Submission to Australian Attorney General's Department

Review of the *Disability Discrimination Act 1992*

Authors: Doddy Armstrong, Stan Winford, Simon Matuzelski, Emily Piggott, Matthew Pallaris & Michael Mayne

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RMIT UNIVERSITY

Centre for Innovative Justice

Introduction

This submission is made jointly by the Centre for Innovative Justice (CIJ) and Voices for Change. It includes a written component and an audio recording.

Centre for Innovative Justice

The CIJ's objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users. The CIJ meets this objective by conducting rigorous research which focuses on having impact – drawing on therapeutic, restorative and procedural justice frameworks and taking our research findings, most of which involve direct engagement with service users and people with lived experience, to develop innovative and workable solutions collaboratively.

Our approach to research

Person-centred:

- We focus on people's lived experience
- We partner with people, rather than doing things 'to' or 'for' them
- We support people to become their own advocates
- We create avenues for people's voices to be heard
- We don't assume we know the answers. Our first step is listening to the people most affected by the issue.

Our research processes embody our values and aims:

- The process is as important as the research 'output'
- We design our approach to be inclusive of and empowering for participants
- We build stakeholder support along the way
- We use the research process to raise awareness of the issues.

We translate research into practice:

- Our projects do not end when the research component finishes. We use our research to advocate, model and pilot
- Our research has a direct practical application.

We are innovative in how we communicate our research:

- We disseminate our research findings using a range of traditional and non-traditional forums and media
- We aim to reach a diverse range of people, from academics and legal system professionals to people without high levels of literacy.

We strongly believe that:

- People with cognitive disability are significantly over-represented in the criminal justice system – a system which does not respond to their needs.
- Access to justice is improved by supporting people with lived experience to have a say in the design of justice systems that affect them.
- Co-production and restorative processes enable individual and group capacity building and facilitate healing.

Voices for Change

Voices for Change is an independent self-advocacy group for people with acquired brain injury (ABI) and contact with the criminal justice system. The group was established in 2019 and is the only lived experience advocacy group for criminalised people with disability in Australia. Voices for Change use their lived experience expertise to educate people, reduce stigma and improve systems for their peers. Two members of Voices for Change are co-authors on this submission. When asked why they want their voices included, they said:

> "I like to help. If I can help where the help wasn't available for me, for us…if we can make it smoother for things to be done right and it's not as stressful as what the situation is, I am happy to do so." Michael

> "…unfortunately I've been through the system multiple times with varying results. Some of the time positive, some of the time very negative. But, primarily I don't want people to go through what I went through as well." Matthew

Photo 1: Team members from CIJ and Voices for Change

Photo 2: Doddy Armstrong from CIJ

Policing as a Service and Procedural Justice

The CIJ and Voices for Change consider that police will be best able to implement the legislative changes being proposed to the *Disability Discrimination Act 1992* (the Act) when policing is seen as a service to the whole of the community, and when policing adopts a procedural justice approach. Applying a procedural justice approach to policing would ensure the exercise of police powers in a way that promotes and upholds the rights of people with a disability, ensures that justice processes and procedures are more accessible to people with disability, and reduce disability discrimination.

Question 31: How could the Disability Discrimination Act be amended to ensure that it covers policing?

The CIJ and Voices for Change recommend that the Act be amended to ensure that it covers policing by ensuring services provided by police officers in the course of performing policing duties and exercising powers be included in the definition of 'services' under the Act.

Question 12: If there was a positive duty in the Disability Discrimination Act, who should it apply to?

The CIJ and Voices for Change recommend that a positive duty in the Act should apply to police.

Question 15: Should there be exceptions or limits to the application of a positive duty?

The CIJ and Voices for Change recommend that police should not be exempt from the application of a positive duty under the Act.

Lived Experience Views

The lived experience of people with disability and justice system involvement often details the lack of procedural justice afforded them by the police and highlights the escalating consequences and lifelong impacts of police discrimination.

Alongside this written submission, the CIJ has provided a short audio submission of excepts from a conversation with members of Voices for Change, and a written summary of a conversation with CIJ's Lived Experience Advisor Doddy Armstrong. See **Appendix 1** for the full transcript and conversation summary.

