



# **Carers WA Policy Submission**

## **Disability Discrimination Act 1992 (Cth) Review**

### **November 2025**

# About Carers WA

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Carers WA is the peak body representing the needs and interests of carers in Western Australia and is part of a national network of Carers Associations. Carers provide unpaid care and support to family members and friends with disability, mental health challenges, long term health conditions (including a chronic condition or terminal illness), have an alcohol or drug dependency, or who are frail aged. The person they care for may be a parent, partner, sibling, child, relative, friend or neighbour.

Caring is a significant form of unpaid work in the community and is integral to the maintenance of our aged, disability, health, mental health, and palliative care systems.

Some important facts about carers include:

- There are currently 3.04 million unpaid carers in Australia.
- There are more than 320,000 families and friends in a caring role in Western Australia.
- The replacement value of unpaid care, according to a report undertaken by Deloitte, Access Economics, “The economic value of unpaid care in Australia in 2020” is estimated at \$77.9 billion per annum.

## Acknowledgement of Country

Carers WA acknowledges the Wadjuk Noongar Nation’s lands, water, customs, and culture of which the Carers WA Head Office is located. Carers WA recognises our services reach beyond the Perth (Boorlo) region, and so we also acknowledge the cultural diversity of First Nation Peoples across our state and throughout Australia.



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# 1.0 Recommendations

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To eliminate discrimination and support the rights of people with disability in a caring role, and Australian carers, Carers WA recommends:

1. A human rights model of disability be used, that is in alignment with the UNCRPD, for the definition within the *Disability Discrimination Act 1992* (Cth).
2. The new Act include a carer definition which is consistent with the 'carer' definition in the Carer Recognition Act 2010 (Cth), and a separate definition be provided for the role of a paid care worker.
3. The specific inclusion of a definition of intersectionality as per the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS) and *Disability Inclusion Act 2024* (ACT), to ensure multiple experiences of disadvantage are considered, including being in a caring role.
4. The inclusion of being a carer or having a caring experience as a protected attribute under discrimination legislation.
5. Express allowance of multiple or combined protected attributes to strengthen the Act (with inclusion of having a caring role as a protected attribute), and allow people with this experience to have easier navigation of court and complaints processes than current practices outlined in the review paper.
6. The removal of the need to make a comparison when proving direct discrimination; and amending the Act to shift the burden of proof to the respondent to prove the reason for their treatment of the person with disability was not because of the person's disability.
7. Align the new Act with recommendations from the Disability Royal Commission to remove the 'reasonableness' element from the definition of indirect discrimination.
8. The inability to comply element be removed from the definition of indirect discrimination to modernise the Act and to align with the *Age Discrimination Act*, *Sex Discrimination Act*, and anti-discrimination legislation in Victoria, Tasmania, the Northern Territory and the Australian Capital Territory.
9. The UNCRPD be enforced in the new *Disability Discrimination Act 1992* (Cth) through specific inclusion in the object of the Act.
10. As recommended by the Disability Royal Commission and as per the positive duty measure in the *Sex Discrimination Act*, a positive duty be created in the new *Disability Discrimination Act 1992* (Cth) for duty holders to be required to take reasonable and proportionate measures to eliminate disability discrimination (including consideration of carers and the caring role).
11. A positive duty be created in anti-discrimination legislation for duty holders to be required to take reasonable and proportionate measures to eliminate discrimination against carers (including people with disability who have a caring role).

12. The application of recommendations 4.25 and 4.26 of the Disability Royal Commission's Final Report, these being to:
    - Replace all references to 'reasonable adjustments' with 'adjustments' in the Disability Discrimination Act 1992 (Cth) (Recommendation 4.25); and
    - Inclusion of a standalone duty to make adjustments (Recommendation 4.26).
  13. The provision of packages of support and education to sectors to assist with ongoing education and training on the application of adjustments for people with disability and carers in their sector.
  14. As per Recommendation 4.32 from the Disability Royal Commission's Final Report, to include additional factors which must be taken into account when determining unjustifiable hardship, including:
    - Consultation with any person with disability concerned
    - Consideration of available alternative measures to eliminate or reduce hardship.
  15. Measures to ensure people with disability and carers are represented in decision making positions, inclusive of Board and managerial positions.
  16. People with disability and carers to be strongly represented and consulted in legislative, service and policy design and review, in all sectors that they navigate and use.
  17. As per Recommendation 7.26 of the Disability Royal Commission's Final Report, the following factors be added to factors which must be considered when determining whether a current or prospective employee would be able to carry out the requirements of a role:
    - The extent of consultation with any person with disability concerned
    - The nature and extent of any adjustments made.
- Carers WA also recommends there be a requirement to report back to the current or prospective employee following these determinations.
18. Clarification of the term 'inherent requirements' in the Disability Discrimination Act 1992 (Cth) through the development of a definition and clearer explanation for inclusion in the Act, with supporting guidelines to ensure consistency in the assessment and application of inherent requirements across workplaces and industries.
  19. Amendments be made to Section 22 of the new *Disability Discrimination Act 1992* (Cth), to cover suspension and exclusion as well as expulsions (as per Recommendation 7.2 of the Disability Royal Commission), to provide increased clarity to carers and the children they care for.
  20. Ongoing educational measures be adopted to help educational staff to better understand and implement this change, including where Section 45 of the Act and 10.5(2) of the Education Standards apply.

