



## FACTSHEET 1

# DISABILITY DISCRIMINATION ACT 1992

## Background

Disability discrimination is when a person with a disability is treated less favourably than a person without the disability in the same or similar circumstances. The Commonwealth *Disability Discrimination Act 1992* (DDA) makes it against the law to treat people unfairly because of a disability.

## Defining disability

### Definition of disability under the DDA

The definition of disability for the purposes of the DDA can be found in Section 4 of the Act.

The DDA defines disability as:

- total or partial loss of the person's bodily or mental functions
- total or partial loss of a part of the body
- the presence in the body of organisms causing disease or illness
- the presence in the body of organisms capable of causing disease or illness
- the malfunction, malformation or disfigurement of a part of the person's body
- a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction
- a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

The definition of "disability" used in the DDA is broad. It includes physical, intellectual, psychiatric, sensory, neurological and learning disabilities. It also includes physical disfigurement and the presence in the body of disease-causing organisms, such as the HIV virus.

The DDA covers disabilities that people have now, had in the past, may have in the future or which they are believed to have. More information is available at the Australian Human Rights Commission's [Guide to the DDA](http://www.humanrights.gov.au/frequently-asked-questions-who-protected-dda#defin) ([www.humanrights.gov.au/frequently-asked-questions-who-protected-dda#defin](http://www.humanrights.gov.au/frequently-asked-questions-who-protected-dda#defin)).

## Discrimination under the DDA

Section 7 of the DDA makes it unlawful to discriminate against a person because of a disability or the disability of an associate, such as a friend, partner, carer or family member of the person.

Section 8 of the DDA states that discrimination is also unlawful where it occurs because a person with a disability:

- uses a palliative, therapeutic or assistive device
- is accompanied by a carer, interpreter, reader or assistant
- is accompanied by a guide or hearing dog or other trained assistant animal.

A person does not gain any special rights or benefits by coming within the definition of disability under the DDA—only the right not to be discriminated against.

### What the DDA does

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

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

- **employment**—getting a job, terms and conditions of a job, training, promotion, being dismissed
- **education**—enrolling or studying in a course at a private or public school, college or university
- **accommodation**—renting or buying a house or unit
- **getting or using services**—such as banking and insurance services, services provided by government departments, transport or telecommunication services, professional services like those provided by lawyers, doctors or tradespeople, services provided by restaurants, shops or entertainment venues
- **accessing public places**—such as parks, government offices, restaurants, hotels or shopping centres.

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

The DDA provides a mechanism for individuals to make complaints and seek redress for disability discrimination in certain areas of public life, including education. If a person believes they have been discriminated against they can make a complaint to the Australian Human Rights Commission about discrimination.

The Commission has legislative responsibility for inquiring into alleged infringements under the DDA including discrimination on the grounds of disability. Under the DDA there is a compulsory conciliation process for the resolution of discrimination complaints. Conciliators at the Commission are trained to seek a negotiated resolution between parties to avoid the need for litigation. If a party is unhappy with the outcome of conciliation, they may commence proceedings in the Courts.

### The DDA and schools

The Australian Government supports the right of children with disability to have the same educational opportunities as other children. This concept is reflected in the DDA. All state and territory education providers, including government and non-government schools, must comply with the DDA and the relevant disability discrimination legislation of their state or territory. All education providers must also comply with the Disability Standards for Education 2005.

### About Disability Standards

Under the DDA, the Attorney-General may make Disability Standards to specify rights and responsibilities about equal access and opportunity for people with a disability, in more detail and with more certainty than the DDA itself provides.

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

The following Standards have been made under the DDA:

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

The DDA does not provide a separate enforcement regime for standards. Non-compliance with a standard is an unlawful act under the DDA in the same way that non-compliance with one of the existing anti-discrimination provisions is an unlawful act.

### **More information**

Further information is available in the 2012 AHRC publication [Know your rights: disability discrimination](http://www.humanrights.gov.au/publications/know-your-rights-disability-discrimination) ([www.humanrights.gov.au/publications/know-your-rights-disability-discrimination](http://www.humanrights.gov.au/publications/know-your-rights-disability-discrimination)).

