

24 October 2025

Disability Discrimination Act Review Team
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Submitted to: <https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/consultation/>

Dear Review Team,

Disability Discrimination Act Review

The APS welcomes the opportunity to provide the following submission responding to the *Disability Discrimination Act 1992* (DDA) Review (the Review).

As the largest and longest-standing professional association for psychologists in Australia, the APS advocates for the vital contribution psychology makes to the health and wellbeing of individuals, families, organisations and communities. Psychologists work with people with disability across a range of settings including schools, under the National Disability Insurance Scheme, hospitals and in private practice. Psychologists can offer interventions such as specialised assessment, mental health treatment, skills training (e.g., communication), pain management, positive behaviour support, capacity building and community engagement strategies.

The APS commends the Australian Government for undertaking this important Review of the DDA which has not undergone significant reform since 2009.¹ We advocate for the elimination of all forms of discrimination, including disability discrimination, which is a determinant of health inequity that ultimately has a detrimental impact on overall health and wellbeing.² Aligned with the social model of disability, the APS recognises that it is often not an individual's impairment that creates vulnerability, but rather the inequitable structures and systems which people with disability navigate.³

As many of the Review's considerations are beyond the scope of APS' expertise, we have not addressed all the *Issues Paper* questions in this submission. Instead, we have focussed on the psychological harm associated with disability discrimination and outlined our broad support for recommendations made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission, [DRC]). The DRC, which was conducted over four years, heard from almost 10,000 people and reported that people with disability are not adequately protected from violence, abuse, neglect and exploitation.⁴ Consequently, the DRC made several recommendations in its Final Report regarding amendments to the DDA to strengthen protections for people with disability.⁵

Prevalence and psychological harm associated with disability discrimination

The prevalence of disability discrimination is likely to be higher than the data suggests because people are often reluctant to report when it occurs. A population-based research survey found that 14% of Australians aged 15-24 with disability reported that they had experienced interpersonal disability-related discrimination in the preceding year.² Similarly, another Australian survey found that 15% of people with disability aged over 55 years reported experiencing discrimination.⁶ In this study, people living with profound/severe disability were more likely to report discrimination (18%), compared with older Australians with moderate/mild disability (12%).⁶ People with a psychosocial disability are also more likely to report exposure to discrimination, with an Australian Bureau of Statistics survey finding that 24.5% of people with psychosocial disability over 15 years of age reported experiencing discrimination in the preceding 12 months, compared with 5.2% of people with another type of disability.⁷

The detrimental impact of disability discrimination on physical and mental health is well established.^{2,6} Studies have found that exposure to disability discrimination is associated with increased psychological distress and poorer health, as well as reduced levels of trust, self-efficacy and life satisfaction.^{2,6} Cumulative exposure to discrimination is particularly damaging to mental health and wellbeing. Consequently, research exploring disability discrimination is likely to underestimate its effects, as studies are often cross-sectional in nature and typically only survey people's experiences of interpersonal discrimination, rather than also exploring experiences of structural discrimination.^{2,6}

The relationship between discrimination and health outcomes is further complicated by the compounding effect of intersectional disadvantage. As outlined in the *Issues Paper*⁵, intersectionality recognises that a person or group of people can be affected by multiple and compounding forms of discrimination and disadvantage due to a range of characteristics or attributes, including but not limited to their race, sex, gender identity, sexual orientation, disability, class, religion and age. Intersectionality may also refer to a person who has multiple disabilities, such as a person with physical and psychosocial disabilities.⁵ Typically, the effects of intersectional disadvantage are difficult to investigate quantitatively as the number of individuals who share particular combinations of characteristics are limited.⁸

The APS commends the discussion about intersectionality in the *Issues Paper*⁵ and draws attention to the need to better support vulnerable groups of people who experience discrimination based on multiple characteristics. We support amendments being made to the DDA that recognise the intersectional nature of discrimination and enable stronger protections for people with disability against intersectional discrimination. This includes endorsement of mechanisms which will enable people with disability who have been discriminated against because of multiple attributes to more easily bring discrimination complaints under the DDA.

