

# Submission on the Review of the Disability Discrimination Act

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## Overview

In Australia, there are millions of volunteers and tens of thousands of volunteer involving organisations that could be impacted by expanding the coverage of the *Disability Discrimination Act 1992* (Disability Discrimination Act). The impacts on volunteers and volunteer involving organisations and potential unintended consequences must be explicitly considered when revising the Act.

This submission focuses on the impacts that proposed changes to the Disability Discrimination Act, being considered by the Australian Government Attorney General's Department, may have on volunteer involving organisations that engage people with disability as volunteers (formal volunteering). We do not address existing obligations on volunteers or volunteer involving organisations engaging with people with disability.

Overall, we support strong protections for volunteers with disability to address unequal treatment between paid and unpaid workers (including volunteers) and ensure inclusive practice. To achieve this, we recommend any additional legal obligations placed on volunteer involving organisations are reasonable and proportionate. We recommend that amendments to the Disability Discrimination Act:

1. Include volunteers in the definition of a worker to ensure volunteers are afforded the same protections as paid workers.
2. Apply a positive duty to eliminate disability discrimination towards volunteers in the workplace.
3. Exclude entirely volunteer run organisations from being duty holders, as the Commonwealth *Work Health and Safety Act 2011* (Work Health and Safety Act) does through the definition of Persons Conducting a Business or Undertaking.
4. Ensure the exceptions for unjustifiable hardship and inherent requirements apply appropriately to volunteer involving organisations, given the differences between paid and unpaid workers.
5. Be accompanied by comprehensive resources to enable volunteer involving organisations to adopt the new legal obligations, including a comprehensive communication campaign, particularly in New South Wales, Victoria and Western Australia where the changes will be the greatest.
6. Provide a transition period.
7. Be developed in consultation with relevant volunteering stakeholders, the volunteering peak bodies, volunteer involving organisations and volunteers themselves, particularly volunteers with disability.

## Introduction

### Background and context

Volunteering Australia defines volunteering as time willingly given for the common good and without financial gain.<sup>1</sup> According to the Australian Bureau of Statistics, one quarter (25%) of Australians aged 15 years and over participated in unpaid voluntary work through an organisation in 2020.<sup>2</sup>

People with disability are active members of the volunteering sector. Overall, people with disability volunteer at a slightly higher rate (26.0%) than people without disability (24.3%). People with disability are also slightly over-represented in the volunteer population compared to the overall population, making up more 29.1% of all people volunteering for an organisation in 2020<sup>3</sup> compared to 27.8% of respondents to the GSS in 2020<sup>4</sup>.

A volunteer involving organisation is any organisation that engages volunteers. Volunteers can be engaged by not-for-profit, private (e.g. residential aged care providers) or government (e.g. schools or hospitals) organisations. Volunteer involving organisations operate across a wide range of sectors including sport, religion, care economy, community services, education, environment, emergency services, justice, arts and cultural groups.

While there is no aggregated figure that captures all forms of volunteer involving organisations in Australia, data is available on charities (a subset of not-for-profit organisations). According to the latest data from the Australian Charities and Not-For-Profit Commission (ACNC), 52,772 charities have provided Annual Information Statements for the 2023 reporting period with 83.6% (44,139) saying they engaged volunteers and more than half (53.1% or 28,020) reporting having no employees/paid staff.<sup>5</sup> Small charities<sup>6</sup> are more likely to have no employees with two thirds (67%) of small charities being entirely volunteer run.<sup>7</sup>

### About this submission

This submission responds to the issues paper published by the Australian Government Attorney General's Department, *Disability Discrimination Act 1992 Review*.<sup>8</sup> It focuses on protections for volunteers in the workplace and any potential changes to the obligations of volunteer involving

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<sup>1</sup> <https://www.volunteeringaustralia.org/resources/definition-of-volunteering/#/>

<sup>2</sup> <https://www.abs.gov.au/statistics/people/people-and-communities/general-social-survey-summary-results-australia/latest-release>

<sup>3</sup> <https://www.volunteeringaustralia.org/wp-content/uploads/Volunteering-Australia-Key-Volunteering-Statistics-2024-Update.pdf> 11

<sup>4</sup> Ibid

<sup>5</sup> <https://data.gov.au/data/dataset/acnc-2023-annual-information-statement-ais-data/resource/f8d9f239-012b-46af-86b5-5f6d9a49af1a> updated 15 September 2025

<sup>6</sup> Annual revenue under \$500,000

<sup>7</sup> <https://data.gov.au/data/dataset/acnc-2023-annual-information-statement-ais-data/resource/f8d9f239-012b-46af-86b5-5f6d9a49af1a> updated 15 September 2025

<sup>8</sup> [https://consultations.ag.gov.au/rights-and-protections/Disability-Discrimination-Act-issues-paper/user\\_uploads/Disability-Discrimination-Act-review-issues-paper.pdf](https://consultations.ag.gov.au/rights-and-protections/Disability-Discrimination-Act-issues-paper/user_uploads/Disability-Discrimination-Act-review-issues-paper.pdf)

organisations as duty holders under the Act with regard to the volunteers they engage as part of their workforce. Section one of the submission outlines the current situation, key risks that need to be considered and options for moving forward. Section two of the submission responds to selected consultation questions set out in the issues paper, focusing on a positive duty to eliminate discrimination, encouraging inclusion of people with disability in employment, education and other areas of life and exemptions.

