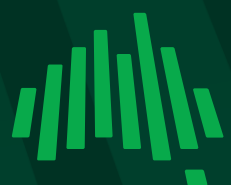


Submission to *Disability
Discrimination Act 1992 Review –
Issues Paper*

Submission by National Farmers Federation

21 October 2025



The National Farmers' Federation

The National Farmers' Federation (**NFF**) is the voice of Australian farmers.

We were established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

NFF Member Organisations



Executive Summary

The National Farmers' Federation (**NFF**) welcomes the opportunity to provide input into the review of the *Disability Discrimination Act 1992* (**DDA**). As the peak national body representing Australian farmers and the broader agricultural sector, the NFF supports efforts to promote equitable participation for people with disability across society, including in employment and education.

Agriculture plays a critical role in regional employment and community life. The sector is characterised by small businesses operating in diverse and sometimes remote environments, where physical, technical and regulatory constraints often shape employment practices. It is therefore essential that any amendments to the DDA strike a balance between protecting the rights of people with disability on the one hand and ensuring that compliance obligations remain practical, proportionate and achievable for farm enterprises on the other.

General Position

The NFF supports the overarching objectives of inclusion and accessibility in employment. However, the proposed amendments under *Part 3 – Encouraging inclusion of people with disability in employment, education and other areas of public life*, while noble sentiments may, without appropriate clarification, raise several issues that could inadvertently increase regulatory burden and uncertainty for employers, particularly small and regional agricultural businesses, without delivering clear safety or inclusion benefits.

Specific Comments on Proposed Amendments

1. Replacement of “Reasonable Adjustments” with “Adjustments”

The proposal to replace the term “*reasonable adjustments*” with “*adjustments*” may appear semantic, but in practice this could materially alter the legal interpretation of employer obligations.

- The current terminology reflects a well-established balance between the rights of employees and the practical capacity of employers.
- Removing the qualifier “reasonable” risks creating ambiguity as to what standard of adjustment is required and may invite inconsistent interpretations in tribunals and courts.

- Employers may be exposed to greater legal uncertainty over whether a failure to provide a particular adjustment, regardless of cost, practicality or risk, constitutes discrimination.

Given the complexity of agricultural workplaces, where machinery, environmental and safety risks are high, this change could have unintended consequences. The NFF therefore recommends retaining the term “reasonable adjustments” to preserve proportionality and legal clarity.

2. Requirement to “Consult with People with Disability”

While encouraging dialogue between employers and employees is positive in principle, the proposed requirement that employers “must” consult with people with disability risks creating a procedural mandate that extends beyond the recruitment stage.

- In practice, it could mean that employers are compelled to consult with all applicants, even where disability is not self-disclosed or relevant to the inherent requirements of the role.
- This may significantly increase administrative burden and red tape, particularly for small farm employers managing seasonal and high-turnover recruitment.
- There is a risk that such obligations could deter smaller enterprises from engaging in open recruitment altogether due to perceived compliance complexity.

The NFF recommends that any consultation requirement be limited to circumstances where an employee or applicant has voluntarily disclosed a disability and requested an adjustment, and that model templates or guidance be developed to support compliance.

3. Expansion of the Definition of “Unjustifiable Hardship”

The NFF notes the review’s proposal to add further factors that must be considered before determining whether an adjustment constitutes *unjustifiable hardship*. This proposal raises significant concern for the agricultural sector.

- Many agricultural workplaces depend on specialised machinery and vehicles, often imported and covered by manufacturer warranties and insurance requirements.

- Modifying machinery to accommodate a specific adjustment could void warranties or create liability risks, as current Australian product and insurance law lacks comprehensive “Right to Repair” protections.
- Requiring employers to undertake or fund such modifications could place them in conflict with workplace health and safety obligations and insurance conditions.

Accordingly, the NFF submits that the DDA should retain a flexible and practical test for “unjustifiable hardship”, with clear recognition that adjustments compromising safety, insurance coverage, or regulatory compliance (e.g. machinery certification) are not required.

