Women With Disabilities Australia (WWDA)

Submission

Disability Discrimination Act 1992 Review

For submission to the Review of the Disability Discrimination Act

Attorney-General's Department

Women With Disabilities Australia (WWDA)

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Language note

This submission reflects the overlapping experiences of marginalisation experienced by women, girls, nonbinary and gender-diverse people in our membership and broader community. Though these groups will experience gender discrimination and marginalisation, not all identify as women. WWDA's submission may reflect the specific experiences of trans, non-binary and gender-diverse people with disability. However, the experiences of trans, non-binary and gender-diverse people with disability warrant specific and direct exploration, particularly how they intersect with employment. WWDA recognises the limitation in aggregating our submission at a broader level of gender-marginalised people. WWDA aims to work in coalition with, rather than replicate the core work of organisations who represent and advocate for LGBTQIA+ people with disability.

This submission uses 'person first' language (for example: women with disability). We acknowledge people describe their experience of disability in different ways, and for many people, 'identity first' language is a source of pride and resistance.

Acknowledgement of Country

The authors acknowledge the traditional owners of the land on which this publication was produced. We acknowledge First Nations people's deep spiritual connection to this land. We extend our respects to community members and elders past, present and emerging.

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About the authors

Women with Disabilities Australia (WWDA) is the National Disabled People's Organisation (DPO) and National Women's Alliance (NWA) for women, girls, feminine identifying, and non-binary people with disabilities in Australia. As a DPO and an NWA, WWDA is governed, run, led, staffed by, and constituted of, women, girls, feminine identifying, and non-binary people with disabilities. Our organisation operates as a transnational human rights organisation - meaning that our work, and the impact of our work, extends beyond Australia. WWDA's work is grounded in a human-rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.

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"Member insights are displayed like this."

Acknowledgements

WWDA extends our sincere thanks to our members for their ongoing engagement and for contributing the lived experience insights that continue to shape our work and priorities.

We gratefully acknowledge the collaboration, generosity and expertise of the legal and academic community who contributed to the development of our organisational positions. We extend special appreciation to **Professor Beth Goldblatt (UTS)**, **Professor Karen O'Connell (UTS)**, **Associate Professor Belinda Smith (University of Sydney)**, and **Dr Natalie Sheard (University of Melbourne)** for early discussions that informed our legal framing and comparative analysis.

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We extend our appreciation to the independently governed state and territory 'women with disabilities' peak organisations: **Women with Disabilities Victoria (WDV)** and **Women with Disabilities ACT (WWDACT)**. Their support in sharing WWDA's national survey through their networks helped extend its reach and ensure broad representation across diverse communities of women and gender-diverse people with disability.

Likewise, we acknowledge the ongoing support of the many partners, allies and advocates who continue to work alongside WWDA in pursuit of a fairer, rights-based legal framework that delivers equality in practice, not only in principle.

Endorsements

The **summaries** and **recommendations** of WWDA's DDA Review submission have been endorsed by:

- Amnesty International Australia
- Australian Autism Alliance (AAA)
- Australian Multicultural Women's Alliance (AMWA)
- Australian Services Union (ASU)
- Australian Lawyers for Human Rights (ALHR)
- Australian Women's Health Alliance (AWHA)
- Down Syndrome Australia (DSA)
- Professor Beth Goldblatt (University of Technology Sydney)
- Children and Young People with Disability Australia
- Disability Advocacy Network Australia (DANA)
- First People's Disability Network (FPDN)
- Full Stop Australia
- Inclusion Australia
- MSI Australia
- National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA)
- National Ethnic Disability Alliance (NEDA)
- National Foundation for Australian Women (NFAW)
- Physical Disability Australia (PDA)
- Victorian Women Lawyers (VWL)
- Women's Legal Service NSW
- Women With Disabilities ACT (WWDACT)
- Women with Disabilities Victoria (WDV)
- Working with Women Alliance (WwWA)
- Working Women's Centre Australia (WWCA)
- Working Women Queensland, Basic Rights Queensland
- Working Women's Centre Victoria
- Working Women's Centre WA

Executive Summary

WWDA welcomes the framing of the *Issues Paper*[1], which recognises the significant time, energy and emotional toll that people with disability have invested in repeatedly advocating for reform. This acknowledgment reflects a shared understanding that meaningful progress depends on building on previous inquiries rather than requiring people with disability to relive the trauma of restating the same harms. WWDA's submission continues this work, centring the lived experience of women, girls and gender-diverse people with disability to inform practical, rights-based reform of the *Disability Discrimination Act 1992 (Cth)*[2] (DDA).

The DDA is an important but currently imperfect tool for addressing the needs of people with disability, especially women, girls and gender-diverse people. It is important to be clear that the DDA does not actually confer or ensure the full human right to freedom from discrimination. Instead, the DDA provides a legal right of action for people with disability who have experienced an infringement of their right to freedom from discrimination, but only in limited circumstances, and subject to complex exceptions and analytic criteria.

WWDA's submission argues that to fulfil its purpose, the DDA must evolve from a reactive, complaints-based mechanism into a proactive, systemic framework that prevents discrimination before it occurs. Reform should embed equality across all areas of public life, shift responsibility from individuals to duty holders, and make rights practically realisable rather than theoretically available.

A cornerstone of this reform is the introduction of a positive duty to eliminate discrimination, applying across government, education, employment, health, and other publicly funded services. To be effective, this duty must integrate the lessons of the Sex Discrimination Act (SDA), where under-resourcing has limited enforcement and impact. The DDA's model must therefore be well-resourced, transparent, enforceable and co-designed with people with disability and their representative organisations.

The submission also calls for a stand-alone duty to provide adjustments, a reformed definition of disability, and modernised tests for direct and indirect discrimination that focus on real disadvantage rather than abstract comparisons.

A major focus of the submission is the section on intersectionality, which WWDA identifies as foundational to understanding and addressing the structural nature of discrimination. The current DDA treats attributes such as gender, race and disability as separate categories, making it difficult to capture compounded or overlapping forms of exclusion. WWDA proposes amending the Act to expressly recognise intersectional discrimination (both across protected attributes and through broader contextual factors such as economic status, caring roles and rurality), and harmonising anti-discrimination frameworks. This would allow the

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[1] Attorney-General's Department (2025). *Review of the Disability Discrimination Act 1992: Issues Paper*. Canberra: Australian Government, Attorney-General's Department, p. 17. Available at: https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/user_uploads/dda-review-issues-paper.pdf .

[2] *Disability Discrimination Act 1992* (Cth), as compiled 12 April 2018, Federal Register of Legislation, Australian Government. Available at: https://www.legislation.gov.au/C2004A04426/2018-04-12/text.

law to reflect how disadvantage operates in practice for women and gender-diverse people with disability and to ensure that systemic barriers are visible and actionable.

Further recommendations include reforming the unjustifiable hardship defence to prevent misuse, requiring consultation and documentation in employment decisions about inherent requirements, and future-proofing the Act to address discrimination in artificial intelligence (AI) and emerging technologies, ensuring transparency, accessibility and human oversight in digital systems.

The submission also calls for strengthened regulatory powers and transparency, limits on the use of non-disclosure agreements, and support for a federal Human Rights Act to embed positive human rights obligations and create coherence across Commonwealth equality laws.

Approach

WWDA acknowledges that this submission is not written in plain language. This reflects the technical complexity of the Review's structure and consultation parameters, which require detailed responses aligned with legislative drafting and policy design. The submission is therefore written primarily for a policy and research audience, including lawmakers, regulators, and academics engaged in the Review.

Repetition across sections is deliberate, ensuring that each consultation question is addressed in full and can stand alone within the segmented structure of the *Issues Paper*. To support clarity and usability, WWDA has mirrored the *Issues Paper* format, providing summary pop-out boxes followed by detailed discussion and clear, actionable recommendations for reform.

This approach has been designed to ensure the submission's utility beyond the current DDA Review process. By structuring the analysis according to the consultation questions, WWDA intends for this publication to serve as both a formal contribution to DDA legislative reform and as an enduring reference for policymakers, regulators, researchers, students and advocates. It provides a detailed, gender-responsive and intersectional lens on disability discrimination law, illustrating how WWDA's foundational human rights principles translate into legislative and regulatory reform.

In doing so, WWDA aims to strengthen both the immediate evidence base for DDA reform and the longer-term understanding of disability and gender equity within Australian law and policy. This ensures the submission contributes not only to the specificity of the DDA Review's outcomes but also to ongoing efforts to build inclusive, rights-based frameworks for people with disability.

WWDA's advocacy is grounded in and guided by the lived experiences of our members. Their insights, included through case studies and excerpts in their own words, give depth and authenticity to the legal and policy analysis and ensure that our recommendations remain accountable to the people the Disability Discrimination Act exists to protect. WWDA sincerely thanks our members for their generosity, insight and courage in sharing their experiences.

Terms of reference addressed:

This submission addresses the following questions from the consultation paper, with a specific focus on the systemic inequalities experienced by **women** and **gender-diverse people with disability** in **employment**, **health** and **disability support** contexts:

- **Q1:** How should disability be defined in the Disability Discrimination Act?
- **Q2:** What factors should be considered in developing a new definition of disability?
- **Q3:** Would the Disability Discrimination Act be strengthened by expressly allowing claims to be brought for multiple or combined protected attributes?
- **Q4:** Could any other changes be made to the Disability Discrimination Act to recognise and provide protection for people with disability who have intersecting identities, or addressing compounding discrimination?
- **Q5:** What test should be used to ensure that the definition of direct discrimination is easy to understand and implement for both duty holders and people with disability, and why?
- **Q6:** How should the burden of proof be addressed in the Disability Discrimination Act?
- **Q7:** How could the definition of indirect discrimination be amended to ensure that it is easy to understand and implement for people with disability and duty holders?
- **Q8:** Should the reasonableness element in the definition of indirect discrimination be:
    - removed
    - retained and supplemented with a list of factors to consider
    - replaced by a legitimate and proportionate test (or another test)
    - other

  Please expand on your response.

- **Q9:** Should the language of 'does not or would not comply, or is not able or would not be able to comply' be removed from the definition of indirect discrimination?
- **Q10:** Should the Disabilities Convention be included in the objects provision of the Disability Discrimination Act?
- **Q11:** 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?
- **Q12:** If there was a positive duty in the Disability Discrimination Act, who should it apply to?
- **Q13:** 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?
- **Q14:** What costs, benefits and other impacts would duty holders experience in meeting a positive duty under the Disability Discrimination Act? If you are an existing

duty holder under the Disability Discrimination Act, please specify how you think meeting a positive duty would impact you.

- **Q15:** Should there be exceptions or limits to the application of a positive duty?
- **Q16:** Would the creation of a stand-alone duty to provide adjustments better assist people with disability and duty holders to understand their rights and obligations?
- **Q17:** Should the scope of the duty to provide adjustments apply only to the existing areas of public life covered by the Disability Discrimination Act, or extend to other contexts?
- **Q18:** Would removing the word 'reasonable' from the term 'reasonable adjustments' to align the language with the legal effect create any unintended consequences?
- **Q19:** What is your preferred approach to achieving greater fairness and transparency in claims of unjustifiable hardship:
    a. the Disability Royal Commission amendment as proposed
    b. a new definition of unjustifiable hardship
    c. other

  Please expand on your response.

- **Q20:** 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?
- **Q21:** 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 role?
- **Q22:** Should any other amendments be made to the definition of inherent requirements, including factors that should be considered when deciding whether a person could carry out the inherent requirements of a job?
- **Q50:** How can we ensure the Disability Discrimination Act remains fit-for-purpose into the future?
- **Q51:** Are there any other issues with the Disability Discrimination Act that should be considered as part of this review?

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Definition of Disability (Q1-2)

1. How should disability be defined in the Disability Discrimination Act?
2. What factors should be considered in developing a new definition of disability?

Q1-2 Summary: Definition of Disability

- The DDA definition should be **modernised and human-rights based**, affirming dignity, autonomy and participation in line with the *CRPD*, but without introducing new evidentiary hurdles.
- **Deficit-based and medicalised language** (such as "malfunction," "disorder" and "disfigurement") should be **replaced with neutral, respectful terms** recognising disability as part of human diversity.
- The law should **retain a broad, inclusive threshold**, protecting all forms of disability (current, past, future and imputed) and avoiding the need to prove the existence of barriers or obtain medical diagnoses.
- Protection must **explicitly include non-visible, episodic, neurodivergent and chronic health conditions**, and extend to discrimination based on **health status or medical record**.
- The revised definition should **reflect the CRPD's human-rights philosophy** rather than replicate its "interaction" language, ensuring the focus remains on discriminatory conduct rather than definitional tests.
- **Self-identification and autonomy** should be affirmed, allowing people to describe their disability in ways that respect identity and lived experience.
- **Co-design with people with disability**, especially those with non-visible or fluctuating conditions, is essential to ensure clarity, inclusivity and rights-based framing.
- The **objects of the Act** should explicitly reference advancing the CRPD and its principles: inherent dignity, individual autonomy, full participation, equality of opportunity, accessibility, and respect for human diversity.

The definition of disability is *"complex, dynamic, multidimensional, and contested.'*[3] It is also not a minor matter. The definition of disability in a particular context can create or contribute to discrimination against people with disabilities by reinforcing ablism or negative stereotypes. Alternatively, the definition can support an approach to disability which encourages evolution in our understanding of disability and makes the lives of people with disabilities visible.

[3] World Health Organization and World Bank (2011). *World Report on Disability.* Geneva: World Health Organization, p. 3. Available at: https://www.who.int/publications/i/item/9789241564182.

The present DDA was enacted more than a decade before the Australia's adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD). The preamble to the CRPD acknowledges that *"disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others."*[4]

Between the enactment of the DDA and the negotiation of the CRPD, our understanding of disability evolved significantly, moving from a predominantly medical model to the social and human rights models of disability, which draw a distinction between the concepts of impairment and disability. The social model describes disability as a product of the interaction between a feature of the individual (impairment) and the external context (e.g. physical design, attitude, system design etc).

The human rights model of disability also recognises disability as a social construct but goes further by valuing impairment as part of human diversity and human dignity[5] and affirming that impairment can never be the basis for the denial or diminishment of human rights.[6] This approach aligns with the **Australian Discrimination Law Experts Group** (ADLEG's) recommendation to replace such language with neutral alternatives (for example, "visible irregularity" or "condition") while retaining the inclusive structure of s 4(1)[7].

Some attempts have been made internationally to incorporate the social model into anti-discrimination laws. In Costa Rica, the *Law for the Promotion of Personal Autonomy of Persons With Disabilities* (2016)[8] draws on the preamble to the CRPD by defining disability as: *"A concept that evolves and results from the interaction between persons with disabilities and barriers due to attitude and environment that prevent their full and effective participation in society on equal terms with other persons*" and defines persons with disabilities as *"those who have long-term physical, mental, intellectual, or sensory*

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[4] *Convention on the Rights of Persons with Disabilities*, adopted 13 December 2006, A/RES/61/106, annex I, preamble para. (e). Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities

[5] Committee on the Rights of Persons with Disabilities (2018). *General Comment No. 6 on Equality and Non-Discrimination,* 19th session, 19 March–13 April 2018, UN Doc CRPD/C/GC/6, adopted 26 April 2018, para. 9. Available at: https://documents.un.org/doc/undoc/gen/g18/110/03/pdf/g1811003.pdf. *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), preamble para. (e). Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities

[6] *Convention on the Rights of Persons with Disabilities, adopted 13 December 2006, A/RES/61/106, annex I, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art. 3. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities;*
Committee on the Rights of Persons with Disabilities (2018). *General Comment No. 6 on Equality and Non-Discrimination,* 19th session, 19 March–13 April 2018, UN Doc CRPD/C/GC/6, adopted 26 April 2018, para. 9. Available at: https://documents.un.org/doc/undoc/gen/g18/110/03/pdf/g1811003.pdf.

[7] Australian Discrimination Law Experts Group (2025). *Submission to the Review of the Disability Discrimination Act 1992 (Cth).* Sydney: Australian Discrimination Law Experts Group, p. 10.

[8] Costa Rica (2016). *Law for the Promotion of Personal Autonomy of Persons with Disabilities* (Law No. 9379). English translation from the original Spanish. *Global Directory – Costa Rica,* Disability:IN. Available at: https://disabilityin.org/global-directory/costa-rica.

deficiencies that, when interacting with various barriers, may prevent their full and effective participation in society on equal terms with others."

The definition of disability in the DDA uses a medical model framed in terms of personal deficit, relying on concepts such as "malfunction" or "disorder." This medicalised approach positions disability as a flaw within the individual, rather than recognising that discrimination arises primarily when social, attitudinal and structural environments are designed around assumptions of non-disabled bodies and minds. These design choices, and the attitudes and practices they reproduce, actively generate barriers that enable and entrench discrimination. In practice, this means that ostensibly "neutral" systems and the people who operate within them can reproduce exclusion at scale.

The definition from Costa Rica above uses a social model approach, identifying disability as something which results from the interaction between people with disabilities and external factors[9]. However, unfortunately, 'persons with disabilities' are subsequently defined purely in terms of 'deficiencies.' In contrast, WWDA supports ADLEG's position that the current DDA definition should be retained in form but modernised in tone and terminology[10]. Despite primarily relying on individual 'deficit', the current definition is broad, inclusive and rarely contested. Additionally, it at least implicitly recognises some situations where a person's body may be disabled by interaction with negative stereotypes even where no actual impairment exists, by including *"the presence in the body of organisms **capable** of causing disease or illness"* [emphasis added] and disability which may exist in the future or which is imputed to a person[11].

As noted above, the definition of disability has the potential to either entrench or challenge negative social norms and stereotypes and consequently should be flexible enough to

"impairment is not inherently bad…the issue is social stigma,"

evolve with our developing understanding and broad enough to capture the full diversity of disability experiences. To reflect this diversity in an affirming way, WWDA strongly advocates removing deficit-based terms such as "disfigurement" or "disturbed behaviour" and replacing them with respectful language that recognises disability as a natural part of human diversity. WWDA members expressed differing views on the role of the term "impairment" in legal drafting. Some preferred to avoid the term altogether, suggesting alternatives like "difference" or "condition." Others suggested:

[9] Ibid
[10] Australian Discrimination Law Experts Group (2025). *Submission to the Review of the Disability Discrimination Act 1992 (Cth).* Sydney: Australian Discrimination Law Experts Group.
[11] *Disability Discrimination Act 1992* (Cth), as compiled 12 April 2018, C2004A04426, s. 4(1). *Federal Register of Legislation*, Australian Government. Section 4(1) defines "disability" for the purposes of the Act. Available at: https://www.legislation.gov.au/C2004A04426/2018-04-12/text.

WWDA advocates for a revised definition to reflect the human rights model of disability, consistent with CRPD preamble paragraph (e)[12], which recognises that disability results from the interaction between persons with impairments and barriers that hinder participation on an equal basis with others. At the same time, care must be taken to avoid drafting a definition that inadvertently narrows coverage. For example, by suggesting that people must prove the presence of external barriers even where those barriers have been reduced or temporarily offset by personal effort, resources, or support.

This tension between recognising the external elements of disability and increasing the evidentiary burden on complainants is a significant problem. One strength of the Act's current broad and inclusive definition is that it is rarely contested, allowing claims to focus on the substance of discrimination rather than the threshold question of whether a person has disability. In contrast, litigation under the Americans with Disabilities Act (ADA)[13] in the United States, which incorporates the social model into its definition, often becomes entangled in disputes over whether a claimant meets the definition, creating an unnecessary hurdle to progressing a case. The CRPD's intentional decision not to include a fixed definition, instead using a non-exhaustive description, reflects the understanding that how disability is conceptualised evolves over time.

WWDA strongly advocates for the framing of the DDA to affirm dignity, autonomy and participation, rather than compelling people to establish "deficits" or proof of barriers to be protected under the law. WWDA members also cautioned against overemphasis on abstract definitions, expressing frustration with "fussing over a definition" and urging that law reform should prioritise enforcement, access and tangible outcomes.

Concerns have been raised that the evidentiary burden under the current definition has become increasingly medicalised, requiring people to produce diagnoses rather than demonstrate functional impact. This disproportionately harms women with chronic illness or non-visible disabilities, who are often excluded because their conditions do not conform neatly to conventional diagnostic categories. To avoid such exclusion, the revised definition should clarify that protection does not depend on medical diagnosis and must explicitly include non-visible, episodic, neurodivergent and chronic health conditions. A broad and inclusive definition, grounded in CRPD principles and focused on the effects of able-bodied design and structural assumptions (rather than rigid tests) will best ensure people are not excluded from protection just because their circumstances or supports make those barriers less visible. To avoid the risk of additional evidentiary hurdles, explicit alignment with the philosophy of the CRPD should be emphasised, ensuring the legal test remains broad, inclusive, and rights-affirming.

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[12] *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD') preamble para (e), available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities

[13] *Americans with Disabilities Act of 1990*, Pub. L. No. 101-336, 104 Stat. 327 (1990). Available at: https://www.ada.gov/law-and-regs/ada/.

Exclusionary environmental and systemic design can be actively reproduced through the attitudes and decisions of people who sustain ableist assumptions in practice. When definitions of disability mirror these design and attitudinal biases, for example by relying on narrow or medicalised criteria, they risk reinforcing the very exclusion they are meant to prevent. O'Connell's analysis reinforces this point, highlighting that legal and policy reliance on medicalised definitions directs attention "at the expense of more systemic considerations"[14]. She further observes that disabled people are often required to accept a "stigmatised identity" in order to qualify for rights[15] . Taken together, these insights show why the definition must explicitly include non-visible, episodic, and chronic conditions without requiring medical proof, and must frame exclusion as arising from both systemic design assumptions and the attitudinal decisions that reproduce them.

WWDA note that the law should be drafted to ensure that recognition of barriers does not become a new gatekeeping device. To avoid this, WWDA advocates that definitions remain anchored to the CRPD but adapted for legal clarity through further co-design with people with disability, particularly those with non-visible and fluctuating or episodic conditions. This co-design approach is consistent with ADLEG's recommendations for ongoing consultation with Disability Representative Organisations (DROs)[16]. It also points to the importance of affirming self-identification and autonomy, so that people are not forced into deficit-based or stigmatising labels in order to secure protection.

WWDA members emphasised that disability should be recognised as dynamic and evolving, encompassing visible and non-visible, permanent and temporary, physical, sensory, cognitive, psychosocial and neurodivergent experiences. For comprehensive protection, this breadth must also extend to discrimination on the basis of health status and medical record (for example, people living with HIV or chronic illness) and imputed disability recognising that such experiences likewise give rise to disability discrimination. WWDA further supports ADLEG's proposed expansion to cover discrimination on the grounds of genetic heritage, which complements this inclusion[17]. The revised definition should therefore acknowledge this diversity and flexibility, ensuring it remains responsive to community understandings and future developments. WWDA members highlighted self-identification and language ownership as critical.

As one noted:

> "I'm happy for disabled people to use language they are comfortable with"

[14] O'Connell, Karen (2017). "Should we take the 'disability' out of discrimination laws? Students with challenging behaviour and the definition of disability." *Law in Context*, 35(2), p. 111. La Trobe University. https://doi.org/10.26826/law-in-context.v35i2.20
[15] Ibid., p. 128.
[16] Australian Discrimination Law Experts Group (2025). *Submission to the Review of the Disability Discrimination Act 1992 (Cth).* Sydney: Australian Discrimination Law Experts Group, p. 7.
[17] Australian Discrimination Law Experts Group (2025). *Submission to the Review of the Disability Discrimination Act 1992 (Cth).* Sydney: Australian Discrimination Law Experts Group, p. 29.

Others worried that euphemisms like “differently abled” can obscure real, pragmatic needs. This underlines the importance of respecting autonomy without diluting recognition of discrimination.

In developing a new definition, it will be important to move beyond deficit-based terminology, while taking care not to draft provisions that inadvertently narrow protections. The definition should recognise non-visible, episodic, chronic and neurodivergent conditions, avoid reliance on medicalised evidence, extend to health status and medical record, include characteristics which are imputed to people with a particular disability and affirm self-identification and autonomy. Above all, it should be written to capture disability as diverse and evolving, while maintaining the clarity needed to protect entitlements. Achieving this balance requires further targeted consultation with people with disability and legal experts, to ensure the Act embeds dignity, autonomy and participation in line with CRPD Articles 6 and 12[18].