This submission was drafted by Volunteering Australia in collaboration with the state and territory volunteering peak bodies and follows previous submissions, most recently:

- Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Response to the Issues paper on Promoting Inclusion<sup>9</sup>
- Joint Submission (with Justice Connect) to the National Inquiry into Sexual Harassment in Australian Workplaces<sup>10</sup>
- Submission to the NDIS Review<sup>11</sup>
- Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability<sup>12</sup>
- Submission to the consultation on the National Disability Employment Strategy<sup>13</sup>
- Submission to the development of the National Disability Strategy<sup>14</sup>

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<sup>9</sup> [https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd\\_category\\_id=154&wpfd\\_file\\_id=25082&token=&preview=1](https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=154&wpfd_file_id=25082&token=&preview=1)

<sup>10</sup> [https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd\\_category\\_id=85&wpfd\\_file\\_id=10114&token=&preview=1](https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=85&wpfd_file_id=10114&token=&preview=1)

<sup>11</sup> [https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd\\_category\\_id=199&wpfd\\_file\\_id=44411&token=&preview=1](https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=199&wpfd_file_id=44411&token=&preview=1)

<sup>12</sup> [https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd\\_category\\_id=154&wpfd\\_file\\_id=25790&token=&preview=1](https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=154&wpfd_file_id=25790&token=&preview=1)

<sup>13</sup> [https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd\\_category\\_id=154&wpfd\\_file\\_id=25080&token=&preview=1](https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=154&wpfd_file_id=25080&token=&preview=1)

<sup>14</sup> [https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd\\_category\\_id=142&wpfd\\_file\\_id=22706&token=&preview=1](https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=142&wpfd_file_id=22706&token=&preview=1)

## The National Strategy for Volunteering (2023-2033)

The National Strategy for Volunteering (2023–2033) is a ten-year blueprint for a reimagined future for volunteering in Australia, providing a strategic framework for enabling safe, supported, and sustainable volunteering. The National Strategy for Volunteering was developed through a 12-month co-design process with members of the volunteering ecosystem.<sup>15</sup> Improving inclusion for people with disability, particularly in the volunteering ecosystem, should consider alignment with the National Strategy for Volunteering. Two of the Strategy’s strategic objectives are particularly relevant:

- Strategic Objective 1.2: Make Volunteering Inclusive and Accessible
- Strategic Objective 3.4: Recognise the Importance of Volunteer Management

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<sup>15</sup> <https://volunteeringstrategy.org.au/the-strategy/>

## Section 1: Current situation, potential risks and options

### Current situation

The Disability Discrimination Act is silent on inclusion of people with a disability in volunteering. Inclusive volunteering is an essential element of enabling the participation of people with disability in their communities. Volunteering supports social connectedness, physical and mental health, sense of purpose, and connection to place. It can also be a pathway to skills development and employment. It empowers people to make a positive impact in areas that are important to them and leads to more inclusive and flourishing communities.

At present, where a volunteer is located determines if they are protected from disability discrimination when applying for and/or carrying out a volunteer role. For volunteering involving organisations, legal obligations around worker disability discrimination depend on where the organisation is located and if the worker is paid or voluntary. This is due to gaps and differences in relevant Commonwealth, state and territory legislation.

The Disability Discrimination Act section on discrimination in work (Division 1, sections 15 to 21B) refers to specific types of workers, but does not include voluntary workers, meaning volunteers are not protected. However, some state and territory legislation does cover voluntary work as well as paid work. For example, since it was first enacted, the *Anti-Discrimination Act 1991 (Queensland)* has included work on a voluntary or unpaid basis under the definition of work (Schedule 1). Hence volunteers are protected by the Queensland legislation's prohibition on discrimination in work and work-related areas (Division 2). According to Justice Connect, the same applies, but in different ways, for disability discrimination in all states and territories except New South Wales, Victoria, and Western Australia.<sup>16</sup>

One impact of this is the unequal treatment of paid and unpaid workers, including supporting a perception that volunteers do not require the same protections as paid workers. Another impact is a lack of recourse for volunteers experiencing discrimination on the basis of their disability.

Regardless of the legal obligations they face, volunteer involving organisations are encouraged to adopt the National Standards for Volunteer Involvement (National Standards).<sup>17</sup> The National Standards are a best practice framework to guide volunteer involvement and can be used flexibly, recognising that volunteering takes place in highly diverse settings and ways. They help organisations attract, manage and retain volunteers and support effective risk and safety practices. They also help improve the volunteer experience and ensure that the wellbeing of volunteers is supported and their contributions are valued.

