Guide to making a submission to the Disability Discrimination Act Review

Introduction

The Australian Human Rights Commission and Attorney-General's Department are consulting the public on ways to reform the Disability Discrimination Act (1992).

The world has changed greatly since 1992, contemporary barriers we face in trying to safely and equitably participate in public life (such as ongoing airborne infectious diseases and awareness of the poor quality of the indoor air we breathe) were not even thought of when this legislation was written. This consultation offers us the chance to tell our stories about what discriminatory barriers to public participation we face and why the current legislation falls short in accommodating us.

There are many ways our right to participate in public life has been impacted by the government's actions and inaction around the ongoing pandemic. Sharing our experiences of these discriminatory barriers will make legislators understand that there are new barriers that must be addressed to offer all Australians accessible public participation and ensure the Disability Discrimination Act is fit for purpose.

There are two options for participating:

1. Completing the Community Survey

2. Making a written submission (uploaded through a questionnaire, can direct other questions to "please refer to uploaded submission")

✦ Who can contribute?

• people with a disability

• parents or care givers of children with a disability

• disability advocates

• service providers

• small businesses

• employers

• unions

• education providers

• academia

• the broader community

✦ How to make a written submission.

You can make a written submission on all of the areas in the The Disability Discrimination Act (DDA) Issues Paper or just a few. Alternatively you can submit a video or audio recording of your submission if it is easier for you. If you already have a video you think is suitable you may like to use that as your submission, just add an introduction to frame it in the context of the review.

Don't underestimate the power of providing a submission in an alternative format. You can make the point that it's easier for you to make a submission in video or audio format because of your underlying health condition. E.g. fatigue from long covid and/or immune dysregulation or physical limitations which make it difficult for you to provide a lengthy written submission.

This guide has prompts to give you ideas/reminders of discriminatory issues/challenges/barriers that you may have experienced. Pick anything that reflects your experiences and use it to spark memories so you can share your stories of discrimination/barriers to public life with the AHRC. The more personal, the better. Thanks so much for making a submission.

If you need help with making a submission, there's a support number to call (02) 61416280 or email at DDAReview@ag.gov.au for assistance. You can also ask for your answers not to be published on the Consultation Hub if you'd prefer.

CLOSING DATE: Friday 14th November, 2025

Link: https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/consultation/

For more information refer to:

The Disability Discrimination Act (DDA) Issues Paper. It can be downloaded from:

https://www.ag.gov.au/sites/default/files/2025-08/DDA-Review-Issues-Paper.PDF

The Community Survey

Completing the Community Survey

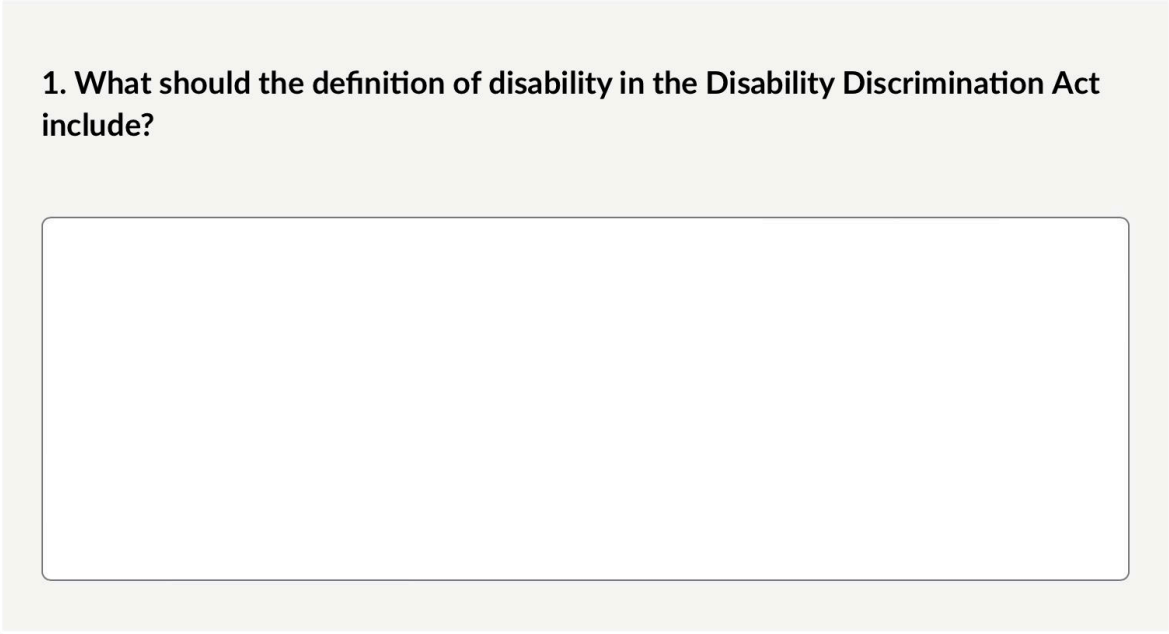
Link: https://consultations.ag.gov.au/rights-and-protections/dda-community-survey/consultation/

This survey is made up of short answer type questions and rating questions. e.g how much you agree or disagree with certain statements. You do not have to answer all of the questions. This guide provides stimulus material designed to use as prompts for answering questions.

Question 1. What should the definition of Disability in the The Disability Discrimination Act include?

The question is asking how you feel about the definition of disability in the DDA and if you feel it represents your own situation.

Question 1 Screenshot



“While it is important to ensure that a legal definition is clear and appropriately broad, there may be some scope to reframe it to reflect modern terminology”

Issues Paper p25

Definitions from The Disability Discrimination Act 1992 (2023 update)

Disability, in relation to a person, means:

(a) total or partial loss of the person's bodily or mental functions; or

(b) total or partial loss of a part of the body; or

(c) the presence in the body of organisms causing disease or illness; or

(d) the presence in the body of organisms capable of causing disease or illness; or

(e) the malfunction, malformation or disfigurement of a part of the person's body; or

(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour

And includes a disability that:

(h) presently exists

(I) previously existed but no longer exists: or

(j) may exist in the future (including because of a genetic predisposition to that disability) or

(k) is imputed to a person

To avoid doubt, a disability that is otherwise covered by this definition includes

behaviour that is a symptom or manifestation of the disability.

Issues Paper p24

Prompts: comment on the definitions above. What words do you identify with when describing your own situation? Should the definition of disability be broadened? How would you broaden the definition?

