



# SUBMISSION TO THE REVIEW OF THE DISABILITY DISCRIMINATION ACT 1992

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Advocacy for Inclusion welcomes the opportunity to make a submission to this important review. Meaningful discrimination reform requires two foundational shifts: positive duties requiring organisations to prevent discrimination proactively, and robust enforcement powers enabling systemic investigation and remedies.

This submission recommends introducing positive duties on large organisations and public authorities, strengthening enforcement through a national body with investigative and penalty powers, narrowing the unjustifiable hardship defence, and embedding accessibility into existing regulatory regimes. The evidence is clear, solutions are known, and international examples demonstrate viability. What remains is the will to act.

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## About us

Advocacy for Inclusion incorporating People with Disabilities ACT is an independent organisation delivering reputable national systemic advocacy informed by our experience in individual advocacy and community consultation. We provide dedicated individual and self-advocacy services, training, information and resources in the ACT.

As a Disabled People’s Organisation, the majority of our organisation, including our Board of Management, staff and members, are people with disabilities. Advocacy for Inclusion speaks with the authority of lived experience and operates under a human rights framework, upholding the principles of the [United Nations Convention on the Rights of Persons with Disabilities](#) (CRPD).

## Introduction

When the Disability Discrimination Act 1992 (DDA) was enacted, it represented a landmark promise: that Australians with disability would be able to participate equally in public life. Thirty years on, that promise remains only partially fulfilled. While the Act has provided important symbolic recognition and avenues for individual redress, it has fundamentally failed to dismantle systemic barriers in employment, transport, education, housing, and services.

This assessment is grounded not only in legal and policy analysis but in the lived experiences of people with disability themselves. During a recent community information forum, people with disability shared stories about discrimination and exclusion. These accounts revealed a consistent pattern: the barriers are not isolated incidents but deeply ingrained across every facet of community life. Participants expressed a shared view that piecemeal change would be inadequate to address barriers of this scale and interconnectedness. There was clear recognition that incremental reforms targeting individual sectors or specific policies cannot effectively dismantle systemic problems that pervade so many areas of daily life. This submission reflects that conviction: that meaningful change requires structural reform, not minor adjustments.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has documented these failings in detail, providing four and a half years of evidence – largely from people with disability themselves – that creates unusual political space for ambitious reform. The challenge for this review is not to establish whether the DDA has fallen short, but to consider how it can be renewed so that its aims are realised in practice.

Minor adjustments to definitions, exemptions, or procedural rules will not be sufficient. The Act's limitations are structural: a reliance on individual complaints, the absence of proactive duties, and weak enforcement mechanisms. These features have made the DDA less a tool of systemic change than a framework for individual dispute resolution – one that is demonstrably inferior to comparable jurisdictions and fails to meet Australia's obligations under the UN Convention on the Rights of Persons with Disabilities.

This submission argues that meaningful reform requires two foundational shifts:

1. **Positive duties** that require organisations to prevent discrimination and remove barriers proactively.
2. **Robust enforcement powers** that allow systemic investigation and remedies, reducing the burden on individuals.

Without these changes, Australia will continue to rely on a model that is reactive, burdensome, and ineffective.

# Structural Limitations of the Current Framework

## A Reactive, Complaints-Based Model

The DDA's fundamental design flaw lies in its reliance on individual complaints to police discrimination across entire sectors of society. The Act presumes that individuals will identify discrimination, bring complaints, and sustain legal action. In practice, this model is ill-suited to dismantling systemic barriers.

The burden this places on complainants is not theoretical. Sheila King, a 75-year-old wheelchair user, litigated for four years against Jetstar's policy limiting wheelchair users to two per flight – and lost, with the Federal Court accepting “unjustifiable hardship” as justification.<sup>1</sup> Paula Hoblely, a guide dog user, reported 32 separate incidents of Uber driver refusals, yet the Australian Human Rights Commission could compel no systemic change, forcing her into ongoing Federal Court proceedings in 2025.<sup>2</sup> Rachael Fullerton required two years of Federal Court litigation simply to achieve what should have been guaranteed by regulation: the right to travel with her assistance animal.<sup>3</sup>

For many people with disability, the costs – financial, psychological, and temporal – make litigation unrealistic. As a result, many instances of discrimination go unchallenged, and those that are challenged rarely produce broader reform. For the DDA to work as designed, Australians with disability would need to engage in endless litigation with employers, airlines, shops, restaurants, schools, and civic buildings. This is neither realistic nor fair.

