

20 October 2025

Katherine Jones PSM
Secretary
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600



via: DDAReview@ag.gov.au

Dear Secretary,

I write to you today on behalf of Victorian Trades Hall Council (VTHC) regarding your review of the Disability Discrimination Act (1992). VTHC is the peak body for unions in Victoria, made up of 40 affiliated unions and representing 450,000 workers from each and every industry and occupation in this great state. These union members care about justice, dignity and security in all aspects of their lives.

VTHC endorses the Migrant Workers' Centre (MWC) submission to this review. The MWC is the preeminent organisation representing migrant workers in Victoria. They have a wealth of lived experience and technical knowledge, which is utilised to educate and empower migrant workers on their rights, and to create connection between migrant workers in their mutual campaign for justice.

VTHC and MWC both support reform to the *Disability Discrimination Act (1992)* on the basis of eliminating legal discrimination on disability status. The current policy settings are incompatible with human rights.

Should you have any questions about our letter of endorsement, please get in touch with VTHC political organiser Clare Elliott at celliott@vthc.org.au.

Regards,

A handwritten signature in black ink, appearing to read "Danae Bosler".

Danae Bosler
Assistant Secretary
Victorian Trades Hall Council

Luke Hilakari
Secretary

Danae Bosler
Assistant Secretary

Amanda Threlfall
Assistant Secretary

Wilhelmina Stracke
Assistant Secretary

Trades Hall
54 Victoria Street
Carlton 3053

Ph: 03 9659 3511
info@vthc.org.au
weareunion.org.au

Submission to the *Disability Discrimination Act 1992* Review

October 2025

For enquires: mwc@migrantworkers.org.au

1 Introduction

- 1.1 The Migrant Workers Centre (MWC) welcomes the opportunity to make a submission to the Attorney-General Department's Review of the *Disability Discrimination Act 1992* (Cth) ('DDA'). The MWC is a community legal service that empowers migrant workers in Victoria to understand and enforce their workplace rights. Our activities include free employment law services, education programs to raise awareness of workplace rights, and an advocacy program to amplify and support migrant workers' voices through research and policy development. Since we were established in 2018, we have been working closely with government, unions, and civil society organisations to advance the rights of migrant workers in Australia.
- 1.2 The MWC commends the Australian Government for acting on the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023), including its commitment to consider opportunities to strengthen and modernise the DDA. As the Issues Paper submits, the DDA has not been significantly updated since it was enacted in 1992 and has failed to keep pace with changing community expectations, standards in comparable democracies, and human rights law. It is in urgent need of reform.
- 1.3 MWC's submission responds to select questions posed by the Issues Paper that are relevant to our advocacy focus, at the intersection of work and migration. We place particular emphasis on the need to recognise an intersectional, social model of disability, and to move towards a proactive approach that requires positive action to prevent discrimination against people with disabilities and/or health conditions. Embedding these principles in the DDA will better align it with international standards and Australia's anti-discrimination framework more broadly.
- 1.4 It is also critical to address gaps in the DDA's coverage that undermine the above-mentioned reforms. While we acknowledge the Government's response to the 2023 *Review of the Australia's Significant Cost Threshold*, which actioned some changes to the outmoded Migration Health Requirements (MHR), we remain concerned about the blanket exemption of certain provisions of the *Migration Act 1958* (Cth) to the scope of the DDA. **The MWC strongly endorses Welcoming Disability's submission and its position that the exemption is overly broad and incompatible with human rights.** A reformulation of this exemption, with a view to balancing legitimate public health priorities while removing discriminatory cost-based exclusions, is necessary to align the DDA with the international and moral imperative to uphold the rights of people with disabilities to the fullest extent possible.
- 1.5 Through our advocacy, we have observed that debates about migration policy are often framed by an ill-defined notion of the "model" or "deserving" migrant, whereby inclusion is contingent on whether individuals are deemed 'worthy' or 'unworthy' based on perceived fiscal value, productivity, or other characteristics. In the same way, people with disabilities and/or health conditions are frequently positioned outside of the imagined norm of the productive worker or ideal citizen. When such value judgments are embedded in law and policy, they entrench exclusion and perpetuate the harmful, deficit-based assumption that people with disabilities are a burden rather than an asset to society. People with disabilities and/or health conditions contribute immensely to the social, economic, and cultural fabric of Australian society, and should not be unjustifiably excluded on the grounds of disability.