E.g. Some people with health conditions may use words including, but are not limited to:

Health Status

Health Impairment

Hidden disability

Immune dysregulation

Immunocompromised

Invisible disability

Underlying health conditions

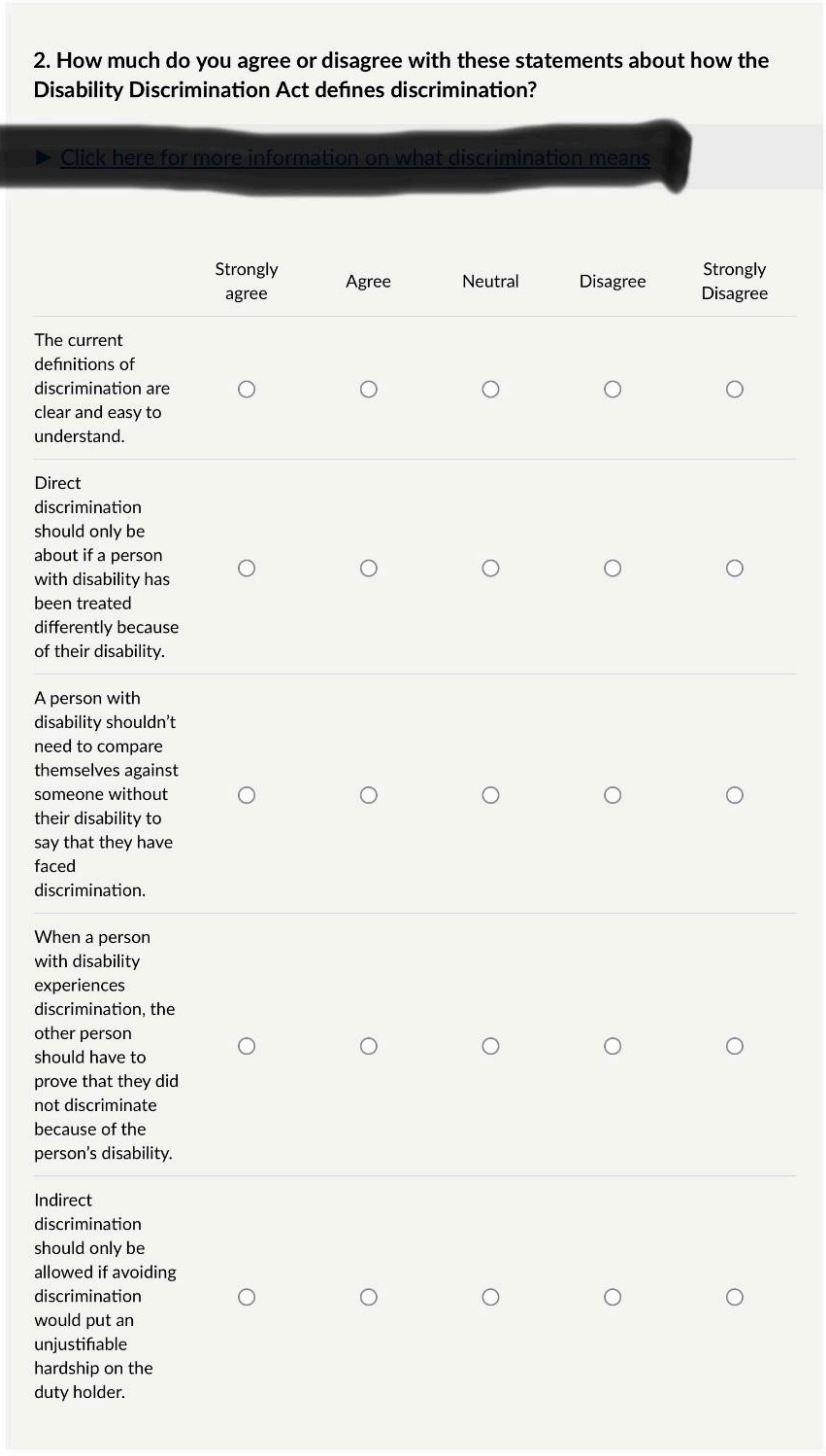
“While the definition of disability currently covers a broad range of health conditions, including HIV and others, some stakeholders in the 2022 review of Queensland’s Anti-Discrimination Act 1991 (QLD) expressed that health conditions such as HIV as well as mental health or psychosocial disability were inappropriately categorised under ‘disability’. Stakeholders stated that they did not identify with the language of disability and felt alternative wording could better reflect their lived experiences. This could include language such as ‘health status’ …”

Issues Paper p25

Question 2. How much do you agree or disagree with statements about how the DDA defines discrimination?

Direct discrimination applies to directly discriminating against the person with a disability. Indirect is when some assistive equipment or technology is discriminated against. e.g “You can come into the shop but you have to take your respirator off” would be an example of indirect discrimination.

Question 2 Screenshot



2. How much do you agree or disagree with these statements about how the Disability Discrimination Act defines discrimination?

► Click here for more information on what discrimination means

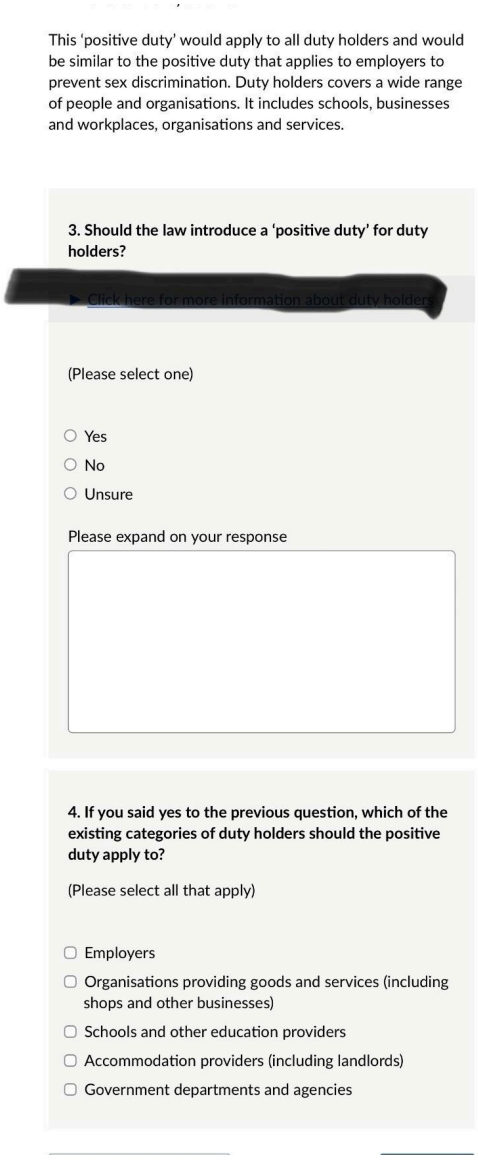
	Strongly agree	Agree	Neutral	Disagree	Strongly Disagree
The current definitions of discrimination are clear and easy to understand.	○	○	○	○	○
Direct discrimination should only be about if a person with disability has been treated differently because of their disability.	○	○	○	○	○
A person with disability shouldn't need to compare themselves against someone without their disability to say that they have faced discrimination.	○	○	○	○	○
When a person with disability experiences discrimination, the other person should have to prove that they did not discriminate because of the person's disability.	○	○	○	○	○
Indirect discrimination should only be allowed if avoiding discrimination would put an unjustifiable hardship on the duty holder.	○	○	○	○	○