21. Requirements be legislated in the new Act for Disability Inclusion Plans and Action Plans, inclusive of timeframes for review, purpose, minimum inclusions and consultation requirements.
22. The Australian Human Rights Commission be empowered to provide development and implementation advice on disability action plans; set minimum requirements for disability action plans (inclusive of consideration of caring roles); and require evaluation of outcomes from previous disability action plans before developing a new one.
23. A defined timeframe for review of disability action plans be set in the new Act, as defined in sections 12-14 of the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS).
24. Jurisdictional disability inclusion plans and disability inclusion action plans for defined entities be required to consider intersectionality, such as if people with disability have additional experiences which may cause disadvantage, inclusive of being in a caring role.
25. Jurisdictional disability inclusion plans and disability inclusion action plans for defined entities be required to also consider people who are in a caring role (who may or may not have a disability).
24. The following actions be taken to increase the enforceability of the Disability Standards to support the 38.6% of carers who also have disability:
  - Provision of extra powers (attached to a positive duty in the new Act) to the Australian Human Rights Commission to enforce compliance and the power to (dependent on outcomes of systemic unlawful discrimination inquiries): apply to a court for civil penalty orders and injunctions; issue compliance notices; and enter into enforceable undertakings.
  - Require duty holders to report on their compliance to the new Act and to relevant Disability Standards through their disability action plans, supported by guidance from the Australian Human Rights Commission.
25. Carer inclusions in recent disability discrimination and rights legislation be considered for adoption in the new *Disability Discrimination Act 1992* (Cth). i.e. the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS) and *Disability Inclusion Act 2024* (ACT).



## 2.0 Introduction

Carers WA appreciates the opportunity to provide feedback to the Australian Government Attorney-General's Department Review of the Disability Discrimination Act.

Carers WA endorses the United Nation's Convention on the Rights of Persons with Disabilities (CRPD), of which Australia is a signatory, and strongly believes in the important role that families and carers can play in supporting the rights of people with disability, where they have been nominated to do so. We also acknowledge the 38.6% of carers who also have disability<sup>1</sup> on top of their caring role, a subset which is often missed in human rights and disability discrimination conversations. This submission is made to support several cohorts, these being:

- Carers of people with disability
- People with disability who are also in a caring role.

We are pleased to be involved in this much-needed review of the *Disability Discrimination Act 1992* (Cth) and would like to commend the Department on the length and level of consultation it has undertaken, as well as the depth of consideration of possible amendments exhibited within the Issues Paper. However, we believe that there is opportunity for increased consideration within the Act of both carers of people with disability and of people with disability who are in a caring role. This submission expands on this position, with practical recommendations to achieve this consideration, and has been informed by ongoing feedback from WA carers and stakeholders.

For the purposes of this submission, the term 'carer' is defined as per the meaning under the *Carer Recognition Act 2010* (Cth), this being that a carer is an individual who provides personal care, support and assistance to another individual who has disability, a medical condition (including a terminal or chronic illness), a mental illness, or who is frail and aged. An individual is not a carer if the care, support or assistance provided is under a contract or services or for provision of services, is in the course of voluntary work for a charitable, welfare or community organisation, or is provided as part of an education or training course.<sup>2</sup>

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<sup>1</sup> (Australian Bureau of Statistics, 2024)

<sup>2</sup> (Commonwealth of Australia, 2010)

## 3.0 General Feedback

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### 3.1 Context

There are over three million unpaid carers in Australia<sup>3</sup>, who provide informal care that is valued at \$77.9 billion per annum<sup>4</sup>. Carers report impacts of caring that place them at significant disadvantage when compared to the average Australian, with these impacts being compounded where the carer also has a disability, long term health condition or other experience that places them at a disadvantage.