Having a voice

We heard from people with disability about having a voice when interacting with the police.

> "It's good, it's like they're treating you on their level, it's still adversarial but it's closer to their level. So, you feel like you're being listened to." Matthew

> "They could slow the conversation down with a person that's got an ABI or mental health issues, where they know the people can understand." Michael

> "I think it's pretty universal, disability or not. It's an incredibly anxious time, especially if you haven't been arrested too often. Uncertainty…yeah if you don't know what's going in with what you've done, it's a lot of stuff coming into your head and it's like a full panic response. You can't get enough clarity, just sitting in a cell…you're not going to get any." Matthew

> "Individual police officers were making own judgements, coming to their own conclusions about me without any enquiry whatsoever – this includes making an assessment of whether or not I had a disability – I was never asked what had happened." Doddy

> "They need to be asking different and better questions, they need to be asking person-centred questions." Doddy

Dignity and respect

We heard from people with disability about being treated with dignity and respect by the police.

> "You slow it down, and communicate instead of like, whose got the bigger attitude. Just forget about the attitudes. Take the attitudes out of it. Learn to get along. They come in here with their chests out like pumped up gorillas as they do sometimes, if they come in like that well of course some like myself is going to put my back up against the wall and say let's go." Michael

> "I've got and ABI, so they talk to me on an even playing field, slowly so I can understand things, it's going to go a lot better. It's all about, as I said, it's got a bit of respect in there." Michael

> "The police are going to sit down, and you know when they are treating you like their being smart to you or they're being condescending and all that sort of stuff, you know, and you act out." Michael

> "There is so much to be gained by treating people decently." Doddy

Neutrality and fairness

We heard from people with disability about neutral and fair treatment by the police.

> "If the rules were fair, and wasn't just fair for me…say it was fair for me and all the rest of the people the same, not just one…I'd be happy, it would be great." Michael

> "In the early days of being a teenager and being a young adult getting in trouble I didn't experience any being treated fairly or anything like that." Michael

> "I was not told what I was being charged with or when I would get out. I was not told my rights when being arrested." Doddy

Trustworthiness

We heard from people with disability about being able to trust the police.

> "I'm less inclined to call police on any matters because of how the police have dealt with me in previously in my life." Matthew

"Just the appearance of being genuine, trying to be genuine, trying to understand the persons plight and where they're coming from. If the policeman can talk a mile in your shoes, he's more likely to understand how you're treated or how you're going in your shoes isn't he." Matthew

Policing and People with Disability

Police officers are routinely required to make a range of decisions in their interactions with people with disability, often with limited knowledge about the person, or about the person's disability. When people with disability are arrested police must decide whether to lay charges, grant bail, or involve an independent third party. Police must also make decisions about how they will conduct an interview, how they will communicate with the person, and how questions will be asked of the arrestee.

When dealing with victims of crime, police are tasked with assessing the credibility of the individual, determining whether adequate information has been provided to warrant an investigation, and deciding if further inquiry is necessary. Police are also required to make decisions where a person with disability has been reported missing from a disability group accommodation setting, or where they are requested to perform a welfare check at a person's house, and what action to take in these circumstances (Dowse et al., 2021).

These decisions require an understanding of the lives of people with disability in the community, how they may communicate, process information, make decisions and behave—particularly in situations where they may be experiencing fear or confusion, or when they lack familiarity with criminal justice procedures. For people suspected of committing a crime, the course of their involvement with the justice system can be significantly influenced by police decision-making.

Amending the Disability Discrimination Act

The CIJ supports the implementation of recommendation 8.19 of the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People With Disability (DRC), which is that 'services provided by police officers in the course of performing policing duties and powers' be included in the definition of 'services' under the *Disability*

Discrimination Act 1992 (the Act), with the intent being that all aspects of policing are covered under the Act (Commonwealth of Australia, 2023).

The CIJ also supports recommendations 4.27 and 4.28 of the DRC, that there be a positive duty on all duty holders under the Act, specifically that such a duty apply to policing. In response to consultation questions 12 and 15, he CIJ supports the position that this positive duty *should* apply to police as service providers under the Act, and that the Act should not exempt police from the application of a positive duty.

