



Blind Citizens Australia

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Response to Review of the Anti-Discrimination Act 1977 (NSW) - Consultation Paper May 2025

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1. Introduction

1.1 About Blind Citizens Australia

Blind Citizens Australia (BCA) is the peak national representative organisation of and for the over 500,000 people in Australia who are blind or vision impaired. For over 50 years, BCA has built a strong reputation for empowering Australians who are blind or vision impaired to lead full and active lives and to make meaningful contributions to our communities.

BCA provides peer support and individual advocacy to people who are blind or vision impaired across Australia. Through our campaign work, we address systemic barriers by promoting the full and equal participation in society of people who are blind or vision impaired. Through our policy work, we provide advice to community and governments on issues of importance to people who are blind or vision impaired. As a disability-led organisation, our work is directly informed by lived experience. All directors are full members of BCA and the majority of our volunteers and staff are blind or vision impaired. They are of diverse backgrounds and identities.

1.2 About people who are blind or vision impaired

According to the Australian Bureau of Statistics (ABS), more than 1 in 5 Australians (about 5.5 million people) are people with disability. There are currently more than 500,000 people who are blind or vision impaired in Australia; with estimates that this will rise to 564,000 by 2030. According to Vision Initiative, around 80% of vision loss in Australia is caused by conditions that become more common as people age¹.

Australians who are blind or vision impaired can live rich and active lives and make meaningful contributions to their communities: working, volunteering, raising families and engaging in sports and other recreational activities.

The extent to which people can actively and independently participate in community life does, however, rely on facilities, services and systems that are available to the public being designed in a way that makes them inclusive of the needs of all citizens – including those who are blind or vision impaired.

2. Submission context

BCA welcomes the opportunity to make a submission to review of the NSW Anti-Discrimination Act 1977 (the ADA) being conducted by the NSW Law Reform Commission (the Commission).

Our response is focused on the parts of the ADA dealing with discrimination on the grounds of disability and responds to discussion points raised in the Community Summary and Consultation Paper (published May 2025). BCA notes that the second consultation paper will consider the procedural aspects of the ADA, including complaint pathways, enforcement options, remedies and options for preventing unlawful conduct. This will be an important piece of work given past failures in enforcing accountability and requisite consequences for duty holders that fail to meet legal mandates and expectations.

BCA's submission draws on extensive consultations with our 3,000-strong member base and other people who are blind or vision impaired, and our ongoing advocacy work in the disability sector. BCA works collaboratively with other disability stakeholders and endorses the recommendations detailed in the submissions to the Commission by Vision Australia and Guide Dogs NSW/ACT (unpublished at time of writing).

BCA supports efforts to strengthen and enhance legal protections for people with disability and welcomes greater alignment and consistency across legislation safeguarding the rights of individuals with protected attributes. Changes to federal discrimination powers and complaint processes in 2022 provide new powers for the Australian Human Rights Commission (AHRC) to inquire into patterns of discrimination ('systemic unlawful discrimination') and improved protection from 'victimisation', to prevent unfair treatment of people involved in making a complaint of discrimination.

Concurrent review of the ADA with the review of the *Disability Discrimination Act 1992 (DDA)(Cth)* presents a valuable opportunity to modernise and harmonise the ADA with the DDA and ensure provisions are consistent and coherent.

To achieve systemic reform, BCA advocates for the alignment of Commonwealth and State/Territory anti-discrimination legislation to reduce confusion, avoid gaps and contradictions, and enhance compliance across jurisdictions.

3. Blind Citizens Australia's submission

3.1 Protected attributes

3.1.1 Definition of disability

BCA agrees that the words used to define disability in the current ADA are outdated and recommends modernising the language in line with more contemporary social and human rights models such as that provided by the *United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)*. Modernisation of the definition of disability is a priority discussion topic for the DDA review and seeks to ensure the legal definition of disability is clear, and appropriately broad but reframed to reflect modern terminology. BCA recommends that the ADA utilise the revised DDA definition to support consistency.

Recommendation 1: Update the ADA to modernise language and reflect contemporary understandings of disability, including those specific to blindness and vision impairment, and align with the revised DDA definition.

