Sussex Street and PWdWA's Review of Opportunities to Reform Australia's Disability Discrimination Act 1992

A joint submission to the federal government's
2025 Review of the Disability Discrimination Act 1992

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Foreword

This submission to the review of the *Disability Discrimination Act 1992* is jointly presented by Sussex Street Community Law Service and People with Disabilities WA (PWdWA), and authored by lived experience advocates, lawyer Dr Rita Kleinfeld-Fowell, Head of Disability Practice at Sussex Street, and Amanda Ellis, Systemic Advocate at PWdWA.

Sussex Street is a community legal service committed to promoting access to justice, particularly for people who experience discrimination and disadvantage. The centre provides legal advice, representation, and advocacy, with a strong focus on supporting people with disability in navigating complex legal systems.

People with Disabilities WA is the peak disability advocacy organisation in Western Australia, representing the rights, interests, and voices of people with disability. PWdWA works to ensure that people with disability are included, respected, and empowered to participate fully in society, and is led by and for people with disability in WA.

This submission has been developed through a combination of international research, years of practice that both organisations have in supporting people with disability in the navigation of the Human Rights Commission, and community consultation processes jointly run by PWdWA and Sussex Street. The first joint consultation was held at a City of Belmont library and brought together about 40 participants, including full and associate members of PWdWA, community members engaged with Sussex Street's Disability Discrimination Unit, and members of the general public. Most attendees participated in person, with a few joining online. The majority of participants were people with disability, alongside a small number of carers and support workers. Sussex Street and our lead author of this submission consultation Rita Kleinfeld-Fow also undertook consultations with members of the blind, deaf and deaf–blind communities.

The insights people shared during these consultations have been instrumental in shaping the recommendations and perspectives outlined in this submission. Both Sussex Street law service and PWdWA are proud to contribute to this important review, reflecting a shared commitment to addressing discrimination, supporting people with disability, and advocating for systemic change through legal and community–based approaches.

—Kat Johns, PWdWA Chief Executive Officer

Acknowledgements

Acknowledgement of Country

We acknowledge Aboriginal and Torres Strait Islander peoples as the traditional custodians of Australia and acknowledge their continuing connection to land, sea and community.

We acknowledge the traditional owners of the lands we live and work on, the Whadjuk and Noongar people, the Ngarluma, Yindjibarndi, Mardudhunera and Yaburara people, and the Wangkatha people, and pay our respects to elders past and present. Some of us come from afar, others from near and here, and acknowledge our deep gratitude at our shared access to these lands that were never ceded. Always was, always will be.

We also pay our respects to all First Nations people reading this submission and recognise the distinct contributions they make to life in this nation and on other lands.

Acknowledgement of lived experience

We are a disabled people's organisation of people with disabilities and we pay respect to all people with disability and all people with lived experience of disability reading this submission. We and acknowledge the awareness, sensitivity and deeply valuable lessons you have learned that you can share with the Australian community in your individual and group submissions to this review and in co-designing Australian laws and policy to help our community leaders improve the lives of people with disability in our country. Nothing About Us Without Us.

Acknowledgement of opportunity

'People with Disabilities WA and Sussex Street Community Law Service thanks the federal Auditor-General and members of the Disability Discrimination Act Review team at the nation's Auditor-General's Department for the opportunity to provide our comments for the Australian community's 2025 review into how our nation can better reform the federal Disability Discrimination Act 1992.

We encourage you as always to co-design all policy and legislation about us with us. Thank you.

Help and support

Before we start sharing our views, let's begin with a content warning for our members, our wider disability community, and anyone reading this submission today.

People with disability experiencing discrimination can find it distressing to remember and re-experience what they have gone through. People learning about other people's disability discrimination experience can react similarly.

With this in mind, we highlight that this submission may bring up deep emotions and reactions for you and other people and we encourage you to stay safe and seek support if you need it.

If you have immediate concerns for your safety, the safety of another person, or there is an emergency, dial triple zero in Australia or other similar numbers abroad.

The following support services can also give you help and support across the country throughout the day and night:

- Beyond Blue (1300 224 636) – A national chat line for people experiencing anxiety, depression or suicidal thoughts. You can call them, chat with or message a counsellor on webchat at www.beyondblue.org.au or visit their website for information resources.
- Blue Knot Foundation (1300 657 380) – A national helpline for adult survivors of childhood trauma. You can call them, visit their website at www.blueknot.org.au, or email helpline@blueknot.org.au.
- Kids Helpline (1800 55 1800) – A national crisis support tailored for children and young people (aged 5 to 25), available 24 hours a day, 7 days a week
- Lifeline (13 11 14) – A national crisis support and suicide prevention service, available 24/7. You can call them, text 0477 131 114 or visit their website at www.lifeline.org.au.
- National Disability Abuse and Neglect Hotline (1800 880 052) – A free independent, confidential service for reporting abuse and neglect of people with disability. You can call them between 9am and 7pm AEST/AEDT, Monday to Friday on non-public-holidays or find out more about making a complaint at www.jobaccess.gov.au/complaints-or-report-abuse/make-complaint-report-abuse.

- National Relay Service TTY/Voice Calls (133 677) or Speak and Listen (1300 555 727) – A translation service people who are d/Deaf, hard of hearing, or have a speech impairment. You can call them or learn more at www.accesshub.gov.au.
- Police (13 14 44) – A national phone line where people not experiencing an emergency can access police assistance.
- Translating and Interpreting Service (131 450) – A translating and interpreting service for non-English language speakers. You can call them or visit their website at www.tisnational.gov.au.
- 13YARN (13 92 76) – An Aboriginal and Torres Strait Islander crisis support line available 24/7. You can call them or find out more about how they can support you at www.13yarn.org.au.
- 1800ELDERHelp (1800 353 374) – A national hotline to prevent the abuse and mistreatment of older people in Australia. You can call them or learn more at www.elderrights.org.au.
- 1800RESPECT (1800 737 732) – A confidential information, counselling and support service for people who are experiencing or have experienced sexual assault or domestic violence. The service is also available to family members and friends of those who have experienced violence. You can give them a call or visit their website at www.1800RESPECT.org.au.

About us

People with Disabilities WA

Since 1981 People with Disabilities WA Inc (PWdWA) has been Western Australia's peak disability consumer organisation representing the rights, needs, and equity of all of our state's residents with a physical, intellectual, neurological, psychosocial, or sensory disability.

We are a member–based organisation and we also serve the disability community in WA with our individual and systemic advocacy services. We provide access to information, and independent individual and systemic advocacy support with a focus on people who are among our community's most vulnerable people.

PWdWA is run by and for people with disabilities and aims to amplifty the voices of all people with disabilities in Western Australia and empower them to live their best lives in our community.

Sussex Street Community Law Service

Sussex Street Community Law Service Inc (SSCLS) is a non-profit non-government community-based organisation that offers people on limited incomes access to accountable, non-judgmental and effective legal services.

Opening its doors in 1978, the Curtin University social work spin-out offers people legal advice in family, civil and minor criminal law matters, financial counselling, advocacy on welfare rights, tenancy advocacy, Disability Royal Commission advocacy, individual disability advocacy and disability discrimination advocacy.

The charity's Sussex Street Community Law Service Disability Discrimination Unit offers free legal information, advice, negotiation and limited representation for people who believe they have been discriminated against due to their disability

SSCLS draws on its expertise in the legal aspects of disability discrimination and its professional experience in undertaking non-legal advocacy support on disability-related matters including NDIS appeals, welfare rights cases, financial counselling matters and tenancy rights areas.

Preface

The Disability Discrimination Act 1992 is an ambitious Act that has caught our imaginations since the early 1990s. Members of the disability community in Australia view it with hope and see as a potential vehicle to ensuring no person with disability in Australia is discriminated against in their everyday life. We want the Act to meet our expectations and be reformed in a better way to serve us.

Unsurprisingly, the Act has failed many of us over the years, at work, at home, at school and at uni – all places where we should be equal or have equity as we go about our lives. We need to reverse this outcome. Our Act needs to serve us!

The Disability Royal Commission ran for 4.5 years in Australia and thousands of our community members shared their stories, offering an opportunity for our community to highlight how deeply the Act had let us down.

