



Environmental
Defenders Office

***Joint Submission to the Disability Discrimination Act
1992 Review***

1 December 2025

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 40 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

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Disability Discrimination Act 1992 Review
Attorney-General's Department
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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations. We acknowledge that not all First Nations will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

Acknowledgements

We acknowledge the systemic exclusion of people with disability from decisions which affect them. We support the call from Disabled Peoples' International and echoed by the disability community in Australia that there be 'Nothing About Us, Without Us.

EDO adopts the People With Disability Australia's 'PWDA Language Guide: a guide to language about disability'.¹ We adopt person-first language in this submission and refer to 'people with disability'. We acknowledge that many people with disability use identity-first language or use other language that with which they identify.

We note that Nicole Sommer, lead author of this submission, proudly identifies as a disabled person, and brings this lived experience with her expertise in climate and environmental law to the question of disability and climate justice.

We wish to thank the following people for their co-authorship and review of this submission:

- Co-authors, Dr Robin Banks, Post-Doctoral Fellow, University of Tasmania, and Member Australian Discrimination Law Expert Group, and Dr Yvette Maker, Senior Lecturer in Law, University of Tasmania.
- Review by Mr Michael Small (Chair) and Mr Vaughn Bennison (CEO) of Disability Voices Tasmania; and
- Contributions of Dr Cristy Clark, Associate Professor, Canberra Law School, and Member, Australian Discrimination Law Experts Group.

¹ People with Disability Australia, 'PWDA Language Guide: A guide to language about disability' (2021). Available at: [PWDA Language Guide: A guide to language about disability](#).

A. Summary of Recommendations

Summary of Recommendations

The *Disability Discrimination Act 1992* (Cth) Review (**the Review**) must:

1. Recognise climate change as having discriminatory impacts for people with disability and recognise climate justice as a vital element of preventing ongoing systemic disability discrimination through Commonwealth laws and programs.
2. Develop mechanisms within the *Disability Discrimination Act 1992* (Cth) (**DDA**) to enable laws, policies and actions of Australian governments and corporations operating in Australia that affect climate outcomes to be challenged on the basis that they have discriminatory impacts on people with disability.

In response to the Review Issues Paper, the Review must:

3. Broaden the definition of disability to explicitly include the discriminatory impacts of climate change on people with disability.
4. Consider ways in which the forms of unlawful discrimination prohibited by the Act can expressly include discriminatory impacts of climate change, including current and future impacts, and intersectional impacts of climate change.
5. Place a positive duty on public and private sector actors to protect people with disability from discrimination and to promote equality, including with respect to taking action to prevent climate change and its discriminatory impacts on people with disability, including intersectional impacts.
6. Introduce a positive duty to make adjustments for people with disability, including with respect of adjustments needed to avoid or overcome barriers that arise from climate change that affect the rights of people with disability to equal opportunity and the full enjoyment of human rights.
7. Address existing barriers to access to justice in respect of pursuing rights under the DDA through expanding standing, allowing for representative and class complaints, applying the equal access costs model to discrimination complaints, expanding time limits and improving remedies including requiring consideration of systemic impacts and making orders to remedy and remove those systemic impacts, to provide for effective legal redress and improved access to justice.

B. Introduction

1. We use the human rights and social model of disability, recognising that impairment is part of human diversity and that disability ‘results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others’.²
2. Australia is a signatory and has ratified the *United Nations Convention on Rights of Persons with Disabilities* (**UNCRPD**) and is therefore obliged to implement it in domestic law and promote, protect and fulfil the rights set out in the Convention for people with disability in Australia.
3. Australia is obliged at international law to take all actions within its control to mitigate the impacts of climate change, primarily by rapidly reducing emissions so as the world can meet the temperature goals of the Paris Agreement on Climate Change to limit warming to 1.5°C.³ This obligation arises under a range of international treaties including the human rights and environmental treaty obligations.⁴
4. In a unanimous United Nations (**UN**) General Assembly Resolution of July 2022, all UN Member States recognised the right to a clean, healthy and sustainable environment as a human right,⁵ recognising the fundamental proposition that human well-being and the enjoyment of all human rights and dignity fundamentally relies on a healthy environment. By this resolution, the international community also acknowledged that the impacts of climate change and other environmental damage are ‘felt most acutely’ by Indigenous peoples, older people, people with disabilities, and women and girls.⁶
5. The human rights model of disability explains that the source of the disproportionate negative impacts of climate change on people with impairments and other so-called ‘vulnerable’ groups is discrimination. It arises from ‘their exclusion from state laws, policies, and services available’ to other rights-holders, including exclusion from involvement in decision-making processes about how to address and respond to climate change.⁷

² *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3, Australian Treaty Series 2008 No 4 (entered into force 3 May 2008, entered into force for Australia 16 August 2008) (**UNCRPD**) Preamble (e).

³ Under the *Paris Agreement*, opened for signature from 22 April 2016 (entered into force 4 November 2016) Art 2(1)(a); and under other international law obligations both treaty and customary, see *Obligations of States in Respect of Climate Change (Advisory Opinion)* [2025] ICJ Rep 187 (**ICJ Climate AO**).

⁴ ICJ Climate AO (n 2).

⁵ United Nations General Assembly Resolution 76/300, adopted by the General Assembly on 28 July 2022, UN Doc A/Res/76/300. In its Climate AO, the ICJ also affirmed that ‘under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights’ [393]. See also, Human Rights Council, *The Human Right to a Clean, Health and Sustainable Environment*, Resolution Adopted 8 October 2021, 48th sess, UN Doc A/HRC/RES/48/13.

⁶ UNGA (n 4).

⁷ Penelope J S Stein and Michael Ashley Stein, ‘Disability, Human Rights, and Climate Justice’ (2022) 44(1) *Human Rights Quarterly* 81, 83; Penelope J S Stein et al, ‘Advancing Disability-Inclusive Climate Research

Consequently, adaptation and mitigation measures designed to address climate risks may also exacerbate inequality and perpetuate disability discrimination, because they are not disability-inclusive.⁸ This has implications for the full suite of human rights of people with disability, including rights to ‘life, water, food, health, housing, accessibility, personal mobility, education, work, participation in cultural life, living independently, and liberty of movements’.⁹

6. The UNCRPD obliges States parties, including Australia, ‘to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability’.¹⁰ It also requires governments to ensure that people with disability are consulted and actively involved in decision-making on matters affecting them.¹¹
7. This submission identifies:
 - a. the discriminatory impacts that climate change has for people with disability within Australia;
 - b. that disability discrimination is further entrenched and perpetuated by climate change, including Commonwealth laws and programs; and
 - c. mechanisms in the DDA ought to be developed to enable laws, policies and actions of Australian governments and corporations operating in the Australian jurisdiction that affect climate outcomes.
8. Our recommendations urge additional reform to address the discriminatory impacts of climate change and discrimination that arises from climate impacts. Our recommendations 1 and 2 indicate that further work is required and the form this could take ought to be considered by the Reviewers, informed by people with disability and their organisations.