[18] *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) (‘CRPD’) arts. 6, 12, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities.

Q1-2 Recommendations

WWDA recommends that:

1. The DDA is better aligned to the human rights-based approach of the CRPD by amending the objects of the DDA in section 3 to include that an object of the Act is to:

   contribute to the implementation of the Convention on the Rights of Persons with Disability by supporting:

   (i)respect for inherent dignity, individual autonomy, including the freedom to make one's own choices, and independence of persons;
   (ii) non-discrimination;
   (iii) the full and effective participation and inclusion of people with disability in society;
   (iv) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
   (v) equality of opportunity;
   (vi) accessibility;
   (viii) gender equality[19]; and
   (ix) respect for the evolving capacities of children with disabilities and their right to preserve their identities.

- Replace the current definition with one consistent with the CRPD's principles and philosophy, while ensuring drafting does not inadvertently narrow coverage or create new evidentiary hurdles.
- Remove deficit-based terms such as "malfunction," "disorder," "disfigurement" or "disturbed behaviour," and instead use affirming, respectful language that recognises disability as a natural part of human diversity.
- Ensure recognition of non-visible, episodic, neurodivergent and chronic health-related disabilities within the scope of the definition, ensuring equal protection across diverse experiences.
- Clarify that protection does not depend on medical diagnosis, reducing the exclusion of people whose conditions are not easily diagnosed, particularly women and gender-diverse people with chronic illness or non-visible disability.
- Affirm the right to self-identification and autonomy, ensuring people are not forced into deficit-based or stigmatising labels to secure protection while also avoiding euphemisms that obscure pragmatic needs (such as "differently abled").

[19] The text of Article 3(g) (General Principles) states 'Equality between men and women'. While this falls within the remit of the *Sex Discrimination Act 1984 (Cth)*, it is also central to the *Convention on the Rights of Persons with Disabilities* (CRPD) and underpinned by Article 6 of the Convention. It underscores the need for provisions that address intersectional discrimination and for a harmonised federal anti-discrimination framework.

- Acknowledge disability as diverse and evolving, encompassing visible and non-visible, permanent and temporary, physical, sensory, cognitive, psychosocial and neurodivergent experiences.
- Extend protection to discrimination on the basis of health status and medical record (for example, people living with HIV or chronic illness).
- Embed recognition of attitudinal, structural and systemic barriers as central to the definition, affirming dignity, autonomy and participation consistent with CRPD Articles 6 and 12, while ensuring that recognition of barriers does not become a new gatekeeping device.
- Undertake targeted consultation with people with disability and legal experts to co-design the final definition, balancing alignment with CRPD principles, clarity of application, and the avoidance of unintended exclusion.

Addressing Intersectionality (Q3-4)

3. Would the Disability Discrimination Act be strengthened by expressly allowing claims to be brought for multiple or combined protected attributes?

4. Could any other changes be made to the Disability Discrimination Act to recognise and provide protection for people with disability who have intersecting identities, or addressing compounding discrimination?

Q3-4 Summary: Intersectionality

- **Intersectionality must be recognised as a legal and structural tool**, not just an identity descriptor. It exposes how systems and institutions (law, health, employment, welfare) create overlapping and compounding disadvantage.
- The DDA should **expressly permit claims based on multiple or combined protected attributes**, ensuring discrimination at the intersection of disability and other grounds (e.g. gender, race, age) can be recognised and remedied.
- **Intersectionality must not be conflated with "multiple disabilities."** Multiple disabilities raise distinct accessibility and adjustment questions; intersectionality addresses how different systems of power combine to produce compounded discrimination.
- The Act should **require judges and duty-holders to consider broader contextual factors** (such as chronic illness, caring roles, economic status, or rurality) when determining detriment, adjustments, or hardship, even if these are not themselves protected attributes.
- **Section 10's current deeming rule** and the **comparator model** fail to capture intersectional discrimination; these should be replaced with a **detriment or "unfavourable treatment" test** that centres actual disadvantage rather than hypothetical comparisons.
- **Section 29** should be clarified to prohibit intersectional and systemic discrimination in the design and administration of Commonwealth programs (such as the NDIS), recognising that exclusion can arise from program settings and evidentiary requirements, not only individual acts.
- A **positive duty to eliminate discrimination** and a **stand-alone duty to provide adjustments** should operate alongside intersectional recognition, shifting responsibility from individual complainants to systemic duty holders.
- The **Australian Human Rights Commission must be empowered and resourced** to investigate and enforce intersectional and systemic discrimination through own-motion inquiries and representative actions.
- Federal discrimination laws should be **harmonised** to enable combined-ground claims across protected attributes within a single, coherent process.
- **Guidance co-designed with people with disability**, particularly women, gender-diverse, First Nations and other marginalised groups, should illustrate how intersectionality operates in practice and avoid reductive or "additive" approaches.

The DDA must be reformed to make visible and remedy the compounding discrimination experienced by people whose exclusion is shaped by multiple factors. This includes discrimination that arises: (1) through the interaction of multiple disabilities; (2) across combined protected grounds such as disability and gender; and (3) through broader contextual factors (like chronic illness, caring roles, economic inequality, or rurality) that deepen disadvantage but are not legislatively defined as protected attributes. While the DDA already permits decision-makers to consider "the circumstances of the case" and "all relevant circumstances," in practice these provisions have been applied narrowly, focusing on individual circumstances rather than the structural conditions that compound disadvantage. WWDA therefore calls for reform to make consideration of broader context a consistent and explicit requirement across the Act, and to ensure that discrimination experienced through multiple disabilities or intersecting attributes is recognised in law rather than treated as background.

This section sets out how intersectionality should be operationalised within the DDA, structured around three guiding aims: principles, clarity of application, and the avoidance of unintended exclusion.

Part 1 – Establishes the theoretical foundation of intersectionality that underpins WWDA's advocacy. We outline principles for recognising intersectionality as a structural and legal tool to address compounded discrimination (not an identity descriptor) and outline the key reforms needed to embed it across the DDA. These reforms include:

- amending the Act to permit complaints based on combined protected attributes;
- clarifying that "the circumstances of the case" must include broader contextual factors when determining detriment, reasonableness, and hardship;
- ensuring discrimination arising through multiple disabilities is explicitly recognised under reasonable adjustment and detriment provisions;
- embedding intersectional analysis within positive duties, Disability Action Plans, and regulatory enforcement powers; and
- strengthening the powers and resourcing of the Australian Human Rights Commission to conduct own-motion inquiries, monitor systemic and intersectional discrimination, and enforce positive duties in practice.

Part 2 – Clarifying application through case examples then grounds these principles in practical experience. Drawing from WWDA's member consultations, it illustrates how compounding discrimination occurs across health, employment, and service access systems, and how the DDA must be restructured to capture these realities.

Part 3 – Avoiding unintended exclusion translates these insights into legal reform measures to strengthen the Act's operation, including the shift to a detriment/unfavourable treatment test, the ability to bring combined-ground complaints, and the admission of contextual evidence across all decision-making.

In doing so, WWDA is mindful that intersectionality is often misunderstood and diluted in both policy and law reform contexts. It is frequently reduced to describing individual

identity or multiple characteristics, rather than serving as the analytical tool it was designed to be (a framework for exposing how systems and structures produce overlapping and compounding disadvantage). In proposing clear legal definitions and mechanisms for recognising the individual impacts of intersecting discrimination, WWDA is conscious not to reinforce these misinterpretations. Our approach holds in tandem two complementary imperatives: the need for applied clarity in legislative drafting and enforcement, and the need to preserve intersectionality's systemic intent: its power to identify and transform the institutional and structural conditions that create inequality in the first place. Achieving this requires strengthening the DDA's systemic and proactive mechanisms, including resourcing the Australian Human Rights Commission (AHRC) to conduct own-motion inquiries, monitor emerging patterns of compounded discrimination, and enforce positive duties in practice. Intersectionality cannot function as a systemic tool unless the institutions responsible for upholding the DDA are empowered and resourced to act on the systemic evidence it reveals.

Part 1 - Theory and Advocacy

Intersectionality must be recognised in the DDA as a legal-structural tool to interrogate systemic discrimination. To operationalise this within the existing anti-discrimination law framework, it is necessary to expressly allow claims to be brought for multiple or combined protected attributes. This necessary first step allows for fuller visibility of the nature of discrimination. While the basis for a discrimination claim remains firmly on **multiple or combined protected attributes,** in hearing the case, **all relevant contextual factors must be considered**. In this section, we will provide examples of broader contextual factors (which may or may not be protected attributes) that should be considered. The recommendations we address in the present 'intersectionality' section therefore provide relevant context for our later recommendations throughout this submission. WWDA's interpretation of intersectionality then significantly underpins the overall recommendations of this submission. For this reason, we devote significant attention to addressing how the DDA should recognise and provide protection "for people with disability who have intersecting identities and address compounding discrimination" (*Q4 issues paper*).

In response to Q3, WWDA strongly recommend that the DDA expressly allow claims to be brought for multiple or combined protected attributes, however we acknowledge that codifying discrimination in this way only addresses discrimination after it has occurred. It makes visible the ways multiply marginalised people may be more likely to experience specific harms, but it does not address the **structural conditions** (including program design, access criteria, implementation and patterns in discretionary decision making) that can **create and sustain disadvantage**. A well-constructed positive duty (addressed later in this submission) is however a step to address this. The potentialities of intersectionality as a legal-structural framework are diluted when the focus rests only on individuals and the multiple ways that they identify. To address the cross-cutting importance of intersectionality to the recommendations of this submission, the discussion that follows will bridge the theoretical origins of intersectionality to WWDA's present advocacy before returning to expand upon principles for DDA reform.

Theoretical origins

Kimberlé Crenshaw coined the term 'intersectionality' in 1989 to illustrate a critical gap in legal recourse. The term is increasingly adopted in public policy, and is often misapplied and diluted[20]. A central theme of WWDA's ongoing advocacy has been supporting Government and organisations to strengthen their understanding and applications of intersectionality. In the context of this need for further terminological clarity, this section of WWDA's submission will provide a brief overview of Crenshaw's initial thesis in order to link this to the present context of WWDA's advocacy. In Part 2, we will then illustrate this foundation with extended case study examples related to WWDA's DDA submission focus areas of health and employment. Drawing from these case studies, WWDA then provides specific guidance for embedding concepts of 'intersectionality' in DDA reform.

Crenshaw's initial thesis centred on a discrimination case that five Black women brought against their employer, General Motors. Black women were not employed by General Motors until *after* the 1964 enactment of the Civil Rights Act[21], however Black men were employed on the factory floor and white women were employed in office roles. The context of this past discrimination meant that Black women were disproportionately affected by seniority-based layoffs in the early 1970's[22]. Addressing the ramifications of seniority-based layoffs was not possible looking at *just* gender (because white women had been employed in office roles) or *just* racial discrimination (because Black men had been employed on the factory floor). However, the court decided that efforts to bind together both racial discrimination and sex discrimination claims would be unworkable, limiting their avenues for legal recourse.

In the context of these seniority-based layoffs, the disadvantage they faced was not a result of "being both Black and women" as traits experienced on an individual level. The disadvantage arose from a history of racialised and gendered patterns which pervaded the present design of the employment system. As the legitimating authority, the legal system acts as the arbiter for disputes about employment design. The Courts then reinforced these overlapping forms of race and gender discrimination by interpreting the law in a way that failed to address them.

Crenshaw's articulation of intersectionality demonstrated that the Courts' decision rendered invisible the **systemic origins** of these multiple forms of discrimination. This addressed both overlapping forms of racial/gendered discrimination in the employment system and the compounded disadvantage reproduced through the interpretive precedents of the legal system. The conceptual origins of intersectionality are therefore not descriptive but structural: it demonstrates how multiple forms of discrimination (e.g. gender, disability,

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[20] Piantedosi, D., Wilding, R., Panisset, M., Molnar, L., Bryant, C., Gibbs, E., and Sawyer, A. (2025). *The Presence and Absence of Gender and Intersectionality in the 2023 NDIS Review: A Content Analysis. International Journal for Equity in Health*, 24, 140. https://doi.org/10.1186/s12939-025-02441-2.
[21] Crenshaw, Kimberlé Williams (1989). *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. University of Chicago Legal Forum*, 1989, 139–167.
[22] Ibid., p. 141.

race, sexuality etc.) can be embedded in one system (e.g. employment) and then legitimised and reinforced by other systems (e.g. law, healthcare, education, or welfare).

The seniority-based layoffs in Crenshaw's seminal example did not *explicitly* target Black women, however it was not a 'neutral' decision, since the roles Black women were concentrated in were disproportionately affected. In other words, identifying the overlapping identities of Black (race) + women (sex) was not the starting point for 'intersectionality'. These patterns in Black women's experiences provided necessary evidence for discrimination that is not visible looking at a single protected attribute in isolation. Scholars have extended Crenshaw's interpretation of intersectionality to encompass other forms of discrimination including classism, homophobia and ableism[23].

It is important to note that in cases involving intersectional discrimination, the prohibited grounds cannot be separated. As described above, the intersectional discrimination described by Crenshaw occurred because the complainants were both Black and women. Women who were white were not affected. Men who were Black were not affected. This is an important point in the context of s. 10 of the DDA, which provides that an act done for multiple reasons which include disability is deemed to be done 'because of' disability. Because s. 10 applies only to complaints where there is more than one reason for the act, it follows that it will not apply to a complaint of discrimination on the basis of the single reason that the complainant is a woman with disabilities.

S. 10's deeming approach creates a false basis for considering intersectional complaints because it does not provide for consideration of the ground which intersects with disability. Thus, a complaint of discrimination which is committed 'because of' the intersection between disability and gender will only be considered as a complaint about disability. In direct discrimination cases identification of the relevant comparator may be affected by the oversimplification of the ground of discrimination. In our example of intersectional discrimination on the ground of being a woman with disability, s. 10 might produce a comparator who is a woman without the complainant's disability, despite gender being a relevant factor in the discrimination. If the comparator is a man, it is unclear what 'circumstances which are not materially different' would mean in a case where gendered assumptions are a feature of the grounds of discrimination.

In indirect discrimination cases, deeming complaints on intersectional grounds to be complaints on the ground of disability will make it difficult to establish that the complainant could not comply with a requirement because of their disability, as only part of the total reason for inability to comply will be included in the analysis.

Application to WWDA's advocacy

WWDA's advocacy at the intersection of gender and disability is immediately transferable to an employment context. We consistently see patterns where women with disability are

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[23] Piantedosi, D., Wilding, R., Panisset, M., Molnar, L., Bryant, C., Gibbs, E., and Sawyer, A. (2025). *The Presence and Absence of Gender and Intersectionality in the 2023 NDIS Review: A Content Analysis. International Journal for Equity in Health*, 24, 140. https://doi.org/10.1186/s12939-025-02441-2.

excluded in employment not simply on the basis of gender or disability alone, but through their interaction. For example, in later sections of this submission we will address how workplaces may be designed with assumptions of constant availability and no need for adjustments, disadvantaging those whose disability experience is already shaped by gendered expectations of work and care. As the present DDA review considers both the introduction of a positive duty and the potential to broaden who is considered a 'duty holder' beyond employers, it is necessary to the arguments that follow in our submission to outline how Crenshaw's intersectionality thesis operates *outside* of an employment context. This next section addresses WWDA's approach to intersectionality in a health and disability support context. This 'theory' will then be grounded in specific case studies which demonstrate pragmatic considerations for DDA law reform to address intersectionality.

Crenshaw's thesis applies to the design assumptions underpinning Australia's healthcare system and the National Disability Insurance Scheme (NDIS). A common theme of WWDA's advocacy has involved addressing persistent NDIS access issues. WWDA has long argued for the NDIS to adopt a gender strategy[24], in recognition that women experience disability in roughly similar rates to men, yet women make up only 38%[25] of participants. Just as Crenshaw argued that the seniority-based layoffs were not a neutral decision when they resulted in Black women's patterned disadvantage, the law must be capable of addressing patterned disadvantage affecting women with disabilities, (for example, occurring within the interpretive patterns of NDIS operational guidelines/ design).

Crenshaw demonstrated that the legacy of discrimination enabled through the legal system (before the 1964 Civil Rights Act) influenced the demographic composition of General Motors staff, such that the seniority-based layoffs disproportionately impacted Black women. A corollary of this argument has since been applied to the gender bias of the medical system which continues to enable decision making in NDIS access and plan values[26]. Piantedosi and colleagues argue this has led to significant "gendered disparities in the way NDIS access requests are addressed. For example, access approval rates for male and female children aged 0–14 are relatively similar, but from the ages 15+ male access requests are approved at far higher rates than females and applicants gendered 'other'. This gendered gap widens for each age band through to 64"[27].

Yates and colleagues have theorised that women's underservicing by the NDIS is in part due to being "underdiagnosed in relation to several types of disabilities, particularly those that are most likely to be funded under the NDIS, such as autism spectrum disorder. Women are

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[24] Women With Disabilities Australia (2024). *WWDA Position Statement: NDIS Gender Strategy*. Hobart: Women With Disabilities Australia. Available at: https://wwda.org.au/wp-content/uploads/2024/04/WWDA-Position-Statement-NDIS-Gender-Strategy.pdf.
[25] National Disability Insurance Agency (2025). *Quarterly Report to Disability Ministers: 2024–25 Q3, Supplement E*. Canberra: Australian Government, National Disability Insurance Agency, Table E.30. Available at: https://dataresearch.ndis.gov.au/reports-and-analyses/quarterly-report-supplements.
[26] Piantedosi, D., Wilding, R., Panisset, M., Molnar, L., Bryant, C., Gibbs, E., and Sawyer, A. (2025). *The Presence and Absence of Gender and Intersectionality in the 2023 NDIS Review: A Content Analysis*. *International Journal for Equity in Health*, 24, 140. https://doi.org/10.1186/s12939-025-02441-2
[27] Ibid

also more likely to be diagnosed with disabilities that are difficult to get NDIS funding for, such as autoimmune disorders, myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS), and fibromyalgia[28]." Adults with chronic health conditions (CHCs) account for 56,000 declined NDIS access requests, over half of all people deemed ineligible from the Scheme inception until 2022[29]. The proportion of declined access requests related to CHC conditions is increasing, and is now estimated to be closer to 75%[30]. These decisions may appear gender-neutral but women are more likely than men to live with multiple chronic CHCs[31] including autoimmune disorders like lupus, rheumatoid arthritis, and multiple sclerosis, which are four times more prevalent in women[32].

These inequities reflect structural conditions that sustain disadvantage: rigid interpretations of NDIS access criteria, and an entrenched bias toward particular kinds of medical evidence. Just as Crenshaw identified that the employment system reproduced disadvantage through the seniority-based layoffs (because the law had earlier permitted discriminatory hiring, meaning Black women specifically did not have the same opportunities for advancement) so too does the medical system's history of gender bias continue to shape who can access disability supports today[33]. The dominance of male-centred medical knowledge remains evident in how little is known about women's bodies compared to male-dominated topics of investigation[34], in the longstanding underrepresentation (and often exclusion prior to 1993)

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[28] Yates, S., Carey, G., Hargrave, J., Malbon, E., & Green, C. (2021). *Women's experiences of accessing individualized disability supports: gender inequality and Australia's National Disability Insurance Scheme*. *International Journal for Equity in Health*, 20, 243, p. 2. https://doi.org/10.1186/s12939-021-01571-7.

[29] National Disability Insurance Agency (2023). *Working Together to Deliver the NDIS: Supporting Analysis*. NDIS Review, 7 December 2023, p. 29. Available at: https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis-supporting-analysis.

[30] Ibid., p. 74

[31] Australian Institute of Health and Welfare (2021). *Chronic Condition Multimorbidity.* Canberra: Australian Government, 13 May 2021. Available at: https://www.aihw.gov.au/reports/chronic-disease/chronic-condition-multimorbidity-2021/contents/chronic-conditions-and-multimorbidity.

[32] Haupt, S., Graham, B., & Huxley, R. (2024). *Unravelling Sex Differences in Autoimmune Diseases*. Sydney: UNSW Sydney, 5 September 2024. Available at: https://www.unsw.edu.au/newsroom/news/2024/09/unravelling-sex-differences-autoimmune-diseases.

[33] Piantedosi, D., Wilding, R., Panisset, M., Molnar, L., Bryant, C., Gibbs, E., and Sawyer, A. (2025). *The Presence and Absence of Gender and Intersectionality in the 2023 NDIS Review: A Content Analysis*. *International Journal for Equity in Health*, 24, 140. https://doi.org/10.1186/s12939-025-02441-2

[34] Gadsden, T., Hallam, L., Carcel, C., et al. (2024). *Theory of change for addressing sex and gender bias, invisibility and exclusion in Australian health and medical research, policy and practice*. *Health Research Policy and Systems*, 22, 86. https://doi.org/10.1186/s12961-024-01173-z;
Burrowes, K. (2021). *Gender bias in medicine and medical research is still putting women's health at risk*. *The Conversation*, 7 March 2021 (updated 9 March 2021). Available at: https://theconversation.com/gender-bias-in-medicine-and-medical-research-is-still-putting-womens-health-at-risk-156495;
Balch, B. (2023). *Why we know so little about women's health*. *AAMC News*. Available at: https://www.aamc.org/news/why-we-know-so-little-about-women-s-health;
Jeffery, M. (2023). *I'm one of too many women misdiagnosed and impacted by history of sex bias in medical research*. *Women's Agenda*. Available at: https://womensagenda.com.au/latest/im-one-of-too-many-women-misdiagnosed-and-impacted-by-history-of-sex-bias-in-medical-research/.

of women from clinical trials[35] and in the well-documented persistence of medical misogyny[36]. These patterns combine to mean that women are underdiagnosed, misdiagnosed, or diagnosed too late, leaving them less able to produce the 'right' evidence to access the NDIS, and more likely to be excluded despite meeting the functional impairment threshold[37].

Chronic health conditions are disproportionately experienced by women[38], who live longer but spend more years in ill health than men[39]. WWDA members consistently report that experiences of disability linked to chronic health conditions are declined for NDIS access, with limited or no pathways for support outside the scheme[40]. Policy decisions that exclude certain conditions, or that design eligibility criteria around narrowly medicalised understandings of disability, produce a patterned disadvantage toward women whose disability experiences are more likely to be connected to chronic health conditions. Likewise, anchoring access to supports in the need for particular forms of medical evidence or formal diagnosis disproportionately disadvantages women who are more likely to be diagnosed later in life, misdiagnosed, or remain undiagnosed[41].

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[35] Burrowes, K. (2021). *Gender bias in medicine and medical research is still putting women's health at risk. The Conversation*, 7 March 2021 (updated 9 March 2021). Available at: https://theconversation.com/gender-bias-in-medicine-and-medical-research-is-still-putting-womens-health-at-risk-156495

[36] Merone, L., Tsey, K., Russell, D., & Nagle, C. (2022). *Sex inequalities in medical research: a systematic scoping review of the literature. Women's Health Reports*, 3(1), 49–59. https://doi.org/10.1089/whr.2021.0083;
Merone, L., Tsey, K., Russell, D., & Nagle, C. (2022). *"I just want to feel safe going to a doctor": experiences of female patients with chronic conditions in Australia. Women's Health Reports*, 3(1), 1016–1028. https://doi.org/10.1089/whr.2022.0052;
Samulowitz, A., Gremyr, I., Eriksson, E., & Hensing, G. (2018). *"Brave men" and "emotional women": a theory-guided literature review on gender bias in health care and gendered norms towards patients with chronic pain. Pain Research & Management*, 2018, 6358624.

[37] Yates, S., Carey, G., Hargrave, J., Malbon, E., & Green, C. (2021). *Women's experiences of accessing individualized disability supports: gender inequality and Australia's National Disability Insurance Scheme. International Journal for Equity in Health*, 20, 243, p. 2. https://doi.org/10.1186/s12939-021-01571-7.

[38] Australian Women's Health Alliance (2024). *The Gendered Experience of Chronic Conditions: Insights, Challenges and Opportunities. Women's Health Hub Series* No. 1. Canberra: Australian Women's Health Alliance. Available at: https://australianwomenshealth.org/wp-content/uploads/2024/11/Position-Paper-The-Gendered-Experience-of-Chronic-Conditions-1.pdf.

