# Stand Up For Your Rights:

# Employment

## A guide to standing up for your rights in employment.



## About this guide

In this self-advocacy guide you will find information on what you can do when you encounter barriers to participating in the community due to your blindness or low vision generally and in particular barriers to accessing employment.

You will find information on communication strategies, and skills you can use, to develop an organised approach to addressing barriers you encounter in your life due to your blindness or low vision accessing premises, transport, and goods and services generally. The information provided will include an overview of State and Federal disability discrimination legislation that protects your rights to participation in all aspects of community life, who you can approach for assistance and the most effective ways to go about it.

In particular, this guide covers information on:

* What is advocacy?;
* Important self-advocacy skills to develop;
* Your rights and relevant laws, conventions or policies; and
* Strategies and practical steps for addressing barriers in accessing premises, transport, and goods and services when travelling with your Employment.

## What is advocacy?

Advocacy is a way of promoting, protecting, and ensuring full and equal enjoyment of all human rights which enables you to participate in any area of life you choose.

You may at times experience a barrier to your full participation in everyday life and seek to address this barrier. The action you take to address the barrier is known as advocacy.

## Self-advocacy skills

### Disclosing your vision impairment

If you experience a barrier to accessing employment you may need to disclose that you are blind or have low vision. You will be more effective in self-advocating to overcome access barriers if you are knowledgeable about your level of vision impairment and you can clearly communicate your needs, and the benefits of meeting your needs (such as a company retaining you as an employee, protecting its reputation, and avoiding complaints of discrimination.

It is not necessary to disclose detailed medical or personal information about your vision impairment. However, in some instances, it may be of assistance to explain how particular aspects of your employment are problematic. For example, your workplace may introduce a new computer database which is colour coded, and you are colour blind. All outgoing stock appears in blue, and all incoming stock appears in purple. You could explain that you cannot identify these colours, so you are not able to access this information.

### Communication

Despite the existence of legislation which makes it unlawful to discriminate against a person with disability, many organisations may not have considered the accessibility needs of people who are blind or have low vision. Beginning your self-advocacy efforts with a simple assumption that the barriers you are experiencing are born out of ignorance is a good first approach.

To be an effective self-advocate, it helps to be able to communicate clearly and confidently, be proactive and assertive, while also being polite, respectful and patient. It is likely that you will have to discuss your matter with someone more than once to have it addressed, so when you first raise an issue, using positive language, like ‘inclusion’, ‘participation’ and ‘access’, may help to open up the lines of communication at this early stage, compared to using language like ‘discrimination’, ‘disadvantage’, and ‘exclusion’, even when it’s these circumstances you are trying to address. If you are becoming frustrated with a situation, be mindful not to come across too aggressively; staying calm and focused is more likely to get you a considered hearing and keep the lines of communication open.

### Avoid stereotypes and assumptions

While you are the expert in your own vision condition and the changes which you think need to be made for employment to be accessible to you, it is important to avoid perpetuating stereotypes and assumptions which are made about providing access to employment for all people who are blind or have low vision.

When you propose solutions to the barriers you encounter in accessing employment, it is helpful to be clear that these solutions would benefit you, and perhaps others, but it is best not to claim that these solutions will provide access for all. In some instances, you may risk proposing solutions which may not adhere to existing Australian Standards or Guidelines and may disadvantage some groups.

### Tenacity and resilience

You can’t put the same amount of energy into every accessibility issue, so picking your battles and thinking about what efforts are needed is important to ensure you have the resources, resilience, and patience to commit to the effort, and consider how much it impacts your life. While some barriers you are attempting to address may be an easy fix, others may be a long-haul, and you may need to take a slow and steady approach in the energy you devote to them.

### Be prepared

Good preparation is an essential element in assisting you to be assertive and feel more confident in asking for what you need. Keep notes, including dates and times of conversations, people spoken to / communicated with and results and agreements made in conversations. This is important should you wish to escalate the matter to senior personnel or lodge a formal complaint in the future.

### Network with others

If you have faced a barrier to accessing employment, a good first step is to talk with others who are blind or have low vision to gather information about whether they have also faced this barrier and if so what they might have done to address it.

This might be achieved through the Vision Australia client network or through email lists such as the vision impaired persons list for Australia (VIP-L). Further information is provided at the end of this guide.

