

22 October 2025

Submission lodged by upload: <https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/consultation/>

Disability Discrimination Act 1992 (Cth) Review

Thank you for the opportunity to comment on the Issues Paper released in July 2025. Relationships Australia acknowledges the extensive work done to date to respond to the findings and recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission), including the in principle acceptance of the 15 recommendations relating to the *Disability Discrimination Act 1992 (Cth)* (the Act).

This submission by the National Office of Relationships Australia is informed by, and consistent with, our 2021 and 2022 submissions to the Royal Commission, and our 2021 submission commenting on the NDIS consultation paper about decision-making. These submissions are available at <https://www.relationships.org.au/research/#advocacy>.

The work of Relationships Australia

Relationships Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances. Relationships Australia provides a range of services, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, services for older people, and relationship and professional education. During the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, the Department of Social Services funded Relationships Australia organisations to support individuals seeking to provide evidence to the Royal Commission. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others.

In 2023-2024, Relationships Australia member organisations:

- served more than 175,000 clients across more than 100 locations and 97 outreach locations
- employed 2,000 staff to offer more than 380 unique services/programs
- launched more than 25 new programs
- participated in over 29 research projects, and

- offered more than 27 articles and submissions, which reflected and amplified what we learn from clients and through research projects,¹ to support legislative and policy development, and continuous improvement and innovation in service delivery.

Recommendations

- Recommendation 1** That Government enact:
- a comprehensive Human Rights Act (as previously recommended by entities including the Australian Human Rights Commission, the Law Council of Australia – and Relationships Australia)
 - a strengths-based, proactive Disability Rights Act (as recommended by the Royal Commission), and
 - a Disability Discrimination Act, supported by Standards made through legislative instrument.
- Recommendation 2** That the definition of disability in the Act be amended to refer expressly to sensory disabilities.
- Recommendation 3** That the Disability Discrimination Act be amended to recognise the compounding effect of marginalisation and positionalities when intersecting with the experience of disability, as follows:
- in the objects of the Act
 - in the definitions of *disability*, *direct discrimination* and *indirect discrimination*
 - as circumstances that may aggravate harms caused by disability discrimination
 - as a basis on which to provide for a broader range of available remedies, and
 - as a circumstance to be considered when undertaking public consultation for the purposes of the Act and any instruments, guidelines or other materials developed to support the objects of the Act.
- Recommendation 4** That the Act be amended to allow claims to be brought:
- for multiple or combined attributes that are currently protected by this and other Commonwealth anti-discrimination laws, and
 - where a person living with disability experiences intersectional marginalisation or disadvantage on the basis of circumstances that are not protected by Commonwealth anti-discrimination law (for example, where a person living with disability and is also experiencing housing precarity), those intersecting circumstances should be addressed by the Act.

¹ Relationships Australia (2024) Annual Impact Report for Family Relationships Services Programs. Accessible at <https://www.relationships.org.au/wp-content/uploads/RA-Impact-Report-24-FINAL.pdf>

- Recommendation 5** That the Act should be amended to:
- establish the detriment test to identify whether an applicant has been harmed, and
 - expressly exclude operation of the comparator test.
- Recommendation 6** That the Act be amended to follow the approach to burden of proof used in the Fair Work Act, rather than adopting the United Kingdom approach canvassed on p 32.
- Recommendation 7** That the Act be amended to remove the reasonableness element.
- Recommendation 8** That the Act should impose a positive duty that applies to all duty-holders under the Act, the scope of which is defined, for specific duty-holders, by a test of reasonable proportionality, and should apply only when a duty holder knows, or ought reasonably to know, about a person's disability and the adjustments needed by the person.
- Recommendation 9** That the Australian Human Rights Commission should receive additional resourcing to enable it to be an effective regulator, overseeing implementation of the proposed positive duty.
- Recommendation 10** That recommendations 4.24-4.26 of the volume 4 of the Final Report by the Disability Royal Commission be implemented without further delay.
- Recommendation 11** That, if Government prefers to develop a new definition of 'unjustifiable hardship', the new definition include a consultation requirement.
- Recommendation 12** That the Act be amended to include a statutory definition of inherent requirements, supplemented by guidelines made by the Attorney-General in a legislative instrument.
- Recommendation 13** That the Act be amended to define exclusion and exclusionary discipline, and to mandate the collection of prevalence data by all schools in Australia, and annual publication of that data.
- Recommendation 14** That Government implement recommendations 4.29 and 4.30 of the Final Report of the Royal Commission without further delay.
- Recommendation 15** That, as far as possible, the Act should be amended to align with the treatment of offensive behaviour and harassment in the *Racial Discrimination Act 1975* (Cth).
- Recommendation 16** That Government implement recommendation 8.19 of the Final Report of the Royal Commission without further delay.
- Recommendation 17** That national consistency of legislation and guidance concerning assistance animals should be prioritised.
- Recommendation 18** That the enactment of a Disability Rights Act and a positive duty (**see Recommendations 1 and 8**) be complemented by an appropriately empowered and resourced regulator (**see Recommendation 9**) and national subordinate legislation dealing with matters such as approved trainers / training organisations.