[39] Australian Institute of Health and Welfare (2023). *The Health of Australia's Females*. Canberra: Australian Government, "Females lose more healthy years of life from living with disease and injury (58%) than from dying prematurely (which accounted for the remaining 42%)." Available at: https://www.aihw.gov.au/reports/women/female-health/contents/how-healthy.

[40] Women With Disabilities Australia, Women With Disabilities ACT, and Women With Disabilities Victoria (2024). *Survey Report: Foundational Supports*. For submission to Part 1 of the Foundational Supports consultation (General supports), 4 December 2024. Available at: https://wwda.org.au/wp-content/uploads/2025/01/Survey-Report-for-submission-3.12.2024.pdf.

[41] Piantedosi, D., Wilding, R., Panisset, M., Molnar, L., Bryant, C., Gibbs, E., and Sawyer, A. (2025). *The Presence and Absence of Gender and Intersectionality in the 2023 NDIS Review: A Content Analysis. International Journal for Equity in Health*, 24, 140. https://doi.org/10.1186/s12939-025-02441-2

There is currently limited legal recourse available for women whose disability experiences relate to chronic health conditions. Importantly, the burden of identifying and contesting these exclusions cannot rest with each individual woman with disability, least of all those who are already least resourced to engage in continual self-advocacy. It is critical then to address the limits of the individual enforcement model which currently underpins the DDA.

Blackham and Temple observe that "the individual complaints model has failed to achieve meaningful systemic change"[42]. Systemic intersectional harms are often diffuse, cumulative, and widespread, and cannot be adequately remedied through individual complaints alone. The DDA should therefore both permit claims which name more than one protected attribute as the legal basis for intersectional discrimination and require decision makers to consider broader contextual factors, such as chronic illness, gender, or economic status, in assessing detriment. Beyond this, the powers and resourcing of the AHRC must be expanded to allow it to undertake own-motion systemic enforcement. Crucially, these powers must be backed by resourcing that enables proactive investigation in practice, rather than existing only as theoretical possibilities.

WWDA strongly believe addressing intersectionality in DDA reform requires systemic solutions. This includes resourcing the AHRC to investigate patterns of discrimination, rather than relying on individual complaints, and addressing discrimination in our research and data collection systems that perpetuate medical bias and the exclusion of women's experiences from clinical evidence. The DDA must be reformed to explicitly recognise and address intersectionality, both in terms of protected attributes and broader social contexts. This framing is essential to reflect the lived experience of women and gender-diverse people with disability, whose discrimination is shaped by overlapping and mutually reinforcing systems, rather than isolated categories of exclusion.

Part 2: Case study examples/ lived experience

In this submission, we have clarified the origins of Crenshaw's concept of intersectionality and demonstrated how this framework informs WWDA's advocacy and context for consideration by the DDA review. The next section turns to direct case studies derived through WWDA's community consultations. Linking theory to lived experience, these case studies illustrate the broader contexts that legislative approaches to intersectionality must be capable of addressing. They also provide contingencies that will be drawn upon in later areas of this submission, reinforcing the overarching significance of recognising intersectionality in DDA reform.

[42] Blackham, A., & Temple, J. (2020). *Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework. University of New South Wales Law Journal*, 43(3), 773–800, p. 774. Available at: https://www.unsw.edu.au/content/dam/pdfs/law/unsw-law-journal/2020-2029/2020/Issue-43-3-02-BLACKHAM-AND-TEMPLE.pdf

Case study #1: Gendered medical bias and rural barriers

This case study illustrates why the DDA must allow claims to be brought on the basis of overlapping protected attributes, and why an intersectional analysis requires consideration of broader systemic contexts.

One WWDA member shared with us:

> "My primary disability is something that people think happens more in men, but actually lots of women have it too, and it's just not diagnosed properly, because women are usually dismissed … and told they're 'hysterical' or 'anxious'… A lot of chronic health issues flowing from it are not recognised by the NDIS, and some doctors even say [the condition] 'doesn't exist,' which I feel is discriminatory. … Being rural makes this worse, organisations say they provide statewide services, but actually they don't, so support doesn't reach rural people at all. … Because one of the impacts of my disability is an energy impairment, I've had trouble getting adjustments approved at work, with my manager saying, 'well, it's your choice to not live in the city, so if you get exhausted, that's your problem.'"

At its core, this account involves both sex and disability: gendered medical bias meant her condition was dismissed as "hysteria" or "anxiety," leaving her undiagnosed and misdiagnosed for years. That gender bias then interacts with the chronic health issue (disability) and the design of the NDIS, which excludes many chronic health conditions from eligibility, producing a pattern of compounded harm.

Beyond this, the case study highlights additional contextual factors that magnify disadvantage. Living in a rural community means services promised as "statewide" fail to materialise, reflecting program design and implementation choices that favour metropolitan areas. The energy impairment linked to her disability compounds this exclusion, as she cannot sustain long commutes or patchwork service arrangements without risk to her health.

Finally, in the workplace, her request for adjustments was dismissed as a "choice" linked to living outside the city. This reflects ableist and gendered assumptions about the "ideal worker": centrally located, always available, never fatigued, and never requiring adaptation.

Taken together, these barriers illustrate two distinct but connected points. First, the DDA must expressly permit claims on overlapping protected attributes. Second, broader contextual factors (which may or may not be protected attributes, such as rurality) must be considered when implementing any test relating to detriment/reasonableness/unfavourable treatment and any positive duty framework. If the DDA does not permit consideration of the broader contextual factors which compound inequity, there is a risk that the most marginalised people with disability will be least able to access the remedies in the DDA.

Case study #2: Reproductive health discrimination

This case study illustrates the systemic discrimination that arises when gender and disability intersect in the context of reproductive health services. One WWDA member described how it took her over 300 days to access a routine reproductive health service (egg freezing).

Reflecting on how the law should reflect intersectionality, she shared:

> "For me, the law should talk about intersectionality in a way that recognises people aren't just one thing. I'm not only disabled, I'm also a woman. And in the case of freezing my eggs, discrimination came from both parts of my identity colliding. The barriers weren't only about disability, they were also about the assumptions placed on women's fertility choices."

Her experience illustrates both how discrimination cannot always be neatly categorised under one attribute and also shows the difficulties of fitting intersectional discrimination into the existing definitions of discrimination in a complaints-based process.

The practical obstacles she encountered were both structural and attitudinal. Fertility clinics repeatedly advised they did not have the equipment or trained staff to assist with transfers from her wheelchair to the bed. These absences were not framed as refusals of service, but as "practical limitations." In her words:

> "What makes discrimination difficult to prove is that it's often hidden behind excuses. In my case with egg freezing, clinics didn't say, 'We won't treat you because you're disabled.' They said, 'We don't have the equipment,' or 'We can't help you with transfers.' On paper that sounds like a practical limitation, but the reality was a refusal to make reasonable adjustments"

The result was months of harmful delay, with significant consequences for her fertility options and personal wellbeing. She reflected:

> "When I was trying to freeze my eggs, proactive action could have changed everything. If fertility clinics had thought about accessibility before I arrived — by having a hoist available and staff trained to use it — I wouldn't have spent more than 300 days searching for a doctor who could help me with a simple transfer from my wheelchair to the bed. That one proactive step would have saved me months of stress, protected my fertility options, and allowed me to focus on the deeply personal decision I was making rather than fighting for basic access. It's a perfect example of how planning ahead doesn't just remove barriers, it gives disabled people the same dignity and opportunity as everyone else."

WWDA recognises that not every possible adjustment can be anticipated in advance. This example however demonstrates a basic and foreseeable accessibility gap, not an idiosyncratic need. Around 7.7% of Australians aged 0–64 use mobility aids (including hoists and transfer equipment)43, yet fertility clinics had not planned for this possibility. This

[43] Australian Institute of Health and Welfare (2024). *People with Disability in Australia: Activities People Need Help With*. Canberra: Australian Government. Available at:

reflects a broader assumption that people who require physical assistance would not seek fertility treatment, a stereotype that itself reproduces discrimination. The failure to plan for such widely occurring accessibility needs illustrates why the DDA must impose proactive duties to identify and address systemic barriers before they result in exclusion.

Without reform of the DDA to cover intersecting forms of discrimination, women with disability will continue to face exclusion in critical areas of life, including reproductive health. It also demonstrates the necessity of a positive duty and proactive obligations across the full range of duty holders (including health services, education providers, and other essential systems) so that, where possible, accessibility and equality are embedded in advance, rather than left to individuals to secure through complaints after harm has occurred. This case study will therefore be referenced again in sections addressing the proposed positive duty, stand-alone adjustments duty and in addressing unjustifiable hardship.

https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/people-with-disability/activities-people-need-help-with.

Case study #3: Pain, menstruation and workplace design

There were over 17 references to pain in our DDA survey. For WWDA members, pain is a site where discrimination occurs through gendered medical bias, normative assumptions about productivity, and workplace and health system design44. In the Issues Paper, intersectionality is framed as possibly referring to "multiple disabilities," for example where a person has both physical and psychosocial disabilities, or a physical disability and neurodivergent experience45. While many WWDA members do live with multiple disabilities or chronic conditions, this describes part of the broader context in which disadvantage occurs. Multiple disabilities are not in of themselves a form of intersectionality as Crenshaw originally intended. Rather, intersectionality is concerned with how multiple forms of discrimination (e.g. gendered norms and ableist structures) and systems of power overlap (the legal system, medical/ health system, organisation of workplaces etc.) creating compounded forms of discrimination.

For this reason, WWDA explicitly recommends separating the concept of multiple disabilities from intersectionality altogether. We do this because the experience of living with multiple disabilities raises distinct practical and legal questions (particularly about adjustments, accessibility, and service design) that differ from the structural analysis of intersecting systems of discrimination that intersectionality addresses. Conflating the two risks distorting both concepts: it medicalises intersectionality by framing it as an accumulation of impairments, and obscures the specific adjustments and supports required by people with multiple disabilities. We address multiple disabilities within this 'intersectionality' section, because the Issues Paper locates the topic here, however we recommend treating it as a discrete area of DDA reform. Our recommendations therefore distinguish between:

- the need to recognise and accommodate multiple disabilities within definitions, adjustment duties, and detriment tests; and
- the need to embed intersectionality as a legal and structural principle for identifying and addressing compounded discrimination across protected attributes and systemic contexts.

In distinguishing 'intersectionality' from experiences of multiple disabilities, this case study highlights the importance of addressing both separately to better understand how they are

[44] Women with Disabilities Victoria (2024). *Inquiry into Women's Pain: Giving Voice to the Experiences and Needs of Women with Disabilities Living with Pain*. Submission to the Victorian Department of Health, 31 July 2024. Available at: https://www.wdv.org.au/wp-content/uploads/2024/07/WDV_Pain_Inquiry_Submission_Final_Report.pdf.

[45] Attorney-General's Department (2025). *Review of the Disability Discrimination Act 1992: Issues Paper*. Canberra: Australian Government, Attorney-General's Department, p. 27. Available at: https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/user_uploads/dda-review-issues-paper.pdf .

experienced by our members on a practical level. One WWDA member living with multiple disabilities described her experience of pain being dismissed:

> "Being female, people dismiss our pain automatically. My pain and mobility issues also affect my mental health issues."

For women, girls and gender-diverse people with disabilities, these experiences are compounded by a high prevalence of pelvic pain and menstrual-related conditions, including significant dysmenorrhoea and catamenial symptoms[46]. Likewise, menopause and perimenopause can further exacerbate underlying disability and create unique health management barriers[47] . These conditions can themselves be disabling or exacerbate other disability-related chronic pain. This means that while the DDA must expressly allow claims to be brought on multiple protected attributes (such as sex and disability), a reformed detriment/unfavourable treatment test/ the construction of a stand-alone adjustments/ positive duty must also be required to capture the broader contexts (such as the co-occurrence of multiple disabilities) that compound disadvantage.

[46] Ye, A.L., Adams, W., Westbay, L.C., & Fitzgerald, C.M. (2020). *Evaluating Disability-Related Quality of Life in Women With Chronic Pelvic Pain. Female Pelvic Medicine & Reconstructive Surgery*, 26(8), 508–513. https://doi.org/10.1097/SPV.0000000000000771.

[47] Dormire, S., & Becker, H. (2007). *Menopause health decision support for women with physical disabilities. Journal of Obstetric, Gynecologic & Neonatal Nursing*, 36(1), 97–104. https://doi.org/10.1111/j.1552-6909.2006.00123.x.

The next testimonial highlights how disability is shaped not only by impairments but by the systems and environments in which people live and work.

> "As a woman with Autism, h-EDS, Endometriosis, and MCAS who is also LGBTQIA+ I have never experienced healthcare services (Medicare, GPs, Hospitals, Surgery, Specialists) that are prepared to consider my whole body and brain.
>
> I always have to choose one part of me to be seen, knowing it won't be the right help or listen for long enough to ever build the knowledge of what is happening because it hasn't first come through the "right" presentation and words of what issues look like in able-bodied men. Overlapping disabilities mean I'm not seen or believed.
>
> I've lost jobs because the interaction of both ASD communication differences with Endo requiring leave being "too much" to accommodate.
>
> I have been made to attend word processing classes to learn to type through DES when I have a law degree and type at 100+ WPM, the law can't anticipate I am skilled, smart, and capable of working - if I have the flexibility and adaption to support me.
>
> ASD + h-EDS needs more access to dental for Private health + Medicare
>
> Endo + MCAS + h-EDS needs non-fertility based access to endometriosis surgery
>
> Endo + ASD needs LGBTQIA+ needs access to preliminary endo Scans without being sexually active (penetrative sex).
>
> ASD + any issue requiring presentation at Emergency needs doctors and nurses and paramedics to be trained on communication differences, pain and interoception differences"

This account shows the significance of living with multiple disabilities for many WWDA members. The compounded disadvantage arises from how systems respond to these needs: health services fail to integrate care, workplaces penalise overlapping needs for leave and flexibility, and disability employment services impose generic requirements that ignore qualifications and capability. This reflects the importance of distinguishing the contextual reality of multiple disabilities from intersectional discrimination. While multiple disabilities may be part of the context, they do not constitute "intersectionality" in the sense Crenshaw intended.

As noted in other case studies, workplaces are often designed around the assumption of the "ideal worker": one who is always available, centrally located, never fatigued, and never requiring adaptation. These "ideals" are also implicitly male and non-menstruating, reproducing the assumption that workplaces employ no bodies with cyclical or chronic pain. Within this framework, pain associated with menstruation, menopause, or related chronic conditions is dismissed as private or exceptional, rather than recognised as a normal experience requiring structural accommodation.

This example demonstrates three distinct but connected needs in DDA reform. First, the Act must expressly permit claims to be brought on overlapping protected attributes (here, sex and disability) so that compounded discrimination is legally visible. Second, a detriment/unfavourable treatment test is required to ensure that broader contexts, including the experience of multiple disabilities, can be taken into account where they interact with systemic gendered and ableist norms. Third, the case shows why a positive duty and a standalone duty to provide adjustments are essential: workplaces and public programs and services must be proactively required to design with gendered and disability-related experiences in mind (including non-visible experiences like pain), rather than leaving individuals to pursue reactive complaints after exclusion has already occurred.

Case study #4: Young people, gender and neurodivergence

In a targeted consultation with our WWDA Youth Advisory Group, members shared:

> "…a lot of discrimination isn't tangible, so for example the intersection between being a young person and being autistic/ADHD means that I don't feel comfortable sharing my disability with future employers because I fear that it would change their opinion of me or make them view me as less capable."

Other young members explained that:

> "They're not intersectional at all in their lens and do not factor compounded discrimination into the mix when investigating a case of discrimination."

> "It puts multiply marginalised people in a difficult situation when going to the Human Rights Commission because you must choose which discrimination legislation (eg sex, race, disability) you lodge the complaint under."

These testimonials illustrate how discrimination is experienced at the intersection of age, disability, gender, and systemic bias in complaints processes. For young people, the perception that they lack experience or capability is already a barrier to employment. When this age-based stigma overlaps with stereotypes about neurodivergence and gendered assumptions about competence or reliability, it produces compounded disadvantage. Disclosure of disability in a recruitment context becomes especially fraught for young women and gender-diverse people, who face entrenched patterns of sexism layered over ableist bias: "too young" is compounded by "too disabled" and reinforced by gendered assumptions of fragility, incapacity, or unreliability.

The example also highlights how the current complaints framework compounds disadvantage. Young women and gender-diverse people with disability who experience discrimination on intersecting grounds are forced to artificially separate their claims, choosing between disability, age, or sex discrimination. This siloed legal approach makes compounded harms invisible and reproduces the very marginalisation the DDA aims to prevent.

Intersectionality makes clear that marginalisation is not the sum of separate exclusions. Here, systemic disadvantage is created by the interaction of employment practices, gendered and ageist workplace cultures, social attitudes about youth and neurodivergence, and legal frameworks that require claims to be disaggregated. Together, these systems both generate the conditions for exclusion and compound its effects, leaving young women and gender-diverse people with disability with few safe options for disclosure, redress, or fair participation.

Similarly, disadvantage and discrimination at the intersection of age, disability, gender and systemic bias persists for older women. For example, data on NDIS access and participation demonstrates not only that male access requests are approved at significantly higher rates

than female access requests, but that this gender gap widens further with age[48]. Relatedly, delays in diagnosis due to medical gender bias can interact with NDIS age requirements, resulting in an absence of funded disability supports for women who would otherwise meet eligibility criteria if their diagnosis was received earlier in life.

[48] Piantedosi, D., Wilding, R., Panisset, M., Molnar, L., Bryant, C., Gibbs, E., and Sawyer, A. (2025). *The Presence and Absence of Gender and Intersectionality in the 2023 NDIS Review: A Content Analysis*. *International Journal for Equity in Health*, 24, 140. https://doi.org/10.1186/s12939-025-02441-2.

Case study #5: Economic inequality and NDIS access

One member described their experiences of discrimination as being shaped by disability, employment status and class position:

> "It's probably going to be a common one for a lot of people, having a disability and [lower] economic status, being unemployed, on a disability pension. Rich people have better access to the NDIS because they can afford reports [and] lawyers, whereas if you're economically disadvantaged you don't have thousands of dollars spare… You're just having to deal with NDIS-funded OTs, not necessarily the best or your choice… It's really hard to get an advocate… advocacy organisations [are] only taking those already at the hearing stage… It just seems you need to be rich to access the best of the best to get onto the NDIS."

As we have argued above, any act which is done because of the intersection of two or more protected attributes must be allowed to form the basis for a claim (for example, disability and where relevant, sex, race, age etc.). However, it is also important that the DDA permit complaints relating to acts which occur because of the intersection between a prohibited ground and a non-prohibited ground. For example, economic status is not itself a protected attribute, but it is a material contextual factor that can intensify disadvantage and therefore should be considered when interpreting whether the person has suffered detriment/unfavourable treatment and whether proactive obligations have been met under a positive duty.

In this testimony, a WWDA member connected their experiences of unemployment and limited economic resources as barriers to afford the medical reports and legal representation increasingly necessary for NDIS access. This places them at a structural disadvantage compared to applicants with greater economic capital, who can privately commission reports, select their providers, and pay for legal advocacy. This highlights how policies or practices (such as requiring expensive specialist evidence or preferring privately commissioned reports) can operate as conditions that produce disadvantage for people with disability, an analysis the DDA should capture through a detriment/unfavourable treatment test rather than a narrow comparator model.

From an intersectional perspective, this is not simply "disability plus poverty," but the way labour market exclusion, entrenched poverty due to the insufficiency of social security, and disability policy design intersect. Being unemployed and on a pension is itself a product of systemic barriers to labour market participation for people with disability. The NDIS then compounds this exclusion by inadvertently structuring access around financial capacity, embedding an assumption that all participants can mobilise private resources to evidence their eligibility. Accordingly, while a complaint may be pleaded on protected grounds (e.g., disability, and where the facts support it sex or race for example), it may also be appropriate for decision makers to examine the broader economic context to understand the extent of detriment and the reasonableness of the respondent's practices.

The result is a cycle: exclusion from employment reduces income, which undermines access to the forms of evidence needed to access the NDIS, which in turn limits supports needed to

gain or sustain employment. This is an example of how intersecting systems, welfare, labour markets, and disability support, create the conditions for marginalisation and compound its effects over time. For interpretive guidance, this case study shows why the DDA must (1) expressly allow claims based on intersecting protected attributes (first step), and (2) require consideration of broader contextual factors, such as economic status, within the analysis of detriment/unfavourable treatment , and also through a positive duty so that decision makers can recognise and remedy compounding disadvantage even where some drivers (like income) are not protected attributes.

Case study #6: Energy impairments and the burden of enforcement

In our consultations, members with chronic illness explained how the very structure of complaints processes can itself create discrimination. This shows why the DDA's reliance on individual complaints is ill-suited to capture patterned, structural issues of exclusion. From a legal perspective, the protected attribute of disability may ground a complaint, but the disadvantage cannot be properly understood without recognising the compounding role of broader factors such as poverty, gender, and the functional impacts of chronic illness.

One member explained:

> "…for people who are chronically ill [and] experience chronic fatigue, [energy impairments, and] brain fog, it is really, really hard to follow up any discrimination. It's honestly just exhausting, and I don't think people in these systems understand what it is like when you are so tired that you can't think or type or feed yourself… If there are ways [systems] can actually consider the burden of admin and medical admin and fighting [discrimination]… I know advocates provide this service, but they're not at all funded enough or widely known about. … Definitely looking at the ways to make [complaints processes] more accessible, and remembering that energy impairments… especially [post-exertional relapse] for conditions like [Chronic fatigue syndrome (CFS/ME)], can actually harm you."

This testimony highlights why legal frameworks must do more than respond to individual complaints: they must be designed to recognise compounded disadvantage and address systemic patterns of discrimination. When the law assumes all complainants can sustain lengthy, resource-intensive enforcement processes, it entrenches inequality. Those most affected by intersecting barriers, (including gender bias in healthcare, economic disadvantage, and chronic energy impairment) are also those least resourced to bring a claim.

Accordingly, this case study functions as a concrete example of why proactive systemic enforcement must be enabled and properly resourced. Without regulator-led investigations, representative actions, and enforced positive duties on duty holders, the burden of identifying and challenging patterned discrimination falls on those least able to carry it. Intersectionality in the DDA must therefore combine legally workable claims on multiple protected attributes with broader contextual analysis and structural enforcement powers that shift responsibility away from individuals and onto institutions.

Case study #7: Racialised ableism and compounded discrimination

This case study illustrates how racism and ableism converge to produce a distinct form of discrimination rooted in suspicion and deficit. When disability is racialised, both racial identity and disability are reinterpreted through bias rather than fact.

One WWDA member shared:

> "I am Lebanese heritage and I look it, I have a commonly found Arabic/Asian surname, my disability has often been – sometimes to my face – summarised as 'Lebanese Back'."

This experience exposes how cultural identity and disability become fused in prejudice. The insulting phrase "Lebanese Back" carries two layers of meaning: it treats ethnicity as a source of suspicion, and disability as a mark of weakness or deficiency. Together they create a stereotype of unreliability and exaggeration, that pain or disability is not genuine but a cultural trait. This type of racialised ableism operates within both health and employment settings, where bias leads to disbelief in people's accounts of pain or capability, shaping access to healthcare, disability supports and workplace adjustments.

Such language reflects a broader pattern in which racialised people with disability are stigmatised through harmful narratives of excess, deceit or incapacity. As Crenshaw observed, discrimination cannot be separated into single grounds: it arises from overlapping systems that determine who is believed and whose bodies are seen as legitimate.

In WWDA's DDA survey, Aboriginal and Torres Strait Islander respondents with disability described distinct experiences of racism, neglect and disbelief that reflect the continuing legacy of colonisation and institutional racism. When asked how the law should describe disability in a way that respects identity, dignity and rights, one respondent wrote:

> "Defined by the person experiencing it - basically if I say it was racist or discrimination that should be enough."