C. Climate change has discriminatory impacts on people with disability

9. There is global recognition that climate change is having, and will continue to have, a disproportionate impact on people with disability, along with other groups facing systemic disadvantage, Indigenous peoples, women and children, and older people.¹²

and Action, Climate Justice, and Climate-Resilient Development’ (2024) 8(4) *The Lancet Planetary Health* e242.

⁸ Beth Goldblatt, ‘Climate Change, Inequality and Discrimination Law: The Example of Swimming Pool Access in Moree’ (2023) 46(1) *UNSW Law Journal* 56; Stein et al (n 6).

⁹ Stein and Stein (n 7) 87; Office of the High Commissioner for Human Rights (**OHCHR**), *Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change*, Human Rights Council, 44th sess, UN Doc A/HRC/44/30 (22 April 2020).

¹⁰ UNCRPD (n 2) art 4(1).

¹¹ Ibid art 4(3).

¹² UNGA Resolution A/71/314; Report of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities, Catalina Devandas-Aguilar: [Attachment DisabilityRights Accessible Version Dec19.docx](#).

10. Climate impacts can both entrench and compound the systemic discrimination against people with disability, as well as pose new forms of discrimination.
11. People with disability face systemic discrimination. In 2019–20 in Australia, one third of adults living in poverty had disability, and 17% of people with disability live in poverty.¹³ People with disability and a ‘core activity restriction’ were in the group at highest risk of poverty.¹⁴ Data indicates that 56% of people with disability are unemployed.¹⁵ Further, as is generally recognised, women, First Nations peoples and children with disability face compounding or intersectional systemic discrimination. This results in greater numbers of people with disability living in poverty, being out of paid work, and in insecure housing.
12. Climate change poses additional burdens on people with disability. It can and has entrenched the systemic discrimination experienced by people with disability in all parts of life.
13. Systemic discrimination can arise from decisions and policies made by governments and private actors about climate change. Governments make these decisions in three broad categories:
 - a. climate **mitigation** decisions – the extent to which climate action is taken and therefore the extent that warming and its impact on people with disability is ‘locked in’;
 - b. climate **adaptation** decisions – how to ‘adapt’ to climate change, in planning, housing, economic and other systems; and
 - c. ‘**transition**’ decisions – how we transition our energy sector and economy away from fossil fuels to clean sources of energy.
14. In this submission, we will address:
 - a. first, the current climate science and impacts likely to be seen in Australia;
 - b. second, the harms people with disability have already experienced in extreme events over the past 5 years; and
 - c. third, the ways that systems can and are discriminating against people with disability in climate policy and decision-making.

(i) Climate change and its impacts

15. It is now beyond doubt that human activities have caused global warming, with a temperature change of 1.1°C above 1850–1900 levels being recorded in 2011–2020.¹⁶ This

¹³ Australian Council of Social Services (**ACOSS**) ‘Poverty in Australia 2023: Who is Affected; A Poverty & Inequality Partnership Report’ (March 2023) 55 <<https://povertyandinequality.acoss.org.au/poverty-in-australia-2023-who-is-affected/>>.

¹⁴ Ibid 8.

¹⁵ Ibid.

¹⁶ Intergovernmental Panel on Climate Change (**IPCC**) ‘Summary for Policy Makers’, in: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team: H Lee and J Romero (eds)] IPCC, Geneva, Switzerland (2023) 1–34, doi: 10.59327/IPCC/AR6-9789291691647.00.

warming has rapidly changed the climate, with catastrophic impacts, loss and damage to people and nature now observable.¹⁷

16. The Intergovernmental Panel on Climate Change (**IPCC**) last reported that climate change worldwide, has:
 - a. reduced food security and affected water security, with observable slowing of agricultural production, impacts of shellfish and fisheries aquaculture in some oceanic reasons;¹⁸
 - b. in all regions, increased extreme heat events and associated human mortality and morbidity, increased food-borne and water-borne diseases;¹⁹
 - c. increased mental health challenges in some regions through trauma from extreme events, loss of livelihoods and culture;²⁰
 - d. caused substantial damage, with increasingly irreversible losses, of ecosystems and associated species loss, with some highly vulnerable regions approaching irreversibility;²¹ and
 - e. resulted in economic damage to climate-exposed sectors such as agriculture, tourism, forestry, fisheries and energy, as well as personal losses due to destruction of homes and infrastructure, loss of property and income, human health and food security, ‘with adverse affects on gender and social equity’.²²
17. In Australia, we have and will continue to see these impacts, with bushfires, flooding, extreme heat events, water scarcity and rapid decline in ecosystem and species health.
18. Australia’s National Climate Risk Assessment (**Risk Assessment**) released this year confirmed that:²³
 - a. ‘Our climate has already changed and will continue to change, even if global temperatures stabilise.’
 - b. ‘Future changes in Australia’s climate will not occur gradually or smoothly.... Reaching potential climate or ecological tipping points is very likely to result in abrupt changes’.
 - c. As climate hazards change in frequency and increase in severity, it is likely we will experience more compounding, cascading and concurrent hazards in the future.

¹⁷ Ibid.

¹⁸ Ibid, 6 at A.2.4.

¹⁹ Ibid, 6 at A.2.5.

²⁰ Ibid 6 at A.2.5.

²¹ Ibid 5 at A.2.3.

²² Ibid 5 at A.2.6.

²³ Australian Climate Service, *Australia’s National Climate Risk Assessment* (Australian Government, 2025) 34.