## Discrimination as a Calculated Risk

An uncomfortable truth has emerged over three decades: discrimination often persists not through ignorance, but through calculated risk assessment. Organisations often treat discrimination as a risk to be managed rather than a wrong to be avoided.

After Paula Hoblely's first report of driver refusal, Uber knew discrimination was occurring. After the tenth, they knew it was a pattern. After the thirty-second, they knew it was systemic. Yet refusals continued because Uber calculated – correctly – that the AHRC lacked enforcement power and forcing an individual into Federal Court was unlikely.<sup>4</sup> Similarly, Qantas imposed requirements going “well beyond” the DDA's standards – a deliberate policy choice based on calculating few would have resources to challenge it.

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<sup>1</sup> *King v Jetstar Airways Pty Ltd* [2012] FCA 417; *King v Jetstar Airways Pty Ltd (No 2)* [2012] FCA 1344.

<sup>2</sup> *Hoblely v Rasier Pacific VOF* [2024] FCAFC 202; Paula Hoblely, 'Uber and guide dogs: blind woman fights in court for right to rideshare', *The Guardian*, 4 December 2024.

<sup>3</sup> *Fullerton v Qantas Airways Ltd* [2024] FCA 1389.

<sup>4</sup> <https://jec.org.au/disability-rights/disability-discrimination/after-32-refusals-guide-dog-user-paula-is-taking-on-uber-for-discrimination/>

Repeated guide dog refusals in the rideshare industry and restrictive airline policies persisted for years because the likelihood of systemic sanction was minimal. In such an environment, non-compliance can appear rational. When the worst outcome is private settlement with one complainant after years of litigation, discrimination becomes manageable business risk.

## **Weak Enforcement Institutions**

The Australian Human Rights Commission plays an important conciliatory role, but without powers to initiate investigations, issue binding orders, or impose penalties, it cannot drive systemic change. Paula Hopley's 32 documented incidents demonstrate this institutional impotence: the AHRC could not investigate Uber's systemic driver model, could not compel training or penalties, could not impose meaningful consequences.<sup>5</sup>

Complaints may be settled privately, leaving underlying issues unresolved and invisible. Historical evidence reinforces this pattern: AHRC records show guide dog taxi refusals dating to 1996 – nearly thirty years ago. Each was resolved individually. Yet in 2025, the same problem persists with rideshare services. Three decades of individual conciliations created no systemic change because the system has no mechanism to compel it.

## **Limited Impact of Standards and Action Plans**

Supporting mechanisms have also underperformed. Action plans are voluntary and unevenly adopted. Standards development has been slow, with exemptions in transport extended to 2032 – four decades after the Act was passed. The Commonwealth Disability Strategy, meant to deliver action plans across agencies, never materialised; evidence of failure is visible in declining employment rates for people with disability within the Australian Public Service itself.

Three major airlines – Qantas, Jetstar, and Virgin – have faced assistance animal discrimination cases, demonstrating industry-wide problems.<sup>6</sup> Yet there is no regulatory oversight requiring airlines to proactively address barriers. Change only occurs when individual complainants can afford years of Federal Court litigation. These delays have blunted the Act's impact and signalled that accessibility can be indefinitely postponed.

