



What is a positive duty to eliminate disability discrimination?

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Introduction

Disability discrimination laws often work after harm has already occurred. A positive duty is a different approach that tries to prevent discrimination before it happens.

This explainer will tell you more about the proposed positive duty in the Disability Discrimination Act. It explains what a positive duty is, who the duty would apply to, and how introducing a positive duty is one step the Government can take to help eliminate disability discrimination.

What is a positive duty to eliminate discrimination?

A **positive duty** is a legal requirement to take action to prevent unlawful discrimination before it happens.

Instead of only responding after discrimination has occurred, a positive duty requires **duty holders** to take **reasonable and proportionate** steps to reduce the risk of discrimination and eliminate it as far as possible.

Australia already has a positive duty in the *Sex Discrimination Act 1984* (Cth) (**Sex Discrimination Act**). This law requires most organisations and businesses to take reasonable and proportionate steps to eliminate sexual harassment, sexist conduct, and related victimisation connected to work as far as possible.



The Australian Human Rights Commission (the **Commission**) recommends a similar positive duty be introduced into the *Disability Discrimination Act 1992* (Cth) (**Disability Discrimination Act**).

Why do we need a positive duty in the Disability Discrimination Act?

The Disability Discrimination Act is currently complaints-based. This means people with disability have to make a complaint of discrimination before they can seek a legal remedy.

There are issues with this approach. First, the burden is on individuals who experience discrimination to make a complaint. Many people face barriers to making complaints, including stress, power imbalances, cost, lack of information and fear of negative consequences. A complaints-based system usually does not work well to address organisational and systemic discrimination.

A positive duty in the Disability Discrimination Act would shift some responsibility to decision-makers within organisations and systems who are best placed to prevent discrimination. It would require them to think ahead and take steps to identify risks and remove barriers that may lead to discrimination. A positive duty would:

- help prevent disability discrimination before it occurs
- support broader cultural and systemic change
- reduce reliance on individual complaints as the main way for discrimination to be addressed.

The Commission's [Free & Equal](#) reports and the Disability Royal Commission both emphasise the need for this preventative approach to better protect people with disability and achieve equality in practice.

Who would the positive duty apply to?

The proposed positive duty in the Disability Discrimination Act would apply to everyone who already has legal responsibilities under the law. These individuals and organisations are known as **duty holders** and include employers, education providers,



businesses and service providers, accommodation providers, and organisations that provide goods, services, or facilities.

Under a positive duty, duty holders would be required to take reasonable and proportionate steps to eliminate all forms of unlawful disability discrimination covered by the Disability Discrimination Act, as far as possible. What counts as reasonable and proportionate steps depends on the circumstances. This can include:

- the size of the organisation
- the nature of the activities
- the resources available.

Steps might include reviewing policies and practices, providing training, consulting with people with disability, and planning to prevent discrimination before problems arise. Most duty holders under the proposed positive duty may have some experience of implementing the positive duty under the Sex Discrimination Act.

How would a positive duty be enforced?

The Australian Human Rights Commission would be responsible for enforcing the positive duty. The enforcement framework under the Sex Discrimination Act could largely be replicated for the proposed positive duty in the Disability Discrimination Act. This includes the [7 Standards and 4 Guiding Principles](#) used by the Commission to measure compliance.

Enforcement activities may include:

- supporting organisations to understand and meet their obligations
- monitoring compliance
- conducting a formal inquiry.

The Commission recommends that its enforcement powers under the *Australian Human Rights Commission Act 1986* (Cth) be strengthened.

If implemented, introducing a positive duty in the Disability Discrimination Act would significantly expand the functions and powers of the Commission in relation to disability discrimination. Adequate funding is needed to ensure the proposed positive duty can operate effectively.



Recommendations made by the Commission

The Commission made several recommendations to the Attorney-General's Review of the Disability Discrimination Act regarding powers to enforce a positive duty. Here is a summary of the recommendations, with the full list in the [Commission's submission](#), dated 14 November 2025.

Recommendations for a positive duty in the Disability Discrimination Act.

- The Disability Discrimination Act should be amended to include a positive duty requiring all duty-holders to eliminate disability discrimination, harassment and victimisation as far as possible. The positive duty should be modelled on the positive duty in the Sex Discrimination Act (with some changes to both laws).
- The positive duty should be introduced in stages across a 2 to 3 year period.
- The amendments should include a requirement for review of the implementation of the positive duty within 5 years of commencement.
- The Australian Human Rights Commission should receive adequate funding to effectively regulate and enforce the positive duty.

Recommendations about the enforcement of a positive duty in both the Disability Discrimination Act and Sex Discrimination Act.

- Civil penalties for breach of the positive duty should be included in the Disability Discrimination Act and introduced into the Sex Discrimination Act.
- Penalties for non-compliance or 'interference' with the Commission's administration and enforcement of the positive duty across both laws should be higher than currently set in the Sex Discrimination Act.
- The Australian Human Rights Commission Act should be amended to give the Commission stronger information-gathering powers to monitor and enforce the positive duty across both laws before a formal inquiry begins.
- Consider reviewing the operation of the secrecy provision in section 49 of the Australian Human Rights Commission Act, and how it affects the Commission's information-sharing powers in its broader regulatory role.