



Your rights as an employee under the *Disability Discrimination Act 1992 (Cth)*

1. Overview

This guide provides information on:

- discrimination on the basis of disability
- how the *Disability Discrimination Act 1992 (Cth)* (DDA) protects people from discrimination
- how the DDA applies in the workplace
- when disability discrimination is lawful under the DDA
- what you can do if you experience discrimination in the workplace, including the steps to make a complaint to the Australian Human Rights Commission (the Commission)
- how the Commission manages complaints
- where you can seek further assistance if you choose to make a complaint.

2. What is discrimination on the basis of disability?

Direct disability discrimination is when a person with a disability is treated less favourably than a person without the disability in the same or similar circumstances.¹

For example, it would be 'direct disability discrimination' if a nightclub or restaurant refused a person entry because they are blind and have a guide dog.

It is also disability discrimination when there is a rule or policy that is the same for everyone but has an unfair effect on people with a particular disability.²

This is called 'indirect discrimination'.

For example, it may be indirect disability discrimination if the only way to enter a public building is by a set of stairs, because people with disability who use wheelchairs would be unable to enter the building.

It is important to remember that discrimination can occur even when someone does not intend to be discriminatory. Disability discrimination can be inadvertent or arise through general ignorance.



Ambassador reflection

"When disability inclusion is included in organisational strategy, then your employees, your customers and the wider community can benefit from a more inclusive world.

Persons with disabilities should have a voice, not just on diversity and inclusion committees, but on boards and high-level committees."

Dr Paul Harpur
Associate Professor at the TC Beirne School of Law, the University of Queensland
IncludeAbility Ambassador



3. How does the DDA protect me from discrimination?

The DDA makes it against the law to treat you unfairly because of your disability.³

You are also covered if you had a disability in the past, may develop a disability in the future, or if people think you have a disability.⁴ You are covered even if people can't tell that you have a disability (particularly in relation to 'indirect' discrimination) or if your disability does not affect you all of the time.

People who are relatives, friends and carers of people with a disability are also protected by the DDA.⁵



Disability defined

The definition of 'disability' used in the Act is broad.

It includes physical, intellectual, psychiatric, sensory, neurological and learning disabilities. It also includes physical disfigurement and the presence in the body of disease-causing organisms, such as the HIV virus.⁶

4. How does the DDA apply in the workplace?

If you have a disability, the DDA protects you against discrimination in many areas of public life, including employment.⁷

The protection in relation to discrimination in employment applies to all stages of the employment lifecycle including:

- arrangements in relation to who should be offered a job
- determining who should be offered a job
- the terms and conditions of any job offer
- access to opportunities for promotion, transfer, training or other benefits
- dismissal.⁸

The DDA also protects you if you are **harassed**, because of your disability, in many areas of public life, including employment.⁹

Harassment occurs when someone makes you feel intimidated, insulted, humiliated or places you in a hostile environment.

Harassment because of a disability, such as insults or humiliating jokes, is unlawful if it happens in a place of employment.

A person with a disability has a right to the same employment opportunities as a person without a disability.

If a person with a disability can perform the main activities or 'inherent requirements' of a job, then they should have an equal opportunity to do that job.

In some cases, an employer may need to make some workplace changes, called 'reasonable adjustments', so that the employee can best perform the job, such as providing an enlarged computer screen or installing ramps.¹⁰

Employers are not required to make workplace changes if it would cause major difficulties or unreasonable costs. This is called 'unjustifiable hardship'.¹¹

However, employers would need to show how making those changes would cause such hardship.¹² Many adjustments involve little or no cost, and the Australian Government's Employment Assistance Fund can assist with reasonable adjustment costs. For further information visit the JobAccess website: <https://www.jobaccess.gov.au/employment-assistance-fund-eaf>.

5. When is disability discrimination in employment lawful under the DDA?

Like other anti-discrimination laws, the DDA provides that in some circumstances treating someone differently because of their disability will not be against the law. This is known as an exception or exemption.

For example, the DDA provides that it may not be against the law to refuse to employ a person with a disability if, because of their disability, they cannot perform the inherent requirements of a job.¹³

However, the DDA also states that employers must consider how a person with disability could be provided with reasonable adjustments to help them do the job.¹⁴ An adjustment is reasonable if it does not impose 'unjustifiable hardship' on the employer.¹⁵



Inherent requirements

It is not against the law to refuse someone a job if, because of their disability, they can't perform the 'inherent requirements' of the position.

In other words, a person must be able to carry out the essential duties of the job.

For example, a person with low vision may not be able to meet the 'inherent requirements' of a job as a delivery driver.

6. What can I do if I experience disability discrimination in the workplace?

You may wish to deal with the situation yourself by raising it directly with the person or people involved, or with a supervisor, manager or discrimination/harassment contact officer.