2 Summary of recommendations

Recommendation 1. The objects of the DDA should be amended by inserting an express requirement that the Act be interpreted, so far as possible, consistently with international instruments that Australia has ratified, including the CRPD.

Recommendation 2. Amend the DDA to include an express provision requiring all duty-holders and administrative and judicial decision-makers to interpret the Act consistently with the CRPD.

Recommendation 3. Amend the DDA to expressly provide that discrimination may occur on the basis of multiple, intersecting, and/or a combination of two or more protected attributes, including those covered across federal discrimination and industrial law.

Recommendation 4. Ensure that the Australian Human Rights Commission (AHRC) is adequately resourced to identify, conciliate, and monitor intersectional discrimination through staff training, specialist expertise, and accessible complaint-handling processes. The Commission should also strengthen data collection, reporting, and community outreach to better support people experiencing compounded disadvantage.

Recommendation 5. Model the definition of direct discrimination on the *Equality Act 2010* (UK) by adopting the term ‘unfavourable’ rather than ‘less favourable’, removing the requirement to identify a comparator, and aligning with the shifting burden of proof approach under section 136.

Recommendation 6. Introduce a positive duty requiring all duty-holders to address and prevent all forms of ‘unlawful conduct’ in all areas of activity under the DDA, including ‘unlawful conduct’ by or against people having any engagement with the organisation. The duty should apply to both public and private sector entities.

Recommendation 7. Establish a robust enforcement framework for the positive duty that empowers the AHRC to proactively monitor, investigate, and enforce compliance without reliance on individual complaints. To ensure effective enforcement, the Commission should also be equipped to impose and escalate sanctions for serious or persistent non-compliance, including civil penalties, injunctions, procurement exclusions, and publication powers.

Recommendation 8. Amend the DDA to make Disability Action Plans (DAPs) mandatory for prescribed duty-holders, including public authorities, statutory bodies, and organisations above a specified size or employment threshold. Entities or organisations that do not meet that threshold should be encouraged and supported to develop DAPs voluntarily, subject to legislated criteria.

Recommendation 9. Require mandatory DAPs to be measured and enforced under the positive duty framework. DAPs should be periodically reviewed and subject to AHRC oversight, with co-design requirements embedded to ensure accountability and inclusion.

Recommendation 10. The proposed positive duty should require duty-holders to identify, consider and report on intersectional impacts, and to take steps to remove barriers arising from them. DAPs should also include specific measures to address intersectional impacts.

Recommendation 11. The exemption under s 52 should be substantially narrowed and limited to measures necessary and proportionate to protect public health, in line with Australia’s obligations under the CRPD.

Responses to the Issues Paper

3 Interpreting the DDA in line with international obligations

- 3.1** We begin by responding to the consultation questions concerning Australia's international obligations, as these frame the context for our submission and underpin the recommendations that follow.
- 3.2** Australia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol in 2008 and 2009 respectively, becoming one of the first countries to do so. The CRPD has since been incorporated into domestic law and policy at Commonwealth, state, and territory levels to varying degrees. The CRPD provides comprehensive protections and directly prohibits discrimination against people with disabilities as a discrete social group.¹ It sets out the obligations of signatories to promote, fulfil, and protect the rights of people with disabilities. In particular, the CRPD:
- 3.2.1 affirms that persons with disabilities are entitled to the full range of human rights and fundamental freedoms on an equal basis with others;
 - 3.2.2 provides that reasonable accommodations should be made to ensure equality and full participation in all areas of life;
 - 3.2.3 promotes positive perceptions and social awareness to challenge stereotypes, prejudices, and stigma; and
 - 3.2.4 provides, through its Optional Protocol, a complaints mechanism for redress of rights violations.
- 3.3** Importantly, the CRPD marks a fundamental shift in how disability is understood in international law, especially when contrasted with the earlier, non-binding *UN Declaration on the Rights of Disabled Persons* (1975). It rejects deficit-based or medicalised approaches and instead affirms that disability arises from interactions with the legal, attitudinal (e.g., stigma and stereotyping), and environmental barriers that restrict access to social opportunities, services, housing, employment, and information. The CRPD also offers an unequivocal endorsement of a human rights-based approach to disability, recognising people with disabilities as rights-holders rather than objects of charity, medical treatment, or social protection. In doing so, it stresses dignity, independence, and the importance of enabling people with disabilities to live lives they value.
- 3.4** Currently, under s 12 of the DDA, the Act is linked to Australia's international obligations for constitutional purposes; that is, it relies on the Commonwealth's external affairs power to give the Act legal force to the extent that it implements international instruments such as the CRPD.² However, the DDA is **not currently required** to be interpreted in line with those international instruments.
- 3.5** To better align the DDA with international law, and to ensure it is applied in a way that advances the rights of people with disabilities, the Act should expressly reference the CRPD and other relevant international instruments ratified by Australia in its objects. This could include, for example, the United Nations Convention on the Rights of the Child. These amendments would clarify the link between the DDA and Australia's international obligations by:

¹ *Convention on the Rights of Persons with Disabilities* (CRPD), opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

² *Australian Constitution* s 51(xxix).