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<sup>5</sup> Australian Human Rights Commission, Complaint handling statistics and limitations on enforcement powers discussed in multiple submissions to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

<sup>6</sup> *King v Jetstar Airways Pty Ltd* [2012] FCA 417 (Jetstar); *Fullerton v Qantas Airways Ltd* [2024] FCA 1389 (Qantas); Virgin Australia assistance animal cases reported in disability rights advocacy submissions 2020-2024

## Historical Recognition of Persistent Failures

These structural deficiencies are not new discoveries. In 1997, as Australia’s first Disability Discrimination Commissioner concluded her term, Elizabeth Hastings warned that eliminating discrimination required “active measures” rather than passive complaints resolution, and that the Act risked limited impact if “complied with only or mainly when compliance is ordered by a court.” She emphasised that while “individual remedy is a significant aspect of our anti-discrimination law,” success would depend on “the recognition and use of complaints as a driving force for other, structural, measures rather than resolution of individual complaints being regarded as the major end.”<sup>7</sup>

Thirty years later, these foundational concerns remain unaddressed. The problems identified when the Act was five years old – insufficient enforcement powers, over-reliance on individual litigation, weak incentives for proactive compliance, and the need for mandatory rather than voluntary action planning – persist as the Act approaches its fourth decade.

This is not a case of unforeseen implementation challenges. It is a case of diagnosed structural flaws that successive governments have chosen not to remedy. The question now facing this review is not whether the Act’s limitations are real, but how much longer people with disability should wait for reforms that were understood to be necessary before the millennium.

## Principles for Reform

### 1. Positive Duties: Prevention Over Punishment

Positive duties represent a fundamental paradigm shift from reactive punishment to proactive prevention. Rather than waiting for discrimination and attempting remedy afterwards, positive duties require organisations to actively identify and eliminate barriers before they cause harm.

The burden of securing equality should not rest solely on individuals. Positive duties would require organisations to take active steps to prevent discrimination and improve accessibility, supported by planning, consultation, and reporting requirements. This would align the DDA with contemporary international practice and shift responsibility to where it belongs: institutions and service providers.

Consider how positive duties would have prevented the patterns documented in our case studies. Airlines would have been required to conduct accessibility audits flagging discriminatory policies before wheelchair users encountered them. Rather than years of

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<sup>7</sup> Elizabeth Hastings, *FounDDAtions: Reflections on the first five years of the Disability Discrimination Act in Australia* (Human Rights and Equal Opportunity Commission, 1997).

individual litigation, regulatory oversight would require industry-wide elimination of barriers. Rideshare companies would have been required to identify driver guide dog refusals as systemic barriers and implement training, penalties, and monitoring – preventing the pattern of repeated discrimination entirely. Employers would develop disability access plans showing accommodation processes, rather than leaving individuals to litigate for years merely to have their cases heard.

Key elements of effective positive duties include:

- Mandatory accessibility planning with concrete timelines
- Proactive consultation with people with disability
- Regular reporting with independent oversight and assessment
- Escalating consequences from improvement notices to substantial penalties

Positive duties are both more effective and more equitable. They recognise that entities with power and resources are better positioned to prevent discrimination than individuals are to challenge it after the fact.

## 2. Stronger Enforcement: Creating Genuine Deterrence

A credible regulatory system requires enforcement powers that go beyond conciliation. The current framework lacks consequences significant enough to change organisational behaviour. When the worst outcome is private settlement requiring years of litigation – if complainants can sustain that burden at all – discrimination remains manageable risk.

Effective enforcement requires several interconnected elements:

- **Own-motion investigative powers:** When the AHRC receives multiple reports of the same pattern, this should trigger investigation into whether discrimination represents a systemic industry problem. The absence of such power means each incident is treated as isolated, leaving systemic problems unaddressed.
- **Substantive penalties:** Consequences must be certain and significant enough to outweigh the benefits of non-compliance. Current penalties are inadequate – individual driver penalties as low as \$480 in some jurisdictions, with no structure for corporations systematically enabling discrimination.
- **Integration with existing regulators:** Disability access should be embedded in building control authorities, transport regulators, education departments, and workplace safety bodies. Civil aviation authorities should include wheelchair accommodation in operational oversight. Transport authorities should include guide dog access in rideshare licensing. Accessibility is not separate from quality or safety but integral to both.
- **Co-regulatory approaches:** Standards should be developed collaboratively with industry and the disability community, but enforcement must be robust and independent.
- These enforcement powers should include own-motion investigations, enforceable undertakings, systemic remedies, and penalties proportionate to

organisational size. Integration with existing regulators – for example, in transport or education – would embed disability access within broader compliance systems rather than treating it as an optional add-on.

