MHLEPQ
MENTAL HEALTH LIVED EXPERIENCE PEAK
QUEENSLAND

Attorney-General

Disability Discrimination Act 1992 Review

24 October 2025

Acknowledgement of Country

The Mental Health Lived Experience Peak Queensland (MHLEPQ) respectfully acknowledges and honours the Traditional Custodians of the Lands and Waters throughout Queensland. We thank the Elders—past, present, and emerging—for their wisdom and enduring strength.

We recognise that the legacy of colonisation has profoundly impacted First Nations peoples, contributing to unique and significant experiences of trauma within the mental health system. Colonisation has enforced systems of racism, stigma, and discrimination, leading to intergenerational social disadvantage and marginalisation. These historical and ongoing injustices have compounded the challenges faced by First Nations (Aboriginal and / or Torres Strait Islander) peoples, affecting their social and emotional wellbeing.

We acknowledge the enduring resilience and resistance of First Nations peoples in the face of these adversities. We respect their rights and autonomy to lead their own healing journeys, guided by their beliefs and traditional practices and connectedness to Country, family, and spirit. In honouring their wisdom and experiences, we commit to supporting their self-determination and promoting equitable and culturally responsive approaches to mental health care.

Who are the MHLEPQ?

The Mental Health Lived Experience Peak Queensland (**MHLEPQ**) is an initiative funded by the Mental Health, Alcohol and Other Drugs Branch, Department of Health. Our organisation was created in July 2021 and moved to direct contracting with Queensland Health on January 1st, 2023 (formerly auspiced by the Queensland Mental Health Commission).

The MHLEPQ was established to provide advice and advocacy informed by people with lived experience of the Queensland mental health system with a specific focus on those who are socially disadvantaged and marginalised. Our work is based on the principles of equity, access, cultural safety, recovery, and human rights.

MHLEPQ is a member of the National Mental Health Consumer Alliance, where other state and territory consumer peak bodies meet to coordinate on shared issues, including issues relating to Commonwealth policy and government-funded services.

This submission has been written as part of a consultative process with members of the MHLEPQ. Results of a member survey are drawn upon to provide answers to the questions posed in the *Disability Discrimination Act 1992 Review: Issues* Paper[1] (**Issues Paper**).

Information has been received from people from wide and diverse backgrounds – LGBTIQA+, disability, CALD communities, different regions in Queensland and spanning different age groups. On the whole, members expressed dissatisfaction with the current *Disability Discrimination Act 1992* (Cth) (***DDA***). Member opinions are detailed below.

[1] Australian Government, Attorney-General's Department, *Disability Discrimination Act 1992 Review: Issues Paper* (Issues Paper, October 2025) https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/australias-anti-discrimination-law/review-disability-discrimination-act.

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Introduction

MHLEPQ represents and celebrates the rich diversity of people with lived experience of mental health issues across Queensland. Our differences make us who we are. They also affirm our equal right to inclusion, respect and opportunity.

People with lived experience are part of the more than 1 in 5 Australians are people who live with disability.[2] In 2023, "42.9% of people aged 16-85 had experienced a mental health issue in some time in their life".[3] Indeed, it are these lived experiences that help us as individuals and a collective drive systemic reform:

> "I now use my lived experience as an advocate within mental health, working to reform systems so others do not face the same barriers."[4]

The DDA was introduced to eliminate, as far as possible, disability discrimination.[5] The DDA is over 30 years old and has not seen large changes for over 15 years. It is, therefore, well overdue for a comprehensive review to ensure that it not only meets the needs of Australians with disability but community expectations.[6]

MHLEPQ provides this submission, drawing on our survey of 14 members, as well as our existing advocacy on human rights, stigma and discrimination. Our members were clear that despite the DDA, discrimination is still common. One member stated that people with lived experience of mental health issues face:

> "… barriers which prevent full engagement with life, employment, mobility and/or access — these barriers are systemic and exist because their needs were not considered when designed."[7]

Systems, including the mental health system, are often the source of this discrimination. Another member stated:

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[2] Australian Bureau of Statistics, 2022.
[3] Australian Bureau of Statistics, 'National Study of Mental Health and Wellbeing,' 2022-2022, 5 October 2023.
[4] Respondent 8, MHLEPQ Disability Discrimination Survey.
[5] See s 3.
[6] Australian Government, Attorney General's Department, 'Disability Discrimination Act Review, Summary Issues Paper,' 2025, p3.
[7] Respondent 3, MHLEPQ Disability Discrimination Survey.