Financially, Australian carers forgo (on average per carer) \$392,500 in lifetime savings and \$170,000 in superannuation to age 67. Some carers report never having enough food (4.3%), with a further 6.9% only sometimes having enough food. Another 6.1% of carers report either never or only sometimes having a safe place to live<sup>5</sup>. Nearly one in four carers said they only sometimes (19.7%) or never (4.3%) had access to affordable healthcare<sup>6</sup> – this is in addition to carers often not prioritising their own health over that of the person they care for or having the time away from their caring role to attend to their own health.<sup>7</sup>

Many carers struggle to work due to their caring role, or are not able to work full time and must prioritise workplace flexibility over more senior positions<sup>8</sup>. In the 2024 National Carer Survey, one in four carers were not in the labour force; half of respondents were of working age (15-64 years old); just above one in three carers were in paid employment; and 7.6% of respondents were unemployed.<sup>9</sup> More than a third of carers (37.7%) and more than one in five of carers in the paid workforce, said they had stopped working on a temporary or permanent basis due to their caring responsibilities. Most respondents (58.6%) also reported at least one form of financial stress.<sup>10</sup>

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<sup>3</sup> (Australian Bureau of Statistics, 2024)

<sup>4</sup> (Deloitte Access Economics, 2020)

<sup>5</sup> (Carers NSW, 2025)

<sup>6</sup> (Carers NSW, 2025)

<sup>7</sup> (Carers NSW, 2025)

<sup>8</sup> (Carers NSW, 2025)

<sup>9</sup> (Carers NSW, 2025)

<sup>10</sup> (Carers NSW, 2025)



Carers also experience impacts to their own wellbeing, experiencing higher rates of psychological distress, and poor wellbeing and health.<sup>11</sup> An increase in formal recognition of carers can increase carer wellbeing and levels of recognition from family and community, having positive impact on longevity of the caring role and quality of life for both the carer and those they care for.<sup>12</sup>

### Carers with disability

Two in five carers (38.6%) have disability<sup>13</sup>, and 46.5% of carers live with a long-term health condition/disability.<sup>14</sup> For carers who have disability, the caring role further exacerbates disadvantage and discrimination, which is recommended to be recognised within the new Act.

Carers with disability or other health condition report having significantly lower wellbeing than other carers and the average population; they experience a higher rate of psychological distress; and 68.9% feel socially isolated.<sup>15</sup> Over one in three carers from this cohort provide care to two or more people, more than half provide 24/7 care and/or have been caring for more than ten years, and 84.9% live in the same household as the person they care for.<sup>16</sup>

Only one-third of carers from this group report still being active in paid employment, and 42.2% want to work more hours than they currently do (compared to 36% of other carers). While one in three (33.0%) carers reported financial stability, 67.0% of carers living with long-term health condition or disability had one or more experiences of financial stress in the twelve months prior to being surveyed.<sup>17</sup>

### Carers who provide care for someone with disability

In Australia, 57.6% of carers provided care for someone accessing disability services, and one in five carers provide care for someone not accessing any formal support services.<sup>18</sup> Across all services, carers were commonly not asked about their needs as a carer, including in mental health services (66.7% of carers), disability services (65.8%) and aged care services (55.1%).<sup>19</sup>

In the 2024 National Carer Survey, many respondents indicated that NDIS services for the person they cared for did not allow them to focus on paid work or looking for employment, study or volunteering. Over half said that these services did not allow them to focus on responsibilities external to their caring role, and two in three reported that these services also did not allow them as a carer to properly rest and recharge.

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<sup>11</sup> (Carers NSW, 2025)

<sup>12</sup> (SAGE Design and Advisory, 2025)

<sup>13</sup> (Australian Bureau of Statistics, 2022)

<sup>14</sup> (Carers NSW, 2025)

<sup>15</sup> (Carers NSW, 2025)

<sup>16</sup> (Carers NSW, 2025)

<sup>17</sup> (Carers NSW, 2025)

<sup>18</sup> (Carers NSW, 2025)

<sup>19</sup> (Carers NSW, 2025)

### 3.2 How should disability be defined and what factors should be considered in the development of this definition?

Carers WA has previously provided submissions to WA's disability legislation reform processes. Within this submission Carers WA recommended a human rights model of disability be used, that is in alignment with the UNCRPD. The same recommendation is made for the definition within the *Disability Discrimination Act 1992* (Cth).

#### Carers WA recommends:

1. A human rights model of disability be used, that is in alignment with the UNCRPD, for the definition within the *Disability Discrimination Act 1992* (Cth).

### 3.3 Intersectionality

As outlined in section 3.1 of this submission, the experience of caring for both people with disability and for carers of people with disability is one which adds disadvantage.

Caring is also an experience which is discriminated against in all sectors and industries which carers navigate and use, from the workplace to health, housing, education and more. This is exacerbated where the carer also has a disability and/or other experience which adds disadvantage such as identifying as LGBTIQ+, and/or being from a culturally and linguistically diverse or First Nations background.