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<sup>16</sup> <https://content.nfplaw.org.au/wp-content/uploads/2025/08/Guide-to-workplace-behaviour.pdf> 16-32

<sup>17</sup> <https://www.volunteeringaustralia.org/nationalstandards/>

Four of the eight standards are particularly relevant:

- Standard 3: Volunteer roles are meaningful and tailored
- Standard 4: Recruitment is equitable, and diversity is valued
- Standard 5: Volunteers are supported and developed
- Standard 6: Volunteer safety and wellbeing is protected

The evidence suggests that while people with disability volunteer in large numbers, they still face barriers to volunteering. Even if discrimination does not appear to be the most significant barrier, it does persist, often in the form of lack of accessibility. Consultation with state and territory volunteering peak bodies in early 2023 found that access to transport poses a major challenge for people with disability, as public transportation systems and infrastructure may not always be fully accessible or equipped to meet their specific needs. The two-hour minimum shift requirement for disability workers and inadequate funding for private transport options in NDIS packages also cause difficulties in this respect. The below example provided by Volunteering SA&NT illustrates this:

*“One of our clients found the perfect volunteering role, but it would have cost him \$80 to get him there and back once a week via an access taxi – he had to reluctantly decline.”<sup>18</sup>*

Other reported barriers include attitudinal and procedural barriers:

*“The barriers to inclusion include the attitude of others i.e., assumptions, stereotypes and misconceptions of people with disability. It includes limited or no accessibility, for example a lack of parking, ramps, toilets and technology in place. It includes processes that don’t take into consideration of what support may be required by a person with disability, to complete processes.”* Co-design workshops, Volunteerability.<sup>19</sup>

In 2022, organisations reported that the most common barrier they faced to being inclusive<sup>20</sup> was accessibility issues.<sup>21</sup> Other barriers less frequently reported were organisational culture, difficulties recruiting and lack of resources to support inclusion.<sup>22</sup>

An example of a program that demonstrates how support can be provided to the volunteering ecosystem to remove barriers, reduce discrimination and improve inclusion of people living with disability or mental health condition/s is the Inclusive Volunteering Pathways to Employment

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<sup>18</sup> Submission to the NDIS Review [https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd\\_category\\_id=199&wpfd\\_file\\_id=44411&token=&preview=1](https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=199&wpfd_file_id=44411&token=&preview=1) 6

<sup>19</sup> Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Response to the Issues paper on Promoting Inclusion [https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd\\_category\\_id=154&wpfd\\_file\\_id=25082&token=&preview=1](https://www.volunteeringaustralia.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=154&wpfd_file_id=25082&token=&preview=1) 4, n=3,948

<sup>20</sup> The question related to inclusion of minority groups in general, not just people with disability.

<sup>21</sup> <https://volunteeringstrategy.org.au/wp-content/uploads/2022/10/Volunteering-in-Australia-2022-The-Organisation-Perspective.pdf> 36, n=116.

<sup>22</sup> Ibid, 37, n= 39,35 and 35 respectively.

Program. The Program is delivered by Volunteering ACT, The Centre for Volunteering (NSW) and Volunteering Tasmania and supports participants to engage in volunteering as a pathway to employment as well as working with volunteer involving organisations to build inclusive practices and remove barriers to volunteering for people with disability.

## Key risks

The two main risks that need to be managed for volunteer involving organisations are capacity and resources to meet increased obligations and unintended consequences.

Volunteer involving organisations vary greatly in their capacity and resources to navigate potentially complex legislative requirements with respect to their volunteers and make changes in their organisations' culture, practices and policies. Capacity and resources might include funding, access to legal advice, skilled personnel, leadership and paid staff hours. The following data points are indicative.

- 54.2% of volunteer managers who responded to a survey manage volunteers as volunteers themselves (i.e., they are unpaid).<sup>23</sup>
- In addition, while paid volunteer managers were more likely to manage large numbers of volunteers than unpaid volunteer managers, 23.8% of unpaid volunteer managers managed 51 or more volunteers, including 3.7% who managed 251 or more volunteers.
- According to ACNC data, more than half (53.1% or 28,020) of reporting charities have no employees/paid staff.<sup>24</sup>
- In addition, 20% of reporting charities that engaged volunteers reported zero revenue for the 2023 reporting period. The same is true for 23% of reporting charities that engaged volunteers and had no paid staff.<sup>25</sup>

Unintended consequences of imposing additional obligations on volunteer involving organisations could include deterring people from setting up a charity or not-for-profit organisation in the first place due to difficulty meeting legal thresholds and deterring them from taking on volunteers and thus inadvertently increasing exclusion.

## Options for a way forward

Volunteers with disability deserve appropriate protections. As outlined in the National Strategy for Volunteering, a healthy and sustainable volunteering eco-system is inclusive and works to ensure everyone can participate in volunteering opportunities that matter to them. We are concerned to ensure that any changes to the Disability Discrimination Act to achieve this outcome are done in a way that imposes reasonable and proportionate new obligations on volunteer involving organisations, includes appropriate supports and is implementable.

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<sup>23</sup> <https://www.volunteering.com.au/wp-content/uploads/2025/04/04058-TCfV-Snapshot-of-Volunteering-2023-FULL-Report-Final.pdf> 21

<sup>24</sup> <https://data.gov.au/data/dataset/acnc-2023-annual-information-statement-ais-data/resource/f8d9f239-012b-46af-86b5-5f6d9a49af1a> updated 15 September 2025.

<sup>25</sup> Ibid

There is a balance to be struck in upholding the rights of people with disability and managing the burden of legal obligations on volunteer involving organisations. We accept that at present the Disability Discrimination Act is unbalanced and places too great a burden on people with disability to fight for their own rights, generally after they have been contravened, and that this needs to be addressed.

