



Submission to review of the *Disability Discrimination Act 1992* (Cth)

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Table of Contents

Table of Contents	2
Amnesty International	3
1. Summary	4
2. Recommendations	4
2. International Legal Human Rights Framework	5
Rights to non-discrimination	5
Rights of people with disabilities	6
2. Definitions (Questions 1, 2, 5, 7 and 9)	6
3. Intersectionality (Questions 3 and 4)	8
4. Objects provision of the DDA and interpretation clause (Questions 10 and 11)	9
6. Burden of proof (Question 6)	10
7. Ensuring the DDA remains fit-for-purpose into the future, and other issues with the DDA that should be considered (Questions 50 and 51)	11

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1. Summary

1.1 Amnesty International Australia (AIA) welcomes the opportunity to make a submission to the review of the *Disability Discrimination Act 1992* (Cth) (DDA).

1.2 The recommendations contained in this submission go towards improving protections from discrimination in the DDA so that the rights of people with disability are better protected and so people with disability can enjoy their human rights.

1.3 People with disability have contributed to many reviews and inquiries since the DDA has been in force, including the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability. The government has said that “this review will draw on the reports and submissions from these reviews and inquiries so that people with disability do not need to advocate again about the same issues and experiences.”

1.4 In line with the participation of full participation contained in Article 3 of the Convention on the Rights of Persons with Disabilities (CRPD) AIA reiterates that the Australian government in this review must be led by the voices and input of people with disability.¹ In this regard, AIA endorses the submissions made by Welcoming Disability, Women with Disability Australia, and Queensland Independent Disability Advocacy Network.

1.5 These recommendations include removing deficit-based language from definitions, aligning the DDA with the CRPD, strengthening the direct and indirect discrimination clauses to improve access to justice, and recognising intersectionality in the DDA.

1.6 Whilst AIA understands that the purpose of this review is not to consider the whole federal human rights and anti-discrimination framework, we nonetheless take the view that the consolidation of federal anti-discrimination laws, the legislation of Human Rights Act (HRA) and the implementation of a federal human rights framework would strengthen the protection of the rights of people with disability.

1.7 Human rights protections are currently fragmented across federal laws and the common law, and many fundamental rights are not protected in Australia. A HRA that protects people's right to housing, healthcare and education, alongside a strengthened DDA, will significantly improve the lives of people with disability; better preventing discrimination by imposing a proactive duty on government to consult with people with disability and to consider human rights when making decisions concerning about laws, policies, and services that impact people with disability, and giving people with disability a tool to take action and remedy injustice if they suffer human rights abuses.

1.8 It is our strong view that the introduction of a an Act will also improve the operation of the DDA. An improved DDA will also strengthen the operation of a Human Rights Act by ensuring that the rights contained in the Act must be enjoyed without discrimination.

2. Recommendations

AIA recommends that the government:

¹ Convention on the Rights of Persons with Disabilities, opened for signature 12 December 2006, A/RES/61/106, entered into force 3 May 2008.

- 1) Remove deficit based language from paragraphs (e) and (f) of the definition and reform the definition of disability to reflect the human rights principles of the CRPD, to ensure the DDA has a strong human rights basis that affirms the inherent dignity, autonomy and equality of people with disabilities and their full participation and inclusion, in line with the CRPD, while remaining broadly applicable, inclusive and accessible.
- 2) Amend the definition of direct discrimination in the DDA to remove the comparator test.
- 3) Amend the definition of indirect discrimination to remove the inability to comply requirement, and further, remove the need to demonstrate that the requirement was unreasonable.
- 4) Strengthen the DDA by recognising intersectionality, expressly allowing claims to be brought for of multiple, intersecting and a combination of protected attributes.
- 5) Amend the DDA to explicitly include the CRPD in the objects provision and introduce a construction and interpretation clause expressly requiring the DDA to be interpreted in a manner that is beneficial to people with disability, in accordance with the CRPD.
- 6) Amend the DDA to reverse the burden of proof.
- 7) The DDA is amended per recommendations by Welcoming Disability including amendments to s52 of the DDA, alongside the removal of the Interpretive Declaration to Article 18 of the CRPD and amendments to the Migration Regulations 1994 (Cth).
- 8) The government consolidates federal anti-discrimination laws into a single statute, which requires proactive action to prevent discrimination against people with a disability, in line with the Human Rights Commission's Position Paper.
- 9) The government legislates a Human Rights Act and introduces a federal human rights framework in line with the recommendations from the Parliamentary Joint Committee on Human Rights review of the federal human rights framework.