Recommendation 19 That specific training organisations should be prescribed in Commonwealth subordinate legislation, and that service providers should be required to accept evidence of training from any prescribed trainer or organisation.

Recommendation 20 That the development of actions plans remain voluntary.

Framing principles for this submission

Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all.

Principle 2 – Commitment to inclusive and universally accessible services

Relationships Australia is committed to universal accessibility of services, as well as inclusive and culturally safe services. Our clients (and staff) experience stigma, marginalisation and exclusion arising from diverse circumstances and positionalities, including:

- ‘postcode injustice’ in accessing health, justice and other social services that are of consistent standards of quality and safety, regardless of location
- poverty
- status as users of care and support
- disability and longstanding health restrictions (including poor mental health)
- intimate partner violence, abuse or neglect as an older person, and/or child maltreatment
- family separation
- being an adult informal carer for a child or other adult
- being a young person caring for a child or an adult
- housing insecurity and instability
- employment precarity, unemployment and under-employment
- misuse of alcohol and other drugs, or experience of gambling harms
- people who come from culturally and linguistically marginalised backgrounds (including people who have chosen to migrate and people who have sought refuge)
- people affected by complex grief and trauma, intergenerational trauma, intersecting disadvantage and polyvictimisation
- survivors of institutional abuse
- people experiencing homelessness or housing precarity
- people who identify as members of the LGBTIQ+ communities, and
- younger and older people.

None of these circumstances, experiences and positionalities are inherent to an individual or family. They become barriers to full enjoyment of human rights and full participation in

economic, cultural, and social life through the operation of broader systemic and structural factors including:

- legal, political and bureaucratic frameworks
- beliefs and expectations that are reflected in decision-making structures (such as legislatures, courts and tribunals)
- policy settings that inform programme administration, and
- biases or prejudices that persist across society and that are reflected in public policy, arts, culture, media and entertainment.

Principle 3 – An expanded understanding of diverse ways of being and knowing

Relationships Australia is committed to working with Aboriginal and Torres Strait Islander people, families and communities. Relationships Australia is also committed to enhancing the cultural responsiveness of our services to other culturally and linguistically marginalised individuals, families and communities. Our commitment to human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing.

Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and Torres Strait Islander people as foundational to policy and programme development, as well as service delivery. Connection to Country, and the context-specific experiences of kinship, for example, do not countenance the hyper-individualism that pervades Western assumptions about distribution of resources and obligations between the Western nation-state and individuals, and among individuals. Centring the epistemologies and experiences of Aboriginal and Torres Strait Islander people is a necessary (although not of course sufficient) step in achieving the targets in the National Agreement on Closing the Gap, as well as preventing entry into poverty, ameliorating its effects, and hastening transitions out of poverty.

Principle 4 - Commitment to promoting social connection and addressing loneliness as a serious public health risk

Loneliness is a complex social problem and a public health concern. It stems from dissatisfaction with our relationships, a lack of positive and respectful relationships, or both of these, and is often caused by experiences of exclusion due to structural and systemic social realities that form obstacles to participation in social, economic, cultural and political life. As a public health concern,² loneliness has been linked to physical health risks such as being equivalent to smoking 15 cigarettes a day and an increased risk of heart disease.³ Loneliness is a precursor to poorer mental health outcomes, including increased suicidality.⁴ It is therefore clear that interventions that address loneliness decrease the burdens on acute and tertiary health care services, and are far less expensive to undertake. Further, policy, regulatory and

² Heinrich & Gullone, 2006; Holt-Lunstad et al, 2015; Mance, 2018.

