

Submission to the Review of the *Disability Discrimination* *Act 1992 (Cth)*



Prepared by Our Watch

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Acknowledgement of Country

Our Watch acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay respects to Elders past and present and recognise the continuing connection Aboriginal and Torres Strait Islander people have to land, culture, knowledge, and language for over 65,000 years.

As a non-Aboriginal organisation, Our Watch understands that violence against Aboriginal and Torres Strait Islander women and children is a whole of community issue. As highlighted in Our Watch's national resource *Changing the picture*, there is an intersection between racism, sexism and violence against Aboriginal and Torres Strait Islander women.

Our Watch has an ongoing commitment to the prevention of violence against Aboriginal and Torres Strait Islander women and children, who continue to experience violence at significantly higher rates than non-Aboriginal women. We acknowledge all Aboriginal and Torres Strait Islander people who continue to lead the work of sharing knowledge with non-Aboriginal people and relentlessly advocate for an equitable, violence-free future in Australia.

About Our Watch

Our Watch is a national leader in the primary prevention of violence against women and their children in Australia. We are an independent, not for profit organisation established by the Commonwealth and Victorian Governments in 2013. All Australian governments are members of Our Watch, including the Australian Government.

Our vision is an Australia where women and their children live free from all forms of violence. We aim to drive nation-wide change in the culture, behaviours, attitudes and structures that drive violence against women.

Guided by the national framework, *Change the story*, we work at all levels of our society to address the deeply entrenched, underlying drivers of violence against women, especially those stemming from gender inequality. We work with governments, practitioners and the community to address these drivers of violence in all settings where people live, learn, work and socialise.

Executive Summary

Our Watch welcomes the opportunity to contribute to the Australian Government review of the *Disability Discrimination Act 1992 (Cth)* (Disability Discrimination Act). In line with Our Watch's expertise in the primary prevention of violence against women, this submission focusses on opportunities to embed and strengthen prevention mechanisms in the Disability Discrimination Act to prevent discrimination and violence before it occurs.

This submission draws on the evidence-based national framework *Changing the landscape: A national resource to prevent violence against women and girls with disabilities*, produced by Our Watch and Women with Disabilities Victoria. *Changing the landscape* demonstrates how ableism, gender inequality and other forms of discrimination intersect to drive violence against women and girls with disabilities and sets out essential actions to address this issue across all areas of society.

Our Watch encourages the Australian Government to consider and build on the recommendations made by the Disability Royal Commission (DRC) and to ensure that they align with the UN Convention on the Rights of Persons with Disabilities.

Reforming the Disability Discrimination Act is a key step forward towards an Australia where women and girls with disabilities can live free from discrimination and violence. There are significant opportunities to strengthen the Disability Discrimination Act to ensure it operates more effectively.

In particular, in line with a primary prevention approach, there is an opportunity to shift the focus and operation of the Disability Discrimination Act from prohibitions of discrimination which rely on individual complaints to a prevention based approach, including a focus on positive duties and adjustments which would ensure it is better able to prevent discrimination and facilitate access to justice. For example, establishing a requirement for duty holders (such as employers, educational institutions, goods and services providers, accommodation providers and government agencies) to prevent discrimination before it occurs, the Disability Discrimination Act could contribute to and motivate widespread structural and cultural change. This is discussed further in the submission.

Our Watch's key recommendations are:

1. **Take a prevention approach:** Amend the *Disability Discrimination Act 1992 (Cth)*, in line with a prevention-based approach, to minimise reliance on individual complaints, and instead focus on prevention, including:
 - a. Introduction of a positive duty,
 - b. Strengthening of Disability Action Plans.
2. **Embed a human rights approach:** The *Disability Discrimination Act 1992 (Cth)* should be amended to include the *United Nations Convention on the Rights of Persons with Disabilities* in the objects provision of the Act.
3. **Recognise intersectional discrimination:** Amend the *Disability Discrimination Act 1992 (Cth)* to expressly recognise intersectional discrimination and identify that protections against discrimination encompass intersectional discrimination against people with disability and other attributes.

4. **Australian Human Rights Commission:** Ensure the Australian Human Rights Commission has the necessary powers and resources to support its effective performance of its functions under the *Disability Discrimination Act 1992* (Cth).