3. International Legal Human Rights Framework

3.1 The Australian Government has committed to ensuring that all people enjoy universally recognised rights and freedoms through the ratification of treaties, including the rights of people with disability through the ratification of the CRPD, and the right to live free from discrimination through the ratifications of the international Covenant on Civil and Political Rights (ICCPR). However, Australia's domestic laws do not adequately implement these protections.

Rights to non-discrimination

3.2 The entitlement of all people to be free and equal in dignity and rights is enshrined in Article 1 of the Universal Declaration of Human Rights (UDHR).² Article 7 of the UDHR and Articles 2, 16, and 26 of the ICCPR recognise the right to equality and non-discrimination.

3.3 Article 26 of the ICCPR requires State Parties to prohibit and guarantee protection against discrimination on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.³

3.4 It is well established that the phrase 'other status' has been interpreted by human rights treaty bodies to include attributes such as disability.⁴

² Universal Declaration of Human Rights, adopted and proclaimed by General Assembly on 10 December 1948, 217 A (III).

³ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171, entered into force 23 March 1976.

⁴ Committee on the Rights of Persons with Disabilities, General comment No.6 on equality and non-discrimination, 26 April 2018, CRPD/C/GC/6.

Rights of people with disabilities

3.5 The CRPD was ratified by Australia in 2008 and sets out the rights, values and standards to inform and guide laws and policies to support the equal treatment of people with disability.

3.6 Article 5 of CRPD states that “States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”⁵

3.7 Article 12 of the CRPD protects the right to equality before the law, meaning people with disability must enjoy legal capacity on an equal basis with others in all aspects of life.⁶

3.8 Article 19 protests the equal right of all persons with disabilities to full inclusion and participation.

3.9 These pieces of international law and standards form the basis of AIA’s recommendations.

4. Definitions (Questions 1, 2, 5, 7 and 9)

4.1 AIA supports the submissions made by disability rights organisations who recommend that references to outdated and inappropriate deficit-based language such as 'malfunction', 'malformation' and 'disfigurement' be removed from the DDA’s definition of disability. This language reinforces harmful stereotypes.

4.2 The revised definition should be human rights based and reflect the principles contained in the CRPD such as respect for inherent dignity, individual autonomy, non-discrimination, the full and effective participation and inclusion of people with disability in society, and acceptance of persons with disabilities as part of human diversity and humanity.

4.3 The definition of disability should be broad and inclusive and should not impose additional barriers on people or narrow the definition, noting many people, particularly people with invisible disability, neurodivergence, and chronic illness are not reflected in the current definition, but who experience discrimination.

Recommendation 1: Remove deficit based language from paragraphs (e) and (f) of the definition and reform the definition of disability to reflect the human rights principles of the CRPD, to ensure the DDA has a strong human rights basis that affirms the inherent dignity, autonomy and equality of people with disabilities and their full participation and inclusion, in line with the CRPD, while remaining broadly applicable, inclusive and accessible.

4.4 Further, AIA supports the positions of disability rights advocacy organisations who call for the definitions of direct and indirect discrimination in the DDA to be amended and simplified.

⁵ Above n1.

⁶ Ibid.

4.5 This would not only assist with removing current barriers to accessing discrimination protections for people with disabilities, amended definitions would also assist in making obligations clearer for duty holders, ensuring greater compliance with the DDA and assisting in preventing discrimination from occurring.