3.1.2 Intersectionality

BCA agrees that the ADA should protect against “intersectional discrimination” as people can experience discrimination based on more than one attribute, or a combination of protected attributes. Intersectionality is discussed at length in the *Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission Report)* and consultation with our members has indicated that individuals can be uncertain about the pathway of lodging a complaint when they experience multiple instances of discrimination across different attributes.

Recommendation 2: Recognise intersectionality in the ADA and prohibit unlawful conduct that is based on more than one, or a combination of, protected attributes.

3.1.3 Relative or associate

BCA welcomes the suggestion to include in the ADA coverage of associates (namely parents) with disability who support children with disability and associates with disability who care or support children who do not have a disability. Many parents who are blind or vision impaired have experienced clear discrimination when trying to access materials in accessible formats such as school newsletters, student reports, permission slips, information on noticeboards and all other printed material supplied to parents. BCA members have noted that they have experienced complete disregard and, at times, hostility to the provision of accommodations to facilitate a parent's use of facilities, such as providing verbal information as to where the child's school bag is hung, and arranging an alternative pick up point. Many note that they feel like their child is experiencing a double disadvantage.²

Recommendation 3: Extend the ADA to include provision for an attribute which protects against discrimination based on being a relative or associate of someone with any other protected attribute.

3.1.4 Assistance Animals

BCA agrees with submissions by Vision Australia and Guide Dogs NSW/ACT to modernise provisions for assistance animals and ensure alignment to the Australian Government's *National Principles for Regulation of Assistance Animals* (currently under consideration).

BCA supports amendment to the ADA to align the definition of assistance animal with that of the DDA, allow a person with any disability covered by the ADA to have or be accompanied by an assistance animal, and to include a requirement in the definition of assistance animal that the animal must be trained by a nationally or internationally accredited training organisation.

People who are blind or vision impaired who use an assistance animal (dog guide) for mobility assistance often experience misunderstanding and discrimination when seeking to access premises including hotels, cafes and restaurants, or use with on-demand transport services such as taxi and ride share. BCA routinely receives requests for advocacy support regarding dog guide refusal. The following case study demonstrates prevailing myths and patronising attitudes regarding dog guide training and their handling by people who are blind or vision impaired.

“A young man, when travelling with his dog guide, was denied access to the upper deck on a double decker sight-seeing bus run by . After complaining he was told

that this access denial was due to company policy and Health and Safety regulations. Two reasons that were given to him for the denial were that other passengers may be frightened of the dog, and the dog could jump out of the bus through the large open gap on the top deck. He was also told that he should consider himself to be fortunate to be allowed on the bus at all with his dog.”

Recommendation 4: Modernise inclusion and reference to Assistance Animals in the ADA.

3.2 Discrimination

Pervasive and often subconscious attitudes continue to exist regarding people who are blind or vision impaired. Such attitudes impact on the effective and genuine implementation of rights which people who are blind or vision impaired are often prevented from exercising without considerable advocacy and emotional stress³.

3.2.1 Testing for discrimination

BCA agrees that it can be hard to differentiate between direct and indirect discrimination, and a single incident of discrimination can constitute both forms. BCA agrees that use of a comparator test is overly complex and fails to reflect the lived experience of discrimination. Determining discrimination based on a comparator – who may be a real or conceived person – can be unnecessarily problematic for both people with disability and the court system. The use of a comparator does not consider the accumulated disadvantage associated with disability, such as lower educational and employment outcomes and higher rates of poverty and social exclusion, which are harder to build into a comparator system.

The Australian Human Rights Commission (AHRC)⁴ identifies reforms to simplify the test of discrimination by removing the requirement for a comparator in favour of a detriment test, and the Disability Royal Commission Final Report recommends reform to the legal test for direct discrimination under the DDA to adopt an unfavourable treatment approach - considered more appropriate and accessible for people with disability. The UNCRPD includes a single definition of discrimination⁵ and tests whether a person’s human rights can be ‘recognised, enjoyed and exercised, on an equal basis with others. This definition appears to align more closely to a detriment test of disability discrimination which considers how a person’s rights have been impacted.