19. The climate impacts we are seeing now are assessed as ‘moderate’.²⁴ These include the devastating Lismore and south-east Queensland flood events in 2022 and 2024, the Black Summer bushfires across eastern Australia, and successive extreme heatwaves in Northern Australia. The Risk Assessment indicates that these risks will intensify and pose ‘high’ to ‘severe’ risks to nine identified systems.
20. One of the systems identified as ‘at risk’ is ‘communities’. ‘Communities’ is defined to include ‘people with pre-existing health conditions’ (ie, people with disability).²⁵
21. The Risk Assessment finds (our emphasis):²⁶

Extreme weather events, including heatwaves, bushfires, flooding and tropical cyclones, will intensify safety and security risks, potentially resulting in loss of life, destabilisation of community structures, and increased migration away from high-risk areas. ...

Compounding hazards (where multiple climate related events such as heatwaves, floods and droughts occur simultaneously or in close succession) and repeated events, combined with lower adaptive capacity, are likely to lead to more severe impacts in regional and remote communities. Compounding impacts can also erode community resilience and social cohesion. If responses are perceived as inadequate or inequitable, this may undermine trust in government and institutions.

Climate change impacts will disproportionately affect populations already living in vulnerable circumstances, such as remote Aboriginal and Torres Strait Islander communities, older people, young children and those with pre-existing health conditions. These groups often face greater exposure and less adaptive capacity.
22. Aboriginal and Torres Strait Islander peoples are identified as a ‘community’ system that is ‘at risk’ from climate change, with seven risks identified as ‘nationally significant’. Risks include the fundamental risk to self-determination, to culture and cultural knowledge, and to First Nations’ health, well-being and identity due to increased mental and physical health conditions, and displacement from Country due to extreme weather.²⁷
23. Ultimately, the current climate risk to the Aboriginal and Torres Strait Islander ‘communities’ system is identified in the National Climate Risk Assessment as ‘moderate’, by 2050 ‘high’ and by 2090 the risk as ‘very high–severe’.²⁸ The current climate risks to Aboriginal and Torres Strait Islander peoples are rated as ‘high’ both now and in 2050, and by 2090 as ‘severe’.²⁹

²⁴ Ibid 39.

²⁵ The Risk Assessment does not specifically refer to people with disability in respect of communities, but we read this reference to ‘chronic health conditions’ as a reference to disability, because the Risk Assessment does not have a separate section on people with disability, or otherwise address people with disability specifically.

²⁶ Australian Climate Service (n 22) 43.

²⁷ Ibid 32.

²⁸ Ibid 39.

²⁹ Ibid.

(ii) Extreme events, disaster and people with disability

24. Worldwide, people with disability are disproportionately affected by climate change. Climate effects are intersectional, with women, children, older people and Indigenous peoples with disability among those at the greatest risk.³⁰
25. The most common form of impact from climate change is and will be direct harm from more frequent and higher intensity disasters or extreme weather events. These include heatwaves, cyclones, bushfires, flooding, storm surges, extreme cold, drying and droughts.
26. In a disaster, people with disability are:
 - a. more likely to be injured or die (2 to 4 times more likely than non-disabled people to be harmed or mortality in a disaster)³¹ – for example, in the Black Summer bushfires, 33 people died directly from the fires and over 400 died from smoke inhalation³²
 - b. more vulnerable to risk in emergencies because they have not been included in community-level disaster preparedness,³³
 - c. more likely to experience discrimination in disaster response and planning;³⁴
 - d. more likely to be homeless or displaced by the disaster;³⁵ and
 - e. more likely to experience family or domestic violence³⁶ domestic the risk of which is increased in disaster events.³⁷
27. The experience of people with disability in disasters and extreme events in Australia are documented and known. People with disability report:

³⁰ OHCHR (n 9).

³¹ Villeneuve M (2020) *Clearing a path to full inclusion of people with disability in emergency management policy and practice in Australia*. Centre for Disability Research and Policy. The University of Sydney, available at: [Issues Paper: Clearing a path to full inclusion of people with disability in emergency management policy and practice in Australia](#). See also Villeneuve M (Dec 2020) 'What people with disability told us about their experiences of disasters and emergencies', University of Sydney. Available at: [What people with disability told us about their experiences of disasters and emergencies - The University of Sydney](#)

³² Michelle Villeneuve, *Clearing a path to full inclusion of people with disability in emergency management policy and practice in Australia*. Centre for Disability Research and Policy (The University of Sydney, 2020) <https://collaborating4inclusion.org/wp-content/uploads/2022/09/clearing-a-path-issues-paper.pdf>. See also Michelle Villeneuve, 'What people with disability told us about their experiences of disasters and emergencies', *News*, University of Sydney (Dec 2020) <https://www.sydney.edu.au/news-opinion/news/2020/12/03/what-people-with-disability-told-us-about-their-experiences-of-d.html>.

³³ Villeneuve, 'Clearing a path' (n 34) 10.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Australia Institute of Health and Welfare, 'Family and domestic violence; People with Disability' (2025) <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/people-with-disability>>.

³⁷ Debra Parkinson and Claire Zara, 'The hidden disaster: domestic violence in the aftermath of natural disaster' (2013) 28(2) *Australian Journal of Emergency Management* 28.

- a. not being able to access warning information,³⁸ for example: a deaf business owner and resident of Lismore could not access information about the 2022 NSW floods, and she took on the role of fielding interpreting requests and described being ‘appalled and frightened’ by the lack of access to critical information;³⁹
 - b. being cut off from medical care and critical treatment,⁴⁰ for example: a woman living with cancer could not attend medical appointments or access cancer treatment during the Lismore floods, and reports living with fear that her treatment was compromised by climate disaster;⁴¹
 - c. evacuation centres not being equipped for people with disability, eg, for wheelchair or mobility scooter access;⁴²
 - d. evacuation points not being accessible to people with disability, eg, evacuation to beaches in the Black Summer bushfires;⁴³ and
 - e. people not being able to avoid inhaling dangerous smoke due to need to work, inadequate housing, lack of access to air purifiers, and being unable to relocate to avoid smoke.⁴⁴
28. People with disability also can face intersectional discrimination in disasters. For example, the NSW Bushfire Inquiry 2020 found that, in some communities, Aboriginal people felt unwelcome at evacuation centres, and in some cases support services were reluctant to provide immediate relief. The inquiry found this ‘in some cases, led to people putting themselves at risk as they feared how they would be treated at evacuation centres’.⁴⁵
 29. These affects are not only felt in the disaster zone, but can be in the area surrounding a bushfire or other extreme event. For example, bushfire smoke can extend over a much larger area as we saw in the 2019-2020 Black Summer bushfires which is estimated to have resulted in more than 400 deaths, 2,000 respiratory hospitalisations and 1,300 presentations to the

³⁸ People with Disability Australia, ‘Realising our right to be safe in emergencies’, *The Impact of Climate Change and Natural Disaster in Australia* (2022) (authors note) 2 and 3-4 <[Emergency-planning-and-response-final.pdf](#)>.

