



# Disability Discrimination Act 1992

## Background

Disability discrimination is when a person with disability is treated less favourably than a person without disability in circumstances that are not materially different. The Commonwealth *Disability Discrimination Act 1992* (DDA) makes disability discrimination unlawful except in certain limited circumstances.

## Defining disability

### Definition of disability under the DDA

The definition of disability in the DDA can be found in section 4 of the Act. Disability in relation to the DDA includes:

- Physical
- Intellectual
- Psychiatric
- Sensory
- Neurological, and
- Learning disabilities, as well as
- Physical disfigurement.

The definition of “disability” in the DDA is broad and does not rely on a formal diagnosis of disability. The DDA covers disabilities that people have now, had in the past, may have in the future or which they are believed to have. More information is available at the Australian Human Rights Commission’s [Brief guide to the Disability Discrimination Act](#) webpage.

## Discrimination under the DDA

Sections 5 and 6 of the DDA set out the types of conduct that will constitute direct and indirect disability discrimination. **Direct disability discrimination** is when a person with disability is treated less favourably than a person without disability

- because of the disability, and
- in circumstances that are not materially different.

Importantly, under the DDA, circumstances are not materially different simply because it is necessary for a person to make reasonable adjustments to allow a person with disability to access premises or participate in an activity (e.g. by providing a ramp or allowing a carer to accompany a person). Reasonable adjustments are defined in the DDA as any adjustments that could be made to

facilitate the participation of a person with a disability that would not impose an unjustifiable hardship on the person providing them.

**Indirect disability discrimination** occurs when a person with disability

- is required to comply with a requirement or condition but they cannot comply because of their disability, and
- that requirement or condition is not reasonable in the circumstances.

Again, a failure to make reasonable adjustments to assist the person with disability to meet requirements or conditions is indirect disability discrimination.

Section 7 of the DDA extends protections against discrimination to people who have an associate with disability, such as a spouse, relative or carer.

Section 8 of the DDA sets out that discrimination can also occur in a situation where a person with disability is discriminated against because the person:

- uses equipment, such as a palliative, therapeutic or assistive device, which provides assistance to alleviate the effect of the disability
- is accompanied by a carer, interpreter, reader or assistant who provides assistance or services to a person because of the disability
- is accompanied by an accredited guide or hearing dog or other trained assistance animal.

## What the DDA does

The DDA supports the implementation of Australia's international human rights obligations under the Convention on the Rights of Persons with Disabilities. It also supports obligations relating to non-discrimination under other treaties, including the International Covenant on Civil and Political Rights.

The DDA protects people with disability against discrimination in many areas of public life, including:

- **work**—including getting a job, terms and conditions of a job, training, promotion, being dismissed
- **education**—enrolling or studying in a course at a government or non-government school, or a public or private college, registered training provider, or university
- **accommodation**—renting or buying a house or unit
- **getting or using services, goods and facilities**—such as banking and insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops, or entertainment venues, regardless of whether the service is provided on a paid or unpaid basis
- **accessing public places**—such as parks, government offices, restaurants, hotels or shopping centres.
- **clubs and incorporated associations**—such as sporting, social and licensed clubs, drama or musical groups, political parties, business associations, and self-help groups.

The DDA also protects people against **harassment** because of their disability, in work, education or in getting or using services.

If a person believes they have been unlawfully discriminated against they can make a complaint to the Australian Human Rights Commission about discrimination.

The Commission has legislative responsibility for inquiring into complaints under the DDA involving discrimination on the grounds of disability. There is a compulsory conciliation process for the resolution of discrimination complaints. Conciliators at the Commission are trained to negotiate a resolution between parties to avoid the need for litigation. If a party is unhappy with the outcome of negotiations, they may begin proceedings in the Courts.

In some circumstances, a person may commence legal proceedings in the Federal Court or Federal Magistrates Court if their complaint is not resolved through the AHRC processes.

## About Disability Standards

Under the DDA, the Attorney-General may make Disability Standards to specify further rights and responsibilities about equal access and opportunity for people with disability, and provide further guidance.

Standards can be made in the areas including work, education, public transport services, access to premises, accommodation and the administration of Commonwealth laws and programs.

The following Standards have been made under the DDA:

- *Disability Standards for Accessible Public Transport 2002*
- *Disability Standards for Education 2005*
- *Disability (Access to Premises – Buildings) Standards 2010.*

Non-compliance with a standard is an unlawful act under the DDA. In these situations, a complaint can be made to the AHRC as outlined above. However, where a person complies with a disability standard, they cannot be found to have engaged in unlawful disability discrimination under the more general provisions of the DDA (section 34)

## More information

Further information is available in the 2012 AHRC publication on the [\*Know your rights: disability discrimination\*](#) webpage.