> "I identify both as a person with a disability due to unexamined extensive extra-familial childhood sexual abuse resulting in ongoing torturous 'treatment' by the mental health and other systems in Australia."[8]

These experiences sit against other voices and reports that have reinforced the systemic nature of mental health stigma, discrimination[9] and vilification.[10]

Our submission brings a mental health lived experience focused on various topics contained within the Issues Paper. Feedback was not received in relation to most of Part 4 – Access to Justice[11] or Part 6 - Assistance Animals and are therefore not commented on.

[8] Respondent 4, MHLEPQ Disability Discrimination Survey.
[9] C Groot et al, *Report on Findings from the Our Turn to Speak Survey: Understanding the Impact of Stigma and Discrimination on People Living with Complex Mental Health Issues* (Ane Deveson Research Centre, SANE Australia, 2020).
[10] Simon Katterl, 'Words That Hurt: Why Mental Health Stigma Is Often Vilification and Requires Legal Protection' (2023) 0(0) *Alternative Law Journal* 1; Bridget Cullen Mandikos and Amber Vario, '"Sticks and Stones" The Lack of Disability Vilification Law in Australia' (2010) 35(2) *Alternative Law Journal* 72.
[11] We did draw on our survey data to highlight the importance of vilification protections.

Part 1 – Updating understandings of disability and disability discrimination

Part 1 of the Issues Paper explores updating definitions of disability and discrimination in the DDA. It considers aligning with the *Convention of the Rights of Persons with Disabilities 2006* (**CRPD**)[12], addressing intersectionality, and refining direct and indirect discrimination definitions. It invites feedback on these proposed reforms to improve legal clarity and inclusivity.

Our members want to have disability discrimination laws and definitions that are understandable, affirming (rather than deficits-based) and grounded in human rights.

Making disability discrimination definitions affirming and rights-based

Definitions of disability should be grounded in the lived expertise of our communities and in human rights. For example, our communities not only see our lived experience as a challenge, but also as a source of individual and collective strength and innovation.[13]

The current definition of disability under section 4 of the DDA is ***disability***, in relation to a person, means:

(a) total or partial loss of the person's bodily or mental functions; or
(b) total or partial loss of a part of the body; or
(c) the presence in the body of organisms causing disease or illness; or
(d) the presence in the body of organisms capable of causing disease or illness; or
(e) the malfunction, malformation or disfigurement of a part of the person's body; or
(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

[12] Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) [signed and ratified by Australia 30 March 2007, entered into force for Australia 3 May 2008].
[13] Shane Clifton et al, 'A Framework for Disability Lived Expertise' [2025] *Evidence & Policy* 1; Shane Clifton et al, 'Disability Lived Experience and Expertise: Recognising the Expert Contributions of People with Disability' [2025] *Evidence & Policy* 1 ('Disability Lived Experience and Expertise'); Louise Byrne and Til Wykes, *A Role for Lived Experience Mental Health Leadership in the Age of Covid-19*, vol 29 (Taylor & Francis, 2020).

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

and includes a disability that:

(h) presently exists; or
(i) previously existed but no longer exists; or
(j) may exist in the future (including because of a genetic predisposition to that disability); or
(k) is imputed to a person

Members believed the definition of disability focussed on out-of-date-deficit-based language of what a person cannot do.

A central concern is that the current definition's focus on disability sees it as an individual deficit-based problem rather than as a problem which results from society's attitudes, practices and structures that exclude or disadvantage people with impairments. The medical model focus means the intervention or response is more likely to focus on changing individuals rather than the systems that they interact with.

Members preferred a more affirming definition:

> "It is important that current definitions of disability are not solely deficit-based (i.e., acknowledging that disability and identity can be very positive, affirming, and meaningful - such as neurodivergent identity, deaf culture, mad identity etc.)."[14]

Another member stated:

> "A clearer, more inclusive definition [of discrimination] would help ensure that people are protected not only from intentional discrimination but also from structural or unintentional barriers that limit participation and equality."[15]

A social model of disability refers to a definition of mental health, which incorporates "psychosocial disabilities that are often invisible, episodic and misunderstood."

[14] Respondent 2, MHLEPQ Disability Discrimination Survey.
[15] Respondent 5, MHLEPQ Disability Discrimination Survey.

