

Submission:

Review of the Disability Discrimination Act

1. Introduction

We welcome this opportunity to provide input to inform the review of the Disability Discrimination Act.

In this submission, we address the first 2 questions posed in the Issues Paper:

1. How should disability be defined in the Disability Discrimination Act?
2. What factors should be considered in developing a new definition of disability?

We emphasise the value of drawing upon the World Health Organization's International Classification of Functioning, Disability and Health (ICF) to inform the development of a definition of disability for the Disability Discrimination Act (DDA).

In this submission we make the following key points and recommendations:

- The ICF provides the appropriate conceptual framework to use as the basis for developing a disability definition for the DDA. An ICF-based approach would define disability as encompassing impairments, activity limitations or participation restrictions that a person experiences in the context of their health and influenced by environmental and personal factors.
- The DDA definition of disability should recognise the central role environmental factors and personal factors play in the experience of disability.
- An ICF-based definition in the DDA would provide a basis for aligning disability definitions in key data sources. This would help strengthen Australia's data and evidence base for monitoring progress against Australia's Disability Strategy and the United Nations Convention on the Rights of Persons with Disabilities, and for informing policy.

We expand on these key points below.

This submission has been written by a sub-group of the ICF Australia Interest Group (ICF-AIG). The ICF-AIG is a collaborative, multidisciplinary group of people who have diverse expertise in data development and the ICF and its uses.

We would be happy to provide further input to assist with the development of the definition of disability for the Disability Discrimination Act. Contact email: shs.icf@sydney.edu.au

2. An ICF-based definition of disability for the Act

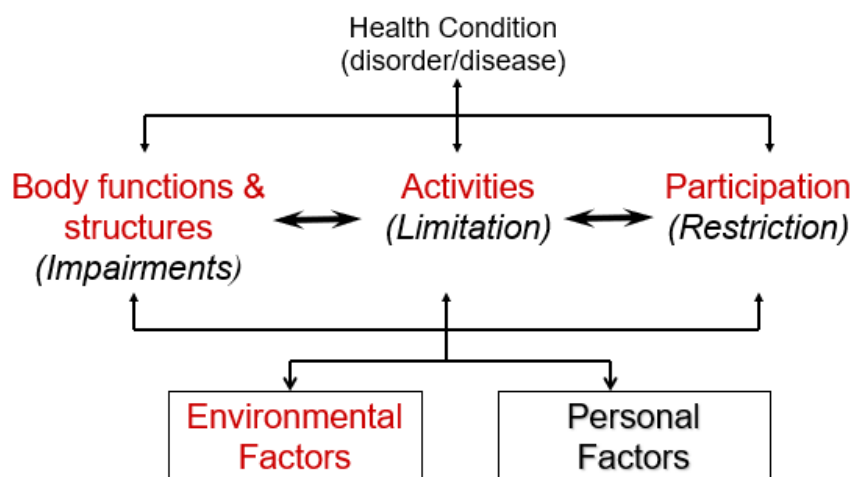
2.1 About the ICF

The ICF is a framework and classification system for organising and documenting information on functioning and disability. It is the World Health Organization's international standard that provides a common language and conceptual basis for the definition and measurement of disability.

Disability is a complex, multi-dimensional phenomenon. The ICF provides a structured model that sets out the different aspects or components required for a comprehensive understanding of functioning and disability (Figure 1). It also provides clear definitions of key concepts such as impairment and environmental factors.

'Functioning' is an umbrella term encompassing all body functions, activities and participation. 'Disability' is an umbrella term for impairments of body functions or structures, activity limitations and participation restrictions. A person's functioning and disability reflect the interaction between their health condition/s, environmental factors and personal factors. The bi-directional arrows between all components of the ICF model signify the dynamic and context-dependent nature of functioning and disability.

Figure 1: Interactions between the components of ICF



The ICF model integrates the major models of disability, and is often described as a ‘biopsychosocial model’. It is compatible with the social model of disability and aligned with the UN Convention on the Rights of Persons with Disabilities. It recognises the role of environmental factors in the creation of disability, as well as the relevance of associated health conditions and their effects. Functioning and disability are understood ‘in the context of health’, which clarifies that participation restrictions related to other factors, for example racial prejudice, are not within the scope of the ICF.

Further information about the ICF is provided in Attachment 1.

2.2 What would an ICF-based definition look like?

As noted in the Issues Paper, a legal definition of disability in the DDA must be clear and appropriately broad. It should avoid negative and deficit-based language.

The current definition of disability in s.4 of the Act is not a coherent or integrated statement that conveys the concept of disability. Rather, it is a conglomerate definition, made up from a list of attributes concerning impairments of body functions or structures, or health conditions. This type of definition does not speak to the experience of disability. It does not provide a firm basis for a common understanding of the group of people whose rights the Act seeks to protect and uphold.