³⁹ Sigrid Macdonald, video: ‘[There was no plan](#)’: Deaf Australians left behind in the 2022 NSW flood response - Disabled People's Organisations Australia (DPO Australia). See also People with Disability Australia, *ibid* [3]–[5].

⁴⁰ Recognised by the *Royal Commission into National Natural Disaster Arrangements – Report* (2020) 332 [15.10]. Available at: [Report | Royal Commissions](#)

⁴¹ People with Disability Australia (2022) (n40), 8.

⁴² *Royal Commission into National Natural Disaster Arrangements* (n 40) 278 [12.66].

⁴³ Dr Tim Senior, Tharawal Aboriginal Corporation Medical Clinic, quoted in ‘How bushfires and air quality are putting pressure on the health system in communities away from the fire front’ (12 Jan 2020), *ABC News*. Available at: [How bushfires and air quality are putting pressure on the health system in communities away from the fire front - ABC News](#)

⁴⁴ Asthma Australia, *Bushfire Smoke Impact Survey 2019-2020. Bushfire Smoke; Are you coping?* [AA6_Smoke-Impact-Survey-1920_Revised.pdf](#)

⁴⁵ NSW Government, *Final Report of NSW Bushfire Inquiry* (31 July 2020).379. Available at [NSW Bushfire Inquiry report | NSW Government](#)

Emergency Department.⁴⁶ Asthma Australia's Australia-wide survey post the 2019-2020 bushfires found that:⁴⁷

- a. sustained exposure to bushfire smoke 'reduced participation in everyday activities particularly for people with asthma';
 - b. 'people with asthma were twice as likely to experience financial stress as a result of bushfire smoke compared to people without asthma'; and
 - c. 'the unprecedented levels and duration of exposure to bushfire smoke had significant impacts on mental health, including new and increased symptoms of anxiety and depression'.
30. It is alarming that people with disability are 2 to 4 times more likely to be injured or die in an extreme event. Research from the Imperial College in London found that climate change tripled the number of heat-related deaths in the early summer heatwave of June/July 2025.⁴⁸ There is evidence of this in Australia, and it will get worse;⁴⁹ the National Climate Risk Assessment indicates that impacts to community now are moderate but will be high to severe between 2050 and 2090.⁵⁰
31. People with disability are at higher risk of death, and of new or compounding disability. Additionally, the number of people with disability will increase. This is consistent with the IPCC's 2023 Report, which predicts both increased mortality and morbidity due to climate change through *inter alia* more frequent and more extreme heat events and extreme events, associated mental health conditions.⁵¹ The reference to increased morbidity implies an increase in the number of people with disability.
32. As the above analysis of reporting demonstrates, people with disability experience climate change in diverse ways. These experiences include:
- a. displacement and loss of housing in extreme weather events, including heatwaves, cyclones, bushfire, flooding, drought;
 - b. inaccessible information and evacuation routes and centres in climate disasters;
 - c. new barriers to treatment and services in extreme events, for instance, restrictions or disruptions to treatment during disaster events;

⁴⁶ Nicolas Borchers et al, 'Unprecedented smoke-related health burden associated with the 2019-20 bushfires in eastern Australia' (2020) 213(6) *Medical Journal of Australia* 282, DOI: 10.5694/mja2.50545, cited in Asthma Australia (n 45) 4.

⁴⁷ Asthma Australia (n 44) 24-25.

⁴⁸ Ben Clarke et al. *Climate change tripled heat-related deaths in early summer European heatwave* (Grantham Institute report, 2025). Available at: [Climate-change-tripled-heat-related-deaths-in-early-summer-European-heatwave.pdf](#)

⁴⁹ Australian Climate Service (n 20), 129, 132, 134.

⁵⁰ Ibid.

⁵¹ IPCC (n 16) B2.1, 14.

- d. exacerbation of existing health conditions (for example, heat exacerbating the symptoms of Multiple Sclerosis);⁵²
 - e. compounding disability through acquisition of new disability due to climatic changes, injury in extreme events, etc;
 - f. food and water insecurity, for example, due to shortages in drought or disaster, or disruption to supply; and
 - g. mental health conditions and exacerbation of existing conditions.
33. This experience can bring with it associated barriers to inclusion in public life, including:
- a. increased barriers to employment, for example, heat affected disability, or because of displacement;
 - b. loss of identity and culture (including for Aboriginal people with disability);
 - c. loss of social connection and resilience; and
 - d. the additional burdens associated with planning for, and responding to climate disasters.
34. The purpose of the UNCRPD to ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms’⁵³ cannot be achieved without equality of access to a safe climate and healthy environment.
35. It is for all the above reasons that climate change poses new disability discrimination risks, and disability discrimination law must recognise the central relevance of climate change.

(iii) Exclusion of people with disability in climate mitigation policy

36. Despite being so directly affected, people with disability are excluded from leadership in the design of climate action, and decisions affecting their futures.
37. As an example, people with disability have long been absent from climate related decision-making. Research in 2023 by the International Disability Alliance shows that disability is referenced in only 20% of nationally determined contributions (**NDCs**) under the Paris Agreement.⁵⁴ Only 15 of those 39 countries that contributed detailed what measures will be taken to ensure inclusion of people with disability. Australia was one of the 80% of States that **did not** refer to people with disability in its first NDC in 2022.
38. Since 2022, the Australian government has made improvements. In September 2025, Australia communicated its second NDC to the UN Framework Convention on Climate Change (**UNFCCC**). The Australia's 2025 NDC does reference people with disability, twice but

⁵² See, eg, *Müllner vs Austria* (Application no. 18859/21) European Court of Human Rights, Fourth Section.

⁵³ UNCRPD (n 1) Art 1, 'Purpose'.