We support calls for the new definition to be one that is explicitly grounded in human rights, most notably the CRPD which would promote a human rights aligned framework was promoted by some members. Discrimination laws would move away from a deficit or charity-based approach to disability, towards acknowledging a person's impairment as part of human diversity and not as a deficit that needs to be fixed.[16]

Recommendation 1 – Amend the definition and objectives
The Commonwealth Government should amend the DDA so that the definition of disability and objectives are both explicitly referencing and grounded in the CRPD and the social model of disability.

Reducing complexity and burdens in proving direct discrimination

Proving discrimination should be as accessible as possible, taking account for the additional barriers that people with lived experience face in accessing legal systems.

At present, a person with lived experience must establish discrimination under the DDA that they have been treated less favourably than a person without a disability *and* that the treatment was because of the person's disability.[17] The first part of the test involves a comparison, and the second proving 'causation' – that the unfair treatment arose from the fact that the person has a disability.

This approach creates unnecessary hurdles and sets too-high of a bar for people with lived experience who wish to prove discrimination. The current approach requires people with lived/living experience to create a fictional person without disability to compare to a person aggrieved by the treatment is undesirable, technical, and uncertain and dismissed by some members. This approach is also impractical as it requires a high degree of information, documentation, and evidence for the person with lived experience to successfully prove direct discrimination. It also risks reinforcing assumptions about 'normality' which undermine our human diversity. One member explained:

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[16] People with Disability Australia, 'PWDA Language Guide: A guide to language about disability,' August 2021, p.5; People with Disability Australia, 'What Do I Say? A guide to language about disability,' 2019, p.5.
[17] *Disability Discrimination Act 1992* (Cth) s 5(1).

> "The current definition is also limited because it relies on comparison to a 'person without disability'. This assumes a universal norm of ability, culture, and communication that erases neurodiverse, First Nations and Indigenous ways of being."[18]

MHLEPQ endorses that an alternative approach termed the "detriment test." In this circumstance, the concerned person with lived experience does not have to perform a comparison; instead, they simply have to prove they received unfavourable treatment.

Once established, a presumption that the unfavourable treatment resulted because of disability discrimination is triggered. This then results in the duty holder having to prove that the treatment did not occur on the basis of the aggrieved persons disability. The *Fair Work Act* (Cth) currently uses this detriment test, and it should be adopted under the *DDA*.

Recommendation 2 – Adopt a detriment test for direct discrimination
The Commonwealth Government should amend the test for direct discrimination to a detriment test, matching the *Fair Work Act 2009* (Cth).

Acknowledging intersectionality

People with lived experience of mental health issues have intersecting identities that reflect our diversity. These diverse experiences can also be connected to intersectional experiences of oppression and discrimination. This can refer to multiple forms of discrimination, or the combined experience of discrimination of one or more attribute – such as the discrimination experienced by a female Aboriginal person with lived experience of mental health issues. Disability discrimination laws should account for, and protect against, intersectional forms of discrimination.

Currently the DDA allows complaints where disability is one of multiple reasons (discrimination against multiple attributes, such as race, gender, age or disability) for discrimination, even if not the dominant reason. However, the DDA provides less flexibility when action is brought to a court proceeding at the Federal Court, meaning it is harder to pursue legal action involving multiple forms of discrimination.[19]

[18] Respondent 13, MHLEPQ Disability Discrimination Survey.
[19] Australian Government, Attorney-General's Department, 'Disability Discrimination Act 1992 Review', 2025, p.28.

This requires the DDA to be amended to allow discrimination claims to be made on multiple or combined forms of discrimination within the one claim. There should also be focus on intersectional discrimination given to any positive duty that is included.

Recommendation 3 – Amend the DDA to protect against intersectional forms of discrimination
The Commonwealth Government should amend the DDA to allow a person to make complaints based on multiple or combined attributes, including disability discrimination.

Recommendation 4 – Ensure the positive duty to addresses intersectional discrimination
The Commonwealth Government should ensure any positive duty includes a duty to identify and address intersectional forms of discrimination.

Improving indirect discrimination rules

People with lived experience of mental health issues should navigate public life on an equal basis with others. However, sometimes there are invisible barriers that restrict our ability to navigate workplaces, healthcare, the mental health system, and other parts of public life. One member stated that this manifests as:

> "… the small daily exclusions… the environments that overwhelm sensory systems, the communication styles that silence difference, and the constant need to mask or translate oneself to be accepted."[20]

Often these barriers are made invisible by claims that everyone is treated the same. In many circumstances rules that are applied equally will have unequal consequences for people with lived experience of mental health issues.