It is well established that people with disability in Australia experience discrimination via their interactions with police when they are victims, witnesses and accused persons (Commonwealth of Australia, 2023). Despite extensive documentation of discriminatory attitudes and practices of police towards people with disability in Australia over the past decade, there remains significant work to ensure people with disability can realise their human rights when interacting with police (Dowse et al., 2021). The CIJ is hopeful that the implementation of these recommendations would result in police policies, training, and practices which ensure all people with disability receive policing services that are equitable, efficient, and non-discriminatory.

Disability discrimination often occurs because of lack of knowledge of what constitutes discrimination, lack of professional skills, ableist and negative attitudes, and lack of clarity of obligations not to discriminate (Australian Human Rights Commission, 2014, 2020). Discrimination is further enabled by the legislative and policy landscape, inaccessible or non-existent complaints bodies and safeguarding mechanisms, and lack of resourcing to ensure organisations can meet their obligations. All of this is captured well in the AHRC's 2014 report 'Equality Before the Law: Towards Disability Justice Strategies' (Australian Human Rights Commission, 2014). The CIJ is hopeful that the implementation of these recommendations would better equip the existing legal framework to enable, support, and enforce the rights of people with disability when engaging with police.

Policing as a Service

The DRC and the Australian Human Rights Commission (AHRC) have separately drawn attention to the Productivity Commissions' statement regarding police as a service in its

2012 Report on Government Services. In the context of recommendation 8.19, the CIJ also draws attention to what the Productivity Commission has said:

> "Broadly, the whole community is a 'client' of the police. Some members of the community, who have more direct dealings with the police, can be considered specific client groups, for example:
>
> - victims of crime
> - those suspected of, or charged with, committing offences
> - those reporting criminal incidents
> - those involved in traffic-related incidents
> - third parties (such as witnesses to crime and people reporting accidents)
> - those requiring police services for non-crime-related matters."

The Productivity Commission went on to say that police have several key objectives that they should work to provide in an "equitable and efficient manner," (Productivity Commission, 2012) which are to:

- "allow people to undertake their lawful pursuits confidently and safely
- bring to justice those people responsible for committing an offence
- promote safer behaviour on roads
- support the judicial process and achieve efficient and effective court case management and judicial processing, providing safe custody for alleged offenders, and ensuring fair and equitable treatment of both victims and alleged offenders."

While it is currently possible to interpret that police are a service under the Act through the existing definition "services of the kind provided by a government, a government authority or a local government body," (Productivity Commission, 2012) courts have not ruled consistently regarding to how the Act covers interactions between police and those suspected of committing an offence. Amending the Act to specifically include services provided by police officers in the course of performing policing duties and powers, would help ensure that the rights of all community members with disability are covered by the Act during all dealings with police – dealings that are well explained in the Productivity Commission's statement.

Policing as a Service that Advances Substantive Equality

The CIJ understands that including services provided by police officers in the course of performing policing duties and powers in the Act would require police to ensure their services uphold formal equality. That is, to ensure their services are not discriminatory in response to any person's irrelevant, protected, disability-related characteristics.

The CIJ is also of the view that policing as a service under the Act should require police to provide services that advance substantive equality. That is, to require police to make adjustments (up to the point of an adjustment involving unjustifiable hardship) that ensure any person they deal with is provided services in an "equitable and efficient manner," as per the Productivity Commission's statement.

This means that police need to make adjustments and treat some people differently so they level the playing field, done so in recognition of the fact that not everyone is starting from the same place. When policing is viewed as a service to all community members, it follows that such adjustments should be seen as a positive duty, so that the service police provide is fair and equal for all. A positive duty would obligate police to ensure their systems, policies and processes are accessible by design, and adjustable to meet the needs of the whole community.

Policing as a Service, Advancing Substantive Equality Through Procedural Justice

The CIJ suggests that amending the DDA to make police a service would necessitate changes in some aspects of policing. Protecting and promoting the rights of people with disability would require police to adopt procedural justice approaches in carrying out their functions and performing their duties.