#### Existing inclusion of carers in discrimination legislation

Carers and/or the experience of caring is already included in some discrimination legislation, including the *Fair Work Act 2009* (Cth); the *Anti-Discrimination Act 1977* (NSW); and the *Sex Discrimination Act 1984* (Cth).<sup>20</sup> Carers are also included in a limited form in the *Disability Discrimination Act 1992* (Cth), but not as the experience of a person with disability who also has caring responsibilities.

#### Example – Carer inclusion in workplace anti-discrimination legislation

The *Fair Work Act 2009* (Cth) prohibits discrimination against employees on the basis of their family or carer responsibilities,<sup>21</sup> and helps to mitigate workplace discrimination for carers through measures including paid personal/carer's leave, unpaid carer's leave, flexible working conditions and the provision of authority to the Fair Work Ombudsman to investigate allegations of misconduct. However, while this legislation provides all employees the right to maintain family responsibilities, due to caring responsibilities often falling outside and exceeding the scope of 'family responsibilities', carers may not experience the full extent of this protection.<sup>22</sup> The level at which workplace discrimination for carers happens in recruitment, career progression opportunities and flexible working arrangement requests is hard to determine<sup>23</sup>.

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<sup>20</sup> (Carers NSW, 2022)

<sup>21</sup> (Australian Government Productivity Commission, 2023)

<sup>22</sup> (Carers NSW, 2022)

<sup>23</sup> (Carers NSW, 2022)

Carers who are not engaged in employment, or who lack supportive employers, are more likely to have poor wellbeing, and experience loneliness and financial stress<sup>24</sup>. In the 2025 Carer Wellbeing Survey, carers who participated in paid work and who also had understanding employers, had healthier levels of wellbeing (48.2%) than those who felt their employers were not so understanding (25.9%).<sup>25</sup> Ensuring carers are proactively supported in the workplace and included in all anti-discrimination legislation in a targeted manner, reduces the likelihood of carers not having understanding employers and makes employed carers more likely to have higher wellbeing.

Having more targeted workforce reengagement programs for carers (such as Carers WA's [Be Job Ready Program](#)) and upskilling workplaces to support carers through programs such as the [Carer Friendly Employers](#) program would also be excellent ways of helping to translate carer-specific anti-discrimination legislation into practice.

#### [Opportunities for inclusion of carers and intersectionality of caring and other experiences](#)

The current *Disability Discrimination Act 1992* (Cth) does not define the role of a carer as outlined in the *Carer Recognition Act 2010* (Cth), or differentiate this role from that of a paid care worker. Carers WA recommends that the new Act include a carer definition which is consistent with the 'carer' definition in the *Carer Recognition Act 2010* (Cth), and a separate definition be provided for the role of a paid care worker.

Carers WA also recommends the specific inclusion of a definition of intersectionality as per the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS) and *Disability Inclusion Act 2024* (ACT). This definition is suggested to be:

- **intersectionality** - means the multi-layered experiences of people with disability in relation to the personal and/or protected attributes of a person or group of persons that create interconnected, overlapping and interdependent systems of disadvantage or discrimination.

Carers WA also recommends the inclusion of being a carer or having a caring experience as a protected attribute under discrimination legislation.

Carers WA also believes that streamlining complaints processes through express allowance of multiple or combined protected attributes would strengthen the Act, allowing people with this experience to have easier navigation of court and complaints processes than current practices outlined in the review paper.

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<sup>24</sup> (Mylek & Schirmer, 2024)

<sup>25</sup> (Mylek & Schirmer, 2024)

**Carers WA recommends:**

2. The new Act include a carer definition which is consistent with the ‘carer’ definition in the Carer Recognition Act 2010 (Cth), and a separate definition be provided for the role of a paid care worker.
3. The specific inclusion of a definition of intersectionality as per the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS) and *Disability Inclusion Act 2024* (ACT), to ensure multiple experiences of disadvantage are considered, including being in a caring role.
4. The inclusion of being a carer or having a caring experience as a protected attribute under discrimination legislation.
5. Express allowance of multiple or combined protected attributes to strengthen the Act (with inclusion of having a caring role as a protected attribute), and allow people with this experience to have easier navigation of court and complaints processes than current practices outlined in the review paper.

### **3.4 Definition of direct discrimination**

Carers have raised the need for complaints processes in disability systems and legislation to be streamlined and easy to navigate. Continuous improvement mechanisms have also been raised such as sharing of complaints information between states and territories, tracking complaints against organisations, ensuring there is feedback to complainants, education and assistance (if needed) on how to submit a complaint, and independent complaint processes.

