

OCTOBER 2025

Australian Government Disability Discrimination Act 1992 Review

Submission by Principal Commissioner Luke Twyford

Updating understandings of disability and disability discrimination

Shifting away from a deficit-based definition of disability

During the 2021-22 review of the *Anti-Discrimination Act 1991* (Qld), stakeholders commented on the negative undertones and 'deficit based' descriptions in current terminology including '*malfunction*', '*malformation*', and '*disfigurement*'; it is noted that Queensland and Western Australia are the remaining jurisdictions in Australia that use the term 'impairment'.¹ The Queensland Human Rights Commission, and Law Reform Commission of Western Australia, recommended using 'disability' to reflect community understandings and for the purposes of legislative consistency. This has not yet been realised in Queensland. Recognising that discrimination can occur at the intersection of disability, age, gender, culture, and care experience, the Act should ensure that no person is defined or disadvantaged because of disability or any other intersecting characteristic.

Amending the definition of direct discrimination (Recommendation 4.23)

Comparator test

Using the detriment test instead of the comparator test has been recommended in multiple reviews and inquiries over several decades into Australian anti-discrimination law. This includes recent reviews and inquiries in Queensland and Western Australia with the detriment test already in operation in other states and territories (Victoria (Equal Opportunity Act 2010 (Vic)) and the Australian Capital Territory (Discrimination Act 1991 (ACT)).

Burden of Proof

Recent reviews of discrimination law in Queensland and Western Australia have led to recommendations for respective anti-discrimination Acts to adopt a burden of proof for direct discrimination similar to the burden of proof in the *Fair Work Act 2009*. Based on recommendation made in the *Disability Royal Commission Final Report* in 2023,² this change would require *an alleged discriminator* to bear the burden of proof that they have not discriminated against *the aggrieved person* on the basis of their disability. Shifting the burden of proof to the *alleged discriminator* reduces the administrative and emotional challenge from the individual who has been aggrieved.

Amending the definition of indirect discrimination

(Recommendation 4.24)

Recent reviews of Western Australian and Queensland anti-discrimination legislation have also recommended the inclusion of a non-exhaustive list of factors to assist in consideration of what is 'reasonable'. The reviews concluded that a list would create clearer guidance about what constitutes a reasonable requirement or condition. Additional guidance would support accurate interpretation and application of the legislation.

The Social Model of Disability

Youth Advocate, Lily, spoke at the Queensland Family and Child Commission 2025 Youth Summit calling for a shift from the medical to social model of disability. Our 2025 report, *Changing the system, not the student*, was led by Lily. This insights paper provides practical recommendations aimed at building a more inclusive and equitable education system. Lily advocates for recognition of the lived experiences and insights of people with disability, over the medical model which frames disability as a 'problem' or deficit within an individual. She advocates for society to

¹ Australian Government (2025). *Disability Discrimination Act 1992 Review* https://consultations.ag.gov.au/rights-and-protections/dda-issues-paper/user_uploads/dda-review-issues-paper.pdf

² Australian Government. (2023). *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* <https://disability.royalcommission.gov.au/publications/final-report>

better accommodate people with disability rather than expecting people with disability to adapt to society. To do this requires the removal of institutional, communication, attitudinal, and environmental barriers in society such as denying reasonable adjustments.³ The paper also highlighted the concept of ‘*school can’t*’ instead of ‘*school refusal*’ – describing situations where a young person is unable to attend school due to severe levels of distress. The term shifts the blame from young people to the underlying barriers they face.

Stronger protections to stop discrimination before it happens

Positive Duty for duty holders to eliminate discrimination

(Recommendations 4.27 and 4.28)

The Queensland Law Society, in their submission to the 2021-2022 review of the Queensland’s *Anti-Discrimination Act 1991*, highlighted that although children were able to make a complaint under the current Act, they very rarely did so and not without assistance from a parent. Young people who do not have the assistance or support of a parent or caregiver to facilitate their complaint are unlikely to raise the issue at the time the discrimination occurs, and responses to discrimination for young people with disability remains reactive and delayed.⁴

Complaints processes should be informed by young people and be child-friendly in the design and operation.⁵ The introduction of ‘positive duty’ for all duty holders under the Act hopes to shift energy to proactive prevention of discrimination.

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

Strengthening the duty to provide adjustments

(Recommendations 4.25 and 4.26)

Currently duty holders must make ‘reasonable adjustments’ for people with disability so that they can take part in activities like employment or going to school. The insights paper, *Changing the system, not the student*, speaks to the structural barriers experienced by young people in accessing education or employment, and suggests that more can be done to provide spaces that are accessible and supportive of young people with disability.

