

Why does the Disability Discrimination Act need to be reformed?

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Introduction

The ***Disability Discrimination Act 1992*** (Cth) (**Disability Discrimination Act**) is an important law – its purposes are to:

- eliminate discrimination against people with disability
- recognise the right to equality for people with disability
- recognise that people with disability share rights on an equal basis with others.¹

The Disability Discrimination Act was first introduced in 1992. There have been no major changes to it since 2009. It has now become clear that parts of the Disability Discrimination Act are not protecting people with disability from discrimination as well as they should.

This explainer will tell you about why the Disability Discrimination Act needs to be reformed so that it can properly achieve its purpose.

What is the Disability Discrimination Act?

The Disability Discrimination Act is a national law made by the Australian Parliament which applies across the whole of Australia. The **Disability Discrimination Act makes it unlawful to discriminate against someone because of their disability**. There are three other national discrimination laws that prohibit discrimination based on different attributes. They are the *Age Discrimination Act 2004* (Cth), *Racial Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth) (**Discrimination Acts**).² The

Discrimination Acts were introduced at different times and have several differences, such as different definitions of what discrimination is.

The goal of the Disability Discrimination Act is to eliminate discrimination against people with disability, and to promote equal rights, opportunity and access for people with disability.³ It is an important law in Australia that protects people with disability from discrimination. Equality and non-discrimination are foundational principles of human rights.

Human rights are outlined in international human rights law. International laws are agreements between countries that outline the rules and standards about how those countries will behave. The most important international law relating to people with disability is the United Nations *Convention on the Rights of Persons with Disabilities* (**CRPD**).

The Disability Discrimination Act prohibits two types of discrimination: **direct discrimination** and **indirect discrimination**.

- **Direct discrimination** occurs when someone treats a person less favourably because of their disability, in comparison to how they would treat someone who does not have the disability in similar circumstances.⁴
- **Indirect discrimination** occurs when:
 - there is a requirement or condition in place that applies to everyone, but because of their disability, the person does not or is not able to comply, and
 - the requirement or condition disadvantages the person because of their disability, and
 - it is unreasonable in all of the circumstances.⁵

The Disability Discrimination Act was reformed in 2009 to include an obligation to make reasonable adjustments for people with disability. The denial of reasonable adjustments is a form of discrimination under the CRPD.⁶ **Reasonable adjustments** are the necessary and appropriate modifications and support required by a person with disability to ensure the removal of barriers that prevent them from participating on an equal basis with others. The adjustments could be changing a policy or procedure, providing technology or modifying the physical environment, such as installing automatic doors or adjustable desks to make the office accessible for an employee with disability. Reasonable adjustments can have broader systemic benefits.

For example, an adjustment to provide audio announcements on trains benefits people with vision impairment who need to know when they have reached their stop. Providing ramps and elevators in buildings benefits people who use wheelchairs or other mobility aids.

Associates, such as a **carer or assistant** of a person with disability, are also protected under the Disability Discrimination Act if discrimination happens to them because of their connection with the person with disability.⁷ The Disability Discrimination Act also protects people who experience discrimination because they have an **assistance animal** or **because they use a disability aid, such as a wheelchair**.⁸

The Disability Discrimination Act only prohibits discrimination in certain areas of public life. Areas of public life include:

- **Employment:** going to work or applying for jobs⁹
- **Education:** at any level, including school, TAFE, university or other courses¹⁰
- **Access to premises:** accessing buildings or other public places¹¹
- **Goods, services and facilities**¹²
- **Accommodation:** finding somewhere to live, having reasonable adjustments made in the home¹³
- **Buying land**¹⁴
- **Joining clubs**¹⁵
- **Playing sport**¹⁶
- **Other laws made by the government** or in government programs¹⁷

The Disability Discrimination Act also makes it unlawful to **harass a person** because of their disability or to **victimise them**.¹⁸ Victimisation is when someone makes a complaint or plans to make a complaint about discrimination to the Australian Human Rights Commission (the **Commission**), and the person who discriminated against them treats them adversely in response to them making or planning to make a complaint. An example of victimisation is when an employer fires a worker with disability after finding out that the worker has made a complaint about their workplace to the Commission.

In addition to making discrimination unlawful, the Disability Discrimination Act gives government the power to make disability standards and guidelines. There are currently three Standards under the Disability Discrimination Act. They set out additional information on the legal requirements under the Disability Discrimination Act relating

to **Access to Premises, Education and Public Transport**.¹⁹ For example, the Disability Standards for Education explain what schools have to do in order to not discriminate against students with disability. The Education Standards include talking to the students about what support they need at school and making reasonable adjustments for them.