In line with recommendations made by the Disability Royal Commission and similar to provisions in the Fair Work Act, Carers WA recommends the removal of the need to make a comparison when proving direct discrimination; and amending the Act to shift the burden of proof to the respondent to prove the reason for their treatment of the person with disability was not because of the person’s disability.

**Carers WA recommends:**

6. The removal of the need to make a comparison when proving direct discrimination; and amending the Act to shift the burden of proof to the respondent to prove the reason for their treatment of the person with disability was not because of the person’s disability.

### 3.5 Definition of indirect discrimination

#### Reasonableness Element

Carers have called for an overhaul of what is considered reasonable, especially in the school environment, and have raised concerns regarding a lack of clarity around the term 'reasonable' in disability legislation. This is in addition to feedback from carers raised in section 3.4 of this submission for streamlined and easy to navigate complaints processes.

As such and given the lack of clarity with this element as raised in the review paper, Carers WA recommends the new Act align with recommendations from the Disability Royal Commission to remove the 'reasonableness' element from the definition of indirect discrimination.

#### Inability to comply element

*'Legislate clearer laws to protect people with disabilities.' – feedback from a carer*

Carers have raised the need to ensure disability legislation translates well into practice, achieves its intent, and is clear and effective. Carers WA notes the item raised in the review paper on the risk of limited clarity of the 'inability to comply' element in the indirect discrimination definition in practice.

Carers WA recommends that the inability to comply element be removed from the definition of indirect discrimination to modernise the Act and to align with the *Age Discrimination Act*, *Sex Discrimination Act*, and anti-discrimination legislation in Victoria, Tasmania, the Northern Territory and the Australian Capital Territory.

#### Carers WA recommends:

7. Align the new Act with recommendations from the Disability Royal Commission to remove the 'reasonableness' element from the definition of indirect discrimination.
8. The inability to comply element be removed from the definition of indirect discrimination to modernise the Act and to align with the *Age Discrimination Act*, *Sex Discrimination Act*, and anti-discrimination legislation in Victoria, Tasmania, the Northern Territory and the Australian Capital Territory.

### 3.6 Interpreting the Act in line with the UNCRPD

Carers WA believes that Australia's obligations to enact the UNCRPD should be enforced through legislation where applicable. In recently established disability legislation such as the *Disability Inclusion Act 2024* (ACT) and the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS), this enforcement has been enacted through inclusion in the objects of these Acts onwards. This same approach is recommended for the new *Disability Discrimination Act 1992* (Cth). In particular, it is suggested that the wording of this section of the object in the new Act be similar to in the ACT and Tasmanian Acts, this being:

*In achieving the object, the operation and administration of this Act is to support, effect and further the human rights of people with disability under international treaties including, but not limited to, the United Nations Convention on the Rights of Persons with Disabilities.*

#### Carers WA recommends:

9. The UNCRPD be enforced in the new *Disability Discrimination Act 1992* (Cth) through specific inclusion in the object of the Act.

### 3.7 Positive duty for duty holders to eliminate discrimination

Carers often raise experiences where they have not submitted complaints for themselves or on behalf of those they care for due to fear of retribution, not knowing complaints processes, or simply not having the time or capacity to deal with submitting a complaint. Carers have also raised that when they have submitted complaints, they have sometimes felt dismissed, or not achieved the outcome they wanted.

As such, Carers WA is supportive of measures to reduce the need for people with disability, people with disability who are also carers, and carers of people with disability to need to make complaints to enact system and circumstance changes.

Carers WA recommends, as recommended by the Disability Royal Commission and as per the positive duty measure in the *Sex Discrimination Act*, that a positive duty be created in the new *Disability Discrimination Act 1992* (Cth) for duty holders to be required to take reasonable and proportionate measures to eliminate disability discrimination (including consideration of carers and the caring role).

Carers WA would also like to see a positive duty be created in anti-discrimination legislation for duty holders to be required to take reasonable and proportionate measures to eliminate discrimination against carers (including people with disability who have a caring role).



Programs such as the [Carer Friendly Employers](#) program can assist employers in implementing this positive duty where it relates to carers and people with disability with a caring role. This program helps employers to define best practice standards for supporting their staff who have caring responsibilities.

**Carers WA recommends:**

10. As recommended by the Disability Royal Commission and as per the positive duty measure in the *Sex Discrimination Act*, a positive duty be created in the new *Disability Discrimination Act 1992* (Cth) for duty holders to be required to take reasonable and proportionate measures to eliminate disability discrimination (including consideration of carers and the caring role).