Amendment in the Act from ‘*reasonable* adjustments’ to ‘adjustments’ would support proactive engagement in removing structural or systemic barriers to engagement for people with disability.

Early Education and Care

Education, including early childhood education, provides opportunity for parents and caregivers to access secondary system networks and seek advice and assistance should their child be experiencing challenges or

³ Queensland Family and Child Commission (2025). *Changing the system, not the student* <https://www.qfcc.qld.gov.au/sites/default/files/2025-09/Paper-Changing-the-system-not-the-student.pdf>

⁴ Queensland Law Society (2022). *Submission to the Review of Queensland’s Anti-Discrimination Act 1991* [qls.com.au/content-collections/submissions/2022/review-of-queensland-s-anti-discrimination-act-1991](https://www.qfcc.qld.gov.au/sites/default/files/2025-08/Child-safety-commission-of-inquiry-complaints-Commissioner.pdf) -

⁵ Queensland Family and Child Commission (2025). *Submission to the Commission of Inquiry into child safety regarding complaints processes* <https://www.qfcc.qld.gov.au/sites/default/files/2025-08/Child-safety-commission-of-inquiry-complaints-Commissioner.pdf>

barriers to their learning.⁶ Early identification and assessment can have significant impact on a young person's school and education experiences and promote proactive engagement with support needs throughout their life.

This cannot be undertaken effectively if a child is regularly excluded. The 2025 report, *Include me, don't exclude me*, describes the experiences of children and young people who have been suspended or excluded from Queensland state schools.⁷ Critically, the report highlights that First Nations students and students living with a disability experience student disciplinary absences (SDA) at twice the rate of all students, and students living in care are suspended or excluded at three times the rate for all students. The intersection for these students further increases likelihood of their exclusion: 33 per cent of First Nations students living with a disability who are placed in out-of-home care received an SDA between 2018-2023. The disproportionality of SDAs for children experiencing vulnerability raises the concern of direct, or indirect, discrimination in the schooling system and underscores the need to recognise both the compounding effects of intersectionality and the impacts of exclusions in early life.

Definition of and considerations for unjustifiable hardship

(Recommendation 4.32)

The Commission's *Strategic Plan 2022-2026* prioritises identifying opportunities for children and families to influence decisions that affect their lives.⁸ Children with disability may face additional developmental and communication barriers due to cognitive or physical constraints. Proactive action should be engaged to ensure accessible and appropriate consultation is undertaken to seek the life experiences, perspectives, and recommendations from children and young people living with disability when developing strategies, policies, or practices to address need and reduce hardship.

Exclusionary discipline and suspension

(Recommendation 7.2)

Impact on academic performance for vulnerable students

The report, published by the Office of the Aboriginal and Torres Strait Islander Commissioner, raises concern regarding overuse of school disciplinary absences (SDA) and their immediate and longer-term impact on children and young people. The report highlights the need for alternative pathways to ensure children can continue their education, stay connected with school and broader services.⁹ In 2023, in every year level, students in out-of-home care (OOHC) were less likely to have a 'proficiency level of developing, strong, or exceeding result' for example, writing and numeracy, compared with non-OOHC students.¹⁰

Recent reports noted that in Queensland, students with disability were noted in Term 2 – 2025 to be over-represented in all categories of SDAs (short suspensions (64%); long suspensions (57%); and exclusions (25%)). This was consistent to other terms in the 2024-25 financial year. In Term 4- 2024, students with disability made up 47 per cent of total school enrolment cancellations.¹¹

⁶ Queensland Family and Child Commission (2023). *Lessons from the life-story timelines of 30 Queensland children who have died* <https://www.qfcc.qld.gov.au/sites/default/files/2023-09/Lessons%20from%20the%20life-story%20timelines%20of%2030%20Queensland%20children%20who%20have%20died.pdf>

⁷ Queensland Family and Child Commission (2025). *Include me, don't exclude me*. [Include me, don't exclude me report](#)

⁸ Queensland Family and Child Commission (2025). *Strategic Plan 2022-2026*. [Strategic Plan 2022-2026](#)

⁹ Queensland Family and Child Commission (2024). *Annual Report 2023-2024* <https://www.qfcc.qld.gov.au/sites/default/files/2024-09/QFCC%20Annual%20Report%202023-2024.pdf>

¹⁰ Queensland Family and Child Commission (2024). *Annual Report 2023-2024* <https://www.qfcc.qld.gov.au/sites/default/files/2024-09/QFCC%20Annual%20Report%202023-2024.pdf>

¹¹ Queensland Government (2025). *Question on Notice No. 903 – asked on 26 August 2025* [903-2025.pdf](#)