Our Royal Commissioners, who included people with disabilities, looked into violence, abuse, neglect and exploitation of people with disabilities. They heard us loud and clear. Our message to all levels of governments in Australia is clear:

> It is vitally important that the disability human rights we have enshrined in the United Nations Convention on the Rights of Persons with Disabilities are reflected in Australian laws and statutes. The Disability Discrimination Act 1992 must have teeth to ensure our rights are respected but it also must not carry the potential sting for us that it currently has. Our DDA Act must be supported by a Disability Rights Act and true culture change in the community to ensure disability rights are respected and upheld.

Like the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, our staff and members at SSCLS and PWdWA believe key actions need to be taken to better reform the DDA. Our PWdWA and SSCLS authors have articulated important recommendations from our community in the following pages. We encourage the Australian Government and the Auditor-General's department to hear people with disability's recommendations based on our lived experience, and respect the professional advocacy experience we also bring to the table by ensuring government reforms the Act in a truly meaningful way.

—Amanda Ellis and Dr Rita Kleinfeld-Fowell

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Introduction

The 2025 review of the *Disability Discrimination Act 1992* (Commonwealth) has been prompted by the 15 specific recommendations to government made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in Volume 4 of the Disability Royal Commission's Final Report of November 2023. The Royal Commission was very insightful in its observations, arguing:

> "The Disability Discrimination Act 1992 (Cth) creates little incentive for employers, schools, service providers and other duty-holders to take active measures to prevent disability discrimination. It should be amended to more effectively promote equality and enhance the right of people with disability to live free from discrimination. These reforms would be complementary to the (Disability Rights Act the government should introduce).
>
> Executive Summary – Our Vision for an Inclusive Australia and Recommendations
>
> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

The Royal Commission's recommendations form a vision for how disability discrimination can be prevented or lessened in Australia. At the heart of the reforms is a deep commitment to introduce a federal Disability Rights Act in Australia and reform the nation's Disability Discrimination Act that we have struggled to make suit us since its introduction in the early 1990s.

In this submission we specifically address issues raised by the Australian Government in response to the Royal Commission, especially those found in the federal Attorney-General's Department's *Disability Discrimination Act 1992 Review* issues paper, 'Updating understandings of disability and disability discrimination.'

We do this being conscious of the thousands of hours our fellow members of the disability community have spent in telling the commission, numerous government consultations, and our own organisations what we need from legislation and our governments. Let our voices be heard and listened to.

1. Updating Understandings of Disability and Disability Discrimination

1.1 Introduction

This section of the submission is provided in response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's review of the *Disability Discrimination Act 1992* (Cth) (the DDA) and the Australian Government Attorney-General's Department's response in its 2025 Review of the Disability Discrimination Act 1992. It addresses the critical issues the Disability Royal Commission raised, especially those issues outlined in Part 1 of the federal Attorney-General's Department *Disability Discrimination Act 1992 Review* issues paper, 'Updating understandings of disability and disability discrimination,' which addressed the need to modernise the current *Disability Discrimination Act 1992*'s foundational concepts.

The DDA has been a vital instrument in advancing the rights of people with disability in Australia. However, to remain practical and relevant, its definitions and frameworks must evolve to align with contemporary understandings of social, legal, and human rights.

This section presents my thoughts on three key areas: the definition of 'disability', addressing intersectional discrimination, and improving the Act's alignment with the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD).

1.2 Defining 'Disability' in the Act: Towards a Respectful and Robust Model

The current definition of disability in Section 4 of the DDA, while broad, is a product of its time. It leans towards a medicalised and functional limitations model, listing specific conditions and impairments. A modern definition should instead be grounded in the **social and human rights models of disability**, which understand disability as the result of the interaction between individuals with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society.

Proposed Reforms

The best way to redefine 'disability' is to adopt a definition that is:

- **Respectful and Person-Centred:** Outdated and potentially stigmatising language should be replaced in the definition of disability. The revised definition should affirm that people with disability are rights-holders, not objects of charity or medical treatment.
- **Broad and Inclusive:** The disability definition should encompass present, past, future, and imputed disabilities, as the current Act does, but do so more clearly. The definition must explicitly include physical, sensory, psychosocial, intellectual, and neurological disabilities, as well as chronic health conditions.
- **Aligned with the CRPD:** The definition should directly reflect Article 1 of the convention, which describes persons with disabilities as those "who have long-term physical, mental, intellectual or sensory impairments which in

interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

Recommended Wording

A revised Section 4 of the DDA could define 'disability' as:

> "Disability refers to a long-term physical, mental, intellectual, or sensory impairment which, in interaction with various barriers, may hinder a person's full and effective participation in society on an equal basis with others."

This definition is simple, powerful, and shifts the focus from the impairment itself to the societal barriers that create disability. It uses respectful language and is directly drawn from the international human rights instrument that Australia has ratified.

1.3 Addressing Intersectional Discrimination

The current DDA, like much anti-discrimination law in Australia, operates on a single-ground basis. A person must prove they were discriminated against 'because of' their disability. This framework is often inadequate for people who experience discrimination based on the combination of their disability and other protected attributes, such as gender, race, age, sexual orientation, or Aboriginal and Torres Strait Islander status.

For example:

- A First Nations woman with a disability may face discrimination that is distinct from what she might

experience based on her Indigeneity, gender, or disability alone.

- A young woman with a psychosocial disability may be stereotyped differently than an older man with the same condition.

This compounded disadvantage, known as **intersectional discrimination**, can leave individuals without an adequate legal remedy if a court cannot isolate disability as the sole or dominant reason for the discriminatory act.

Proposed Reforms

The Act should be amended to recognise and prohibit intersectional discrimination explicitly. This can be achieved by:

1. **Including an Express Clause:** A new section should be added stating that a person must not be discriminated against based on a combination of two or more protected attributes (e.g. disability and race, disability and sex).
2. **Providing a Cause of Action:** The Act should allow a complainant to claim intersectional discrimination, where the court or tribunal is required to consider the unique nature of the discrimination arising from the intersection of identities.
3. **Guidance for Courts:** The amended Act should include interpretive principles to assist courts in understanding that intersectional discrimination is not merely the sum of its parts but a distinct and specific form of disadvantage.

These reforms would ensure the DDA is responsive to the lived realities of diverse people with disability and would bring Australian law into closer alignment with international best practice.

1.4 Improving How the Act Refers to the CRPD

While the DDA's objectives include giving effect to the CRPD, its integration into the operative parts of the Act is limited. To truly "better refer to the Disabilities Convention," the Act must be transformed from a statute that merely prohibits discrimination into one that actively **promotes, protects, and fulfils the human rights** of people with disability, as mandated by the CRPD.

Proposed Reforms

1. **Incorporate the CRPD as a Guiding Interpretive Principle:** A new section should be inserted at the beginning of the Act stating that its objects are to give effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities. Crucially, it should mandate that **all provisions of the Act must be interpreted and applied in a way that advances the principles and rights contained in the CRPD.** This would provide a powerful tool for courts and tribunals to interpret the Disability Discrimination Act in a manner consistent with human rights.
2. **Explicitly Embed CRPD Principles:** The DDA should explicitly incorporate key CRPD principles into its substantive provisions. This includes:

- **Respect for inherent dignity, individual autonomy, and independence.**
- **Non-discrimination.**
- **Full and effective participation and inclusion in society.**
- **Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.**
- **Accessibility.**

3. **Positive Duty to Provide Reasonable Accommodation:** The concept of "reasonable adjustment" (or "reasonable accommodation" as termed in the CRPD) should be strengthened from a reactive defence to a **positive duty** imposed on employers, educators, and service providers. This shift, consistent with Article 5 of the CRPD, would obligate duty-bearers to make proactive changes to ensure the inclusion of people with disabilities.

1.5 Summary

Updating the definitions and frameworks within the Disability Discrimination Act is not a mere technical exercise. It is a necessary step to ensure the law is a living instrument that truly protects and empowers all people with disability in Australia. By adopting a human rights–based definition of disability, explicitly recognising intersectional discrimination, and deeply embedding the principles of the CRPD into the DDA's fabric, we can create a more just, inclusive, and effective legislative framework.