Indirect discrimination laws are one measure to address this. Indirect discrimination is often subtle, relational, and systemic. One member stated that:

> "Indirect discrimination has been more subtle but equally damaging. It includes rigid attendance or performance requirements that don't allow for mental-health

[20] Respondent 13, MHLEPQ Disability Discrimination Survey.

> fluctuations... These structures unintentionally exclude people with psychosocial disabilities, forcing many of us to either hide our condition or risk being penalised."[21]

Our members wish for indirect discrimination protections that are clearly defined, easier to prove, with unnecessary exemptions removed.

The DDA provides that the duty holder is excused from the operation of the DDA if they can prove that compliance with the condition, requirement or practice is reasonable. The operation of this reasonableness assessment is in addition to the specific exemption of unjustifiable hardship.

At present, there is confusion about how the 'reasonableness' of the condition, requirement or practice interacts with unjustifiable hardship defence. This would be resolved by removing the reasonableness requirement whilst keeping the unjustifiable hardship defence.

Recommendation 5 – Removal of reasonableness requirement
The Commonwealth Government should remove the reasonableness requirement.

Although suggestions have been made to create a list of guiding factors as to what is to be considered reasonable, it would still allow for additional avenues of legally based exemptions that permit discriminatory treatment. This occurs within the context of significant power imbalances faced by people with lived experiences and decision-makers in areas of public life.

> "I had to grieve the fact that no one would be held accountable. I felt powerless. The trauma of being dismissed and excluded is ongoing."[22]

Arguably, a system that favours an aggrieved person bearing the onus of proving that there is a condition, requirement, or practice in operation, then shifting the onus to the duty holder to prove unjustifiable hardship, is a fairer way of viewing indirect discrimination.

[21] Respondent 5, MHLEPQ Disability Discrimination Survey.
[22] Respondent 2, MHLEPQ Disability Discrimination Survey.

Part 2 -Creating stronger prevention for everyone through a positive duty

Part 2 of the Issues Paper discusses introducing a positive duty for all duty holders to proactively prevent disability discrimination. This duty would shift the focus from reactive complaints to proactive compliance, requiring reasonable and proportionate measures to eliminate discrimination, with enforcement powers granted to the Australian Human Rights Commission.

Our members have strong views about the importance of a positive duty to eliminating disability discrimination.

A positive duty

Addressing discrimination requires addressing it before it occurs. This goes beyond individual instances of discrimination towards addressing the systems that enable and reinforce discrimination. As one member stated:

> "The law needs to recognise that discrimination is not just a policy breach but a pattern of relational disconnection and systemic inflexibility."[23]

As another member stated, preventing discrimination before it occurs, stops people from being impacted "by the effects of direct and indirect discrimination…[S]eeking stronger, clearer and more vigilant laws [are] introduced [must occur]."[24]

The current system created by the DDA is a reactionary one. This is because protections only occur after a harmful instance of discrimination may have occurred, meaning a person has both had a negative experience and then is required to undertake a complaint or legal process. This system also places the burden of proof on the person with lived experience to prove less favourable treatment when they are not best positioned to gather such evidence.

A positive duty means that duty holders must take proactive steps to prevent discrimination, rather than simply respond to complaints after harm has occurred. A

[23] Respondent 8, MHLEPQ Disability Discrimination Survey.
[24] ibid.

positive duty would require duty holders to assess their compliance and regularly with their obligations ensuring that people with disability are not being subjected to discrimination. [25]

This approach would shift the burden of proof and allow for the adoption of a person-centred and trauma-informed approach whereby individuals are supported in choice, safety, and dignity when responding to incidents.[26] One member stated:

> "To prevent and protect people—especially those with psychosocial or invisible disabilities—from discrimination, several systemic changes are needed… Organisations should have positive duties to identify and eliminate barriers before harm occurs, rather than relying on complaints." [27]

Various states and territories have done this in regard to their discrimination legislation.[28] At a Commonwealth level, in December 2022, the *Sex Discrimination Act 1984* (Cth), was amended to provide a positive duty on employers and 'persons conducting a business or undertaking' to take reasonable and positive steps to eliminate sex discrimination, sexual harassment and related acts of victimisation."[29] In Victoria, the positive duty and adequate investigation powers have been instrumental in taking a systemic approach to workplace instances of sexual harassment and discrimination[30].