3.5.1 strengthening interpretive consistency by making the CRPD and other instruments *express interpretive anchors*, rather than relying either on the discretionary common law presumption of legislative consistency with international law,³ or the limited scope of the *Acts Interpretation Act 1901* (Cth), which provides for references to be made to international law as ‘extrinsic material’ to aid in the interpretation of legislation; and

3.5.2 narrowing the scope for judicial interpretations inconsistent with those obligations.

3.6 Moreover, under the individualised complaints model, the majority of DDA matters are resolved through administrative processes, conciliation, or internal decision-making by duty-holders, rather than courts. As a result, judicial interpretation of the DDA remains limited under the complaints model. While courts may adopt purposive approaches to interpretation that are consistent with Australia’s international human rights obligations, there is currently no binding requirement for decision-makers outside the courts to do so.

3.7 To address this, DDA should be amended to include an express provision requiring all duty-holders and administrative decision-makers to interpret the Act consistently with the CRPD. An explicit interpretive clause would embed a binding requirement to apply the DDA in a manner that is consistent with the CRPD at every level of decision-making. This would ensure that the DDA operates not only as a prohibitive mechanism against discrimination but also as a proactive and normative framework for advancing substantive equality across all areas of activity it covers, complementing the positive obligations discussed in **Section 5**.

Recommendation 1. The objects of the DDA should be amended by inserting an express requirement that the Act be interpreted, so far as possible, consistently with international instruments that Australia has ratified, including the CRPD.

Recommendation 2. Amend the DDA to include an express provision requiring all duty-holders and administrative and judicial decision-makers to interpret the Act consistently with the CRPD.

4 Addressing intersectionality

What is intersectionality?

4.1 The concept of intersectionality has been progressively incorporated into anti-discrimination law, both internationally and domestically. It recognises that discrimination can emerge at the intersection of grounds such as race, sexuality, and gender. These overlapping forms of discrimination can interact and reinforce each other, compounding their impact and creating additional barriers to redress and support. For example, being a woman may be experienced differently depending on race or disability; at the same time, racism, ableism, and sexism can reinforce one another in unique ways so that “the sum of disadvantage is greater than its individual components”.⁴ Research has shown that this reflects the lived experiences of discrimination for a substantial proportion of the Australian population.⁵

4.2 In this submission, we take intersectionality not merely as a theory of *intersecting identities*, but as a broader analytical lens for recognising disadvantage and supporting a commitment to

³ Dan Meagher, ‘The Common Law Presumption of Consistency with International Law: Some Observations from Australia (and Comparisons with New Zealand)’ (2012) 3 *New Zealand Law Review* 465.

⁴ Alysia Blackham and Jeromey Temple, ‘Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework’ (2020) 43(3) *University of New South Wales law journal* 776.

⁵ *Ibid.*

substantive equality. To clarify how intersectionality can be applied more broadly in anti-discrimination law, we emphasise two points about how it conceptualises disadvantage: first, that it is relational and systemic; and second, that it produces experiences of marginalisation that are shifting and context dependent.

- 4.3** *First*, disadvantage does not operate in a straightforward, ‘additive’ way; it cannot simply be measured by the number of marginalised identities a person holds. Because discrimination arises through relationships between groups and through the way social structures operate, it should be understood as socially and historically contingent. Intersectionality recognises that identities are complex, change over time, and are influenced by systems of power—such as laws, institutions, and cultural norms—that determine how people are treated.⁶ The CRPD’s recognition of disability as an “evolving concept” reflects this understanding, as it leaves room to for interpretation to capture future developments in society and law.⁷
- 4.4** *Second*, because disadvantage is shaped by context, people who belong to multiple groups may experience marginalisation in different ways, and these experiences may become “more or less” salient at different points in their lives.⁸ This aligns with the **social model of disability**, which sees disadvantage not as something within the individual, but as a result of barriers created by society (see **Box 1**). By focusing on dismantling these structures, both the social model and intersectional approaches seek to transform the conditions that produce inequality.