### Recognise volunteers by including them in the definition of a worker

Including volunteers in the definition of a worker under the Disability Discrimination Act (while still acknowledging they are distinct from paid workers in practice) would provide an important expansion to the areas of life in which the Act encourages the inclusion of people with disability and would also address the unequal treatment of paid and unpaid workers currently perpetuated by the Act. This improvement, however, but must be accompanied by proportionate regulation and implementation.

This change to the Act would bring it in line with legislation in Qld, SA, NT, ACT and Tas (at least with respect to disability discrimination). It would also impose new legal obligations on volunteer involving organisations in NSW, Victoria and WA with respect to the recruitment and appointment of volunteers and their treatment in the workplace, expanding obligations they may already hold for their paid workers. Additionally, it would impose new legal obligations on volunteers with respect to their treatment of each other and of prospective volunteers in the workplace.

The definition of worker used by the Work Health and Safety Act (section 7 (1)), includes volunteers, where **volunteer** means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses) (section 4). This definition is used in both the *Fair Work Act 2009* (Fair Work Act) (Section 527 D) in relation to prohibiting sexual harassment in connection with work and in the Commonwealth *Sex Discrimination Act 1984* (Sex Discrimination Act).

Consequently, like the Work Health and Safety Act (section 5) it would also be necessary to move away from using the term employer and instead use Person Conducting a Business or Undertaking. This encompasses businesses or undertakings conducted on a not-for-profit basis and by partnerships and incorporated associations and encompasses the relationship between volunteers and the volunteer involving organisations that engage them. The Work Health and Safety Act definition excludes volunteer associations (section 5 (7)), that is, entirely volunteer run organisations (see section below).<sup>26</sup>

Importantly, volunteers are different from paid workers in the workforce in their role types, obligations and work expectations. For example, volunteers are there by choice, can leave without notice, can be absent for as long and as often as they like and can often choose their hours. So, while including them in the definition of a worker is appropriate, they are different and distinct from paid workers, and they need to be considered separately. Organisations that engage both voluntary and paid workers also need both circumstances considered.

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<sup>26</sup> **volunteer association** means a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

### Application of duties to the workplace

Expanding the duties of employers and Persons Conducting a Business or Undertaking to all workers (including volunteers) means it is appropriate for duties, particularly positive duties, to apply in the workplace. It would not be appropriate for volunteer involving organisations to have duties towards their volunteers in all contexts and settings. Applying duties with respect to volunteers in the workplace (which would cover anywhere the volunteer work is done, including online) makes it clear who the duty holder is and why, and applies duties in a context the duty holder is responsible for and can act in. It is a reasonable and proportionate expansion for volunteer involving organisations and the greatest increase in protections for volunteers with disability.

We recognise that positive duties have an important role in potentially reducing discrimination by shifting from relying on people with disability being willing and able to make a complaint to duty holders having a positive duty to proactively prevent and respond to discrimination. Positive duties can also play a role in shifting attitudes by normalising inclusion and accessibility as standard rather than exceptional behaviour.

We recommend a similar approach to that taken in the Sex Discrimination Act, which limits the application of the positive duty to sexual harassment and certain types of discrimination focussed on the workplace. It would have the effect of applying the positive duty to volunteer involving organisations with respect to their engagement of volunteers and in relation to all workers, not just paid workers (see next section for proposed exception).

#### **Text Box 1: Informal volunteering**

Informal volunteering occurs outside of formal organisations. People in communities may see a need and together or separately act on it, such as helping out a neighbour or hosting a street library. It may be a one off or regular occurrence. It is still time willingly given for the common good and without financial gain, but there is no formal organisational element to it and no workplace. In that sense, for the purposes of the Disability Discrimination Act, informal volunteers are probably members of the public dealing with other members of the public.

### Exclude volunteer run organisations from being duty holders

Organisations that are solely run by volunteers and have no paid workers are the volunteer involving organisations with the least resources (broadly defined) to meet increased legal obligations. Resources in this context might include funding, access to legal advice, skilled personnel, and paid or unpaid staff hours. In addition, as they do not have any paid employees, they are not subject to Commonwealth disability discrimination legislation with respect to the workplace at present. There is precedent for this approach in the Work Health and Safety Act, where the definition of a Person Conducting a Business or Undertaking captures volunteer involving organisations but explicitly excludes volunteer associations, that is, solely volunteer run organisations.

We recommend that solely volunteer run organisations be excluded from being duty holders with respect to their volunteers and discrimination in work. Even with such an exclusion in place, the National Standards for Volunteer Involvement are the best practice standard for all volunteer involving organisations and support inclusive practices.<sup>27</sup>

### Apply exceptions for unjustifiable hardship and inherent requirements to volunteer involving organisations

The exceptions for unjustifiable hardship and inherent requirements should be retained. They should apply to volunteer involving organisations in relation to volunteers, in the same way as they apply to employers with respect to paid workers. As discussed earlier, different language is required as organisations are not employers with respect to volunteers. As previously noted, the Work Health and Safety Act uses Persons Conducting a Business or Undertaking and refers to workers in a business or undertaking rather than employees.