The definition of disability in the Act should be in the form of an integrated statement about what disability is understood to mean, in relation to a person, for the purposes of the Act.

An ICF-based approach would define disability as encompassing impairments, activity limitations or participation restrictions that a person experiences in the context of their health and influenced by environmental and personal factors.

To aid legal determinations that are aligned with the intent of the Act and uphold the rights of people with disability, the definition could include interpretive guidance, drawing on definitions of key concepts in the ICF. For example,

“Environmental factors make up the physical, social and attitudinal environment in which people live and conduct their lives. These are either barriers to or facilitators of the person's functioning. Environmental factors can include formal and informal supports and services.”

It may be appropriate for the definition to list inclusions, along the lines of current sub-sections h to i: (h) presently exists; or (i) previously existed but no longer exists; or (j) may exist in the future (including because of a genetic predisposition to that disability); or (k) is imputed to a person.

An ICF-based definition would encompass current sub-sections a, b and e, as these relate to impairments of body function or structure. It would encompass current sub-sections f and g, as these relate to activity limitations.

The Issues Paper talks about feedback previously received during the 2022 review of Queensland's *Anti-Discrimination Act 1991* (Qld) that conditions such as HIV and mental health conditions were inappropriately categorised under 'disability'. If an ICF-based definition is adopted, no health conditions would be 'categorised under disability'. Rather, if a person were subject to negative attitudes (an 'environmental factor' in the ICF model) in relation to their health status (e.g., diagnosis of HIV), which impacted their participation, they would fall under the protection of the DAA. In this way, an ICF-based definition would encompass current sub-sections c and d (presence in the body of organisms causing, or capable of causing, disease or illness).

It will be essential to test the new definition for inclusiveness to ensure it does in fact cover all people with disability.

2.3 Using the word 'impairment' or 'disability'

The Issues Paper notes that there have previously been discussions as to whether the word 'disability' or 'impairment' should be used in Australian anti-discrimination law. We recommend that the word 'disability' should continue to be used to describe the group of people whose rights the Act seeks to protect and uphold.

In the ICF, 'disability' is an umbrella term for impairments of body functions or structures, activity limitations and participation restrictions. A person's experience of disability reflects the interaction between their health condition/s, environmental factors and personal factors. Environmental factors encompass products and technology, natural and built environments, relationships, attitudes, services, systems and policies.

Thus, an ICF-based definition would acknowledge the role of societal practices and attitudes in creating a person's experience of disability. It would encompass people who experience discrimination in relation to health status (e.g., HIV) that is not accurately described as 'impairment'. Further, using the word 'disability', understood broadly as it is in the ICF, signals that the DDA is a component of the suite of legal and policy instruments that have been put in place to protect and uphold the rights of people with disability.

3. The definition of disability in the Act can support better data

An ICF-based disability definition in the DDA would support efforts to achieve more consistent and meaningful disability data for monitoring and informing policy. While this is not a central aim of reforming the DDA, it is widely acknowledged that improvements to disability data are needed to support reforms aimed at improving outcomes for people with disability.

As a party to the UN Convention on the Rights of Persons with Disabilities Convention, Australia is obliged to collect data and statistics on disability, and monitor and report on implementation of the Convention. These obligations are set out in Articles 31 (Statistics and data collection), 33 (National implementation and monitoring), and 35 (Reports by States Parties).

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) identified that inconsistent approaches to defining disability in different data collections are limiting our ability to monitor progress towards social inclusion for people with disability, and our ability to understand and respond to the experiences of people with disability. It recommended a nationally consistent approach to collecting disability information (Rec. 12.5) and implementation of disability flags (core sets of disability questions) in data collections for mainstream services (Rec. 12.6).

The ICF has underpinned disability data development in Australia for over 20 years¹ and is being used as a reference for describing disability in the National Disability Data Asset (NDDA). The NDIS Review recommended that the NDIS data structure should be aligned with the ICF (Action 23.4). As recently announced, the Instrument for Classification and Assessment of Support Needs (I-CAN) will be used as the basis for developing a new support needs assessment process for NDIS participants. The I-CAN is conceptually based on the ICF and it assesses support needs for each of the 9 ICF activity and participation domains. Thus, in future, support needs data captured through the NDIS will be aligned with the ICF.

Conceptually aligned approaches to defining disability in the DDA and capturing disability-related information in national and jurisdictional data sources will greatly assist with building an evidence base of data that can be readily related to Australia's disability policy and administrative framework.

¹ Madden, R.; Madden, R. Disability services and statistics: past, present and future. In Australia's welfare 2019 data insights, Australian Institute of Health and Welfare, Ed. AIHW: Canberra, Australia, 2019.

Attachment 1: Further information about the ICF

The International Classification of Functioning, Disability and Health (ICF) is a framework for describing and organising information on functioning and disability. It was approved for use by the World Health Assembly in 2001, after extensive testing across the world involving people with disability and people from a range of relevant disciplines.

