

The law

This section provides some key points regarding the provisions of the Disability Discrimination Act 1992 (Commonwealth). It is provided as a guide only and should not be relied upon for legal advice.

Disability Discrimination Act (1992) (Commonwealth)

This Act aims to eliminate discrimination against people with disability, and promote community acceptance of the principle that people with disability have the same fundamental rights as all members of the community.

Definition of 'disability' for the purposes of the DDA is:

- total or partial loss of a person's bodily or mental functions
- total or partial loss of a part of the body
- the presence in the body of organisms causing disease or illness
- the presence in the body or organisms capable of causing disease or illness
- the malfunction, malformation or disfigurement of a part of the person's body
- a disorder or malfunction that results in the person learning differently from a person without disorder or malfunction, or
- a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

What areas of life does the DDA cover?

The DDA makes it unlawful to discriminate against someone if they have a disability in the following areas of life:

- **Employment** – e.g. when someone is trying to get a job, equal pay or promotion.
- **Education** – e.g. when enrolling in a school, TAFE, university or other college.
- **Access to premises used by the public** – e.g. using libraries, places of worship, government offices, hospitals, restaurants, shops, or other premises used by the public.
- **Provision of goods, services and facilities** – e.g. when a person wants goods or services from shops, pubs, and places of entertainment, cafes, video shops, banks, lawyers, government departments, doctors, hospitals and so on.
- **Accommodation** – e.g. when renting or trying to rent a room in a boarding house, a flat, unit or house.
- **Buying land** – e.g. buying a house, a place for a group of people, or a drop-in centre.
- **Activities of clubs and associations** – e.g. wanting to enter or join a registered club (such as a sports club, RSL or fitness centre), or when a person is already a member.
- **Sport** – e.g. when wanting to play, or when playing a sport.
- **Administration of Commonwealth Government laws and programs** – e.g. when seeking information on government entitlements, trying to access government programs, wanting to use voting facilities.

DDA and educational institutions

A person with a disability has a right to study at any educational institution in the same way as any other student.

The DDA makes it against the law for an educational authority to discriminate against someone because that person has a disability.

This includes all public and private educational institutions, primary and secondary schools, and tertiary institutions such as TAFE, private colleges and universities.

Whether the actions of an educational institution would be considered unlawful discrimination would be dependent on the individual circumstances of each case.

Requirements of the DDA for educators to consider

Educators should not make assumptions about what a person can or cannot do because of a disability or a perceived disability. They should base their decisions on a person's ability to meet the essential requirements of the course of study.

If a person with a disability meets the essential entry requirements, then educators must make changes or 'reasonable adjustments' if that person needs them to perform essential course work, provided that making reasonable adjustments will not cause major difficulty or unreasonable costs to the institution.

Adjustments could include:

- modifying educational premises, e.g. making ramps, modifying toilets and ensuring classrooms are accessible to the person with a disability
- modifying or providing equipment, e.g. lowering lab benches, enlarging computer screens, providing specific computer software or an audio loop system
- changing assessment procedures, e.g. allowing for alternative examination methods such as oral exams, or allowing additional time for someone else to write an exam for a person with a disability
- changing course delivery, e.g. providing study notes or research materials in different formats or providing a sign language interpreter for a deaf person.

What if changes are too difficult for educators?

The DDA does not require changes to be made if this will cause major difficulties or unreasonable costs to a person or organisation. This is called 'unjustifiable hardship'. Before considering claiming adjustments are unjustified, educators need to:

- thoroughly consider how an adjustment might be made
- discuss this directly with the person involved, and
- consult relevant sources of advice.

For further discussion of how the courts have interpreted the requirements see the Commissions web links:

- www.humanrights.gov.au/disability_rights/faq/education/education_faq.html
- www.humanrights.gov.au/disability_rights/decisions/court/court.html

Other relevant legislation includes:

- State and territory anti-discrimination legislation
- *Fair Work Act (2009)* (Commonwealth)
- State and territory industrial relations legislation
- Occupational Health and Safety legislation