These changes would ensure the DDA reflects today's understanding of disability, respects the diversity of the disability community, and fulfils Australia's commitments under international law. A modernised DDA will be a stronger tool to dismantle barriers and achieve equality in everyday life.

2. Stronger Protections to Stop Discrimination Before It Happens

2.1 Introduction

This section of the submission contains a response to the Auditor-General Department's Disability Discrimination Act review issues paper, focusing on the critical proposal to introduce a **positive duty** into the current *Disability Discrimination Act 1992*. The current reactive model in the DDA, which relies on individuals making complaints after harm has occurred, places an unfair and often traumatic burden on people with disability. It is an inefficient mechanism for driving systemic change.

The introduction of a positive duty in the Act, modelled on reforms such as those in the *Sex Discrimination Act 1984* (Cth), would represent a paradigm shift. It would move the legal impetus from redress to prevention, making equality a proactive goal rather than a reactive defence. This paper outlines my thoughts on the practical obligations this duty should impose and provides a perspective on its anticipated impact and cost.

2.2 The Substance of the Positive Duty: What Duty-holders Should Do

A positive duty must be more than a vague statement of principle; it must be actionable and measurable. For employers, educational institutions, service providers, and other duty-holders, compliance should require demonstrable, ongoing efforts across several key areas. These actions align with the

principles of the CRPD, particularly Article 5—Equality and non-discrimination and Article 9 —Accessibility.

Proposed reforms

Duty-holders should be required to take reasonable and proportionate measures to:

1. Conduct Proactive Risk Assessments and Audits:

- **Identify Barriers:** Systematically assess their policies, practices, physical environments, and culture to identify existing and potential barriers to the full and equal participation of people with disability.
- **Consult with the Disability Community:** This process must not be undertaken in isolation. Duty-holders should be explicitly required to consult with people with disabilities and their representative organisations to ensure their lived experiences inform the identification of barriers and the development of solutions.

2. Implement and Maintain Accessibility Plans:

- Based on the audit, duty-holders should develop, implement, and regularly review a formal Accessibility Action Plan. This plan should be a public document outlining:
    - **Clear Objectives:** Specific, measurable goals for improving accessibility and inclusion.
    - **Timelines:** A realistic schedule for implementing changes.

- **Accountability:** Designation of responsibility for oversight and implementation within the organisation.

3. Provide Comprehensive Training and Education:

- Deliver mandatory, ongoing training to all staff and decision-makers (e.g. managers, teachers, board members) on disability rights, unconscious bias, the principles of the DDA, and the organisation's specific obligations under the positive duty. Training must be developed in consultation with people with disability to ensure it is relevant and practical.

4. Establish Robust Policies and Response Systems:

- Develop clear, accessible, and well-publicised internal policies and procedures for preventing and addressing discrimination, harassment, and victimisation. This includes ensuring safe and accessible reporting mechanisms and providing reasonable adjustments throughout internal processes.

5. Embed Universal Design and Reasonable Adjustment:

- **Proactive Design:** Integrate principles of universal design into the development of new facilities, services, products, and digital platforms to minimise the need for later adjustments.
- **Reactive Adjustments:** Implement a clear, timely, and responsive process for providing reasonable adjustments for individual employees, students, or customers, recognising this as a core component of the duty, not an exception.

2.3 The Impact and Cost of a Positive Duty: An Investment in Inclusion

The introduction of a positive duty will undoubtedly have an impact and involve costs for duty-holders. However, these must be viewed not as a mere regulatory burden, but as a necessary and ultimately beneficial investment.

A. Effect on Duty-holders:

- **Cultural Shift:** The most significant impact of reforms will be a shift in organisational cultures. Duty-holders will move from a mindset of legal compliance (avoiding complaints) to one of active inclusion (creating equitable environments). This fosters a more positive and productive environment for everyone.
- **Strategic Prioritisation:** Disability inclusion will become a strategic governance issue, requiring attention from senior leadership and boards, rather than being siloed as a minor operational or HR matter.
- **Increased Accountability:** Organisations will be accountable to the Australian Human Rights Commission (AHRC) for demonstrating their compliance, creating a powerful external driver for continuous improvement.

B. Costs for Duty-holders:

- **Initial Implementation Costs:** There will be upfront costs associated with conducting audits, developing action plans, and delivering training. For small businesses, these costs may be more keenly felt, highlighting the need for a **proportionality principle** and government support.

- **Ongoing Operational Costs:** Costs will be incurred in maintaining systems, reviewing plans, and making physical or digital modifications. The duty requires "reasonable and proportionate" measures, which inherently considers the size and resources of the duty-holder.

C. Offsetting Benefits and the Broader Economic Case:
It is crucial to balance the discussion of costs against the substantial benefits, which often outweigh the initial investment. These benefits will include:

- **Reduced Legal and Complaint Costs:** By preventing discrimination, organisations will avoid the significant costs associated with defending against complaints, legal proceedings, and potential reputational damage.
- **Access to a Larger Talent Pool and Customer Base:** Genuinely inclusive employers can tap into the skills and talents of people with disability. Businesses that are accessible gain access to a market of over 4.4 million Australians with disability, their families, and friends—a substantial economic force.
- **Improved Productivity and Innovation:** Inclusive workplaces have higher employee morale, engagement, and retention. Principles of universal design often lead to products and services that are better for all users.
- **Social Benefit:** The primary benefit is a more equitable and inclusive society where people with disability can participate fully without facing preventable barriers. This reduces societal costs related to unemployment, social exclusion, and diminished mental health.

2.4 Summary

Introducing a positive obligation into the Disability Discrimination Act is a vital and transformative reform. It rightly shifts the responsibility for preventing discrimination to the entities with the power to establish inclusive systems, rather than on individuals who are tasked with challenging exclusion.

By clearly specifying the expected duties of duty-holders and enforcing them through the Australian Human Rights Commission, the law can encourage meaningful, systemic change. Although there are costs involved, they are a justified and wise investment in creating a fairer, more productive, and truly inclusive Australia. The expense of inaction—ongoing discrimination, wasted potential, and a personal toll on individuals—is much greater.

We strongly urge the Auditor-General's Department to recommend the introduction of a robust, enforceable positive duty in the reformed Disability Discrimination Act.

Proposed Reforms

The Disability Discrimination Act should be amended to impose a **mandatory procedural obligation** on employers to engage in a collaborative, evidence-based assessment with the prospective or current employee before a conclusion on inability to perform inherent requirements can be reached. This process should be explicitly outlined and must include:

1. **A Rigorous Definition of 'Inherent Requirements':** The DDA should clarify that 'inherent requirements' are the essential, non-tradable duties of the specific position, distinct from marginal or peripheral tasks. The burden of

proving that a requirement is ‘inherent’ should rest squarely on the employer.

2. **Sequential Assessment:** An assessment under the Act must be sequential. First, the employer must identify the inherent requirements. Second, in consultation with the employee, they must explore and assess the efficacy of possible adjustments. Only after this good-faith exploration can a determination be made as to whether the employee, *with the benefit of reasonable adjustments*, is unable to perform the inherent requirements.
3. **Documentation:** Employers should be required to document this consultative process, including the adjustments considered and the reasons for their acceptance or rejection. This creates a verifiable record and promotes accountability.

These reforms shift the inquiry from a static assessment of the employee’s impairment to a dynamic assessment of the interaction between the employee (with adjustments) and the essential functions of the role.

3. Encouraging Inclusion in Employment, Education, and Public Life

3.1 Introduction

This section of the submission addresses Part 3 of the Auditor-General Department’s Disability Discrimination Act review issues paper, which concerns the critical operational mechanisms of the current federal *Disability Discrimination Act 1992* that govern

inclusion in employment, education, and public life. The current framework, while foundational, has proven insufficient to dismantle the pervasive barriers to participation. The concepts of 'reasonable adjustments', 'inherent requirements', and 'unjustifiable hardship' have been subject to judicial interpretation that has, at times, unduly narrowed the DDA's protective scope and created legal uncertainty. This paper provides detailed thoughts on proposed clarifications to the Act and reflects on the reforms necessary to give practical effect to a right to inclusion.

