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# BCA Inform Consultation Paper - Review of the Disability Discrimination Act

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## Background

The Australian Government is reviewing the Disability Discrimination Act 1992 (the Act). The Act makes discrimination against people with disability unlawful in areas of public life such as workplaces, in schools and universities and in public places.

Since introduction of the Act, numerous legal and policy changes have occurred including Australia becoming a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2008, as well as significant societal and technological changes.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) made 15 recommendations to amend the Act which were in principle supported by the Australian Government. The current review of the Act is centered on these 15 recommendations and asks how the Act can be changed to improve the experiences of people with disability and provide greater clarity to duty holders.

For further information on the review and to read the Issues Paper or a Summary of the Issues Paper visit [Review of the Disability Discrimination Act | Attorney-General's Department](https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/australias-anti-discrimination-law/review-disability-discrimination-act). Individuals and organisations can contribute to the consultation by [making a submission](https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/) or completing the [community survey](https://consultations.ag.gov.au/rights-and-protections/dda-community-survey/consultation/).

## BCA's Position

BCA supports modernising and updating the Act to strengthen protections for people with disability including people who are blind or vision impaired. The Act’s existing reliance on individual complaints and conciliation through the Australian Human Rights Commission (AHRC) limits its impact, as many cases do not reach courts, and systemic issues persist. To ensure effectiveness and deliver meaningful protections, it is critical that robust measures are implemented to enforce compliance with the Act.

Comparable measures are already enshrined in other anti-discrimination laws, and protections for people with disabilities must be prioritised to ensure equitable treatment. Harmonisation of federal and state/territory anti-discrimination legislation is essential to enhance clarity, streamline compliance, and ensure consistent protections across jurisdictions.

## Discussion to inform BCA’s submission to review of the Act

To inform BCA’s submission to the consultation, BCA is seeking input from members and stakeholders on the priority areas for improvement of the Act and specific considerations for people who are blind or vision impaired and their associates.

This paper presents a first draft of recommendations, drawing on findings from the Disability Royal Commission and previous BCA submissions and engagement activities.

To support discussion at the upcoming BCA Inform session, BCA members are encouraged to:

* Consider the draft recommendations outlined in BCA’s Consultation Paper and suggest any amendments.
* Identify any concerns, constraints or unintended consequences of recommended changes to the Act that could impact on people who are blind or vision impaired.
* Suggest additional priorities, alternative recommendations or pragmatic ways to clarify requirements under the Act.
* Identify examples or case studies that BCA could include as evidence to support the recommendations in BCA’s submission.

## Priority areas for improvement (draft recommendations)

### Use modern, rights affirming language to define disability that highlights abilities and enablement.

* Prioritise adoption of human rights and social models that emphasise inclusion and equity and recognise interaction between individuals and external societal barriers.
* Consider using the term disability rather than impairment (consistent with anti-discrimination legislation in most Australian jurisdictions and UNCRPD). A move away from using the term “impairment” would likely prompt a change in use of the term “vision impaired” to an alternative such as “low vision” (consistent with other stakeholders).
* Ensure the definition is legally robust, inclusive, culturally sensitive and adaptable to modern contexts and emerging conditions.

### Make it unlawful to discriminate based on intersecting or combined protected attributes, including multiple disabilities.

* Including intersectionality is critical to ensure comprehensive protection for individuals with disability who face compounded discrimination due to overlapping identities such as race, gender, sexuality or age.
* Discrimination can be multifaceted and occur based on a combination of protected attributes and it can be difficult to determine the primary cause for discriminatory treatment. For example: A First Nations person with a dog guide may experience discrimination on the basis of race and disability.
* Without an intersectional approach, the needs of groups such as women with disability who may face gender-based violence alongside accessibility barriers, or culturally diverse individuals who encounter language and cultural obstacles in accessing services may be overlooked.

### Use an unfavourable treatment (detriment) approach to test for discrimination and remove the need for a comparator.

* The comparator test is a traditional approach used to determine whether discrimination has occurred by comparing the treatment of the person alleging discrimination (the complainant) to that of a hypothetical or actual person (the comparator) who does not share the protected attribute (disability) but is in a similar situation. Finding an appropriate comparator is difficult, artificial and impractical. The comparator test struggles to address systemic or structural discrimination where policies or practices inherently disadvantage certain groups.
* In contrast, an unfavourable treatment test shifts the focus from comparing the complainant to a hypothetical person to evaluating whether the treatment they received was inherently disadvantageous or detrimental due to their protected attribute (disability).
* It assesses whether a person has suffered a disadvantage, harm, or negative impact because of the treatment. For example, a person who is blind and uses screen reader software who is unable to use online banking services due to inaccessible design and cannot complete transactions independently is treated unfavourably.
* An unfavourable treatment approach aligns more closely with the UNCRPD's definition of discrimination and whether a person’s human rights can be recognised, enjoyed and exercised, on an equal basis with others.