### Know your rights

The United Nations Convention on the Rights of Persons with Disabilities recognises the rights of all people with disabilities to live independently, inclusively and with dignity in the community. You may at times find yourself in a situation where your rights as a person who is blind or has low vision are compromised. It is important to know your rights so that you have an idea of what is possible, what is reasonable to expect and how your needs may be met. Knowing the laws, policies and practices that are in place to protect your rights will ensure you can speak up for yourself if you are treated unfairly because of your blindness or low vision. These may include:

* The Disability Discrimination Act 1992 (Cth) and State disability discrimination legislation;
* Accessibility standards and guidelines; and
* Organisational policies and procedures that aim to address the needs of people with disabilities and other specific community groups.

The following sections of this guide provide details of the relevant laws, standards, and policies that apply specifically to employment.

## Employment Accessibility

### The United Nations Convention on the Rights of Persons with Disabilities

Article 27 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) recognises the right to work and employment as a basic human right. Australia has ratified the Convention and policies and practices should be implemented having regard to these obligations under the Convention.

### The Disability Discrimination Act 1992

The Disability Discrimination Act 1992 (the DDA) is Commonwealth legislation which makes it unlawful to discriminate against a person with a disability.

The DDA defines two types of discrimination against a person with a disability: direct and indirect. Direct discrimination occurs when a person is ‘treated less favourably than a person without a disability’ (section 5), or when there is a failure to make reasonable adjustments. Disability discrimination can also occur indirectly (section 6) such as when a requirement is imposed which a person cannot meet because of their disability. There may also be indirect discrimination if a person with disability could meet the requirement if reasonable adjustments were made, and those adjustments are not made. The DDA covers a range of areas where there may be discrimination, including employment (Division 1, sections 15 - 21B).

### What can I expect when accessing employment or in the workplace?

It is reasonable to expect that you can access employment or participate in the workplace with the same ease and dignity as those without a disability. This includes having an equal opportunity in:

* recruitment (advertising, providing information about jobs, application forms, interview arrangements, selection tests or examinations)
* staff selection
* conditions of employment (salary, duties, leave entitlements, superannuation)
* opportunities for training and promotion
* dismissal
* trade or professional registration
* membership of unions or professional associations.

These protections apply to all employees, including contract workers, commission agents, agency workers and partnerships of 3 or more.

### Inherent requirements of a work role

Discrimination is not always against the law. There are some exceptions to the rule, called exemptions. One of these exemptions is the inherent requirements of a work role. In some situations, it may not be unlawful for an employer to refuse to employ a person if, because of their disability, they are unable to carry out the inherent requirements – or essential duties – of the job. For example, a medical role that involves performing surgical procedures has an inherent requirement that a person have sufficient eyesight to perform those procedures.

It is the responsibility of the employer to clearly spell out the essential duties of the position being advertised and the specifics of the type of work the employee is expected to do.

### Reasonable adjustments

You have the right to reasonable adjustments. A reasonable adjustment is a measure or action taken to assist a candidate or employee with a disability to participate in employment on the same basis as others.

Reasonable adjustments can include:

* Changing recruitment and selection procedures - for example providing position descriptions in accessible format or modifying the online application process;
* Modifying work premises - for example modifying lighting and shade, providing Seeing Eye Dog facilities;
* Changes to job design, work schedules or other work practices – for example changing your duties or swapping some duties with other workers;
* Modifying equipment - for example providing adaptive technology.

Funding for reasonable adjustments is available via the Australian Government’s Job Access Program. For further information contact Job Access, your Disability Employment Service (DES) provider or Vision Australia’s Employment Services team.

An adjustment is reasonable if it does not cause unjustifiable hardship to the employer.

### Unjustifiable Hardship

An employer may not need to make reasonable adjustments if this will cause unjustifiable hardship.

### Health and safety in the workplace

All employers have a legal obligation to provide safe and healthy workplaces and to work against potential risks to the health and safety of all employees.

While laws differ in each state, they are commonly based on principles of identifying, eliminating, controlling and reducing risk in the workplace.

A person who is blind or has low vision has a right to work in an environment which protects their health and safety on an equal basis with others, but must also recognise that the ability to meet reasonable health and safety standards is an inherent requirement of any role.

Reasonable adjustments should be made in order for an employee to meet the workplace health and safety requirements of a role.

## What can you do when you encounter a barrier to employment?

### Identify and clarify the nature of the barrier

If you are having difficulty accessing employment, or in the workplace, it is very useful to identify that there is actually a barrier. That is, clarify that there is not something you have missed which will provide the access you need. For example, if you are having difficulty navigating your way into your work building, you may have missed that directional tactile ground surface indicators (TGSIs) are available to guide you.