Why does the Disability Discrimination Act need to be reformed?

The Disability Discrimination Act is an important law and many people with disability who experience discrimination use it to enforce their rights. However, the Disability Discrimination Act has not had any significant changes to it since 2009. It is clear that **parts of the Disability Discrimination Act are not working as they were meant to.**

- There is limited guidance from the courts on the meaning of key concepts in the law. There are court decisions that mean it is more difficult for people with disability to prove that they have been discriminated against because of their disability. Because of this, the Disability Discrimination Act is not achieving its purpose of eliminating discrimination against people with a disability.
- The Disability Discrimination Act needs stronger mechanisms to ensure discrimination is prevented from occurring in the first place. Its regulatory framework relies on organisations taking voluntary action and on individuals making complaints.
- The Discrimination Acts use different definitions of discrimination. Many people with disability face discrimination because of their disability and other personal attributes, for example, their age, race or gender. This means that complaints about discrimination based on multiple attributes can require complicated legal arguments.

What is the best way to reform the Disability Discrimination Act?

The Commission's series of reports called '[Free & Equal](#)' outline ways to improve the Discrimination Acts. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Disability Royal Commission**) referred to these

proposed changes in its final report and recommended similar changes to the Disability Discrimination Act.

The Australian Government should make the changes to the Disability Discrimination Act recommended by the Disability Royal Commission and by the Commission in the Free and Equal reports.

The Free and Equal reports explain that there is a benefit to many of the changes to the Disability Discrimination Act also being made to the three other Discrimination Acts. There should be consistent legal protections against discrimination for different groups of people. There should also be consistent legal protections for people who are discriminated against because of more than one attribute, for example because of their disability and their race. The [‘Free & Equal’](#) reports explain in detail the four main changes that should happen across all Discrimination Acts²⁰:

1. **Building a culture of prevention:** The Disability Discrimination Act and other Discrimination Acts are all designed to allow a person who has been discriminated against to complain about the discrimination. This is called a ‘reactive’ law. A more modern approach is to have the law focus on preventing discrimination from happening in the first place, which is called a ‘proactive’ law.
2. **A positive duty:** Requires duty holders to take active steps to eliminate discrimination should be included in both the Disability Discrimination Act and the other Discrimination Acts to help build a culture that prevents discrimination and make laws ‘proactive’.
3. **Modernising the regulatory framework:** The regulatory framework for the Disability Discrimination Act, which includes the Disability Standards, is not strong enough and is difficult to enforce. A more modern approach is to have ‘responsive regulation’ where a range of measures can be used to enforce the law.
4. **Enhancing access to justice:** Proving discrimination is currently too complex under the Disability Discrimination Act and other Discrimination Acts. It requires the person who has been discriminated against to prove that the person discriminated against them because of their disability, which is not always possible. The laws should be changed to require the person who is accused of discrimination to prove that they did not engage in discrimination.

5. **Improving the practical operation of laws:** All Discrimination Acts need to be changed to remove barriers for people who have been discriminated against because of multiple attributes. Having consistent discrimination laws would make it easier and more efficient for businesses and other organisations to comply with these laws.

Citations

¹ *Disability Discrimination Act 1992* (Cth).

² *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth).

³ *Disability Discrimination Act 1992* (Cth) s 3.

⁴ *Disability Discrimination Act 1992* (Cth) s 5.

⁵ *Ibid*, s 6.

⁶ *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* (Cth).

⁷ *Disability Discrimination Act 1992* (Cth) s 7,8.

⁸ *Ibid*, s 8,9, 54A.

⁹ *Ibid*, s 15.

¹⁰ *Ibid*, s 22.

¹¹ *Ibid*, s 23.

¹² *Ibid*, s 24.

¹³ *Ibid*, s 25.

¹⁴ *Ibid*, s 26.

¹⁵ *Ibid*, s 27.

¹⁶ *Ibid*, s 28.

¹⁷ *Ibid*, s 29.

¹⁸ *Ibid*, s 35,37,39,42.

¹⁹ *Disability (Access to Premises — Buildings) Standards 2010* (Cth), *Disability Standards for Education 2005* (Cth), *Disability Standards for Accessible Public Transport 2002* (Cth).

²⁰ Australian Human Rights Commission, *Free and Equal Final Report: Revitalising Australia's Commitment to Human Rights* (2023).