As mentioned previously, some people may be unaware that their actions or decisions are inadvertently discriminating against you, and they may be very receptive to working with you to resolve the issue. A lack of awareness is no excuse for discrimination. However, if pointed out, it can allow people to learn from their mistakes and ensure changes occur quickly to prevent the reoccurrence of discrimination.

If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Commission.¹⁶ You can also have someone, such as a solicitor, advocate or trade union, make a complaint on your behalf.¹⁷

It does not cost anything to make a complaint to the Commission.

Your complaint needs to be put in writing.¹⁸ The Commission has a complaint form that you can fill in and post or email, or you can lodge a complaint online through the Commission's website. If you are not able to put your complaint in writing, the Commission can help you with this.

The complaint should say what happened, when and where it happened and who was involved.¹⁹

A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you.

To find out more about making a complaint:

- call 1300 656 419 (local call)
- email infoservice@humanrights.gov.au
- visit www.humanrights.gov.au/complaints.

If you need an Auslan interpreter, the Commission can arrange this for you.

If you are blind or have low vision, the Commission can provide information in alternative formats on request.

7. What happens if I make a complaint to the Australian Human Rights Commission?

When the Commission receives a complaint about something that is covered by the DDA, the President of the Commission can investigate the complaint and try to resolve it by conciliation.²⁰ Conciliation is conducted by experienced staff within the Commission.

The Commission is not a court and cannot determine whether unlawful discrimination has happened. The Commission's role is to get both sides of the story and help those involved to resolve the complaint.

Commission staff may contact you to get further information about your complaint.

Generally, the Commission will tell the person or organisation the complaint is against (the respondent) about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint.

Where appropriate, the Commission will invite you to participate in conciliation.²¹ Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint. Conciliation can take place in a face-to-face meeting or a meeting over the telephone. In some cases, complaints can be resolved through an exchange of letters and conversations with the conciliator.

If your complaint is not resolved, or it is discontinued for another reason, you may be able to take your complaint to the Federal Court of Australia or the Federal Circuit Court.²²

8. Where can I seek further assistance?

If you are thinking about making a complaint, you might also wish to consider obtaining legal advice or contacting your trade union.

There are community legal services that can provide free advice about discrimination and harassment. Contact details for your closest community legal centre can be found at <https://clcs.org.au/findlegalhelp>.

There are also legal services which provide free specialist advice about disability discrimination. Contact details for your nearest Disability Discrimination Legal Centre can also be found at <https://clcs.org.au/findlegalhelp>.

Endnotes

1 *Disability Discrimination Act 1992* (Cth) s 5.
2 *Disability Discrimination Act 1992* (Cth) s 6.
3 *Disability Discrimination Act 1992* (Cth) ss 5, 6.
4 *Disability Discrimination Act 1992* (Cth) s 4 (definition of 'disability').
5 *Disability Discrimination Act 1992* (Cth) s 7.
6 *Disability Discrimination Act 1992* (Cth) s 4 (definition of 'disability').
7 In addition to direct employee employer relationships the DDA also applies to a broader range of work relationships including: partner and partners; commission agent and principal; contract worker and principal; or an employment agency, employer and employee/worker.
8 *Disability Discrimination Act 1992* (Cth) s 15.
9 *Disability Discrimination Act 1992* (Cth) s 35.
10 *Disability Discrimination Act 1992* (Cth) s 4 (definition of 'reasonable adjustment'), ss 5, 6.

11 *Disability Discrimination Act 1992* (Cth) ss 11, 21B.
12 *Disability Discrimination Act 1992* (Cth) s 11(2).
13 *Disability Discrimination Act 1992* (Cth) s 21A.
14 *Disability Discrimination Act 1992* (Cth) ss 5(2), 6(2).
15 *Disability Discrimination Act 1992* (Cth) s 4 (definition of 'reasonable adjustment').
16 *Australian Human Rights Commission Act 1986* (Cth) s 46P(1).
17 *Australian Human Rights Commission Act 1986* (Cth) s 46P(2).
18 *Australian Human Rights Commission Act 1986* (Cth) s 46P(1).
19 *Australian Human Rights Commission Act 1986* (Cth) s 46P(1B).
20 *Australian Human Rights Commission Act 1986* (Cth) s 11(aa).
21 *Australian Human Rights Commission Act 1986* (Cth) s 46PJ.
22 *Australian Human Rights Commission Act 1986* (Cth) s 46PH.

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This guide is part of a suite of resources developed by the Australian Human Rights Commission as part of IncludeAbility to assist:

- employers provide meaningful job opportunities to people with disability
- people with disability navigate barriers to employment.

Further resources are available at www.IncludeAbility.gov.au.