Questions 3 and 4

3.Should the law introduce a “positive duty for duty holders?

A positive duty would help to prevent discrimination happening in the first place by placing the responsibility not to discriminate on the duty holder. i.e. hospitals, schools, universities, allied health services, shops, offices etc.

Question 3 & 4 Screenshot



This ‘positive duty’ would apply to all duty holders and would be similar to the positive duty that applies to employers to prevent sex discrimination. Duty holders covers a wide range of people and organisations. It includes schools, businesses and workplaces, organisations and services.

3. Should the law introduce a ‘positive duty’ for duty holders?

▶ Click here for more information about duty holders

(Please select one)

- ○ Yes
- ○ No
- ○ Unsure

Please expand on your response

4. If you said yes to the previous question, which of the existing categories of duty holders should the positive duty apply to?

(Please select all that apply)

- ☐ Employers
- ☐ Organisations providing goods and services (including shops and other businesses)
- ☐ Schools and other education providers
- ☐ Accommodation providers (including landlords)
- ☐ Government departments and agencies

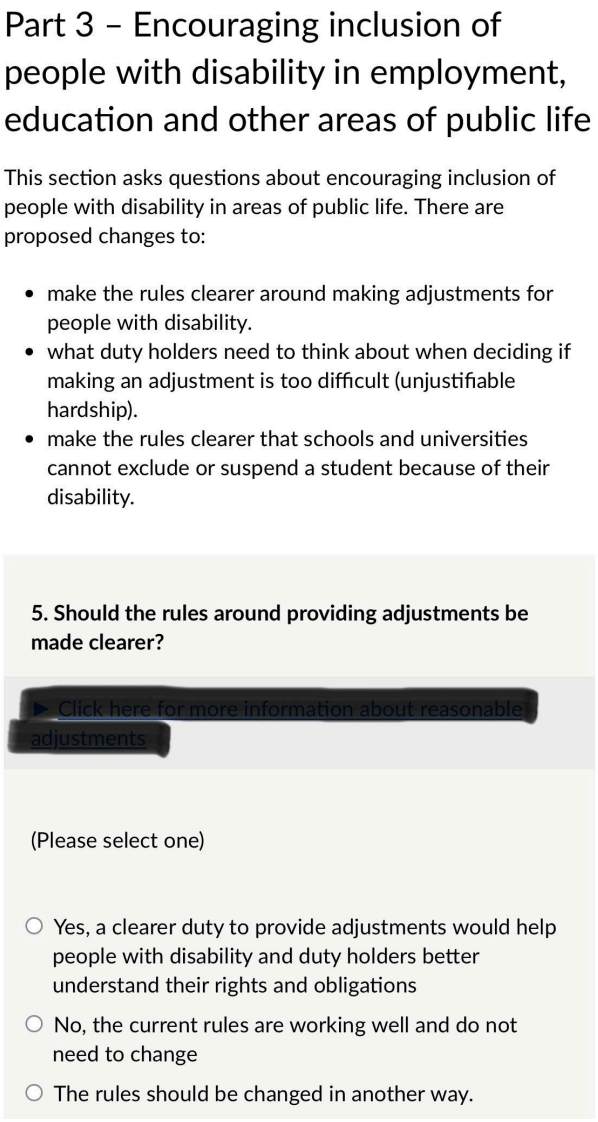
4. If you said yes to the previous question, which of the existing categories of dutyholder should the positive duty apply to? (Tick whichever boxes you agree with)

Question 5.

Should the rules around providing adjustments be made clearer?

If you agree, tick 'Yes a clearer duty of care to provide adjustments would help people with a disability and duty holders better understand their rights and obligations'

Question 5 Screenshot



Part 3 – Encouraging inclusion of people with disability in employment, education and other areas of public life

This section asks questions about encouraging inclusion of people with disability in areas of public life. There are proposed changes to:

- make the rules clearer around making adjustments for people with disability.
- what duty holders need to think about when deciding if making an adjustment is too difficult (unjustifiable hardship).
- make the rules clearer that schools and universities cannot exclude or suspend a student because of their disability.

5. Should the rules around providing adjustments be made clearer?

[redacted]

(Please select one)

- ○ Yes, a clearer duty to provide adjustments would help people with disability and duty holders better understand their rights and obligations
- ○ No, the current rules are working well and do not need to change
- ○ The rules should be changed in another way.

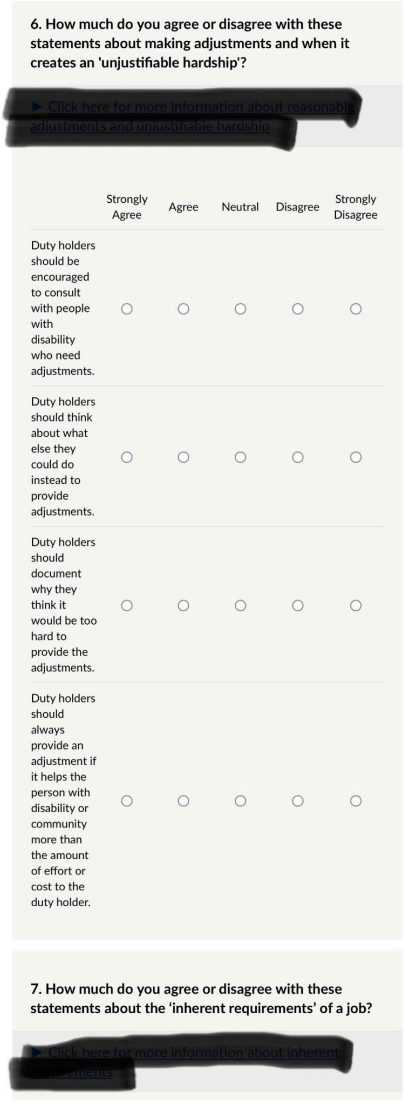
Questions 6 and 7

6. How much do you agree or disagree with these statements about making adjustment and when it creates an ‘unjustifiable hardship’?