Recommendation 5: Incorporate use of the unfavourable treatment approach in place of a comparator test for discrimination in the ADA.

3.2.3. Positive duties

BCA agrees to the incorporation of clear and enforceable positive duties to provide adjustments (accommodations) for people with disability and prevent discrimination. As indicated in the Consultation Paper, parties to the UNCRPD⁶, including Australia, must take steps to ensure that “reasonable accommodation” is provided to people with disability, and as stated by the AHRC⁷, the provision for reasonable adjustment is based on advancing substantive equality.

Positive duties can help to prevent discrimination and reduce the burden of lodging individual complaints. For people with disability who experience discrimination, particularly indirect discrimination, collecting evidence and meeting the burden of proof requirements can be difficult and can deter people from progressing with a complaint. The Disability Royal Commission Report supported shifting the burden of proof from the claimant to the respondent in its recommendations to reform the DDA and reduce procedural barriers for people with disability.

Feedback from our members indicates that a complaint-driven discrimination model alone is insufficient, as it does not incentivise inclusive practices and poses significant barriers for individuals including those who are blind or vision impaired due to its complexity, power imbalance, cost, and the uncertainty of achieving a satisfactory outcome.

BCA do not believe that a person with a protected attribute should first have to request an adjustment, before the obligation to provide one arises. As noted in the Consultation Paper, introduction of a separate duty to provide adjustments provides that a failure to provide adjustments can itself be unlawful discrimination. Examples of adjustments or accommodations for people who are blind or vision impaired include installing audio announcements in a lift, providing screen-reading software (e.g. JAWS) or screen magnification tools (e.g. ZoomText) or the option for mortgage documents in accessible formats such as braille.

Imposing enforceable positive duties, supported by relevant compliance powers and processes, is in keeping with legislation in other jurisdictions, is supported by the Disability Royal Commission Report and consistent with Australia’s international obligations.

Standards, such as those established under the DDA, play a critical role in clarifying positive duties to prevent discrimination of people with disability. The standards provide specific, actionable guidelines that translate broad anti-discrimination principles into practical obligations and measurable requirements for duty holders (e.g. organisations, businesses and governments). For example, the

Disability Standards for Accessible Public Transport 2002 require transport providers to use tactile paving and audio announcements (among other things) to provide accessibility for blind and vision impaired people. The standards also include timelines and compliance mechanisms to ensure organisations take action. In introducing positive duties into the ADA, BCA recommends the Commission consider mechanisms (such as standards) by which to support implementation, monitoring and compliance.

Recommendation 6: Establish a standalone positive duty in the ADA to require duty holders to provide adjustment for people with disability and prevent discrimination.

3.3 Protected areas and exceptions

3.3.1 Work

As noted in the Consultation Paper it's unclear if the ADA covers unpaid workers and volunteers. Many people who are blind or vision impaired rely on volunteer work to build up the necessary skills and work experience to gain paid work. Leaving such a cohort of people excluded from protections against unlawful discrimination is unacceptable. BCA is aware of many instances where volunteering opportunities have been denied to a person who is blind or vision impaired due to perceived risks around occupational health and safety – despite research concluding that people with disability are significantly less likely to have a workplace accident⁸ – or presumptions about how the volunteer will complete the tasks associated with a position.⁹

BCA agrees the ADA should have a different definition of who is responsible for work discrimination with a focus on whether someone has been discriminated against at work, and not whether they have a particular employment relationship. This would help to overcome gaps in protection where individuals who experience discrimination may not be covered because their work arrangement may not fit traditional definitions and focus instead on the experience of discrimination itself.

Recommendation 7: Expand the definition of employment in the ADA to include protection of voluntary and unpaid workers and shift focus away from particular employment relationships.

The labour force participation rate for people with disability in Australia is only 53% compared to 84% of people without a disability¹⁰. Over 575,000 Australians are blind or vision impaired, representing a significant portion of those impacted by inaccessible products, services, and workplaces¹¹.