This statement asserts the right to self-definition and authority over one's own experience. It challenges the colonial legacy in which Aboriginal and Torres Strait Islander people's accounts are discounted or required to be externally validated. Recognising intersectionality in this context means affirming that individuals are the best interpreters of their own discrimination, and ensuring the DDA reflects that credibility.

Another participant with disability, when asked to share a time when discrimination was made worse because of both disability and another part of their identity, responded:

> "Hospital and medical settings in truth every setting and with tradespeople etc I get ripped off abused…"

This response illustrates how racism is experienced across all systems, not only in health care but in daily life and service interactions. It shows how colonisation's legacy persists through neglect, exploitation and everyday abuse. In health settings, it highlights the

absence of cultural safety and the ongoing bias that devalues Aboriginal and Torres Strait Islander people's accounts of pain, treatment and care.

When asked what changes to rules or processes could have made it fairer, one respondent explained:

> "Incorporating the realisation that mental [physical] and [disability] all are intersected if one's not ok the others [s]uffer Need a whole approach social emotional wellbeing model includes physical mental emotional cultural spiritual."

This describes the holistic worldview that underpins Aboriginal and Torres Strait Islander understandings of health and wellbeing. It recognises that mental, physical, cultural and spiritual dimensions are interconnected, a principle central to social and emotional wellbeing frameworks developed by First Nations communities. Intersectionality must therefore encompass this holistic view, acknowledging that disability, health, gender and culture cannot be compartmentalised. Embedding intersectionality in the DDA means requiring culturally safe, whole-of-person approaches in policy design and enforcement, and supporting Aboriginal and Torres Strait Islander leadership in defining and implementing them.

When law confines discrimination to discrete categories, these compounded harms remain invisible. The DDA must therefore recognise intersectional discrimination as a distinct legal wrong, enabling combined claims and requiring decision-makers to consider cultural and racial context in assessing detriment or access to supports.

These accounts demonstrate that racialised ableism is not merely interpersonal but structural, meaning that it is sustained through systems that position whiteness and able-bodiedness as the norm and treat deviation from that norm as "suspect". For Aboriginal and Torres Strait Islander peoples, this structure is inseparable from the ongoing legacy of colonisation, dispossession and systemic racism. For people from culturally and linguistically diverse (CALD) communities, similar dynamics operate through disbelief, language barriers and cultural stereotyping that shape access to healthcare, employment and justice. In both contexts, discrimination is reinforced by institutional practices that privilege particular ways of communicating, diagnosing and defining legitimacy.

Embedding intersectionality within the DDA means explicitly allowing claims based on overlapping protected attributes (such as race, gender and disability) so that the full nature and impact of the harm can be addressed. It must also ensure that the anti-discrimination frameworks require culturally safe practice across all systems, while recognising that cultural safety has distinct meanings for different communities: for Aboriginal and Torres Strait Islander peoples, it may include respect for connection to Country, kinship and spirituality; for people from CALD backgrounds, it may include recognition of migration histories and diverse forms of cultural expression.

Across both contexts, care, family, disability and wellbeing are understood and organised in culturally specific ways. They are rooted in collective responsibility, interdependence and community connection. These ways of knowing and caring differ from Western

individualised models but are equally valid. They must be recognised and respected in law and policy. Embedding intersectionality in this way would move the DDA beyond an individualised model of redress. It would create a mechanism capable of acknowledging structural harm, addressing its causes, and ensuring accountability for its ongoing impacts across all cultural, linguistic and colonial contexts.

Part 3: Principles for Reform

The case studies in Part 2 reflect Crenshaw's original intent, to demonstrate where overlapping forms of discrimination are generated and sustained through the interaction of structural systems, rather than being reducible to individual identities. To be workable in practice, the DDA must explicitly allow recognition of combined or overlapping protected attributes, alongside proactive duties and a detriment test, ensuring that the systemic origins of intersecting and compounding disadvantage are confronted while also providing redress for their impacts on individuals.

In the Australian context, Blackham and Temple observe that "there is a fundamental disconnect between the legal framework, which focuses on separate and distinct 'grounds' of discrimination, and how people actually experience discrimination in practice, which is multiple and overlapping"[49]. They argue that Australian law's siloed approach, which requires each protected ground to be pleaded separately, "has failed to achieve meaningful systemic change"[50]. This structure creates insurmountable barriers for people who experience compounded disadvantage, including women with disability who also face sexism or racism.

This systemic disadvantage must also be understood through the lens of s29 of the Disability Discrimination Act, which makes it unlawful to discriminate in the performance of any function or the administration of a Commonwealth law or program. The NDIS is one of the largest Commonwealth programs affecting people with disability, and its eligibility settings and implementation practices are exercises of statutory power. Where overall disability prevalence between men and women is relatively similar, yet participation patterns show significant gender exclusion, this raises serious concerns about systemic discrimination in the design and administration of the NDIS. Strengthening the DDA to address intersectional and systemic discrimination in Commonwealth laws and programs would ensure that program-level design and administration are subject to scrutiny and reform. As illustrated in *Case Study #5 Economic inequality and NDIS access*, exclusions can arise not from a single decision but from cumulative settings (such as evidentiary requirements) that disproportionately disadvantage women and gender-diverse people with disability.

Such an amendment would be consistent with the legislative purpose of the DDA and with Australia's obligations under the CRPD. The DDA was always intended to move beyond individualised notions of discrimination toward addressing systemic exclusion, but case law has tended to interpret its provisions narrowly. Parliament has both the power and precedent to expand obligations to capture systemic responsibility (as seen in the Sex Discrimination Act's positive duty reforms), and in state and territory laws that already use detriment-based standards. Recent Tasmanian and ACT disability legislation explicitly define

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[49] Blackham, A., & Temple, J. (2020). *Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework. University of New South Wales Law Journal*, 43(3), 773–800, p. 774. Available at: https://www.unsw.edu.au/content/dam/pdfs/law/unsw-law-journal/2020-2029/2020/Issue-43-3-02-BLACKHAM-AND-TEMPLE.pdf

[50] Ibid., p. 773

and apply intersectionality, showing legislative feasibility. Clarifying the operation of s29 to encompass intersectional program-level discrimination would therefore be both possible and necessary to achieve the DDA's aims. To give effect to this, s29 should be interpreted (and, if necessary, amended) to expressly cover discriminatory program design, access criteria, implementation practices and patterns in discretionary decision-making, and to require proactive steps such as gender-impact assessments in the design of Commonwealth programs.

For the DDA, the lesson is that intersectionality cannot remain an undefined placeholder for diversity. It must be embedded as a guiding principle that directs attention to structural drivers of exclusion and requires reform of the systems that entrench inequality. Piantedosi and colleagues argue that frameworks must move "beyond additive inclusion principles" and instead apply intersectionality "as a tool to guide structural (re)design"[51]. Bates and colleagues reinforce this from a broader policy perspective, warning that when intersectionality is used rhetorically but not built into design, reforms "gesture towards inclusivity but fail to restructure systems"[52]. To be effective, the DDA must adopt intersectionality not as symbolic language but as a legal standard that instructs decision-makers to assess how laws, policies and practices operate at the junction of disability with gender, race, Indigeneity and other attributes, and to treat compounded harms as a distinct form of discrimination[53].

In practical terms, this requires multiple coordinated moves. First, the Act must expressly allow claims to be brought on the basis of overlapping or combined protected attributes so that intersectional discrimination is legally visible, the necessary first step exemplified in *Case study #1: Gendered medical bias and rural barriers* and *Case study #2: Reproductive health discrimination*. Second, once a matter is before a tribunal or court, broader contextual factors must be considered and weighed across the Act (including under a detriment/unfavourable treatment test, the interpretation of "inherent requirements," the scope of reasonable adjustments, and any unjustifiable hardship defence) even where those factors (such as rurality or economic status) are not themselves protected attributes.

This interpretive approach should be supported by a detriment/unfavourable treatment test that centres actual disadvantage rather than a hypothetical comparator. It should also be reflected in guidance to decision-makers that multiple disabilities may form part of the lived context, while the discrimination to be remedied arises from how systems interpret and respond to those conditions. Pain, menstruation and workplace design demonstrates why non-visible experiences (such as pain and energy impairment) must be recognised when determining detriment and the reasonableness of adjustments.

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[51] Piantedosi, D., Wilding, R., Panisset, M., Molnar, L., Bryant, C., Gibbs, E., and Sawyer, A. (2025). *The Presence and Absence of Gender and Intersectionality in the 2023 NDIS Review: A Content Analysis*. *International Journal for Equity in Health*, 24, 140. https://doi.org/10.1186/s12939-025-02441-2.
[52] Bates, S., Kayess, R., & Katz, I. (2024). *What can we learn from disability policy to advance our understanding of how to operationalise intersectionality in Australian policy frameworks? Australian Journal of Public Administration*, 1–15, p. 6. https://doi.org/10.1111/1467-8500.12648.
[53] Ibid., pp. 9-10.

Adding overlapping grounds of discrimination to the DDA is made significantly more difficult by the separation of federal anti-discrimination legislation into multiple Acts. By contrast, the *Canadian Human Rights Act 1985*[54] provides for combined grounds of discrimination by listing all of the prohibited grounds of discrimination, then noting that:

> *"**Multiple grounds of discrimination***
>
> ***3.1** For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds."*

The Federal anti-discrimination framework should be harmonised and to provide consistency and clarity across the framework and to facilitate the consideration of complaints about discrimination on overlapping grounds.

Finally, ensuring effectiveness demands systemic enforcement. The AHRC must be empowered and resourced to conduct own-motion, proactive investigations with expanded investigation and enforcement powers, so that patterned discrimination is identified and addressed without relying on individuals least able to carry enforcement burdens. Similarly, representative and group actions must be enabled, consistent with recommendations from the CRPD Committee[55]. WWDA supports the 2022 amendments to the AHRC Act which allowed legal standing for organisations to pursue discrimination complaints in the federal courts on behalf of people they represent[56]. The burden of enforcement shows that a complaints-led model, in the absence of regulator-led investigations and a positive duty, reproduces inequality by placing the greatest weight on those with the least energy and resources to seek redress. A positive duty to eliminate discrimination and a standalone duty to make adjustments should therefore operate alongside the ability to complain about discrimination on intersecting or overlapping grounds, and the detriment test, shifting

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[54] *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (current to 29 September 2025, last amended 19 August 2024). Government of Canada, Department of Justice. Available at: https://laws-lois.justice.gc.ca/eng/acts/h-6/.

[55] Committee on the Rights of Persons with Disabilities (2019). *Concluding Observations on the Combined Second and Third Periodic Reports of Australia* (CRPD/C/AUS/CO/2–3). United Nations, 15 October 2019. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AUS/CO/2-3&Lang=En.

[56] "Although the AHRC had existing powers to inquire into systemic issues in relation to human rights and unlawful discrimination these inquiry powers were confined in scope and the AHRC could not conduct inquiries on its own motion." Australian Council of Trade Unions (2023). *Respect@Work Act: Positive Duty to Prevent Sex Discrimination and Other Reforms to the Sex Discrimination Act.* Briefing Note BN9, 14 February 2023. Melbourne: Australian Council of Trade Unions;
Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022: Revised Explanatory Memorandum. Parliament of the Commonwealth of Australia, Senate. Circulated by authority of the Attorney-General, The Hon Mark Dreyfus KC MP. Canberra: Australian Government. Available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6916.

responsibility for enforcing the DDA from individual complainants to people and entities with obligations under the DDA and embedding prevention into everyday decision-making.

In response to Question 4, WWDA recommends that the DDA be reformed to explicitly recognise: multiple protected attributes, the admission of broader contextual evidence across the Act, a detriment-based standard, a broad reading of s29, and resource systemic enforcement. This will provide a coherent, legally workable framework for the DDA to address intersectional discrimination at a systemic level, whilst providing remedy for its individual effects.

Q3-4 Recommendations

WWDA recommends that the DDA be amended to:

- **Amend the DDA to explicitly include discrimination on intersectional grounds,** adopting a definition which addresses overlapping and compounding forms of systemic discrimination, ensuring it is not conflated with "multiple disabilities"[57]. This may include those which are already recognised under existing frameworks to support harmonisation[58], such as:
    - *race, colour, descent or national or ethnic origin, and in some circumstances, immigrant status as defined in the Racial Discrimination Act 1975 (Cth)*
    - *sex, marital or relationship status, pregnancy or potential pregnancy, breastfeeding, family responsibilities, sexual orientation, gender identity, and intersex status as defined in the Sex Discrimination Act 1984 (Cth)*
    - *age as defined in the Age Discrimination Act 2004 (Cth)*
    - *religion, political opinion, national extraction, and social origin as defined in the Fair Work Act 2009 (Cth)*
    - *medical record, criminal record and trade union activity as defined in the Australian Human Rights Commission Act 1986 (Cth)]*
- **Replace the comparator model** of direct discrimination with a detriment or "unfavourable treatment" standard to make the test usable in intersectional cases[59] so that combined claims can be brought without artificial disaggregation.

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[57] Attorney-General's Department (2025). *Review of the Disability Discrimination Act 1992: Issues Paper*. Canberra: Australian Government, Attorney-General's Department, p. 27. Available at: https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/user_uploads/dda-review-issues-paper.pdf

[58] This aligns with "Reform 35: A new provision should be added across all federal discrimination laws which identifies that discrimination may occur on the basis of a particular protected attribute 'or a particular combination of 2 or more protected attributes'." Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights.* Sydney: Australian Human Rights Commission. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

[59] This aligns with "Reform 30: The test for direct discrimination should be simplified by removing the 'comparator test'", Ibid.
Blackham, A., & Temple, J. (2020). *Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework. University of New South Wales Law Journal*, 43(3), 773–800, p. 780, 797. Available at: https://www.unsw.edu.au/content/dam/pdfs/law/unsw-law-journal/2020-2029/2020/Issue-43-3-02-BLACKHAM-AND-TEMPLE.pdf

- **Harmonise Federal anti-discrimination frameworks** to ensure consistency across the Acts[60] and provide a clear pathway for people experiencing discrimination on multiple grounds.
- **Require decision-makers to consider all relevant circumstances**, including but not limited to: chronic health conditions, caring roles, economic status and rurality when assessing discrimination, to ensure intersectional impacts are visible in outcomes.
- **Expand the powers and resourcing of the Australian Human Rights Commission to initiate own-motion systemic enforcemen**t, recognising that reliance on individual complaints "has failed to achieve meaningful systemic change"[61].
- **Clarify and strengthen s29 obligations** to prohibit discrimination in the design and administration of Commonwealth laws and programs (such as the NDIS), including an obligation to identify and address systemic and intersectional discrimination, and require active assessment of gendered impacts. This would align with the positive duty on public authorities proposed by the AHRC under a Human Rights Act.
- **Resource Disability Representative Organisations (DROs) to lead the development of guidance and case examples on intersectionality**, in partnership with the regulator. This aligns with recommendations of the DRC in the context of law reform to uphold the rights of people with disability[62]. This ensures the work is led and directed by people with disability, particularly from marginalised groups, with gender central and avoiding "additive" dilution. Guidance should include practical examples that demonstrate how intersectionality can help legal experts develop more nuanced arguments about how discrimination operates.

[60] Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, p. 37. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

[61] Blackham, A., & Temple, J. (2020). *Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework. University of New South Wales Law Journal*, 43(3), 773–800, p. 774. Available at: https://www.unsw.edu.au/content/dam/pdfs/law/unsw-law-journal/2020-2029/2020/Issue-43-3-02-BLACKHAM-AND-TEMPLE.pdf

[62] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Final Report – Volume 4: Realising the Human Rights of People with Disability,* p. 249. Canberra: Australian Government. Available at: https://disability.royalcommission.gov.au/publications/final-report-volume-4-realising-human-rights-people-disability.

Recommendation 4.23 – Amending the definition of direct discrimination (Q5-6)

5. What test should be used to ensure that the definition of direct discrimination is easy to understand and implement for both duty holders and people with disability, and why

6. How should the burden of proof be addressed in the Disability Discrimination Act?

The current construction of direct discrimination in the DDA, anchored in the comparator

Q5-6 Summary: Direct Discrimination

- The current comparator test is complex, outdated, and poorly suited to recognising intersectional discrimination, particularly where disability combines with gender or other attributes.
- The DDA should adopt a **detriment or "unfavourable treatment" test** that focuses on what actually happened to the person and whether disability materially contributed, rather than relying on hypothetical comparisons.
- This simpler, fairer test aligns with the social and human rights models of disability and is already successfully used in Victoria and the ACT.
- The **burden of proof should shift** once a complainant establishes a prima facie case, requiring the respondent to show that the treatment was not because of disability.
- These changes would address power and information imbalances, improve access to justice, and ensure the law focuses on outcomes rather than intent.
- Clear guidance and practical examples should accompany the reform to help all parties understand and apply the new test.

test, is outdated, overly complex, and resistant to recognising the lived reality of discrimination. Blackham and Temple point out that discrimination law's reliance on hypothetical comparators is "highly resistant to intersectionality," making it unclear "how to choose a comparator for intersectional claims"[63]. As a result, the compounded exclusion faced by women with disability (such as being denied employment or health care on the basis of both gendered assumptions and disability stereotypes) cannot easily be recognised within the current legal test for direct discrimination. This barrier has been identified in previous law reform processes, including the Productivity Commission's 2004 review of the DDA, which noted the practical difficulties in identifying appropriate comparators[64].

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[63] Blackham, A., & Temple, J. (2020). *Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework. University of New South Wales Law Journal*, 43(3), 773–800, p. 779. Available at: https://www.unsw.edu.au/content/dam/pdfs/law/unsw-law-journal/2020-2029/2020/Issue-43-3-02-BLACKHAM-AND-TEMPLE.pdf

[64] Productivity Commission (2004). *Review of the Disability Discrimination Act 1992,* Report No. 30, p. 309. Melbourne: Productivity Commission. Available at: https://assets.pc.gov.au/inquiries/completed/disability-discrimination/report/disability-discrimination.pdf.

Blackham and Temple propose that the law move to a test of disadvantage[65] and the removal of the comparator test[66] in favour of a detriment or unfair treatment model. This approach is already legislated in Victoria[67] and the ACT[68], demonstrating that a detriment-based model is workable in practice.

The comparator test has proven unwieldy and, in many cases, determinative in ways that mask discrimination. It asks tribunals and courts to hypothesise how a person "without the disability" would have been treated, which is particularly problematic where the disadvantage manifests at the intersection of disability with gender, age or other attributes. For example, a woman with disability may face attitudinal barriers when seeking fertility treatment due to both gendered assumptions about women's reproductive roles and stereotypes about disability and parenting capacity. The current comparator reasoning cannot capture such compounded exclusion. A detriment or "unfavourable treatment" test focuses attention on what actually happened to the complainant and whether a disability-related reason materially contributed to that treatment. This model is simpler, consistent with human rights approaches, and already legislated in Victoria and the ACT. This is the test WWDA supports for the DDA (in line with the *Issues Paper's* proposal to amend the definition of direct discrimination at Recommendation 4.23[69]).

In the words of a WWDA member:

> "…Proving intent can be really hard. So I think definitions focusing more on the impact on somebody with disability, rather than, you know, that person having to try and find evidence that the person doing the discriminating definitely did it because of disability."

While intent is not formally required under current discrimination law, in practice courts and tribunals often rely on evidence of an employer or service provider's reasoning to establish causation. These records are usually controlled by respondents, making them inaccessible to complainants. This information asymmetry creates a heavy evidentiary burden, which is particularly acute for people with disability.

To make the detriment test workable for complainants, the evidentiary balance should also be updated. After a complainant establishes a prima facie case of unfavourable treatment because of disability, the onus should shift to the respondent to explain their conduct, an

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[65] Blackham, A., & Temple, J. (2020). *Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework. University of New South Wales Law Journal*, 43(3), 773–800, p. 779. Available at: https://www.unsw.edu.au/content/dam/pdfs/law/unsw-law-journal/2020-2029/2020/Issue-43-3-02-BLACKHAM-AND-TEMPLE.pdf

[66] Ibid., p. 797

[67] *Equal Opportunity Act 2010* (Vic), s. 8. *Victorian Government, Legislation Victoria*. Available at: https://www.legislation.vic.gov.au/in-force/acts/equal-opportunity-act-2010/031.

[68] *Discrimination Act 1991* (ACT), s. 8(2). *Australian Capital Territory Government, Legislation Register*. Available at: https://www.legislation.act.gov.au/a/1991-81.

[69] Attorney-General's Department (2025). *Review of the Disability Discrimination Act 1992: Issues Paper*. Canberra: Australian Government, Attorney-General's Department, p. 29. Available at: https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/user_uploads/dda-review-issues-paper.pdf .

approach the AHRC has recommended to address information asymmetries in discrimination litigation[70]. This model is consistent with s361 of the Fair Work Act 2009 (Cth), which provides that once an employee alleges adverse action because of a protected attribute, it is presumed unless the employer proves otherwise[71]. This demonstrates that burden-shifting is both workable and familiar in federal law. In practical terms, this would reduce the burden on individuals to prove the respondent's state of mind with limited access to documentation or supporting evidence, which our consultations show is often unrealistic in disability cases.

WWDA supports introducing a shifting burden of proof, such that once a complainant establishes facts from which unfavourable treatment because of disability can be inferred, the law should presume it was because of disability unless the respondent demonstrates that it was due to a non-disability related reason. This addresses information asymmetries, makes litigation more accessible, and aligns with how indirect discrimination claims already operate.

Q5-6 Recommendations

WWDA recommends:

- **That the DDA be amended to replace the comparator test with a detriment/unfavourable treatment test**, ensuring the focus is on the complainant's actual experience rather than hypothetical comparisons and explicitly providing that it does not matter whether the person who discriminates considers the treatment is unfavourable. The test must also recognise intersectional context (covered previously in the submission), consistent with the social and human rights model of disability.
- **That the DDA be amended to shift the onus of proof** so that once a complainant shows unfavourable treatment, the respondent bears the burden of proving that the treatment or proposed treatment was not on the ground of the complainant's disability.
- **The publication of practical guidance prior to legislative change**, including examples and sector-specific case studies, to support both complainants and duty holders in applying the new detriment test.

[70] See: "Reform 17: The evidentiary burden in relation to unlawful discrimination matters should be shifted to align with the approach taken in the Human Rights and Anti-Discrimination Bill 2012." in Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, p. 87. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

[71] *Fair Work Act 2009* (Cth), s. 361. *Federal Register of Legislation,* Australian Government. Available at: https://www.legislation.gov.au/C2009A00028/2017-09-20/text.

Recommendation 4.24 – Amending the definition of indirect discrimination (Q7-9)

7. How could the definition of indirect discrimination be amended to ensure that it is easy to understand and implement for people with disability and duty holders?
8. Should the reasonableness element in the definition of indirect discrimination be:
a. removed
b. retained and supplemented with a list of factors to consider
c. replaced by a legitimate and proportionate test (or another test)
d. other
Please expand on your response.

9. Should the language of 'does not or would not comply, or is not able or would not be able to comply' be removed from the definition of indirect discrimination?

Q7-9 Summary: Indirect Discrimination

- The current definition is overly technical and focuses on whether a person "can comply," rather than whether a rule or practice **disadvantages people with disability in effect**.
- The DDA should **remove the "inability to comply" wording** and adopt a simple disadvantage-based test, consistent with other federal discrimination laws.
- The **reasonableness element** should be **removed** and reliance placed on the existing **unjustifiable hardship defence** as the balancing mechanism.
- If retained, it should become a **"legitimate and proportionate means"** test, requiring respondents to show that their rule pursues a legitimate aim and uses the least discriminatory method.
- Decision-makers should be required to consider **gendered and intersectional impacts**, ensuring that ostensibly neutral rules do not compound disadvantage.
- The reformed test should align with the **duty to provide adjustments**, supported by **plain-language guidance** and adequate **legal assistance funding** to make the system accessible in practice.