³ Valtorta, 2016.

⁴ Calati et al, 2019; McClelland et al, 2020; Mushtaq, 2014.

service interventions that strengthen connections and reduce isolation are the most promising and feasible avenues for reducing the risk of abuse and exploitation of people who face structural and systemic barriers to their full participation in society. For example, social support has emerged as one of the strongest protective factors identified in elder abuse studies:

....Social support in response to social isolation and poor quality relationships has also been identified as a promising focus of intervention because, unlike some other risk factors (eg disability, cognitive impairment), there is greater potential to improve the negative effects of social isolation.⁵

Relationships Australia is a foundation member of the Ending Loneliness Together network⁶ and has, since 2013, been the custodian of Neighbours Every Day,⁷ the primary purpose of which is to equip and empower individuals to build sustainable, respectful relationships with those around them. It is an evidence-based campaign aimed at reducing loneliness by raising awareness and, importantly, providing tools to combat social isolation.

Principle 5 – Intergenerational stewardship and equity

Fairness to future generations should not be viewed through a reductionist fiscal lens. Relationships Australia takes seriously obligations of stewardship for future generations, which transcend the national balance sheet and require us to invest in social infrastructure (tangible and intangible). This includes fit for purpose human rights infrastructure.

Principle 6 – Commitment to centring lived experience in policy and service design, delivery and evaluation

Centring lived experience (including through authentic co-design⁸) in policy and service design supports the development of policy, legislation and services that uphold human rights – especially human rights of individuals and groups who have traditionally been marginalised and excluded from policy discourse, or been the ‘objects’ of such discourse. In addition, centring lived experience can enhance the transparency and public accountability in policy and programme development, and the efficiency of government services, by supporting the delivery of outcomes that are valued by service users, not just administrators.

⁵ See Dean, CFCA 51, 20, Box 7, citing the United States of America population study described in Acierno et al, 2017; citing also Hamby et al (2016); Pillemer et al (2016).

⁶ The campaign Ending Loneliness Together has released a guide that explains how community organisations can use validated scales to measure loneliness:

https://endingloneliness.com.au/wpcontent/uploads/2021/08/AGuidetoMeasuring-Loneliness-for-Community-Organisations_Ending-LonelinessTogether.pdf

⁷ Neighbours Every Day is an evidence-based campaign, evaluated by the Australian National University, aimed at reducing loneliness by raising awareness and, importantly, providing tools to combat social isolation. With adequate resourcing, we are confident that Neighbours Every Day could be scaled to reach a greater number of Australians, in all communities and at all stages of the life course. For recent international endorsement of Neighbours Every Day, see: From loneliness to social connection - charting a path to healthier societies: report of the WHO, 2025.

⁸ For discussion of the debasement of the term ‘co-design’ in First Nations policy, see eg Butler et al, 2025.

Responses to the questions posed in the Issues Paper

Overarching comments – duplicative consultation, scarce resources and re-traumatisation

As noted in the consultation paper, the Disability Royal Commission

...was one of the most far reaching and extensive Royal Commissions, hearing from nearly 10,000 people about their experiences. (p 4)

We welcome the acknowledgement at p 17 of the multiple reviews and inquiries over the past three decades. Individuals and organisations, often with scarce resources, have invested time and effort in participating in these, often experiencing ‘review fatigue’ as well as – especially for individuals – re-traumatisation in recounting their experiences for a succession of reviewers. It is disappointing that review recommendations are, instead of being implemented in a timely way, made the subject of additional rounds of consultation, which are inevitably less comprehensive than that carried out by the Royal Commission. In any event, there are many other recommendations, from many other inquiries in the recent past, which would prevent and remediate discrimination against people with disability, but which instead gather dust on physical and virtual bookshelves. For example, in addition to the inquiries mentioned at p 17 of the consultation paper, the following inquiries have made relevant recommendations:

- Australian Law Reform Commission Report 124, *Equality, Capacity and Disability in Commonwealth Laws* (2014) <https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-alrc-report-124/>
- Australian Human Rights Commission, *A Future Without Violence – Quality, safeguarding and oversight to prevent violence against people with disability in institutional settings* (2018) <https://humanrights.gov.au/our-work/disability-rights/publications> , and
- Australian Law Reform Commission Report 131, *Elder Abuse – A National Legal Response* (2017) <https://www.alrc.gov.au/publication/elder-abuse-a-national-legal-response-alrc-report-131/>

Relationships Australia has made salient recommendations in our submissions to other inquiries and consultations, including :

- our 2025 submission commenting on Australia’s draft national report to Australia’s fourth Universal Periodic Review (especially Recommendation 5)
- our 2023 submission to the inquiry by the Parliamentary Joint Committee on Human Rights into Australia’s Human Rights Framework (in which we recommend the passage of an Australian Human Rights Act; see especially Recommendation 1), and
- our 2021 and 2022 submissions to the Royal Commission.

These submissions are accessible at <https://www.relationships.org.au/research/#advocacy>

Multiple inquiries that traverse substantially the same ground are harmful, as well as being wasteful of scarce resources. They delay effective reforms and leave people in circumstances in

which they are vulnerable to wrongdoing (in this instance, to unlawful discrimination), without meaningful remedies. A succession of inquiries without timely follow up indicates structural ableism, expressed through ongoing de-prioritisation of needed reforms.

Q. 1 How should disability be defined in the Disability Discrimination Act?

Relationships Australia **recommends** that Government enact:

- a comprehensive Human Rights Act (as previously recommended by entities including the Australian Human Rights Commission, the Law Council of Australia – and Relationships Australia)
- a strengths-based, proactive Disability Rights Act (as recommended by the Royal Commission), and
- a Disability Discrimination Act, supported by Standards made through legislative instrument. (**Recommendation 1**)

For the most part, the reforms supported by Relationships Australia in this submission should be implemented through a Disability Rights Act, rather than by retrofitting the deficits-based and medicalised Disability Discrimination Act.

Relationships Australia **supports** modernisation of the current definition of disability. In addition to the language being negative and deficit-based, it is also highly medicalised, reinforcing medicalised ‘othering’ of people with disability. This undermines the scope for the Act to realise its objectives which are grounded in social (and human rights) models of disability. We also **support** retention of the term ‘disability’ to make explicit the link between domestic legislation and the Convention on the Rights of Persons with Disability, and amendment of the *Fair Work Act 2009* (Cth) to use language consistent with the Disability Discrimination Act. We **recommend** that the definition also be amended to refer expressly to sensory disabilities. (**Recommendation 2**)

Q. 2 What factors should be considered in developing a new definition of disability?

Noting also the discussion at p 27 of the consultation paper, Relationships Australia **recommends** that the Disability Discrimination Act be amended to recognise the compounding effect of marginalisation and positionalities when intersecting with the experience of disability, as follows:

- in the objects of the Act
- in the definitions of *disability*, *direct discrimination* and *indirect discrimination*
- as circumstances that may aggravate harms caused by disability discrimination
- as a basis on which to provide for a broader range of available remedies, and
- as a circumstance to be considered when undertaking public consultation for the purposes of the Act and any instruments, guidelines or other materials developed to support the objects of the Act. (**Recommendation 3**)

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

Yes. This would both strengthen the Act and better reflect contemporary understanding of the nature and effects of intersectionality. Relationships Australia **recommends** that the Disability Discrimination Act be amended to allow claims to be brought:

- for multiple or combined attributes that are currently protected by this and other Commonwealth anti-discrimination laws, and
- where a person living with disability experiences intersectional marginalisation or disadvantage on the basis of circumstances that are not protected by Commonwealth anti-discrimination law (for example, where a person living with disability and is also experiencing housing precarity), those intersecting circumstances should be addressed by the Act. **(Recommendation 4)**

Q. 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?

See responses to Questions 2 and 3.