4. Definition of Direct Discrimination – Comparator Test and Burden of Proof

The NFF does not support proposals to remove the comparator test from the definition of direct discrimination or to reverse the burden of proof. The existing framework provides necessary safeguards to ensure that a finding of discrimination is based on evidence and a causal connection to disability, rather than assumption or perception.

Removing the comparator test risks capturing neutral and lawful business practices as discriminatory, simply because they may result in differential outcomes. In agriculture, where employers must apply consistent performance, conduct and safety standards across a workforce, this could undermine legitimate and lawful management decisions.

Similarly, the proposal to reverse the burden of proof would require employers to disprove discriminatory intent, including in cases where disability was never known or disclosed. This raises serious concerns:

- Employers would effectively be required to prove a negative, creating unreasonable evidentiary burdens.
- There is a risk of increased vexatious claims, given employers would carry the obligation to justify otherwise lawful decisions.
- Small and family-run farming enterprises may adopt defensive employment practices or avoid recruitment risks altogether.

The NFF submits that the current approach appropriately balances protection against discrimination with procedural fairness and should be retained.

5. Definition of Indirect Discrimination – Retaining Practical Limits

The NFF supports retaining the requirement that a complainant must demonstrate that they would not be able to comply with a term, requirement, or condition. This ensures the provision continues to focus on actual, rather than hypothetical, disadvantage.

The NFF also supports retaining and refining the reasonableness test within indirect discrimination. Reasonableness must continue to consider the circumstances of the employer, including scale, resources, and operational context. For agriculture, this flexibility is critical, given:

- Many regional employers have limited access to services or technology compared to urban settings.
- Farm work often involves inherent physical and safety risks that must be preserved.
- Operational requirements fluctuate with seasonal demands, commodity cycles and weather events.

The NFF would support clarification through guidance material, not legislative expansion, so that employers have certainty while continuing to accommodate employees where reasonable.

6. Opposition to Introducing a Positive Duty

The NFF does not support introducing a new positive duty to eliminate disability discrimination. Such a change would dramatically expand compliance obligations and depart from the long-standing individual complaints model under Australian anti-discrimination law.

Introducing a positive duty would:

- Impose open-ended obligations on employers, regardless of whether discrimination has occurred.
- Duplicate existing WHS laws, which already impose a proactive obligation to manage psychosocial risks, including discrimination, bullying and harassment.
- Add further regulatory complexity for farmers, who already face compliance pressure across workplace relations, biosecurity, environmental and safety frameworks.

Rather than a positive duty, the NFF recommends:

- Enhancing voluntary inclusion initiatives.
- Providing sector-specific education resources.
- Supporting practical workplace adjustments through incentives rather than penalties.

Broader Considerations for Regional and Agricultural Employers

Agricultural enterprises are often small, family-run, and operate in remote areas with limited access to technical support, allied health professionals, or disability employment services.

- Reforms that expand employer obligations without proportionate guidance or support risk discouraging participation in inclusive employment, the opposite of the intended effect.
- The NFF urges the Government to develop industry-specific guidance materials, model policies, and training resources co-designed with small business and regional stakeholders.
- Consideration should also be given to financial or tax incentives to support practical workplace adjustments for rural and agricultural employers.

Recommendations

- Retain the term “reasonable adjustments” to ensure expectations remain practical and proportionate for employers.
- Limit consultation obligations to circumstances where a disability is disclosed and an adjustment is requested.
- Preserve the current legal framework by:
 - Retaining the comparator test and current burden of proof for direct discrimination
 - Keeping the existing structure of indirect discrimination, including the reasonableness test
- Maintain a practical definition of “unjustifiable hardship,” recognising safety, insurance and warranty limitations.
- Reject the introduction of a new positive duty to avoid duplication with WHS laws and additional regulatory burden.
- Provide practical support instead of regulation, including clear guidance for small and regional employers and targeted incentives for workplace adjustments.



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