WWDA supports modernising the indirect discrimination test so it targets rules and practices that may appear neutral but have exclusionary effects. Two changes are essential. First, the current requirement that a person *"does not or would not comply, or is not able or would not be able to comply"*[72] with a condition or requirement should be removed. The AHRC has identified this wording as confusing and out of step with other jurisdictions because it invites undue emphasis on literal "inability" rather than addressing whether the requirement disadvantages people with disability in practice[73]. It also obstructs the

[72] *Disability Discrimination Act 1992* (Cth), ss. 6(1)(b), 6(2)(b). *Federal Register of Legislation,* Australian Government. Available at: https://www.legislation.gov.au/C2004A04426/2018-04-12/text.
[73] See "Reform 32: Amend the definition of indirect discrimination to remove the requirement that the aggrieved person 'does not comply or is not able to comply'." in Australian Human Rights Commission

identification of systemic inequity by focusing too tightly about an individual and complicates cases in which the complainant is able to comply, but only by taking steps not required of people without disability. Comparable provisions in the Sex Discrimination Act 1984 (Cth)[74] and Age Discrimination Act 2004 (Cth)[75] already frame indirect discrimination around "disadvantage" rather than compliance, demonstrating that a disadvantage-focused model is workable and consistent across federal law. This is consistent with the *Issues Paper's* examination of Recommendation 4.24 to amend the definition of indirect discrimination[76].

Second, the reasonableness test should either be removed altogether or, if retained, be reformulated so decision makers separate ends from means. WWDA's preferred position is to remove the reasonableness test entirely and rely on unjustifiable hardship as the balancing mechanism, in line with the Disability Royal Commission's recommendation[77]. This would simplify the test and avoid duplication, given that the DDA already contains a well-developed unjustifiable hardship defence. If retained, a clearer test requiring respondents to show that (a) the rule pursues a legitimate objective, and (b) the means are proportionate (necessary and the least discriminatory way to achieve that aim) would reduce muddled analysis and make space for practical solutions. This proportionality model is already familiar in international and comparative human rights law, is included in the SDA[78] and has been endorsed by the AHRC as a unified, purposive approach to indirect discrimination[79].

This reform would make the purpose of the test more transparent, prevent overly broad or discriminatory interpretations of what is "reasonable", and force decision-makers to separate the actual goal from the method used to achieve it. Simplification would make the law easier to understand and use for both people with disability and duty holders. The amended text should also direct courts to consider "relevant circumstances", including

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(2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, p. 88. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

[74] *Sex Discrimination Act 1984* (Cth), s. 7B. *Indirect Discrimination: Reasonableness Test. AustLII*. Available at: https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/sda1984209/s7b.html.

[75] *Age Discrimination Act 2004* (Cth), s. 15. *Discrimination on the Ground of Age – Indirect Discrimination. AustLII*. Available at: https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ada2004174/s15.html.

[76] Attorney-General's Department (2025). *Review of the Disability Discrimination Act 1992: Issues Paper*. Canberra: Australian Government, Attorney-General's Department, p. 33. Available at: https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/user_uploads/dda-review-issues-paper.pdf .

[77] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Final Report – Volume 4: Realising the Human Rights of People with Disability*. Canberra: Australian Government. Available at: https://disability.royalcommission.gov.au/publications/final-report-volume-4-realising-human-rights-people-disability.

[78] *Sex Discrimination Act 1984* (Cth), s. 7B (2). *Indirect Discrimination: Reasonableness Test. AustLII*. Available at: https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/sda1984209/s7b.html.

[79] Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, p. 189. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

gendered and intersectional impacts, when judging proportionality; this would help to address recurring patterns WWDA has identified in which apparently neutral rules compound disability discrimination (for example, due to caring roles, flexible work needs, or gendered access barriers).

Q7-9 Recommendations

WWDA recommendations

- **Amend the definition of indirect discrimination** to remove the "inability to comply" language and instead focus on whether a requirement, condition, or practice disadvantages people with disability.
- **Remove the reasonableness element from the test.** If retained, it should be replaced with a "legitimate and proportionate means" test, explicitly requiring decision-makers to separate ends from means and supported by a non-exhaustive list of guiding factors.
- **Ensure the proportionality analysis expressly requires consideration of gendered and intersectional impacts**, including how seemingly neutral requirements may interact with caring roles, flexible work needs, or gendered service pathways.
- **Ensure coherence between the indirect discrimination test and the duty to provide adjustments** (Recommendations 4.25–4.26), so that adjustments function as the primary mechanism for resolving issues and the indirect discrimination test acts as a safeguard against entrenched exclusionary rules.
- **Publish plain-language guidance and examples to help people with disability**, employers, service providers and other duty holders apply the reformed test in practice.
- **Review the adequacy of funding to the Disability Discrimination Legal Services,** including an audit and costing of unmet need.

Recommendations 4.33 and 4.34 – Interpreting the Disability Discrimination Act in line with the Convention on the Rights of Persons with Disabilities (Q10-11)

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?

The DDA's architecture predates Australia's ratification of the CRPD and does not expressly anchor its purpose in that treaty. This absence now matters in practice. Where decision-makers face ambiguity, particularly in complex, discretionary settings across government programs and services, there is no explicit statutory direction requiring alignment with the rights and obligations articulated in the CRPD, or the human rights model of disability. In the absence of such direction, decision-makers may default to narrow, medicalised, or deficit-based interpretations of disability and discrimination, forcing people with disability to

Q10-11 Summary: Interpretation and CRPD

- The DDA predates Australia's ratification of the *Convention on the Rights of Persons with Disabilities (CRPD)* and lacks an explicit requirement that it be interpreted consistently with that treaty. This gap allows narrow, medicalised interpretations of disability and discrimination to persist, placing the burden on individuals to contest them after harm occurs.
- The Act should be amended to **state explicitly in its objects that it gives effect to the CRPD**, affirming dignity, autonomy, participation, and the removal of attitudinal, environmental and procedural barriers.
- A **beneficial-interpretation clause** should require courts, regulators and public authorities to interpret the DDA in the way that best advances the rights and interests of people with disability in line with the CRPD, particularly where provisions are ambiguous or discretions are exercised.
- These provisions would align the DDA with established human-rights practice and comparable remedial legislation, ensuring decisions are guided by equality-promoting outcomes rather than technical or deficit-based reasoning.
- The DDA's interpretation must also be **gender-responsive**, directing judges and duty holders to consider compounded and intersectional discrimination, consistent with CRPD Article 6 on the advancement of women and girls with disability and the general principles of the CRPD.
- The new objects and interpretive clauses should be **linked to regulatory practice** (including standards, guidance and positive duties) so that interpretation drives systemic, preventative reform rather than reactive, individual remedies.

challenge these after harm has occurred. This reactive model leaves individuals to shoulder the burden of contesting narrow readings instead of ensuring that systems are guided to prevent discrimination and uphold rights in the first place.

Expressly stating in the DDA's objects that the Act gives effect to the CRPD would provide that compass. It would confirm that the Act's core purpose is to realise equal participation by removing attitudinal, environmental and procedural barriers[80], and that interpretation of rights and duties should reflect the CRPD's emphasis on autonomy, dignity and participation, including specific recognition that women and girls with disability experience multiple discrimination[81]. A CRPD-linked object would also reinforce the shift away from deficit-based constructions of disability and toward a social and relational understanding that centres the conduct and responsibilities of duty bearers, rather than framing impairment as the source of exclusion.

An explicit beneficial-interpretation clause is the necessary counterpart. Requiring courts, regulators and public authorities to construe the DDA in the way that best advances the rights and interests of people with disability as articulated in the CRPD would operationalise the Act's remedial purpose. In concrete terms, it would guide interpretation when provisions admit of more than one meaning; steer statutory discretions (including within Commonwealth programs) toward equality-promoting outcomes; and reduce the need for individuals to litigate fine distinctions about comparator classes or medical evidence just to access protection.

Comparable interpretative techniques and objects clauses exist in remedial legislation such as the *Fair Work Act 2009* (Cth), which contains an Objects clause emphasising fairness and productivity in workplace relations[82]. While the Fair Work Act does not currently include an explicit clause requiring interpretation 'in a way that best advances the rights and interests' of particular groups, the established principle of purposive interpretation demonstrate that the addition of such a clause in the DDA would be workable and consistent with rights-based practice. Likewise, this approach aligns with the broader human-rights practice highlighted in WWDA and PWDA's joint submission to the CRPD Committee on intersectional discrimination, which underscores that legal frameworks must centre those most affected and read rights purposively so they "advance genuine equality, empowerment, and justice" rather than entrench fragmentation and individualisation of harm[83].

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[80] *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD') Preamble (e), available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities.

[81] Ibid, art. 6.

[82] *Fair Work Act 2009* (Cth), s. 3(f). *Division 2 — Object of this Act. Federal Register of Legislation,* Australian Government. Available at: https://www.legislation.gov.au/C2009A00028/2017-09-20/text.

[83] People With Disability Australia and Women With Disabilities Australia (2025). *Joint Submission: Response to the CRPD Committee's Call for Submissions on the Draft Guidelines on Addressing Multiple and Intersectional Forms of Discrimination Against Women and Girls with Disabilities*. 2 October 2025.

A CRPD-aligned, beneficially interpreted DDA must also be applied in a gender-responsive way. The interpretive task should require decision-makers to consider compounding forms of discrimination (for example, where gender, disability, race and age intersect) and to prefer constructions that do not erase gendered patterns of exclusion. This is consistent with CRPD's mandate to ensure the full development, advancement and empowerment of women and girls with disability[84], and with the evidence (drawn across our consultations and allied scholarship) that gender-neutral readings tend to miss systemic disadvantage and push burdens back onto individuals.

Finally, interpretation cannot be divorced from implementation. Linking the objects and beneficial-interpretation clause to the Act's positive, preventative tools (for example, standards, guidance and any future positive duty) ensures that interpretation drives practice: co-designed, accessible guidance and transparent enforcement mechanisms should be expressly tied to the CRPD-aligned objects to ensure interpretation produces systemic, preventative change, not only reactive individual remedies.

Q10-11 Recommendations

WWDA recommends that the DDA be amended to:

- Prohibit discrimination in all areas of "**public life**", (defined as all areas of life covered by the CRPD).
- Insert an explicit object that the Act gives effect to the CRPD, affirming dignity, autonomy, participation and the removal of environmental, attitudinal and procedural barriers (CRPD Preamble (e)[85]; art 6)[86].
- Include a statutory beneficial construction and interpretation clause requiring courts, regulators and public authorities to interpret the DDA in the way that best advances the rights and interests of people with disability in line with the CRPD, particularly where provisions are ambiguous or discretions are exercised.
- Require gender-responsive application of the Act's objects and interpretation, expressly directing decision-makers to consider compounded and intersectional discrimination affecting women and girls with disability[87].
- Link the new objects and beneficial-interpretation clause to regulatory practice (standards, co-designed guidance, and compliance activity), so that interpretation consistently drives preventative, systemic change rather than reactive, individualised responses.

Available at: https://wwda.org.au/our-resources/publication/joint-submission-addressing-multiple-and-intersectional-forms-of-discrimination/.

[84] *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD') art. 6, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities.

[85] *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD') Preamble (e), available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities.

[86] Ibid, art.6

[87] Ibid, art. 6

Recommendations 4.27 and 4.28 – Positive duty for duty holders to eliminate discrimination (Q12-15)

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?
14. What costs, benefits and other impacts would duty holders experience in meeting a positive duty under the Disability Discrimination Act? If you are an existing duty holder under the Disability Discrimination Act, please specify how you think meeting a positive duty would impact you.
15. Should there be exceptions or limits to the application of a positive duty?

Q12-15 Summary: Positive Duty

- WWDA supports introducing a **positive duty** in the DDA to require organisations and governments to **proactively prevent discrimination**, shifting responsibility away from individual complaints.
- The duty should **apply across all areas of public life** (including government, public authorities, employers, education, services and health) where systemic exclusion persists.
- Duty holders should be required to take **reasonable and proportionate measures** to eliminate discrimination, guided by **consultation with people with disability** and co-designed, sector-specific standards.
- The **AHRC must be empowered and resourced** to enforce compliance through investigations, compliance notices, enforceable undertakings and penalties, ensuring transparency and accountability.
- The duty should be **linked to Disability Action Plans** and integrated into organisational design, training, and decision-making to embed accessibility and equality in advance.
- It should also **cover third-party discrimination and harassment**, requiring proactive steps to protect workers and service users.
- **No broad exemptions** should apply; limits should only arise through proportionality based on size, capacity and risk.
- The duty should include obligations to **collect and report disaggregated data** and ensure inclusive participation in research to expose systemic discrimination.
- Together, these reforms would transform the DDA from a **reactive, complaints-based law** into a **preventative, systemic framework** that drives equality across public life.

WWDA strongly supports the introduction of a positive duty into the DDA. At present, the Act relies heavily on individual complaints, placing an unreasonable burden on people with

disability to enforce their own rights after harm has already occurred. This approach fails to account for the diffuse, cumulative and systemic nature of discrimination, and leaves many women and gender-diverse people with disability without redress. A positive duty would shift the emphasis from reactive enforcement to proactive prevention, ensuring that organisations and government bodies take responsibility for addressing discrimination before it occurs.

In response to Question 12, WWDA recommends that the positive duty apply to all duty holders across public life. WWDA understands 'public life' as including all areas of life that are covered by the CRPD. This includes but may not be limited to government, public authorities, employers, education providers, service providers (and explicitly health services). A positive duty in the DDA must move us from a complaints-led system to one that prevents discrimination before it occurs. Our members' experiences and our consultation with experts for this submission make clear that the law cannot continue to rely on people with disability to shoulder the burden of enforcing their own rights after harm. A statutory duty on duty bearers to take proactive steps is essential. Embedding prevention of discrimination is a foundational design principle for disability equity, particularly for women and gender-diverse people with disability who face compounded systemic barriers across work, services and public life.

Scope: Apply the duty across public life (including health)

WWDA argues that a positive duty must bind government, public authorities and private organisations across all areas of public life, and it must explicitly extend to health services and government-funded services. The same structural barriers that operate in workplaces (assumptions, poor design, and a failure to plan for access) also operate in hospitals, clinics, universities, schools, public transport, housing and social security**.** The language of "reasonable and proportionate measures to eliminate discrimination," already used in the Sex Discrimination Act 1984 (Cth), provides a tested model for framing the scope of the duty. WWDA recommends that the duty apply to all duty holders under the DDA. If government chooses to stage implementation by first limiting coverage to the public sector, the definition of "public sector organisations" must be drawn broadly to capture all relevant functions.

This wider scope would also align with the DDA's existing coverage of Commonwealth functions. Section 29 already makes it unlawful for a person performing any function under a Commonwealth law or program to discriminate. A positive duty should give practical effect to this principle by requiring Commonwealth agencies and contractors to build accessibility and equality into programs, policies and infrastructure at the design stage. In response to Question 15, WWDA emphasises that exceptions or carve-outs should not apply to whole sectors. Limits should exist only through the proportionality standard, ensuring obligations scale appropriately rather than excluding high-risk areas such as health.

International comparisons provide further lessons. In the UK, since 1995 the Disability Discrimination Act and its successor, the Equality Act 2010, public bodies have been subject to a proactive duty to anticipate and accommodate the needs of people with disability. The

Equality Act 2010 (Explanatory Notes) describes this as an 'anticipatory duty'[88]. However, academic analysis finds that despite the duty's promise, the "anticipatory reasonable adjustment duty…has…struggled to fulfil its practical' potential[89]. Critically, while clear legal duties are essential, they must be supported by accountability and enforcement mechanisms if they are to be transformative rather than symbolic.

[88] *Equality Act 2010* (UK), Explanatory Notes, Part 16, Schedule 2, para. 676. *UK Public General Acts 2010 c. 15*. Available at: https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/19.
[89] Lawson, A., & Orchard, M. (2021). *The Anticipatory Reasonable Adjustment Duty: Removing the Blockages? The Cambridge Law Journal,* 80(2), 308–337. https://doi.org/10.1017/S0008197321000568

Case study #8 Systemic barriers in research and data systems

Funders, institutions and Government agencies hold significant power to shape accessible research and data collection practices. This leverage, however, has not been consistently applied to correct long-standing inequities in either research funding or national data systems. WWDA's insights on these issues are drawn from years of organisational experience (through participation on steering committees, governance bodies and consultation processes) where we consistently observe and provide advice to prevent the same systemic patterns of exclusion across multiple sectors and research/ data collection contexts. These are not isolated failures of individual projects, but widespread structural issues that reflect how disability, gender and chronic health are routinely overlooked in the design and governance of research and data collection systems.

Inequities in research funding and design have direct implications for the DDA. In the absence of a positive duty requiring duty holders to anticipate and prevent discrimination, inaccessible research systems, biased funding allocations and weak (or exclusionary) data collection practices persist unchecked. The current complaints-based model of the DDA is not designed to address systemic patterns of exclusion in knowledge production or public reporting. It leaves the responsibility with individuals to challenge inaccessible research facilities, exclusionary trial criteria, or biased funding allocations, a task that is practically impossible for most people with disability.

Women with disability are disproportionately affected by entrenched gendered medical bias in research funding and design. Conditions predominantly experienced by women (such as autoimmune disorders, chronic pain syndromes and endometriosis,) remain significantly under-researched and under-funded, reinforcing diagnostic delay and treatment gaps[90]. These inequities are compounded for women with disability, who face systemic exclusion both from research careers[91] and as participants in clinical studies[92]. The DDA must be reformed to recognise that such systemic exclusion constitutes discrimination requiring proactive redress, rather than relying on individual complaints after harm has occurred.

Persistent data gaps also undermine the effectiveness of anti-discrimination frameworks and extends to how governments and public authorities collect and use data. Current surveys, government data sets and administrative systems rarely provide robust sex-, gender- and disability- disaggregated data. In some cases, they do not cross-tabulate gender and disability at all; in others, identity questions are framed so broadly that they erase important differences in disability experiences. For example, in addressing employment opportunities, there are meaningful differences in the way women with intellectual and

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[90] Armour, M., Ciccia, D., Yazdani, A., Rombauts, L., Van Niekerk, L., Schubert, R., & Abbott, J. (2023). *Endometriosis research priorities in Australia. Australian and New Zealand Journal of Obstetrics and Gynaecology*, 63, 594–598. https://doi.org/10.1111/ajo.13699.

[91] Kingsley, I., Slavich, E., Harvey-Smith, L., Johnston, E.L., & Williams, L.A. (2025). *Gender differences in Australian research grant awards, applications, amounts, and workforce participation. Science and Public Policy,* scaf012. https://doi.org/10.1093/scipol/scaf012.

[92] Galea, L.A., & Parekh, R.S. (2023). *Ending the neglect of women's health in research. BMJ (Online)*, 381, p. 1303. https://doi.org/10.1136/bmj.p1303.

cognitive disabilities engage with systems and recruitment processes. This means that investigating topics like employment and economic security requires dedicated disaggregation to address specificities. Instead, WWDA finds where sample sizes for smaller groups (such as women with intellectual disabilities) are captured, their experiences are often flagged as statistically "unreliable" and are excluded from policy analysis. The effect is that the "margins within the margins" remain invisible, meaning regulators like the AHRC are deprived of the evidence base needed to monitor systemic discrimination and track progress.

This illustrates why a positive duty is necessary. A legal obligation on public authorities and research funders to design inclusive data systems (including booster and purposive sampling, cross-tabulation of gender and disability, and nuanced identity questions) to ensure that the DDA operates as a systemic tool rather than a reactive, complaints-based mechanism. Without these reforms, systemic discrimination remains hidden and cannot be addressed through the Act.

The 2024 revision of the World Medical Association's *Declaration of Helsinki*[93], which sets global ethical standards for research involving human participants, strengthened requirements for inclusion, diversity and meaningful community consultation at all stages of research. This update is significant for Australia because it reinforces and modernises the ethical standards that govern how clinical trials and other health research are designed, reviewed and approved[94]. As a signatory, Australia embeds these principles through frameworks such as the *National Statement on Ethical Conduct in Human Research*[95], giving them direct relevance to domestic research policy and regulatory practice. For the DDA review, this underscores that Australian law must not only prohibit discrimination in access to research opportunities but also impose proactive duties on funders, institutions and government authorities to design systems that reveal, rather than obscure, inequality.

[93] World Medical Association (2024). *WMA Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Participants*, 19 October 2024. Available at: https://www.wma.net/policies-post/wma-declaration-of-helsinki/.

[94] Wilkinson, D. (2024). *Declaration of Helsinki turns 60 – how this foundational document of medical ethics has stood the test of time. The Conversation,* 24 October 2024. Available at: https://theconversation.com/declaration-of-helsinki-turns-60-how-this-foundational-document-of-medical-ethics-has-stood-the-test-of-time-241769.

[95] National Health and Medical Research Council, Australian Research Council, and Universities Australia (2025). *National Statement on Ethical Conduct in Human Research.* Canberra: National Health and Medical Research Council. Available at: https://www.nhmrc.gov.au/research-policy/ethics/national-statement-ethical-conduct-human-research.

Case study #9: Training, assumptions and non-visible disability

In *Case study #2: Reproductive health discrimination* we shared the experience of a member who waited more than 300 days to access a routine reproductive health service. This illustrates why the scope of a positive duty must extend to health settings. Her experience was not the result of an individual provider's bad faith but of systemic failures, clinics that had not planned for accessibility, lacked basic equipment such as hoists, and did not equip staff with the necessary training to support disabled patients. Without a duty on health services to anticipate and address such barriers, people with disability will continue to experience profound exclusion in areas as fundamental as reproductive choice. This example shows that limiting the duty to employers alone would leave large parts of public life untouched, perpetuating discrimination where it is most harmful.

Experiences from other WWDA members show that discrimination does not always arise from overt hostility but from entrenched assumptions and poor practice. These assumptions can be just as harmful in their effects and have specifically gendered manifestations. Women and femme presenting gender-diverse people with (visible) disability often experience patronising behaviour and invasions of personal space that may not be intended as hostile acts, but nonetheless reproduce unequal power dynamics and diminish dignity.

In the words of one WWDA member:

> "being…someone that appears to [be] femme, you get treated like a child. Like they say, Oh, sweetie, Oh, darling…they also like, touch you without your consent."

Damaging assumptions can also be made when disability is non-visible. In these cases, the absence of obvious visible identifiers of disability can lead to people being dismissed or denied care altogether. This illustrates how lack of training and systemic reliance on stereotypes has direct and harmful consequences for health outcomes:

As one WWDA member explained, regardless of intention, the law must address outcomes.

> "…last time I was in hospital and nobody took my disability history because they looked at me and they were like, oh, like someone in their 30s can't be disabled, so I won't bother asking. And I feel like training would have fixed that. [A positive duty] would have meant that I would have had the care that I needed and not been discharged when I couldn't take care of myself"

> "…I experienced disability discrimination at work, and something that the person came back with was, Oh, but I didn't know I was doing it, so it's not really discrimination. And I was like, well, that's not the way the law works, but more to the point they wouldn't even be able to use that excuse if there was a positive…because then it wouldn't be about me proving whether or not they knew it was bad. It would be about the workplace, proving whether or not they've done enough to make sure…the workplace was accessible"

A positive duty would close the gap by requiring organisations to plan for accessibility and train staff, so that harmful assumptions are identified and corrected before they cause exclusion:

Responsibility for compliance

The positive duty should rest on institutions and organisations, with clear duties imposed on those with delegated control over systems and settings. Responsibility should be proportionate to the level of authority within the organisation, ensuring that environments, equipment, policies, workflows and training are accessible and non-discriminatory, and that all staff receive appropriate disability-specific training.

Lessons from the Sex Discrimination Act (SDA)

The DDA can adopt the core architecture of the SDA's positive duty "reasonable and proportionate measures" but must correct **three design weaknesses** that have impeded transparency and impact to date. **First, consultation must be an intentional design feature from the outset**. The law should include consultation as a relevant factor for assessing what is 'reasonable and proportionate'. Consultation should be with people with disability who are affected by a decision or policy, and must be meaningful, documented and cyclical. This requires embedding feedback loops with Disability Representative Organisations to ensure compliance assessments reflect lived experience.

Second, the duty must be tethered to **practical guidance and co-designed standards,** similar to the operation of s148 and s149 of the Equal Opportunity Act 2010 (Vic)[96]. These provisions allow the Commission to issue practice guidelines, and require the Commission to consult with bodies that represent the areas or persons the guidelines will relate to. Although the practice guidelines are not legally binding, a court or the Tribunal may consider evidence of compliance with practice guidelines if relevant to any matter before the under the Act. Disability Representative Organisations must be resourced to partner with the AHRC in developing this guidance, ensuring tools are sector-specific and grounded in lived experience, as well as practical, accessible and usable.