⁵⁴ International Disability Alliance, [Persons with disabilities and climate action](https://www.internationaldisabilityalliance.org/sites/default/files/cop_28_-_final_version_-_nov_16th_-_02.pdf) (2023) 4 <https://www.internationaldisabilityalliance.org/sites/default/files/cop_28_-_final_version_-_nov_16th_-_02.pdf>.

only with respect to international engagement.⁵⁵ In announcing its NDC and Net Zero target, Australia released both a Net Zero Plan and National Climate Risk Assessment. The Net Zero Plan also only references people with disability twice – once under the heading of ‘Youth’ and the second in relation to advancing employment opportunities for under-represented groups.⁵⁶

39. *Australia’s National Climate Risk Assessment* has more detailed references to disabled people, albeit limited in scope. It recognises, under the heading ‘communities at risk’, that disability prevalence has increased between 2018 and 2022, at the same time as ‘extreme natural hazard events’ are increasing.⁵⁷ Importantly, the Risk Assessment recognises that the ‘inclusion’ of people with disability ‘can significantly enhance the design and implementation of adaptive strategies’.⁵⁸ However, the Risk Assessment refers to people with disability as a ‘vulnerable’ group rather than focusing on the external causes of that vulnerability and the strengths that disabled people bring to addressing those causes. It also refers to ‘consultation’ rather than leadership and contains no focus on decision-making.
40. While a step in the right direction, these references are overly limited. The NDC, the Net Zero Plan and *Australia’s National Climate Risk Assessment* are each limited to disaster response, employment and, in a limited way, adaptation. These documents do not acknowledge or address the true cost of climate inaction and climate related loss and damage for people with disability.
41. Further, there is very little detail in any of the plans about how they were developed and whether people with disability were involved.
42. To prepare policies and plans that exclude people with disability from the decisions that affect them is inconsistent with Australia’s general obligations under article 4(3) of the UNCRPD to ‘closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations’ in the development and implementation of legislation and policies.⁵⁹ This is an example of climate policy entrenching systemic discrimination.
43. Environmental justice frameworks refer to ‘sacrifice zones’ – certain communities and areas sacrificed for the economic benefits of others. Beneficiaries may be private corporations,

⁵⁵ *Australia’s 2035 Nationally Determined Contribution*, Department of Climate Change Energy and Water, Canberra (2025) 24: ‘the Australian Government is prioritising the delivery of equitable climate action and integrating disability equity across our international engagement on foreign policy, international development, trade, humanitarian assistance and climate with a particular focus on the Indo-Pacific region.’ Available at: [Australias Second NDC.pdf](#).

⁵⁶ *Australia’s Net Zero Plan*, Department of Climate Change, Energy, Environment and Water, Canberra (2025) 89. Available at: [Australia’s Net Zero Plan](#).

⁵⁷ Australian Climate Service (n 23) 86.

⁵⁸ Ibid 91.

⁵⁹ See further, Committee on the Rights of Persons with Disabilities, [General Comment No 7 on Article 4.3 and 33.3 - the Participation of Persons with Disabilities in the Implementation and Monitoring of the Convention](#) UN Doc CRPD/C/GC/7 (9 November 2018).

elite communities, or wealthier global north State actors. The UN Special Rapporteur on Human Rights and the Environment, reported that:⁶⁰

21. While all humans are exposed to pollution and toxic chemicals, there is compelling evidence that the burden of contamination falls disproportionately upon the shoulders of individuals, groups and communities that are already enduring poverty, discrimination and systemic marginalization. Women, children, minorities, migrants, Indigenous peoples, older persons and persons with disabilities are potentially vulnerable, for a variety of economic, social, cultural and biological reasons.

...

26. Some communities suffer from environmental injustices whereby the exposure to pollution and toxic substances is so extreme in the areas in which they live that they are described as “sacrifice zones”.

27. Today, a sacrifice zone can be understood to be a place where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas. The climate crisis is creating a new category of sacrifice zones as a result of unabated greenhouse gas emissions, as communities have become, and are becoming, uninhabitable because of extreme weather events or slow-onset disasters, including drought and rising sea levels.

44. This is what we see playing out in climate policy and decision-making. Disabled people, particularly those who face intersectional barriers to achievement of rights, are being placed at risk by decisions in which people with disability had no part. In addition to being excluded from decision-making about what matters, when people with disability are included, their remit is generally limited to those areas that stereotypically relate to disability. This is an example of structural discrimination, increasing barriers to society, instead of removing them.
45. The principle of ‘non-discrimination’ applies to climate and environmental decision-making: ‘Non-discrimination requires States to avoid exacerbating, and actively improve, existing situations of environmental injustice, with special urgency in sacrifice zones.’⁶¹
46. What is needed is to go beyond a mere ‘incorporating the perspectives of’ people with disability, and instead ensuring that people with disability lead the design of adaptation strategies, Australia’s pathway to net zero and indeed, decisions on how Australia fulfils its international obligations to keep warming to at least 1.5°C.⁶²
47. Disabled people have enormous expertise in disability policy, in our own lives and in how broad policy approaches directly affect our lives. To ensure policies fulfil human rights obligations, this expertise must lead decision-making across all aspects of policy making.

⁶⁰ [Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of safe, clean and healthy environment](#), Human Rights Council A/HRC/49/53 (12 January 2022).

⁶¹ Ibid 13 [57].

⁶² As required by Australia’s obligations under international law, including under the Paris Agreement, opened for signature from 22 April 2016 (entered into force 4 November 2016) Art 2(1)(a); and under international law to protect the climate system: ICJ Climate AO (n 2).

Such an approach will help Australia comply with its cross-cutting obligation to closely consult and actively involve people with disability in public processes in the UNCRPD.

(iv) Exclusion from People with Disability in adaptation and transition policy

48. This same dynamic plays out with respect to adaptation and transition decisions.
49. Climate adaptation is generally understood to mean the actions we take as a society to adapt to climate change. This typically includes construction of sea walls to protect houses and beaches from storm surge, changes to bushfire standards in building codes to increase disaster protection, greening of urban spaces to reduce the urban heat island effect, and the protection of fresh water sources from saltwater inundation.
50. Climate transition is generally understood to mean the transition from a fossil fuel driven economy to a clean energy economy. In this 'from/to state', people with disability can find themselves bearing the cost of transition and having new barriers imposed on them in 'clean solutions'.
51. For example, in the transport sector, transition plans generally refer to replacing internal combustion engine (ICE) vehicle fleets with electric vehicles, encouraging active transport such as walking or cycling, and increasing reliance on electric public transport. These are positive moves from a health and climate perspective. However, for people with disability, this may also increase costs or pose additional barriers to their active participation in society. For example, it is necessary to consider whether:
 - a. public transport or active transport is accessible for people with disability;
 - b. the move away from ICE vehicles disproportionately increases transport costs for people with disability (eg, through electric only roads / areas, additional tariffs, and higher petrol costs);
 - c. electric vehicle charging ports are accessible to wheelchair users; and
 - d. there a higher risk of accident for people with vision impairments due to the silent operation of electric vehicles.
52. This is just one example. It will be true in the transition of all systems. Transition planning must be led by people with disability.