### 3.8 Strengthening the duty to provide adjustments

Carers have called for more education and understanding of adjustments in many different settings, including workplaces, schools, etc. For example - in educational settings, carers have described a broad range of experiences when seeking adjustments for those they provide care for. These have ranged from positive experiences, through to not so positive experiences, which in some cases have led to these families moving schools or home schooling. Carers have raised concerns about the resourcing and capacity of schools to be able to adequately support students with disability. This is in addition to the concerns raised in section 3.5 around the application of what is 'reasonable'.

Further to this feedback, Carers WA notes the misconception raised by the Disability Royal Commission (as noted in the issues paper), that a reasonable adjustment is one which is both reasonable and which does not cause unjustifiable hardship.<sup>2627</sup> This is as compared to the current definition of 'reasonable adjustment' in the *Disability Discrimination Act 1992* (Cth), which defines a reasonable adjustment as '*an adjustment to be made by a person is a reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person*'.<sup>28</sup> This discrepancy between legislative intent and practical application is indicative of a need for increased clarity in the legislation.

Carers WA recommends the application of recommendations 4.25 and 4.26 of the Disability Royal Commission's Final Report, these being to:

- Replace all references to 'reasonable adjustments' with 'adjustments' in the *Disability Discrimination Act 1992* (Cth) (Recommendation 4.25); and
- Inclusion of a standalone duty to make adjustments (Recommendation 4.26).

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<sup>26</sup> (Australian Government Attorney-General's Department, 2025)

<sup>27</sup> (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2023)

<sup>28</sup> (Australian Government, 2024)

Carers WA also recommends the provision of packages of support and education to sectors to assist with ongoing education and training on the application of adjustments for people with disability and carers in their sector. This should include overarching policy and guideline improvements, such as those recommended by the Disability Royal Commission for students with disability (Recommendation 7.3).

**Carers WA recommends:**

11. A positive duty be created in anti-discrimination legislation for duty holders to be required to take reasonable and proportionate measures to eliminate discrimination against carers (including people with disability who have a caring role).
12. The application of recommendations 4.25 and 4.26 of the Disability Royal Commission's Final Report, these being to:
  - Replace all references to 'reasonable adjustments' with 'adjustments' in the Disability Discrimination Act 1992 (Cth) (Recommendation 4.25); and
  - Inclusion of a standalone duty to make adjustments (Recommendation 4.26).
13. The provision of packages of support and education to sectors to assist with ongoing education and training on the application of adjustments for people with disability and carers in their sector.

### 3.9 Definitions of and considerations for unjustifiable hardship

*‘Provide opportunities for open conversations and submissions by those with the lived experiences. They are the only ones that can tell the Government what they need to improve their life and to simply live as any other individual in society.’ – feedback from a carer*

Carers consulted regarding disability legislation and reform have broadly been supportive of measures to increase service and place accessibility, as well as increased transparency and consultation with people with disability and their carers (where applicable).

*‘Consult, consult, survey, survey, listen, listen, listen and then act.’ – feedback from a carer*

Carers WA is supportive of Recommendation 4.32 from the Disability Royal Commission’s Final Report, to include additional factors which must be taken into account when determining unjustifiable hardship, including:

- Consultation with any person with disability concerned
- Consideration of available alternative measures to eliminate or reduce hardship.

*‘Positive stories in the media, the inclusion of people with disabilities on health boards and consultative committees for policy and reviews- and actually doing the things recommended by people with disabilities not just hearing their opinions.’ – feedback from a carer*

In addition, Carers WA is also supportive of measures to ensure people with disability and carers are represented in decision making positions, inclusive of Board and managerial positions. Further, we also call for people with disability and carers to be strongly represented and consulted in legislative, service and policy design and review, in all sectors that they navigate and use.

*‘Systemic change. Better consultation of people with disability and their carers’. – feedback from a carer*

**Carers WA recommends:**

14. As per Recommendation 4.32 from the Disability Royal Commission's Final Report, to include additional factors which must be taken into account when determining unjustifiable hardship, including:
  - Consultation with any person with disability concerned
  - Consideration of available alternative measures to eliminate or reduce hardship.
15. Measures to ensure people with disability and carers are represented in decision making positions, inclusive of Board and managerial positions.
16. People with disability and carers to be strongly represented and consulted in legislative, service and policy design and review, in all sectors that they navigate and use.

### **3.10 Factors for employers to consider when determining if an employee can carry out the inherent requirements of particular work**

As per section 3.9 of this submission, Carers WA is strongly supportive of increased consultation with people with disability and carers (where applicable). As per Recommendation 7.26 of the Disability Royal Commission's Final Report, Carers WA recommends that the following factors be added to factors which must be considered when determining whether a current or prospective employee would be able to carry out the requirements of a role:

- The extent of consultation with any person with disability concerned
- The nature and extent of any adjustments made.

Carers WA also recommends that there be a requirement to report back to the current or prospective employee following these determinations.