Unjustifiable hardship is a defence under the DDA against a finding of disability discrimination. The threshold is met where the making of an adjustment would impose unjustifiable hardship on the duty holder when considering all relevant circumstances of a particular case, including the benefit or detriment to any person concerned.

Issues Paper p19

Question 6 and 7 screenshot



6. How much do you agree or disagree with these statements about making adjustments and when it creates an 'unjustifiable hardship'?

[redacted]

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Duty holders should be encouraged to consult with people with disability who need adjustments.	○	○	○	○	○
Duty holders should think about what else they could do instead to provide adjustments.	○	○	○	○	○
Duty holders should document why they think it would be too hard to provide the adjustments.	○	○	○	○	○
Duty holders should always provide an adjustment if it helps the person with disability or community more than the amount of effort or cost to the duty holder.	○	○	○	○	○

7. How much do you agree or disagree with these statements about the 'inherent requirements' of a job?

[redacted]

7. How much do you agree or disagree with these statements about inherent requirements of the job?

Again another tricky question with complexities around the term ‘inherent requirements’ for employment. Even though employers are able to argue an applicant with a disability does not meet the ‘inherent requirements’ of a job they do not have to provide a description of these requirements. It is lawful to discriminate against a person with a disability in employment on the grounds that they do not meet the ‘inherent requirements’ of particular work even though there is no requirement to specify these requirements.

“The Disability Royal Commission highlighted that the current operation of the inherent requirements exception acts as a barrier to employment for people with disability, and that the lack of clarity around inherent requirements can discourage people with disability from applying for roles. It was also noted that the current approach does not encourage employers to engage in discussions with prospective or existing employees about job design or the scope of adjustment that could be made”. Issues Paper p55

You are asked to respond based on how you feel this situation could be improved.

This may mean asking for employment accommodations such as:

- Wearing a respirator in the workplace.
- Being allowed to work from home.
- Indoor Air quality standards.

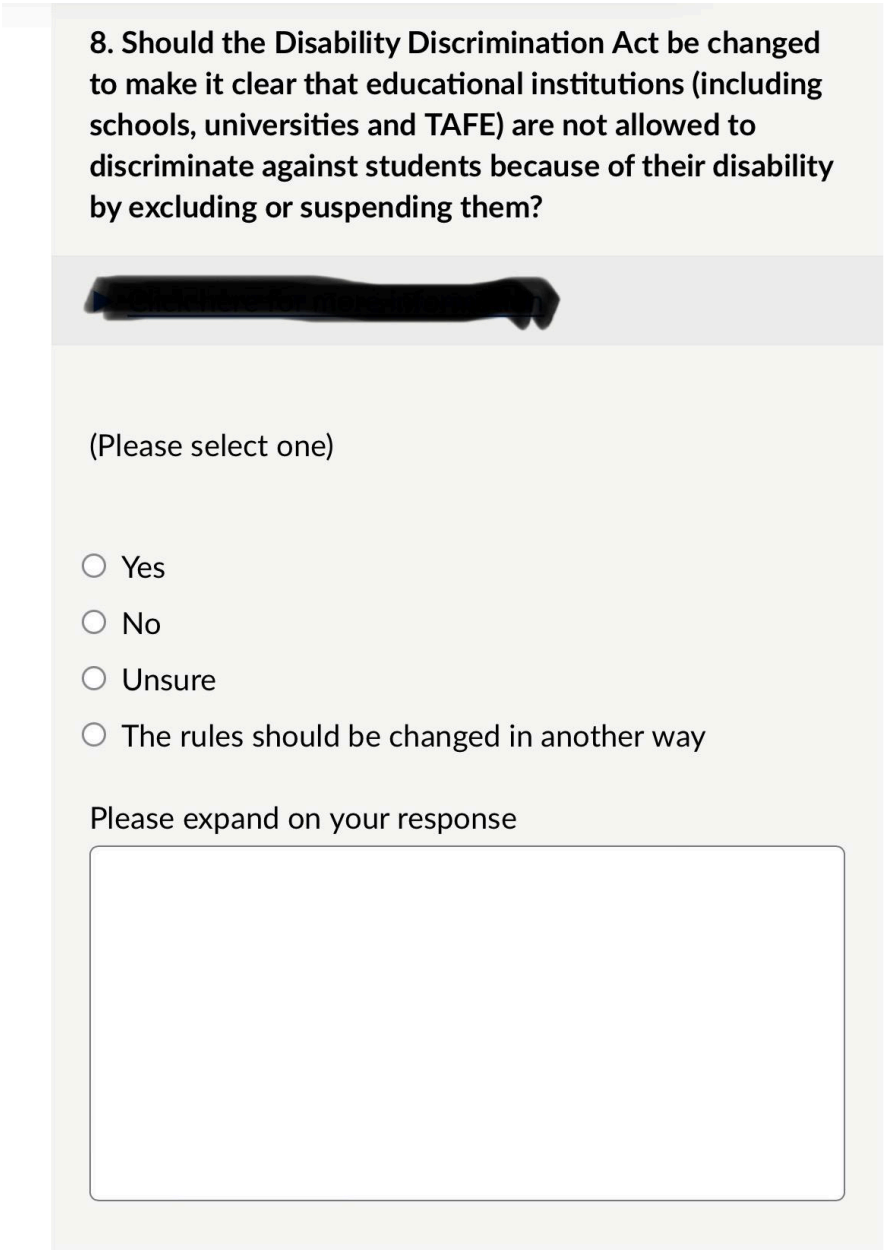
Question 8.

Should the Disability Discrimination Act be changed to make it clear that educational institutions (including schools, universities and TAFE) are not allowed to discriminate against students because of their disability by excluding or suspending them?

If you believe that suspension or exclusion should never be used on the grounds of disability to exclude or suspend a student then tick ‘Yes’.