4.6 The current definition of the DDA uses the terminology “less favourable”, requiring the use of a comparator, however jurisdictions such as Victoria and Tasman do not use a comparator. Disability and legal organisations have made submissions recommending removing the use of the comparator test to simplify and clarify the DDA. The AHRC also recommended this in its position paper *Free and Equal: A reform agenda for federal discrimination laws*. There is strong consensus for this position and AIA supports it.

Recommendation 2: Amend the Definition of direct discrimination in the DDA to remove the comparator test.

4.7 The current DDA definition of indirect discrimination requiring an applicant to show that they had an “inability to comply” with a requirement, condition or practice, and also that it was “unreasonable”, is limiting and complex. People with a disability need to show they had an “inability” to meet the condition – rather than placing the emphasis on the requirement, condition or practice that has a disadvantageous, discriminatory effect on people with a disability.

4.8 This is not consistent with a substantive equality approach⁷, and goes against the underlying principles of the CRDP relating to inclusive equality, and removing structural barriers to create inclusivity and equal access, as well as principles of empowerment, autonomy, and full and effective participation and inclusion.

4.9 AIA is in agreement with the Australian Human Rights Commission (AHRC), which has said that the ‘inability to comply’ requirement is unnecessary and confusing, and noted that the Attorney-General’s Department has said there is no clear policy reason for this more stringent test to be included in the DDA⁸. We submit that it ought to be removed and this would align the DDA with the *Sex Discrimination Act 1984* (Cth) and the *Age Discrimination Act 2004* (Cth), as well as Victorian, Tasmanian, Northern Territory and ACT laws.

4.10 Further, the DDA currently also requires a person making an indirect disability discrimination claim to show that the requirement, condition or practice that has impacted them adversely is “unreasonable”. This must be amended, and AIA urges the Review to consider and be guided by submissions from disability organisations informed by lived experience and legal organisations with expertise representing people with disability in discrimination, as well as the recommendations made by the AHRC in its *Free & Equal* position paper, matters when considering what the appropriate test should be.

⁷ Australian Human Rights Commission, *Free & Equal: A reform agenda for federal antidiscrimination laws*, December 2021, p 298, 296.

⁸ *Ibid*, p 296, 297.

Recommendation 3: Amend the definition of indirect discrimination to remove the inability to comply requirement, and further, remove the need to demonstrate that the requirement was unreasonable.

5. Intersectionality (Questions 3 and 4)

5.1 AIA has previously noted in submissions to the review of the federal human rights framework that many people experience multiple overlapping forms of discrimination, which today's anti-discrimination laws fail to address. Women with Disabilities Australia describe intersectionality as the way in which different systems and institutions of power combine to produce overlapping and compounded discrimination.

5.2 In its 2021 report *Free & Equal: A reform agenda for federal antidiscrimination laws*, the AHRC noted that as Australian anti-discrimination law is framed around single attributes, it "may not adequately capture the experience of claimants affected by discrimination on multiple fronts, as 'intersectional discrimination'." The Commission cited Professors Beth Gaze and Belinda Smith, who wrote:

"Multiple disadvantage occurs where more than one category of disadvantage affects a person in an additive way, whereas intersectional disadvantage occurs where the two or more attributes of disadvantage compound one another, for example the fact that Indigenous women are more disadvantaged than either white women or Indigenous men. ... Many people may possess more than one attribute of disadvantage; many are identified by multiple attributes; for example, minority racial or ethnic groups include women, people with disability and/or minority sexualities."

5.3 In its position paper Australian Human Rights Commission cited approaches taken in other common law countries to intersectionality, which include making 'explicit provision for combined claims... through terming discrimination as occurring on the basis of "multiple", "intersecting" and a "combination" of discriminatory grounds',⁹ and agreed with observations of experts that this approach has potential to greatly improve discrimination law.¹⁰

5.4 A particular issue with intersectionality arises when an applicant needs to prove direct discrimination under the DDA, which requires reference to a comparator. Where compounding discrimination exists the comparator is currently unclear. Many organisations have recommended removing the comparator test from the definition of direct discrimination in the DDA and substituting this for a definition of 'unfavourable' treatment similar to that contained in Victoria's *Equal Opportunity Act 2010 (Vic)*.¹¹

5.5 AIA supports this as it will remove a current barrier for people with disabilities and improved their access to protections under the DDA, as well as simplifying discrimination applications generally.¹² It will also help to promote greater compliance with discrimination laws and assist service providers in understanding obligations under the DDA.¹³

⁹ Julia Mansour, 2012, cited in above n7, p303.