Carers WA is also supportive of clarification of the term 'inherent requirements' in the *Disability Discrimination Act 1992* (Cth) through the development of a definition and clearer explanation for inclusion in the Act, with supporting guidelines to ensure consistency in the assessment and application of inherent requirements across workplaces and industries.

**Carers WA recommends:**

17. As per Recommendation 7.26 of the Disability Royal Commission's Final Report, the following factors be added to factors which must be considered when determining whether a current or prospective employee would be able to carry out the requirements of a role:

- The extent of consultation with any person with disability concerned
- The nature and extent of any adjustments made.

Carers WA also recommends there be a requirement to report back to the current or prospective employee following these determinations.

18. Clarification of the term 'inherent requirements' in the Disability Discrimination Act 1992 (Cth) through the development of a definition and clearer explanation for inclusion in the Act, with supporting guidelines to ensure consistency in the assessment and application of inherent requirements across workplaces and industries.

### **3.11 Exclusionary discipline and suspension**

Carers WA is concerned regarding the lack of consistency in discipline and exclusionary practices between state and territory jurisdictions in education systems. Indeed, carer feedback indicates that these practices often vary between schools and even between individual teachers at the same school. This lack of certainty is incredibly stressful for carers and/or people with disability, as well as for the children involved.

Exclusion was a significant theme which emerged from the Disability Royal Commission, not only in mainstream education, but also in other areas which people have the right to access and participate in.<sup>29</sup> The Final Report outlined experiences and themes with education in which children had experienced abuse, been excluded inappropriately, and had these experiences impact them in later life. These have included the potential to go on to access higher education and employment opportunities. In regard to changes which can be made to the new *Disability Discrimination Act 1992* (Cth) to help address this, it was recommended by the Commission that Section 22(2)(b) of this Act be amended to cover 'suspension and exclusion' as well as expulsions.

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<sup>29</sup> (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2023)

Carers WA is supportive of amendments to Section 22 of the new *Disability Discrimination Act 1992* (Cth), to cover suspension and exclusion as well as expulsions (as per Recommendation 7.2 of the Disability Royal Commission). We also recommend ongoing educational measures be adopted to help educational staff to better understand and implement this change, including where Section 45 of the Act and 10.5(2) of the Education Standards apply; (these being that it is not unlawful for an education provider to provide special measures (including specialised units or institutions) intended specifically for the benefit of students with disability)<sup>30</sup>.

**Carers WA recommends:**

19. Amendments be made to Section 22 of the new *Disability Discrimination Act 1992* (Cth), to cover suspension and exclusion as well as expulsions (as per Recommendation 7.2 of the Disability Royal Commission), to provide increased clarity to carers and the children they care for.
20. Ongoing educational measures be adopted to help educational staff to better understand and implement this change, including where Section 45 of the Act and 10.5(2) of the Education Standards apply.

### 3.12 Disability Action Plans

As outlined in the issues paper, at present there are no minimum requirements at a Commonwealth level for disability action plans, nor are there requirements for review or assessment of these plans for effectiveness.

Sections 9 to 12 of the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS) sets out requirements for a Disability Inclusion Plan within the state. Section 12 of the Act outlines requirements for Disability inclusion action plans for defined entities, inclusive of timeframes for review, purpose, minimum inclusions and consultation requirements. Carers WA is supportive of similar requirements being outlined within the new *Disability Discrimination Act 1992* (Cth).

Carers WA is also supportive of the proposal from the Australian Human Rights Commission for them to provide advice on the development and implementation of disability action plans; for them to set minimum requirements for disability action plans through a mechanism such as guidelines; and require that evaluation of outcomes from previous disability action plans be sent to the Australian Human Rights Commission when updating plans. Carers WA is also supportive of a defined timeframe for review of disability action plans, as defined in sections 12-14 of the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS).

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<sup>30</sup> (Australian Government Attorney-General's Department, 2025)



Carers WA also recommends that jurisdictional disability inclusion plans and disability inclusion action plans for defined entities be required to consider intersectionality, such as if people with disability have additional experiences which may cause disadvantage. i.e. being in a caring role; having co-occurring health or mental health conditions; identifying as LGBTQI+; being from a First Nations or culturally or linguistically diverse background; or from a regional or remote area.

Finally, it is also recommended that jurisdictional disability inclusion plans and disability inclusion action plans for defined entities be required to also consider people who are in a caring role (who may or may not have a disability). The caring role also has a significant impact on a person's ability to work, and research has shown that having a supportive employer substantially increases carer wellbeing.<sup>31</sup> Programs such as the [Carer Friendly Employers Program](#) or the jurisdiction-level carer association could assist with carer considerations within these plans.