### Shift the burden of proof from the person making a discrimination complaint to the respondent (duty holder).

* Collecting evidence and meeting the burden of proof requirements is difficult and can deter people with disability from progressing a discrimination complaint.
* Adopt an approach similar the Fair Work Act, where the person making the complaint must prove that the unfavourable treatment occurred and the respondent must prove that the treatment was not on the basis of the person’s disability.
* For example, an employment application process requires submitting a resume through an online portal that is not compatible with screen-reader software (e.g it uses CAPTCHA without audio alternatives). When the applicant asks the recruiter for an alternative method of submission they refuse on the basis that the recruitment method is standardised for efficiency. This situation could constitute unfavourable treatment and in the event of a claim, the burden would be on the company to justify their actions, such as proving that providing an alternative (e.g. email submission) would impose unjustifiable hardship.

### Narrow and simplify the definition of indirect discrimination by removing the defence of ‘reasonableness’ and ‘inability to comply’.

* Currently respondents would not be found to have indirectly discriminated against a person if they can show that a requirement or condition they imposed upon a person was reasonable in the circumstances.
* The inclusion of reasonableness can dilute obligations and cause confusion between “reasonableness” and “reasonable adjustment” (positive duty).
* In its submission to the Productivity Commission BCA notes the confusion between direct and indirect discrimination, and that many respondents argue that unjustifiable hardship is made out in cases involving indirect discrimination in which the test is reasonableness. It is not clear in the legislation how the indirect discrimination provisions interact with discrimination in specific areas such as employment and goods and services which more easily accommodate allegations regarding direct discrimination.
* It should be explicit in the legislation that there is an obligation to provide adjustments to the point of unjustifiable hardship. This will assist in addressing issues of systemic discrimination (e.g. inaccessible policies or procedures).
* For example, a workplace requires staff to use a proprietary intranet system that is not accessible or useable for someone who is blind or vision impaired. This requirement disproportionately disadvantages an employee who is blind or vision impaired. If a complaint was made, the workplace would need to prove that making adjustments would impose unjustifiable hardship e.g. excessive cost relative to the company’s size.

### Align the Act with the Convention on the Rights of Persons with Disabilities.

* Explicit alignment with the UNCRPD is critical to strengthen protections, ensure compliance with international human rights obligations, and address gaps in the current legal framework for people with disability.
* The Act is a key piece of legislation through which the government fulfils its obligations as a signatory to the UNCRPD. As the Act predates the UNCRPD it doesn’t refer to it in its objects and interpretation sections which should be rectified.
* The UNCRPD explicitly addresses systemic issues (such as education and employment), requires duty-holders (such as employers and service providers) to take proactive steps to eliminate barriers, and is based on a human rights model of disability.

### Introduce ‘positive’ or ‘inclusive’ duty that requires all duty holders to take proactive steps to prevent discrimination rather than relying on people with disability to make a complaint.

* + A complaint-driven discrimination model alone is insufficient. It does not incentivise inclusive practices and poses significant barriers for individuals including those who are blind or vision impaired due to its complexity, power imbalance, cost, and the uncertainty of achieving a satisfactory outcome.
  + Duty holders must be required to proactively consider the needs of people with disability and take them into account in the procurement, design and delivery of goods and services and remove any idea that duty holders don’t have to comply because people with disability don’t use their services or aren’t employed in their organisation. For example, failure to provide mortgage documents in formats that can be accessed by someone who is blind or vision impaired.
  + Duty holders under the Act should include employers (public, private, and not-for-profit), service providers, education and training institutions, government agencies and public authorities.
  + Consideration of the size of a duty holder’s business or operations, and resources, should be considered in determining whether a positive or inclusive measure is reasonable and proportionate.
  + Mechanisms for enforcement, reporting, monitoring and compliance, including tangible consequences for non-compliance must be included.
  + Introduction of positive duties would require a transition period to give duty holders sufficient time to prepare as well as investment of resources to support change management.
  + Standards, such as those established under the Act, play a critical role in clarifying positive duties to prevent discrimination of people with disability. The standards provide specific, actionable guidelines that translate broad anti-discrimination principles into practical obligations and measurable requirements for duty holders (e.g organisations, businesses and governments). However they must be supported with requisite compliance mechanisms to be effective.
  + Positive duty requirements must be useable, meaningful and simple enough that general community can apply them. Overly onerous, unwieldy or complex requirements on duty holders without appropriate supporting mechanisms could lead to public criticism, resistance, delays and negative attitudes towards people with disability. For example, the 2025 updates to the National Construction Code (NCC) caused concerns that they're too complex and burdensome for the construction industry and progress on accessibility has stalled.
  + The term ‘positive duty” may be misunderstood by some duty holders. For example a duty holder may see dog guide refusal as a “positive” outcome for their business. Consider use of alternate terms such as proactive or inclusive duty.