(v) Discrimination and climate change

53. The causes of climate change are complex and yet, in many ways, straightforward. The key drivers of climate change are the burning of fossil fuels for energy and transport, as well as fugitive emissions from mining and agriculture and deforestation.⁶³ Australia has signed and ratified the United Nations Framework Convention on Climate Change (**UNFCCC**), the Kyoto Protocol and the Paris Agreement under the UNFCCC, all of which have the aim of limiting warming to no more than 1.5°C.

⁶³ IPCC (n 16) A.1, A.1.1-A.1.5 4-5.

54. Australia's domestic per capita greenhouse gas emissions are among the highest in the world. If we look at Australia's exported or 'scope 3' emissions, Australia is in the top five polluters globally.
55. The latest reports from the [Australian Academy of Sciences](#) and the IPCC are clear: to keep warming within 1.5°C, developed countries like Australia must reduce emissions by at least **75% below 2005 levels by 2030**, and must reach net zero by 2035 to give the best possible opportunity to avert major disruption to Earth's climate systems. Australia's 2025 NDC falls short of that trajectory. Instead, it risks locking us into dangerous levels of warming, with profound consequences for communities, ecosystems, and future generations.
56. Further, in July 2025, the International Court of Justice (ICJ) delivered its [Advisory Opinion on Obligations of States in Respect of Climate Change](#). In it, the ICJ confirmed *inter alia* that states have legal obligations under international law to take action consistent with keeping warming below 1.5°C. and to safeguard the climate system. The ICJ unanimously said that it:

Is of the opinion that customary international law sets forth obligations for States to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions. These obligations include the following:

(a) States have a duty to prevent significant harm to the environment by acting with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment, in accordance with their common by differentiated responsibilities and respective capacities...⁶⁴

57. Most relevantly, the ICJ found that this obligation arises from all international human rights conventions, legal principles and norms. This would include the rights of people with disability set out in the UNCRPD, including the right to life (art 10), the right to liberty and security of the person (art 14), respect for privacy, home and family (arts 22, 23), right to health (art 25), work and employment (art 27) and participation in political and public life (art 29).
58. The joint statement on climate change and human rights prepared by five UN human rights treaty bodies stressed that:

When reducing emissions and adapting to climate impacts, States must seek to address all forms of discrimination and inequality, including advancing substantive gender equality, protecting the rights of indigenous peoples and of persons with disabilities, and taking into consideration the best interests of the child.⁶⁵

⁶⁴ ICJ Climate AO (n 2) 26

⁶⁵ Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of the Child, Committee on the Rights of Persons with Disabilities (n 7) [13]. For a discussion of the value of the human rights framework and the particular role of social rights see Siobhán McInerney-Lankford, 'Climate Change and Social Rights: Perspectives on Legal Obligations' in Christina Binder et al (ed), *Research Handbook on International Law and Social Rights* (Edward Elgar Publishing, 2020) 495.

59. Human rights of people with disability are therefore also relevant to domestic decisions made about climate policy, including climate targets. As a clear illustration, globally, people with disability are two to four times more likely to die in a disaster than non-disabled people, and are at higher risk of injury or harm in disasters.⁶⁶ Fossil fuels are now, with high confidence, causing more frequent and severe disasters, and globally the world is aiming for 2.6°C warming or more. At a minimum, decisions and policy making relating to climate mitigation necessarily engages State obligations under the UNCRPD. Likewise, acts or practices of State and non-State actors with respect to climate can engage with anti-discrimination laws. This inter-relationship ought to be recognised in the DDA and remedies provided for people with disability.
60. Decisions to further develop or expand production of fossil fuels conflict with the obligation of equality and the fulfillment of rights of people with disability under the UNCRPD. Further, a failure to consult with people with disability may result in Australia also being in breach of its obligations under the UNCRPD.⁶⁷
61. The primary impact of climate change on people with disability that is usually discussed is in relation to disasters (also called ‘extreme events’) and disaster risk reduction and response. For example, there is evidence that people with disability are two to four times more likely to be injured or die as a result of disasters. Climate change increases the frequency and intensity of disasters, and the rate of these increases depends on the degree of heating.
62. Self-evidently, policies and decisions about disaster planning and management have the potential to directly and indirectly discriminate against people with disability. Policies and decisions affecting people with disability must be inclusive of and led by people with disability.
63. Furthermore, climate policy is not limited to disaster risk reduction. Climate policy, more broadly, *prima facie* engages the rights of persons with disability – whether climate mitigation, climate adaptation (and disaster risk reduction as a subset of that) or energy and economic transition. It is trite in environmental law that a decision made now affects our shared future, which is why environmental impact assessment includes principles requiring consideration of current and future generations, referred to as “intra and inter-generational equity”. Similarly, a person with disability living now has had (and will have) a range of decisions made about them, decisions that have or will change their future.

⁶⁶ Cinnamon P Carlarne, ‘Environmental Law and Feminism’ in Deborah L Brake, Martha Chamallas and Verna L Williams (eds), *Oxford Handbook of Feminism and Law in the United States* (Oxford University Press, 2021) 1, 9.

D. Disability Discrimination Act Reform

- 64. The Review is an opportunity to address systemic injustice for current and future generations associated with climate change.
- 65. We recommend that the Review amend the DDA to recognise the discriminatory impacts of climate change. How systemic discrimination in climate policy is addressed must be led by people with disability and their organisations.
- 66. In the following part, we address some part of the Review Issues Paper. However, there is further work that needs to be done on how to grapple with the threat and opportunity posed by climate change.

Part 1 – Definition of disability

- 67. We support the submission of the Australian Discrimination Law Expert Group (**ADLEG**) with respect to changes to the definition of ‘disability’. We specifically highlight the need for internal intersectionality and intersectionality with other attributes in the context of climate change, as well as current and future disability discrimination.
- 68. In terms of future disability discrimination, in an environmental context, this should be inclusive of the obligation of intergenerational equity under the sustainable development principles, and the human right to a healthy environment.
- 69. The NSW Land and Environment Court found that a coal mine proposed for Gloucester in the NSW region of the Hunter Valley would result in inter and intra-generational inequity. The Chief Justice found that there would be economic benefits **and** environmental harms including from the impacts of climate change. His Honour found.⁶⁸

The benefits of the Project are therefore distributed to the current generation but the burdens are distributed to the current as well as future generations (inter-generational inequity).