Any changes to clarify and simplify the tests for the unjustifiable hardship exception and the inherent requirements exception would be welcomed. The effect of relevant tests and thresholds should be considered as they would apply to volunteer involving organisations and volunteer roles, not just employers and paid workers.

### Resource the supports for volunteer involving organisations to take on any new legal obligations

Should volunteer involving organisations be required to take on new legal obligations, they will require support to do so. At a minimum, this would include guidance materials and training specific to volunteers and volunteer involving organisations. A good example of similar targeted support is the materials developed by the Department of Health, Disability and Aging regarding the new aged care legislation that comes into effect from 1 November 2025.<sup>28</sup>

Additional support would be required by some volunteer involving organisations to meet their obligations, for example on how to change organisational culture, volunteer recruitment and onboarding processes and tailor volunteer roles. This could be provided, for example, by expanding the Inclusive Volunteering Pathways to Employment Program currently provided by Volunteering ACT, The Centre for Volunteering (NSW) and Volunteering Tasmania to volunteer involving organisations or creating something similar but tailored to the requirements of the Disability Discrimination Act.

Employers already have access to support to meet their obligations under the Disability Discrimination Act. For example, the Job Access program provides advice and funding from the Employment Assistance Fund to make workplace adjustments. Support is provided to people with disability and their employers, as well as jobseekers with disability.<sup>29</sup> If volunteer involving organisations are to have the same legal obligations as employers, they should have access to similar financial supports for their volunteers (and prospective volunteers).

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<sup>27</sup> <https://www.volunteeringaustralia.org/nationalstandards/>

<sup>28</sup> <https://www.health.gov.au/topics/aged-care/volunteers/resources>

<sup>29</sup> <https://www.jobaccess.gov.au/> and <https://www.jobaccess.gov.au/i-am-a-person-with-disability/looking-applying-job/government-services-help-you/funding-workplace-changes>

Access to legal advice should also be considered. Justice Connect provides Not-for-profit Law, a national legal service that offers free and affordable legal supports for not-for-profit organisations and social enterprises.<sup>30</sup> Demand for this service can be expected to increase, particularly in the transition phase, as volunteer involving organisations seek to understand their new obligations. This activity will need to be funded.

When considering structural and systemic changes that impact organisations it is important for policy makers to remember that volunteering is not free – while volunteers give their time without financial gain, there are costs associated with recruitment, onboarding, training and retention of volunteers. Additional legal requirements regarding the recruitment and managements of volunteers will require greater time spent on volunteer management, at least in the transition phase as processes are adjusted. This is likely to mean an increase in funding required for volunteer management, a function that is often under-funded already.

#### Provide a transition or notice period

It would be appropriate to provide a transition or notice period before revised legislation comes into effect – or between revised legislation coming into effect and new obligations applying to volunteer involving organisations – to enable them to prepare to meet their obligations and for adequate training and resources to be provided. For example, a positive duty to eliminate discrimination was introduced via amendments to the ACT *Discrimination Act 1991* in April 2004 and has a staged commencement applying to ACT government entities from April 2025 and to all other duty holders from April 2027.<sup>31</sup> A positive duty to eliminate discrimination was introduced into the Northern Territory *Anti-Discrimination Act 1992* on 2 January 2024, with organisations given until 6 January 2025 to implement their obligations and before they were enforced.

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<sup>30</sup> <https://www.nfplaw.org.au/>

<sup>31</sup> <https://www.hrc.act.gov.au/discrimination/act-discrimination-act-positive-duty>

## Section 2: Responses to select consultation questions

### Positive duty to eliminate discrimination

#### 6. How should the burden of proof be addressed in the Disability Discrimination Act?

There is a balance to be struck in upholding the rights of people with disability and managing the burden of legal obligations on volunteer involving organisations. We accept that, at present, the Disability Discrimination Act is unbalanced and places too great a burden on people with disability to fight for their own rights, generally after they have been contravened, and that this needs to be addressed.

As outlined in the National Strategy for Volunteering, a safe and sustainable volunteering ecosystem is inclusive and works to ensure everyone can participate in volunteering opportunities that matter to them.

#### 12. If there was a positive duty in the Disability Discrimination Act, who should it apply to?

A positive duty that would require the duty holder to take reasonable and proportionate measures to eliminate, as far as possible, discrimination against people with disability and would enable a third party (the Australian Human Rights Commission) to act if the duty holder is not taking appropriate steps to address discrimination should apply with respect to the workplace, as the positive duty in the Sex Discrimination Act does.

It is appropriate to expand coverage of the Disability Discrimination Act with respect to the workplace to capture volunteers, excluding entirely volunteer run organisations. As discussed previously, this means certain definitions would need to change, with the Work Health and Safety Act suggested as a suitable model.

It is appropriate that the size of a duty holder's business or operations, and resources, be taken into account in determining whether a measure to eliminate disability discrimination is reasonable and proportionate. Guidance would need to be provided on whether the same measures are reasonable and proportionate for volunteers in a not-for-profit volunteer involving organisation as is the case for paid workers in a business of a comparable size (revenue or numbers of workers).

See also Text Box 2.