### **3. Clearer Limits on “Unjustifiable Hardship”**

The defence of unjustifiable hardship, intended as a narrow safeguard, has in practice shielded systemic exclusion. The case of Sheila King illustrates how this defence can validate discriminatory policies as business decisions, effectively reading disability rights out of the Act when they become inconvenient for well-resourced organisations.<sup>8</sup>

Reform should ensure that unjustifiable hardship is narrowly construed and subject to stricter scrutiny. At a minimum, the onus of proof should rest with respondents, and economic considerations should not override fundamental rights. Defendants should be required to demonstrate that they have genuinely explored alternatives and that accommodation would impose truly prohibitive burdens, not merely additional costs.

### **4. Embedding Accessibility in Governance**

Accessibility should be treated as integral to good governance, not as a compliance burden or special consideration. This recognises that inclusive design benefits everyone and that accessibility failures represent governance failures.

This could include a National Disability Inclusion Act mandating Disability Access and Inclusion Plans across government, strengthened procurement requirements that preference accessible providers, and integration into accreditation and regulatory frameworks. When accessibility is embedded in existing systems rather than treated as parallel requirement, it becomes normalised rather than marginalised.

### **5. Learning from International Practice**

Australia’s protections are demonstrably inferior to comparable jurisdictions. The Americans with Disabilities Act, while imperfect, provides robust enforcement through the Department of Justice with meaningful consequences. Under the ADA, systemic discrimination would trigger Department of Justice investigation and enforcement action without waiting for individual complainants. The department can investigate patterns, require systemic changes, and impose substantial penalties.

Canada’s positive duty framework, the UK’s Equality Act provisions, and EU accessibility directives all demonstrate that alternatives to Australia’s broken

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<sup>8</sup> <https://probonoaustralia.com.au/news/2012/01/court-decision-on-jetstars-two-wheelchair-policy-a-major-blow-disability-group> and <https://rlc.org.au/news-and-media/rlc-media/rlc-media-disabled-woman-loses-case-against-jetstar>

complaints-based system are viable and more effective. These jurisdictions have driven accessibility improvements that dwarf the DDA's incremental changes.

Australia should not settle for being a laggard in human rights protection. We have the evidence, international examples, and political opportunity to create a world-leading framework for disability equality.

## **6. Retaining but Improving Individual Complaint Pathways**

Complaint mechanisms remain important for individual justice and should be preserved. However, they must be streamlined, less costly, and supported by stronger systemic levers. Individual complaints can reveal patterns requiring systemic intervention, but should not remain the primary mechanism for driving change.

Improvements should include cost protections for complainants achieving partial or full success, faster resolution for straightforward matters, enhanced support for navigating the system, and transparency in outcomes that creates precedent and accountability rather than allowing problems to remain invisible through private settlement.

## **Recommendations**

We recommend the Commonwealth Government implement the following reforms:

### **1. Introduce Positive Duties on Large Organisations and Public Authorities**

Amend the DDA to establish an active duty to avoid discrimination and promote accessibility. Initially apply to Commonwealth agencies and large corporations (100+ employees or \$50 million+ turnover), with phased expansion to smaller entities.

Require covered organisations to:

- Conduct accessibility audits identifying barriers
- Develop and publish Disability Access and Inclusion Plans with concrete timelines
- Consult meaningfully with people with disability in plan development
- Report annually on progress with independent assessment

### **2. Strengthen Enforcement Through Enhanced Institutional Powers**

Create a National Disability Discrimination Commission, or vest enhanced powers in the Australian Human Rights Commission, with investigative and remedial powers comparable to sector regulators. This body should have authority to:

- Initiate systemic discrimination investigations based on patterns or complaints

- Require development or improvement of accessibility plans
- Issue improvement notices with mandatory compliance timelines
- Impose substantial financial penalties proportionate to organisational size
- Conduct compliance audits across sectors
- Publish findings and hold entities publicly accountable

Such powers must be supported by adequate resourcing to ensure effective implementation.