Determination of disability discrimination

As identified in the *Issues Paper*⁵, several stakeholders, including the DRC, have recommended that the comparator test for direct discrimination, which requires that a person with disability proves they have been treated less favourably than a person without disability in the same circumstances, is removed. Finding a comparator can be a difficult and artificial undertaking, particularly for people experiencing discrimination based on multiple attributes. Applying the comparator test can also take the focus away from the harm experienced by the person with disability.¹ The APS supports the DRC's proposal that the comparator test is replaced by the detriment test, which focuses instead on whether the person with a disability has been treated unfavourably because of a particular attribute.

As identified in the *Issues Paper*⁵, using the detriment test instead of the comparator test has been recommended in several reviews over the past few decades, with anti-discrimination legislation in Victoria and the Australian Capital Territory also using the detriment test.

The Disabilities Convention

The United Nations Convention for the Rights of Persons with Disabilities (the Disabilities Convention) is underpinned by the guiding human rights principles of equality and non-discrimination.⁹ The Australian Government ratified the Disabilities Convention in 2008 and is obligated to ensure that domestic laws respect, protect and fulfill the human rights of people with disability.¹⁰ The APS endorses the DRC recommendation that the DDA, which predates the Disabilities Convention, is amended to reference the Disabilities Convention in its objects provision and that the DDA is explicitly interpreted to protect the human rights of people with disability. We understand that strengthening the link between the Disabilities Convention and the DDA is anticipated to facilitate both symbolic and substantive benefits for people with disability.⁵ Given this, the APS commends its consideration and supports its implementation.

Positive duty to eliminate disability discrimination

The DDA currently relies on reactive, complaints-based mechanisms to protect the rights of people with disability. The DRC recommended the introduction of a positive duty to eliminate disability discrimination which aims to shift the focus of duty holders towards the prevention of discrimination. A similar positive duty was added to the *Sex Discrimination Act 1984* in 2022.¹¹ As outlined in the *Issues Paper*⁵, a positive duty would require that duty holders take reasonable and proportionate measures to eliminate disability discrimination, as far as possible. This recommendation also provides that the size of a person's business or operations, and a person's resources, should be taken into account when determining whether a measure is reasonable and proportionate.

Aligned with the DRC recommendation, the APS endorses the introduction of a positive duty to eliminate disability discrimination to better protect the rights of people with disability. As outlined in the *Issues Paper*⁵, the Australian Government recognises that if a positive duty was to be adopted that the measures that a small business would be required to take would likely be different to and less than those of a large corporation. The APS appreciates that the Australian Government intends to develop appropriate guidance, if the proposed reforms are adopted, to ensure that duty holders are equipped to meet their obligations. APS members work across a diverse range of sectors and there may be a role for psychologists, including organisational psychologists, to support duty holders to develop policies and facilitate organisational cultural change to prevent disability discrimination. Given this, the APS would be pleased to assist in the development of this initiative, if it were to proceed.

Inclusion of people with disability in employment

Engagement in meaningful work can have a positive impact on the health and wellbeing of people with disability.¹² The APS provides broad support for amendments proposed in the *Issues Paper*⁵ that aim to facilitate access and engagement in meaningful employment for people with disability and reduce the barriers to seeking and maintaining meaningful employment.

This includes providing greater clarity regarding the obligations of duty holders to make adjustments that do not cause unjustifiable hardship, while recognising that duty holders will not be responsible for circumstances that are beyond their knowledge or control.

The APS also broadly supports strategies that encourage greater dialogue and consultation between prospective or current employers with prospective or current employees regarding potential adjustments and the ability of a person with disability to perform the required duties. As outlined in the *Issues Paper*⁶, the intention of the DRC proposed amendments is to encourage appropriate consultation with the person with disability and facilitate decision-making by prospective or current employers that is based on accurate information, rather than assumptions or bias. If these amendments are adopted, consideration will need to be given to the resources required by small organisations to meet any new obligations. As outlined above, psychologists, including organisational psychologists, may play a role in supporting duty holders that are considering job redesign and the scope of adjustments that could be made.

We consent to our submission being made publicly available. If any further information is required from the APS, I would be happy to be contacted through the National Office on (03) 8662 3300 or by email at z.burgess@psychology.org.au.

Yours sincerely,

Dr Zena Burgess, FAPS FAICD
Chief Executive Officer

The APS would like to acknowledge and sincerely thank the members who so kindly contributed their time, knowledge, experience and evidence-based research to the development of this submission.

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