Our Watch welcomes the opportunity to provide further advice or assistance to the Attorney-General's Department in relation to the issues outlined in this submission. We also encourage the Attorney-General's Department to engage with key disability organisations when considering the implementation of any potential reforms, including Women with Disabilities Victoria who we partnered with in developing *Changing the Landscape*.

Please contact **Amanda Alford, Director of Government Relations, Policy and Evidence**, at amanda.alford@ourwatch.org.au to discuss.

Primary prevention, violence against women with disabilities and the Disability Discrimination Act

Violence against women and girls with disabilities is a pervasive issue in Australia, occurring more frequently, over longer periods and across more diverse settings than it does against women and girls without disabilities.¹ *Changing the landscape* demonstrates that this violence is driven by intersecting forms of discrimination that arise from both gender inequality and ableism.² These forms of discrimination are compounding for women with disabilities, who experience higher rates of violence than both men with disabilities and women without disabilities.³ In addition to being driven by sexism and ableism, this violence can be compounded by other forms of discrimination, such as racism, homophobia, ageism and classism.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) found that violence against women and girls with disabilities can take many forms, including physical, sexual, emotional and economic abuse, as well as acts such as threatening to or actually withholding assistive devices, using restrictive practices and restraints, or undertaking medical procedures without consent, including forced contraception and sterilisation.⁴

These acts of violence are often justified or enabled by the intersection of ableist stereotypes and gendered stereotypes. Ableism and gender inequality not only drive violence but can also excuse and normalise it. Women with disabilities are often excluded from information about the important issues that impact their lives (for example, their health care, living arrangements, sexual and reproductive autonomy and right to have children). Limited access to information, education or support, makes it harder for women with disabilities to make informed decisions, exercise their rights and seek help.

To stop violence against women and girls with disabilities before it starts, it is critical to identify and address the underlying drivers of this violence. *Changing the landscape* identifies the underlying drivers of violence against women and girls with disabilities as specific intersecting expressions of gender inequality and ableism.

One of the specific ableist drivers of violence against women is accepting or normalising violence, disrespect and discrimination against people with disabilities.

As a result, having clear and effective legal frameworks that prevent discrimination against people with disability is an important part of addressing the drivers of violence. Addressing the drivers of violence is not only a means to ending violence against women and girls with disabilities but will help to build a society where women and girls with disabilities are valued and are able to fully realise their human rights on an equal basis with all other people.

Response to consultation questions

1. Human rights approach

10. Should the Disabilities Convention be included in the objects provision of the Disability Discrimination Act?

11. Should the Disability Discrimination Act be expressly required to be interpreted in a way that is beneficial to people with disability, in line with human rights treaties?

Our Watch supports the proposed reforms to embed a human rights approach in the Disability Discrimination Act, including through the amendment to include reference to the Convention in the objects provision of the Act.

The Disability Discrimination Act should be a central piece of legislation that gives domestic effect to Australia's international human rights obligations. However, the Disability Royal Commission heard that the Disability Discrimination Act has not kept pace with the expectations of the disability community or with the standards established by the *Convention on the Rights of Persons with Disabilities*.⁵

Including the *Convention on the Rights of Persons with Disabilities* in the objects provision of the Disability Discrimination Act and requiring the Act to be interpreted in a manner consistent with other relevant international human rights instruments, would provide a stronger legal foundation for protecting and promoting the rights of people with disabilities. This would also bring the Disability Discrimination Act into line with other Commonwealth anti-discrimination laws, such as the Sex Discrimination Act, which includes the *Convention on the Elimination of All Forms of Discrimination Against Women* in the objects provision.

Our Watch notes that the Royal Commission recommended the establishment of a new, standalone Disability Rights Act to give full effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities.⁶ In lieu of a commitment to a Disability Rights Act, or a broader Human Rights Act, incorporating the *Convention on the Rights of Persons with Disabilities* into the Disability Discrimination Act is a meaningful step towards meeting Australia's international obligations and community expectations. This would provide a stronger legislative foundation until more comprehensive reforms may be considered.