We are aware that some organisations may argue against a positive duty, arguing that meeting those duties would be too onerous. These are often termed 'regulatory burdens.' We note that this has not resulted in significant burdens in other jurisdictions such as Victoria where a positive duty is in effect. We also submit that where there are equal

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[25] Diversity Australia, 'Building Systems that Don't Fall Apart', 7 July 2025, accessed 16 October 2025, https://www.diversityaustralia.com.au/guidelines-for-complying-with-the-positive-duty-the-executives-reality-check/#:~:text=Building%20Systems%20That%20Don't,knowledge%20across%20your%20leadership%20team.

[26] Australian Human Rights Commission, 'Factsheet Series: Positive Duty under the *Sex Discrimination Act 1984* (Cth): *Steps to meet the Positive Duty"*, October 2023, accessed 16 October 2025, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://humanrights.gov.au/sites/default/files/2310_fs_steps_to_meet_the_positive_duty_v2_0.pdf

[27] Respondent 5, MHLEPQ Disability Discrimination Survey.

[28] See Northern Territory, Australian Capital Territory and Victoria adopting positive duty requirement in their State/Territory based discrimination laws.

[29] Australian Human Rights Commission, 'The Positive Duty in the Sex Discrimination Act' accessed 16 October 2025, https://humanrights.gov.au/our-work/sex-discrimination/positive-duty-sex-discrimination-act; Australian Human Rights Commission,

[30] Victorian Equal Opportunity and Human Rights Commission, *Preventing Sexual Harassment in Retail Franchises: Investigation under the Equal Opportunity Act 2010* (Report, August 2022).

tensions between eliminating discrimination and managing regulatory burdens, these reforms and Australia's duties under the CRPD should favour eliminating discrimination.

The development of clear guidelines which articulate the kind of factors that can be considered would be advantageous and prevent the creation of a blanket "get out of jail" card with costs being the only consideration.

In support of introducing a positive duty, clear guidelines should be created so that the new duty can be clearly and easily navigated. These should be co-designed by the Australian Human Rights Commission in conjunction with disabled people and their representative organisations, including those with lived experience of mental health issues.

Recommendation 6 – Introduce the positive duty
The Commonwealth Government should introduce a positive duty to eliminate discrimination under the DDA.

Recommendation 7 – Provide guidance material
The Commonwealth Government should resource the Australian Human Rights Commission to co-design guidance materials on the positive duty, ensuring that people with lived experience of mental health issues and their representative bodies are included.

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

Part 3 of the Issues Paper discusses strengthening inclusion by clarifying and expanding the duty to provide adjustments, redefining unjustifiable hardship, and improving employment protections. It considers the use of clearer obligations for employers and educators, ensuring people with disability can participate fully in public life through proactive, rights-based adjustments.

Our members have supported proposals that expand the duty to provide adjustments, limit the scope of unjustifiable hardship and improving employment and other protections.

Clarification of burden of proof and defence

Ensuring equal enjoyment of the community, workplaces, education and services requires adjustments. In mental health settings, these could relate to trauma-informed processes or designs, flexible work arrangements. Those adjustments should be made in ways that create certainty for people with lived experience.

Under the DDA, the alleged adjustment claimed must be a 'reasonable adjustment' that would not impose 'unjustifiable hardship.' This historically has created confusion regarding what is meant by 'reasonable adjustments' and 'unjustifiable hardship.'

This test should be simplified and strengthened to enable greater protection. We endorse an approach where a person's request for an adjustment (rather than termed reasonable adjustment) must be accepted unless the duty-holder can demonstrate that it would cause unjustifiable hardship.

Recommendation 8 – Removal of reasonable condition
The Commonwealth Government should amend the DDA to remove "reasonable" from adjustments, requiring acceptance unless unjustifiable hardship is proven.

Extending protections to private life

People should enjoy disability discrimination protections and rights in both public and private life. The DDA applies to acts committed in the public domain. Private acts are intentionally omitted.

The Disability Royal Commission unveiled a plethora of human rights breaches spanning across different age groups, cultures, sex and locations – in home, in care and everything in between. The Disability Royal Commission in its Final Report suggested that disability discrimination law should extend past the current boundaries of it occurring in public life.[31] The law should, therefore, capture disability discrimination occurring in private life such as in the private home.[32]

Those of us with mental ill-health are among the most vulnerable members of society. Measures ensuring that we are protected from discriminatory acts, must be in place including the private arena. It is noted that policing the private duty would be difficult and would require a comprehensive public information campaign. This would take time and sufficient funding.