The term procedural justice refers to the notion that the fairness of processes used to make decisions and enforce laws is just as important as the outcomes themselves. In policing, procedural justice is realised by ensuring that authorities act in a manner that is respectful and transparent, make decisions that are impartial, and give people a voice in the processes that affect them. When these principles are followed, people are more likely

to see the police as a legitimate authority and comply voluntarily with laws and decisions (Bolger & Walters, 2019; White et al., 2016). There is a substantial body of research demonstrating that when police make efforts to be neutral and respectful, and give people a voice in their interactions, perceptions of, and trust in police are substantially improved (Pass et al., 2025). Where police behave in a fair and respectful manner they are viewed as holding similar values to the community, meaning people are more likely to view police as legitimate enforcers of law (Bolger & Walters, 2019).

Relations between police and minority groups are more complex, as minority groups often have less trust in police than the rest of the community, meaning that for trust to be built with minorities, such as people with disability, police may need to make significant cultural change (Bolger & Walters, 2019; Ellem & Richards, 2018). Research suggests that alongside the general decrease in trust in police worldwide, the disability community are less likely to trust the police, especially within communities where people with disability have been harmed through police interactions (Rogers et al., 2024; Vega & Peacock, 2024).

Relations between police and communities are also complicated by negative police attitudes towards the community and to the fair and respectful treatment of citizens (Pass et al., 2025). Research on police cultures suggests that procedural justice is often not believed to be part of the real work of policing (Pass et al., 2025). This can result in a cycle whereby police hold negative views of the community, and the community, in turn, hold negative views of police, resulting in poor services from police and adversarial community relations (Pass et al., 2025).

The features of procedural justice are (Murphy, 2021):

- **Having a voice** – people have the chance to give their side of the story.
- **Dignity and respect** – treatment is polite and dignified.
- **Neutrality and fairness** – decisions are unbiased.
- **Trustworthiness** – the police show their interest for the public and community.

Procedural justice suggests that it is the processes, not just the outcome, that represents justice at both the individual and societal level. It tells us that perceived fairness matters. Procedural justice also provides a framework for police and other justice stakeholders to ensure that the way they exercise their powers and make their decisions will enhance

public trust and confidence, as well as result in more fair, equal, and legitimate outcomes during each interaction.

We know that procedural justice matters for people with disability, because “the way in which individuals are treated by those in positions of authority conveys information to them about their value and standing within the social group” (Gibbs et al., 2023). Low perceptions of procedural justice can impact an individual’s sense of self-worth and dignity by conveying they are not a full member of society (Tyler & Lind, 1992). Policing that incorporates procedural justice both affirms the equal standing of people with disability in Australian society and provides a platform upon which mutual trust and accountability can be built.

Procedural Justice and Community Policing

Community policing refers to an approach where police work in partnership with communities to set priorities for crime prevention (O’Neill et al., 2023). Community policing is characterised by collaboration and building trust in communities; utilising prevention and diversion methods; citizen involvement and problem-solving approaches (O’Neill et al., 2023). We know that community policing strategies are well oriented to incorporate procedural justice principles, and that they provide the opportunity for these principles to be actioned and to result in enhanced police legitimacy and better outcomes for all (Chan et al., 2025). The CIJ suggests that an increased focus on community policing initiatives would provide police with a tangible way to incorporate procedural justice into their practices.

Human Rights Act

The CIJ also supports calls made in other submissions, including by the Human Rights Law Centre, that these essential reforms to the Disability Discrimination Act can be improved in their operation and effectiveness with the introduction of a Human Rights Act. We support the idea that reformed and modernised discrimination laws help with the operation of a Human Rights Act by complementing the rights outlined in an Act must be enjoyed by all without discrimination.

The CIJ notes that whilst the DRC were unable to consider a Human Rights Act due to their terms of reference and instead recommended a Disability Rights Act, the July 2024 joint statement of 12 disability representative organisations advocating for a Human Rights Act shows the support for the benefits of a Human Rights Act alongside reforms and modernisation of the Disability Discrimination Act.