¹⁰ Professor Beth Gaze and Professor Belinda Smith, 2017, cited in above n7, p303.

¹¹ Victoria Legal Aid, *Addressing discrimination to prevent violence, abuse, neglect and exploitation Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, 30 April 2020, p13, referring to the *Equal Opportunity Act 2010 (Vic)* and noting that in the absence of an express comparator tests, Tribunals have also confirmed there is no implied requirement for a comparator test.

¹² The Disability Royal Commission found the comparator test to be "complex and a barrier to people with disability proving they have experienced discrimination." See Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Executive Summary*, 29 September 2023, p63.

¹³ Above n11, p13.

5.6 AIA also supports the explicit recognition of intersectionality and that claims for discrimination should include compounded discrimination on the basis of intersecting protected attributes. The Women with Disability Australia submission recommends that the DDA expressly permit claims based on multiple or combined protected attributes, which would ensure discrimination at the intersection of disability and other protected attributes (for example, gender, race, age) is able to be recognised and remedied.

5.7 However, intersectionality must not be conflated with “multiple disabilities” as these differ from intersectionality and require distinct accessibility and adjustment questions.

Recommendation 4: Strengthen the DDA by recognising intersectionality and expressly allowing claims to be brought for of multiple, intersecting and a combination of protected attributes.

6. Objects provision of the DDA and interpretation clause (Questions 10 and 11)

6.1 Amnesty supports including the CRPD in the objects provision of the DDA and expressly requiring the DDA to be interpreted in a manner that is beneficial to people with disability, in accordance with the CRPD.

6.2 Article 1 of the CRPD sets out its purpose, to:

“promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”¹⁴

6.3 The CRPD requires State Parties to take administrative, legislative and other measures to ensure and promote the full realisation of all human rights and fundamental freedoms for people with disability without discrimination of any kind on the basis of their disability.¹⁵

6.4 Australia ratified the CRPD after the legislation of the DDA so the DDA does not reflect the principles and rights contained in the CRPD.

6.5 Embedding the CRPD in the objects provision of the DDA and including an interpretation clause that expressly requires provisions of the DDA to be interpreted with reference to and in line with the rights contained in the CRPD will assist in ensuring the DDA best advances the rights of people with disability. Women With Disability Australia state that an interpretation clause will require public authorities to act in line with the CRPD, leading to a greater focus on preventative, systematic change.

6.6 The CRPD is based on the principle of inclusive equality, a principle which requires positive action to provide support or make structural changes to create or maintain inclusive settings for people with disability, whereas the DDA is based on formal equality.¹⁶ The Royal Commission found that an approach to disability rights based on formal equality may entrench inequality because the same treatment is not focused on achieving equal outcomes or providing equal

¹⁴ Above n1.

¹⁵ Above n1, Art 4.1.

¹⁶ Above n12, p55.

opportunities.¹⁷

6.7 The Royal Commission also found that there are gaps in the protection of CRPD rights in Australia, and based on expert reports, Counsel Assisting proposed to make a finding that:

*“the Australian Government has not fully implemented the CRPD into relevant laws, policies and practices. There presently remains gaps in the implementation of the CRPD to protect, promote and ensure the CRPD rights to prevent violence, abuse, neglect and exploitation of people with disability in Australia.”*¹⁸

6.8 While the Australian Government did not accept it has failed to fully implement the CRPD, it did concede that there were “opportunities to improve upon the ways in which the CRPD has been implemented in Australia”.¹⁹ The Royal Commission found that it is clear Australia requires a “stronger more comprehensive and transformative legal framework is required to achieve equality and inclusion and advance the human rights of people with disability, including their right to live free from violence, abuse, neglect and exploitation.”²⁰

Recommendation 5: Amend the DDA to explicitly include the CRPD in the objects provision and introduce a construction and interpretation clause expressly requiring the DDA to be interpreted in a manner that is beneficial to people with disability, in accordance with the CRPD.