3.2 Fostering a Collaborative Assessment of 'Inherent Requirements'

The current formulation of the defence in Section 15(4)(a) of the DDA—that it is not discriminatory to treat a person with a disability less favourably if they are unable to carry out the 'inherent requirements' of the job—has been problematic. The determination of what is 'inherent' is often made by the employer unilaterally and *a priori*, without proper consideration of how adjustments could enable the person to meet those core requirements.

3.2 Mandating Consultation: The Duty to Inquire and Collaborate

A fundamental weakness in the current DDA is the absence of an express obligation for duty-holders to proactively consult with the person with disability to identify necessary adjustments. This places an unreasonable onus on the individual to diagnose

barriers and propose solutions, often without full knowledge of the systems or resources available.

Proposed Reforms

1. The Disability Discrimination Act should be amended to incorporate a positive duty to consult: This would require an employer, educator, or service provider to:

- Initiate timely and meaningful discussions with the person with disability.
- Approach these discussions with a presumption that an effective adjustment exists.
- Consider the individual's own suggestions and expertise regarding their needs as primary, though not necessarily determinative.

2. Failure to engage in this consultative process should be a distinct contravention of the Act and, critically, should preclude a duty-holder from successfully relying on the 'unjustifiable hardship' defence: An adjustment cannot be deemed unreasonable if the duty-holder has not made a genuine attempt to understand the need or explore alternatives.

3.3 Clarifying the Tripartite Framework: Adjustments, Inherent Requirements, and Unjustifiable Hardship

The interrelated concepts of 'reasonable adjustments', 'inherent requirements', and 'unjustifiable hardship' require statutory clarification to restore the balance the Parliament of Australia intended. Several rebalances are required.

Proposed Reforms

1. Renaming 'Reasonable Adjustments' to 'Adjustments':
The term 'reasonable' as used in the Disability Discrimination Act is inherently prejudicial, suggesting that the default position may be unreasonableness. Replacing it with the term **'adjustments'** or **'necessary adjustments'** more accurately reflects that the obligation is standard and non-negotiable, subject only to the specific, high-threshold defence of 'unjustifiable hardship'. This linguistic shift aligns with the social model of disability by framing adjustments as a right, not a concession.

2. Codifying the 'Unjustifiable Hardship' Test:
The factors in Section 11 of the DDA for determining unjustifiable hardship are currently non-exhaustive and have been applied inconsistently. The test should be strengthened by:

- **Codifying Mandatory Considerations:** The Act should mandate that, before claiming unjustifiable hardship, a duty-holder must demonstrate they have:
    - Engaged in the requisite consultation with the person.
    - Thoroughly investigated a range of alternative adjustments, including phased or cost-shared solutions.
    - Made a genuine effort to access available government subsidies or assistance.
    - Objectively quantified the costs and benefits, including the broader benefits of inclusion.

- **Raising the Threshold:** The amendments should make it clear that the threshold for unjustifiable hardship is intended to be high, and that mere inconvenience, modest cost (particularly for large organisations), or the preferences of other parties are insufficient grounds.

3. Clarifying Responsibility for Adjustments:
The Act should explicitly state that the primary responsibility for providing adjustments lies with the direct entity (the employer, education provider, or service provider). In complex scenarios, such as labour-hire arrangements, the Act should provide guidance on apportioning responsibility, ensuring the individual is not left without a remedy.

3.4 The Critical Need for Coherent Alignment with the Disability Standards for Education

The recent announcement of a limited review of the *Disability Standards for Education 2005* (DSE) poses a significant risk of creating legislative incoherence and undermining the very objectives of this comprehensive DDA review.

A. The Problem of Parallel, Inconsistent Reviews

The Disability Standards for Education are a legislative instrument made under the Disability Discrimination Act. Their purpose is to elaborate and give concrete effect to the DDA's general prohibitions in the educational context. However, as noted in the provided correspondence, the DSE have been widely criticised since their inception for failing to operate effectively and, in critical aspects, for creating interpretations that contradict the broader intentions of the DDA itself.

The current approach, wherein the DDA is being reviewed in isolation from a concurrent but narrowly scoped review of the DSE, is fundamentally flawed. It creates a high risk that:

Progressive reforms to the DDA will be neutered by outdated DSE provisions. For instance, amending the DDA to replace "reasonable adjustments" with "adjustments" and to impose robust consultation duties (as proposed in Part 3 of the Auditor-General's Department issues paper) is rendered almost meaningless if the DSE continue to grant education providers unilateral control over what is provided, as exemplified in the interpretation stemming from disability discrimination cases like *Sklavos v. Australasian College of Dermatologists*.

Legislative incoherence will be perpetuated. Contradictions between the parent Act (the DDA) and its subordinate instrument (the DSE) create legal uncertainty for students, families, and education providers alike, leading to increased litigation and decreased compliance.

B. The Inadequacy of the Current DSE Review

The announced DSE review, focusing only on "effective implementation," "inclusive decision-making," and "clear responsibilities," is unacceptably narrow. It fails to address the foundational drafting errors and substantive flaws that have been identified by the disability community for nearly two decades. This limited scope appears designed to avoid the significant structural reform the DSE require.

A prime example of this failure is the provision that vests total discretion in education staff to determine adjustments, effectively sidelining the expertise and lived experience of the

student. This directly contravenes the core CRPD principle of participation and informed choice.

C. A Unified Call for Coherent Reform

Therefore, in the strongest possible terms, we urge the Australian Government, the Auditor-General's Department and the federal Department of Education to implement specific reforms.

Proposed Reforms

1. Formally Reject the Limited Scope of the Current 2025 Review of the Disability Standards for Education: We endorse the call from disability advocacy organisations to halt the current, constrained DSE review process being conducted by the federal Department of Education.

2. Recommend a Comprehensive, Aligned Overhaul: The Department of Education, and any final report of the Auditor-General's review of the DDA must recommend that the DSE be comprehensively redrafted *in parallel and in alignment* with the modernised DDA. The revised DSE must be a true extension of the DDA's principles, not a source of contradiction.

3. Incorporate DSE Principles into the DDA Itself: As part of this reform, key substantive obligations from the DSE—particularly those concerning proactive planning, student consultation, and the provision of adjustments—should be elevated and explicitly stated within the body of the DDA itself. This would ensure that these duties are rooted directly in the primary legislation, with the DSE serving to provide the detailed, sector-specific technical guidance, not to create divergent legal tests.

To proceed with ambitious reforms to the DDA while leaving the dysfunctional DSE untouched would be an exercise in futility for students with disability. The government cannot claim to be serious about inclusion if it allows one arm of the legislative framework to undermine the other. We call upon the Auditor-General's Department to use its influential position to demand a harmonised and comprehensive reform of both the DDA and the DSE, ensuring they work in concert to guarantee the right to an inclusive education.

3.5 Prohibiting Educational Exclusion on the Basis of Disability

The practice of excluding, suspending, or 'counselling out' students with disability under the guise of being unable to accommodate them is a severe form of discrimination that fundamentally denies the right to education. While the DDA implicitly prohibits this, the law must be made unequivocal.

Proposed Reforms

A new, standalone section should be inserted into the Education Standards (or directly into the Disability Discrimination Act) that explicitly states:

> "An education provider must not suspend, exclude, or deny admission to a student on the basis that the student has a disability, or requires adjustments to participate in the educational program."

The only permissible defence should be that, after complying with the strengthened duties of consultation and exploration of

adjustments, the provider can demonstrate that enrolling the specific student would impose an unjustifiable hardship on the provider, considering the factors outlined above. This places a heavy onus on the institution to prove that *no* adjustment could facilitate participation, thereby preventing the use of disability as a pretext for exclusion.

3.6 Summary

The proposed reforms to the operational heart of the Disability Discrimination Act are essential to transform it from a statute of theoretical protection into one of practical inclusion. By mandating collaboration, clarifying obligations, raising the bar for exemptions, and explicitly prohibiting discriminatory exclusion in education, the DDA can finally provide a clear and equitable pathway for the full participation of people with disability in all areas of public life. These changes to the Act are not merely procedural; they are fundamental to realising the promise of the Convention on the Rights of Persons with Disabilities and achieving a truly inclusive society.