Lifetime impacts

Negative experiences in schooling can contribute to a lifetime of disadvantage, ranging from reduced employment opportunities to social exclusion and poorer physical health indicators. Students and parents have reported that many schools had only taken minimal steps towards specific adjustments to their sensory environment, education aid, curriculum and assessment procedures.¹²

Changing the system, not the student identified that 85 per cent of students with autism experienced difficulty at school with social inclusion, learning and communication, with only 58 per cent of parents and carers reporting their child was provided with an individual learning plan. Parents reported only limited numbers of educators who were professionally equipped to support children with autism. Ninety-five per cent of parents and carers also believe school staff required additional training to better understand ADHD. Thirty-one per cent of parents said their child was frequently bullied.¹³

This data is supported by specific insights provided by neurodivergent children and young people regarding a lack of understanding and support from educators. Some felt they were unfairly punished for being unable to conform to expectations which did not accommodate their needs. Youth Advocate Lily made four recommendations in the report including improving professional development for educators, actively listen to neurodivergent students, and integrating neurodiversity into school culture, such as through hosting campaigns and events.¹⁴

Home Education

In Queensland, families with multiple school-aged children, who are supporting a child with a health issue or disability, are more likely to adopt a mixed approach between home education and traditional school. For families of children who have special needs, this approach is becoming more common so that their unique requirements or specific learning challenges can be addressed. Other reported drivers for increased rates of homeschooling in Queensland include concerns about negative influences on their child, including bullying and racism.¹⁵

For parents and caregivers who take on responsibility for their child's education because their support needs were unable to be addressed or assisted in mainstream school, there is an impact on the family unit, particularly if the reasons for homeschooling include the need for adjustments in the school setting, or the limited accessibility for neurodivergent children to engage safely in the classroom. Opportunities for additional supports are limited where parents take on responsibility for their child's learning.¹⁶ Children and young people with disability should be supported to remain engaged in mainstream education and encouraged to meet their educational milestones.

Improving access to justice

Children and young people within the justice system

In the *Queensland Child Death Review Board Annual Report 2023-24*, the Board noted that within the youth justice system there is often a lack of targeted intervention for children with complex needs. Children and young people with diagnosed (or suspected) foetal alcohol spectrum disorder (FASD) are over-represented in statutory settings; their needs can often be overlooked in community settings, symptoms may be inaccurately reported as other learning, emotional, or behavioural presentations, and a formal diagnosis and appropriately care planning not

¹² Queensland Family and Child Commission (2025). *Changing the system, not the student* <https://www.qfcc.qld.gov.au/sites/default/files/2025-09/Paper-Changing-the-system-not-the-student.pdf>

¹³ Queensland Family and Child Commission (2025). *Changing the system, not the student* <https://www.qfcc.qld.gov.au/sites/default/files/2025-09/Paper-Changing-the-system-not-the-student.pdf>

¹⁴ Queensland Family and Child Commission (2025). *Changing the system, not the student* <https://www.qfcc.qld.gov.au/sites/default/files/2025-09/Paper-Changing-the-system-not-the-student.pdf>

¹⁵ Queensland Family and Child Commission (2024). *Regulation of Home Education* https://www.qfcc.qld.gov.au/sites/default/files/2024-12/QFCC%20Regulation%20of%20Home%20Education%20in%20Queensland%20Insights%20Paper_0.pdf

¹⁶ Queensland Family and Child Commission (2024). *Regulation of Home Education* https://www.qfcc.qld.gov.au/sites/default/files/2024-12/QFCC%20Regulation%20of%20Home%20Education%20in%20Queensland%20Insights%20Paper_0.pdf

realised.¹⁷ For these children, often their first experience of screening, assessment and diagnosis occurs only after they have entered the youth justice system, typically via their detention. Young people in contact with the youth justice system require a health response to appropriately identify their needs in the context of their behaviour. Early identification, assessment and diagnosis support the statutory systems to build a more complete understanding of the disability support needs for children in care or involved with youth justice.

The Board noted in instances of child deaths there were occasions where this lack of understanding negatively impacted a child's physical health, safety and over-all wellbeing.

Conclusion

The Commission also supports efforts to modernise the Act's frameworks for disability standards, action plans and accessibility to ensure the legislation remains responsive to future needs and technologies. In doing so, the Act should recognise the intersectional nature of discrimination, particularly as it affects children and young people with disability across care, education, justice and health systems. The changes must reflect contemporary understandings and lived experiences of all people including children and young people.

¹⁷ Child Death Review Board (2024). *Annual Report 2023-24* <https://www.qfcc.qld.gov.au/sites/default/files/2025-02/Child%20Death%20Review%20Board%20Annual%20Report%202023-24.pdf>