7. Burden of proof (Question 6)

7.1 The DRC Final Report recommended reversing the burden of proof so that people with disability are not made to prove that discrimination occurred, but rather the person who committed the breach must prove it did not.²¹

7.2 Under a reversed burden of proof, the complainant must demonstrate the attribute and that treatment was unfavourable, the respondent must then prove that the treatment was not because of the complainant’s disability.

7.3 The difficulty of proving conduct was discriminatory stops many people from making complaints under the DDA. Amnesty notes that this recommendation is supported by many disability organisations and legal organisations as it will improve access to justice and also help duty holders understand their obligation under the Act.

Recommendation 6: Amend the DDA to reverse the burden of proof.

¹⁷ Ibid.

¹⁸ Above n12, p56..

¹⁹ Ibid.

²⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final report - Volume 4, Realising the human rights of people with disability*, 29 September 2023, p5.

²¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Executive Summary*, 29 September 2023.

8. Ensuring the DDA remains fit-for-purpose into the future, and other issues with the DDA that should be considered (Questions 50 and 51)

Discrimination in migration health rules

8.1 The exclusion of people with a disability from many types of visas using the health requirement has long been an ‘acceptable’ form of discrimination in Australia. Both the exemption in the DDA relating to the *Migration Act 1958* (Cth) that allows for people with disability to be treated differently in the grant of a visa, and the requirements in the *Migration Regulations 1994* (Cth) that applicants meet Public Interest Criteria (PIC), are based on an assumed ‘significant’ financial cost of the disability to the Australian government. However, these assumed costs do not consider the rights and capacities of people with disabilities.

8.2 The Welcoming Disability submission sets out that Australia’s current migration health requirements and their application are inconsistent with international human rights law in the CRPD and with the DDA.²²

8.3 While individuals can apply for a waiver of the PIC health rules in some circumstances and appeal the decision or apply for Ministerial intervention if a visa is refused, this is costly and time consuming, as well as distressing, for those involved.²³

8.4 In practice this exclusion has devastating impacts on families and communities. The decisions can mean a family can be forced to split, with the family member with a disability forced to stay behind while other family members are granted Australian visas. It can mean families living in Australia with children born with disability are forced to leave despite holding valid visas and contributing to Australia or must spend years appealing the decision to refuse their child a visa.²⁴ It also deters applications from and deprives Australia of highly skilled workers who are needed to fill job gaps. Discriminatory migration health requirements have “strongly negative implications in terms of societal perceptions of the value of the lives of people with disabilities.”²⁵

8.5 The DDA, and international human rights law, particularly Article 5 of the CRPD, provides that people with disabilities have the same rights as any other person, and must be guaranteed protection against discrimination. Accordingly, Australia should not apply discriminatory criteria in its migration policies.

8.6 This protection is limited by Australia’s Interpretive Declaration to Article 18 of the CRPD which provides a caveat to the equal treatment of people with a disability under Australia’s migration health requirements. AIA supports Welcoming Australia’s calls to review this.

8.7 AIA notes that the Disability Royal Commission Final Report recommended section 52 of the DDA, which authorises discrimination against people who wish to enter Australia either temporarily or permanently, be reviewed, and recommends the review consider changes to legislation and migration practices to prevent such discrimination.²⁶

²² Welcoming Disability, *Position Statement on Migration and Disability*, available at <https://www.welcomingdisability.com/materials-for-learning>.

²³ Above n23, para 22.

²⁴ For example see some families’ stories documented by the Welcoming Disability campaign at <https://www.welcomingdisability.com/stories> and here at BBC, *You’re not welcome here’: Australia’s treatment of disabled migrants*, 9 July 2024, available at <https://www.bbc.com/news/articles/cyr70ezev2mo>.