2. While this review of the Disability Discrimination Act is an important one, there are also opportunities to consider and undertake broader reform of anti-discrimination laws, including potentially into a consolidated and updated statute, as well as the potential value of a national Human Rights Act. Positive Duty

12. If there was a positive duty in the Disability Discrimination Act, who should it apply to?

13. Are there lessons from the operation of the positive duty in the Sex Discrimination Act that could be incorporated into a positive duty in the Disability Discrimination Act?

Our Watch supports the proposed reforms to introduce a positive duty under the Disability Discrimination Act as an important step towards addressing the systemic drivers of discrimination and violence against women and girls with disabilities, as set out in *Changing the landscape*.

Establishing a positivity duty in the Disability Discrimination Act would facilitate a shift towards a preventative approach, specifically one that moves from a reactive, complaints-based framework to one that proactively prevents discrimination. The current Disability Discrimination Act largely relies on individuals to lodge complaints after harm has occurred. However, the Disability Royal Commission found that this approach is not working as intended and has failed to deliver the systemic change needed to promote equality and prevent discrimination and violence against people with disabilities.⁷

Complaints under the Disability Discrimination Act have consistently represented the largest proportion of complaints made across all discrimination legislation. In 2023-2024 complaints under the Disability Discrimination Act accounted for 43 per cent of all complaints received by the Australian Human Rights Commission.⁸ This underscores the importance of addressing the limitations of the current Disability Discrimination Act in preventing systemic discrimination, harassment and exclusion.⁹

A positive duty would instead create a proactive obligation to identify and address risks of discrimination before they cause harm. It also has the potential to move the onus of identifying and responding to discrimination away from individuals and onto organisations and institutions, holding them accountable for ensuring the rights of people with disabilities are upheld. This would legally recognise that it is society's responsibility, not the responsibility of people with disabilities, to remove the barriers that prevent people with disabilities from being active and equal members of society. As a mainstream organisation, Our Watch supports mechanisms that encourage mainstream organisations to proactively promote the inclusion of people with disabilities in all aspects of life.

The introduction of a positive duty to the Sex Discrimination Act through the Respect@Work reforms offers several learnings on implementation. Our Watch closely observed these reforms through the Engaging Employers to Prevent Sexual Harassment project, implemented by Our Watch to contribute to Recommendation 8 of the Respect@Work report.¹⁰ Our Watch continues to work closely with employers to embed gender equality and respect in the workplace. The following learnings could guide the design of a disability positive duty to ensure it is an effective mechanism for systemic change:

Include broad coverage of duty holders

Under the Sex Discrimination Act, the positive duty applies to all employers and persons conducting a business of undertaking, regardless of size or sector. This breadth is important to ensure all employees benefit from proactive action to prevent discrimination, harassment and abuse. For the Disability Discrimination Act, Our Watch supports the proposal for the positive duty to apply to all duty holders under the Act, including employers, education providers, service providers, accommodation providers, and government agencies, to ensure systemic barriers are addressed across all areas of public life.

Prioritise clear guidance and education

The Sex Discrimination Act reforms highlighted the need for extensive sector- and size-specific guidance to help duty holders understand what is expected of them. Similarly, under the Disability Discrimination Act, guidance is likely to be most effective if it is tailored to the varied contexts of duty holders. Australian Government investment in the Australian Human Rights Commission to co-design and deliver this guidance with people with disabilities should ensure provision of clear guidance and education.

Strengthen compliance mechanisms

Experience from the Sex Discrimination Act demonstrates that the effectiveness of the positive duty depends on its enforcement. Revisions to the *Australian Human Rights Commission Act 1986* (Cth) gave the Australian Human Rights Commission compliance and monitoring powers, including the ability to conduct inquiries and issue compliance notices. These powers are essential to ensure the positivity duty is not seen as voluntary. For the Disability Discrimination Act, there is an opportunity to ensure the Australian Human Rights Commission compliance and monitoring powers support the intended reform and are complemented by ongoing public reporting to promote transparency. Without these mechanisms, people with disabilities will continue to bear the onus of monitoring compliance, undermining the intent of a proactive duty.