**Text Box 2: Applying a positive duty to eliminate discrimination and/or a duty to provide adjustments in other areas of life**

At present, volunteers and volunteer involving organisations have duties under the Disability Discrimination Act not to discriminate against people with disability (as clients, customers, activity participants etc or members of the public) in relation to the following areas of life: access to premises (section 23); the provision of goods and services or making facilities available, whether for payment or not (section 24); accommodation (section 25); membership of clubs and incorporated associations and the provision of benefits and services to members (section 27); and sport, including community sport (section 28). The Act includes exceptions to the unlawfulness of discrimination for sport, and others that allow positive discrimination.

The Act captures a wide range of formal volunteer activities, such as working at an op shop, making up support packs for new mothers, visiting older people to provide companionship, mentoring young people, staffing a mobile laundry or toy library, coaching the local soccer team, hiring out the scout hall, and involvement in the range of service clubs like Lions, Rotary or the Country Women's Association.

While the application of a positive duty in all these circumstances should reduce discrimination by shifting from relying on people with disability being willing and able to make a complaint to duty holders having a positive duty to proactively prevent and respond to discrimination, we advise careful consideration be given to the application of these duties to volunteer involving organisations. Volunteer involving organisations may face issues taking on a positive duty because of lack of capacity and resources where they are not-for-profit organisations or are entirely volunteer run. Noting that measures to eliminate discrimination should be reasonable and proportionate, taking into account, for example, the size of a duty holder's operations and resources. Taking on a duty to provide adjustments could be an even greater challenge, noting that the unjustifiable hardship exception should still apply. If positive duties were to be expanded in these areas of the Act, consideration should be given to an exception for entirely volunteer run organisations. Any new duties need to be accompanied by the appropriate resources and supports.

At present, a positive duty to eliminate discrimination has been in force in the Northern Territory since 6 January 2025. There is a positive duty to provide adjustments and to eliminate discrimination in the ACT, with the latter yet to come into effect. Both jurisdictions' legislation cover the type of contexts described at the start of the text box, and the ACT and NT legislation also apply to volunteer involving organisations with respect to their volunteers in the workplace.<sup>32</sup>

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<sup>32</sup> <https://content.nfplaw.org.au/wp-content/uploads/2025/08/Guide-to-workplace-behaviour.pdf> 18, 22, 30

13. Are there lessons from the operation of the positive duty in the Sex Discrimination Act that could be incorporated into a positive duty in the Disability Discrimination Act?

Yes. The Sex Discrimination Act:

- uses a definition of a worker which includes volunteers
- uses employer or Person Conducting a Business or Undertaking which includes certain volunteer involving organisations
- the duty is not imposed on volunteer associations (a volunteer association is entirely volunteer run and does not engage employees or contractors to carry out work on its behalf)<sup>33</sup>
- the duty does not apply to all forms of discrimination in all contexts, in effect it applies to the workplace
- specifies relevant matters to be taken into account (section 47C (6)) in determining whether a duty holder complies with their positive duty obligations under the Act, namely:
  - (a) the size, nature and circumstances of the duty holder's business or undertaking;
  - (b) the duty holder's resources, whether financial or otherwise;
  - (c) the practicability and the cost of measures to eliminate conduct covered by [the Act] or;
  - (d) any other relevant matter.

14. What costs, benefits and other impacts would duty holders experience in meeting a positive duty under the Disability Discrimination Act? If you are an existing duty holder under the Disability Discrimination Act, please specify how you think meeting a positive duty would impact you.

Should volunteer involving organisations become duty holders under the Disability Discrimination Act with respect to their volunteers, the following may arise:

- The cost of legal advice to understand their duties or participate in any action taken against them under the Act plus any liability if found responsible for a breach.
- Potential increase in insurance costs. It is already the case that volunteer involving organisations must take out personal accident insurance to cover harm caused to their volunteers as volunteers are generally not covered by workers compensation legislation.<sup>34</sup> More work needs to be done to fully understand the implications of any changes, including for liability insurance.
- Funding, time and resources would be needed to educate and support duty holders on their (new) obligations, and to update internal procedures, processes and policies and ensure compliance with them.
- Reduced willingness of volunteers to take on management positions on a voluntary basis, either as volunteer managers, on management committees or on boards, due to increasing

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<sup>33</sup> This is due to the definition of a Person Conducting a Business or Undertaking, which is taken from the Work Health and Safety Act Section 5

<sup>34</sup> <https://content.nfplaw.org.au/wp-content/uploads/2025/10/National-Volunteering-Guide.pdf> 105

legal complexity of the operating environment (not solely related to changes to the Disability Discrimination Act), resulting in unintended arm's length discrimination or exclusion.

- Deterring people from setting up a charity or not-for-profit organisation at all due to difficulty meeting legal thresholds and deterring them from taking on volunteers and thus inadvertently increasing exclusion.
- Volunteers and prospective volunteers may feel safer and better supported, which could result in an increase in the number of volunteers or in volunteer hours and/or better use of volunteers.

#### 15. Should there be exceptions or limits to the application of a positive duty?

Yes. Exceptions or limits should exclude entirely volunteer run organisations from being duty holders (the Work Health and Safety Act definition of a Person Conducting a Business or Undertaking explicitly excludes volunteer associations) and confine application of a positive duty with respect to volunteer involving organisations' volunteers to the workplace for the reasons outlined in Section 1. See also Text Box 2.