The aims of the ICF are to:²

- provide a scientific basis for understanding and studying health and health-related states, outcomes, determinants, and changes in health status and functioning;
- establish a common language for describing health and health-related states in order to improve communication between different users, such as health care workers, researchers, policy-makers and the public, including people with disabilities;
- permit comparison of data across countries, health care disciplines, services and time; and
- provide a systematic coding scheme for health information systems.

Four principles underpinned and guided ICF development:³

- **Universality:** ICF is about all people and is relevant to everyone's functioning. It is not a tool for labelling minority groups.
- **Aetiological neutrality:** the language and structure of the classification make it relevant to any health condition.
- **Neutral language:** wording and domain names allow users to express both positive and negative aspects in each area of functioning (e.g., d455 'Moving around' could be used to express a limitation, a goal for improved functioning, or an area in which functioning has improved over time).
- **Environmental factors:** ICF provides a classification of physical, social and attitudinal factors that may affect functioning across all areas of life.

Definitions of key concepts in the ICF are given in Box 1.

² World Health Organization. International Classification of Functioning, Disability and Health. WHO: Geneva, Switzerland, 2001, p.5

³ World Health Organization. International Classification of Functioning, Disability and Health. WHO: Geneva, Switzerland, 2001; World Health Organization. Towards a Common Language for Functioning, Disability and Health. WHO/EIP/GPE/CAS/01.3. 2002

Box 1: Definitions of the components of the ICF, and of functioning and disability

Body functions - The physiological functions of body systems (including psychological functions).

Body structures - Anatomical parts of the body such as organs, limbs and their components.

Impairments - Problems in body function or structure such as a significant deviation or loss.

Activity - The execution of a task or action by an individual.

Participation - Involvement in a life situation.

Activity limitations - Difficulties an individual may have in executing activities.

Participation restrictions - Problems an individual may experience in involvement in life situations.

Environmental factors make up the physical, social and attitudinal environment in which people live and conduct their lives. These are either barriers to or facilitators of the person's functioning.

Functioning is an umbrella term encompassing all body functions, activities and participation. It denotes the positive or neutral aspects of the interaction between a person's health condition(s) and that individual's contextual factors (environmental and personal factors).

Disability is an umbrella term for impairments, activity limitations and participation restrictions. It denotes the negative aspects of the interaction between a person's health condition(s) and that individual's contextual factors (environmental and personal factors).

Source: World Health Organization. International Classification of Functioning, Disability and Health. WHO: Geneva, Switzerland, 2001, pp. 3,8,10

For each ICF component there are chapters containing hierarchical lists of codes, designed to be mutually exclusive and exhaustive. The chapter headings listed in Box 2 provide a broad indication of the scope and contents of the ICF. The nine chapters of Activities and Participation are intended to cover all areas of life for all people. The five chapters of Environmental Factors comprise physical, social and attitudinal factors that affect functioning.

Qualifiers are measures recorded after the relevant ICF category. A uniform or 'generic' five-point qualifier scale is provided to record the extent of the 'problem' or difficulty, in relation to impairment, activity limitation and participation restriction. It is recognised that this generic qualifier requires calibration to relate its scale to existing measurement tools. The Environmental Factors qualifier uses both a positive and a negative scale, to indicate the extent to which an environmental factor acts as either a facilitator or barrier to a person's functioning.

Box 2: ICF components and chapters

Body Functions: 1. Mental functions 2. Sensory functions and pain 3. Voice and speech functions 4. Functions of the cardiovascular, haematological, immunological and respiratory systems 5. Functions of the digestive, metabolic, endocrine systems 6. Genitourinary and reproductive functions 7. Neuromusculoskeletal and movement-related functions 8. Functions of the skin and related structures	Activities and Participation: 1. Learning and applying knowledge 2. General tasks and demands 3. Communication 4. Mobility 5. Self-care 6. Domestic life 7. Interpersonal interactions and relationships 8. Major life areas 9. Community, social and civic life
Body Structures: 1. Structure of the nervous system 2. The eye, ear and related structures 3. Structures involved in voice and speech 4. Structure of the cardiovascular, immunological and respiratory systems 5. Structures related to the digestive, metabolic and endocrine systems 6. Structure related to genitourinary and reproductive systems 7. Structures related to movement 8. Skin and related structures	Environmental Factors: 1. Products and technology 2. Natural environment and human-made changes to environment 3. Support and relationships 4. Attitudes 5. Services, systems and policies

Source: World Health Organization. International Classification of Functioning, Disability and Health. WHO: Geneva, Switzerland, 2001, pp. 29-30

Further ICF information and resources can be found at:

<https://www.who.int/standards/classifications/international-classification-of-functioning-disability-and-health>