- 70. This means people who may be discriminated against on the ground of disability may have additional and intersecting burdens placed on them by society, resulting in overburdening and exacerbation, and the highest risk of environmental harms. This includes, for example, exposure to pollution, heat, etc, without the time and money to pay to avoid, mitigate or manage those harms.
- 71. We also agree that people with disability face multiple intersecting barriers, which need to be accounted for and recognised in existing planning and response. This is demonstrated in the PWD Report of peoples’ experiences in the 2022 Lismore flood event,⁶⁹ and in the 2019-2020 Black Summer bushfires, peoples’ experience of barriers to safe and equal access to evacuation, public warnings, evacuation centres and locations, and the impacts of prolonged smoke exposure, along with other examples given above.

⁶⁸ *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7, Chief Justice Preston, [415]–[416].

⁶⁹ PWDA (2022), n

72. We recommend that the duty ought to be on the decision-maker and/or duty holder to prevent those inter- and intragenerational forms of discrimination. This should be an explicit component of the positive duty proposed.
73. It is essential that the DDA reference UNCRPD obligations, particularly due to the connections between climate change, disability discrimination, and lack of human rights enjoyment of people with disability (as described above). This would also support Australia's proactive compliance with its international commitments.
74. Therefore, we support the recommendations made in the submission to this review by the Australian Discrimination Law Experts Group (**ADLEG**):
 - a. at 1.5.2, that the DDA be amended to prohibit discrimination in all areas of life that are covered by the UNCRPD;
 - b. at 1.5.3 that an express provision be included in the DDA requiring all administrative and judicial decision-makers interpret the Act in a manner that best promotes compliance with the UNCRPD.

Part 2 – Positive Duty

75. A positive duty ought to be introduced, and not only a positive duty to protect from discrimination, but a positive duty to promote equality. We support the ADLEG recommendations and reasoning in this respect.
76. The UNCRPD imposes obligations on States to '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.'⁷⁰ This includes by:
 - (b) [taking] all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
 - (c) [taking] into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
77. In a climate context, discrimination can occur in, and discriminatory impacts can arise from, decision-making about factors affecting climate change at every level. In a government context, for example, when government bodies or decision-makers set policies and make decisions that will either expand or reduce greenhouse gas emissions into the atmosphere (mitigation), that will set the course in how we adapt to climate change (adaptation), and in deciding our approach to the transition of the economy from fossil fuels to cleaner sources of energy (transition).
78. This can play out at a macro scale (national/international), or at a micro scale (local). As an example, a sector plan made by the Australian government to reduce emissions in the transport sector might see an increased reliance on active transport, but the implementation of this at a local level may discriminate against people with disability. As outlined above, transition of the transport sector can be discriminator, for example, active transport modes which are inaccessible to or creates heightened risks for people with

⁷⁰ UNCRPD (n 2) art 1, 'Purpose'.

disability. Discrimination can and does occur in decision-making about climate change mitigation and adaptation, including in transition.

79. Climate mitigation, adaptation and transition decision-making is made both by the public and private sectors. The positive duty to promote disability equality ought to apply to both public and private actors.
80. The positive duty must be framed broadly enough to expressly include preventing climate injustice. It needs to ensure that entities, when designing programs, or undertaking decision-making on climate-related matters, do so in ways that reduce over-all burdens of climate change on people with disability, rather than increase them. It must also ensure that decision-making relating to climate include people with disability and decision making relating to disability is led by people with disability.

Part 3 – Encouraging inclusion in public life

81. We support the ADLEG submission recommendation 3.1.1 that the DDA be amended to create a stand-alone duty to provide adjustments.
82. In line with ADLEG recommendation 3.1.2, we also support the expansion of the scope of this duty to ‘capture all aspects of public life’.⁷¹ This would give access to adjustments for climate-related barriers in all areas of life and in relation to all human rights protected by the UNCRPD.
83. A stand-alone duty to provide adjustments would also offer recourse where climate adaptation or mitigation strategies are discriminatory against disabled people. Existing examples include the banning of plastic straws required by some disabled people for eating and drinking, the risks of silent electric vehicles to blind people, and banning of ICE vehicles in certain areas when these are the only accessible vehicles for some disabled people.

Part 4 – Improving access to justice

84. Recognising that access to legal remedies sits within the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), improving access to justice is relevant to the future proofing component of the review. The recent amendments to the AHRC Act to provide for the equitable costs rule to apply to discrimination cases in the federal courts is a positive development in this regard and must be protected.
85. People with disability do not have access to justice. The Law Council of Australia’s *Justice Report* recognises that people with disability are at higher risk of facing barriers to access to justice.⁷²
86. There are various reforms that would ensure the DDA is fit for purpose and remains so. These are:

⁷¹ ADLEG, [Submission of the Australian Discrimination Law Experts Group in response to the Commonwealth Attorney-General’s Department Review of the Disability Discrimination Act](#) (16 October 2025) 68.

⁷² Law Council of Australia, *The Justice Project: Final Report – Introduction and Overview* (August 2018, Law Council of Australia) 20, and *Part 1 – People with Disability* <[Final Report - Law Council of Australia](#)>.

- a. expanding standing;
- b. enabling representative and class complaints;
- c. extending time limits for lodgement of complaints and recognising that, in respect of harms caused by climate change, there may be delays in understanding the extent of such harms affecting people with disability; and
- d. improving remedies, particularly in respect of systemic discrimination.

Standing – person aggrieved/ affected

87. The current framing of the standing provisions in the AHRC Act have been interpreted to mean that only a person directly affected by unlawful discrimination has the right to bring an action.⁷³ In *Access for All Alliance (Hervey Bay) Inc v Hervey Bay City Council*,⁷⁴ a disability organisation complained of multiple breaches by the respondent Council of the *Disability Standards for Accessible Public Transport 2002* (Cth) (**Transport Standards**) made under the DDA. These breaches arose in the context of the implementation of about 20 new bus stops in the local government area. The complainant was an organisation of members, the majority of whom were people with disability. The members were affected by the alleged breaches, but Collier J held that the complainant was not a ‘person aggrieved’. Collier J further suggested that:⁷⁵

... reference by s 46PB [of the] Act to representative proceedings in human rights matters provides a framework such that matters of this nature could be brought as representative proceedings rather than under the aegis of an association incorporated to give voice to such concerns.

