

# How should the Disability Discrimination Act define disability?

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There are many ways to define disability, and the understanding of disability evolves over time. **This explainer will tell you more about the current definition for disability in the *Disability Discrimination Act* and why it needs to change.**

## What are the different ways of defining disability?

Defining disability may seem simple at first. However, there are many different ways to talk about and define disability. The words we choose are important, because language plays a big role in how we break down harmful stereotypes about people with disability.

Historically, disability has been defined based on what is 'wrong' with a person with disability. This is known as the **medical model** of disability. Under the medical model, disability is viewed as a problem that needs to be fixed, treated or cured.

The medical model plays a role in contributing to ableism in society by viewing disability as something negative. **Ableism** is the basis of how society understands what it means to be 'normal', where disability is viewed as something lacking within a person who does not meet the standard of 'normal'. In reality, no one has all the skills, talents and abilities for every situation in life. We all need help in some way at some time.

The result of ableism is inequality and discrimination against people with disability. Ableism is very common in our legal system and in everyday thinking.

The **social model of disability** was introduced by disability rights activists in the 1980s. The social model of disability does not define disability based on what's 'wrong' with someone. The social model distinguishes between an impairment and disability:

- Impairment is part of being human and an individual characteristic that is just one attribute that makes up who a person is.
- Disability results from the way society responds to impairment. It is barriers within society that disables people with impairments.

The social model recognises that the inequality and discrimination faced by people with disability is not because of their impairment, but because of societal barriers. These barriers include things such as: prejudice and stereotypes, inaccessible physical environments, and ableist laws, systems and processes.

The United Nations *Convention on the Rights of Persons with Disabilities (CRPD)* is the international human rights law relating to the rights of people with disability. The CRPD builds on the social model of disability by adding a human rights element. The **human right model** reinforces that human rights cannot be denied or limited on the basis of impairment. People with disability have rights that cannot be breached just because they have an impairment.

## How does the *Disability Discrimination Act* define disability?

The *Disability Discrimination Act 1992 (Cth)* (**Disability Discrimination Act**) is a law that makes it unlawful to discriminate against someone because they have disability.

The Disability Discrimination Act includes a definition of disability, which is essentially a definition of impairment. The full definition of disability is found in section 4 of the Disability Discrimination Act.

Discrimination occurs in response to a person's impairment, so it is important that discrimination law uses a broad and inclusive definition to make sure all people with disability are covered. This is because it is necessary for a person to meet the definition of having disability in order to be successful in making a complaint of disability discrimination. In other words, if someone does not have disability in the eyes of the law, then it is not possible for them to have been discriminated against on the basis of disability.

## Should there be a new definition of disability?

There are both positive and negative parts of the current definition of disability in the Disability Discrimination Act.

The Disability Discrimination Act uses terms such as 'loss of function', 'loss of a body part', 'malfunction', 'disfigurement' and 'disturbed behaviour' to describe disability. This is known as **deficit language**. This type of language reinforces the ableist stereotypes and medical model of disability, where having disability means lacking something that 'normal' people have or that people with disability have something 'wrong with them'. This type of language is harmful and does not match the overall purpose of the Disability Discrimination Act, which is to eliminate discrimination against people with disability.

On the other hand, the current definition of disability is a good definition because it is broad enough and clear enough so that it is generally not difficult for people with disability to prove that they have disability under the Disability Discrimination Act. The definition also includes disability that has occurred in the past, in the present or may arise in future.

The definition in the Disability Discrimination Act is the broadest definition of disability used in the law in Australia. The Commission considers that consideration should be given to updating the definition of disability in the Disability Discrimination Act to **remove deficit language, while also remaining broad**, so that everyone with disability is protected by the law.