

## Issues paper - Definition of 'impairment'

Part IVA of the Act deals with discrimination on the basis of impairment. Section 4(1) of the Act defines impairment as meaning one or more of the following conditions: (a) any defect or disturbance in the normal structure or functioning of a person's body; (b) any defect or disturbance in the normal structure or functioning of a person's brain; or (c) any illness or condition which impairs a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour, whether arising from a condition subsisting at birth or from an illness or injury and includes an impairment (d) which presently exists or existed in the past but has now ceased to exist; or (e) which is imputed to the person.

Section 66A(1) prohibits direct discrimination on the basis of the impairment of the aggrieved person, a characteristic that appertains generally to persons having the same impairment as the aggrieved person, a characteristic that is generally imputed to persons having the same impairment as the aggrieved person, or a requirement the aggrieved person be accompanied by or in possession of any palliative device in respect of a person's impairment. Section 66A(3) prohibits indirect discrimination on the basis of impairment. Section 66A(1a) also protects from discrimination against a relative or associate of a person who is protected from discrimination on the ground of their impairment.

The Act does not protect against discrimination on the basis of an impairment that may exist in future, or an imputed future impairment.

All State and Territory jurisdictions protect against discrimination on the grounds of disability and impairment. Their definitions differ and are outlined on page 43 of the Discussion Paper.

The definition of 'disability' under the DDA is more extensive than the definition of disability under the Act. It includes the presence in the body of organisms causing or capable of causing disease or illness and 'behaviour that is a symptom or manifestation of the disability'. The definition of 'disability' also expressly includes bodily malformation and disfigurements while the definition of 'impairment' covers this broadly by including 'defects to the normal structure of a person's body.'

The definition of impairment in the Act could be redrafted so that it is more elaborative or, arguably, extensive. A potential issue with the current definition of impairment in the Act is that its limited extent may, in practice, mean that not all matters which might be considered impairments are readily covered. For example, arguably, schizophrenia more readily falls within 'any permanent or temporary psychiatric or psychological disease' than the Act's less specific definition of 'any defect or disturbance in the normal structure or function of a person's brain' or 'any illness or condition which impairs a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour'. **The Commission invites submissions in relation to whether there are any impairments that should be protected by the Act, but which do not fall within the current definition.**

The definition could be amended to extend the definition to future impairment so as to include, for example, a job applicant who is refused employment because they come from a family with a history of heart disease. **The Commission seeks submissions regarding the merit of including future impairment in the definition of impairment.**

A full discussion of these issues is in the Discussion Paper at pages **19-20, 43 and 109-111**.