Further the Parliamentary Joint Committee on Human Rights inquiry into Australia's human rights framework reported on 30 May 2024 their recommendation for a Human Rights Act, and that recommendation should be supported as part of the implementation of the CRC alongside reforming the Disability Discrimination Act.

Conclusion

Procedural justice approaches ensure that the people who are most affected by laws, policies and processes are treated with dignity and respect by people in authority who exercise power over them. Three of the authors of this submission have lived experience of disability and contact with police and have provided examples of disability discrimination they have experienced in their interactions with police. They have also pointed to the potential for a much more effective approach, by highlighting how bringing a procedural justice lens to policing would increase trust in police and reduce disability discrimination.

Applying a procedural justice approach to policing would ensure the exercise of police powers in a way that promotes and upholds the rights of people with a disability, ensures that justice processes and procedures are more accessible to people with disability, and reduce disability discrimination. Additionally, a procedural justice approach would improve police accountability and oversight by affording people with disability more opportunities to report their concerns or participate in complaint making processes. In short, amendments to the *Disability Discrimination Act* 1992 to include police as a service may lead to significant but necessary cultural change in policing in Australia for the benefit of people with disability and the community as a whole.

Appendix 1: Lived Experience Voices

Transcript of interview with Michael and Matthew

The Centre for Innovative Justice (CIJ) met with Michael and Matthew from Voices for Change, and recorded a conversation about disability discrimination, policing, and procedural justice. The following quotes are from that recorded interview, and the audio of these quotes has been included as a part of this submission.

Why is it important for you to have a voice in this submission?

Michael: "I like to help. If I can help where the help wasn't available for me, for us, you know. We can make it a lot easier. And that's for the guy with the ABI or the girl with the ABI, to the police, whoever is involved. If we can make it as smooth a transition, if we can make it smoother for things to be done right and it's not as stressful as what the situation is, I am happy to do so."

Matthew: "Well I support unfortunately I've been through the system multiple times with varying results. Some of the time positive, some of the time very negative. But, primarily I don't want people to go through what I went through as well. Sometimes it was ok but a lot of the times it wasn't. If I could have had a couple of things go differently, yeah maybe I'd be looking at life differently entirely."

What does it feel like when police communicate well and treat you fairly?

Michael: "It's good, it's like they're treating you on their level, it's still adversarial but it's closer to their level. So, you feel like you're being listened to."

Matthew: "In the early days of being a teenager and being a young adult getting in trouble I didn't experience any being treated fairly or anything like that."

What does it feel like when you are treated unfairly?

Michael: "The police are going to sit down, and you know when they are treating you like their being smart to you or they're being condescending and all that sort of stuff, you know, and you act out."

Police and disability awareness.

Matthew “If we don’t physically see that someone’s missing an arm or missing a leg, we don’t always take on board that it’s a mental issue, and it’s a disability. So obviously, if we can do it then the police force could do the same thing and make the same mistake. So yeah, it would help.”

What should police do to make sure people with disability can communicate well when they are being arrested or interviewed?

Michael: “Ok so I feel that one they could, as I’ve touched on, respect. Two is that they could slow the conversation down with a person that’s got an ABI or mental health issues, where they know the people can understand. Say me, I’ve got and ABI, so they talk to me on an even playing field, slowly so I can understand things, it’s going to go a lot better. It’s all about, as I said, it’s got a bit of respect in there. As I said you slow it down, and communicate instead of like, whose got the bigger attitude, just forget about the attitudes. Take the attitudes out of it. Learn to get along, you can’t just…they come in here with their chests out like pumped up gorillas as they do sometimes, if they come in like that well of course some like myself is going to put my back up against the wall and say let’s go. They come in with that attitude, I’m going to stand there with that attitude and fight back.”

What does it feel like when they rules are fair?

Michael: “If the rules were fair, and wasn’t just fair for me…say it was fair for me and all the rest of the people the same, not just one…I’d be happy, it would be great.”

What does it feel like when you are treated unfairly by police?

Matthew “I think it’s pretty universal, disability or not. It’s an incredibly anxious time, especially if you haven’t been arrested too often. Uncertainty…yeah if you don’t know what’s going in with what you’ve done, it’s a lot of stuff coming into your head and it’s like a full panic response. You can’t get enough clarity, just sitting in a cell…you’re not going to get any.”