²⁵ Above n23, para 3.

²⁶ Above n20, p32.

Recommendation 7: The DDA is amended per recommendations by Welcoming Disability including amendments to s52 of the DDA, alongside the removal of the Interpretive Declaration to Article 18 of the CRPD and amendments to the *Migration Regulations 1994* (Cth).

Harmonising federal discrimination laws

8.8 While AIA welcomes this review of the DDA, we urge the Australian Government to take action towards a consistent, proactive, and substantial anti-discrimination and human rights framework, including the legislation of a Human Rights Act, across the federal government.

8.9 The federal laws currently addressing different types of discrimination are inconsistent, providing for differing levels of protection depending on the protected attribute. AIA agrees with other stakeholders, such as the Australian Human Rights Commission and the Network for Disability Law Reform, who call for Australian discrimination law to be streamlined and consolidated into a single statute which will ensure anti-discrimination laws is more equitable and accessible.²⁷

8.10 This statute must shift the focus from a reactive model that responds to discriminatory treatment to a proactive model that seeks to prevent discriminatory treatment.²⁸

8.11 In their Position Paper *Free and Equal: A reform agenda for federal discrimination laws* the AHRC identified four pillars of reforms; building a preventative culture, modernising the regulatory framework, enhancing access to justice, improving the practical operation of the laws.²⁹

Recommendation 8: The government consolidates federal anti-discrimination laws into a single statute, which requires proactive action to prevent discrimination against people with a disability, in line with the Australia Human Rights Commission's Position Paper.

Human Rights Act

8.12 The Government should legislate a Human Rights Act protecting the rights of everyone in Australia, including people with disability.

8.13 AIA has long campaigned for a federal HRA, as part of a large coalition of civil society groups, human rights organisations, peak bodies, and community organisations.³⁰ AIA believes that codifying all human rights protections in the treaties Australia has ratified in one overarching Act is the most important step the government can take to promote and protect human rights in Australia and fulfill its obligations it has agreed to by ratification.

8.14 The Parliamentary Joint Committee on Human Rights reviewed the federal human rights framework, recommending the Government legislate a HRA in May 2024.³¹ The report also set out key elements of an Act, and provides a model Act, based on the AHRC model, that Amnesty and partner's support.³²

²⁷ Above n7.

²⁸ Amnesty International Australia, *Submission: Inquiry into Australia's Human Rights Framework*, 11 August 2023, p6.

²⁹ Above n7.

³⁰ Above n29; Amnesty International Australia, *Submission to the Australian Human Rights Commission's project on 'Free and Equal: an Australian conversation on human rights'*, 11 November 2019,

³¹ Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework – Report*, 30 May 2024.

³² Ibid.

8.15 The Disability Royal Commission, as well as the Aged Care and Robodebt Royal Commissions all found the federal government consistently failed vulnerable people, evidencing the need for a HRA. As Australia lacks a HRA the federal government wasn't required to respect human rights when making decisions concerning Robodebt, Aged Care, and disability services, leading to systematic abuses of human rights which could have been prevented. Without a Human Rights Act people who suffer abuses like those documented by the Royal Commissions cannot challenge injustices and right wrongs, through mediation and conciliation or in court

8.16 The Australian Capital Territory, Victoria, and Queensland all have HRAs as do the United Kingdom, Canada and New Zealand. These Acts have been proven to make a positive difference in people's lives, particularly the lives of people with disability, per the Human rights Act Coalition's "101 Cases" report.³³

The ACT Act helped a person with disability escape abuse: A service provider in the ACT raised concerns to the ACT Human Rights Commission that a person with a disability was experiencing physical, financial, and emotional abuse by a carer with whom they lived. The Commission met with the person and arranged for them to move to alternative housing. They also supported them to become financially independent with supported decision-making.

The Queensland Act helped a person with disability access public transport: When escalators at a train station were replaced by steep, inaccessible stairs, one older resident of the community made a human rights complaint under Queensland's Human Rights Act. It was resolved by a conciliation process that led to agreement that escalators would be installed as part of the station upgrade.