Recommendation 9 – Extend to private life
The Commonwealth Government should remove the limitation that protections only apply to public life, thereby extending it to areas of private life.

Improve the unjustifiable hardship test

Transformative shifts towards a more equal future require duty holders to take up their responsibilities. Currently, the unjustifiable hardship test provides that disability discriminatory acts are to be held to be legal if the duty holder proves unjustifiable hardship. Members reported that they wanted exemptions to:

> "exist only in limited, clearly justified circumstances where they serve a legitimate purpose of safety, privacy, or representation, and where no reasonable alternative exists."[33]

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[31] 'Realising the human rights of people with disability,' *Final Report*, 2023, Volume 4, pp 30-31, p309.
[32] Australian Government, Attorney-General's Department, 'Disability Discrimination Act 1992 Review', 2025, p.49.
[33] Respondent 5, MHLEPQ Disability Discrimination Survey.

Members reported that adjustments are inconsistently applied, often reactive, and require burdensome proof. One member stated:

> "I have had to provide extensive evidence—multiple medical appointments, specialist reports, and psychological documentation—just to request basic changes… that were ultimately deemed 'not reasonably practicable"[34]

There is no legal requirement for the duty holder to:

- consult with the person with a lived/living experience who is affected by their actions; or
- make and retain detailed documentation about the adjustments sought or reasons for unjustifiable hardship.

Failing to consult people with lived experience may mean decisions about unjustifiable hardship are not grounded in fact, and that any adjustments that are made are not helpful to the person seeking an adjustment. Failing to keep documentation means in practice it is difficult for the Australian Human Rights Commission or courts to assess claims about unjustifiable hardship from duty holders.

Consultation should be required whenever adjustments and unjustifiable hardship exemption are sought to be applied. The benefits are clearly obvious, negotiated solutions can potentially be found.

MHLEPQ therefore, supports the Disability Royal Commission's suggested outcome contained in Option 1 in the Review Document. (i.e., mandatory consultation and considerations of alternative measures to eliminate or reduce hardship). The alternative approach of a new unjustifiable hardship definition appears to be less certain and less precise in direction.

Recommendation 10 – Include a duty to consult and document for adjustment requests
The Commonwealth Government should amend the DDA to include a requirement on duty holders, when considering and making decisions about adjustments, to —

(a) Consult the person seeking the adjustment about their preferred adjustment and the impact of that adjustment on them; and

[34] Respondent 8, MHLEPQ Disability Discrimination Survey.

(b) Document what alternative options were available to remove or reduce hardship.

Creating more equal and fair workplaces

People with lived experience of mental health issues contribute to workplaces everyday. Despite these contributions, people with lived experience face unnecessary and unfair barriers to employment and within employment settings.

Members reported that consultation is required when decisions are being made about a person's ability to work and perform the duties of employment.

Consultations on what adjustments can be made can place the person with disability in a position of power. They would be in control of their employment, the terms on which they are engaged and the environment in which they work.

Consultation breaks down stigma associated with disability, fosters an environment of understanding and allows for meeting of the minds. Introducing a requirement to consider the nature and extent of any adjustments made is therefore, encouraged.[35] MHLEPQ considers consultation to be a positive step forward towards a rights-based approach to the DDA.

Recommendation 11 – Include a duty to consider the nature and extent of adjustments and encourage consultations.

The Commonwealth Government should amend the DDA to provide a duty consider the nature and extent of adjustments needed and their impacts on the workplace before employment decisions are made, with consideration given to consulting the person in making that decision.

[35] Australian Human Rights Commission, 'Guide: Your rights as an employee under the *Disability Discrimination Act 1992* (Cth), 2021, p3.

