospital support (e.g. Auslan interpreter) or access to essential services, where delayed remedies through conciliation months later are ineffective.

This strategy aligns with recommendations from the Disability Royal Commission that calls for independent complaint and disability-specific oversight mechanisms. We acknowledge the DDA review issues paper outlines that changes to the *Human Rights Commission Act 1986* 'will only be considered where they are needed to implement the reforms to the *Disability Discrimination Act 1995*.' While changes to the *Human Rights Commission Act 1986* could be made to clarify jurisdictional boundaries between

AHRC and this new independent regulator, it may not be necessarily required to establish this new process.

Disability discrimination is a specialist area that warrants its own dedicated statutory regulator. The Australian Human Rights Commission is already tasked with a broad human rights mandate, and other sectors, such as aged care, have acknowledged the value of tailored oversight.

Tribunal

We recommend the establishment of a tribunal function within the DDA. This could involve providing an existing tribunal with the jurisdiction (e.g. increased resourcing to the Administrative Review Tribunal) to oversee cases related to the DDA or the establishment of a new tribunal. A similar model to the Fair Work Commission Tribunal could be introduced within the DDA that allows the tribunal to conduct hearings, make binding decisions, and issue orders including both formal and informal proceedings depending on the matter.

As highlighted above, the federal court is not a viable option for most cases of disability discrimination. This review must seek to address this issue by providing a tribunal option that is less formal, and more simplified and conducive to these matters.

Consequences

Currently the DDA lacks enforcement authority; its clauses are directory rather than mandatory meaning non-compliance does not automatically trigger a legal penalty. As a result, there are no consequences unless a complaint is formally lodged and pursued through the federal court, an avenue that does not guarantee penalties for misconduct. This makes the legislation difficult to enforce in practice.

Other legislation like the *Fair Work Act 2009*, assigns civil penalties for breaches and empowers regulators to take action. This issue is in conjunction with the need to improve the complaints pathway and introduce an independent regulator to resolve these matters. Any legislative changes must seek to address these enforcements issues concurrently.

Positive duty

12. If there was a positive duty in the Disability Discrimination Act, who should it apply to?

14. What costs, benefits and other impacts would duty holders experience in meeting a positive duty under the Disability Discrimination Act? If you are an existing duty holder under the Disability Discrimination Act, please specify how you think meeting a positive duty would impact you.

We strongly support the introduction of a positive duty provision within the DDA. The current process is very reactive, and dependent on the person with a disability asking for an issue to be remedied, and having that request refused, before the action is deemed discriminatory. Often duty holders will use the defence that the person with a disability 'didn't ask,' in cases of discrimination. While a positive duty would place a stronger responsibility on the duty holder, in practice unless the complaints process and oversight issues are resolved (as highlighted above), the intent of this shift may be lost.

Responsibilities clearly defined

The responsibilities of duty holders must be clearly defined in the DDA as current obligations are ambiguous. In practice, sectors such as health, education and NDIS often defer responsibility to another department when some cases of discrimination are raised. For example, a hospital will argue the

responsibility to ensure accessibility sits with the NDIS, while the NDIS will say it is a hospital and/or health department issue. We are concerned that without clearly defined responsibilities within the legislation, in practice, disability discrimination will not be prevented.

The legislation should include a clause enabling changes to be made through Regulations, allowing for ongoing adaptation as further issues around responsibility emerge.

Proportionate threshold

In implementing a positive duty to prevent discrimination, legislation must clearly define how reasonableness and proportionality tests apply across different organisational contexts. Distinctions between small and large businesses must be explicit and equitable and should not rely on overly simplified metrics such as staff numbers. Otherwise, minor variations in organisational size could exempt some duty holders from compliance obligations, creating inconsistencies and undermining accountability. A more nuanced approach should consider overall resourcing and capacity of the duty holder.

Protection for employees

Robust whistleblower protections must be embedded within the DDA to safeguard employees who identify disability discrimination, like protections under the *Aged Care Act 2024*. In addition, to ensure effective implementation of the positive duty, education for frontline employees will be vital to encourage a workplace culture where concerns can be raised safely and proactively. This approach shifts the burden away from people with a disability (who are often unfamiliar with the Act) and reinforces shared responsibility for preventing disability discrimination.

Guidelines

Any guidelines (or subsequent Regulations under the DDA) for duty holders to prevent disability discrimination should include requirements for implementing communication accessibility standards (e.g. Easy English).

Duty to make adjustments

16. *Would the creation of a stand-alone duty to provide adjustments better assist people with disability and duty holders to understand their rights and obligations?*

17. *Should the scope of the duty to provide adjustments apply only to the existing areas of public life covered by the Disability Discrimination Act, or extend to other contexts?*

18. *Would removing the word ‘reasonable’ from the term ‘reasonable adjustments’ to align the language with the legal effect create any unintended consequences?*

We support the creation of a stand-alone duty, as it would improve clarity around the requirements of duty holders. Additionally, we agree that these provisions should be limited to the current scope of the DDA.

We do not believe removing the word ‘reasonable’ would create unintended consequences. However, we recommend that defining ‘reasonable adjustment’ would be more effective. We acknowledge the misconception identified by the Disability Royal Commission that a ‘reasonable adjustment’ ‘is both reasonable and does not cause unjustifiable hardship.’ Instead, ‘reasonable adjustment’ could be defined within the DDA as an - adjustment that would not impose an unjustifiable hardship.

Reform

There is currently a missed opportunity to identify systemic reform as most complaints under the DDA remain private if they do not proceed to the federal court. In addition, there is no requirement that a respondent make changes to prevent a case of discrimination from occurring again by introducing organisational level reform following conciliation. While introducing a positive duty will help, annual reports could be provided to the Attorney General's office that identify systemic issues rising from disability discrimination complaints, triggering inquiries, or changes. The responsibility to provide these annual reports could sit with the proposed independent regulator.

Other issues

6. How should the burden of proof be addressed in the Disability Discrimination Act?

Comparative test vs detriment test

We support the proposal to introduce a detriment test instead of a comparative test for cases of direct discrimination. We acknowledge current criticism with the comparator test is that the task of identifying an appropriate comparator is practically difficult and this change seeks to address this issue.

Assistance animals

39. Would legislative amendments or guidance materials be helpful to balance flexibility and certainty, or a mixture of both?

40. Should specific training organisations be prescribed under the Disability Discrimination Regulations?

Our main concern in relation to assistance animals is that training and accreditation varies between each state, which can cause complexities. National consistency is required regarding these rules by embedding clear provisions within the DDA.

Transitional period

We recommend a realistic transitional phase be incorporated for changes to the DDA, that includes a comprehensive implementation plan.

Conclusion

We appreciate the opportunity to provide a submission to the Attorney Generals Department on the review of the *Disability Discrimination Act 1992 (DDA)*. This review presents a crucial opportunity to improve outcomes. We recommend priority is given to making legislative changes that will improve the enforcement and regulation of the Act. This will create meaningful impact on both preventing and effectively responding to disability discrimination in Australia.