

Vision Australia Submission: Queensland Anti-Discrimination Bill 2024 (Exposure Draft)

Submission to: Queensland Department of Justice and Attorney-General

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# Introduction

Vision Australia is providing some comments on the Queensland Anti-Discrimination Bill 2024 Exposure Draft (**the Draft Bill**) following the submission that we made during the initial consultation reviewing the current Act in 2022. We read with keen interest the Building Belonging report that resulted from this consultation, and we are very encouraged by the comprehensive incorporation of the Report’s recommendations into the Draft Bill.

Our comments on the Draft Bill draw attention to some issues that we believe are worthy of further consideration, and we also provide thoughts on selected questions from the three Consultation Papers that are within the scope of our expertise and experience.

In preparing this submission we are mindful of the relevance of the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**the DRC**). The report articulates an inspiring vision of an Australia that is truly inclusive of people with disability:

“a future where people with disability live free from violence, abuse, neglect and exploitation; human rights are protected; and individuals live with dignity, equality and respect, can take risks, and develop and fulfil their potential.”

Fundamental to the realisation of this vision is the incorporation into all areas of society of a positive duty to eliminate discrimination. The Commissioners explain:

“Achieving substantive equality requires more than making adjustments for one person. Positive action is required to remove systemic barriers. It means shifting the focus from a reactive model to one of preventing and eliminating systemic barriers for people with disability more broadly.”

The DRC’s Final Report includes considerable discussion leading to recommendations for legislative reform, including changes to the Disability Discrimination Act 1992 (**the DDA**). The Building Belonging report was released prior to the publication of the DRC’s Final Report, but we believe that it is nevertheless appropriate to consider the implications of relevant recommendations before the Draft Bill is finalised.

# Reasonable adjustments

Notwithstanding the widespread use in Australian legislation (both Commonwealth and State/Territory) of the term “reasonable adjustment”, Recommendation 4.25 of the DRC’s Final report is:

“The Disability Discrimination Act 1992 (Cth) should be amended by replacing all references to ‘reasonable adjustments’ with ‘adjustments’.”

The effect of this change would be to dispel the misconception that reasonableness is a separate requirement (or set of requirements) that an adjustment must meet as well as not imposing unjustifiable hardship.

We are awaiting the Commonwealth Government’s response to the DRC’s Final Report and, in particular, whether and to what extent it will support the changes to the DDA that the DRC recommends, but it is inevitable that Recommendation 4.25 and the other DDA-related recommendations will be discussed in more detail as consultations on the Final Report continue.

In this context we support further consideration being given to the DRC’s Final Report as part of the Draft Bill’s finalisation, including whether it is feasible to replace the phrase “reasonable accommodations” with “accommodations”.

# Assistance Animals

Since the passage of the DDA, the traditional use of assistance animals as Seeing Eye Dogs and Guide Dogs has been significantly expanded to alleviate the impact of disabilities in addition to blindness and vision impairment. Hearing assistance dogs, dementia dogs, diabetes dogs, and anxiety-relieving dogs have become much more widely used, and the range of disabilities that may benefit from the use of assistance animals is becoming broader.

Unfortunately the increasing use of assistance animals has not been supported by uniform and rigorous standards and accreditation. Regulatory approaches designed with the flexibility to accommodate the expanding use of assistance animals often fail to create certainty and set clear expectations about how assistance animals can be effectively and safely incorporated into key areas of public life and activity.

In our view, the Queensland Guide, Hearing and Assistance Dogs Act 2009 (the GHADA) is a model legislative approach in the area of assistance animals. As well as establishing clear and comprehensive access rights for assistance animal users, it emphasises the importance of appropriate training, accreditation and identification. In particular, the Identity Card mechanism established by Part 5 of the GHADA creates clear and consistent expectations for users of assistance animals and also for public transport and venue operators. The public can also have some confidence that any assistance animal they encounter has been trained according to objective measures by certified trainers.