Part 4 – Improving access to justice

Protecting against mental health vilification

In order to move freely through public life, people with lived experience need to navigate it free of hate. In 2025 people with lived experience of mental health issues face not only discrimination but also vilification—public acts that incite hatred, ridicule, or contempt. These harms are not abstract. They are real, persistent, and deeply damaging. One member stated:

> "A clinician came up to my then abusive partner in the street and discussed my current hospitalisation. My parent's speech at my engagement party was to apologise for my having a mental illness to my fiancé to be."[36]

Another member stated that these views are so entrenched that people within our own lived experience community make harmful statements:

> "Even neurodiverse identifying people will say… 'I don't have schizophrenia or bipolar' as if that is [a slur]." [37]

We also see normalised use of terms like "psycho" or "schizo" used as slurs, which again is harmful to people with lived experience. Making fun of people who have been detained within psychiatric settings is part of Halloween costumes without legal recourse[38]. We also know of evidence where mental health diagnoses are used to discredit people's views, including of racism.[39]

Part of the reason for this continuing is the lack of mental health vilification protections. Many people in our community incorrectly believe that discrimination laws protect from vilifying conduct, meaning there has not been adequate advocacy for mental health vilification laws.[40]

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[36] Respondent 4, MHLEPQ Disability Discrimination Survey.
[37] Respondent 2, MHLEPQ Disability Discrimination Survey.
[38] 2:49pm Oct 30 and 2024, 'Big W Pulls "hurtful" Halloween Costume from Shelves, Apologises' (30 October 2024) <https://www.9news.com.au/national/call-to-remove-straight-jacket-insane-asylum-halloween-costumes-from-sale/d96bdf2b-d965-4774-a9b5-7b45e9add2e8>.
[39] Katterl (n 10).
[40] Ibid.

Currently, the DDA prohibits harassment in limited contexts but fails to protect against broader offensive behaviour or vilification. Anecdotally, there is also limited knowledge about these protections, and their use appears limited. There are also no disability (and by extension mental health) vilification protections in Queensland after similar protections were paused indefinitely.[41] This gap leaves people with psychosocial disabilities vulnerable to public abuse, including online hate, media misrepresentation, and derogatory language.

Recommendation 4.29 proposes a prohibition on offensive behaviour—acts that offend, insult, humiliate or intimidate—modelled on section 18C of the *Racial Discrimination Act 1975* (Cth) (**RDA**). Other states such as Victoria have adopted different harm-based tests[42]. This would provide a civil remedy for harmful conduct that falls short of criminal thresholds but still causes significant harm. Recommendation 4.30 goes further, targeting vilification that incites hatred or threatens violence. These provisions would align the DDA with protections already afforded to other groups and reflect Australia's obligations under the CRPD.

There will need to be additional work done to ensure that these laws are accessible and meaningful to people with mental health issues, as part of the broader disability protected attribute. Guidance material should be developed to identify possible instances of mental health vilification that clearly explains overlapping social and legal concepts of mental health stigma, discrimination and vilification. This guidance material should be developed by mental health consumer lived experience peak bodies who are best placed to explain these concepts.

We support these recommendations. They are necessary, overdue, and consistent with a human rights-based approach to preventing mental health vilification. They affirm that people with lived experience deserve protection—not just from discrimination, but from the words and conduct that wound.

Recommendation 12 - Create mental health vilification protections
include vilification protections based on the section 18C protection within the RDA or similar harm-based tests.

[41] 'News: Anti-Discrimination Act Reforms Delayed' <https://www.qhrc.qld.gov.au/about-us/news/pause-to-the-anti-discrimination-act-reforms> ('*News*').
[42] See *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic).

Recommendation 13 – Create guidance material for mental health vilification
The Commonwealth Government should commission mental health consumer lived experience peak bodies to develop guidance material about how these laws protect against mental health vilification.

Part 5 – Exemptions

Creating more transparency on exemptions

To promote equality any measures that may limit it should be open to public viewing. This includes exemptions to anti-discrimination duties under the DDA. Members were cautious about the use of exemptions to undermine DDA protections:

> "There should be very limited or no exemptions under the Disability Discrimination Act, especially where the exemption could permit unfair treatment of people with disabilities".[43]

While others acknowledged that there are some circumstances where it may be appropriate such as for example:

> "Identified or lived-experience positions that require a person to share the background or experience of the community being served."[44]

> "Gender-specific roles in contexts involving personal care, safety, or privacy — for example, a women's shelter."[45]

These are typically achieved through special measures as noted in the Issues Paper. Members commented on things being done behind closed doors and in a way that did not encourage full public participation. At present we are not aware that there are any publicly available means to observe the granting of exemptions that authorise otherwise unlawful discrimination towards people with disability.

Decision-making should involve transparent criteria, such as: does the exemption align with human rights obligations (e.g., UN CRPD)? Has the organisation explored all reasonable adjustments and alternatives?