Third, the duty must be accompanied by expanded powers and resourcing for **enforcement**. The SDA experience reflects a transparency gap. ADLEG have noted that at present, there is insufficient public disclosure of enforcement activity or compliance monitoring undertaken by the regulator (AHRC)[97], and duty bearers under the Act currently have no reporting obligations[98]. To be effective, the regulator must be provided with the mandate and resources to publish enforcement updates and operate a graduated enforcement pathway, including investigations, compliance notices, enforceable undertakings, and penalties through the courts.

Taken together these elements require an escalation pathway; that is, the ability to investigate, issue compliance notices, accept and monitor enforceable undertakings, and seek penalties or other court orders where needed. A clearly defined escalation pathway

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[96] *Equal Opportunity Act 2010* (Vic), s. 148 and s. 149. *Victorian Government, Legislation Victoria*. Available at: https://www.legislation.vic.gov.au/in-force/acts/equal-opportunity-act-2010/031.
[97] Australian Discrimination Law Experts Group (2025). *Submission to the Review of the Disability Discrimination Act 1992 (Cth),* p. 62. Sydney: Australian Discrimination Law Experts Group.
[98] Ibid., p. 53

must culminate in penalties and court-enforceable orders where non-compliance persists. Executing real enforcement powers relies upon a strong and well-funded regulatory enforcement role, coupled with adequate resourcing for the regulator. If adequately funded to support this work, WWDA and other Disability Representative Organisations are well positioned to play an active role in developing broader systemic guidance.

We also see a practical opportunity to integrate the DDA's longstanding Disability Action Plans into the operational life of the positive duty. DDA law reform presents the opportunity to explore whether a new positive duty could or should be linked to the current voluntary 'action plan' mechanism under the DDA. This would ensure an organisation's up-to-date plan (co-designed with people with disability) becomes both a roadmap for compliance and relevant evidence of whether its measures are reasonable and proportionate.

Finally, lessons from the SDA on third-party harms should be translated for disability. A positive duty should require employers and service providers to take proactive steps to prevent harassment of workers by clients, patients or visitors, ensuring safe and equitable environments.

Costs, benefits and proportionality.

Organisations may face upfront costs to assess risks, consult, and implement measures. Health services may need to procure equipment or redesign clinical pathways. These are modest compared with the systemic exclusion they address.

As one WWDA member noted:

> "the government often talks about the cost of positive duty for duty holders, but not the cost of not having it for disabled people"

At its core, a positive duty should be understood as an enforceable obligation for duty holders to proactively plan for accessibility, consult with people with disability, and document their decisions. This creates safer and more inclusive services and workplaces for everyone. To avoid check-box compliance, WWDA recommends that record-keeping obligations sit with organisations, while transparency and reporting obligations sit with the regulator.

The positive duty should be designed to scale with the size and resources of the duty holder. It asks for what is reasonable and proportionate. These disciplines, thinking proactively about accessibility, meaningful consultation, evidencing decision making, are low-cost measures that prevent high-cost harms. When embedded well, a positive duty reduces litigation risk, lowers complaint-handling costs, provides clarity for staff, and improves outcomes for service users.

WWDA recommends that the AHRC hold responsibility for public transparency, supported by robust regulatory resourcing, while duty holders must demonstrate compliance on request.

Exceptions and limits

WWDA does not support carve-outs that exclude whole sectors. The only limit should be in the standard itself (reasonableness and proportionality) not in excluding contexts (such as health) where discrimination is well documented.

Q12-15 Recommendations

To be meaningful, WWDA recommends that a disability positive duty must:

- Introduce a positive duty applying to all duty holders, including government, public authorities (including functional public authorities as proposed by the AHRC's Free and Equal Report), employers, education providers and service providers with explicit coverage of health services[99].
- If implementation is staged, ensure any definition of "public sector organisations" is drawn broadly to capture all relevant functions and programs, with explicit coverage of health services and government-funded services in the first tranche.
- Strengthen section 29 by clarifying that the positive duty extends to Commonwealth agencies and contractors to proactively build accessibility, equality and non-discrimination into the design and implementation of all programs, policies and infrastructure.
- Embed meaningful and cyclical consultation with people with disability as a core element in assessing compliance, ensuring decisions reflect lived experience.
- Resource and mandate the AHRC, in partnership with Disability Representative Organisations, to co-design sector-specific guidance and practical tools (e.g. decision trees, worked examples), including tailored to health, education, housing, employment and transport.
- Require guidance materials to be taken into account in assessment of compliance with the positive duty.
- Provide the AHRC with a clear enforcement pathway as proposed in the AHRC's Free and Equal Report, including investigative powers, compliance notices, enforceable undertakings, and penalties through the courts, supported by adequate resourcing to make enforcement visible and effective.
- Require duty holders to take proactive steps to prevent third-party harassment of people with disability, ensuring safe and equitable workplaces and services (e.g. protection of nurses from harassment by patients).
- Design the duty to scale with organisational size, resources and risk profile, adopting the Victorian Equal Opportunity Act model of "reasonable and proportionate" obligations.
- Introduce clear, public and independent transparency requirements to ensure accountability for compliance with the DDA. *(Organisations should be required to maintain records and demonstrate compliance on request, with the oversight arrangements designed and monitored by an independent body such as the AHRC, subject to further consultation on the Commission's role).*

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[99] Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, p. 58. Available at: https://humanrights.gov.au/our-work/publications/free-equal-revitalising-australias-commitment-human-rights.

- Mandate the inclusion of people with disability as participants in research with exclusion criteria subject to strict justification, consistent with the updated Declaration of Helsinki (2024).
- Introduce stronger demographic data collection obligations across the research sector, ensuring detailed, standardised questions on disability and disaggregation for key characteristics (including sex, gender and intersex status) to monitor equity, identify barriers, and evaluate the impact of reforms.

Recommendations 4.25 and 4.26 – Strengthening the duty to provide adjustments (Q16-18)

16. Would the creation of a stand-alone duty to provide adjustments better assist people with disability and duty holders to understand their rights and obligations?
17. Should the scope of the duty to provide adjustments apply only to the existing areas of public life covered by the Disability Discrimination Act, or extend to other contexts?
18. Would removing the word 'reasonable' from the term 'reasonable adjustments' to align the language with the legal effect create any unintended consequences?

A clear, standalone duty to provide adjustments is essential to make the DDA

Q16-18 Summary: Stand-alone duty to provide adjustments

- The DDA should include a **plain-language, stand-alone duty** requiring duty holders to make adjustments unless doing so would cause **unjustifiable hardship**, removing the ambiguous term "reasonable."
- This reform would **clarify rights and obligations**, replacing scattered and inconsistent provisions with a single, enforceable standard.
- The duty should **apply across all areas of public life**, including health, education, employment and publicly funded or quasi-public settings such as aged care and supported accommodation.
- Adjustments should be treated as **anticipatory and ongoing**, with organisations expected to plan for common needs and review arrangements as circumstances change.
- **Co-designed, sector-specific guidance and practical tools** must support implementation, ensuring obligations are practical and consistent across settings.
- These reforms would make the DDA **clearer, fairer and more effective**, embedding accessibility and equality as proactive responsibilities rather than reactive remedies.

understandable and usable for both people with disability and duty holders. The current drafting disperses obligations across several provisions and relies on the contested qualifier "reasonable," which is used differently elsewhere in the Act. This creates confusion about what must be done, when, and by whom. In response to Question 16, WWDA submits that a new stand-alone duty should be expressed in plain terms: adjustments must be made unless doing so would impose unjustifiable hardship. This reflects how the law already operates in practice, but gives both people with disability and organisations the clarity they need at the point of decision. It would reflect and clarify existing interpretations of the Act, such as that in *Tropoulos v Journey Lawyers Pty Ltd [2019] FCA 436*[100], where the court considered that

[100] *Tropoulos v Journey Lawyers Pty Ltd* [2019] FCA 436, [161]. *BarNet Jade*. Available at: https://jade.io/article/640106.

the definition of "reasonable adjustment" contemplates that any adjustment which is identifiable and available is a reasonable adjustment.

Clarity must be paired with practical implementation support. Employers often want to comply but lack accessible, sector-specific guidance on how to identify, agree to and review adjustments. The Act should therefore be accompanied by co-designed resources (decision-trees, templates, model policies and worked examples) that map a simple pathway from request to delivery. These materials should show what "good practice" looks like in common workplace scenarios (for example, flexible hours and location, assistive technology, task reassignment or job-carving, communication supports, accessible recruitment processes, and adjustment review cycles). To ensure consistency, the same guidance should emphasise that adjustments are anticipatory and iterative: organisations are expected to plan for commonly required supports and to revisit arrangements as circumstances change.

In response to Question 17, WWDA stresses that the scope of the duty cannot be confined only to the areas of "public life" currently covered by the Act. Rather, it must apply to all areas of public life, to public authorities, and to services that are publicly funded. The Disability Royal Commission recommended that the stand-alone duty apply "generally to all contexts and settings"[101]. This requires extending coverage into settings where people with disability are at heightened risk of discrimination and exclusion, and which currently fall between the categories of "domestic" and "public" life. These may include residential aged care facilities, group homes, supported independent living (SIL) environments, specialist disability accommodation (SDA), and policing contexts – many of which are subject to public funding. In a further example, a WWDA member shared their experience living in a village for people aged over 55, governed by resident committees:

> "My husband and I have multiple disabilities and we live in an over-55s village where the residents form the committees and then they don't know about the Disability [Discrimination] Act and refuse to [provide adjustments]. Education is the answer."

In these quasi-public/ private environments, people with disability interact with service providers or resident committees with governance powers in ways that shape every aspect of daily life. In these environments, like the over-55s village example, collective decisions determine upgrades, repairs, safety measures and operational policies that affect all residents. These committees function in practice like service providers, exercising governance powers that directly impact accessibility and inclusion. In such environments, an enforceable adjustment duty is required to address unequal treatment and dismantle systemic barriers to safety, dignity and participation.

To avoid creating an unworkable duty that extends to purely private interactions, further consultation is required, to ensure people with disability can enforce their rights where

[101] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Final Report – Volume 4: Realising the Human Rights of People with Disability*. Canberra: Australian Government, p. 309. Available at: https://disability.royalcommission.gov.au/publications/final-report-volume-4-realising-human-rights-people-disability.

governance structures and service provision affect their daily lives, while recognising concerns about over-reach of regulation into purely private social activity.

In response to Question 18, WWDA notes that concerns about disclosure should not become a reason to narrow the scope of the duty. People with disability are not required to disclose their disability; however, many forms of adjustment can and should be anticipatory (for example, accessible communication formats, flexible service delivery models, or inclusive built environments). The duty should be framed so that it does not require duty holders to anticipate undisclosed individual circumstances, but does require proactive and anticipatory planning for broadly foreseeable needs, and enforceable obligations where disability is known.

For example, a hospital cannot be expected to anticipate every specific clinical accommodation for every patient in advance, but it can and must ensure that basic access features such as step-free entry, accessible bathrooms, and availability of interpreters or Easy Read information are built into service design. Once a patient discloses particular needs (such as requiring a hoist for transfers), the hospital then has an enforceable obligation to provide adjustments.

This distinction between unforeseeable and foreseeable needs is illustrated by *Case Study #2: Reproductive health discrimination*. In that example, a WWDA member was unable to access routine fertility care because no clinic had planned for patients requiring a hoist and staff training to support transfers. This was not an unusual or highly individual requirement but a foreseeable accessibility need affecting thousands of Australians. Her experience demonstrates how systemic failure to anticipate common adjustments compounds discrimination and delays care. Recognising such scenarios as foreseeable obligations under the DDA would ensure that proactive duties extend to basic, widely occurring accessibility needs, particularly in mainstream health settings.

This approach balances feasibility for duty holders with enforceable rights for people with disability, and ensures that the duty remains consistent with the DDA's objective of eliminating discrimination and promoting substantive equality of opportunity. Statutory guidance should therefore be provided to clarify: (a) that the duty extends beyond existing areas of "public life" to cover quasi-public/private residential contexts and service environments, and (b) that "unjustifiable hardship" remains the safeguard for circumstances where compliance would be genuinely unworkable.

Q16-18 Recommendations

WWDA recommends that the DDA be amended to:

- Create a plain English, standalone obligation to provide adjustments, expressed as: *duty holders must make adjustments unless doing so would impose unjustifiable hardship* (Rec 4.26, linked to Rec 4.25).
- Remove the qualifier “reasonable” from “reasonable adjustments” to eliminate ambiguity, making clear that the only limitation is unjustifiable hardship (Rec 4.25).
- Require duty holders to treat adjustments as anticipatory and iterative, with simple, documented processes for requesting, agreeing, implementing and reviewing adjustments.
- Mandate co -designed, sector specific guidance and tools for employers (decision trees, templates, model policies, worked examples) so obligations are practical to implement.
- Make explicit that the duty applies across recruitment, onboarding, day to-day work, progression and return to work, not only after an issue arises.
- Extend the duty beyond existing areas of “public life” currently covered by the Act, including where service provision contexts are also domestic and/or residential contexts, ensuring people with disability in these settings have enforceable rights to adjustments.

Recommendation 4.32 – Definition of and considerations for unjustifiable hardship (Q19)

19. What is your preferred approach to achieving greater fairness and transparency in claims of unjustifiable hardship:
a. the Disability Royal Commission amendment as proposed
b. a new definition of unjustifiable hardship
c. other
Please expand on your response.
Unjustifiable hardship must be a carefully controlled limitation, not a default escape clause

Q19 Summary: Unjustifiable hardship

- The concept of **unjustifiable hardship** must be a narrow safeguard, not a routine defence for avoiding accessibility obligations. Current misuse shows it is invoked prematurely and without proper assessment.
- WWDA supports a **hybrid approach** combining the Disability Royal Commission's amendment with a strengthened statutory definition that embeds **consultation, evidence and proportionality** into the hardship process.
- Duty holders should be legally required to **consult meaningfully** with the affected person, **explore alternatives** (including low-cost or staged options), and provide **written reasons** before claiming hardship.
- A reformed definition should require a **holistic and proportionate assessment**, weighing rights, dignity and participation alongside financial and operational factors, with greater expectations placed on larger organisations and public systems.
- **Hardship must never justify refusal of basic, low-cost or widely available adjustments**, and where services are delivered at scale, shared or pooled solutions should be explored (provided these do not result in segregation).
- The **regulator should review and report on hardship claims**, publishing deidentified guidance to improve consistency and transparency.
- Together, these reforms would ensure unjustifiable hardship operates as a **last resort**, grounded in genuine consultation and proportionality, rather than as an easy excuse for inaction.

for duty holders. In WWDA's 2025 DDA survey, over 70% of respondents have been told that something they needed was "too hard" to provide. This demonstrates that the current test is not working as intended: rather than a narrow safeguard, hardship is being invoked routinely and prematurely. WWDA's preferred approach, in response to Question 19, is a combination of the Disability Royal Commission's proposed amendment (option a) and a strengthened statutory definition (option b). In effect, this amounts to "option c – other": adopting the Commission's recommendations as a baseline, but going further to embed

consultation, evidence requirements, and proportionality into the definition of hardship itself.

WWDA members shared their experiences where hardship is invoked without a balanced assessment of feasibility. WWDA is concerned adjustments are currently being denied without consultation, exploration of alternatives, or recognition of the person's rights. One member explained:

> "I was told it was to[o] hard and expensive to put in a ramp at the front which would of helped not just me but also customers who were disabled. I think deciding to do that rather than spending thousands on other things like decoration, fixing the hotel, or trying to spend thousands into putting in an infinity pool, or the 10 vending machines they put in even [though] there so many places to buy drinks. All for them to make more money instead of making changes…"

This experience highlights how assumptions about cost can be used to dismiss essential access measures, even where organisations clearly have capacity to spend in other areas. Without guardrails, unjustifiable hardship is invoked to protect profit-making choices, rather than balance rights and resources in a proportionate way. Other members described being excluded from work, training and volunteering through misuse of hardship arguments:

> "I had three months off work with a neuromuscular injury that then compromised my brain and led to a cascade of other problems. On my first day back at work, I had a return to work plan that was ignored by my manager and team. The boss only spoke to me if necessary, ceased all friendly chit chat with me completely. I didn't even have a chair. I was meant to have certain ergonomic equipment that was provided at the beginning of my return to work but then taken off me without explanation or replacement. This meant I became more disabled and developed severe anxiety and PTSD from being victimised and excluded at work. When I complained to HR, I was told I just needed to toughen up and it's because I worked with too many women…"

These accounts show how the denial of physical access supports can be compounded with attitudinal treatment. Others shared similar stories of their requests for physical access being met with hostility:

> "They actually had chairs and barstools in the break room. Not that difficult to acquire a seat. It was, also, too hard to not leave things all over the ramp out the back. Oh and, with my early stage glaucoma, I can trip over things if they are in the middle of the walkway and I'm looking straight ahead. Actually, I'm pretty sure that it's also deemed a trip hazard for the non disabled and potential to block escape routes in a fire, even for non disabled volunteers. I've also been denied volunteering opportunities because they felt that they would have to make adjustments or that I was not mentally up to it. Education wouldn't go astray."

In these WWDA members' accounts it is evident that simple or low-cost supports, like access to a chair, safe walkways, or basic ergonomic equipment, can be rationalised as "too hard." In practice, hardship becomes an excuse for inaction that compounds exclusion, undermines health, and forces people out of work altogether. The human consequences, including permanent loss of employment and trauma, show why unjustifiable hardship must be tightly defined as a last resort.

Other members echoed this frustration with decisions that ignored alternatives:

> "I wanted a chair. I was told I had to pick a chair from the pre-approved list. The chair I wanted was $200 cheaper than the cheapest chair on the list. I pointed this out and was told again that I must pick a chair from the list because that's what the OT had approved for the workplace. I ended up buying the chair myself with my own money."

> "Workplace. Needed a more ergonomic set up for chronic pain."

> "I live in a community housing home where it is apparently too hard to have access... an OT report was required for proof but still no action [weeks] later."

These stories show how bureaucracy, rigid processes, or simple delay are labelled as hardship, even when adjustments are affordable or could be staged. Rather than engaging with the individual and exploring solutions, organisations retreat to inflexible procedures that push costs and risks back onto the person with disability.

Finally, as another member reflected:

> "I was told that changes to communication or workload flexibility were "too hard" or "not realistic," even when they were small adjustments. A fairer response would have been to explore solutions with me, acknowledge the validity of my needs, and try alternatives instead of dismissing them outright. Even if something couldn't be done exactly as I asked, a supportive approach would involve genuine effort, transparency, and collaboration."

This illustrates what a proportionate hardship test should look like: not blanket refusal, but genuine consultation, exploration of alternatives, and transparent reasoning. WWDA's preferred model therefore requires: (1) implementing the Disability Royal Commission's proposed amendment; and (2) strengthening it with an updated statutory definition that codifies consultation, written reasons, and proportionality as mandatory steps.

Likewise, *Case study #2: Reproductive health discrimination* described earlier underscores this point. For example, a smaller fertility clinic might argue that purchasing a hoist is prohibitively expensive and amounts to unjustifiable hardship. Under a reformed duty, such a claim could not be accepted at face value. The clinic would be required to demonstrate consultation, explore pooled or networked solutions, and show why alternatives could not

meet the need. This ensures hardship cannot be misused to delay or deny access to essential services, particularly where the consequences for women with disability are profound.

To prevent misuse, the Act should require a transparent, evidence-based process before an unjustifiable hardship claim can be made. That process should begin with genuine, documented consultation with the person seeking the adjustment, move through concrete exploration of options (including low-cost or staged approaches), and culminate in clear written reasons. The assessment should be holistic, engaging not only with financial and operational factors, as but also human rights, dignity, and the foreseeable benefits of participation and retention. Capacity is also relevant; larger organisations and public systems should be expected to do more than small enterprises.

Guardrails should also ensure that hardship is not used to avoid basic, low-cost supports that are commonplace and well-understood. Where duty holders claim unjustifiable hardship, they should be required to show what alternatives were considered and why those alternatives would not meet the need. This ensures that unjustifiable hardship operates as a narrow safeguard, consistent with CRPD principles of inclusion, rather than a routine defence against accessibility obligations.

Q19 Recommendations

WWDA recommends that the DDA be amended to:

- Require meaningful, documented consultation with the affected person before a duty holder may rely on unjustifiable hardship (Rec 4.32).
- Require duty holders to evidence alternatives considered (including low-cost, staged or pooled options) and to provide clear written reasons when hardship is claimed (Rec 4.32).
- Define unjustifiable hardship as a holistic, proportionate assessment that weighs rights, dignity and participation alongside financial and operational factors, with higher expectations on larger organisations and public systems.
- Prohibit reliance on unjustifiable hardship to deny basic, widely available adjustments, and require early consideration of pooled or shared solutions where services are delivered at scale (e.g., shared equipment within a network). *NB: Any requirement to consider pooled or shared solutions must be explicitly limited so that it cannot be relied upon to justify segregation or institutionalisation, but only to expand access to adjustments in a manner consistent with the rights contained in the CRPD and its principles of inclusion and equal participation.*
- Enable and resource the regulator to review unjustifiable hardship decisions and publish deidentified guidance on common pitfalls and good practice, driving consistency and reducing misuse.

Recommendation 7.26 – Expanding the factors considered by employers when determining if an employee can carry out the inherent requirements of particular work (Q20–22)

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 role?
22. Should any other amendments be made to the definition of inherent requirements, including factors that should be considered when deciding whether a person could carry out the inherent requirements of a job?

Q20-22 Summary: Inherent requirements

- The DDA should be amended to ensure the **inherent requirements test promotes inclusion**, not exclusion based on assumptions or convenience.
- Employers must be required to **consult with applicants or employees**, **consider and, where practicable, trial adjustments**, and **document reasons** before deciding a person cannot meet inherent requirements.
- The definition should be **outcomes-based**, focusing on whether the core functions of a role can be performed with adjustments unless this would cause unjustifiable hardship.
- **Safety considerations** should only justify exclusion where risks cannot be managed through reasonable adjustments, redesign, or training.
- Decision-makers should be guided by clear statutory factors, including the extent of consultation, adjustments trialled, proportional safety assessment, and privacy protections.
- A **structured consultation process** and **positive safety duty** should require employers to proactively design roles and systems to be accessible and inclusive.
- Implementation must be **co-designed with people with disability**, particularly women and gender-diverse people, and supported by AHRC-led guidance to ensure clarity and accountability.
- These reforms would make employment decisions **evidence-based, transparent, and consistent with human rights principles**, reducing exclusion across workplaces.

The “inherent requirements” exception under the DDA is central to how people with disability experience employment discrimination. While intended as a safeguard for employers, it has too often become a mechanism for exclusion, particularly in the absence of statutory duties to consult, to consider adjustments, or to clearly define what “inherent

requirements” means. The Disability Royal Commission found that this creates systemic barriers to inclusion, with people excluded on the basis of assumptions, stereotypes, or employer convenience rather than evidence.

In response to Question 20, WWDA strongly supports amending the DDA to require decision-makers to consider the nature and extent of any adjustments made or available, and to consult meaningfully with the person before concluding that they cannot meet inherent requirements. Currently, employers are not required to advertise inherent requirements, to document what adjustments were considered, or to explain why exclusion was necessary. This lack of transparency discourages people from applying, allows employers to rely on assumptions, and pressures applicants to disclose deeply personal health information without safeguards.

The obligation to consult and document should be framed as a rights-based dialogue, not a procedural box-tick. Consultation must be genuine, must explore supports and alternatives, and must respect privacy by limiting requests for health information to what is strictly necessary and job-related.

As one WWDA member explained:

> “They should conduct a proper job analysis to identify which tasks are truly essential versus which are just traditionally done a certain way, consider what reasonable adjustments could enable someone to perform the role, focus on outcomes rather than specific methods of completing tasks, and engage in an interactive dialogue with the candidate about potential accommodations. Instead of making assumptions based on someone's disability, they should ask "how would you perform this task?" and be open to different approaches that achieve the same results. This prevents employers from prematurely deciding someone "can't do the job" when what they really mean is "can't do the job exactly the way we've always done it.”