Box 1. What is the social model of disability?

The **social model of disability** distinguishes between ‘impairment’ (problems in body function or structure) and ‘disability’, which arises from the interaction of impairments with barriers in society. Under this model, disadvantage is understood to arise as the result of social, economic, and environmental barriers to participation, not from the impairment itself. It stands in contrast to the medical model, which frames disability as a condition or pathology to be fixed. By shifting the focus from the ‘problem’ of disability to the ‘problem’ of discrimination, the social model places the onus on society to dismantle barriers to inclusion.

- 4.5** Intersectionality should therefore not be understood solely in terms of *intersecting identities* for the purposes of direct discrimination. It also provides a framework for recognising disadvantage and advancing *substantive equality*. Applied in this way, intersectionality has transformative potential for anti-discrimination law, particularly in contexts where duty-holders carry positive obligations to prevent discrimination. As Mansour explains:

An intersectional approach, then, calls for the development of a legal framework with the capacity to recognise the experience of intersectional discrimination, as well as policy measures that ensure individuals who experience intersectional subordination (whose needs may differ significantly from others in their identity sub-group) nonetheless have mechanisms through which they may access justice on an equal basis.⁹

Incorporating intersectionality in the DDA

- 4.6** The DDA is primarily framed around an individualised, complaints-based model that focuses on discrimination ‘because of’ disability. This narrow construction overlooks how disability interacts

⁶ Ibid

⁷ CRPD (n 1) preamble para (e).

⁸ Mary Wickenden, ‘Disability and Other Identities?—How Do They Intersect?’ (2023) 4 *Frontiers in rehabilitation sciences* 1200386

⁹ Julia Mansour, ‘Consolidation of Australian Anti-Discrimination Laws: An Intersectional Perspective’ (2012) 21(2) *Griffith Law Review* 537.

with other social, cultural, and legal factors to shape lived experiences of discrimination. In conjunction with other reforms, embedding intersectionality within the DDA would help reorient its interpretation from a formal model of equality toward one that recognises context, systemic barriers, and the interrelated nature of disadvantage. This will ensure that disability is not examined in isolation, but in relation to the broader systems that determine access to rights and resources.

4.7 Incorporating intersectionality would also bring the DDA into closer alignment with the social model of disability and Australia’s obligations under international law. The CRPD Committee has increasingly acknowledged intersectional discrimination in its jurisprudence, most notably with respect to Article 6, which focuses on women and girls with disabilities. In acknowledging the diversity of experiences of people with disabilities, the CRPD also affirms that they are not a monolithic group. Migrants with disabilities and/or health conditions, for example, may experience exclusion not only on the basis of disability, but also due to migration status, race, language, or cultural background. These factors can have significant implications for experiences of discrimination. As scholars have noted, the legal and policy construction of citizenship creates a dichotomy between “citizen” and “non-citizen,” producing a form of “double(d) marginalisation” in which migrants with disabilities (particularly temporary visa holders) are framed both as outsiders and as a collective drain on resources, rather than an asset to Australian society. We discuss this further in **Section 6** of this submission.¹⁰

4.8 As the Issues Paper notes, there are practical challenges associated with operationalising intersectionality within the law, particularly in the context of a complaints-based model. To address this, several complementary reforms should be considered.

Resourcing to handle intersectional claimants

4.9 The Australian Human Rights Commission (AHRC) routinely receives complaints that allege discrimination on the basis of multiple or a combination of characteristics.¹¹ In practice, the Commission handles these as a single complaint rather than separating them by attribute, and the majority are resolved through conciliation. Compared to court processes, the Commission’s complaint-handling framework offers a more accessible avenue for resolving such matters, which is particularly important for people experiencing intersecting forms of disadvantage.¹²

4.10 Existing procedural mechanisms should be strengthened to ensure that intersectional forms of discrimination can be properly identified and addressed. The AHRC should be adequately resourced to identify, conciliate, and monitor intersectional matters through staff training, specialist expertise, and accessible complaint-handling processes. The Commission should also evaluate and report on how its policies, staffing, and organisational structures respond to the needs of people experiencing overlapping discrimination. To make complaint-handling processes more accessible and responsive, the AHRC should strengthen data collection and reporting on intersectional complaints, and broaden its multicultural outreach and education programs to ensure diverse communities are aware of and can engage with its services.