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

#### 16. Would the creation of a stand-alone duty to provide adjustments better assist people with disability and duty holders to understand their rights and obligations?

We support efforts to clarify the obligations on duty holders, particularly if volunteer involving organisations become duty holders or have new obligations with respect to their volunteers, for example if there is a duty to provide adjustments for all workers, including volunteers.

We strongly agree that it would be necessary to ensure that duty holders are not responsible for circumstances outside their knowledge or control e.g., where a person with disability chooses not to disclose their disability, which they are entitled to do.

Consideration should be given to whether exactly the same duty to provide adjustments applies to paid and voluntary workers and whether the unreasonable hardship exception should apply in the same way to making adjustments for paid and voluntary workers, noting the difference in role types, obligations and work expectations.

#### 17. Should the scope of the duty to provide adjustments apply only to the existing areas of public life covered by the Disability Discrimination Act, or extend to other contexts?

The duty to provide adjustments should be applied in a way that makes it clear who the duty holder is in any given context and where that duty holder has the ability to take action to make adjustments. For volunteer involving organisations, it is reasonable for duties to be expanded to apply in the workplace with respect to voluntary workers.

If volunteer involving organisations were to have a duty to provide adjustments for volunteers as well as paid workers, then they should have access to equivalent supports to enable them to do so, such as funding and advice available under the Job Access program, and particularly the Employment Assistance Fund. This should include support for costs that do not exist for paid employees, such as insurance costs resulting from the fact that volunteers are generally not covered by workers compensation legislation.

See also Text Box 2.

**18. Would removing the word 'reasonable' from the term 'reasonable adjustments' to align the language with the legal effect create any unintended consequences?**

Not that we are aware of. We understand that whether the word reasonable is included or not, the legal effect is that only justification for not making adjustments is the unjustifiable hardship exception, which will be retained and clarified. The critical point is to consider how this change would impact volunteer involving organisations and volunteers, not just employers and paid workers, if the definition of work or worker is changed to include volunteers.

**19. What is your preferred approach to achieving greater fairness and transparency in claims of unjustifiable hardship:**

- a. the Disability Royal Commission amendment as proposed
- b. a new definition of unjustifiable hardship
- c. other

**Please expand on your response.**

It is reasonable to include a requirement to consult the person with disability as they are best placed to provide expert knowledge about the options available to facilitate their participation. This would help overcome unconscious bias and misconceptions about disability that can create barriers to participation in volunteering.

From the point of view of volunteer involving organisations, particularly small and medium ones, it is important to consider that many of the people making decisions with respect to whether providing adjustments constitutes an unreasonable hardship for the organisation will be volunteers themselves. They may not have ready access to advice or support from anyone with expertise on personnel matters, or legal requirements.

In addition, what constitutes an unjustifiable hardship in making adjustments for a volunteer must take into account whether volunteer involving organisations are provided with access to advice, funding and support equivalent to that available to employers, including that available under the Job Access program.

**20. What are your views on amending the Disability Discrimination Act to consider the nature and extent of any adjustments made and encourage consultation between prospective or current employers and prospective or current employees before making employment decisions?**

If the definition of work or worker is changed to include voluntary workers, it is appropriate to consult with current or prospective workers on adjustments. However, the nature of volunteer roles and voluntary work should be considered as well. For example, is the same level of adjustment expected for a volunteer role as for a paid role. As previously noted, role types, obligations and work expectations differ between paid workers and volunteers. Volunteers are there by choice, can leave without notice, can be absent for as long and as often as they like and can often choose their hours.

See also the following response regarding safety and insurance for volunteers.

**21. Are there other amendments to the Disability Discrimination Act that could support engagement between prospective or current employers and prospective or current employees to better understand the inherent requirements of a job?**

If the definition of work or worker is changed to include voluntary workers, then consideration needs to be given to whether there are any differences in the application of inherent requirements to volunteer roles compared to paid roles. All roles, whether paid or voluntary should have inherent requirements based on position descriptions. However, as mentioned previously, there are differences between volunteers and paid workers in terms of role types, obligations and work expectations. For example, what happens when a prospective volunteer and a volunteer involving organisation disagree on whether a person can meet the inherent requirements and whether an adjustment is reasonable? What is the mediation or resolution pathway? This is particularly relevant where safety is concerned, as it is already the case that volunteers are not generally covered by workers compensation legislation and volunteer involving organisations must take out insurance, such as personal accident insurance, for their volunteers.<sup>35</sup>

**22. Should any other amendments be made to the definition of inherent requirements, including factors that should be considered when deciding whether a person could carry out the inherent requirements of a job?**

Again, if the definition of work or worker is changed to include voluntary workers, then consideration needs to be given to whether there are any differences in the decision-making process around inherent requirements for volunteer roles compared to paid roles.

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<sup>35</sup> <https://content.nfplaw.org.au/wp-content/uploads/2024/06/Part-4-NVG-Volunteer-safety-with-annexures.pdf> 55-60.