This testimony highlights how employers currently assume tasks must be done “the way they’ve always been done,” excluding people with disability without considering aids, redesign, or consultation. Under a reformed DDA, employers would need to document these steps before rejecting a candidate.

WWDA also recommends that employers be required to conduct time-limited trials of adjustments before concluding that a role cannot be performed. Too often, employers assume adjustments will not work without ever testing them. This leads to exclusion based on speculation rather than evidence. Requiring trials would help distinguish genuine hardship from unfounded assumptions.

This approach is consistent with state laws such as Victoria’s Equal Opportunity Act 2010 (s 86), which only permits discrimination for safety reasons where reasonably necessary to protect health and safety and where risks cannot be controlled by other means. In response to Question 22, WWDA recommends that a similar proportionality safeguard be included in the DDA, ensuring that “safety” can only justify exclusion if risks cannot be controlled through adjustments, redesign, or training.

Supporting engagement and understanding

In response to Question 21, WWDA recommends amendments to support structured and constructive engagement between employers and employees about inherent requirements. At present, the lack of statutory process creates inconsistency and uncertainty.

First, the definition of inherent requirements should be **reframed in outcomes-based terms**. This means the focus must be on whether the core objectives of a role can be achieved, not whether tasks are performed in a "traditional" way. This is especially important in sectors where women with disability are concentrated, such as care and education, where tasks can often be redesigned, supported by technology, or shared among teams. Without reform, employers can simply assert that "traditional" duties (like manual handling or fixed hours) are inherent, thereby excluding women without considering feasible alternatives.

Members offered a range of examples, including:

> "it is regularly a job requirement to have a driver's licence even when driving is not part of the job description. This feels discriminatory and has prevented me from applying for jobs I was otherwise well qualified for. I have sometimes asked employers why a licence was required and they tended to give unsatisfactory answers like, "The job may require driving" or "You may have to sometimes go to another site" or "It's just our policy"."

This shows how generic requirements can be weaponised as a proxy for exclusion. A reformed DDA would require employers to show that such requirements are truly outcome-critical, and that no adjustments (such as transport supports or flexible deployment) could enable the person to perform the role.

Second, the DDA should codify a **structured consultation process**, drawing on the model Workplace Health and Safety Laws, the Fair Work Act and the positive duty in the Sex Discrimination Act. This would require employers to:

- provide information about inherent requirements;
- invite feedback about potential impacts and adjustments; and
- record how employee views were considered.

Recruitment processes must also be included. Many WWDA members reported encountering inaccessible application and interview processes. In the words of one member, a fairer process would have involved:

> "[offering] an adapted interview process. Even just talking about how the interview process

> "The job descriptions and application process should be conducted in an easier and accessible way for people with disabilities"

Other members similarly highlighted:

These examples underline the need for consultation and transparency from the earliest recruitment stages, not just after employment has begun. Guidance should be developed by the AHRC, co-designed with Disability Representative Organisations (DROs) and funded to

ensure leadership from women and gender-diverse people with disability. Without disability-led co-design, reforms risk being gender-neutral in form but inequity-reproducing in practice.

Third, safety must be framed carefully. While genuine safety risks can be part of inherent requirements, they should only justify exclusion if they **cannot** be addressed through reasonably practicable adjustments, workplace redesign, or training. Critically, it is important to acknowledge that workplace health and safety laws impose a positive duty to ensure health and safety, which extends to preventing discrimination and harassment.

Our members felt strongly that in determining inherent requirements, 'work-trial' and 'risk-control' principles should be applied in consultation. In their own words:

> "Before deciding I couldn't do the role, employers should have asked what support or adjustments I needed and given me a fair chance to try the work with those in place. … Decisions should have been based on evidence of my performance with reasonable support, not assumptions or stereotypes."

This demonstrates the key reform principle: inherent requirements should be assessed against actual performance with adjustments, not assumptions about disability.

Clarifying definition and factors

WWDA supports amending the DDA to define inherent requirements as the core outcomes of a role that are essential to the employer's operations and which may be performed with adjustments unless those adjustments would impose unjustifiable hardship. This directly links the concept to the adjustments and unjustifiable hardship framework, ensuring "inherent" is not misread as "unalterable." Decision-makers should be required to consider and document the following factors before concluding that a person cannot meet inherent requirements:

- the nature and extent of adjustments considered or trialled, including equipment, flexible arrangements, and role re-design;
- the extent and quality of consultation with the person concerned;
- whether safety risks can be managed by reasonably practicable controls;
- whether the assessment is based on **current capacity** rather than speculative assumptions about future deterioration (for example, where a person has a progressive condition);
- whether outcomes can be achieved by different means;
- whether intersectional barriers (for example related to gender, culture, or socio-economic context) affect how adjustments are evaluated; and

- whether privacy safeguards were applied in seeking information.

Worked example: Assessing current capacity in practice

A woman with multiple sclerosis applies for an office role. The employer refuses to hire her, saying: "Your condition will probably worsen in the next five years, so you won't be able to keep up with the workload long-term." This is speculation about future capacity. It disregards her current ability to perform the role with adjustments such as ergonomic equipment and flexible hours. Under a reformed DDA, the employer would more clearly be required to assess whether she can do the job now with adjustments, not on assumptions about her future health trajectory.

Embedding privacy protections is critical. Women with disability frequently report being compelled to disclose deeply personal health information in ways that compromise dignity. Employers should only be permitted to request information strictly necessary for assessing adjustments, and must treat it confidentially.

Finally, the reform process must itself be grounded in disability-led consultation. Definitions, factors, and guidance should be co-designed with people with disability, with resourcing for DPOs and DROs, particularly those led by women and gender-diverse people, to lead this work.

Q20-22 Recommendations

WWDA recommends:

- Ensure all reforms are underpinned by substantive disability-led consultation, resourcing DPOs and DROs led by women and gender-diverse people with disability to lead co-design.
- Amend the DDA to require employers to:
    - consider the nature and extent of adjustments available;
    - engage in genuine, documented consultation with the person concerned; and
    - trial adjustments where practicable before refusing employment.
- Define "inherent requirements" in outcomes-based terms, clarifying that they may be met with adjustments unless these would impose unjustifiable hardship.
- Specify statutory factors for decision-makers, including:
    - adjustments trialled;
    - quality and extent of consultation;
    - proportional and evidence-based safety considerations;
    - current rather than speculative capacity;
    - intersectional barriers; and
    - privacy and dignity protections.
- Codify a structured consultation process (mirroring duties similar to those under the model Workplace Health and Safety Laws, the *Fair Work Act* and *Sex Discrimination Act*) requiring employers to provide information, seek employee views, and document outcomes.

- Develop AHRC guidance and model templates co-designed and led by disability representative organisations, with funded leadership from women and gender-diverse people with disability.
- Require employers relying on the inherent requirements exception to keep contemporaneous records of consultation, adjustments considered, and reasons for exclusion.
- Establish a standalone positive safety duty requiring employers to proactively design roles, equipment, systems, and policies inclusively, so inherent requirements are not defined in ways that exclude people unnecessarily.
- Clarify that health and safety can only justify exclusion if risks cannot be controlled by reasonably practicable measures, consistent with WHS requirements and a proposed positive safety duty.

How can we ensure the Disability Discrimination Act remains fit-for-purpose into the future? (Q50)

Q50 Summary: Future-Proofing

- The DDA should include a **legislated five-year, disability-led review cycle** to ensure it keeps pace with social, technological and policy change.
- The Act must explicitly **cover discrimination arising from AI and automated systems**, holding those who design or deploy them legally responsible for discriminatory outcomes.
- **Employers and health providers** should be required to conduct **accessibility and bias audits**, disclose AI use, and maintain **human oversight** of automated decisions.
- DDA should require **equitable access to AI-related training and employment pathways**, particularly for women and gender-diverse people with disability.
- Regulation must embed **anti-racism, cultural safety and Indigenous data sovereignty**, ensuring inclusive governance of technology.
- Automation should **complement (not replace) human care and judgment**, preserving dignity and relational aspects of service delivery.
- These reforms would ensure the DDA remains **responsive, preventative and rights-based**, capable of addressing emerging forms of discrimination in an evolving digital and social landscape.

Ensuring that the DDA remains fit-for-purpose requires deliberate design of mechanisms that anticipate change rather than waiting for discrimination to manifest. The world in which people with disability live and work is evolving rapidly. New technologies, shifting workforce structures, and the increasing use of artificial intelligence (AI) in both employment and health care create both opportunities and risks for people with disability. The DDA must embed forward-looking safeguards so that it is capable of addressing systemic barriers that may not yet be fully visible.

Regular statutory reviews and disability-led consultation

The DDA has not undergone comprehensive reform since its introduction in 1992. This static approach has left the law lagging behind modern understandings of disability, human rights, and discrimination. WWDA strongly supports a legislated five-year review cycle for the Act, ensuring it is continually updated to reflect evolving community expectations, international standards, and technological change. These reviews must be disability-led, centring the voices and expertise of women, girls, and gender-diverse people with disability. Consultation should be conducted through co-design, not passive feedback, so that law and policy evolve in step with lived experience.

Artificial intelligence and emerging technologies

The rapid deployment of AI across employment and health systems illustrates the urgency of future-proofing. Without deliberate safeguards, AI can reinforce existing inequalities and generate new forms of discrimination that the DDA must be equipped to address. The Australian Discrimination Law Experts Group (ADLEG) has recommended that the Act be amended to explicitly cover discrimination arising through automated or algorithmic decision-making, and to ensure that responsibility rests with those who authorise and deploy such systems[102]. This aligns with WWDA's call for anticipatory, proactive duties that prevent rather than merely respond to harm.

Although WWDA's survey did not specifically ask participants about AI, many respondents shared concerns directly relevant to AI-driven practices: such as opaque recruitment systems, inaccessible digital processes, biased health interactions, and the erosion of human connection in care and service delivery. Their insights underscore how digital processes can reproduce entrenched ableism under the guise of technological neutrality, and why the DDA's reforms must recognise algorithmic systems as potential sources of discrimination equivalent to human decision-makers. These insights reinforced the importance of including AI as a priority area for evolving reform.

AI in employment

Employers are increasingly turning to algorithmic tools for recruitment, performance monitoring, and workplace adjustments. Yet early evidence shows that automated decision-making can encode and replicate bias[103]. For people with disability, risks include:

- Exclusion from applicant pools due to inaccessible assessment platforms.
- Screening out candidates whose work histories reflect disability-related interruptions.
- Biased productivity metrics that undervalue flexible or adjusted work practices.

In the words of WWDA members:

[102] Australian Discrimination Law Experts Group (2025). *Submission to the Review of the Disability Discrimination Act 1992 (Cth).* Sydney: Australian Discrimination Law Experts Group, pp 126- 128.

[103] Sheard, N. (2025). *Algorithm-Facilitated Discrimination: A Socio-Legal Study of the Use by Employers of Artificial Intelligence Hiring Systems*. *Journal of Law and Society*, 52(2), 269. https://doi.org/10.1111/jols.12535.

> "AI is riddled with ableism. It's now being used to interview people via video conferencing, and it's scanning resumes. When the programming for the AI is ableist, and is limited in how it thinks or decides, it's excluding disabled people, usually, no matter their disability. Then, employers can just blame the AI instead of fixing the flaws or scrapping it altogether… AI isn't interested in your disabilities and how workplaces could make adjustments. It's also not accessible for people with vision impairments, hearing impairments, or tactile impairments….Whoever programs AI for the application process, is coming from an ableist mindset."

Another member stated:

> "…bin AI. AI interviews you, and scans resumes. Very limited processes. It makes no room for disabled applicants. It just assumes you can't or that adjustments should not have to be made."

These reflections illustrate the lived impact of algorithmic bias and its interaction with structural ableism in digital labour markets. They point to the need for clear legal duties requiring employers and service providers to assess, audit and disclose AI use, and to be held legally responsible for discriminatory outcomes generated by automated systems. These harms often compound for women with disability, who already face gendered barriers to work. An updated DDA should clarify that discrimination through automated systems is unlawful to the same extent as discrimination by human decision-makers. Employers must be required to conduct accessibility and bias audits of recruitment and performance systems, and to provide transparency about when and how AI is used.

AI in health and the care economy

In health contexts, the integration of AI poses particular risks for women with disability. Generative AI used to draft patient notes has been shown to emphasise men's health needs more directly than women's, contributing to diagnostic delays and treatment gaps[104]. These disparities are even sharper for Aboriginal and Torres Strait Islander women[105], migrant and refugee women, and trans and gender-diverse people with disability[106], who are often absent from underlying datasets.

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[104] Rickman, S. (2025). *Evaluating gender bias in large language models in long-term care. BMC Medical Informatics and Decision Making,* 25, 274. https://doi.org/10.1186/s12911-025-03118-0.
[105] Perera, M., et al. (2025). *Indigenous peoples and artificial intelligence: A systematic review and future directions. Big Data & Society,* 12(2), 20539517251349170. https://doi.org/10.1177/20539517251349170.
[106] Buslón, N., Cirillo, D., Rios, O., & Perera del Rosario, S. (2025). *Exploring gender bias in AI for personalized medicine: focus group study with trans community members. Journal of Medical Internet Research,* 27, e12307004. Available at: https://pmc.ncbi.nlm.nih.gov/articles/PMC12307004/.

WWDA members have shared:

> "I am really concerned about the impacts of AI in healthcare and how our privacy is being eroded by healthcare providers using AI for case-noting and other functions of case management and healthcare provision. I don't feel that the law is adequately up to date with this and feel very concerned about my privacy. I feel that there should be greater investment in healthcare so that providers do not feel forced to adopt potentially risky tech to cut corners in their work as they are forced to take on unrealistic client loads."

This concern highlights how the rapid adoption of digital and automated tools is outpacing existing legal and ethical protections. As healthcare providers turn to AI to manage workloads and streamline administration, gaps in regulation could create new vulnerabilities, including privacy breaches, bias, and unsafe or unaccountable decision-making. Ensuring the DDA is fit for purpose therefore requires anticipatory safeguards that treat algorithmic decisions as subject to the same non-discrimination and privacy standards that apply to human ones.

AI also risks entrenching **diagnostic overshadowing**, where a person's disability status leads clinicians or automated systems to misattribute new symptoms to their existing diagnosis, or to dismiss them entirely. For women, this compounds the longstanding issue of delayed or missed diagnoses for chronic health conditions such as endometriosis, autoimmune disorders, and chronic pain syndromes. If AI systems replicate these biases, by underweighting women's reports of pain or misclassifying symptoms, they will reinforce structural inequities in health access and outcomes.

Risks include:

- Biased clinical recommendations derived from incomplete or discriminatory training data.
- Misdiagnosis or delayed diagnosis due to diagnostic overshadowing, disproportionately affecting women with chronic health conditions.
- Reduced quality of care if automation substitutes for human contact, where relational aspects of care are themselves vital to wellbeing.
- Breaches of data sovereignty if Indigenous communities' health information is used without consent or governance.

Members emphasised the importance of retaining relationality, calling for:

> "less use of technology websites and call centres. Being able to talk to human being rather than a robot. AI is not going to help either and increasing use will end up in more and more expensive necessary 'qualified legal' litigation."

This perspective illustrates how automation can strip care of the human connection that is central to trust, safety, and wellbeing. It reinforces the need for explicit legal duties requiring transparency, human oversight, and accessibility in the design and deployment of AI systems in healthcare. AI should support, not replace, the relational and cultural

dimensions of care, and its use must be grounded in co-designed frameworks that embed gender, disability and cultural safety from the outset.

While AI may alleviate administrative burdens, it must never replace the human interaction central to care relationships. Regulation should require human oversight of all AI-assisted medical decisions and embed anti-racism, anti-ableism, gender-responsiveness and cultural safety standards across AI procurement, validation, and auditing.

Addressing inequities in training and access

Only a small minority of health workers in Australia have received formal training in AI, and women remain significantly less likely than men to use or trust generative AI systems[107]. Women with disability are already overrepresented in the health/care workforce (often in insecure and undervalued roles), with these inequities risk deepening exclusion. The context in which WWDA members raised AI related concerns was overwhelmingly cautious, but several indicated the potential to enable access, calling for:

This reflects the dual potential of AI: when developed inclusively, it can expand access and

> "[flexibility] around the use of AI for people who can not access information in other ways. also the allowance for people to use services like Aira[1] to empower employee autonomy"

autonomy for workers and service users with disability. However, without intentional inclusion in design and training, technological change risks reinforcing gendered and ableist divides in skills and opportunity. The DDA should therefore anticipate not only the harms of AI but also the obligation to ensure equal access to its benefits, including through accessible training, adaptive workplace technologies, and equitable participation in emerging digital roles.

Another member stated:

> "[AI] could, possibly, assist disabled employees, as we've seen AI be of help to disabled people, opening up things that were previously not accessible. *[Describes the example of an Australian journalist who is blind]*. AI can help with narration through [their] earpiece.."

This perspective underscores the importance of choice and control in technology use. AI-enabled tools can promote independence when they are accessible, transparent, and user-directed, not imposed or used to justify reduced human support. Embedding this principle of informed and voluntary use into DDA reform would help to ensure that technology enhances, rather than undermines, workplace inclusion and autonomy for women and gender-diverse people with disability.

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[107] Deloitte (2025). *TMT Predictions 2025*. Sydney: Deloitte Australia. Available at: https://www.deloitte.com/au/en/Industries/tmt/perspectives/tmt-predictions.html.

DDA reforms should include requiring equitable access to AI-related training and require that any public investment in new technologies includes targeted pathways for women and gender-diverse people with disability.

Rights-based regulation of AI

WWDA strongly advocates for the rights-based regulation of AI, which should:

- Prevent AI from creating new barriers or reinforcing existing discrimination.
- Recognise fairness as grounded in lived experience, not solely technical accuracy.
- Ensure transparency and review rights where AI is used in decision-making.
- Create avenues for redress when AI systems discriminate.
- Ensure that people with disability, especially those facing intersectional marginalisation, are central to the design, evaluation, and governance of AI frameworks.

While many AI discussions focus on abstract risks or high-level systems, WWDA members emphasised that discrimination is already occurring through everyday technologies. Automated systems embedded in retail, transport, and service environments frequently misinterpret mobility aids, communication devices, and other assistive tools as anomalies or threats. These practical examples demonstrate how bias in design and data can directly translate into humiliation, delay, and exclusion in daily life.

One member described the following experience:

> "Security features at self checkouts, pick up on my crutches inside the trolley, when I'm using the trolley for groceries and like a walker… the security beeps that there's something in my trolley. Sure, a staff member can wave a barcode over the self checkout to say it's a personal item, but it shouldn't be flagging a mobility aid at all. Standing hurts, lifting groceries hurts, then I have to stand there, sometimes for 10 minutes longer if the store is busy, waiting for someone to fix the problem. You might think I should go through a staffed checkout to avoid this problem (and give a human a job), but I'm going through the self checkout because I can't stand still for long periods in a long queue. Self checkouts usually keep moving, except for their AI flagging my crutches. I shouldn't have to take my wheelie walker or my crutches out of the trolley. AI is riddled with ableism. This isn't just about my experience as a customer, I also mean that it's concerning that this technology, not just security features, is being introduced across all sectors and doesn't make allowances for disabled people. It's programmed to exclude."

This experience illustrates how AI can reproduce ableist assumptions in everyday settings when accessibility and disability inclusion are treated as after thoughts. It highlights why legal obligations must extend beyond intent or design to include ongoing monitoring, auditing, and correction of discriminatory outcomes. Ensuring transparency and accountability for automated decisions is critical to upholding the right to participate equally in public life. The DDA should explicitly provide that discrimination via AI constitutes discrimination under the Act, and establish enforceable duties on duty-holders to audit, disclose, and mitigate risks.

Q50 Recommendations

WWDA recommends:

- **Legislate periodic reviews** of the DDA at least every five years, with disability-led co-design at their core.
- **Recognise AI-driven discrimination as unlawful**, clarifying that automated decisions are subject to the same standards as human decision-making.
- **Mandate transparency and audit duties** for employers and health providers using AI, including accessibility, bias, and fairness reviews.
- **Require human oversight** of all AI-assisted medical decisions.
- **Ensure equitable access to AI training**, particularly for women and gender-diverse people with disability in the health and care workforce.
- **Embed anti-racism, cultural safety, and Indigenous data sovereignty** principles into AI procurement, design, and regulation.
- **Establish clear redress mechanisms** for people discriminated against by AI systems.
- **Balance efficiency with human connection**, recognising that automation must never replace the relational aspects of care and support.

Are there any other issues with the Disability Discrimination Act that should be considered as part of this review? (Q51)

Q51 Summary: Other areas

- The DDA's impact depends on a **strong, well-resourced regulator**. The AHRC should receive **secure statutory funding** and be required to **report publicly** on enforcement, systemic inquiries and outcomes.
- The AHRC's mandate should extend beyond complaints to include **systemic monitoring, investigation and enforcement** of disability discrimination across sectors.
- The DDA should **restrict the use of non-disclosure agreements (NDAs)** in discrimination cases to prevent silencing complainants and concealing systemic issues.
- WWDA supports the introduction of a **federal Human Rights Act (HRA)**, based on the AHRC model, to complement DDA reforms and embed **positive, preventative human rights duties** on public authorities.
- The HRA should include **economic, social and cultural rights**, including the **right to health**, require genuine **participation and access-to-justice** for people with disability, and embed rights that have meaning and relevance for people with disability such as support for decision-making[1].
- Experience in **Victoria, Queensland and the ACT** shows that HRAs strengthen discrimination law by embedding equality, dignity and accountability across all areas of government.
- Together, a **resourced regulator**, **limits on NDAs**, and a **national Human Rights Act** would create a cohesive, prevention-based human rights framework that ensures transparency, systemic accountability, and equality in practice.

Strengthening regulator powers and transparency

At present, the AHRC is significantly under-resourced and lacks a clear statutory funding mechanism to use its systemic inquiry powers.

WWDA recommends that the DDA be amended to:

- Provide the AHRC with secure, statutory funding to enable systemic inquiries without reliance on ad hoc appropriations;
- Require regular public reporting on enforcement actions, inquiries and compliance outcomes, to build trust and accountability;
- Clarify that the regulator's role is not only to resolve individual complaints but also to monitor, investigate and address systemic patterns of discrimination across employment, health and services.

Transparency in regulator actions is critical. Individuals who experience discrimination should not bear the sole burden of enforcement. A regulator with genuine systemic powers, and the resources to use them (and report transparently on activities) will ensure the DDA achieves its purpose of eliminating disability discrimination at both individual and structural levels.

Limiting the use of non-disclosure agreements (NDAs)

In disability discrimination cases, non-disclosure agreements and non-disparagement clauses are frequently used to silence complainants and conceal systemic issues. The result is a "private settlement" culture where patterns of discrimination remain hidden, preventing regulators, policymakers and the public from learning about risks or recurring harms. WWDA asked members: "*Have you (or someone you know) felt pressured to stay silent about discrimination at work (for example: through a confidentiality or non-disclosure agreement)?*" 39 people responded, with **over half** (51.28% n=20) indicating that **they had felt pressured to remain silent**, reflecting a culture of concealment that deters accountability and perpetuates discrimination.

Answer Choices	Responses	
Yes	51.28%	20
No	28.21%	11
I'm not sure	15.38%	6
Prefer not to answer	5.13%	2
	Answered	**39**

These findings confirm that pressure to remain silent is a widespread feature of discrimination resolution processes, not an isolated occurrence. Members described feeling unable to speak about their experiences even when outcomes were unresolved or harmful, underscoring how confidentiality obligations can reproduce the same power imbalances that gave rise to the discrimination itself. WWDA supports legislative reform to restrict the use of non-disclosure agreements (NDAs) in all discrimination complaints. This would align the DDA with emerging best practice in sexual harassment law reform, where the Australian Human Rights Commission[108] and the Victorian Parliament[109] have recognised that silencing survivors through NDAs perpetuates unsafe and discriminatory cultures.

Restricting NDAs would ensure transparency, allow lessons from complaints to inform systemic improvements, and protect complainants' freedom to share their experiences without fear of reprisal. The DDA's effectiveness depends not only on the law on the books but on the ability of lived experience to inform public accountability.