Rather than exclude or suspend a student with a disability there should be a process for resolving issues to help support students. Many educational institutions have Support Groups or Disability Liaison Officers to help facilitate the accommodations needed by students with a disability. It should be compulsory for educational institutions to have processes in place for students with disability from the time of enrolment and to inform them that such supports exist. Funding should be conditional on having procedures and personnel in place to support students with disabilities.

Question 8 Screenshot



Questions 9 and 10

9. How could the DDA be updated to protect people with a disability from offensive behaviour or stop people from spreading hate about people with a disability (vilification)?

This is a very important question as the DDA does not currently provide protections for people with a disability being vilified. The Disability Royal Commission has recommended this area needs reform. As harassment can also occur online it has been suggested that the online harassment also needs to be looked at.

Issues Paper p68

Prompts: Examples might include:

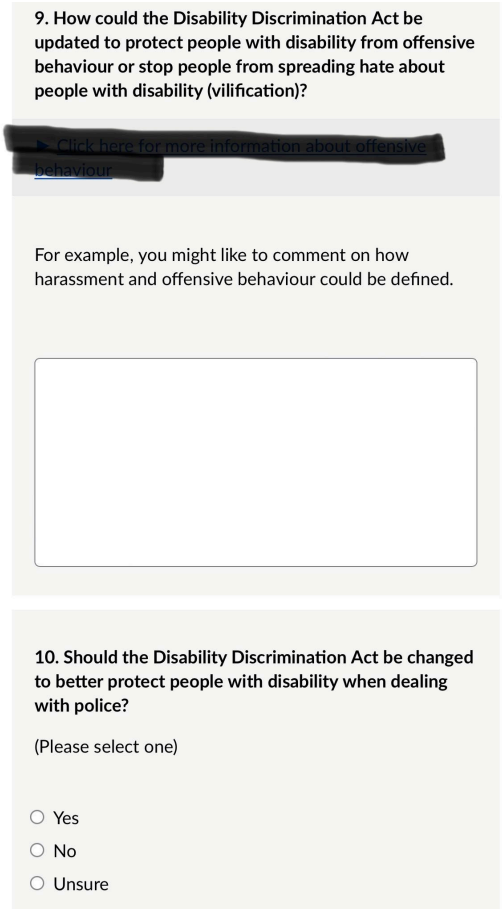
Being harassed for wearing a respirator - being taunted, sworn at, belittled, spat at in

Being accused of being a criminal/ stealing something because you are wearing a respirator.

Media publications which vilify people who are wearing masks

Asking someone to take off a medical respirator when doing so would put the person at risk medically.

Questions 9 and 10 screenshot



10. Should the DDA be changed to better protect people with disability when dealing with the public?

At present, the prohibition against discrimination in service delivery does not cover interactions between police and people with disability suspected of committing an offence.

"The Disability Royal Commission recommended the Disability Discrimination Act be amended to ensure all people with disability are protected from unlawful discrimination when engaging with police, regardless of the nature of that engagement."

Issues Paper p71

Question 11

How much do you agree or disagree with these statements about exemptions under the Disability Discrimination Act?

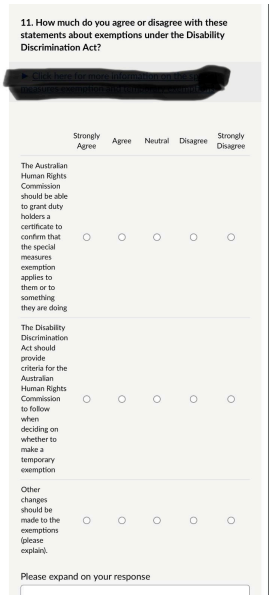
"The DDA includes10 permanent areas for exemptions which set out when discrimination against people with disability is not unlawful. The Australian Human Rights Commission can also grant temporary exemptions."

Issues Paper p74

If you have an interest in this area please refer to Part 5 - Exemptions.

Issues Paper pp74-80.

Question 11 screenshot



11. How much do you agree or disagree with these statements about exemptions under the Disability Discrimination Act?

[redacted]

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
The Australian Human Rights Commission should be able to grant duty holders a certificate to confirm that the special measures exemption applies to them or to something they are doing	○	○	○	○	○
The Disability Discrimination Act should provide criteria for the Australian Human Rights Commission to follow when deciding on whether to make a temporary exemption	○	○	○	○	○
Other changes should be made to the exemptions (please explain).	○	○	○	○	○

Please expand on your response

Questions 12, 13 and 14.

Question 14 is important.

“The Disability Standards are subordinate legislation made under the Disability Discrimination Act. As each of the Disability Standards are reviewed every 5 years the Disability Standards themselves are out of the scope of this review. The review will consider any opportunities for improvement to the Disability Standards framework in the Disability Discrimination Act itself.”

Issues Paper p7

Although the code is ‘updated’ every 5 years it does not seem to be effective. The Standards are difficult to navigate and some are hard to find. In some instances you have to pay a third party website to get access to a Disability Standard. Even though a Disability Standard exists, it is generally not retrospective, leaving the person with a disability having to make an individual complaint about each and every situation in which the discrimination has occurred.

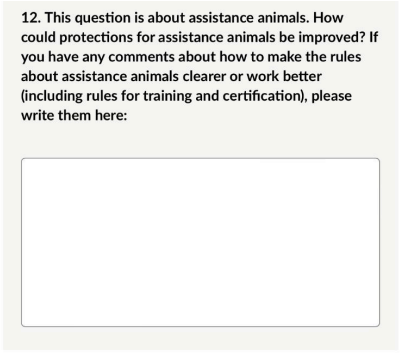
Prompt: There is a Disability Standard Building Code but it doesn’t make any reference to Indoor Air Quality. This would be a good opportunity to request a framework which recognises the need to implement a Disability Standard for Indoor Air Quality as a matter or urgency, otherwise it could be another 4 years before there is an opportunity to advocate for this Disability Standard.

