##

Stand Up For Your Rights: Disability Discrimination Act 1992

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A guide to standing up for your rights.

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# About this guide

This guide provides information to help you use the “Disability Discrimination Act 1992” or the DDA to address barriers you have faced in participating in the community due to your blindness or low vision. It covers:

* What is the DDA?
* How the DDA works;
* What to consider when lodging a DDA complaint;
* Other Advocacy Strategies in Conjunction with a DDA Complaint;
* Lodging your complaint;
* Conciliation or settlement of your complaint; and
* Next steps if a DDA complaint does not result in a settlement.

## What is the DDA?

The Disability Discrimination Act 1992) or the DDA, is Commonwealth Law which makes it unlawful to discriminate against a person on the grounds of a disability in specific areas. The objects of the DDA include eliminating, as far as possible, discrimination against people with a disability, and promoting recognition and acceptance that people with a disability have the same fundamental rights as the rest of the community.

It covers areas including access to premises; accommodation; education; employment; the provision of goods, services and facilities; and the administration of Commonwealth laws and programmes. Goods and services include those provided by banks and other financial institutions, retail shops, churches, cinemas, television stations and websites.

In some instances, organisations may need to put particular programs and facilities in place to enable someone with a disability to participate on an equal basis. One example of this is the ‘meet and assist’ service provided by airlines. Another example is specialist support services for children with a disability in main stream schools. These provisions are called reasonable adjustments.

Some organisations have developed a range of measures for improving accessibility and to reduce the risk of a DDA complaint being lodged against them. These measures include the design of web sites that enable access by people using screen reading technology and audio announcements on trains so that all people (including those who are blind or have low vision) know their location along a journey.

There are some situations where discrimination on the basis of a disability is not unlawful under the DDA. For example, where there is a genuine occupational requirement to have a certain level of eyesight for jobs such as a truck driver or an airline pilot. There are a number of exemptions under the DDA that apply to a range of areas, including migration and employment with the Australian Defence Force.

## DDA Standards

The DDA allows for the development of Standards in specific areas. The Standards provide certainty for organisations in meeting their obligations under the DDA in relation to the specific areas covered by the Standards. The Standards also serve as a guide for people with a disability about what is reasonable to expect in the areas covered by the standards.

Currently there are standards covering:

* Accessible public transport;
* Education; and
* Access to Premises.

## Types of Disability Discrimination

There are two types of discrimination. These are direct discrimination and indirect discrimination.

Direct discrimination occurs when a person with a disability is treated less favourably than a person without a disability. An example would be a university refusing to allow a student to enrol in a course due to their blindness or low vision. Another would be an employer refusing to interview or employ a suitably qualified person due to their blindness or low vision.

Indirect discrimination refers to treatment that on the face of it, appears to treat all people equally, but there is some test or requirement that a person cannot meet because of their disability, and they are treated less favourably as a result.

 An example would be a requirement for everybody to fill in a printed form, but you are unable to do so because of your blindness or low vision. Another would be the installation of touch screens which provide information or services to the public in a visual format, but you are unable to access it due to your blindness or low vision.

Whether a particular action is Direct or Indirect discrimination is not generally something an individual needs to specify. It is sufficient to identify that particular actions or treatment by an organisation or business has resulted in you being treated ‘less favourably’ than someone without a disability.

## How the DDA Works

The DDA is a complaints based law. If as a person with a disability you face a barrier which is not faced by a person without a disability, in areas covered by the DDA, you can lodge a complaint with the Australian Human Rights Commission (the Commission).

The Commission looks at your complaint to ensure it is covered under the DDA, and if the complaint is accepted, the Commission will attempt to resolve the matter through a process of conciliation.

Conciliation is an informal process where the Commission assists the complainant and the person or organisation being complained about (the respondent) to reach agreement about how to address the discrimination.

Conciliation may be conducted through letters, telephone negotiations, a telephone or face-to-face meeting called a conciliation conference. If an agreement is reached the Commission will prepare a document for both sides to sign which will finalise the matter. If an agreement between the two parties is not reached after reasonable efforts have been made, the Commission will then ‘terminate’ the complaint and you then have the option to take the matter to the Federal Court or the Federal Circuit Court.

## What to consider when Deciding Whether to Lodge a DDA Complaint

At the point at which you are considering lodging a DDA complaint, we recommend that you seek advice to ensure that your complaint is covered by the DDA and can be dealt with by the Commission. You can do this by contacting the AHRC and making a general enquiry, or by contacting a disability advocate for advice and guidance.

There is no right or wrong answer as to whether you should lodge a DDA complaint, or use other advocacy strategies first when trying to address a barrier you have faced due to your blindness or low vision. In some instances you may choose to do both. Below are some things to consider.

### (a) Experiences of others

As with many areas of life for a person with a disability, seeking information and support from others who are blind or have low vision who have experienced similar barriers is often a useful first step. It assists you to know that your concerns are valid, and will give you more confidence to know you are not fighting the battle alone.

A resource for connecting with networks of people who are blind or have low vision is VIPL (see Resources section at the end of this guide).