4. Improving Access to Justice

4.1 Introduction

This section of the submission addresses Part 4 of the Auditor-General Department's Disability Discrimination Act review issues paper, focusing on the critical imperative to strengthen access to justice for people with disability. The current *federal Disability Discrimination Act 1992* provides a foundational framework for addressing discrimination but contains significant remedial gaps, particularly concerning harassment, vilification, and discriminatory treatment within the justice system itself. A truly effective legislative scheme must not only proscribe discrimination but also offer robust protections against the hostile environments that perpetuate exclusion and deny dignity. This paper outlines necessary reforms to modernise the Act's protections against offensive behaviour and to ensure equitable treatment within the criminal justice system.

4.2 Codifying a Prohibition on Disability-Based Harassment and Strengthening Vilification Laws

The current DDA's protections against offensive behaviour are inadequate. While Section 35 of the Act prohibits an act that is "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate" a person with a disability, this provision is confined to the provision of goods and services. It does not create a general, standalone prohibition against disability-based harassment in areas such as employment, education, or in public spaces. Furthermore, the existing vilification provisions in Part 2

of the Act are narrow in scope and have proven difficult to enforce.

Proposed Reforms

1. **Enact a Standalone Cause of Action for Disability-Based Harassment:** The Disability Discrimination Act should be amended to include a new section that explicitly makes it unlawful to harass a person because of their disability, or a characteristic that appertains generally to persons with that disability. This prohibition should apply across all domains of public life covered by the Act (employment, education, provision of goods and services, etc.). The definition of harassment should be modelled on best practice from other jurisdictions, capturing any unwelcome conduct that, in the circumstances, a reasonable person would anticipate could offend, humiliate, or intimidate the person, and which occurs because of the person's disability.
2. **Strengthen and Modernise Vilification Provisions:** The DDA's existing provisions on disability vilification should be substantially strengthened. Reforms should include:
    - **Lowering the Threshold:** The current requirement in the Act for conduct that incites "hatred towards, serious contempt for, or severe ridicule of" a person or group sets an excessively high bar. This should be replaced with a prohibition on conduct that incites **hatred or severe contempt**, capturing a broader range of harmful speech.
    - **Explicit Extension to Online Conduct:** The amended section must explicitly state that it applies to the

publication or dissemination of material on the internet, including via social media platforms. This would clarify the liability of both original posters and, in certain circumstances, platforms that fail to remove vilifying content after being notified.

These changes would provide a more straightforward, more accessible legal pathway for individuals subjected to a hostile environment, sending an unequivocal message that such behaviour is unacceptable.

4.3 Applying Protections in Online Spaces

The digital environment has become a key part of public life, though the DDA's application to online spaces remains unclear. This results in a significant protection gap, as online harassment and vilification can be especially widespread and harmful.

Proposed Reforms

1. **Clarify Jurisdiction over Digital Platforms:** The Disability Discrimination Act should be amended to explicitly state that the provision of "goods, services and facilities" (Section 24) and "accommodation" (Section 25) includes the provision of digital platforms, websites, online forums, and social media services that are operating within Australia's jurisdictional reach.
2. **Impose a Positive Duty on Platform Providers:** Beyond simply clarifying jurisdiction, the DDA should impose a positive obligation on providers of large online platforms to take reasonable and proportionate measures to prevent unlawful harassment and vilification on their services. This

amendment to the Act would also require the platforms to develop accessible reporting mechanisms, act promptly to remove unlawful content, and design systems with safety-by-design principles. A defence of unjustifiable hardship would still be available, but the burden would rest on the platform to prove it had taken reasonable steps.

These measures would ensure that the Act remains relevant in the 21st century and that the rights of people with disabilities are protected in both the virtual and physical public spheres.

4.4 Ensuring Protections When Dealing with Police and the Justice System

People with disability are significantly over-represented in their interactions with the criminal justice system, both as victims and as accused persons. They face a high risk of discrimination due to a lack of understanding, inadequate training, and systemic failures to provide necessary adjustments.

Proposed Reforms

1. **Codify a Duty to Provide Adjustments in Justice Interactions:** A new section should be inserted into the Disability Discrimination Act creating an unequivocal obligation for law enforcement agencies, courts, and tribunals to make reasonable adjustments when engaging with a person with a disability. This duty would apply to all interactions, including:
    - **Police Interactions:** This duty would apply to arrests, questioning and detention, and introduce an obligation to ensure effective communication through the use of

accredited interpreters (for deaf individuals), intermediaries, or other supports for individuals with cognitive or psychosocial disabilities.

- **Court Proceedings:** This duty would extend to ensuring accessibility of courtrooms, providing information in accessible formats, and making procedural adjustments to allow for effective participation.

2. **Prohibit Discriminatory Investigation and Enforcement:** The Disability Discrimination Act should explicitly prohibit practices that constitute discrimination in the enforcement of the law. This includes failing to investigate crimes reported by people with disability with the same rigour as other reports (a form of discriminatory service provision) or using a person's disability as a pretext for heightened surveillance or enforcement action without objective justification.
3. **Mandatory Training and Guidelines:** The DDA amendments should include a requirement to develop national guidelines, in consultation with people with disabilities, on identifying disabilities and providing adjustments in justice settings. While not establishing a direct cause of action, such guidelines would act as a crucial benchmark for evaluating compliance with the new duties.

4.5 Summary

Strengthening the Disability Discrimination Act's protections against harassment and vilification, both online and offline, and ensuring non-discriminatory treatment within the justice system are essential steps towards genuine access to justice. Without these reforms, the promise of the DDA remains incomplete. By addressing these critical gaps in the current Act, the law can better fulfil its role in safeguarding the safety, dignity, and equal citizenship of all people with disability.

5. A Principled Review of Exemptions

5.1 Introduction

This section of the submission addresses Part 5 of the Auditor-General Department's Disability Discrimination Act review issues paper, which concerns the scope and application of exemptions under the federal *Disability Discrimination Act 1992*. Exemptions, by their nature, deviate from the fundamental principle of non-discrimination. Their ongoing justification must be carefully evaluated against the objectives and purpose of the Disability Discrimination Act and Australia's international obligations under the Convention on the Rights of Persons with Disabilities. A rights-based framework demands that any exemptions be limited, precise, necessary, and proportionate. This paper presents views on reforming both permanent and temporary exemption mechanisms to ensure they do not unjustifiably weaken the DDA's protective scope.

5.2 Reforming Permanent Exemptions: A Strict and Rights-Based Approach

The current suite of permanent exemptions in the DDA requires critical re-evaluation. The guiding principle for reform should be that any exemption must be demonstrably necessary to achieve a legitimate aim that is consistent with the CRPD and must be the least restrictive means of achieving that aim.

Proposed Reforms

Reforms to the Disability Discrimination Act's permanent exemptions need to be made.

1. The 'special Measures' Exemption (Section 45):
Section 45, which permits actions that constitute "special measures," is a vital mechanism for achieving substantive equality. However, its application could be strengthened to better align with the CRPD.

- **Proposed Improvement:** The provision should be amended to explicitly frame special measures not merely as permissible exceptions, but as **positive measures** that are encouraged to accelerate de facto equality. The language should be reframed from an "exemption" to an "affirmative action" clause, consistent with Article 5(4) of the Convention on the Rights of Persons with Disabilities.
- **Clarifying Criteria:** The amended section should include non-exhaustive criteria to guide the assessment of what constitutes a valid special measure, including:
    1. The measure must be designed to achieve a legitimate objective consistent with the CRPD (e.g. promoting inclusion, redressing disadvantage).
    2. The measure must be proportionate and necessary to achieve that objective.
    3. The measure must be developed in consultation with, and for the benefit of, the relevant group of people with disability.

4. The measure must be temporary, ceasing once its objectives have been achieved.

This clarification would provide greater certainty and ensure that such measures are used appropriately to advance equality, rather than to perpetuate segregation or paternalism.

2. Other Permanent Exemptions:
Other permanent exemptions in the DDA, such as those for insurance and superannuation (Section 46), must be subjected to a strict necessity and proportionality test.