**Carers WA recommends:**

21. Requirements be legislated in the new Act for Disability Inclusion Plans and Action Plans, inclusive of timeframes for review, purpose, minimum inclusions and consultation requirements.
22. The Australian Human Rights Commission be empowered to provide development and implementation advice on disability action plans; set minimum requirements for disability action plans (inclusive of consideration of caring roles); and require evaluation of outcomes from previous disability action plans before developing a new one.
23. A defined timeframe for review of disability action plans be set in the new Act, as defined in sections 12-14 of the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS).
24. Jurisdictional disability inclusion plans and disability inclusion action plans for defined entities be required to consider intersectionality, such as if people with disability have additional experiences which may cause disadvantage, inclusive of being in a caring role.
25. Jurisdictional disability inclusion plans and disability inclusion action plans for defined entities be required to also consider people who are in a caring role (who may or may not have a disability).

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<sup>31</sup> (Mylek & Schirmer, 2024)

### 3.13 Disability Standards

The issues paper raises the enforceability of the Disability Standards as an area of concern for stakeholders, and that this is an area of possible reform.

Enforceability in legislation is also an area which impacts Australian carers, as the *Carer Recognition Act 2010* (Cth) states that the Act does not create legally enforceable obligations. The Inquiry into the recognition of unpaid carers recognised this and recommended that a process be established to handle complaints and address breaches of the Carers Recognition Act 2010. In short, a lack of enforceability in legislation or standards, especially those which impact the 38.6% of carers who also have disability<sup>32</sup> as in the case of the Disability Standards, is a significant concern for Carers WA.

**Carers WA recommends (as discussed in the issues paper) that:**

26. The following actions be taken to increase the enforceability of the Disability Standards to support the 38.6% of carers who also have disability:

- Provision of extra powers (attached to a positive duty in the new Act) to the Australian Human Rights Commission to enforce compliance and the power to (dependent on outcomes of systemic unlawful discrimination inquiries): apply to a court for civil penalty orders and injunctions; issue compliance notices; and enter into enforceable undertakings.
- Require duty holders to report on their compliance to the new Act and to relevant Disability Standards through their disability action plans, supported by guidance from the Australian Human Rights Commission.

### 3.14 Further options for reform

Carers WA recommends that, at a minimum, carer inclusions in recent disability discrimination and rights legislation be considered for adoption in the new *Disability Discrimination Act 1992* (Cth).

In the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS), the following legislative inclusions have been made to support carers:

- Clear definition of ‘carer’ in line with appropriate jurisdictional carer legislation.
- Inclusion of carers in the Principles of the Act:
  - (c) people with disability and their families and carers have the right to certainty that people with disability will receive the care and support that they need over their lifetime;
  - (l) the role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected;

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<sup>32</sup> (Australian Bureau of Statistics, 2024)

- (o) the voices of families, friends and carers of people with disability are to be considered in the development of practical, effective and targeted services and programs;
- Inclusion of carers of people with disability in the permitted membership of the Disability Inclusion Advisory Council;
- Part 11, Funding, permits financial assistance to be granted to promote the objects of the Act, including to ‘(a) a person with disability, or a carer of such a person, for the purpose of obtaining the care, support or assistance that the person with disability or the carer may need;’

The *Disability Inclusion Act 2024* (ACT) contained the following inclusions in support of carers:

- Requiring consultation with families and carers of people with disability, in the preparation of disability inclusion strategies;
- Requiring consultation with families and carers of people with disability in the preparation or review of a disability inclusion plan;
- One of the functions of the Disability Advisory Council being to:
  - ‘foster cooperative relationships between people with disability, their families, their carers, relevant organisations, government and the community’
- Inclusion of carers of people with disability in the permitted membership of the Disability Advisory Council;
- Clear definition of ‘carer’, ‘care relationship’ and ‘care relationship principles’ in line with appropriate jurisdictional carer legislation.
- Inclusion of carers in the Principles of the Act:
  - (7) Relationships between people with disability and their families, carers and other significant people are a crucial part of the lives of people with disability and should be preserved.
  - (8) People with disability are free to associate with families, carers and other people in a way that they want.

**Carers WA recommends:**

27. Carer inclusions in recent disability discrimination and rights legislation be considered for adoption in the new *Disability Discrimination Act 1992* (Cth). i.e. the *Disability Rights, Inclusion and Safeguarding Act 2024* (TAS) and *Disability Inclusion Act 2024* (ACT).

## 4.0 Conclusion

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Should any further information be required regarding the comments included within this submission, or assistance from the perspective of WA carers, Carers WA would be delighted to assist. Please contact the Carers WA Policy Team at [policy@carerswa.asn.au](mailto:policy@carerswa.asn.au).

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