### (b) The success of attempts you have made to resolve the situation

You can contact the organisation in the first instance to ask whether they are prepared to change things to remove the barriers you have experienced. Examples include:

* making their web site accessible to you as a screen reader user;
* providing adaptive technology or adjustments to lighting to make your job easier to perform with your blindness or low vision; or
* having a child taught Braille at school

It is not a requirement that you make approaches to an organisation first before lodging a DDA complaint, but sometimes an organisation is willing to remove the barrier immediately, in this case you will save a lot of time and effort.

If you have attempted to resolve the situation yourself or with the assistance of a lawyer or disability advocate, and the organisation refuses to make changes, or is taking an unreasonably long time, you can lodge a complaint with the Commission under the DDA.

In instances where you have made approaches to the organisation first, it is very helpful for you to have kept detailed notes on:

* Dates of actions (letters telephone conversations or meetings)
* Content of conversations (including agreed next steps) and
* What did or didn’t happen as a result.

### (c) How widespread or persistent is the problem

For many of the common barriers faced by people with a disability, where contact with the organisation has not seemed to make much difference, you can progress the matter by lodging a DDA complaint.

For example, repeated refusal of access to a business or organisation because you are accompanied by a Seeing Eye dog. Another example is a government website which is persistently inaccessible to people using screen reading technology.

### (d) How personally upset or angry has the alleged discrimination made you feel?

In some cases where you face discriminatory barriers, the situation may cause you to feel so upset or angry that you don’t feel able to contact the organisation directly and lodging the complaint first with the Commission is the best course of action.

### (e) How long ago did the discrimination occur?

If more than 6 months have passed since the discrimination occurred, the Commission may not accept your complaint.

### (f) Does the DDA cover your particular complaint?

In some instances the situation you are facing may not be covered by the DDA. Exemptions include some areas of employment by the Australian Defence Forces, migration, superannuation and insurance.

### (g) Complaint time frames

If your complaint is accepted, it may take some time for the Commission to investigate and seek a response from the organisation or person you are complaining about. It can then take more time for a conciliation conference to be organised. The entire process can take several months.

If the matter you are complaining about is time critical, such as a child needing supports at school; an individual completing a course of study; or an employee facing dismissal, the Commission may (upon request) be able to consider the matter as a priority.

### (h) How far are you willing to go?

It is important to consider what you will do if the conciliation process fails. It is worth thinking about this question up front, because it might influence when you seek legal advice and what effort you put into the conciliation process.

The conciliation process is treated as voluntary. Although the Commission has the power to compel a respondent to attend conciliation, it almost never uses this power. If the respondent (the person or organisation you are complaining about) refuses to participate in conciliation, the Commission will formally ‘terminate’ the complaint.

If the conciliation conference goes ahead, but negotiations fail and no agreement is reached, the Commission will terminate the complaint.

In both these situations, once the complaint has been ‘terminated’ by the Commission, you then have a limited period of time to file the matter in the Federal Court or the Federal Circuit Court.

For example, if you are lodging a complaint because your child with a disability is not receiving necessary supports at school to enable them to equally participate in education, you should put more effort into the conciliation process to get a more immediate result, then go to the Federal Court if you do not get a satisfactory resolution.

Alternatively, if you make a complaint to a public transport provider about an inaccessible bus stop near your house, you may not want to pursue the matter past the conciliation phase.

###  (i) Is there a more appropriate avenue for a discrimination complaint

All states and territories in Australia have anti-discrimination legislation, and in a few instances it may be more appropriate to lodge a complaint under state or territory law. However you are best to seek legal advice on which approach to take as you generally cannot lodge the same complaint under both the state/territory and Commonwealth laws.

## (j) Seeking support and being prepared

It can be stressful to lodge a complaint with the Commission under the DDA. It can be drawn out. It can put a strain on relationships between you and the party you are complaining about (particularly in instances where your complaint is your employer, a land lord or your child’s school). Further, if that party comes to the conciliation table with a number of legal representatives, it can be daunting.

Therefore, it is advisable that you seek out somebody who can provide support throughout the process. This can be a friend, or a disability advocate, or a Lawyer.

## (k) Seeking legal advice

Although the Commission’s conciliation process does not require you to have legal representation, it can often be useful to seek advice from a lawyer prior to lodging the complaint and/or prior to the conciliation conference.

A lawyer or disability advocate may have some suggestions on the drafting of the complaint. It may also be possible to have a lawyer or disability advocate attend the conciliation conference with you, to assist you with negotiating the settlement. If no agreement is reached and you plan to take the matter to Federal Court you will need expert legal advice and assistance for this process.

**Other Advocacy Strategies in Conjunction with a DDA complaint**

 For those interested in advocating for widespread, societal change, we strongly encourage people to make contact with an organisation such as Vision Australia, or Blind Citizen’s Australia, as an organisation is best placed to co-ordinate DDA complaints about the same issue at the same time. This can be a powerful way to achieve broader change. A blindness organisation also has capacity to use social media, like Facebook and Twitter, and publish press releases to publicise the discrimination issue and DDA action that is being taken.