### Create a stand-alone duty to provide adjustments to make it unlawful for a duty holder to fail or refuse to make an adjustment unless making the adjustment would impose unjustifiable hardship.

* + Replace references to ‘reasonable adjustments’ with ‘adjustments’. Remove any misconception that a ‘reasonable adjustment’ is an adjustment that is both reasonable and does not cause unjustifiable hardship.
  + A stand-alone duty to provide adjustments (reactive and individual focused) would operate to clarify the obligations on duty holders and provide specific grounds for people with disability to make a discrimination complaint if a duty holder fails or refuses to make such adjustments.
  + This duty complements and can coexist with a positive duty (proactive and systemic). For example a museum must proactively anticipate needs like audio guides for vision impaired people as well as make specific adjustments for to meet the needs of individuals.
  + Removing ‘reasonable’ would create an absolute duty to provide adjustments regardless of constraints. Given potential financial implications, there may be a risk that duty holders feel overwhelmed with compliance demands and respond by prioritising one group over another. For example, focusing on physical adjustments at the expense of adjustments for sensory disabilities.
  + Consider value of extending requirements for adjustments beyond areas of public life covered by the Act (e.g. employment, education, access to premises) to other contexts/settings such as private housing.
  + Explicitly extend adjustments to incorporate digital communication technology including online platforms, apps and virtual environments, as well as audio descriptions (see recommendation 17).

### Achieve greater fairness and transparency in claims of unjustifiable hardship by requiring duty holders to consult with people with disability and explore all available alternative measures to eliminate or reduce hardship.

* “Nothing about us without us”. A person with disability is uniquely able to discuss how they may personally complete work or use adjustments to thrive in a prospective or current role.
* Ensure that any decisions are informed by accurate advice about the person’s situation and the adjustments that they may require. This aligns with international human rights obligations to make practical and effective adjustments and reduce perceptions of hardship through collaborative problem solving.
* People with disability currently bear the onus to disprove a hardship claim. Shift the burden of proof for fairness to the respondent (duty holder) and enhance transparency and accountability by requiring respondents to document factors they considered in assessing hardship.

### Clarify ‘inherent requirements’ of a job and require employers to talk to people with disability about what adjustments they might need to be successful in the role.

* The lack of clarity around inherent requirements can discourage people with disability from applying for roles. Assumptions around inherent job requirements often stem from stereotypes, lack of awareness and misconceptions regarding capability. For example, the default job requirement for applicants to have a driver’s license overlooks the fact that for many roles, adjustment for other transport options is available and can be effectively utilised by people who are blind or vision impaired.
* Consultation is critical before making employment decisions to avoid assumptions being made about inherent requirements (core duties) and adjustments. However, some people with disability will prefer not to disclose and should not be disadvantaged by a situation where an employer is permitted to discriminate because they “were not advised.”
* A frequent concern raised with BCA is that disclosing a disability during applications often leads to not securing interviews. Many applicants don’t disclose to avoid rejection, managing without adjustments, which can lead to underperformance or stress. Delays in installing necessary adjustments for people who are blind or vision impaired (e.g. screen readers, braille displays) can prevent employees from performing productively during initial employment periods, undermining job opportunities and reinforcing employer biases.

### Define exclusion and exclusionary discipline and make it explicitly unlawful to discriminate against a student on the grounds of their disability by suspending or excluding the student.

* Strengthen protections for students with disabilities, including those who are blind or vision impaired. Suspensions and exclusions can perpetuate stigma, labelling students as “problematic” when their challenges stem from systemic failures such as inaccessible environments.
* Schools may suspend or exclude students for behaviors linked to their disability, claiming these actions are justified under school policies. For students who are blind or vision impaired, barriers such as inaccessible textbooks, digital platforms, or lack of teacher training in assistive technology can lead to frustration, disengagement, or behaviors misinterpreted as disruptive, resulting in disciplinary action.
* Explicitly making such actions unlawful unless justified (e.g. by proving unjustifiable hardship or non-disability-related reasons) clarifies that suspensions or exclusions tied to disability are discriminatory and reinforces the duty to provide adjustments before disciplinary measures.