88. It is notable, however, that this assertion was not raised during the hearing and is, in fact, not sustainable as the requirements for representative proceedings in the Federal Court do not match the provisions in the AHRC Act permitting representative proceedings. This failure to ensure a clear and unhindered process from complaint at the AHRC to proceedings in the Federal Court (or Federal Circuit and Family Court) is yet to be remedied. Until it is remedied, the mechanism of enabling a complaint to be brought by a representative body on behalf of people with disability is unworkable.

Representative/ class complaints

89. The Productivity Commission, in its 2004 review of the DDA, identified ‘that greater use of representative actions could improve the effectiveness of the complaints process, particularly in achieving systemic change’.⁷⁶ It noted that amendments were necessary to the (then) *Human Rights and Equal Opportunity Commission Act 1986* (Cth) to enable representative complaints provisions to be effective and recommended that the:

⁷³ *Access for All Alliance (Hervey Bay) Inc v Hervey Bay City Council* [2007] FCA 162; 162 FCR 313 (2 May 2007).

⁷⁴ [2007] FCA 162; 162 FCR 313 (2 May 2007).

⁷⁵ *Ibid* [64].

⁷⁶ Productivity Commission, *Review of the Disability Discrimination Act 1992: Inquiry Report* (Report No 30, 30 April 2004) 400.

[then] *Human Rights and Equal Opportunity Commission Act 1986* should be amended to allow disability organisations with a demonstrated connection to the subject matter of a complaint to initiate complaints in their own right and proceed to the Federal Court and [the then] Federal Magistrates Court if required.⁷⁷

90. This recommendation has not been acted on and representative complaints remain an ineffective mechanism because of this failure. Indeed, it appears that new provisions of the (now) *Australian Human Rights Commission Act 1986* (Cth) relating to representative complaints have made the mechanisms more onerous and still avoid the possibility of a disability organisation making a complaint on behalf of, say, its affected members. Section 46POA of the AHRC Act (added to the Act in 2022⁷⁸) specifies that a ‘representative application may not be made without the written consent of each person on whose behalf the application is made’. This undermines the potential to use representative actions to challenge systemic discriminatory impacts, such as of climate-related decisions that disadvantage people with disability.

Time limits

91. The time limit on lodgement of complaints, again found in the AHRC Act, was originally 12 months. This was reduced in 2019 to 6 months, creating a more significant barrier to justice for people with disability and other complainants. It has recently been extended to 2 years. Even at 2 years, the time limit is significantly tighter than is the case for other forms of personal injury which vary across Australia, but all are no less than 3 years.⁷⁹
92. There is no rational basis for stricter time limits on discrimination claims than other claims for injury.
93. In respect of the discretion available to the AHRC to accept a complaint made beyond the 2-year time limit, we submit that where the complaint is of systemic discrimination, the onus ought to be on the respondent to establish what, if any, prejudice would accrue to it if the complaint is accepted.
94. This is particularly relevant to claims relating to discriminatory effects of failures to take appropriate actions to prevent or mitigate climate change. These are claims where all the control of the situation rests with the Australian government and corporate actors.

Need for effective remedies.

95. A disappointing aspect of the jurisprudence that has developed in respect of disability discrimination complaints is the very limited remedies ordered when discrimination has

⁷⁷ Ibid, recommendation 13.5, 401.

⁷⁸ *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth) sch 4, cl 8.

⁷⁹ *Limitation Act 1985* (ACT) s 16B: 3 years; *Limitation Act 1969* (NSW) s 18A: 3 years; *Limitation Act 1981* (NT) s 12: 3 years; *Limitation of Actions Act 1974* (Qld) s 11: 3 years; *Limitation of Actions Act 1936* (SA) s 36: 3 years; *Limitation Act 1974* (Tas) s 5A: 3 years; *Limitations of Actions Act 1958* (Vic) s 5: 3 years; *Limitation Act 1935* (WA) s 38: 6 years.

been found to have occurred. The relevant provision of the AHRC Act provides that a court, on finding unlawful discrimination, can:⁸⁰

... make such orders (including a declaration of right) as it thinks fit, including any of the following orders or any order to a similar effect:

- (a) an order declaring that the respondent has committed unlawful discrimination and directing the respondent not to repeat or continue such unlawful discrimination;
- (b) an order requiring a respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by an applicant;
- (c) an order requiring a respondent to employ or re-employ an applicant;
- (d) an order requiring a respondent to pay to an applicant damages by way of compensation for any loss or damage suffered because of the conduct of the respondent;
- (e) an order requiring a respondent to vary the termination of a contract or agreement to redress any loss or damage suffered by an applicant;
- (f) an order declaring that it would be inappropriate for any further action to be taken in the matter.

96. Despite the breadth of this provision, the courts have generally made orders under section 46PO(4)(d), that is, orders for compensatory damages. They have failed to take the opportunity to make orders under (a) or (b), both of which could be orders with systemic effect. This is in stark contrast to the equivalent tribunal dealing with discrimination complaints in Canada, which regularly makes orders for changes in policies or practices to prevent the continuation of systemic discrimination.⁸¹

97. In response to climate change impacts, such orders would be vital to achieve climate justice.

E. Conclusion

98. The Disability Discrimination Act Review is an opportunity to address the discriminatory impacts that climate change has for people with disability in Australia, and which is further entrenched and perpetuated by climate change, including Commonwealth laws and programs.

99. We urge that mechanisms in the DDA ought to be developed to enable laws, policies and actions of Australian governments and corporations operating in the Australian jurisdiction that affect climate outcomes to be challenged on that basis.

⁸⁰ Australian Human Rights Commission Act 1986 (Cth), s 46PO(4).

⁸¹ See, eg, Sophie Bisping, 'Confronting our failures: Tensions in remedying systemic discrimination in Canada' (2024) 24(4) *International Journal of Discrimination and the Law* 313, DOI: 10.1177/13582291241291024; *CN v. Canada* (Canadian Human Rights Commission), [1987] 1 S.C.R. 1114.

100. We make this submission to raise this issue and ensure it is considered in the Review. How the DDA addresses systemic discrimination ought to be led by and with the views of people with disability and Disabled People's Organisations. People with disability are themselves the experts.



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