



Attorney-General's Department  
by email: [DDAreview@ag.gov.au](mailto:DDAreview@ag.gov.au)

## Disability Discrimination Act 1992 Review

Thank you for the opportunity to comment on the Disability Discrimination Act 1992 Review. This submission is on behalf of Financial Rights Legal Centre, and Mob Strong Debt Help.

This submission provides comments and recommendations on one specific area of inquiry: Part 5 Exemptions and specifically Question 33 regarding whether any of the permanent exemptions should be narrowed or updated.

### **Question 33. Could any of the permanent exemptions be narrowed or updated, while balancing other policy considerations?**

As noted in the consultation paper there are 10 permanent exemptions under the *Disability Discrimination Act (DDA)* that can be relied upon as an exception. One key exception that impacts financial services consumers is the section 46 exemption regarding superannuation and insurance.

The exemption is in place because

*"it is likely that for persons with disabilities payments in relation to, for example, life insurance, might well be made sooner than to members of the general community who do not have that particular disability."*<sup>1</sup>

Discrimination however is only permitted where:

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<sup>1</sup> [Explanatory Memorandum, Disability Discrimination Bill 1992](#), p 17.

*"[I]t is based on either actuarial or statistical data which, in all the circumstances, it is reasonable to rely on, and the discrimination is reasonable having regard to all other relevant factors as well."*

Or:

*"Where there is no such data available and it cannot be reasonably obtained ... if it is reasonable to discriminate having regard to all other relevant factors."<sup>2</sup>*

In practice however the exemption and its requirements have not prevented poor outcomes for consumers. A clear example, is the treatment of mental illness in insurance, but the exemption and its requirements could be applied to a number of medical conditions.

Put simply there is a wealth of evidence demonstrating that people living with mental health conditions, or who have experienced a mental health condition or symptoms of a mental health conditions find it more difficult than others to access many forms of insurance.

A 2011 Consumer Experiences Survey first raised this issue.<sup>3</sup> It found that people living with mental health conditions experience significant difficulty and discrimination when applying for insurance products and making claims against their policies. It noted that Australians with experience of mental health conditions often face increased premiums, excessive restrictions on their policies and outright rejection of their applications and claims when a history of mental illness is disclosed.

These insights and findings were reconfirmed by the Public Interest Advocacy Centre (**PIAC**)<sup>4</sup> following long term research ultimately published in 2021.<sup>5</sup> They reported that their clients faced a series of problems including:

- insurance cover being limited by a broad exclusion for mental health for the individual insured
- having an application for insurance cover declined
- insurers cancelling (avoiding) a policy and/or denying a claim because of an alleged failure to disclose a mental health condition
- insurers charging an additional policy loading due to a mental health condition, and

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<sup>2</sup> As above, p 18. See paragraphs (f) and (g) of s 46(1) and (2).

<sup>3</sup> See Mental Health Council of Australia and beyondblue, [Mental Health Discrimination and Insurance: A Survey of Consumer Experiences](#) 2011

<sup>4</sup> as the Justice and Equity Centre (**JEC**) was then known

<sup>5</sup> Public interest Advocacy Centre, [Mental Health Discrimination in Insurance](#), 2021

- insurance cover being limited by a blanket mental health exclusion applicable to all policies.

The Actuaries Institute identified several reasons for insurer difficulties in responding to mental health conditions, including a lack of available data about mental health condition prevalence.<sup>6</sup>

In 2017 the Joint Parliamentary Committee on Corporations and Financial Services conducted an inquiry into Life Insurance and examined this specific issue. That inquiry found that while a consumer has a right to know how an insurer reached its decision under section 75 of the *Insurance Contracts Act*, the customer must ask for such reasons and there is no positive obligation for insurers to explain to a consumer why an application has been denied.

PIAC provided evidence to the committee of how difficult it was to obtain written reasons for why a decision has been made. Even where written reasons are provided under section 75 of *Insurance Contracts Act*, they are not targeted to the part of a person's medical history relied on by the insurer when making a decision. PIAC provided evidence that consumers are not provided copies of the actuarial and statistical data or any other material relied and are required to lodge a formal complaint to the Disability Discrimination Commissioner.