### Make it illegal to harass, threaten, or spread hate about people with disability and extend these protections to online spaces (such as social media).

* Explicitly make it unlawful to vilify a person or group of people with disability on the ground of their disability or perceived disability.
* Define vilification to include behaviour that incites hatred or threatens violence toward a person or group of people with disability.
* BCA recently heard a distressing account from a member detailing an assault from a stranger in an accessible parking bay, as well as numerous other examples of harm, “Usually when people assault me they walk into me and expect me to get out of their way even though I clearly have a seeing eye dog. Back when I used a cane, people ran over me (in cars at zebra crossings, on bikes, and even once someone trod on my cane bending it so badly it was useless)”.

### Include a new provision to cover policing and the justice system rather than including policing in the definition of services.

* People with disability are overrepresented in the justice system and more often criminalised by police.
* Recognise that police aren’t necessarily providing a ‘service’ to a suspect in the same way that other services are provided to people with disability.
* Enhance clarity for police and suspects and strengthen measures to eliminate disability discrimination, ensuring people with disability do not experience less favourable treatment within the justice system.
* People who are blind or vision impaired report they are often not respected or considered as a credible witness by the police and/or justice system.
* Police have a critical role to play in enforcing compliance with the Act and significant opportunity exists to improve resolution of discriminatory practices. For example, police are frequently called upon to intervene in instances of dog guide refusal between a dog guide handler and a duty holder such as a hotel, restaurant or transport provider. Improved disability awareness and understanding of obligations under the Act would contribute greatly to a positive outcome.
* People who are blind or vision impaired are often placed at a disadvantage in the civil justice system, particularly in relation to appearing competent in cases involving children. Parents (and grandparents) who are blind often find it extremely difficult exercising their rights to access their children because their blindness is used as the reason to deny or limit their access.

### Remove the permanent exemption for actions taken under the Migration Act 1958 from the anti-discrimination provisions.

* The exemption perpetuates ableism by allowing the migration system to treat people with disability as a burden based on projected health care and support costs rather than recognising their potential contributions to Australian society.
* Denying visas based on disability undermines the intent and reform of the Act and the exemption contradicts Australia’s obligations under the UNCRPD.
* It is not acceptable that skilled migrants with disability are denied permanent residency purely on the basis of disability.

### Improve protections for assistance animals by clarifying definitions and scope and establishing national standards and accreditation.

* The proliferation of assistance animals has exacerbated discrimination against dog guide handlers who are blind or vision impaired, leading to frequent refusals of access in public spaces, transport, and services.
* A clear definition of assistance animals is required alongside proactive duties to reduce incidents like dog guide refusal.
* The definition should mandate that assistance animals be trained by nationally or internationally accredited organisations.
* The Act should fully incorporate and build upon the draft National Principles for the Regulation of Assistance Animals (released March 2025 by the Department of Social Services).
* Complementary measures could include establishing national accreditation standards, a standardised Public Access Test to verify an animal's behaviour and skills, and mandatory national identity cards for simplified verification. These tools could empower duty holders to confidently recognise legitimate assistance animals, minimising discriminatory denials and fostering trust in the system.
* Critically, assistance animal regulations must be harmonised across federal, state, and territory levels to eliminate jurisdictional inconsistencies that amplify discrimination.

### Improve the Disability Standards by introducing a positive (inclusive) duty, require reporting by duty holders and empower a regulator to address non-compliance.

* The effectiveness of standards is linked to their enforceability and current compliance with Disability Standards is lacking. A person with disability is responsible for making a complaint to the AHRC if a duty holder isn’t complying and the AHRC does not currently have powers to enforce compliance.
* Introduction of positive duties and enforcement by a regulator would shift the burden from the person with disability and enable a regulator to address non-compliance without the need for an individual complaint.
* BCA's submission to the Productivity Commission emphasised that despite the Act and Disability Standards, barriers in employment, education, or transport have not sufficiently been reduced. For example, the Act has achieved little in relation to the provision of information in accessible formats or the provision of a safe and accessible path of travel to, from and within buildings, and the Transport Standards have been undermined by individual transport operators choosing to apply access measures (such as tactile ground surface indicators) in an idiosyncratic way, rather than according to the agreed Standard.
* Duty holders must be able to understand their obligations under the Act. The use of practical examples and sector-specific requirements will help to ensure clarity and consistency in implementation.