Matthew: “It triples…ADHD, an inherent anxiety disorder, you’re going to be in massive trouble. I know people with anxiety disorders that have to take major meds every day, so they’re already impaired and if the police don’t let them have their medication, then it’s going to be incredibly amplified and yeah they’ll be sick and not going to be able to participate really very well.”

Michael: “I suppose communicating properly and again, respect comes into it, but yeah if they can try … at first when you first get arrested they don’t know that you’ve got an ABI and they’re going to come in twice as hard, they are going to come in normal full on throw you on the ground, cuff you and all that sort of stuff. You don’t know what going on, especially if you get someone with an ABI that hasn’t been in trouble that often, they’re going to be freaking out. So, your anxiety goes through the roof, you’re stressed out, and yeah you just want to know what’s going on.”

Interacting with police as a victim or witness of crime.

Matthew “I’m less inclined to call police on any matters because of how the police have dealt with me in previous…in my life.”

What can the police do to show they are trustworthy?

Matthew “Just the appearance of being genuine, trying to be genuine, trying to understand the persons plight and where they’re coming from. If the policeman can talk a mile in your shoes, he’s more likely to understand how you’re treated or how you’re going in your shoes isn’t he.”

Keeping police accountable for their actions towards people with disability.

Matthew: “Speciality disability worker within the police, I would think would be better than a police officer themselves. Someone that knows some of the eccentricities of disabilities and ABIs and everything else, which the police aren’t going to know.”

Matthew “For me, it would be a specialist office or person there to be able to do it, but with enough internal pull with the police that things happen and it’s not just a recommendation that nothing is acted upon.”

Important of police being an active part of the community.

Matthew: “It only adds to more respect. Adds to the trust…everything between the community and the police by them showing a bit of humanity and trying to understand.”

Interview with Doddy

Doddy Armstong is an adviser, lived experience expert and peer mentor employed by the CIJ. She works extensively across the disability and criminal justice sectors and provides advice on a range of issues relating to people with acquired brain injury involved in the criminal justice system.

As a part of this submission, Doddy spoke about her experience as a person with disability in the criminal justice system.

The impacts of a lack of communication by police

“Individual police officers were making own judgements, coming to their own conclusions about me without any enquiry whatsoever – this includes making an assessment of whether or not I had a disability – I was never asked what had happened (in reference to marks around neck). Nobody asked if I had a head injury – I’m black and blue and no one asked me what had happened.”

“Not told what I was being charged with or when I would get out. Was not told rights when being arrested. Put their hands on me – hurt me further, even though I had been beaten up – no conversation – no opportunity for them to work out if I understood what was happening because there was no conversation.”

Doddy discussed her experience of being in room with police officers and presented with charges that weren’t to do with her. She described police pressure, with police saying things like “if you don’t plead up to this you’ll go to prison.” She described it as intimidation and coercion – experiences with police have been “absolutely frightening,” and said that it was always with a man, always frightening, and usually one on one in a room.

Policing as an institution

Doddy recalled how there is a history of systemic and institutional abuse and harm towards people with disability, stating that “people with disability have always been violated and abused.” Doddy spoke about the police as an institution, and how there is now an

even more significant onus on them to not to do further harm, she noted that there is a bigger responsibility on them because they are an institution.

Policing as a service to the community

Doddy stated that it's in best interests of police for them to treat people with disability with respect, as they are a community service. She noted that it would make their jobs easier and would be in best interests of community. She said that "there is so much to be gained by treating people decently."

Police communicating better

Doddy stated that the police learning about people in the community who have disabilities would assist them to communicate better. She said that people have behaviours in the community – such as a person with disability – and that police need to take time, slow down, offer support, even if that person has committed an offence. Police should take a more supportive approach to people, no matter the stage that a person in the justice system.

"They need to be asking different and better questions, they need to be asking person-centred questions."

Procedural justice

Doddy stated that for her, procedural justice in a nutshell is about involving the person – involving them in the process that they will be going through.

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