### **3. Narrow the Unjustifiable Hardship Defence**

Reform the unjustifiable hardship defence to:

- Place the burden of proof firmly on respondents
- Establish clear criteria that reflect contemporary expectations of accessibility
- Require demonstration that reasonable alternatives have been genuinely explored
- Limit availability where discrimination is systemic or longstanding
- Ensure economic considerations do not automatically override fundamental rights

### **4. Reform Standards and Action Plans**

Accelerate and strengthen standards development by:

- Setting mandatory timelines for development and regular review
- Requiring standards that reflect international best practice, not minimal compliance
- Eliminating exemptions that undermine accessibility (such as school bus exemptions)
- Establishing interim standards where full standards face delay
- Ensuring meaningful consultation with disability community throughout development

### **5. Embed Accessibility into Existing Regulatory Regimes**

Integrate disability compliance into existing oversight frameworks:

- Building approvals must verify accessibility standards compliance before permits are issued
- Transport regulators must incorporate accessibility into licensing and operational oversight
- Education accreditation must assess accessibility as integral to quality assurance

- Workplace safety regulators must include disability inclusion in compliance frameworks
- Procurement systems must preference providers with approved accessibility plans

This integration ensures accessibility becomes normalised within existing governance structures rather than remaining a parallel, optional consideration.

## **6. Maintain and Improve Individual Complaints Mechanisms**

Preserve individual complaint pathways as complement to systemic enforcement, with improvements including:

- Cost protections for complainants who achieve partial or full success
- Streamlined processes for straightforward matters
- Enhanced support for navigating the complaints system
- Publication of outcomes to create transparency and precedent
- Faster resolution timelines with adequate resourcing

## **7. Enact a National Disability Inclusion Act**

Introduce complementary legislation requiring all Commonwealth agencies to develop, publish, and operate under approved Disability Access and Inclusion Plans. Empower the Commonwealth to preference businesses and service providers with approved plans in procurement and funding decisions.

Work through National Cabinet to align State, Territory, and Local Government approaches to disability access planning, creating a coherent national framework rather than fragmented jurisdictional approaches.

## **Conclusion**

The DDA was a pioneering reform in 1992, but its current framework is no longer adequate. A system that relies on individual complaints, weak enforcement, and voluntary compliance cannot deliver the structural change required for equality.

The evidence accumulated over thirty years is overwhelming. When a 75-year-old pensioner must litigate for four years only to lose; when 32 documented incidents achieve no systemic response; when basic policy changes require years of Federal Court proceedings; when individuals require multiple court levels simply to have their cases properly heard; and when legal precedent makes law worse rather than better – the system is broken.

The five cases presented throughout this submission are not outliers. They represent a system that places impossible burdens on complainants, allows well-resourced defendants to win through attrition, provides no meaningful enforcement mechanism, and enables discrimination through calculated risk assessment. They reveal recurring structural patterns that minor amendments cannot address.

People with disability continue to face exclusion in core areas of life, and existing mechanisms have been insufficient to address these barriers. The first Disability Discrimination Commissioner identified these structural flaws in 1997. Successive governments have chosen not to remedy them. The disability community has now waited three decades for the DDA's promises to be realised.

Reform must now be structural. Positive duties and effective enforcement are not radical innovations but established international standards. They represent recognition that preventing discrimination is more effective and equitable than asking victims to challenge it after the fact – and that those with power and resources are better positioned to remove barriers than individuals are to litigate their way through them.

The review, born from four and a half years of Royal Commission evidence, offers a rare chance to realign the DDA with its original promise. To settle for incremental adjustments would be to accept another generation of unmet rights. To act decisively would be to restore the Act's purpose: to make equality for people with disability not just a legal aspiration, but a lived reality.

The time for meaningful reform is now. The evidence is clear, the solutions are known, and the political opportunity exists. What remains is the will to act.

This submission is endorsed by the ACT Council of Social Services (ACTCOSS), Women with Disabilities ACT (WWDACT), ACT Down Syndrome and Intellectual Disability (DSID), ACT Disability, Aged and Carer Advocacy (ADACAS), and Guide Dogs NSW/ACT.