Align with existing compliance frameworks

Although it is an important standalone measure, it is beneficial that the positive duty in the Sex Discrimination Act is reinforced by complementary work health and safety regulatory frameworks. These frameworks, such as the *Work Health and Safety (Sexual and Gender-based Harassment) Code of Practice 2025*, provide further practical guidance for duty holders seeking to understand their obligations. A positive duty under the Disability Discrimination Act could be integrated into existing frameworks across different domains such as workplace health and safety, and education and health standards. This integration would normalise compliance, reduce duplication and ensure that proactive measures to prevent disability discrimination are embedded into the systems that already govern organisational practice.

Data and reporting

One of the other highly effective components of the effectiveness of positive duty under the Sex Discrimination Act has been the associated reporting as well as the data collection and publication role undertaken by the Workplace Gender Equality Agency (WGEA).

There is value in requiring duty bearers to undertake annual reporting. In addition, requiring reporting in relation to positive duty and action plans be aggregated and made publicly available, similar to the role played by WGEA, would contribute to and strengthen the operation of any positive duty under the Disability Discrimination Act.

Finally, in line with the recommendation made in relation to embedding an intersectional approach under the Disability Discrimination Act, Our Watch suggests that the proposed positive duty include requirements to consider and report against intersectional impacts and the removal of barriers to equal opportunity arising from those impacts.

3. Workplaces

20. What are your views on amending the Disability Discrimination Act to consider the nature and extent of any adjustments made and encourage consultation between prospective or current employers and prospective or current employees before making employment decisions?
21. Are there other amendments to the Disability Discrimination Act that could support engagement between prospective or current employers and prospective or current employees to better understand the inherent requirements of a job?

Employment is essential to economic security, independence and social participation. However, people with disabilities continue to face significant barriers to securing and maintaining work. For women with disabilities, these barriers intersect with gender inequality, compounding disadvantage and increasing risks of poverty and violence.¹¹

Amending the Disability Discrimination Act to require consultation between employers and employees about workplace adjustments would be an important step forward. *Changing the landscape* emphasises that decisions are too often made without the involvement of women with disabilities, resulting in adjustments that are either inadequate or inappropriate. Embedding consultation in the Act would help centre the expertise of people with disabilities in determining what they need to participate equally.

The focus of reform should not only be on the 'nature and extent' of adjustments provided but also on their effectiveness in removing barriers. This would help avoid adjustments being treated as temporary fixes rather than proactive measures to create inclusive workplaces. Clarifying in the Disability Discrimination Act that employers must ensure adjustments are effective, and that this requires consultation with the employee, would strengthen both practice and accountability.

It is also important that the Disability Discrimination Act recognises that adjustments may include flexible work arrangements, not only physical or technical modifications. Flexibility in hours, location or support can be particularly important for women balancing work with caring responsibilities. Recognising flexible work as a form of adjustment would bring the Disability Discrimination Act into line with contemporary understandings of workplace inclusion.

Embedding consultation requirements into the Disability Discrimination Act is likely to provide an additional level through which people with disability can work with workplaces in shaping their conditions of employment. This is likely to help reduce discrimination and contribute towards building inclusive workplaces that promote equality and safety, particularly for women with disabilities.

4. Access to justice

27. How could the Disability Discrimination Act be amended to protect people with disability from offensive behaviour and/or harassment?

31. How could the Disability Discrimination Act be amended to ensure that it covers policing?

Our Watch supports the proposal to explicitly prohibit offensive behaviour and harassment on the ground of disability, consistent with protections already available under the Sex Discrimination Act and the Racial Discrimination Act.

The Disability Royal Commission recommended this reform to address persistent gaps in the law, recognising that vilification and harassment contribute to cultures of exclusion and violence.¹² Incorporating these explicit protections into the Disability Discrimination Act would signal that disability-based harassment is unacceptable in all areas of public life and give individuals further avenues for justice.

Our Watch's handbook *Putting the prevention of violence against women into practice: How to Change the story* sets out that legal, justice and corrections agencies provide an important foundation for primary prevention of violence against women by ensuring safety for victim-survivors and accountability for perpetrators. *Change the story* and *Changing the landscape* emphasise that the justice system also plays a significant role in influencing and reinforcing community norms and may inadvertently tolerate, condone, justify, or excuse ableism and violence against women.