It could be argued that the GHADA is too prescriptive, and does not fully reflect the contemporary variety in assistance animal training and usage. The Draft Bill, following the DDA, introduces a more flexible approach. The definition of assistance animal in Schedule 1 of the Draft Bill includes a requirement that an animal be trained to meet acceptable standards of hygiene and behaviour, but does not require accreditation or an identity card as in the GHADA (this is similar to the DDA approach, although S54a(1)(5) of the DDA allows a person to request evidence that a particular animal is an assistance animal and that it has been trained to meet acceptable hygiene and behaviuor standards). Thus, the Draft Bill would allow an assistance animal user to train the animal themselves if an accredited trainer is not available or appropriate to meet their individual needs.

As a national provider of Seeing Eye Dogs for people who are blind or have low vision, we have abundant anecdotal evidence that there is an increase in the number of tourism and accommodation venues, and taxi and rideshare drivers, refusing to accept bookings from people accompanied by assistance animals. In our view, at least part of the reason for this increase is that there is widespread confusion and uncertainty about what is and is not a legitimate assistance animal, and a lack of confidence that a particular assistance animal will necessarily behave appropriately. There are no clear guidelines on what it means in practice and in different contexts for an assistance animal to be trained to acceptable standards, and a proliferation of unregulated training methods only adds to this confusion and lack of clarity. We think it is more likely, for example, that a rideshare driver who does not know whether a dog will jump on and scratch the seats will simply decline the booking and risk the (usually minor) negative consequences, rather than trying to negotiate acceptable behaviours midway through the journey. Moreover, our experience is that comparatively few assistance animal users who are refused access pursue the matter by using available regulatory options, because of the time, energy and stress involved and the perception that any outcome will be temporary and insufficient at best.

We certainly support the legitimate use of assistance animals to alleviate the impact of a disability, and we are encouraged that the range of disabilities the effect of which can be alleviated by assistance animals is increasing through more research and innovation. However, we have observed a significant increase in the number of companion-style dogs that are being classified as assistance animals without the sufficient evidence base that the trained animal actually alleviates the impact of the person’ s disability. In addition, we do have serious concerns that users of assistance animals such as Seeing Eye Dogs will find it more difficult to assert their access rights if the need for greater guidance and standardisation remains unaddressed.

Accordingly, we strongly recommend that the Queensland Human Rights Commission be tasked with the expedited development of guidance on how the identity card mechanism in the GHADA will coexist with the more flexible approach in the new Anti-Discrimination Act, and also with the urgent development of guidance on how acceptable standards of hygiene and behaviour apply in different contexts.

# Timeframe for Dealing with Complaints

Section 125 of the Draft Bill states that the Commissioner must use “best endeavours” to finish dealing with a complaint within 12 months after it is made. Especially given that this is an aspirational goal, we believe that 12 months is much too long. From our extensive experience interacting with clients over many years, we know that a major deterrent to using complaints-based legislation is the often inordinate amount of time it takes for a complaint to progress through the system. Many people will simply not be prepared to wait 12 months to find out if their complaint can be resolved, or if it will be terminated without a satisfactory outcome. Individuals lodging complaints do not simply cast the complaint aside while it is being dealt with – it continues to have a real impact on their lives, especially if the alleged discrimination is ongoing, and it continues to cause stress and anxiety.

We think that the purposes of the new Act will be thwarted if 12 months is seen as an acceptable default timeframe for the resolution of complaints. Particularly in light of the inclusive vision articulated by the DRC in its Final Report, we believe that we must try to do better. We would therefore prefer this timeframe to be specified as either six or nine months.

# Questions from Consultation Paper: Affirmative Measures

## Q1. Do you agree with the proposed approach to the general requirements for affirmative measures?

We strongly support the approach to affirmative measures contained in the Draft Bill and, in particular, we believe that it is consistent with the vision of an inclusive society articulated in the DRC’s Final Report. We do believe, however, that the development of any affirmative measure must be done in close consultation with the group for whom it is intended to be of benefit, since they will be ideally placed to provide advice about best practices and identify any shortcomings in the proposed measure. If this requirement for consultation is not specifically included in the new Act, then it must be made clear through subsequent guidance developed by the Commission.

# Questions from Consultation Paper: Equality and Non-Discrimination for People with Disability

## Q1. Should the new legislation include: Option One: the current definition of disability in the Disability Discrimination Act; or Option Two: the updated definition of disability above, adapted from the definition of disability in the Disability Discrimination Act?