- **Insurance and Superannuation (Section 46):** This exemption, which allows for actuarial or statistical data to be used in assessing risk, must be tightened. The Act should be amended to require that any reliance on such data is:
    - **Reasonable, Relevant and Up-to-Date:** The data used must be current, scientifically sound, and directly relevant to the assessment of the individual risk.
    - **Subject to Individual Assessment:** Where practicable, the exemption should not permit blanket exclusions but should require an individualised assessment based on the available data.
    - **Transparent:** The duty-holder should be required to disclose, upon request, the data upon which a discriminatory decision was based.

A general review of all permanent exemptions should be conducted with a presumption of repeal, unless a compelling, evidence-based case can be made for their continued necessity in a form that is narrowly tailored to achieve a legitimate aim.

5.3 Reforming the Temporary Exemption Process: Enhancing Rigour, Transparency and Rights-Compatibility

The authority of the Australian Human Rights Commission (AHRC) to issue temporary exemptions under Section 55 of the DDA is a considerable discretionary power that can halt the operation of the Act for particular entities. The current procedure lacks the rigour and safeguards necessary to guarantee that exemptions are granted only in rare or exceptional cases.

Proposed Reforms

Reforms to temporary exemptions need to be made.
These should:

1. **Establish a Statutory Test of "Exceptional Circumstance":** The Disability Discrimination Act should be amended to state that a temporary exemption may **only** be granted where the applicant demonstrates that it is necessary due to **exceptional circumstances**. This would create a high threshold, preventing exemptions from being sought as a matter of convenience for compliance planning.
2. **Require Mandatory Consultation as a Condition Precedent:** The grant of a temporary exemption should be conditional upon the applicant undertaking a process of genuine consultation with relevant organisations of people with disability regarding the need for, and terms of, the exemption. The application to the AHRC must include a report detailing the consultation undertaken and how the views of people with disability have been considered.

3. **Incorporate an Action Plan:** An exemption should not simply permit non-compliance. The AHRC should be empowered to grant an exemption **only** if it is coupled with a binding and publicly available Action Plan, submitted by the applicant, that outlines:
    - The specific barriers to immediate compliance.
    - The concrete steps and timeline for achieving full compliance within the exemption period.
    - The interim measures that will be taken to minimise discrimination during the exemption period.
4. **Shorten Exemption Durations and Ensure Stricter Review:** The maximum duration for any temporary exemption should be reduced (e.g. to a maximum of 12 to 24 months). Any application for a renewal must be subject to an even stricter test, requiring evidence of substantial progress against the Action Plan.
5. **Introduce a Merits Review:** Decisions by the AHRC to grant or refuse a temporary exemption should be subject to merits review by the Administrative Appeals Tribunal. This would provide an essential check on the exercise of this significant power, ensuring consistency and legality in decision-making.

5.4 Summary

The exemptions within the Disability Discrimination Act must not be static legacies but should be dynamically interpreted and, where necessary, amended to ensure they serve, rather than undermine, the DDA's objectives. Reforming permanent

exemptions through a strict necessity and proportionality lens, and overhauling the temporary exemption process to incorporate consultation, conditionality, and transparency, are essential steps to recalibrate the balance struck by the Act. The ultimate goal must be to narrow the scope of exemptions, ensuring the DDA operates as a robust and comprehensive charter of rights for people with disability in Australia.

6. Modernising the Act—Assistance Animals, Disability Action Plans, and Standards

6.1 Introduction

This section of the submission addresses Part 6 of the Auditor-General Department's Disability Discrimination Act review issues paper, which concerns key operational mechanisms for modernising the federal *Disability Discrimination Act 1992*. The efficacy of the DDA depends not only on its core prohibitions but on the clarity and enforceability of its specific provisions. Ambiguity in areas such as assistance animals, the voluntary nature of Disability Action Plans (DAPs), and the enforcement of Disability Standards creates uncertainty for both rights-holders and duty-holders, ultimately undermining the Act's objectives. This paper provides views on refining these provisions to enhance practical compliance and substantive inclusion.

6.2 Clarifying Protections for People with Assistance Animals

The current provisions in Part 2A of the DDA regarding assistance animals create significant practical difficulties. The definition relies on the animal being "trained to assist a person with a disability to alleviate the effect of the disability" and being accredited under a state/territory law or "trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place." This dual pathway is a source of confusion and inconsistency, particularly for animals trained by their owners or for emerging disability types.

Proposed Reforms

1. **Adopt a Functional, Outcomes-Based Definition:** The Disability Discrimination Act should shift from a prescriptive focus on formal certification to a functional definition centred on the animal's behaviour and the user's need. The test for a duty-holder should be whether:
    - The animal is *identifiable* as assisting a person with a disability (e.g. through a harness, vest, or other appropriate means); and
    - The person with a disability can provide a credible assurance that the animal is *trained to a standard of hygiene and behaviour* suitable for a public environment.
2. **Limit Permissible Inquiries:** The DDA should explicitly restrict the questions a duty-holder may ask a person accompanied by an assistance animal. Permissible inquiries should be confined to:
    - "Is the animal required because of a disability?"
    - "What work or task has the animal been trained to perform?"
    - Duty-holders should be expressly prohibited from demanding access to medical documentation or detailed certification papers, which can be invasive and impractical.
3. **Create a National Code of Practice:** To support this functional approach, the Attorney-General should be empowered to approve a National Code of Practice for

Assistance Animals, developed in consultation with the disability community. This code would provide clear, nationally consistent guidance on appropriate training, behaviour, and identification, offering certainty for both users and duty-holders without creating a mandatory, exclusionary certification regime.

6.3 Improving Disability Action Plans: From Voluntary to Mandatory and Meaningful

The current provision for voluntary Disability Action Plans in Section 61 of the DDA has failed to drive widespread cultural change. While some organisations have adopted DAPs, their voluntary nature means that many entities, including major public and private bodies, have no obligation to proactively plan for inclusion.

Proposed Reforms

1. **Introduce a Mandatory Disability Action Plan Requirement for Public Authorities and Large Organisations:** The Disability Discrimination Act should be amended to impose a mandatory obligation on defined entities—such as all Commonwealth and state public authorities, and corporations over a specified size or revenue threshold—to develop, implement, and regularly review a DAP.
2. **Specify Minimum Content Requirements:** The DDA or associated Regulations should stipulate the minimum requirements for a DAP, ensuring it is a substantive document. This must include:

- **A Barrier Identification Audit:** A systematic review of policies, practices, and physical and digital environments.
- **Measurable Goals and Targets:** Specific, time-bound objectives for removing barriers and improving accessibility.
- **Consultation Obligations:** A requirement that the DAP be developed in genuine consultation with people with disability and their representative organisations.
- **Public Reporting:** A requirement to publish the DAP and annual progress reports on its implementation, fostering public accountability.

3. **Link to the Positive Duty:** The development and implementation of a DAP should be recognised as a core component of fulfilling the proposed positive duty (as discussed in Part 2 of the Auditor-General's Department's Disability Discrimination Act review issues paper), providing a structured framework for compliance.

6.4 Strengthening Compliance and Enforcement of Disability Standards

Disability Standards, made under Sections 31 and 32 of the DDA, are a critical tool for providing detailed, sector-specific guidance. However, their effectiveness is hampered by weak enforcement mechanisms and a lack of systemic compliance monitoring.

Proposed Reforms

1. **Introduce Proactive Compliance Auditing:** The Australian Human Rights Commission should be empowered and funded to conduct random, proactive compliance audits of duty-holders subject to Disability Standards (e.g. public transport operators, educational institutions, building managers). This shifts the enforcement model from being purely complaint-based to one that can identify and rectify systemic non-compliance before individuals are harmed.
2. **Enhance Reporting Obligations:** The Disability Discrimination Act should be amended to require entities governed by Disability Standards to submit regular, detailed compliance reports to the AHRC. These reports should be publicly available, creating a transparent record of performance and enabling benchmarking across industries.
3. **Clarify and Strengthen Consequences for Non-Compliance:** The consequences for breaching a Disability Standard should be made more transparent and more significant. This includes:
    - **Civil Penalty Provisions:** For serious or systemic breaches, the AHRC should be able to seek civil penalties from the Federal Court, creating a meaningful financial deterrent.
    - **Enforceable Undertakings:** The AHRC should be empowered to accept enforceable undertakings from duty-holders, which are legally binding agreements to take specific remedial action. Breach of an undertaking would then be enforceable by a court.