The ADA currently allows some duty holders to discriminate against someone based on disability or carer's responsibilities if they can't carry out the "inherent requirements" of the job. Discrimination is also allowed if: someone needs a special arrangement to help them meet those job requirements, and it would cause the duty holder "unjustifiable hardship" to provide it.

BCA supports amendment of the ADA in relation to the Inherent Requirements exemption, in line with recommendations from the Disability Royal Commission Report whereby employers have a duty to make accommodations to enable a person to do their job and that discrimination only be allowed if the person still couldn't meet the job requirements despite the accommodations and it is reasonable, proportionate and justifiable. Furthermore, BCA agrees with Vision Australia that additional factors to be taken into account should be: (a) the nature and extent of any accommodations made; and (b) the extent of consultation with any person with disability concerned.

The barriers to employment for people who are blind or vision impaired remain unacceptably high. In 2021, the publication of Ernst & Young's decade-long survey of 1,000 employers revealed that 92 per cent of people involved in recruitment had concerns about hiring someone who was blind or vision impaired. Concerns included workplace health and safety, expense of workplace accommodations, productivity and transport.¹²

A 2011 PWC report estimated that increasing the employment of people with disability could add almost \$50billion or 1.4% to Australia's Gross Domestic Product (GDP) by 2050¹³. Research by the International Labor Organisation (ILO) showed that economies lose up to 7% of their GDP when people with disability are excluded from the workforce due to inaccessible environments (either physical or digital). The ADA should reflect today's work environments and address inaccessibility, digital exclusion, and systemic bias as forms of discrimination within modern work practices and processes including recruitment.

Recommendation 8: Amend the ADA in relation to the Inherent Requirements exemption in line with recommendations from the Disability Royal Commission Report.

3.3.2 Education

BCA shares concerns that existing exceptions under the ADA permitting discrimination against people with disability are outdated, unjustified and undermine inclusivity. Also, that they apply unconditionally, without requiring duty holders to justify their conduct. BCA does not support the ADA exception for private educational authorities to discriminate against students with disability and recommends the exception be removed.

Reports by UNESCO indicate that children with disability are among the most excluded from education systems globally¹⁴ and illiteracy is higher in children with visual impairments, multiple or mental disorders compared to children with motor disability.¹⁵ The World Blind Union substantiates that “children with visual disability are among the most excluded group from the education system.”¹⁶ UNCRPD states that students who are blind, or vision impaired must not be excluded from education based on disability and should receive education on an equal basis to peers in their communities.¹⁷ Australian Institute of Health and Welfare figures reinforce the persistent gap in educational attainment between people with and without disability. As of 2018, only 34% of people aged 20 and over with disability had completed Year 12, compared to 66% of people without disability.¹⁸

Recommendation 9: Remove exceptions for private educational authorities in education to discriminate against students and prospective students with disability.

3.3.3 Goods and services

BCA agrees for the ADA to be amended to deal with discrimination in the provision of goods and services, prohibiting discrimination in the way the good or service is provided. For example, if a self service ticket machine lacks accessibility features such as tactile buttons or audio guidance and relies solely on a visual interface it excludes people who are blind or vision impaired.

The ADA should reflect the scope and language of the equivalent section of the DDA (S.24) with particular attention to: (a) to add the phrase ‘terms and condition’ to replace the singular word ‘terms’; and (b) to expand the definition of ‘services’ in relation to ‘the use of facilities’ to include the terms and conditions on which the facilities can be used, and the manner in which they are made available.

Recommendation 10: Expand the definition and coverage of the protected area of “the provision of goods and services”.

3.3.4 Digital goods and services

BCA recommends amendment of the ADA to include digital goods and services as a protected area.

A significant and increasing barrier to the inclusion of Australians who are blind or vision impaired is the development and use of digital goods and services and technology which does not take into account our needs. People who are blind or vision impaired can be, and are, competent users of many forms of technology yet lack of application of universal design principles or compliance with accessibility standards in the design and delivery of products and services renders technology

inaccessible, irrespective of the user's skills or equipment. Vendors and providers of essential services are increasingly requiring people to utilise digital goods and services to undertake daily living tasks such as book medical appointments, apply for employment or housing, use automated/self-service terminals, or purchase products.