### Explicitly recognise access to information as a separate area under the Act and include audio description as an adjustment

* The majority of discrimination cases BCA lodge on behalf of people who are blind or vision impaired relate to access to goods and services.
* Although access to information can generally fit within the definition of a "service", a new "area" of access to information should be added to the Act as people do not consider access to information as necessarily part of the provision of a good, service or facility.
* Access to information remains the area in which BCA has the greatest number of inquiries relating to discriminatory treatment. BCA is involved in complaints relating to access to billing information, mortgage and other loan agreements, banking information, prospectuses, books, websites, apps and other digital platforms.
* BCA has long campaigned for the mandatory inclusion of audio description on Australian television. BCA's 2022 submission to the Disability Royal Commission highlighted its absence as a significant barrier to accessibility for blind and vision-impaired individuals and constitutes systemic discrimination under the Act.
* In late 2022, after a lengthy complaints process, the UN Committee on the Rights of Persons with Disabilities found Australia has breached the rights of people who are blind and vision impaired by refusing to mandate any level of audio description on free-to-air TV networks.
* The revised Act should include requirements for audio description in media (TV, streaming, films) as an adjustment under the Act, ensuring broadcasters are legally required to provide audio description to prevent discrimination.

### Mandate digital accessibility standards under the Act

* Persistent digital barriers, such as inaccessible online banking or job application systems, disproportionately exclude people who are blind or vision impaired.
* There is no explicit requirement for compliance with standards like Web Content Accessibility Guidelines (WCAG 2.2), leaving enforcement reliant on individual complaints and judicial interpretation. This results in inconsistent accessibility outcomes.
* The Act should explicitly cover information and communication technology, inclusive of web and mobile technology, software and digital platforms (e.g content management systems), online services (e.g e-commerce), hardware supporting digital access (e.g kiosks), touchscreen devices and emerging technology (e.g AI).
* The Act should incorporate mandatory compliance with Web Content Accessibility Guidelines (WCAG 2.2 Level AA) and Australian Standard AS EN 301 549:2020 for all digital platforms, including websites, apps, and emerging technologies (e.g., AI, virtual reality), as part of the Act’s obligations and enforceable standards.

### Empower the AHRC or establish an independent regulatory body with the authority to monitor compliance, conduct audits, and investigate complaints promptly. This body should have the power to impose meaningful penalties for non-compliance to deter violations.

* While the Act and AHRC provide a framework for preventing discrimination, they are outdated, under-resourced, and insufficiently proactive, leading to persistent exclusion for people who are blind and vision impaired. BCA submissions note that many avoid the process of making a discrimination complaint due to lack of self-confidence, advocacy experience, technical knowledge, financial and emotional resources, compounded by fears of retaliation or stigma in small communities or workplaces.
* In its current form, the Act is reactive, only addressing discrimination after it occurs via complaints, rather than imposing positive duties on organisations to proactively prevent barriers which leaves inclusion "to chance" and burdens people who are blind or vision impaired to challenge issues themselves.
* The AHRC's conciliation process is seen as daunting and intimidating, deterring individuals from lodging complaints. Complainants often face respondents with significantly greater power and resources including lawyers and technical staff during hearings. People who are blind or vision impaired may lack advocacy experience or confidence, and report feeling overwhelmed, especially when explaining technical issues.
* The AHRC lacks enforcement powers, with voluntary conciliation allowing respondents to disengage without penalties and complaints delayed until complainants give up.
* There are no repercussions, penalties for non-compliance or robust mechanism to ensure respondents implement agreed changes, leaving complainants to monitor compliance themselves. Even when complaints succeed, outcomes are often weak (e.g. apologies or minor changes without penalties), failing to deter future discrimination. For instance, BCA’s 2013 complaints against broadcasters for missing audio descriptions resulted in limited progress.
* Following a breach, change is slow and there is little evidence to suggest that conciliation outcomes (as published in the register) are used to promote systemic change.
* Pursuing complaints, especially if escalated to the Federal Court, involves legal fees or expert reports (e.g on website accessibility) which people on limited incomes cannot afford. The AHRC’s lack of funding for legal assistance exacerbates this.

### Reform the discrimination complaints process to be fully accessible for people with disability.

* This includes ensuring complaint lodgement systems are compatible with assistive technologies (e.g screen readers), providing materials in accessible formats (e.g Braille, audio, large print), simplifying procedural requirements, and enhancing support mechanisms to reduce barriers.
* BCA has reported that people who are blind or vision impaired can struggle to navigate the AHRC’s online complaint lodgement system and website independently, compromising autonomy and privacy. Submitting evidence (e.g. screenshots of inaccessible websites or detailed descriptions of discrimination) can be challenging for complainants who may not easily access or interpret visual data, requiring technical support they may not have.