## Exemptions

### 33. Could any of the permanent exemptions be narrowed or updated, while balancing other policy considerations?

If the definition of work or worker is changed to include voluntary workers, then the important consideration is to make sure that permanent exemptions properly account for volunteers and volunteer involving organisations. This might include consideration as to whether a permanent exemption for voluntary associations needs to be created, or whether it is sufficient to rely on a definition of Persons Conducting a Business or Undertaking that explicitly excludes them in legislation or in the regulatory frameworks and subordinate regulations.

### 36. Should a definition for temporary exemptions be added to the Disability Discrimination Act?

We support balancing clarity for duty holders with flexibility for the Australian Human Rights Commission, should volunteers come into scope under the Disability Discrimination Act. It is possible that even if a transition period is created for volunteer involving organisations with respect to any new obligations towards their volunteers under the Act, that there may be temporary exemptions requested by those unable to transition quickly enough.

Thorough consultation is needed with volunteer involving organisations and the wider ecosystem to determine what volunteer involving organisations who are duty holders would have to do to comply with the Act, what resources would be involved and what timeframes are reasonable. Clear guidance would also need to be provided on when it would be possible to apply for a temporary exemption and when a justifiable hardship exception could be relied upon.

### 37. Would you recommend any changes to the legislative process of granting temporary exemptions?

We support balancing clarity for duty holders with flexibility for the Australian Human Rights Commission, should volunteers come into scope under the Disability Discrimination Act.

## Further options for reform

### 48. Are there examples of legislative provisions in Commonwealth or state and territory anti-discrimination law that could be drawn on to modernise or strengthen the Disability Discrimination Act?

- Work Health and Safety Act definition of a worker and of a Person Conducting a Business or Undertaking.
- Sex Discrimination Act approach to positive duty.
- ACT and Northern Territory approaches to positive duties, including implementation periods before the provisions are enforced.

49. What additional guidance materials should be provided to the community, including duty holders, about the operation of the Disability Discrimination Act or specific amendments proposed in this paper?

It would be critical to provide guidance specifically aimed at volunteers, volunteer managers and volunteer involving organisations about their rights and obligations. The Department of Health, Ageing and Disability has undertaken this in relation to the new Aged Care Act 2024 see:

<https://www.health.gov.au/topics/aged-care/volunteers/resources>.

51. Are there any other issues with the Disability Discrimination Act that should be considered as part of this review?

Yes. If volunteer involving organisations become duty holders with respect to their volunteers under the Disability Discrimination Act, they will need more than guidance materials to be able to comply with the Act. A significant communication and education campaign would be required to raise awareness of the new obligations and the guidance materials available.

Tangible resources would also be required, such as:

- Providing access to advice, funding and other support to make adjustments for all workers, not just paid workers. This could include:
  - expanding the Job Access program, particularly the Employment Assistance Fund, and access to it to include all workers (and work seekers) or creating something similar for volunteering.
  - Expanding the Inclusive Volunteering Pathways to Employment Program or creating something similar.
- Increasing funding to Justice Connect to expand the Not-for-profit Law service, to ensure volunteer involving organisations who need it have access to free or low cost legal advice, particularly in the transition period, and then in relation to any claims brought against them under the Act.

Nothing should be made mandatory for duty holders without considering the impact on volunteer involving organisations, taking into account the differences in managing paid and volunteer workforces and what is reasonable and proportionate for diverse types and sizes of volunteer involving organisation.

## Recommendations

Based on consideration of the *Disability Discrimination Act 1992 Review* issues paper we recommend that amendments to the Disability Discrimination Act:

1. Include volunteers in the definition of a worker to ensure volunteers are afforded the same protections as paid workers.
2. Apply a positive duty to eliminate disability discrimination towards volunteers in the workplace.
3. Exclude entirely volunteer run organisations from being duty holders, as the Commonwealth *Work Health and Safety Act 2011* (Work Health and Safety Act) does through the definition of Persons Conducting a Business or Undertaking.
4. Ensure the exceptions for unjustifiable hardship and inherent requirements apply appropriately to volunteer involving organisations with respect to their volunteers, given the differences between paid and unpaid workers regarding role types, obligations and work expectations.
5. Be accompanied by comprehensive resources to enable volunteer involving organisations to prepare for new legal obligations, including a comprehensive communication campaign, particularly in New South Wales, Victoria and Western Australia where the changes will be the greatest.
6. Provide a transition period to enable volunteer involving organisations, particularly small ones, to take on new obligations.
7. Be developed in consultation with relevant volunteering stakeholders, the volunteering peak bodies, volunteer involving organisations and volunteers themselves, particularly volunteers with disability.

## Authorisation

This submission has been authorised by the Chief Executive Officer of Volunteering Australia.



Mr Mark Pearce  
Chief Executive Officer

## Endorsements

This position statement has been endorsed by the seven state and territory Volunteering Peak Bodies.



## About Volunteering Australia

Volunteering Australia is the national peak body for volunteering, working to advance volunteering in the Australian community. Volunteering Australia's mission is to support a thriving volunteering ecosystem in Australia by promoting and advocating for volunteering and providing leadership at a national level.

The seven state and territory Volunteering Peak Bodies work to advance and promote volunteering in their respective jurisdictions and are Foundation Members of Volunteering Australia.

Our vision is for a future where volunteering is the heart of Australian communities. This vision was co-designed with thousands of people from across Australia during the development of the National Strategy for Volunteering.

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