For determinations that authorise otherwise unlawful discrimination, those determinations should be kept on an outward facing website and searchable by members of the public. This would allow the public to review whether the exemptions should be allowed.

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[43] Respondent 8, MHLEPQ Disability Discrimination Survey.
[44] Ibid.
[45] ibid.

Recommendation 14 – Create more transparency for some exemptions
The Commonwealth Government should develop an appropriate mechanism that requires publication of exemptions that permit otherwise unlawful discrimination against people with disability.

Recommendation 15 – Require consideration of the CRPD

The Commonwealth Government should amend the DDA to ensure that the Australian Human Rights Commission must consider the CRPD and the use of reasonable alternatives when authorising exemptions.

Part 6 – Modernising the Disability Discrimination Act

Strengthening disability action plans

Organisational commitments to eliminating disability discrimination are integral to broader social change in favour of people with disabilities. Disability action plans are instrumental to this.

We note there are limitations to how disability action plans are implemented through law and policy. One member summarised the view that "disability action plans are not compulsory, so [they]lack any real impact."[46] We note that there are not minimum requirements for disability action plans, meaning it is hard to measure their consistency and impact.

Similarly, this member also provided the following proposed improvements

> "1. Strengthen accountability and transparency.
>
> 2. Currently, many DAPs exist only as symbolic commitments. Organisations should be legally required to publish their plans, report annually on progress, and face consequences for non-compliance.
>
> 3. Include psychosocial disability explicitly.
> Mental health–related disabilities must be named and addressed in all Standards.
>
> 4. Make DAPs co-designed with lived experience.
>
> 5. Embed trauma-informed and intersectional principles.
>
> 6. Improve accessibility and awareness.
>
> 7. Link funding to compliance."[47]

We broadly endorse these kinds of measures being applied to reform the use of disability action plans for relevant organisations.

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[46] Respondent 9, MHLEPQ Disability Discrimination Survey.
[47] Ibid.

Recommendation 16 – Strengthen disability action plans
The Commonwealth Government reform the DDA and resource the Australian Human Rights Commission to strengthen disability action plans by improving uptake, quality (commitments, trauma-informed principles and intersectionality principles), accessibility and the use of incentives to drive uptake and compliance.

Part 7 – Further options for reform

In order to ensure that we continue to reduce and aim to eliminate disability discrimination from the community, we need to ensure that the DDA remains relevant and serves purpose of the legislation and the CRPD.

Part of this requires that the Commonwealth Government and state and territory governments maintain close connection to disability representative organisations, representatives, advocates so as to keep track on whether the *DDA* is delivering on its revised intended purposes.

Recommendation 17 – Create appropriate forums to monitor implementation and impact of DDA reforms
The Commonwealth Government should establish a disability-led forum to monitor implementation and impact of the DDA reforms.

Conclusion

As a community, people with mental ill-health are made vulnerable by systems, structures, services and attitudes. We can without our consent be taken into custody, locked up in mental health institutions, be subject to seclusionary practices, be administered medication that has adverse effects on our health and have electro convulsive pulses radiated through our mind. In light of this, protecting us from unlawful discriminatory acts, is a modest ask.

Whilst we acknowledge the challenge in tackling discrimination, things have to be done differently than they are done today. Disability should be understood beyond the medical model and include societal factors relevant to how we view people with disability. For too long we have looked to 'fix it' solutions that are reactive to disability discrimination. This accepts that harm should occur first and that it is the responsibility of people with disability to change systems.

Problems with evidence and proving cases, with access to documents, policies and procedures will not change until we rebalance responsibility away from people with disability towards duty holders.

The DDA was passed before the CRPD, the National Disability Insurance Scheme and the Disability Royal Commission. However, the intent and purpose, if not from the beginning of its enactment, but now, is in line with our international rights and responsibilities under the CRPD. Moving towards that body of discrimination law can only benefit and make our *DDA* stronger and more in line with community expectations.

The time is right to hold the DDA up to the light and commit to meaningful change. It is with much anticipation that MHLEPQ awaits the final reporting on this review. This is something that all Australians will benefit from. As one member reminds the Commonwealth Government:

> "Inclusion is not a favour — it's a shared responsibility. When systems are flexible, informed, and human-centred, everyone benefits."[48]

[48] Respondent 8, MHLEPQ Disability Discrimination Survey.

Communication

Future communication about this submission or associated matters can be made with:

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