Strengthening access to justice under the Disability Discrimination Act is essential to prevent further harm within the systems designed to safeguard rights. Women and girls with disabilities experience disproportionately high levels of violence, abuse and vilification.¹³ They are also more likely than others to experience negative psychological consequences due to the impacts of violence and/or the barriers and discrimination they face when reporting or disclosing violence or seeking access to justice and support.¹⁴

In line with this evidence, there is value in the Disability Discrimination Act being amended to cover policing. For example, the Disability Royal Commission found that people with disabilities, particularly women, often face discrimination when interacting with police, including when reporting violence.¹⁵ Women with cognitive disability who have experienced sexual violence are particularly at risk of negative stereotyping by police, with research showing police consistently view these women as promiscuous and unreliable.¹⁶ The underlying and compounding issues of ableism and sexism in police responses have been shown to lead to the dismissal of women complainants with cognitive and/or psychosocial disability who have experienced sexual violence.¹⁷ Ensuring the Disability Discrimination Act applies to policing would contribute to addressing these issues.

Importantly however, this reform should be supported by primary prevention approaches across and within the justice system, including training, cultural change and mechanisms for accountability. There are opportunities to expand on existing initiatives to support organisations and institutions to promote safety, respect and equality across the justice system. This could include, by way of example, adopting and implementing *Workplace Equality and Respect* and broader training and education on the gendered and ableist drivers of violence against women with disabilities.

These reforms would bring the Disability Discrimination Act into line with other federal discrimination laws, implement the recommendations of the Disability Royal Commission and help ensure women with disabilities are able to seek justice.

5. Accountability

41. Should there be minimum requirements for action plans (such as through guidelines) and what should the minimum requirements cover?

42. Should the Australian Human Rights Commission be able to reject action plans that fail to meet these requirements?

Disability action plans are a valuable tool for organisations to identify barriers to inclusion and commit to practical steps for change. However, the Disability Royal Commission found, action plans under the current Disability Discrimination Act have been inconsistent in quality and impact, with many treated as symbolic documents rather than drivers of systemic reform.¹⁸ Strengthening accountability for action plans is an important component of ensuring that the Disability Discrimination Act, and the proposed positive duty, promote meaningful prevention change.

Our Watch supports the introduction of minimum requirements for disability action plans, set out through guidelines developed by the Australian Human Rights Commission. At a minimum, Our Watch suggests these requirements should include consultation with people with disabilities, measurable actions, timelines for delivery, approaches to responding to intersectional impacts and processes for public reporting. This would ensure action plans are not only aspirational but provide a clear roadmap to prevent discrimination.

There is also value in the Australian Human Rights Commission having the power to reject action plans that fail to meet these requirements. Without this, organisations may continue to submit inadequate plans. Requiring organisations to provide evaluations of previous action plans when submitting a new one would further strengthen accountability, creating a cycle of continuous improvement and transparency.

Strengthened accountability for action plans would also complement the introduction of a positive duty. Together, these reforms would contribute to long-term cultural and structural change to prevent discrimination before it occurs. For women and girls with disabilities, who continue to experience high rates of exclusion and violence, robust accountability mechanisms are essential to ensure that commitments translate into real improvements in the settings where they live, work and play.

References

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- ³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2023). [Volume 3: Nature and extent of violence, abuse, neglect and exploitation.](#)
- ⁴ Ibid.
- ⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2023). [Volume 4: realising the human rights of people with disability.](#)
- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ Australian Human Rights Commission. (2024). [2023-24 Complaint Statistics.](#)
- ⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2023). [Volume 4: realising the human rights of people with disability.](#)
- ¹⁰ Our Watch. (2025). [Engaging employers in preventing workplace sexual harassment: Learning brief.](#)
- ¹¹ Our Watch & Women with Disabilities Victoria. (2022). *Changing the landscape: A national resource to prevent violence against women and girls with disabilities*. Melbourne, Australia: Our Watch.
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- ¹³ Australian Institute of Health and Welfare. (2024). *People with disability in Australia 2024*. catalogue number DIS 72, AIHW, Australian Government.
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- ¹⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2023). [Volume 8: Criminal Justice and people with disability](#)
- ¹⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2021). [Research Report: Police responses to people with disability.](#)
- ¹⁷ Ibid.
- ¹⁸ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2023). [Volume 4: realising the human rights of people with disability.](#)