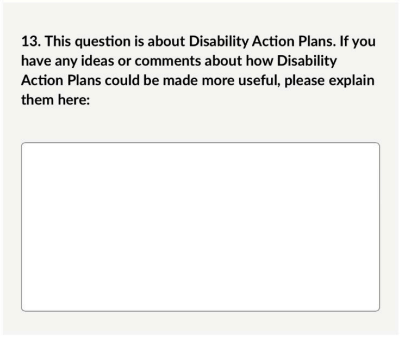
Questions 12, 13 and 14 screenshots

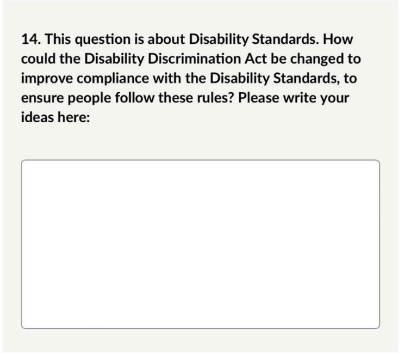
- **Assistance animals**
  - The rules about assistance animals are unclear. This includes for people with disability and duty holders.
  - The review is asking how to make the rules clearer about training and certification.

- **Disability action plans**
  - Some organisations have voluntary plans to improve accessibility.
  - The review is asking how these plans could be improved.

- **Disability Standards**
  - Public premises, public transport and education have special rules to help them be accessible.
  - The review is asking how we can be better at enforcing and reporting on these rules.







Question 15.

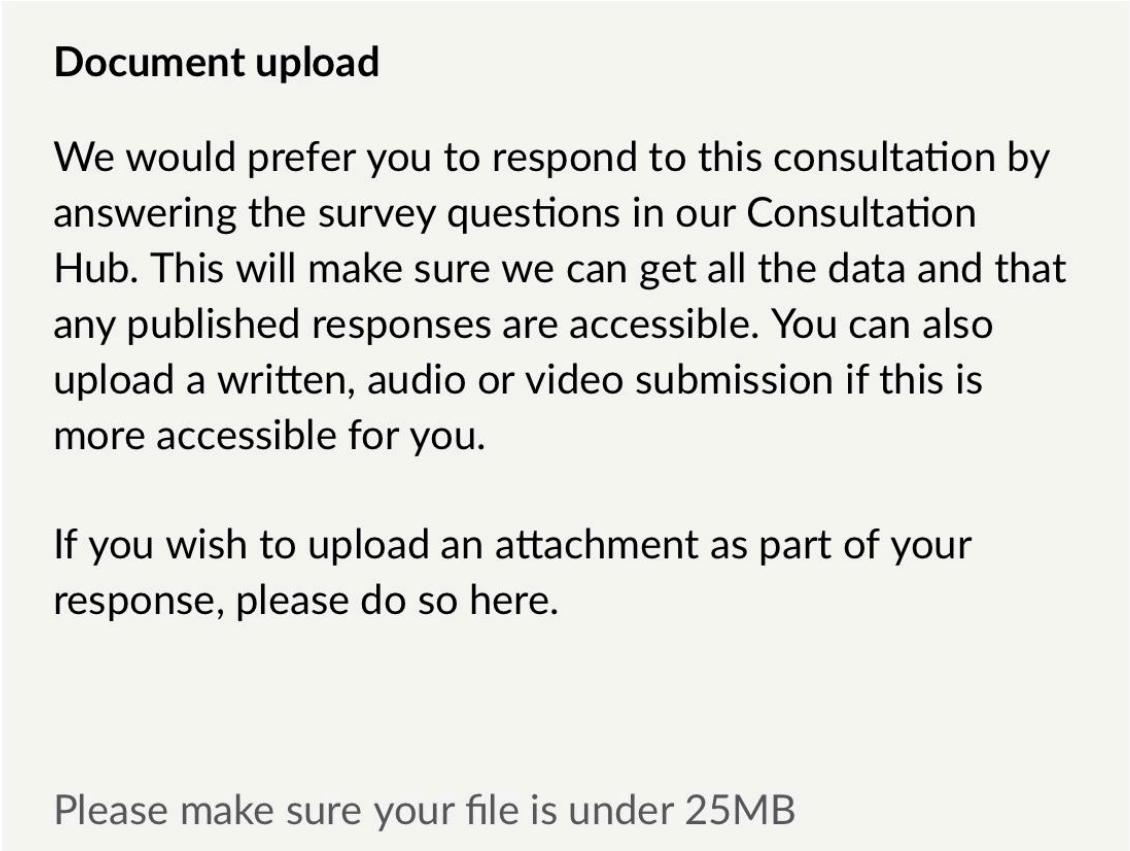
What other changes should be made to the Disability Discrimination Act?

15. What other changes should be made to the Disability Discrimination Act?

Contributing a Submission

At the end of the survey (or the longer questionnaire) there is the opportunity to attach a written, audio or video submission (see screenshot below). Following are a number of prompts and discussion about different situations, challenges, barriers and concepts that you may wish to consider including in your submission.

Submission upload Screenshot



Prompts exploring discrimination you may have faced/are currently facing due to the ongoing pandemic and the lack of safe access to public indoor spaces:

Discriminatory Barrier of Poor Indoor Air Quality

A new barrier to being able to safely participate in public life is the danger of shared air in indoor public spaces. Poorly ventilated public indoor spaces are now preventing medically at risk Australians from safely accessing public activities once taken for granted. This new discrimination puts the burden on the person with disability to try and ameliorate their

disproportionate health risk themselves, which is unrealistic, ineffective and unfair compared to improving IAQ universally which would provide a positive duty of care to all. Just as those in wheelchairs used to face stairs with no ramps to support access, now clinically vulnerable Australians face venues with unsafe air, with no accommodations to provide safe access. This is a contemporary health and inclusion challenge which has created such a significant barrier to public life that many are currently trapped in their homes, in individual lockdowns that have no end in sight.

We need IAQ accessibility requirements built into the DDA and Premises Standards, for public spaces including healthcare, aged care, education, public transport and workplaces. Anything less is denying universal safe access to participation in public life for people with the intersectional disability of chronic illness and immune dysregulation.

How is the lack of IAQ standards in indoor public spaces impacting your ability to participate in public life?

Discriminatory Lack of Safe Access to Workplaces: Any work environment that does not offer acceptable IAQ through good ventilation/HEPA filtration and a policy of staying home when sick with infectious airborne disease is discriminating against its workers who are at risk of poor outcomes of infection.

Has anyone in your family been forced to work in a work environment with unsafe IAQ? Has anyone been infected at work and had poor outcomes? Has someone in your family had to leave a job because of the risks of its unsafe working environment?