Q. 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?

For the reasons canvassed in the Royal Commission and further detailed in the consultation paper, Relationships Australia **recommends** that the Act should be amended to:

- establish the detriment test to identify whether an applicant has been harmed, and
- expressly exclude operation of the comparator test. **(Recommendation 5)**

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

Relationships Australia **recommends** that the Act be amended to follow the approach to burden of proof used in the Fair Work Act, rather than adopting the United Kingdom approach canvassed on p 32. The Fair Work Act approach should be preferred as being, first, simpler than the United Kingdom approach, and supporting greater consistency, and minimising unwarranted fragmentation, across the Commonwealth statute book. **(Recommendation 6)**

Q. 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?

See response to Question 8.

Q. 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
- d. other?

Please expand on your response.

Relationships Australia **recommends** that the Act be amended to remove the reasonableness element (Option (a)). **(Recommendation 7)** Options (b) and (c) in Question 8 both appear likely to invite protracted and expensive litigation to settle the scope and meaning of factors or the content of a ‘legitimate and proportionate’ test, without necessarily leading to timely improvements in outcomes for people with disability (who face barriers to access to justice, as noted by the Law Council of Australia,⁹ the Royal Commission, and in the Issues Paper).

The ‘unjustifiable hardship’ test is sufficient to protect respondents.

Relationships Australia considers that mere provision of additional guidance (p 35) would not overcome the complexities that applicants must currently navigate, and that substituting the reasonableness test with a ‘legitimate and proportionate’ test would not address the issues identified by the Royal Commission. However, guidance materials should be developed to assist duty holders to avoid indirect discrimination against people with disability, regardless of which test is used.

Q. 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?

Yes.

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

Yes.

Q. 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?

Yes.

⁹ Law Council of Australia, 2018.

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

As recommended by the Royal Commission, Relationships Australia **recommends** that the Act should impose a positive duty. (**Recommendation 8**) The imposition of a positive duty under the *Sex Discrimination Act 1984* (Cth) has, in our view, significantly raised employers' awareness of sexual harassment and of the need to take active steps to prevent it. There is no principled reason why such a duty should not be imposed in other Commonwealth anti-discrimination legislation; creation of a positive duty would enhance consistency across the Commonwealth statute book.

As recommended by the Royal Commission, the proposed positive duty should apply to all duty-holders under the Act. (**Recommendation 8**) Relationships Australia acknowledges that the positive duty was included in the Sex Discrimination Act in response to catalysts that were firmly oriented towards employment relationships. While it is beyond the scope of this consultation, we consider that the positive duty in that Act should be imposed on all duty-holders under that Act, not only employers.

Relationships Australia further **recommends** that the Australian Human Rights Commission should receive additional resourcing to enable it to be an effective regulator, overseeing implementation of the proposed positive duty. (**Recommendation 9**) Too often, regulatory powers that look great on the statute book languish unused by regulators who do not have the staff and other resources to exercise them as intended. In these circumstances, regulators can become captured and acquiescent, to the detriment of community members.¹⁰

Questions 13 and 14

Nil response.

Q. 15 Should there be exceptions or limits to the application of a positive duty?

Relationships Australia **recommends** that the scope of the duty should be defined, for specific duty-holders, by a test of reasonable proportionality, and should apply only when a duty holder knows, or ought reasonably to know, about a person's disability and the adjustments needed by the person. (**Recommendation 8**).

Q. 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?

Yes. Relationships Australia considers that a stand-alone duty is likely to be a catalyst for normalising systems, processes and business as usual practices that support participation, across all facets of society, by people living with disability. Measures to date have

¹⁰ As demonstrated by, for example, the findings of the Aged Care Royal Commission and the Banking and Finance Royal Commission, as well as recent events in the child care sector. This is not a new problem, as illustrated by the HIH Royal Commission established in 2001.

conspicuously failed to achieve this. Too many public spaces, workplaces, educational settings, cultural and leisure settings, as well as the provision of goods and services including public transport and even health care, remain obdurately inaccessible for people living with a range of disabilities. As noted by the Royal Commission:

As presently drafted, the DDA imposes no obligation on and creates little incentive for employers, schools, service providers and others covered by the legislation to take active measures to prevent discrimination on the grounds of disability. It is not enough to rely on a complaints-based system to bring discriminatory conduct to light. (Final Report, volume 4, p 298)

Q. 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?

Nil response.

Q. 18 Would removing the word ‘reasonable’ from the term ‘reasonable adjustments’ to align the language with the legal effect create any unintended consequences?

