

ARA X NRA SUBMISSION

REVIEW OF THE DISABILITY DISCRIMINATION ACT 1992 (CTH)

OCTOBER 2025

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to provide feedback on the review of the *Disability Discrimination Act 1992* (Cth) (**the Act**).

The ARA and the NRA (**the Associations**), which propose to amalgamate to form the Australian Retail Council (**ARC**), represent a \$430 billion sector that employs 1.4 million Australians—one in ten workers—making retail the nation's largest private sector employer and a cornerstone of the Australian economy.

Our combined membership spans the full breadth of Australian retail: from family-owned small and independent businesses, which comprise 95% of our membership, to the largest national and international retailers that support thousands of jobs and sustain communities across both metropolitan and regional Australia. Our industry operates more than 155,000 retail outlets nationwide, with the majority of those also represented by an online or e-commerce presence.

A strong retail sector delivers widespread benefits to all Australians, with a significant portion of every dollar spent in retail flowing back into employees, suppliers, superannuation funds, and local communities. We are united in advocating for the policy settings, reforms and collaboration that will drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it.

EXECUTIVE SUMMARY

The Associations welcome the opportunity to contribute to the review of the Act. Retail is Australia's largest private sector employer and a key driver of participation and opportunity. Our members are committed to inclusive, accessible workplaces that reflect the diversity of the communities they serve.

The review is a timely opportunity to modernise Australia's anti-discrimination framework so that it continues to protect people with disability while remaining clear, practical and workable for employers and service providers. We support reforms that promote inclusion and participation but caution that changes must preserve proportionality, certainty and alignment with existing workplace and safety regulation.

The recommendations of this submission aim to strengthen inclusion, preserve reasonableness, and ensure reforms are accompanied by practical guidance that employers and retailers can rely on with confidence.

DEFINITIONS AND INHERENT REQUIREMENTS

The Associations note that proposed changes to the definitions of disability, discrimination, and inherent requirements will have flow-on impacts for employers. Any shift in how inherent requirements are understood or applied must maintain alignment with existing workplace health and safety obligations and established employment law principles.

Employers have a duty to provide safe work environments and to ensure employees are fit to perform the inherent requirements of their role. Altering this definition without clear safeguards risks confusion about an employer's capacity to manage workplace safety and could inadvertently lead to the placement of individuals in roles that are not safe or sustainable.

The review also proposes to introduce consultation as a factor when determining whether an individual can carry out the inherent requirements of a role. While consultation already occurs informally in many workplaces, this proposal could require new or expanded processes to document and evidence consultation to demonstrate compliance. For employers, this may necessitate policy changes, training and record-keeping systems to ensure consistency and defensibility in the event of a complaint.

The Act should continue to recognise that assessing inherent requirements involves weighing both the capabilities of the individual and the operational and safety needs of the role. Guidance must be developed to ensure employers can make these assessments consistently and lawfully, without exposure to conflicting obligations under other workplace legislation.

WORKPLACE ADJUSTMENTS

The proposal to remove the word reasonable from the obligation “to make reasonable adjustments” is a central concern for employers. The concept of reasonableness has been integral to balancing the rights of individuals with the legitimate operational and financial constraints of businesses for more than three decades.

Eliminating this qualifier risks creating uncertainty, inconsistency and exposure to dispute, particularly for small and medium-sized employers without specialist HR capability. The current approach provides flexibility to tailor adjustments to context and resources, consistent with established jurisprudence and the Fair Work Act’s overarching principle of fairness.

Importantly, the removal of reasonableness may also compromise workplace safety. Employers have legal duties to ensure the health and safety of all staff, contractors and customers. If the obligation to make adjustments is expanded without consideration of these duties, businesses may be required to accommodate arrangements that increase physical or psychological risk.

The Associations support proactive engagement between employers and employees to identify workplace adjustments that enable participation. However, the duty should remain to make reasonable adjustments, supported by practical guidance and examples that reflect real-world retail settings.

If the Act is amended, accompanying measures should:

- provide clear statutory guidance on what constitutes a lawful and practicable adjustment;
- recognise that capacity to make adjustments varies with business size, resources and operational demands;
- maintain proportionality between compliance effort and the scale of risk being addressed;
- ensure that obligations under the Act operate consistently with employers’ duties under work health and safety laws; and
- include clear expectations around consultation and documentation processes when adjustments are being considered.