4. **Mandate Review of Standards:** The Act should require a mandatory, public review of each Disability Standard every five years to ensure they keep pace with technological change and evolving community expectations.

6.5 Summary

Modernising these specific provisions of the Disability Discrimination Act is essential to translating its broad principles into tangible outcomes. By clarifying the law on assistance animals, transforming Disability Action Plans from a voluntary gesture into a mandatory tool for strategic inclusion, and creating a robust, proactive regime for enforcing Disability Standards, the DDA can become a more powerful and effective instrument for achieving a barrier-free Australia. These reforms to the Act are a necessary culmination of the broader modernisation agenda, ensuring the law operates with clarity, purpose, and force.

7. Further Options for Reform—A Holistic Modernisation

7.1 Introduction

This concluding section of this submission for the comprehensive review of the *Disability Discrimination Act 1992* addresses overarching structural and procedural issues that are fundamental to the DDA's efficacy. Beyond the substantive reforms proposed in previous parts, the modernisation process presents an opportunity to enhance the Act's coherence, accessibility, and practical utility. This paper outlines further considerations, drawing on lessons from other jurisdictions and focusing on the ecosystem in which the law operates, including the clarity of its drafting and the support mechanisms available for compliance.

7.2 Lessons from Other Anti-Discrimination Laws

A comparative analysis of domestic and international anti-discrimination frameworks reveals several best practices that could be incorporated into a modernised DDA.

- **The Model of the federal *Sex Discrimination Act 1984*:** The recent introduction of a positive duty in the Sex Discrimination Act provides a directly applicable template for the DDA. The associated guidance materials and enforcement powers granted to the Australian Human Rights Commission offer a proven model that can be adapted to address disability discrimination, ensure legislative consistency, and leverage institutional expertise.

- **The Equality Act 2010 (UK):** The UK's consolidated approach, although not without its challenges, shows the advantage of a unified legislative framework. While a complete consolidation of Australian federal anti-discrimination laws may be a longer-term endeavour, the DDA review can incorporate key features of the UK Act, such as:
    - **A Clearer Test for Indirect Discrimination:** Providing a more precise definition of when a seemingly neutral provision, criterion, or practice puts a person with a disability at a particular disadvantage.
    - **Prohibition of Discrimination by Association:** Explicitly making it unlawful to discriminate against a person because they are associated with a person with a disability (e.g. a carer or family member).
- **The *Americans with Disabilities Act* (ADA):** The ADA's emphasis on architectural and communication barriers, enforced through detailed standards and a robust litigation framework, underscores the importance of specific, technical standards backed by strong enforcement mechanisms. This reinforces the need for strengthened Disability Standards, as proposed in Part 6 of the Auditor-General Department's Disability Discrimination Act review issues paper.

7.3 Enhancing Legislative Clarity and Accessibility

The current DDA is a product of incremental amendment, resulting in a complex structure that can be difficult for non-lawyers, including many rights-holders and duty-holders, to navigate. A rewritten Act should prioritise plain English and logical structure.

Proposed Reforms

1. **Restructuring and Plain Language Redrafting:** The Disability Discrimination Act should be comprehensively restructured into a more logical sequence: Definitions, Objects and Guiding Principles, Prohibited Conduct (direct/indirect discrimination, harassment, victimisation), Positive Duties, Exemptions and Defences, and Enforcement. The DDA's language should be modernised to be unambiguous.
2. **Incorporation of a Statutory Statement of Objects and Principles:** A strengthened objects clause should be inserted at the outset, explicitly referencing the Convention on the Rights of Persons with Disabilities and outlining the Act's purpose as not merely to prohibit discrimination, but to achieve substantive equality and full social inclusion. This would serve as a key interpretive aid for courts.
3. **Guidance Notes and Examples:** The inclusion of non-exhaustive examples within the Act itself, illustrating how key provisions apply in practical scenarios (e.g. what constitutes a reasonable adjustment in a retail setting), would greatly enhance understanding and predictability.

7.4 Support and Help for Duty-holders

Effective compliance requires more than the threat of sanction; it requires capacity-building. Many duty-holders, particularly small- and medium-sized enterprises (SMEs), lack the necessary resources or expertise to understand their obligations fully.

Proposed Reforms

1. **Centralised and Accredited Resources:** The AHRC should be funded to develop and maintain a comprehensive, plain-language online resource hub. This hub should include:
    - **Sector-specific guides (e.g. for hospitality, retail, small business).**
    - **Template policies and checklists for conducting accessibility audits and developing Disability Action Plans.**
    - **A register of accredited consultants who can provide advice on compliance.**
2. **Financial and Practical Support for SMEs:** The government should explore mechanisms to lower the cost of compliance for SMEs. This could include:
    - **Tax Incentives:** Deductions or rebates for expenses related to accessibility improvements, such as physical modifications or purchasing assistive technology.
    - **Grants Programs:** Targeted funding to help small businesses undertake necessary modifications.

- **A ‘Safe Harbour’ Provision:** Consider introducing a provision whereby a duty-holder who has demonstrably sought and acted upon advice from an accredited source or the AHRC may be afforded a mitigation in penalty in the event of a breach, encouraging proactive compliance.

7.5 Other Necessary Changes

Other additional reforms to the DDA are required to modernise the Act and widen the scope of its obligations.

Proposed Reforms:

1. **Strengthening the Role of the Australian Human Rights Commission:** To effectively enforce a positive duty and conduct audits of Disability Standards, the Australian Human Rights Commission must be provided with sufficient, ongoing funding and enhanced investigative powers. This includes the power to initiate systemic inquiries *sua sponte* (on its own initiative) and to seek civil penalties for serious contraventions.
2. **Addressing Digital Accessibility as a Core Obligation:** The Disability Discrimination Act should explicitly recognise access to digital infrastructure, websites, and mobile applications as a fundamental aspect of accessing goods, services, and facilities. This could be achieved by referencing the Web Content Accessibility Guidelines (WCAG) as a benchmark for compliance within the definition of “reasonable adjustment” or through a specific Digital Accessibility Standard.

3. **Review of the Carve-out for Inherent Requirements:** As part of the broader review, the continued appropriateness and scope of the "inherent requirements" defence in employment should be critically examined to ensure it is not applied in an overly broad manner that undermines the duty to provide adjustments.

7.6 Summary

The modernisation of the Disability Discrimination Act is a once-in-a-generation opportunity to create a legislative framework that is not only robust in its protection of rights but also intelligible, practical, and supportive of compliance. By learning from other jurisdictions, prioritising clarity, investing in support mechanisms for duty-holders, and making other strategic changes, the reformed Act can become a more effective and enduring instrument for achieving the full inclusion and participation of people with disability in Australian society. A holistic approach that considers the law in its operational context is essential for bringing legal principles to life.

8. A Final Word: On Systemic Advocacy and Enduring Change

8.1 Introduction

This final addendum section to this submission on opportunities to reform the Disability Discrimination Act acknowledges the profound debt this review owes to the decades of courageous advocacy by people with disability, their families, and representative organisations. The preceding sections have detailed specific legislative amendments. This concluding comment addresses the meta-principle that must underpin the reformed DDA: the Act must be designed not as a static document, but as a dynamic instrument for systemic change that actively dismantles the power imbalances it seeks to redress.

8.2 Beyond Individual Redress: Embedding a Mechanism for Systemic Advocacy

The primary flaw of the current DDA is its reliance on an individualised, complaints-based model. This places the onus on the victim of discrimination to initiate and pursue action, a process that is often adversarial, retraumatising, and resource-intensive. While the proposed positive duty is a critical step away from this model, the reformed Act must go further to empower systemic advocacy.

Proposed Reforms:

- **A Statutory Cause of Action for Representative Bodies:** The Disability Discrimination Act should be amended to grant standing to designated disability

representative organisations to bring proceedings in their own name for alleged contraventions of the DDA, particularly the positive duty. This would allow organisations to address systemic patterns of discrimination without requiring an individual complainant to put themselves forward, protecting individuals from victimisation and enabling the targeting of institution-wide practices.

- **Public Interest Interventions:** The Act should explicitly encourage and facilitate interventions by disability advocacy groups in proceedings before courts and tribunals that raise issues of general importance, ensuring that the court benefits from the expertise and perspective of the disability community.