Relationships Australia **recommends** that recommendations 4.24-4.26 of the volume 4 of the Final Report by the Disability Royal Commission be implemented without further delay. (**Recommendation 10**).

Q.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.

See the response to Question 18. If, however, Government prefers to develop a new definition of ‘unjustifiable hardship’, Relationships Australia **recommends** that the new definition include a consultation requirement. (**Recommendation 11**).

Q. 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?

Relationships Australia is concerned that pre-employment conversations may have the unintended adverse effect of warping decisions about employment, to the disadvantage of applicants with disability. It would be undesirable to legislate in a way that had the effect of forcing people to disclose disability.

Q. 21 Are there other amendments to the Disability Discrimination Act that could support engagement between prospective or current employers and prospective or current employees to better understand the inherent requirements of a job?

Nil response.

Q. 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?

Relationships Australia **recommends** that the Act be amended to include a statutory definition of inherent requirements, supplemented by guidelines made by the Attorney-General in a legislative instrument. (**Recommendation 12**)

Q. 23 Should the concepts of exclusion and exclusionary discipline be defined in the Disability Discrimination Act?

Relationships Australia **recommends** that the Act be amended to define exclusion and exclusionary discipline, and to mandate the collection of prevalence data by all schools in Australia, and annual publication of that data. (**Recommendation 13**)

Q. 24 Should there be exceptions or limits on when exclusion is unlawful?

Relationships Australia is concerned about the disproportionate extent to which children and young people with disability are subjected to exclusion and exclusionary discipline, in breach of their human rights.

We are concerned that schools are so chronically under-funded as to be unable to meet the needs of students with disability in ways that support the rights to safety and education of all students (as well as the safety of school staff), without disproportionate recourse to exclusion and exclusionary discipline as the only option. It is not open to governments to wash their hands of the consequences of failing to fund schools to operate in ways that comply with Australia international and national human rights obligations.

Questions 25 and 26

Nil response.

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

Relationships Australia **recommends** that Government implement recommendations 4.29 and 4.30 of the Final Report of the Royal Commission without further delay. (**Recommendation 14**)

Q. 28 If the Disability Discrimination Act were to prohibit offensive behaviour and/or harassment, how should these terms be defined?

Relationships Australia **recommends** that, as far as possible, the Act should be amended to align with the treatment of these concepts in the *Racial Discrimination Act 1975* (Cth).
(Recommendation 15)

Q. 29 Should there be exemptions for any behaviour, similar to the Racial Discrimination Act?

Relationships Australia does not agree that there are legitimate scientific or medical purposes that justify acts that offend, insult, humiliate or intimidate people living with disability. Further, while Relationships Australia does not support censorship of artistic expression, we note that artistic expression which offends, insults, humiliates or intimidates people with disability can contribute to structural ableism and public tolerance of ableist norms.

Q. 30 Given the recent legislative developments, are there any further gaps in the legislative framework that could be addressed by amendments to the Disability Discrimination Act to protect people with disability from vilification?

Nil response.

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

Relationships Australia **recommends** that Government implement recommendation 8.19 of the Final Report of the Royal Commission without further delay. **(Recommendation 16)**

Questions 32 and 33

Nil response.

Q. 34 Should the Australian Human Rights Commission be given the power to grant special measures certificates?

Yes.

Q. 35 Should a definition for special measures be added to the Disability Discrimination Act?

Yes.

Q. 36 Should a definition for temporary exemptions be added to the Disability Discrimination Act?

Yes.

Q. 37 Would you recommend any changes to the legislative process of granting temporary exemptions?

Nil response.

Q. 38 How could the protections for assistance animals be clarified for both people with disability and duty holders, including in relation to evidence of training, evidence or standards of hygiene and behaviour that are appropriate for a public place?

Relationships Australia **recommends** that national consistency of legislation and guidance should be prioritised, so that duty holders can no longer hide behind inconsistency and lack of clarity as excuses for persistent discrimination against people supported by assistance animals. (**Recommendation 17**)

While some duty holders may be unsure of their obligations in relation to assistance animals (consultation paper, p 82), Relationships Australia considers that, even where obligations are clear and well-publicised, some duty holders are indifferent to them, and are willing to wear any consequences, financial and reputational, as a mere ‘cost of doing business’ that is less than the cost of compliance. This is why Relationships Australia recommends the enactment of a Disability Rights Act and of a positive duty with general application (see **Recommendations 1 and 8**), complemented by conferral on the AHRC of appropriate regulatory powers and of sufficient resources to proactively enforce compliance by duty holders (**Recommendation 9**).