POSITIVE DUTY TO PREVENT DISCRIMINATION

The proposed introduction of a positive duty to prevent discrimination would align the Act with the *Sex Discrimination Act 1984* (Cth) reforms. The Associations support the intent to promote proactive inclusion. However, this is likely to be the most significant change arising from the review, creating new compliance and administrative obligations for both employers and service providers.

For employers, the introduction of a positive duty will require the development or formalisation of controls to eliminate disability discrimination. This may involve reviewing training programs, updating policies and procedures, spot-checking recruitment and pre-employment screening practices, and introducing regular audits of workplace accessibility. These activities will require substantial administrative effort and resourcing, particularly for small and medium retailers.

For members that also act as providers of goods and services, it is important to clarify the extent to which the positive duty applies beyond employment. If the duty extends to the provision of goods and services - as suggested by some interpretations - it would significantly broaden the compliance footprint for retail businesses, covering customer service, digital accessibility, marketing, and complaints management. The Associations recommend that the

Government clarify the scope of this duty early and, if extended to goods and services, ensure appropriate transitional arrangements and practical guidance are developed.

To be effective and workable, a positive duty must be:

- supported by a clear, single set of compliance resources developed with industry input;
- accompanied by an initial educative phase focused on awareness and capability rather than enforcement;
- implemented gradually, beginning with large employers before being extended to smaller businesses; and
- aligned with existing workplace and consumer laws to minimise duplication and regulatory overlap.

UNJUSTIFIABLE HARDSHIP

The existing test for unjustifiable hardship is well understood and should be retained. It ensures that obligations remain fair and achievable in practice.

Rather than altering the definition, the focus should be on clarifying its application through updated guidance, case examples and consultation templates developed jointly by the Australian Human Rights Commission, employer groups and disability advocates.

Any changes should continue to consider cost, practicability and impact on others while encouraging constructive dialogue between employers and employees.

PRACTICAL INCLUSION MEASURES

The Associations support initiatives that make inclusion easier to deliver in practice. These could include:

- supporting the industry to build a repository of workplace adjustment tools, checklists and templates designed for small and mid-sized business;
- expanded access to advisory services such as JobAccess, with case studies relevant to retail environments;
- streamlined certification and recognition processes for assistance animals; and
- clearer guidance on the development and use of disability action plans and disability standards.

Such measures would help employers act confidently and consistently while ensuring that reforms translate into real improvement for people with disability.

RECOMMENDATIONS

Preserve the principle of reasonableness

- Retain the term reasonable adjustments to ensure obligations remain proportionate, clear and practical. Provide supplementary statutory guidance defining expected standards for employers of different sizes, and ensure obligations operate consistently with workplace health and safety duties.

Clarify inherent requirements and consultation

- Maintain the current understanding of inherent requirements to protect both workplace safety and employer decision-making. Ensure that any new consultation requirement is clearly defined, supported by guidance, and capable of being implemented without excessive administrative burden.

Introduce any positive duty gradually and with support

- Recognise that a positive duty to prevent discrimination will impose new cost, resource and reporting

burdens. Phase it in by working with relevant industry bodies on education and awareness, and clarify whether the duty extends beyond employment to the provision of goods and services.

Maintain the unjustifiable hardship framework

- Retain the existing test while improving clarity through modernised guidance and examples that reflect contemporary workplaces and small business capacity.

Provide practical tools and resources for employers and service providers

- Support the industry to develop clear, nationally consistent guidance and templates to assist both employers and goods-and-services providers in implementing inclusive practices efficiently and confidently.

CONCLUSION

The Associations support a strong, inclusive and contemporary Disability Discrimination Act that upholds fairness while remaining workable for employers and service providers. By retaining the concept of *reasonableness*, maintaining clarity around *inherent requirements* and consultation, and implementing any new obligations in partnership with business, the review can strengthen protections for people with disability while ensuring safe, sustainable and inclusive workplaces and retail environments.

The Associations thank the Attorney-General's Department for the opportunity to outline our position and remain available for further engagement on reforms that support both inclusion and operational workability across Australia's largest private sector workforce.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.