Accessibility of digital goods and services for people who are blind or vision impaired depends on whether the digital service is navigable, readable, and usable and there are many ways technology can fail to be inclusive. For example, touchscreens without tactile features, buttons which are not labelled, verification requiring CAPTCHA, graphics and photos without image descriptions, videos without audio description, and webpages where elements are not labelled. Highlighting the inaccessibility of government websites, smartphone applications and documents is one of BCA's most often repeated tasks. If the visual elements of a critical information video are not described, people who are blind or vision impaired are denied access to information in a whole range of areas, including parenting, travel, safety, emergency warnings, contact information and products.

The UNCRPD explicitly refers to the importance of accessible products and services. Article 4 of the CRPD promotes universal design in the development, availability and use of goods, services, and facilities to enhance accessibility, as well as support for research and development for new technologies that benefit people with disability, and to ensure affordable access to these devices and technologies. Similarly, Article 9 states that governments must ensure that people with disability have equal access to the physical environment, transportation, and information and communications technologies¹⁹. The *Web Content Accessibility Guidelines (WCAG) 2.2* mandates that digital technologies meet internationally recognised accessibility standards, ensuring usability by people who are blind or vision impaired, including compatibility with screen readers.

As noted by Vision Australia, there are few effective mechanisms for reporting and redressing accessibility failures in digital technologies and online services. Many examples of inaccessibility persist despite the existence of anti-discrimination legislation in all Australian jurisdictions. This highlights the need to use mechanisms which reinforce that discrimination in digital environments is unlawful, enhance consequences for non-compliance and require proactive action on digital accessibility (positive duty).

Recommendation 11: Elevate the status of digital goods and services in the ADA by including it as a protected area.

3.3.5 Accommodation

BCA agrees that coverage of this area should more clearly reflect the rights of people with disability and incorporate relevant protections to improve alignment with other discrimination laws as outlined in the Consultation Paper.

BCA supports (a) an amendment which allows a person with disability to make reasonable alterations to accommodation if certain conditions are met and (b) an amendment to make it unlawful to refuse accommodation to a person with disability because they have an assistance animal.

Recommendation 12: Improve protection of disability rights in accommodation in the ADA.

3.3.6 Sport

Whilst the inclusion of people with disability within the community has increased and many clubs do make a concerted effort, many people who are blind or vision impaired continue to be treated less equitably in their pursuit of sport and recreation. BCA agrees that the ADA should recognise Sport as a distinct protected area in line with the approach taken in Victoria and the DDA.

Mainstream activities can be impacted for children with disability even at an early age, as the following example illustrates: “When my son was about 2 1/2, we joined a swim class for mothers and tots. It was here I experienced an unpleasant situation. The staff would not allow me to stay in the water with my son while other mums stayed out of the pool while the little ones were in the water with support jackets. The instructor felt if I were to stay in the water with my son, (for his security), others’ tots would want the same. We really had to leave the program. That was hard. To this day people will stare at my son. For the most part I’ve dealt with that but will admit it sometimes hurts”.

Recommendation 13: Include Sport as an additional protected area in the ADA.

3.3.7 Voluntary Bodies

Like other members of the community, people who are blind and vision impaired participate with voluntary associations. BCA agrees that given that many voluntary bodies receive substantial public funding and benefits and provide an array of important community services, exception under the ADA is not appropriate.

Recommendation 14: Do not provide an exception for voluntary bodies in the ADA.

3.4 Vilification and harassment

Currently, the ADA doesn't protect against vilification based on disability as well as other protected attributes. BCA agrees that more attributes should be protected from vilification, recognising that people from other groups can experience hate-based conduct. BCA supports the suggestion that the same list of attributes could be used for both discrimination and vilification and agrees that the ADA should prohibit intersectional vilification. As stated in the Consultation Paper, aligning the areas and attributes could make it easier to understand when harassment and discrimination were unlawful, and could promote consistency across the ADA.