Discriminatory Lack of Safe Access to Education: Unsafe IAQ in schools especially discriminates against those staff and students who have underlying conditions and face poor outcomes of airborne infectious diseases. It is a barrier to safe access to public education. Children with disability shouldn't have to risk their health, quality of life and future for their education in unsafe learning environments. The education system must take responsibility for their health and safety. Anything less is discriminatory. We have the tools to provide a positive duty of care and prevent this discrimination. Better IAQ in classrooms will not only improve learning and productivity for all, but is also an important accommodation for children with disability and/or chronic illness, protecting from bushfire smoke, pollution, pathogens and pollen that can cause poor health outcomes.

Are there schoolchildren (or teachers) in your family whose ability to gain an education without jeopardising their health has been discriminated against by the lack of IAQ standards?

Intersectional Discrimination towards At Risk Groups: Certain marginalised groups, such as ethnic, disabled, LGBTQI, low-income communities, also those in aged care or prisons, may be disproportionately affected by current discriminatory barriers to participation in public life, exacerbating existing inequalities.

Have any members of your family been disproportionately affected because of intersecting disadvantage?

Discrimination of Withholding Access to Timely Vaccine Protection: The Health Minister has a positive duty of care to provide access to vaccination to all citizens. Preventing a cohort of Australians who have the “disability” of being unable to medically tolerate mRNA vaccines, from accessing the only vaccine they can safely use (Novavax XBB and JN.1, approved around the world) for years now, is discriminatory, dangerous and a moral failure. It creates a significant barrier to public participation. This lack of access to vaccine protection is unnecessarily endangering lives and creating unnecessary severe illness.This is an inclusion issue: will this cohort be permanently excluded from the vaccine protection enjoyed by the rest of the population which enables safe participation in public life?

Australia has consistently lagged behind the rest of the world in adequately procuring, approving and distributing vaccines, leaving Australians waned and unprotected during waves. Vulnerable, exposed populations like the elderly in aged care have not been given acceptable, timely access to boosters, leading to unnecessary poor outcomes such as severe illness and deaths. Australian children are now denied access to any vaccine protection at all, unlike their counterparts around the world.

Has anyone in your family been denied timely access to vaccine protection? How does this impact your ability to participate in public life?

Discrimination by Lack of Safe Access to Healthcare: the Australian Charter of Healthcare Rights states “I have a right to:

- Access Healthcare services and treatment that **meets my needs**
- Receive **safe and high quality health care** that meets national standards
- Be cared for in an environment **that is safe and makes me feel safe**

Dropping evidence-based protections such as mask mandates and testing has eliminated safe access to healthcare for at-risk patients, especially given a high mortality rate for hospital acquired COVID-19 infections. Confirmed airborne transmission of COVID-19 means it's in the air in all areas of hospitals. Hand hygiene protocols are inadequate and not fit for purpose in protecting against airborne infectious diseases; airborne strategies are needed.

Patients are especially medically vulnerable in healthcare settings, hospitals are exceptional settings with a population with the greatest risk of dying. Hospitalised patients are different from non-hospitalised populations, failing to protect them from preventable negative health outcomes that are due to their higher risk levels is discriminatory. Airborne Hygiene cannot be a choice for individual HCWs, hospital administrators or even state politicians (none of whom are leading experts in Infection Prevention and Control). We need a proactive, national duty of care to accommodate those at risk from airborne infectious disease.

It is a fair, reasonable and proportionate response to this new threat to medically at risk Australians, to wear respirators in healthcare to protect them from highly infectious (and often asymptomatic), airborne diseases such as influenza, COVID-19, RSV, tuberculosis and measles.

Has anyone in your family avoided healthcare since mask mandates were dropped due to concerns about being infected with COVID-19 while seeking treatment? Has anyone in your family been infected with COVID-19 while accessing healthcare? Did they suffer poor outcomes?

Discrimination against Vulnerable Elderly of Unsafe Aged Care: the lack of airborne transmission Infection Prevention and Control protocols in aged care has led to constant, unacceptably and tragically high rates of transmission, severe illness and deaths amongst elderly Australians living in aged care residences.

Do you have any family members who have suffered preventable COVID-19 infections in aged care, suffering poor outcomes?

Discrimination of Harassment Experienced while Protecting Health in Public Spaces: a number of Australians have experienced vilification, harassment and/or offensive behaviour while trying to protect their health in unsafe public venues, eg while wearing a respirator or mask. This can become a barrier to public participation.

Have you or any family members experienced harassment because you are trying to protect your health in public?

Discrimination of Human Right to Protect Health by Police: a number of Australians have been required to remove respirators during public protests, despite having a disability which means they need to wear a mask to protect their health. Could the DDA incorporate a right to mask for health purposes to protect them?

Have you been forced to remove your mask in an unsafe public environment and is this a barrier to public participation?

Discrimination by Inadequate Disability Standards: public spaces, public transport and education have special rules called Disability Standards to help them be accessible. Unfortunately these do not adequately cover IAQ.

Accommodations, legislation and protocols need to be embedded in the health system and preferably in all public buildings, not reliant on individual advocacy from those living with disability.

Would adding IAQ requirements to Disability Standards improve your ability to safely access public spaces such as public transport?

Discrimination by Inequity of Health Protections: there is genuine inequity in the double standard of parliamentary air quality upgrades while neglecting the poor IAQ of other public indoor spaces including schools, aged care, public transport, workplaces etc. Parliamentarians both Federal and State enjoy the privilege of very high IAQ in Parliament House. For instance, in August 2021, the NSW Premier upgraded the NSW Parliament House ventilation system to ensure "eight exchanges of fresh air in the chamber every hour".

All public indoor spaces should be made equally safe and accessible. All Australians should enjoy the same privilege of breathing safe indoor air as their elected representatives who have looked after their own workspaces, but have failed to extend that protection to the rest of the population.

Do members of your family experience poorer standards of IAQ than Australian politicians? How has this impacted your ability to participate in public life?

Discrimination of Australian failure to Implement the Right to a Clean, Healthy and Sustainable Environment: the United Nations declared this fundamental human right in 2022, but the federal government has failed to implement this right for Australians, despite specific recommendations from its Long COVID Inquiry re creating and legislating national IAQ standards. A clean, healthy, sustainable environment must include clean air to be genuinely accessible.

How do you feel about the Australian government's failure to commit to a clean, healthy and sustainable environment? How has this failure impacted you and your family?

Discrimination of Legislation Banning Masks - There is a discriminatory move both within Australian and overseas jurisdictions to legislate to ban masks in public, even for medical purposes. Mask bans that prevent those at risk from accessing public places, whether at a protest, on public transport or at a specific venue, are a discriminatory infringement on their civil rights and directly threaten their ability to access public life.

