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**Vision Australia Submission: Commonwealth Government Response to the Final Report of the Disability Royal Commission**

Submission to: Commonwealth Disability Royal Commission Taskforce

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# Introduction

Vision Australia welcomes the opportunity to provide a submission to the Commonwealth Disability Royal Commission Taskforce for the purpose of informing its response to the final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**the DRC**). Given the extensive nature of the DRC’s report, our focus will be on those recommendations which, in our experience, are closely linked with the most common barriers faced by people who are blind or have low vision, or which have the potential to provide the most significant impact for the blind and low vision community.

# Recommendations

Vision Australia endorses the recommendations made by the Australian Communications Consumer Action Network in its submission to the Commonwealth Disability Royal Commission Taskforce dated 16 January 2024, namely that the government response to the DRC should include:

1. Establishing a Disability Rights Act (*DRC Recommendation 4.1*) and expanding on the proposed duty holders.
2. Adopting the proposed amendments to the Disability Discrimination Act (*DRC Recommendations 4.23 to 4.34*)and establishing a Digital Technology Standard.
3. Creating a national plan to promote accessible information and communications (*DRC Recommendation 6.1*).
4. Harmonising legislation to align with recent international reforms and advancements to leverage economies of scale.

In addition, Vision Australia recommends that the government response to the DRC include:

1. Adopting the requirement that all information and communication technology purchases comply with the current Australian information and communication technology accessibility standard (AS EN 301 549: 2020 – Accessibility for ICT products and services) (**the ICT Standard**) (*DRC Recommendation 7.23*).
2. Reference to the importance of tertiary education in positive employment outcomes for people with disability.
3. Adopting specific and disaggregated targets for disability employment in the public sector (*DRC Recommendation 7.18*) and adopting specific and disaggregated targets for new public service hires in agencies and departments (*DRC Recommendation 7.19*).

Further information regarding items 1, 2, 5, 6 and 7 is set out below.

# Disability Rights Act

Vision Australia supports the establishment of a Disability Rights Act (*DRC Recommendation 4.1*) but urges the government to expand the duty holders under the Act to private and community sector entities from the point at which the Act is introduced. It is important that organisations involved in the provision of public infrastructure and services, or that receive substantial government funding, be accountable in upholding the rights of people with disability in line with public entities. This is the only way to fully realise the intent of the proposed legislation.

We are also concerned that any such legislation is administered and enforced in a way that does not see the burden of proving non-compliance with the Act fall on people with disability, in a similar way to how the Disability Discrimination Act currently operates. Any new legislative regime which sought to introduce a complaint style mechanism as its primary enforcement function would not be benefiting the very people that it seeks to protect. For a Disability Rights Act to be effective, it would need, at the least, to impose on government and other duty holders, requirements to publicly report on the measures being taken by those bodies to progressively uphold the rights conferred by the Act. In this respect, there needs to be a shift away from the primary responsibility for enforcing rights-based legislation falling on those whose rights are being impacted.

# Disability Discrimination Act

Vision Australia strongly supports the strengthening of the Disability Discrimination Act (**the DDA**), particularly the introduction of a stand-alone duty to make adjustments, the introduction of a positive duty to eliminate discrimination, and the removal of the comparator test (*DRC Recommendations 4.23, 4.26 and 4.27*).

## Stand Alone and Positive Duties

Vision Australia has advocated for many years that a purely complaint-driven process does not achieve the best outcomes in the area of disability discrimination. This was also accepted by the DRC, noting in its final report that:

*“Amendments are needed to address one of the principal deficiencies of the DDA: the protection of a person’s rights depends on that person being prepared to make and pursue a complaint of discrimination. This requires the complainant to have the knowledge and personal resources to pursue the claim, including the risk of an adverse costs order should the matter reach court. As presently drafted, the DDA creates little incentive for employers, schools, service providers and other duty-holders to take active measures to prevent disability discrimination.”*

We urge the government to amend the DDA to include both a stand-alone duty to make adjustments for people with disability, and a positive duty to eliminate disability discrimination. In our experience, individuals and organisations are generally not motivated to adopt inclusive practices merely by the possibility of a complaint against them. It is necessary to balance this with positive obligations so as to encourage changed behaviours and to address areas of systemic discrimination. The creation of clear, enforceable and enforced positive duties to make adjustments and to prevent discrimination must be made a key part of the DDA for it to achieve its purpose, and to reduce the burden on people with disability.

We also believe that one of the factors to be considered in determining ‘unjustifiable hardship’ as it relates to the proposed stand-alone duty should be the size of the organisation or authority seeking to make a hardship claim. Large businesses, corporations and government should only be able to argue unjustifiable hardship in certain narrow circumstances. The capacity of these organisations, both financially and in terms of human resourcing, should limit access to this exception.

## The Comparator Test

A significant failing of the DDA in proving direct discrimination has been the need for the construction of a hypothetical comparator. In circumstances where disability is a factor, it can be challenging to construct a suitable comparator and often an unfair and unreasonable result will follow. It is also impossible to predict how a particular judge will construct a hypothetical comparator, and this increases the reluctance of complainants to pursue a complaint through the courts if voluntary conciliation is unsuccessful. For this reason, we support a move towards the unfavourable treatment approach as currently applies in comparable legislation in Victoria and the ACT. The benefit of this approach is that the impact of the treatment on the person who is making the complaint is the only consideration that is required.