## Lodging your Complaint with the Commission

Under the DDA, the person making a complaint must be “an aggrieved party”. That is, you must have experienced the discrimination yourself. For example, you must have experienced an inaccessible web site yourself, not be complaining because you’ve heard from others that a web site is inaccessible.

A complaint can be lodged with the Commission in a range of ways, including a print form , on an accessible MS Word form sent as an attachment, via email, in audio or Braille or using the accessible online form. The important thing is that you provide all the information required.

Before drafting the complaint, put the events and information in sequential order. For example if the discrimination covers a period of time or a series of events, put it in date order or order of contact with staff of an organisation. This will help to make it easier for Commission staff to read, and understand the situation as it happened.

Some of the information required includes:

* Contact information for you and/or a lawyer or disability advocate who may be assisting you.
* Assistance you may need to participate in the complaints process (such as correspondence in a particular format due to your blindness or low vision);
* Name and contact information of the person or organisation(s) you are complaining about;
* The type of discrimination you have experienced, i.e. due to a disability. This is because the Commissions’ complaints process covers a number of discrimination laws.
* A description of what happened to you.
* Supporting documentation. If you have taken diary notes or have correspondence from efforts to date to address the situation, you can provide that as part of the complaint;
* Reasons for any delay in lodging the complaint; and
* What you would like the outcome to be

This last point is important, because a key part of the process is about reaching an agreement in order to settle, or finalise, the matter.

The process of conciliation involves negotiation, and it may be that you can’t get agreement on everything you want. Therefore you need to consider what is the least you will accept.

**Possible Elements in a Settlement Agreement**

Items often included in a settlement agreement include

* That the organisation make a written apology;
* That the staff in the organisation undergo disability awareness training;
* That the organisation will fix the barrier that caused you to feel discriminated against, or perhaps agree on a time-frame to fix the problem in stages;
* An amount of compensation for the hurt and humiliation you experienced or reimbursement of costs incurred because of the discrimination;
* An agreement that you will not disparage or speak negatively about the organisation in public.

These are just examples. What you want from the complaint may be quite different. In addition, other advocacy strategies you use in conjunction with a DDA complaint will impact on what the respondent asks for or what they will agree to in the settlement.

## The Conciliation Conference Process

During The conciliation conference there are 3 main parties:

* The complainant – You, your support person and/or your lawyer or disability advocate
* The respondent – the party you are complaining about, who may also be accompanied by their staff and/or legal representatives; and
* The conciliator(s), an impartial representative(s) of the Commission, whose role is to broker a settlement between both parties.

A face-to-face conciliation conference usually begins with introductory remarks from the conciliator(s) followed by opening statements by you as the complainant, then a statement from the respondent.

The conciliator often uses a ‘shuttle mediation approach’. This means that the complainant and the respondent move to separate rooms, and the conciliator moves between rooms in an attempt to negotiate an agreement.

If an agreement is reached, the conciliator prepares a document detailing the points of agreement for both parties to sign.

## Personal Support for Conciliations

You may take a support person with you to the conciliation conference; this can be a friend or relative. They are not able to speak during opening statements, but you can share your thoughts with them during breaks or when you are in a separate, private room. If your support person is a disability advocate or lawyer they can speak during opening statements, but it is important for you to have your say about how the discrimination personally affected you.

A disability advocate or a lawyer must have your permission to advocate for you and the Commission will ask for a signed authorisation form.

Vision Australia’s Advocacy team can assist with the drafting and lodgement of complaints as well as providing non-legal support during the conciliation process.

To seek legal advice you can contact a private lawyer, a community legal centre, Legal Aid in your state or Vision Australia’s Advocacy team for a referral.

Not all organisations will be resourced to support everybody lodging a DDA complaint. Some organisations take on matters of broad interest in the disability community, or will only take on certain types of matters such as employment or education.

### Next Steps if a DDA Complaint does not Result in a Settlement

A large number of DDA complaints are successfully settled by the Commission’s conciliation process.

However, if negotiations fail and no agreement is reached, and you plan to take the matter to the Federal Court or Federal Circuit Court, you will need to seek legal advice and assistance, as Federal Court processes and procedures are complex.

If a respondent is not willing or able to address the discrimination, it must be able to show the court that doing so would cause ‘unjustifiable hardship’.

## Relevant Resources

Australian Human Rights Commission National Information Service

Ph.: 1300 656 419

[Visit the Human Rights website.](https://www.humanrights.gov.au/complaints/make-complaint)

Community Legal Centre in your state

[Visit the Community Legal Centre website](http://www.naclc.org.au/clc_directory.php?page_no=13&use_filters=true&letter)

Vision Australia’s Advocacy Team

Ph.: 1300 847466

Vision Impaired Persons Email list (VIP-L)

This is an information sharing forum for all people who are blind or have low vision in Australasia.

To subscribe, send a blank email to subscribe-vip-l@freelists.org

## For Further Information

For information on advocacy strategies or to obtain this guide in another format, call Vision Australia’s’ advocacy team on 1300 847 466