Express recognition of intersectional discrimination

4.11 The DDA should be amended to clarify that discrimination may occur on the basis of “multiple”, “intersecting” and/or a “combination” of discriminatory grounds, including protected attributes across federal discrimination law and industrial law. Where a complaint is formulated on the

¹⁰ Bill Hughes, ‘Impairment on the Move: The Disabled Incomer and Other Invalidating Intersections’ (2017) 32(4) *Disability & Society* 467.

¹¹ Mansour (n 9)

¹² Ibid.

basis of different grounds of discrimination covered by separate federal legislation, the Commission or the court should be required to consider the interrelation of the complaints and provide an appropriate remedy if the claim is substantiated.

- 4.12** In conjunction with adopting an *unfavourable treatment* test (as discussed below), these amendments would enable complaints involving multiple grounds to be brought within a single claim. This would prevent applicants from having to separate or compartmentalise aspects of their experience in ways that distort or minimise the nature of the harm.

Replace the ‘comparator test’ with the ‘unfavourable treatment’ test

- 4.13** While the conciliation process allows for multiple grounds to be considered within a single complaint, this flexibility is constrained once matters proceed to court. The **‘comparator test’** is used to establish direct discrimination. It requires comparing the treatment of the complainant with that of a person without their protected attribute, in circumstances that are “not materially different”.¹³ The reason for the treatment is then examined to determine whether it is causally related to the complainant’s disability. This means that complainants must artificially isolate claims by protected attribute, in effect limiting intersectional claims to single-ground terms.
- 4.14** A key flaw in the ‘comparator test’ lies in defining the actual or hypothetical comparator.¹⁴ It may fail, for example, because no direct comparison can be made.¹⁵ The test also reflects a formal conception of equality, assuming that equality means identical treatment, regardless of people’s different circumstances or the discriminatory effects that may result.¹⁶
- 4.15** By contrast, the ‘unfavourable treatment’ test is based on the simpler premise that discrimination occurs where a person is treated unfavourably because of a protected attribute. It also better accommodates intersectional claims, recognising that discrimination often arises from the compounding, rather than additive, effects of multiple protected characteristics. This approach has been adopted in Victoria under the *Equality Opportunity Act 2010* (Vic), and internationally, notably under the *Equality Act 2010* (UK).¹⁷
- 4.16** However, scholarship has cautioned that simply adopting an ‘unfavourable treatment’ test does not, by itself, eliminate the need for comparison. Its effectiveness depends on how the concept of ‘unfavourable’ is interpreted.¹⁸ As in the reasoning in *Purvis*, courts may still focus on identifying the ‘real reason’ for the treatment (such as behaviour or safety concerns), rather than the link between the treatment and the person’s disability. This can make it difficult for complainants to prove a causal connection between their disability and the unfavourable treatment.
- 4.17** We therefore propose modelling the test for direct discrimination on that used under the *Equality Act 2010* (UK), which links the assessment of unfavourable treatment to the protected attribute itself, while also incorporating a shifting burden of proof (s 136). Once a complainant establishes an arguable case of unfavourable treatment, the evidentiary burden should shift to the respondent to demonstrate that the treatment was for a lawful and non-discriminatory reason.

¹³ *Disability Discrimination Act 1992* (Cth) s 5(1).

¹⁴ See *Purvis v New South Wales (Department of Education and Training)* [2003] HCA 62; (2003) 217 CLR 92.

¹⁵ For example, a person denied access to a disability-specific service may have no realistic comparator, as people without that disability would not require the service in the first place.

¹⁶ Anna Chapman, *Australian Anti-Discrimination Law, Work, Care and Family* (Working Paper No 51, Centre for Employment and Labour Relations Law, University of Melbourne, January 2012).

¹⁷ See, eg *Equal Opportunity Act 1984* (SA) s 66; *Discrimination Act 1991* (ACT) s 8; *Equal Opportunity Act 2010* (Vic) s 8.

¹⁸ Dale Smith and Colin Campbell, ‘Direct Discrimination without a Comparator? Moving to a Test of Unfavourable Treatment’ (2015) 43(1) *Federal Law Review* 91.

This would ensure that decision-makers focus on the key question – what happened and why – rather than on technical issues of comparison or motive, providing for a more consistent and accessible framework for assessing discrimination claims under the DDA.

Recommendation 3. Amend the DDA to expressly provide that discrimination may occur on the basis of multiple, intersecting, and/or a combination of two or more protected attributes, including those covered across federal discrimination and industrial law.