The Victorian Act helped to prevent a man with a cognitive disability being jailed for unpaid fines: the man, who had accrued fines for minor offences, faced imprisonment after he defaulted on a repayment order. The Victorian Court of Appeal ruled the Magistrates' Court decision invalid because it had an obligation before making an imprisonment order to enquire if the person had special circumstances such as an intellectual disability, that would justify making a less severe order. The Court's decision was strongly influenced by the Victoria's Charter of Human Rights and in particular the rights to equality, liberty and fair hearing.

8.17 These laws put human rights at the heart of decision making, ensure the actions of public authorities are guided by human rights, and in doing so, prevent human rights abuses. They have also empowered everyday people to take action to realise their rights.

8.18 Amnesty notes that the twelve disability representative organisations (DROs) have released a joint Position Statement advocating for a federal Human Rights Act based on the PJCHR inquiry's recommendation, alongside reforms to the DDA.

8.19 AIA strongly supports the Position Statement which specifies that an Act within a broader human rights framework would provide a uniform, prevention focused, comprehensive and consistent legal framework, uphold the government's obligations under the CRPD, recognise

³³ Human Rights Act Coalition, *101 cases of how Human Rights Acts make our lives better*, available at <https://www.humanrightsact.org.au/101-cases>.

intersectionality, and guarantee broad human rights protections for all, but also offer the protections specific to the experiences of people with disability.

“Our goal is to create an inclusive national HRA that affirms the dignity, equality, and rights of every person, while specifically addressing the needs of people with disability, thereby promoting a just and equitable society for all.”³⁴

8.20 In AIA’s view, essential reforms to the DDA will be improved with the introduction of a Human Rights Act. Victoria, Queensland, and the Australian Capital Territory, all have both discrimination laws and HRAs. The positive rights in a Human Rights Act improve the interpretation and operation of discrimination laws by including the rights such as equality before the law, privacy, and the right to dignified treatment, and which can be considered when determining whether a person has been discriminated against. An Act can also be used to challenge laws, regulations, policies, and practices that are in themselves discriminatory.

8.21 Conversely, a reformed DDA will help with the operation of a Human Rights Act by requiring that the rights outlined in an Act must be enjoyed by all without discrimination.

Federal human rights framework

8.22 Amnesty also calls on the Government to develop a new National Human Rights Framework in accordance with the Parliamentary Joint Committee on Human Rights review. This includes introducing an independent national human rights indicator index, an annual statement to Parliament on human rights priorities by the Government, establishing a human rights education program for public servants and the public, among other reforms that will ensure a comprehensive, effective approach to protecting and promoting human rights.

Recommendation 9: The government legislates a Human Rights Act and introduces a federal human rights framework in line with the recommendations from the Parliamentary Joint Committee on Human Rights review of the federal human rights framework.

9. Conclusion

9.1 The review of the DDA presents a significant opportunity for the government to fulfill their human rights obligations and ensure that people with disability can live free from discrimination in Australia.

9.2 In line with the participation principle in the CRPD, the government should also carefully consider and act on the many expert and lived-experience-informed recommendations to improve the Act.

9.3 However, to fulfill the government’s obligations under international law to ensure people in Australia can enjoy all their human rights, AIA calls for the Government to go beyond consideration of the DDA, and to address the gaps, inconsistencies and inequalities in the federal human rights framework.

9.4 This including adopting the approach set out by the Australian Human Rights Commission to modernise and streamline federal anti-discrimination, introducing a new human rights framework, and critically, legislating a federal Human Rights Act to protect and promote human rights.

³⁴ Ibid.

9.5 A federal Human Rights Act would be transformative for Australian society. Every person in our community would benefit from living in a strong, rights respecting country. The human rights of all Australians would be protected, including the rights to healthcare, housing, and education, in Australia's federal laws, and these laws would be contained in one place, operating to prevent human rights abuses by requiring public authorities consider human rights when drafting new laws, and giving all people a tool to take action to and remedy wrongs if their right are abused.