Legislating mask bans establishes and makes official a dangerous and unfair precedent which flies in the face of what the DDA is trying to achieve. There is an opportunity for the DDA to move in the opposite direction and legislate a right to mask, preferably a universal right, but at the very least as an accommodation for all those living with a disability. Individuals with pre-existing conditions rely on masks as an accessibility tool and essential protective barrier against potential health threats. We must ensure that everyone has the right to protect themselves.

Do you think the ability to protect health with masks is a fundamental human right? What would be the likely outcomes for you and your family if masks were banned in public places?

Discrimination of Inequity of Risk: in addition to the inequitable investment made in ensuring politicians are breathing safe air in parliament while neglecting the rest of the population, there are many other inequities of risk including the privilege of working from home vs frontline workers; the privilege of health literacy; the disproportionate risk to women with their triple threat of heavily exposed frontline occupations such as teaching, healthcare and hospitality/retail, caring duties for sick children putting them in harm's way and being more likely to develop long covid; privilege of being able to afford to buy expensive protective tools such as HEPA air purifiers, co2 monitors, high quality masks, RATs etc.

Do you and your family suffer disproportionate risk and if so, what have the consequences been?

This is a physical, social, political and ethical challenge. We need to address barriers to access with reasonable accommodations to public buildings or change the way we deliver services (e.g. Telehealth, work from home, supported online learning, outdoor service provision options, monitoring IAQ). Genuine inclusivity should be the goal. People at risk are human beings. They're mostly not at death's door, waiting to die, but functioning, contributing members of society with careers, families, hobbies - full lives that shouldn't be indefinitely curtailed and isolated because of indifference.

Australia's Disability Discrimination Act makes it against the law for public places to be inaccessible to people with a disability. This needs to be used to include those at risk from airborne disease.

What are the barriers to accessibility for you and your family?

Further information and discussion about concepts under review including information from the Issues Paper and various definitions.

PART 1. Updating understandings of disability and disability discrimination.

Issues Paper p21

Definition of Disability

The Attorney-General's Department (AGD) would like to know whether or not the terms used in the DDA adequately reflect contemporary language and models of disability. Many people do not relate to the terms used today commenting that the DDA uses a negative deficit model of disability. The AGD is asking for people to describe how they feel about the current wording and whether or not it adequately describes their own situation.

You may wish to address whether the current definitions of disability and discrimination are broad and/or up to date enough to cover all those Australians who are currently unable to safely participate in public life. This legislation was passed in 1993, long before the ongoing pandemic made us aware of the importance of Indoor Air Quality (IAQ) to creating accessible public indoor spaces and before we understood the disabling impact of "invisible" chronic disease.

"We are seeking feedback on whether the definition of disability in the Disability

Discrimination Act needs to be modernised, and if so, how this could be achieved."

Prompts:

Some other words people might use:

Health Status

Health Impaired

Immune dysregulation

Immunocompromised

Underlying health condition

You may also wish to write about words you don't want used such as "vulnerable"

Medical and social models of disability and the UN Convention on the Rights of Persons with Disabilities.

Comments are sort on the preferred model of disability. In the past a medical definition of disability has been used and this has been described as a deficit model.

The social model of disability is a contemporary model which introduces the idea that it is the environment that is disabling and that the concept of disability is a social one.

“The social model recognises that it is societal practices that are disabling and not the traits of an individual. This covers certain attitudes, practices and structures that can be disabling and act as barriers preventing people from fulfilling their potential and exercising their rights as members of the community. The social model seeks to change society in order to accommodate people with a disability. It does not seek to change people with a disability to accommodate society”.

Issues Paper Page 22, R Kaye’s & T Sands, Conventions on the Rights of People with a Disability: Shining a Light on Social Transformation.

The United Nations Convention on the Rights of Persons With Disabilities.

“Australia is a party to the United Nations Convention on the Rights of Persons with Disabilities (Disability Convention). The Disabilities Convention is an international human rights convention which sets out the fundamental human rights of people with disability. The Disabilities Convention requires countries to ensure and promote the full realisation of all human rights and fundamental freedoms for all people with a disability on an equal basis with others.” Issues Paper p10

The Issues Paper asks if Australia should update the DDA in line with the UN’s Rights of Person With Disabilities. As Australia is a signatory to this convention it has an obligation to do so. (If you agree you might like to say this in your submission)

Addressing Intersectionality

Many people have more than one identity. “Intersectionality recognises that a person or group of people can be affected by multiple and compounding forms of discrimination and disadvantage due to their race, sex, gender identity, sexual orientation, disability, class, religion, age and other identity markers.”

As Discrimination Laws stand at the moment each occurrence of discrimination would have to be dealt with separately. If it was changed to recognise intersectionality it would be possible to deal with all the different forms of discrimination together and take into account the compounding effect of this. You can write on whether or not you think this is a good idea.

Some Questions you could address from the Issues Paper: P28

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

“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?”

PART 2. Positive duty to eliminate discrimination P41

At the moment a person with a disability who has experienced discrimination is required to lodge a complaint with the Australian Human Rights Commission if they wish to seek a remedy. It is an onerous position to be in and because of this many many people with disabilities are reluctant to make a Complaint. One of the Disability Royal Commission’s main recommendations was that Governments need to implement a positive duty to avoid discriminating against a person with a disability in the first place. It may be worth considering making a comment on whether creating a “positive duty” to prevent discrimination would help eliminate the barriers you and/or your family currently face in trying to safely access public spaces.

Prompts:

Hospitals could use a pre- admission form which asks a patient about any particular Health Status requirements. For example the patient could ask for the staff to wear respirators.

PART 3. Encouraging inclusion of people with disability in employment, education and other areas of public life.

You may like to write on this area if you are a parent with a child in school who needs adjustments e.g. wear a mask, air purifier, good ventilation etc. in order to attend school safely.

To bring these areas in line with a positive duty not to discriminate it is suggested that the word “reasonable” be removed from the term “reasonable adjustments” currently used in the DDA. This has been a confusing term and often subject to open ended interpretations. It has been suggested that the word “adjustments” be used instead.

If you are writing on this section you could amplify the rights of children in schools with disabilities to cleaner air and good ventilation. Also the right to wear a respirator.

This section also covers employment and other areas of public life. E.g visiting a gallery, cinema, theatre etc.