The Inquiry committee ultimately recognised the need for transparent processes in enabling consumers to understand how the decisions made by life insurers were reached and made the following recommendation:<sup>7</sup>

*Recommendation 10.2*

*The committee recommends that a requirement be inserted, where necessary, into both the Insurance Contracts Act 1984 and the Disability Discrimination Act 1992 to the effect that an insurer must provide a person with written reasons when an application for insurance has been rejected or an insurance claim denied. The committee further recommends that the written reasons be provided as a plain English summary of such evidence and be targeted to the part of a person's medical history relied on by the insurer. The committee also recommends that the statistical and actuarial evidence and other material relied on by the insurer be available on request.*

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<sup>6</sup> Actuaries Institute, Mental Health and Insurance Green Paper

<sup>7</sup> Joint Parliamentary Committee on Corporations and Financial Services, [Report: Life Insurance Industry \(March 2018\)](#).

In a 2021 response to the report the Government simply noted the recommendation.<sup>8</sup> A 2024 follow also noted the recommendation and stated that “given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.”<sup>9</sup>

Our view is that now is the time for the Government to reconsider this and implement the recommendations.

The simple fact is that consumers continue to face the same challenges that have been known and acknowledged for almost 15 years.

In September 2025, the Life Insurance Code Compliance Committee (**Life CCC**) released a report into whether life insurers were meeting the commitments that they had made under their code of practice with respect to treatment of consumers with mental health conditions.<sup>10</sup> That report found that some life insurers are still relying on blanket mental health exclusions or rigid underwriting practices, limiting coverage for Australians who disclose a mental health condition. The inquiry found that insurers’ underwriting processes too often default to exclusions or denials when applicants disclose a mental health condition. Of the underwriting guidelines reviewed by the Life CCC, almost all relied solely on exclusions rather than exploring alternative ways to manage risk, such as higher premiums, limits, or caps. This approach can limit access to cover and may unintentionally reinforce stigma by treating all mental health disclosures in the same way.

Most critically the inquiry found that insurers lack reliable data on their assessments of mental health disclosures and the outcomes of these cases. As the Life CCC stated when releasing its report, “Without this information, insurers cannot meaningfully evaluate their practices, identify systemic issues, and improve.”<sup>11</sup>

## Recommendations

At a minimum we recommend that this current review act on the recommendations of the Joint Parliamentary Committee on Corporations and Financial Services to amend the DDA to ensure that an insurer must provide a person with written reasons when an application for insurance has been rejected or an insurance claim denied.

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<sup>8</sup> [Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the Life Insurance Industry report](#), 6 August 2021

<sup>9</sup> [Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the Life Insurance Industry report](#), 4 July 2024:

<sup>10</sup> Life CCC, [Inquiry Report, Keeping the Promise: Mental Health and Life Insurance Commitments](#), September 2025

<sup>11</sup> Life CCC, [“Media release: The need for fairer treatment of customers who disclose mental health conditions”](#) (16 September 2025).

It should also require that these written reasons be provided as a plain English summary of such evidence and be targeted to the part of a person's medical history relied on by the insurer.

The DDA should also be amended to ensure that the statistical and actuarial evidence and other material relied on by the insurer be made available on request. Where there is no such data available and it was reasonable to discriminate having regard to all other relevant factors, the reason why such data cannot be reasonably obtained, and the other factors making discrimination reasonable, should be made available.

Furthermore, consideration should be given to requiring insurers:

- annually review and update the statistical and actuarial evidence and other material relied on in their underwriting decisions
- not rely on out of date or irrelevant sources of information
- specify the criteria and process an insured would be required to satisfy to have an exclusion removed or premium reduced
- clearly explain which associated conditions that may arise from the initial condition, including mental health, are covered by an insurance policy.

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on 0404 604 978

Kind Regards,



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