8.3 Legislating the Principle of 'Nothing About Us Without Us'

The consistent call from the Disability Royal Commission and other inquiries is for the full and direct participation of people with disability in the decisions that affect their lives. This principle must be moved from a guiding sentiment to a concrete legislative requirement.

Recommended Reforms:

- **A Statutory Obligation for Co-Design:** The Disability Discrimination Act should impose a statutory obligation on the Attorney-General's Department and the Australian Human Rights Commission to ensure that people with disability and their representative organisations are central partners in the **co-design** of all future Disability Standards,

guidelines, and major compliance tools developed under the DDA. This should be specified as a non-delegable duty.

- **Establishing a Permanent Advisory Council:** The Act should establish a statutory, independently funded Disability Discrimination Act Advisory Council, with a membership comprising a majority of people with lived experience of disability. This council's mandate would be to provide ongoing, formal advice to the AHRC and the Attorney-General on the operation, enforcement, and future amendment of the Act.

8.4 Ensuring the Act is Future-Proofed

A recurring theme in past reviews is that the law lags behind societal and technological change. The reformed Act must be built with adaptability in mind.

Proposed Reforms

- **A Mandatory Independent Review Clause:** The Disability Discrimination Act should include a provision requiring an independent, public review of its operation to be tabled in Parliament every five years. This DDA review must assess the Act's effectiveness in achieving its objects and must specifically consult with people with disability. This creates a permanent feedback loop for continuous improvement.
- **A Broad Power to Develop New Standards:** The federal Minister for Disability's power to formulate new Disability Standards should be broadened beyond education, employment, and public transport to include other critical areas of public life, such as healthcare, the justice system,

and digital service provision, allowing the government to respond proactively to emerging barriers.

8.5 Concluding Reflection

The trauma and exhaustion borne by the disability community in repeatedly giving evidence must be met with more than just gratitude; it must be met with transformative action. This Disability Discrimination Act review cannot result in mere legislative-tinkering. The ultimate test of the reformed DDA will not be the elegance of its clauses, but whether it shifts power—from a model that requires people with disability to fight for their rights to one that imposes an affirmative, enforceable obligation on society to include them.

The changes proposed throughout this submission are interconnected. Robust standards give teeth to positive duties; standards are made meaningful by effective enforcement, and enforcement is guided by the lived experience embedded through co-design. By adopting a holistic approach that values systemic advocacy as much as individual remedy, this review can produce an Act that truly honours the struggle and wisdom of the community it serves.

Case studies

Case Study A – Jett

Alex and Michelle are a neurodiverse couple and parents of a child with multiple disabilities. Michelle has ADHD and Alex probably has autism. Michelle could tell her energetic nine-year-old son was neurodivergent too, so she's gone down the long process of getting him diagnosed. He has AuDHD – autism and attention deficit hyperactivity disorder, plus global anxiety disorder too.

Jett often feels anxious at school and can be loud. He doesn't like being told what to do and often challenges authority. It's pretty clear he needs reasonable adjustments in class, like a quiet working space and extra time to do his work, but he's not getting them. He doesn't know how to ask for things to be any different, in a way the school will listen to at least.

The private school Jett attends is strict with its students and expects quiet in the classroom, and students to finish their tests on time. Jett is often in trouble and once overheard two teachers talking about him once, saying "does he have to be so naughty all the time." He feels hated, like he has no friends or teachers that like him. He doesn't want to go to school anymore. When his parents try to persuade him, he tells them he'd rather die.

Michelle and Alex feel they have run out of options with the school. When he goes, Jett is treated like a naughty boy and is being punished regularly in line with a policy on bad behaviour in school. Sometimes he is locked in another room off his classroom. He is developing agrophobia. When the parents find out he should have an Individualised Education Plan with

reasonable adjustments and try and get the school on board and fail, they don't know what to do next. Michelle sees a promo at the library for Discrimination Cafe and goes along. She tells her story and people are outraged. They tell her Jett is experiencing disability discrimination.

Michelle hears about a disability discrimination law service at Sussex Street Community Law Services and goes to see a lawyer there. The lawyer says they have a case, as the school failed to make reasonable adjustments for the child as agreed and documented in an Individualised Education Plan. The private school's choice to manage Jett's behaviour from his disabilities as bad behaviour was the wrong call, and it went badly for Jett and his parents. The lawyer says by not developing an Individualised Education Plan the school was in the wrong and Jett and his parents suffered as a result.

With their DDU lawyer's help, Michelle and Alex lodge a complaint with the Australian Human Rights Commission and asks Sussex Street's Disability Discrimination Unit for assistance. DDU provides legal advice then representation for the Jett and his parents in a case Conciliation Conference. The DDU negotiates for all of the outcomes the parents were seeking for their family.

Outcome: The school issues a private apology to the parents, agrees to undertake training for all its staff, pays $20,000 in general damages to the family, and also offers the parents the opportunity to meet with the Board and Governing Body of the private school to share their experience and suggestions on how to improve school for children with disabilities.

Case Study B – Penelope

Penelope is a worker with disability in her 40s who has just quit her job and is suing her old employer. She says that although her employer knew she used a wheelchair, they discriminated against by her by not providing reasonable adjustments such as accessible toilets, flexible breaks, and flexible work-from-home arrangements. Without those adjustments, she felt compelled to resign and her lawyer agrees.

Pen has a disability discrimination lawyer on board to help her out with a complaint to the Australian Human Rights Commission.

Outcome: The disability lawyers and Pen attend a Case Conference together with the employer's representative and she is issued a private apology. The employer also agrees to pay her compensation and undergo anti-discrimination training. Pen feels glad other people who might work at her old job might get a better time than she did. The money helps her look for another job, but it's not much in the scheme of things. She hopes to find a disability-friendly employer next time.

Case Study C – Jessie

Petra is a single mother who lives in the inner city with her young daughter Jessie. The seven-year-old has cerebral palsy and lives with intellectual disability. The CP affects Jessie's mobility out-and-about and at school. The school often makes decisions without thinking about Jessie's needs. Some of their decisions make Petra really mad. These decisions include putting Jessie in a classroom really far away from a ramp, and expecting Jessie to use stairs that have no handrails. Petra worries Jessie will slip and fall, and asks the school to move the class to a different

classroom closer to the ramp. She also wants them to install handrails for the sake of all the children and stair-users at the school. Petra gets nowhere. Her relationship with the school is at an impasse.

Petra is thinking of pulling Jessie out of school but instead googles "forcing schools to make classrooms accessible." She realises that by making Jessie use an inaccessible classroom, the school is discriminating against her little one. The mum then searches up accessibility lawyers and two names come up. She considers Legal Aid's Disability Legal WA, then goes with Sussex Street Community Law Service's Disability Discrimination Unit in Belmont near her work at the library.

Sussex Street's DDU agrees to provide legal advice and assists Petra to draft a letter to a representative for the school, raising the mother's concerns and inviting the rep to intervene because of the relationship breakdown.

Outcome: The complaint is successfully resolved. The responsible person assesses the matter, acknowledges Petra's concern, and got handrails installed. Jessie now enjoys pulling herself up the stairs sometimes, and counts every step. Petra feels lighter. She's keeping Jessie at the school and is enjoying focusing on other things in her spare time.

Case Study D – Jack

A man called Jack is bullied at his workplace because of his disability and sexual orientation. Although Jack knows he's got rights, he's been suspended from his so-called supported workplace for disruptive behaviour. He knows they object to his

negative reaction to the bullying but Jack thinks this is unfair and decides to find a lawyer.

Jack talks over options on what to ask for with the lawyer and says he's keen to return to his job but wants his workplace to do better. He wants the higher-ups to take proactive steps to stop the bullying by conducting a proper investigation into his complaint, stop the bullying and ban the main bully from attending the workplace.

Sussex Street Community Law Services' lawyers help out Jack with legal advice and facilitate a meeting between him and the employer's representatives. The reps agree to investigate the allegations and take steps to prevent the alleged abuser from attending the workplace and reinstate Jack without penalties around his suspension. Jack goes back to work and starts to make friends. He's feeling safer and affirmed. Life really does work out sometimes.