We also support the onus of proof being placed on an alleged discriminator to show that the reason for the treatment of the complainant was not disability. We submit, however, that a slightly different approach should be implemented around pre-employment. In our experience, when a person who is blind or has low vision applies for a position and is not selected, it is difficult or often impossible for that person to prove that this was due to discrimination, based on disability. Because the person does not have objective information regarding the recruitment process, that person cannot prove a prima facie case of discrimination. The recruitment and selection information is only available to the potential employer. In such cases, we consider that there should be a presumption of discrimination, and the burden of proof should be on the potential employer to provide evidence that the decision to reject the person’s job application was not on the grounds of the person’s disability and was not unlawful discrimination.

# Accessible Procurement

Vision Australia strongly supports government procurement policies that mandate the purchase of accessible ICT products in line with the ICT Standard. Vision Australia is one of various organisations that has been advocating for the introduction of a mandatory accessible ICT procurement regime across all Australian governments for several years.

Finding and maintaining employment is the most significant challenge for people who are blind or have low vision. There are many barriers to employment for the blind and low vision community, but a key barrier is the inaccessibility of mainstream ICT products and services. Unless ICT products are designed to be accessible from the outset, it can be virtually impossible to make changes at a later stage for accessibility purposes. Australia has adopted the ICT Standard which establishes minimum requirements to ensure that websites, software and digital devices are accessible, and provides a framework for the development and procurement of a wide range of accessible ICT products. The way the ICT Standard is applied, however, is inconsistent, and in many cases compliance is voluntary. Therefore, whilst the ICT Standard has the potential to remove accessibility barriers for the employment of people who are blind or have low vision, its effectiveness is dependent on it being universally and consistently applied at all levels of public procurement. Doing this will provide a significant opportunity to improve the employment landscape for people who are blind or have low vision, as well as others in the disability sector more generally.

# Tertiary Education

For Australians who are blind or have low vision, quality and inclusive education is vital to enabling participation in the civil, political, economic, social, and cultural spheres of society on the same basis as other members of the community. This encompasses all levels of education. For students who are blind or have low vision, there is a strong link between university education and employment. Vision Australia research has shown that 75% of people who are blind or have low vision that also have a tertiary education are employed. Given the otherwise low employment rates for the blind and low vision community[[1]](#footnote-2), it is clear that a tertiary sector that is inclusive and accessible is vital to improving employment and economic outcomes for this cohort.

However, there remain significant accessibility issues for students who are blind or have low vision (and students with other disabilities) in undertaking tertiary studies. These issues are unique to the tertiary setting. These matters were not dealt with by the DRC, nor were any recommendations made in the final report regarding tertiary education. We would urge the government to give some recognition in its response of the need for changes for students with disability in the tertiary system to improve experiences, outcomes and employment opportunities for these students, and to ensure that these students are able to learn on the same basis as their peers, as is their legal right.

# Employment Targets

As noted above, finding and maintaining employment is the most significant challenge for people who are blind or have low vision. Governments must provide leadership in the employment of people with a disability, including people who are blind or have low vision, if employment outcomes for these cohorts are to be improved. Establishing specific and disaggregated targets for disability employment in the public sector, together with specific and disaggregated targets for new public service hires, is one measure that would be impactful in this regard. Vision Australia strongly supports governments at all levels implementing disaggregated targets in the employment of people with disabilities, and also being accountable for meeting such targets. The targets must be disaggregated to ensure that different disability categories are represented, including blindness and low vision.

# About Vision Australia

Vision Australia is the largest national provider of services to people who are blind, deafblind, or have low vision in Australia. We are formed through the merger of several of Australia’s most respected and experienced blindness and low vision agencies, celebrating our 150th year of operation in 2017.

Our vision is that people who are blind, deafblind, or have low vision will increasingly be able to choose to participate fully in every facet of community life. To help realise this goal, we provide high-quality services to the community of people who are blind, have low vision, are deafblind or have a print disability, and their families.

Vision Australia service delivery areas include: registered provider of specialist supports for the NDIS and My Aged Care Aids and Equipment, Assistive/Adaptive Technology training and support, Seeing Eye Dogs, National Library Services, Early childhood and education services, and Feelix Library for 0-7 year olds, employment services, production of alternate formats, Vision Australia Radio network, and national partnership with Radio for the Print Handicapped, Spectacles Program for the NSW Government, Advocacy and Engagement. We also work collaboratively with Government, businesses and the community to eliminate the barriers our clients face in making life choices and fully exercising rights as Australian citizens.

Vision Australia has unrivalled knowledge and experience through constant interaction with clients and their families, of whom we provide services to more than 30,000 people each year, and also through the direct involvement of people who are blind or have low vision at all levels of our organisation. Vision Australia is well placed to advise governments, business and the community on challenges faced by people who are blind or have low vision fully participating in community life.

We have a vibrant Client Reference Group, with people who are blind or have low vision representing the voice and needs of clients of our organisation to the board and management.

Vision Australia is also a significant employer of people who are blind or have low vision, with 15% of total staff having vision impairment.

1. A report conducted by Vision Australia in 2012 showed that 58% of the blind and low vision community were not working. Furthermore, a 2018 research study conducted by CNIB Foundation (Canada), Vision Australia and the Blind Foundation of New Zealand found that people with a vision impairment were significantly less likely to be employed than their sighted counterparts. [↑](#footnote-ref-2)