Human Rights Act

[108] Australian Human Rights Commission (2025). *Speaking from Experience: What Needs to Change to Address Workplace Sexual Harassment*. Sydney: Australian Human Rights Commission.
[109] Victorian Government, Department of Justice and Community Safety (2024). *Restricting the Use of Non-Disclosure Agreements: Consultation Paper*. Melbourne: Victorian Government. Available at: https://engage.vic.gov.au/restricting-non-disclosure-agreements.

In WWDA's primary analysis of employment, health and other Commonwealth contexts, we remain concerned that even a fully modernised DDA may continue to operate as a complaints-led statute, constrained by the fragmented nature of existing anti-discrimination laws. While consideration of a Human Rights Act (HRA) sits outside the formal scope of this Review, its relevance and necessity must nonetheless be raised. This position is reinforced by the outcomes of WWDA's consultations, where the demand for a federal HRA emerged as a strong theme despite not being an area we explicitly identified or explored within the remit of this Review.

For example, WWDA members shared:

> "Australia still doesn't have a National Human Rights Act or framework, and that, in and of itself, could help enormously in not just the area of disability discrimination, but discrimination more broadly"

> "..a Human Rights Act could also help address some of the complexities related to intersectional discrimination."

That demand demonstrates the extent to which women with disability and their representative organisations view a Human Rights Act as essential to addressing structural and intersectional discrimination, promoting and upholding the full range of human rights, and to shifting responsibility from individuals towards systemic prevention and accountability.

The Parliamentary Joint Committee on Human Rights has recommended legislating a federal HRA[110], drawing on the Australian Human Rights Commission's (AHRC) model[111], precisely to address systemic gaps that individual anti-discrimination statutes cannot reach (including economic, social and cultural rights). The Committee's report situates disability rights within that broader reform pathway[112]. Experience in jurisdictions such as Victoria, Queensland, and the ACT demonstrates that Human Rights Acts strengthen the operation of discrimination law by embedding rights such as equality before the law, privacy, and dignified treatment into statutory interpretation and decision-making. Conversely, reformed

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[110] Parliamentary Joint Committee on Human Rights (2024). *Inquiry into Australia's Human Rights Framework.* Commonwealth of Australia, May 2024. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report.

[111] Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, pp. 185- 192. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

[112] Parliamentary Joint Committee on Human Rights (2024). *Inquiry into Australia's Human Rights Framework.* Commonwealth of Australia, May 2024. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report, pp. 146-151

and modernised discrimination laws improve the operation of Human Rights Acts by clarifying that these rights must be enjoyed by all without discrimination[113].

An HRA would impose a general, legally enforceable obligation on public authorities (including Commonwealth departments, agencies and statutory schemes) to (1) act compatibly with human rights and (2) properly consider human rights when making decisions. This positive duty applies across portfolios and procurement (not just in discrimination jurisdictions), creating a consistent baseline that prevents harms "upstream" in policy design and administration[114]. In the AHRC model, these two limbs of the public authority duty are the backbone of the Act and would apply federally just as they do in existing state/territory charters. Embedding this duty at the federal level would directly support the DDA's shift to prevention by requiring systemic attention to equality before a complaint ever arises[115].

In 2024, WWDA released a Position Statement which makes clear that the protection of the rights of people with disability is best achieved through a comprehensive national HRA, rather than a stand-alone Disability Rights Act[116]. The indivisibility and interdependence of human rights mean disability equality cannot be siloed; instead, an HRA embeds obligations across the full spectrum of civil, political, economic, social and cultural rights. Following this, the 12 national Disability Representative Organisations issued a joint paper in support of a national HRA.

Crucially, the AHRC model adds two procedural duties that map closely to the reforms WWDA seeks under the DDA. The first is a **participation duty**, which requires genuine, timely and representative consultation when decisions directly concern, or are likely to disproportionately affect, people with disability (including through their representative organisations)[117]. Importantly, the duty incorporates objective criteria that a court can apply to assess whether consultation met the standard. This responds to the "consultation gap" identified in our DDA work and would hard-wire good decision-making across government. The second is an **equal access to justice duty**, which obliges public authorities to ensure the

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[113] Ibid, p. 373

[114] Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, p. 46. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

[115] Ibid, p. 107;
Parliamentary Joint Committee on Human Rights (2024). *Inquiry into Australia's Human Rights Framework*. Commonwealth of Australia, May 2024. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report, pp. 147-148

[116] Women With Disabilities Australia (2024). *Strengthening Protection of the Rights of People with Disability through a National Human Rights Act (HRA)*. Hobart: Women With Disabilities Australia, 19 July 2024. Available at: https://wwda.org.au/our-resources/publication/strengthening-protection-of-the-rights-of-people-with-disability-through-a-national-human-rights-act-hra/.

[117] Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, p. 59. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

provision of core supports[118] (such as accessible information, interpreters, legal assistance and disability support) so that rights are practically exercisable. Together, these duties systematise the very process improvements (consultation and accessibility) we have urged for the DDA's positive duty.

The HRA would also provide a consistent legal anchor for intersectionality. Under the DROs' joint position (which WWDA led), a national HRA should "recognise intersectional inequity and discrimination" and make clear that a single decision can breach multiple inseparable rights, so people are not forced to "choose" one aspect of identity or run parallel claims[119]. This approach aligns with WWDA's submission stance that intersectionality is not an identity count but a structural lens for how system design and administration can produce and reinforce inequity. It ensures courts and regulators read and apply equity obligations in a way that captures compounding discrimination.

Embedding **the right to health** within a federal HRA would likewise address recurring barriers we have documented in health and reproductive care. The AHRC model includes access to health services without discrimination as a core guarantee[120], which would require health departments, hospital networks and regulators to plan for accessibility in policy, infrastructure and clinical pathways (not only respond to posthoc complaints). This is particularly critical for women with disability, who face compounded barriers to preventative and reproductive healthcare due to medical gender bias, diagnostic overshadowing, and systemic neglect. This HRA model complements (rather than replaces) the DDA by creating a whole-of-system obligation in health that is enforceable through the HRA's public authority duty and interpretive clause[121].

A national HRA would also strengthen workplace equality. Because the public authority duty applies to all functions (including as employer, funder and purchaser), it would require government to model best practice across employment programs and contracts. That baseline then flows through regulatory guidance and scrutiny, creating a consistent standard across sectors rather than relying on fragmented, scheme-by-scheme rules. The DRO statement underscores that a comprehensive HRA (incorporating ICCPR and ICESCR

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[118] Ibid, p. 60

[119] Women With Disabilities Australia (2024). *Strengthening Protection of the Rights of People with Disability through a National Human Rights Act (HRA).* Hobart: Women With Disabilities Australia, 19 July 2024. Available at: https://wwda.org.au/our-resources/publication/strengthening-protection-of-the-rights-of-people-with-disability-through-a-national-human-rights-act-hra/.

[120] Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, p. 55. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

[121] Parliamentary Joint Committee on Human Rights (2024). *Inquiry into Australia's Human Rights Framework*. Commonwealth of Australia, May 2024. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report, p. 476

rights and obligations) offers the most cohesive framework for disability equality while DDA reforms proceed in tandem[122].

Finally, a federal HRA introduces a **dialogue model of rights protection** (interpretive obligations for courts and decisionmakers, statements of compatibility for new laws, and structured scrutiny) that reduces the burden on individuals by aligning administration and adjudication with human rights at the front end. The PJC has indicated that key features of the AHRC model (including the public authority duty[123] and procedural duties[124]) could be implemented through the HRA's drafting. That architecture enables regulators and courts to read and apply the DDA consistently with human rights and to use HRA tools where systemic issues emerge, supporting the DDA's preventive purpose[125].

WWDA consultation with members has confirmed strong support for the introduction of a federal Human Rights Act. Members identified that current laws fail to protect them against compounded and intersectional discrimination, and many emphasised that a Human Rights Act is necessary to shift responsibility away from individuals and towards systemic prevention and positive realisation of the full range of rights.

Q51 Recommendations

In relation to non-disclosure agreements:

WWDA recommends that the DDA is amended to restrict the use of non-disclosure agreements (NDAs) and non-disparagement clauses in discrimination complaints, at a minimum in disability discrimination matters, to prevent silencing complainants and concealing systemic issues, and to ensure transparency and accountability in addressing discrimination.

In relation to a Human Rights Act:

WWDA asks the Review to acknowledge, that while DDA reform is necessary, a federal Human Rights Act is the structural reform that completes the prevention-first architecture we have argued for. Specifically, we ask that the Review: support a national HRA based on the AHRC model (including the public authority duty, participation duty and equal access to justice duty)[126]; recognise the importance of including economic, social and cultural rights

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[122] Women With Disabilities Australia (2024). *Strengthening Protection of the Rights of People with Disability through a National Human Rights Act (HRA)*. Hobart: Women With Disabilities Australia, 19 July 2024. Available at: https://wwda.org.au/our-resources/publication/strengthening-protection-of-the-rights-of-people-with-disability-through-a-national-human-rights-act-hra/.

[123] Parliamentary Joint Committee on Human Rights (2024). *Inquiry into Australia's Human Rights Framework*. Commonwealth of Australia, May 2024. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report, pp. 165- 166

[124] Ibid, pp. 169- 174

[125] Ibid, p. 326;
Australian Human Rights Commission (2024). *Free & Equal: Revitalising Australia's Commitment to Human Rights*. Sydney: Australian Human Rights Commission, p. 81. Available at: https://humanrights.gov.au/Revitalising-Australia%E2%80%99s-commitment-to-human-rights

[126] Ibid, pp. 185- 192

(especially the right to health); and acknowledge that a national HRA would reinforce DDA reforms on positive duties, adjustments, intersectionality and regulator transparency by hardwiring consultation, accessibility and compatibility duties across the Commonwealth.

Specifically, we urge the Australian Government to:

- Support a national HRA based on the AHRC model and the joint DRO position statement (including the public authority duty, participation duty and equal access to justice duty);
- Recognise the importance of including economic, social and cultural rights (especially the right to health), with attention to gendered and intersectional barriers women with disability face;
- Recognise that state and territory experience demonstrates the effectiveness of Human Rights Acts in complementing discrimination law (Victoria, Queensland, ACT);
- Acknowledge the strong support expressed through WWDA's consultations with members for the introduction of a Human Rights Act;
- Act on the report and recommendations of the PJCHR Inquiry, including by introducing legislation to enact a Human Rights Act, ensuring it is developed in close partnership with people with disability and their representative organisations.

Appendix: Consultation Design

WWDA gathered all member quotes in this submission during extensive consultations with members and WWDA advisory structures between August and October 2025. The consultation process was deliberately designed to be accessible, inclusive, and responsive to the diverse communication preferences and lived experiences of women, girls and gender-diverse people with disability.

Across the three core consultation mechanisms described below, WWDA recorded **114 individual interactions with members**. These contributions form the qualitative evidence base for the member quotes and lived-experience insights presented throughout this submission.

1. **Two regular meetings of the WWDA Youth Advisory Group (WYAG)** – WYAG is a standing advisory body comprising young women and gender-diverse people with disability aged between 18 and 35. The group meets every two months and provides ongoing advice to WWDA on policy, advocacy and program priorities affecting young people with disability. Their contributions ensure that intergenerational and emerging perspectives are embedded across WWDA's work.
2. **One collaborative focus group co-convened with The Social Deck (TSD)** – This session formed part of the national consultation process for the DDA Review. It was designed to enable deeper conversation about emerging themes identified through the survey, such as intersectionality, positive duties, and systemic barriers in law and practice.
3. **A national survey of WWDA members** – Developed to broaden participation beyond the live sessions and provide an alternative format for members who could not attend focus groups.

In both WYAG meetings and the TSD focus group, plain-language explainers were provided in written form within advance agendas distributed one week before each meeting. Participants could contribute verbally or via chat, and all materials were circulated beforehand to allow for preparation and reflection. These sessions were facilitated by professionals trained in mental health first aid, and the TSD focus group additionally included a counsellor available to move participants into private breakout rooms if discussions became distressing.

Due to resourcing limitations, additional focus groups were not feasible. The national survey was therefore designed to ensure that any WWDA member who wanted to have their say could participate in an accessible alternative format. The survey incorporated plain-language explainer videos for every question to enable greater accessibility. Questions were designed as prompts for storytelling, and participants were encouraged to answer only those that resonated with them. Narrative responses were later developed into extended case studies to illustrate key thematic patterns emerging from data analysis.

Across all consultation mechanisms, participants were encouraged to share experiences in their own words, in any format that felt most comfortable. No questions were mandatory, and members were provided with multiple entry points and levels of support to ensure safe, meaningful participation throughout the consultation process.

1 August: Initial Scoping and Directional Consultation with WWDA Youth Advisory Group (WYAG)

Participants: 7

The WWDA Youth Advisory Group (WYAG)[127] was established under the WWDA LEAD project to advise WWDA on issues affecting young women, feminine-identifying and non-binary people with disability. The group comprises 14 members aged between 15 and 35 who meet every two months to guide WWDA's policy, advocacy and leadership work.

This session followed a trauma-informed and inclusive structure. After a short welcome and housekeeping overview, participants were guided through facilitated discussion prompts designed to identify key issues for WWDA's DDA Review submission. Facilitators encouraged participants to respond in whichever mode felt most comfortable (verbally or via chat), and real-time captioning was available throughout. Discussion questions explored young people's perspectives on discrimination, disability pride, and the accessibility and relevance of existing legal protections.

Key discussion themes:

Disability pride:

Participants described disability pride as authenticity, self-acceptance and rejecting deficit-based thinking. Pride meant being "unapologetic" and "free to be who I am," while also acknowledging the realities of discrimination and barriers that shape disabled people's lives. Members highlighted that pride is not about ignoring hardship but about claiming identity and dignity in the face of ableism.

Relevance of the DDA:

Members viewed the DDA as a landmark piece of legislation that prohibits discrimination but emphasised that it remains reactive rather than preventative. Participants noted that the Act often feels disconnected from the everyday discrimination people experience, and that its processes are complex and difficult to navigate without support.

Intersectionality:

Participants explained that the DDA and its complaints mechanisms are not sufficiently intersectional, forcing individuals to choose between discrimination grounds such as disability, sex or race. Members emphasised that this approach fails to reflect compounded and contextual forms of disadvantage. They called for future reforms to recognise multiple and overlapping forms of discrimination.

Access to justice:

Participants expressed uncertainty about where to make complaints and how enforcement works in practice. They described the current process as "exhausting" and "emotionally

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[127] Women With Disabilities Australia (2024). *WWDA Youth Advisory Group*. Hobart: Women With Disabilities Australia. Available at: https://wwda.org.au/about-us/youth-advisory-group/.

charged," noting that the onus is on individuals to prove and pursue discrimination. Members proposed that the system include clearer guidance, accessible templates, advocacy supports and options for assisted reporting to reduce the administrative and emotional burden on complainants.

Cultural change and prevention:
Participants highlighted the need to shift from reactive complaint-based models to proactive systems of prevention. They argued that accessibility and inclusion should be embedded into all aspects of daily life rather than treated as optional "add-ons." This included building accessibility into policy, practice and organisational culture from the outset, rather than as a response to discrimination after it occurs.

Evolving the DDA:
Members called for the DDA to evolve alongside social and technological change. They questioned how the Act will respond to emerging issues such as automation, artificial intelligence, and the changing nature of work. Participants also expressed strong support for ongoing, disability-led review cycles to ensure the Act remains relevant, enforceable and intersectional.

Insights from this session informed the framing of WWDA's survey questions, ensuring the perspectives of young people with disability shaped subsequent consultation stages.

8 September to 21 September 2025- WWDA DDA Member Survey

Total responses received: 89

Responses included in analysis: 84 (those identifying as women or gender-diverse people with disability)

The survey formed the central consultation mechanism for WWDA's DDA Review submission. It used a combination of multiple-choice and open-ended questions. Each question was accompanied by a plain-language video explainer to support accessibility. Participants were encouraged to respond to whichever questions felt relevant to their experiences. No questions were mandatory. Narrative responses were used to inform the case studies and member quotes presented throughout this submission.

WWDA DDA Member Survey Questions:

Q1. Do you identify as a woman or gender-diverse person with disability, or chronic health condition?

Answer choice	Responses
Yes	94.38% (84)
No	5.62% (5)
Total respondents	89

Q2. What is your age group?

Age range	Responses
Under 18	1.33% (1)
18–24	6.67% (5)
25–34	22.67% (17)
35–44	25.33% (19)
45–54	18.67% (14)
55–64	12.00% (9)
65+	13.33% (10)
Prefer not to answer	0% (0)
Total respondents	75

Q3. What is your gender identity?

Answer choice	Responses
Woman	90.67% (68)
Non-binary	5.33% (4)
Gender-diverse	4.00% (3)
Prefer to self-describe	0% (0)
Total respondents	75

Q4. Do you identify as (please select all that apply):

Answer choice	Responses
None of the above	4.00% (3)
Living with one or more chronic health conditions	89.33% (67)
Aboriginal or Torres Strait Islander person	4.00% (3)
Culturally and linguistically diverse (CALD)	14.67% (11)
Living in a rural or remote area	10.67% (8)
LGBTQIA+SB (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other marginalised gender and sexualities, including Brotherboy and Sistergirl)	33.33% (25)
Prefer not to answer	1.33% (1)

Other identities	9.33% (7)
Total respondents	75

Q5. Have you ever experienced disability discrimination in any of these areas covered by the DDA? (Please select all that apply)

Area	Responses
Workplace or employment	70.67% (53)
Education	45.33% (34)
Healthcare	62.67% (47)
Government agencies and services	54.67% (41)
Accessing justice (for example: police, courts, or the legal system)	25.33% (19)
Community access (for example: transport, buildings or public spaces)	58.67% (44)
Community attitudes (for example: stigma, prejudice or harassment)	80.00% (60)
I have never personally experienced disability discrimination	2.67% (2)
Other (please specify)	4.00% (3)
Total respondents	75

Q6. In your own words, how should the law describe disability so it respects identity, dignity and rights, without using negative or medicalising language?

Narrative question.

Q7. How do you feel about the word "impairment" being used in the law?

Narrative question.

Q8. If the DDA follows the CRPD approach, what wording would make this idea clear in plain language?

Narrative question.

Q9. Can you share a time when discrimination was made worse because of both disability and another part of your identity (for example: being a woman or gender-diverse person)?

Narrative question.

Q10. What changes in the law would have helped in that situation?

Narrative question.

Q11. How should the law talk about intersectionality in a way that makes sense to you?

Narrative question.

Q12. Do you feel that having more than one disability has shaped your experiences of discrimination?

Narrative question.

Q13. How would you describe these overlapping experiences in your own words and life?

Narrative question.

Q14. When you have faced discrimination, what made it difficult (or easier) to prove?

Narrative question.

Q15. What would a fairer process have looked like for you?

Narrative question.

Q16. What would it look like in your life if employers or health providers had to take action to prevent discrimination before it happened?

Narrative question.

Q17. Can you share an example where proactive action would have made a difference?

Narrative question.

Q18. Have you (or someone you know) felt pressured to stay silent about discrimination at work (for example: through a confidentiality or non-disclosure agreement)?

Answer choice	Responses
Yes	51.28% (20)
No	28.21% (11)
I'm not sure	15.38% (6)
Prefer not to answer	5.13% (2)
Total respondents	39

Q19. What would have helped you feel safe to speak up and see change happen?

Narrative question.

Q20. Think about adjustments you needed at work or in services. What helped you participate?

Narrative question.

Q21. What would have been helpful that you didn't get?

Narrative question.

Q22. Have you ever been told that something you needed was "too hard" to provide?

Answer choice	Responses
Yes	71.79% (28)
No	15.38% (6)
I'm not sure	12.82% (5)
Prefer not to answer	0% (0)
Total respondents	39

Q23. If so, what were the circumstances, and what would a fairer and more supportive response have looked like?

Narrative question.

Q24. When you applied for or were in a job, what should employers have done before deciding you couldn't do the role?

Narrative question.

Q25. What approach would have made the process fairer?

Narrative question.

Q26. Can you share an example of being denied supports or services because an experience was treated as a "health condition," and not recognised as a disability?

Narrative question.

Q27. What impact did this have on you?

Narrative question.

Q28. What changes to the rules or processes would have made it fairer?

Narrative question.

Q29. What changes in society (like new technology or new ways of working) should the law keep up with to protect your rights?

Narrative question.

17 September – Focus Group in Partnership with The Social Deck (TSD)

Participants: 11 attendees (10 were present for the full session)

This focus group delivered in partnership with The Social Deck (TSD), formed part of the national consultation process for the DDA Review. Participation was limited to WWDA members who identified as women, feminine-identifying, or gender-diverse people with disability, with priority given to members who had not previously participated in earlier consultations.

The 60-minute session was delivered online following a structured facilitation plan with live captioning, chat participation options, and counsellor support available throughout. Participants received an agenda and plain-language explainer text for each question one week in advance to ensure accessibility. The session was recorded solely to generate an accurate transcript, with all contributions de-identified in both WWDA's and The Social Deck's reports.

Focus group structure and facilitation: The session followed a trauma-informed, inclusive structure. After a short welcome and housekeeping overview, participants were guided through facilitated discussion prompts on priority reform areas in the Issues Paper. Facilitators encouraged people to respond in whichever mode felt most comfortable (verbally, through chat, or via written follow-up). The agenda and prompt questions were based on those used in WWDA's broader survey to enable consistency and comparability across consultation data.

Key discussion themes:

Intersectionality: Participants emphasised that intersectionality must operate as an underpinning principle for reform of the DDA, not simply as an additional category of discrimination. Members described how disability discrimination is compounded by gender, sexuality, culture, age, economic status, and geographic location, creating patterns of exclusion that cannot be addressed through single-ground approaches. Decision-makers must also consider broader contextual and systemic factors such as rurality, financial precarity, and access to diagnosis or care.

Positive duty: There was strong support for the introduction of a positive duty on organisations, including employers, health providers and service bodies, to act proactively to eliminate discrimination, including in residential and community settings.

Discrimination tests: Participants called for replacement of the comparator test with a simpler, detriment-based model focused on impact rather than intent.

Adjustments and unjustifiable hardship: Participants described frequent refusals or delays in receiving even simple, low-cost adjustments; accessible communication options should be standard accommodations.

Enforcement: Participants highlighted exhaustion and procedural complexity in the complaints system, advocating for systemic enforcement powers and proactive monitoring.

Other themes included medical and financial discrimination, discrimination in aged care, and the emerging risks of AI and automated decision-making, each reinforcing the need for stronger, anticipatory regulation. Additionally, there was strong support for a Human Rights Act.

24 September – The Social Deck (TSD) Feedback Loop

In this session, WWDA and TSD staff met to ensure alignment in our respective reporting following the joint focus group. WWDA highlighted member perspectives on intersectionality as an underpinning principle for DDA reform, the need to move beyond comparator tests toward detriment-based models, and the importance of embedding positive duty obligations that account for broader systemic and contextual factors such as rurality and economic status. Specific recommendations included extending positive duty to residential and domestic service provision contexts, clarifying discrimination tests to focus on impact rather than intent, and simplifying burdens of proof for complaints processes.

3 October – WYAG Feedback Loop

Participants: 7 (6 of whom attended the initial August session)

The final youth advisory session revisited themes identified in the earlier consultations and focus group. Members reflected on "invisible labour," power imbalances, gaslighting, and the inadequacy of existing legal protections. Participants highlighted that current discrimination mechanisms lack sufficient "bite" or enforcement power, arguing that the law too often provides symbolic recognition without meaningful recourse. They emphasised the emotional and practical toll of having to self-advocate within systems that frequently dismiss or minimise discrimination. These perspectives informed WWDA's recommendations to strengthen enforcement, improve accessibility of complaints mechanisms, and embed a positive duty on duty holders.

Data Integrity and Ethical Considerations

All participant responses were de-identified and analysed thematically by WWDA's policy and advocacy team. Where quotes have been lightly edited for readability, this is indicated using **[square brackets]**. Where parts of a quote have been omitted, this is shown with **"…"**. Wherever possible, we have prioritised reproducing participants' accounts in the depth and detail in which they were shared, providing supporting interpretation only where it assists in contextualising or analysing case studies. Participants provided informed consent for the use of their words in WWDA's systemic advocacy and policy work.