Findings from the Disability Royal Commission speak to the need for strengthened protections for people with disability. It is noted that while the DDA does not currently have a vilification provision, the Disability Royal Commission Report includes a similar recommendation and consideration of making it illegal to harass, threaten, or spread hate about people with disability, extending protection to online spaces (such as social media) and including one-off or isolated instances of harassment. BCA posits the ADA should be similarly amended.

Recommendation 15: Amend the ADA to prohibit vilification based on the protected attribute of disability.

4. Summary of recommendations

1. Update the ADA to modernise language and reflect contemporary understandings of disability, including those specific to blindness and vision impairment, and align with the revised DDA definition.
2. Recognise intersectionality in the ADA and prohibit unlawful conduct that is based on more than one, or a combination of, protected attributes.
3. Extend the ADA to include provision for an attribute which protects against discrimination based on being a relative or associate of someone with any other protected attribute.
4. Modernise inclusion and reference to Assistance Animals in the ADA.
5. Incorporate use of the unfavourable treatment approach in place of a comparator test for discrimination in the ADA.

6. Establish a standalone positive duty in the ADA to require duty holders to provide adjustment for people with disability and prevent discrimination.
7. Expand the definition of employment in the ADA to include protection of voluntary and unpaid workers and shift focus away from particular employment relationships.
8. Amend the ADA in relation to the Inherent Requirements exemption, in line with recommendations from the Disability Royal Commission Report.
9. Remove exceptions for private educational authorities in education to discriminate against students and prospective students with disability.
- 10.** Expand the definition and coverage of the protected area of “the provision of goods and services”.
11. Elevate the status of digital goods and services in the ADA by including it as a protected area.
12. Improve protection of disability rights in accommodation in the ADA.
13. Include Sport as an additional protected area in the ADA.
14. Do not provide an exception for voluntary bodies in the ADA.
15. Amend the ADA to prohibit vilification based on the protected attribute of disability.

¹ Vision2020. Eye health in Australia. <http://www.visioninitiative.org.au/common-eye-conditions/eye-health-in-australia>

² Blind Citizens Australia Submission (2012). Response to the consolidation of anti-discrimination laws.

³ Blind Citizens Australia (2021) Response to Issues Paper – Rights and Attitudes Towards People with Disabilities Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disabilities

⁴ Australian Human Rights Commission (2021) Free & Equal: A reform agenda for federal discrimination laws.

⁵ United Nations. (2006). Convention on the Rights of Persons with Disabilities, Article 2.

⁶ Convention on the Rights of Persons with Disabilities, 2515 UNTS 3 (entered into force 3 May 2008) art 2 definition of “reasonable accommodation”, arts 5, 14, 24, 27.

⁷ Australian Human Rights Commission (2021) Free & Equal: A reform agenda for federal discrimination laws.

⁸ Graffam, J. et al., 2002a, “Employer benefits and costs of employing a person with a disability”, *Journal of Vocational Rehabilitation* 17, pp.251-263.

⁹ Blind Citizens Australia. (2023). Employment Policy.

¹⁰ Australian Bureau of Statistics. (2024). Disability, Ageing and Carers, Australia: Summary of Findings.

¹¹ Graffam, J. et al., (2002a), ‘Employer benefits and costs of employing a person with a disability’, *Journal of Vocational Rehabilitation* 17, pp.251-263.

¹² Blind Citizens Australia. (2023). Employment Policy.

¹³ Price Waterhouse Coopers. (2011). Achieving Better Outcomes for People with a Disability and their Families. Disability expectations - Investing in a better life, a stronger Australia.

¹⁴ UNESCO. (2020). Global Education Monitoring Report: Inclusion and Education.

¹⁵ UNESCO. International Institute for Educational Planning. Disability inclusive education and learning portal.

¹⁶ Blind Citizens Australia. (2021). Education Policy.

¹⁷ Article 24 Education, clause 2 UNCRPD; Disability Standards in Education 2005 4.3.

¹⁸ Australian Institute of Health and Welfare. (2024). People with disability in Australia Educational Attainment (web report)

¹⁹ United Nations. (2006). Convention on the Rights of Persons with Disabilities.