Relationships Australia is concerned that fragmentation of policy and legislation concerning assistance animals continues to impede timely progress in making the Assistance Animal National Principles and will continue to subject people living with disability to a ‘postcode lottery’ of rights in implementation. This is another instance of governments failing to lift the burdens of fragmentation from those least equipped to bear them.

Service providers, too, are fragmented in relation to assistance animals. For example, the websites of QANTAS and Virgin Australia list criteria to be met to allow an assistance animal to board. The criteria include training by accredited trainers. Virgin Australia will recognise animals trained by Assistance Dogs International (ADI), or by a trainer accredited under Queensland, South Australia, Western Australia or the Australian Capital Territory legislation. QANTAS’ criteria, however, recognise only training provided by a full member of ADI or a provider approved under the *Guide, Hearing and Assistance Dogs Act 2009* (Queensland).

It is self-evident that these inconsistencies disempower and undermine the full participation, in the economy and our community life, of people supported by assistance animals.

Q. 39 Would legislative amendments or guidance materials be helpful to balance flexibility and certainty, or a mixture of both?

Relationships Australia recommends that the enactment of a Disability Rights Act and a positive duty (see **Recommendations 1 and 8**) be complemented by an appropriately empowered and

resourced regulator (**see Recommendation 9**) and national subordinate legislation dealing with matters such as approved trainers / training organisations (**Recommendation 18**). This would provide an appropriate balance of certainty and flexibility.

Q. 40 Should specific training organisations be prescribed under the Disability Discrimination Regulations?

To mitigate postcode lottery, Relationships Australia **recommends** that specific training organisations should be prescribed in Commonwealth subordinate legislation, and that service providers should be required to accept evidence of training from any prescribed trainer or organisation. (**Recommendation 19**)

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

Relationships Australia **recommends** that the development of actions plans remain voluntary. (**Recommendation 20**)

Questions 42, 43 and 44

See the response to Q 41.

Q. 45 How could compliance with and enforcement of the Disability Standards be improved?

Enforcement of the Standards is too dependent on individuals having the time, capacity and energy to make and pursue a complaint. Further, existing measures have, over 30 years, failed to effect the cultural and commercial transformations necessary to meaningfully support participation, by people living with disability, in Australia's economic, political, and cultural life. Genuine inclusion is still trivialised as a 'nice to have', rather than a necessary component of a society that does not waste the skills and capabilities of a significant proportion of the population.

As recommended above, enactment of a Disability Rights Act and of a positive duty, combined with adequate resourcing and empowerment of the AHRC as a regulator (see **Recommendations 1, 8 and 9**), are necessary prerequisites of improved compliance and enforcement.

Q. 46 Should the Disability Discrimination Act be amended to encourage relevant duty holders to self-report on their compliance with the Disability Standard(s) in disability action plans?

No. Any encouragement of self-reporting should be done through education and awareness campaigns, rather than by legislative mandate. It is unclear whether self-reported compliance drives improved outcomes for people with disability, rather than simply providing a veneer of inclusivity.

Q. 47 Could the Australian Human Rights Commission provide additional guidance to duty holders regarding how to self-report on the Disability Standards in disability action plans?

See the response to Q 46.

Questions 48 and 49

Nil response.

Q. 50 How can we ensure the Disability Discrimination Act remains fit-for-purpose into the future?

Recommendations from Government inquiries be acted on in a timely way and, in the case of recommendations from the Royal Commission's final report of 2023, without further delay.

Q.51 Are there any other issues with the Disability Discrimination Act that should be considered as part of this review?

Nil response.

Conclusion

Thank you again for the opportunity to respond to the questions raised in the Issues Paper. Please do not hesitate to contact us if you wish to discuss any aspect of our comments. I can be contacted at ntebbey@relationships.org.au; alternatively, you may contact our National Policy Manager, Dr Susan Cochrane, at scochrane@relationships.org.au.

Kind regards



Nick Tebbey
National Executive Officer

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