Recommendation 4. Ensure that the Australian Human Rights Commission (AHRC) is adequately resourced to identify, conciliate, and monitor intersectional discrimination through staff training, specialist expertise, and accessible complaint-handling processes. The Commission should also strengthen data collection, reporting, and community outreach to better support people experiencing compounded disadvantage.

Recommendation 5. Model the definition of direct discrimination on the *Equality Act 2010* (UK) by adopting the term ‘unfavourable’ rather than ‘less favourable’, removing the requirement to identify a comparator, and aligning with the shifting burden of proof approach under section 136.

5 Positive duty to eliminate discrimination

- 5.1** Under the current framework, the primary mechanism for enforcing the DDA is through complaints lodged by individuals who have personally experienced discrimination. The complaints-based model places a heavy emotional and financial burden on individuals, as the protection of a person’s rights depends on their willingness and capacity to pursue a complaint on the grounds of disability. Moreover, courts rarely make orders requiring broader reforms or improvements to accessibility for people with disabilities, and such outcomes are typically achieved through negotiated settlements.¹⁹
- 5.2** It is widely acknowledged that reliance on individual complaints limits the effectiveness of the DDA in addressing systemic discrimination.²⁰ The current model reflects a *formal equality* approach, which is narrow in scope and conceptually limited. It fails to recognise difference, does not ensure a minimum standard of equitable treatment, and as discussed above, relies on the identification of a suitable ‘comparator’.²¹ By contrast, a *substantive understanding of equality* recognises that achieving equality sometimes requires treating people differently to accommodate difference and redress disadvantage.
- 5.3** Embedding a positive duty within the DDA would operationalise substantive equality by shifting from a reactive, complaints-based model to a proactive one. It would do so by requiring duty-holders to address and prevent discrimination, harassment, and victimisation before they occur. Importantly, the duty should also require duty-holders to consider and address intersectional impacts. To be effective, this duty should be complemented by enhanced enforcement and compliance powers for the AHRC.

Introducing a positive duty

- 5.4** The positive duty should be modelled on the framework introduced under section 47C of the *Sex Discrimination Act 1984* (Cth) (SDA), which requires organisations and businesses to take

¹⁹ Dominique Allen, ‘Thou Shalt Not Discriminate: Moving from a Negative Prohibition to a Positive Obligation on Business to Tackle Discrimination’ (2020) 26(1) *Australian Journal of Human Rights* 112.

²⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report Vol 4: Realising the Human Rights of People with Disability* (2023) 310.

²¹ Allen (n 19) 113.

reasonable and proportionate measures to eliminate, as far as possible, discrimination, harassment, and victimisation. However, lessons from the SDA indicate the importance of drafting a broader, clearer, and more coherent duty. The SDA duty is limited in scope as it applies only to work-related conduct and specific types of wrongs, resulting in a complex and fragmented framework.²²

- 5.5** A positive duty under the DDA should apply across all areas of activity covered by the Act (including accommodation, education, and the provision of services) and extend to both public and private sector entities. Duty-holders should be required to take reasonable and proportionate measures to address and prevent all forms of ‘unlawful conduct’ under the Act, which includes discrimination, harassment, victimisation, and non-compliance with disability standards. The duty should apply to all people interacting or engaging with the duty-holder, such as workers, contractors, agents, and service-users (including customers, patients, and visitors), and require duty-holders to prevent their workers or agents from engaging in any form of unlawful conduct against others.
- 5.6** The duty should also require duty-holders to take reasonable and proportionate measures to protect their workers and service-users from unlawful conduct by third parties, consistent with duties under work health and safety law.²³ As with section 47C(6) of the SDA, compliance should be assessed with regard to the size, nature and resources of the duty-holder, ensuring proportionality while maintaining a consistent expectation of proactive compliance.

Compliance mechanisms

- 5.7** The positive duty should not rely on a system of individual complaints for its enforcement. Relying on individual complaints would replicate the limitations of the current model by placing the burden of enforcement on those most affected, who often face barriers to reporting. This would leave widespread non-compliance undetected. The DDA should instead be supported by an enforcement model that empowers the AHRC to proactively conduct investigations to identify breaches, monitor compliance, and enforce compliance through formal mechanisms where necessary, including sanctions for serious non-compliance. The Commission should be provided with broad powers to:
- 5.7.1 investigate potential breaches of the DDA, including powers to enter and inspect premises and compel the production of documents or information;
 - 5.7.2 take proactive steps to monitor and investigate compliance with orders made under the DDA;
 - 5.7.3 commence proceedings, whether in relation to individual or systemic issues; and
 - 5.7.4 develop and enforce binding codes of conduct and/or guidance materials to promote a culture of compliance and continuous improvement among duty-holders.
- 5.8** The AHRC must also be equipped with the tools and resources necessary to effectively discharge these powers. The Commission’s current enforcement powers under the SDA are constrained by the high threshold for initiating inquiries and the limited consequences for non-compliance. To ensure effective enforcement of the positive duty under the DDA, the AHRC should be empowered to escalate responses where non-compliance persists (for example, if a duty-holder is persistently non-compliant with an order), including through:

²² Belinda Smith, ‘Respect@Work Amendments: A Positive Reframing of Australia’s Sexual Harassment Laws’ (2023) 36 *Australian Journal of Labour Law* 163.

²³ Australian Human Rights Commission (AHRC), [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (Report, August 2023).

- 5.8.1 **Civil penalties**, similar to those available under the *Fair Work Act 2009* (Cth);
- 5.8.2 **Injunctions**, requiring non-compliant duty-holders to work with the AHRC or expert bodies to develop and implement corrective action plans;
- 5.8.3 **Procurement exclusions**, preventing persistently non-compliant organisations from accessing public contracts or funding; and
- 5.8.4 **Publication powers**, such as maintaining a public register of non-compliers, to promote transparency and accountability.

Disability action plans

- 5.9 Under s 64 of the DDA, the preparation and lodgement of Disability Action Plans (DAPs) is voluntary and unenforceable. As a result, uptake and implementation have been inconsistent across sectors, and their impact on systemic change has been limited.
- 5.10 The DDA should be amended to make DAPs mandatory for prescribed duty-holders, including public authorities, statutory bodies, and organisations above a specified size or employment threshold (as with the *Workplace Gender Equality Act 2012* (Cth)). Applying a proportionate threshold under the DDA would ensure that entities with the greatest capacity and influence lead systemic change while maintaining flexibility for smaller organisations. The DDA should provide that smaller organisations can still develop DAPs voluntarily, subject to specific criteria.
- 5.11 DAPs should be prepared and reviewed periodically and form part of the compliance architecture for the positive duty to eliminate discrimination. The AHRC should be mandated to:
 - 5.11.1 review DAPs while undertaking investigations;
 - 5.11.2 use DAP performance as evidence of compliance (or non-compliance) with the positive duty; and
 - 5.11.3 issue sector-specific guidance for effective implementation, particularly in education, health, and employment.
- 5.12 The DDA should also embed co-design, accessibility, and intersectionality within the DAP framework. DAPs should be co-designed with people with disabilities and disability rights organisations through inclusive consultation processes. Compliance should be tied to funding and accreditation frameworks (e.g., as a condition of eligibility for government contracts).

Recommendation 6. Introduce a positive duty requiring all duty-holders to address and prevent all forms of ‘unlawful conduct’ in all areas of activity under the DDA, including ‘unlawful conduct’ by or against people having any engagement with the organisation. The duty should apply to both public and private sector entities.

Recommendation 7. Establish a robust enforcement framework for the positive duty that empowers the AHRC to proactively monitor, investigate, and enforce compliance without reliance on individual complaints. To ensure effective enforcement, the Commission should also be equipped to impose and escalate sanctions for serious or persistent non-compliance, including civil penalties, injunctions, procurement exclusions, and publication powers.

Recommendation 8. Amend the DDA to make Disability Action Plans (DAPs) mandatory for prescribed duty-holders, including public authorities, statutory bodies, and organisations above a specified size or employment threshold. Entities or organisations that do not meet that threshold should be encouraged and supported to develop DAPs voluntarily, subject to legislated criteria.

Recommendation 9. Require mandatory DAPs to be measured and enforced under the positive duty framework. DAPs should be periodically reviewed and subject to AHRC oversight, with co-design requirements embedded to ensure accountability and inclusion.

Recommendation 10. The proposed positive duty should require duty-holders to identify, consider and report on intersectional impacts, and to take steps to remove barriers arising from them. DAPs should also include specific measures to address intersectional impacts.