We support the inclusion of Option Two, because it retains the essential features of the DDA definition of “disability” but updates the language to reflect contemporary usage. If the relevant recommendations in the DRC’s Final Report are adopted, then it is likely that the DDA will be updated in the foreseeable future, which will provide an opportunity for modernising the language.

## Q3. Do you agree with the proposed approach to assistance animals, carer and disability aids?

## Q4. Do you have any feedback about the definitions of: assistance animal, carer or disability aid?

We have discussed our concerns in relation to assistance animals above. It will be essential for the Commission to clarify the operation of the new Act in conjunction with the GHADA, and also to develop guidance that will provide users, trainers and the public with clarity and confidence about the effective and safe incorporation of assistance animals into key areas of public life. It seems likely that the use of assistance animals will increase, and if the current confusion and uncertainty is not addressed then we fear that it will become harder and less predictable for users to participate in the community with their assistance animals.

We do not have specific comments in relation to carer or disability aid, and support the proposed approach and definition.

## Q5. Do you agree with the proposed approach to providing for reasonable accommodation?

## Q6. Are the factors for determining whether an accommodation is reasonable appropriate?

We agree with the proposed approach, noting our previous recommendation that consideration be given to removing the word “reasonable” as suggested in relation to the DDA by the DRC in its Final Report. The primary focus should be on whether providing an accommodation would impose unjustifiable hardship, and debates about whether a particular accommodation is “necessary” should be minimised as far as possible to avoid creating distractions and loopholes, to the ultimate disadvantage of people with disability.

## Q7. Do you agree with the proposed approach to the general requirements for affirmative measures?

As we noted previously, we agree with the general requirements for affirmative measures, but recommend that guidance be developed to encourage consultation and co-design with the groups for whom the measures are intended.

# Questions from Consultation Paper: Exceptions for Religious Bodies

## Q2: Should the exception include examples to demonstrate that the exception does not permit discrimination against employees who are not involved in the teaching, observance or practice of a religion? If yes, what examples should be included?

As a general principle we support the inclusion of illustrative examples to clarify the meaning and intent of legislation. Not only do examples assist in clarifying difficult or unfamiliar concepts and promoting understanding, but they also reduce the risk of incorrect inconsistent or misinformed interpretation.

People with disability have often found the intersection between religion and disability to be problematic, and religious bodies may especially benefit from guidance on how to eliminate discrimination by promoting the objects of the legislation. It will therefore be useful to include examples of where a disability in and of itself is not a sufficient ground for refusing employment if the role is not related to the religious activities of the body concerned.

# About Vision Australia

Vision Australia is the largest national provider of services to people who are blind or have low vision in Australia. We are formed through the merger of several of Australia’s most respected and experienced blindness and low vision agencies, celebrating our 150th year of operation in 2017.

Our vision is that people who are blind or have low vision will increasingly be able to choose to participate fully in every facet of community life. To help realise this goal, we provide high-quality services to the community of people who are blind, have low vision or have a print disability, and their families.

Vision Australia service delivery areas include:

* Registered provider of specialist supports for the NDIS and My Aged Care Aids and Equipment;
* Assistive/Adaptive Technology training and support;
* Seeing Eye Dogs;
* National library services, early childhood and education services and Feelix Library for 0-7 year olds;
* Employment services;
* Production of alternate formats;
* Vision Australia Radio network including a national partnership with Radio for the Print Handicapped;
* NSW Spectacles Program; and
* Government advocacy and engagement.

We work collaboratively with governments, businesses and the community to eliminate the barriers our clients face in making life choices and including fully exercising their rights as Australian citizens.

Vision Australia has unrivalled knowledge and experience through constant interaction with clients and their families, of whom we provide services to more than 26,000 people each year, and also through the direct involvement of people who are blind or have low vision at all levels of our organisation.

Vision Australia is well placed to advise governments, business and the community on challenges faced by people who are blind or have low vision as well as they support they require to fully participating in community life.

We have a vibrant Client Reference Group, comprising of people with lived experience who are representing the voice and needs of clients of our organisation to the board and management.

Vision Australia is also a significant employer of people who are blind or have low vision, with 15% of total staff having vision impairment. Vision Australia also has a Memorandum of Understanding with, and provides funds to, Blind Citizens Australia, to strengthen the voice of the blind community.