6 Exemptions under the DDA

Migration exemption

- 6.1** Section 52 of the DDA exempts certain provisions of the *Migration Act 1958* (Cth) and its regulations from the operation of the DDA. In effect, a migration decision or policy that would otherwise constitute unlawful discrimination on the ground of disability remains lawful if it is made under an exempt provision of the *Migration Act* or its regulations.
- 6.2** The exemption covers a wide range of activities and decisions relating to the arrival and presence of non-citizens in Australia, migration sponsorship, detention and deportation, and associated administrative processes. Among these, the Migration Health Requirements (MHR) has had the most significant and far-reaching impact, resulting in many migration applications being lawfully refused on the basis of the disability of the applicant or a member of their family.²⁴ The MHR, set out in the *Migration Regulations 1994* (Cth), requires visa applicants to satisfy health criteria designed to ensure that entrants do not:
- 6.2.1 Pose a risk to public health or safety;
 - 6.2.2 Impose ‘undue cost or demand’ on community services (measured against the Significant Cost Threshold); or
 - 6.2.3 Prejudice access by citizens to scarce health or community resources.²⁵
- 6.3** The MHR is inherently discriminatory. It permits exclusion on the basis of disability by assessing applicants against cost-based criteria rather than their individual circumstances or capacity to contribute to Australian society. By framing disability solely in terms of impairment and economic burden, the MHR entrenches a medicalised and deficit-based understanding of disability that departs from the CRPD and the social model of disability. This framing, alongside the exemption, disregards the contributions of people with disabilities and reinforces a false dichotomy between “deserving” and “undeserving” subjects of rights, which is further entrenched through visa categories.²⁶
- 6.4** While recent reforms have modestly increased the Significant Cost Threshold to \$86,000 and, as of October 2024, exempts children born and ordinarily resident in Australia from the cost component, these adjustments fall short of structural reform.²⁷ Proposed reforms arising from the Review of the MHR likewise do not address the underlying exemption, lack clear timelines, and remain contingent on further government action.²⁸ Despite repeated calls from various

²⁴ Elizabeth Waldeck and Robert Guthrie, ‘Disability Discrimination and Immigration in Australia’ (2007) 8 *International Journal of Discrimination and the Law* 221.

²⁵ *Migration Regulations 1994* (Cth) sch 4, Public Interest Criteria 4005.

²⁶ Bella Choo, “‘A Fair Go’? Critiquing the Australian Narrative of Egalitarianism from the Disability–Migration Intersection” (2025) *Communication Research and Practice* (advance online publication, 22 September 2025).

²⁷ *Migration Amendment (Public Interest Criteria 4005 and 4007) Regulations 2024* (Cth).

²⁸ Welcoming Disability, *Media Release: Review findings expose urgent need for reform of Australia’s discriminatory, outmoded and out of step Migration Health Requirement* (26 July 2024).

domestic inquiries and the Committee on the Rights of Persons with Disabilities (2019) to review or repeal s 52, it remains intact.²⁹

6.5 Protection from discrimination applies to all people, regardless of citizenship or visa status.

This right stems from the fundamental principle that persons with disabilities are human beings, born free and equal in dignity and rights. Australia's international obligations require it to respect and protect the rights of persons with disabilities, without distinction and to the fullest extent reasonably possible. These obligations extend to all areas of public administration. Public authorities must therefore act consistently with the principles of equality and non-discrimination under the CRPD.³⁰

6.6 To bring Australian law into compliance with these obligations, s 52 of the DDA must be substantially narrowed. Of the policy justifications advanced, only the protection of public health (which forms part of the MHR criteria) warrants retention as a legitimate and proportionate basis for exemption. However, it does not, on its own, justify the wholesale exclusion of migrants with disabilities and/or health conditions from all protection under the DDA. **We support and endorse the reasoning put forward by Welcoming Disability in their submission.**

6.7 In its current form, the exemption provides an unjustifiably broad scope for disability discrimination in the administration of the migration scheme. The cost-based justifications for the MHR rest on outdated and discriminatory assumptions that treat people with disability as a fiscal burden rather than valued members of society. Every migrant, with or without disability, both contributes to and draws from community resources. It is unjust to single out people with disability on the basis of projected costs, as this fails to recognise their individual contributions and the broader social and economic value of inclusion. Until this exemption is narrowed, efforts to align the DDA with the international imperative to uphold the rights of people with disabilities will remain incomplete and merely rhetorical.

Recommendation 11. The exemption under s 52 should be substantially narrowed and limited to measures necessary and proportionate to protect public health, in line with Australia's obligations under the CRPD.

²⁹ Joint Standing Committee on Migration, *Enabling Australia: Inquiry into the Migration Treatment of Disability* (Parliamentary Paper No 80, June 2011); Productivity Commission, *Disability Care and Support* (Report No 54, July 2011); Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Combined Second and Third Periodic Reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019).

³⁰ CRPD (n 1) art 4.