To assist you to clarify whether this is a difficulty experienced by others and whether there is a simple solution, you may like to contact your Disability Employment Service (DES) provider or Vision Australia’s Employment Services team. They may be able to assist you to identify what is causing your difficulty and thus to help you to articulate the issue to the employer.

### (A) Accessing employment

If you come across barriers when attempting to access employment, like an inaccessible recruitment or interview process, you can make contact with the employer to alert them to these barriers.

Contact the employer or recruitment agency and find out who would be the best person to receive your feedback. You may want to provide a complaint or feedback over the phone, or in writing, such as an e-mail or via an online form.

If you are able to access the application form or position description you will be able to identify the contact person for the job position. If these documents are not accessible, you can make general contact with the organisation.

Some organisations have their address, phone, and other contact information on the front page of their website. However many organisations provide contact information via a link, usually labelled “Contact Us”.

Information that is helpful to include:

* Details such as where, when and how you were trying to access the recruitment process or interview
* What happened or what the barrier was
* How it has impacted on you as someone who is blind or has low vision, and
* What could be changed to give you more equitable access.

### (B) In the workplace

If you face barriers in the workplace you can make contact and raise them with your direct supervisor or manager in the first instance. This may be a meeting between the two of you, or communication in writing such as an e-mail. Often barriers are more easily and quickly addressed when they first emerge than when they have already escalated to more serious and entrenched problems.

Topics that you may discuss with a supervisor or manager include:

* A clear and concise summary of the barrier you have faced;
* How the barrier impacts on your duties at work;
* Steps you have taken to address the barrier
* Proposed solutions or changes that might be made to reduce or avoid the barrier;
* A time frame for the supervisor or manager to get back to you in order for you to consider your next steps.

If you have not had a workplace assessment via the Job Access Program, or your role has changed since you last had one, you may wish to raise this option with your supervisor or manager. You can then contact Job Access, your Disability Employment Service (DES) provider or Vision Australia’s Employment Services team.

Any proposed or agreed adjustments discussed with your supervisor or manager at a meeting should be recorded in writing so you may refer to these in the future if required. This could be in the form of a follow up email to your supervisor or manager. For example ‘Hi John, thanks for the meeting today, I’m glad we agreed on an adjustment to my work duties, that is, starting next Monday, Jane will do my paper filing duties, and I will do her travel booking duties’.

Since you are likely to continue working while any barriers are being addressed, it is in the interests of all to ensure that the relationship between you and your employer remains productive. Although you should not be passive when a serious barrier prevents you from participating fully in the workplace, you should also aim to avoid conflict which might damage the potential to work together to enable change.

If the issue is not resolved within a reasonable time, you may want to contact a union representative, or human resources staff, or progress the matter with a higher level of management. You may wish to seek advice from your Disability Employment Service (DES) provider, Vision Australia Employment Services team or Vision Australia’s Advocacy team.

### Making a complaint

If you have approached an employer directly and have received a poor response, or no response at all, you may wish to consider lodging a complaint. You can do this in a number of ways. You may wish to access the organisation’s internal complaints procedures, or contact the AHRC or any of the state-based anti-discrimination commissions and boards in respect of alleged discrimination.

There is no requirement to exhaust an organisation’s internal complaints procedures before approaching the AHRC or other commissions or boards. These complaints handling services are free, and a person does not need a lawyer to make a complaint. A complaint can be in English or another language. A translator can be provided if required. Information about this process can be obtained by contacting Vision Australia’s Advocacy team, the AHRC or your State’s Discrimination Commission.

### What if I lose my job or I’m likely to lose my job?

If your workplace situation has deteriorated, or you have been threatened with termination of your employment, you may be eligible for Job in Jeopardy assistance. This is an Australian Government program, a disability employment expert can provide advice on keeping your job, organise a workplace assessment, identify changes or adjustments that could be made, and arrange for you to get specialised equipment to help you at work. For more information on the Job in Jeopardy program, contact your Disability Employment Service (DES) provider or Vision Australia’s Employment Services team.

If you have been terminated from your employment on the basis of your blindness or low vision, you may wish to lodge a discrimination complaint with a Federal or State Discrimination Commission. For more information contact Vision Australia’s Advocacy team, the AHRC or your State’s Discrimination Commission.

You may also like to seek advice about your rights under the Commonwealth Fair Work Act 2009. You can do this by contacting the Fair Work Commission on 1300 799 675 and telling them that you think you lost your job due to your disability discrimination. This area of law has a tight time limit, so act fast when you receive notice of termination.

## Other common scenarios

### Employers engage a third party

Employers sometimes engage the services of a third party organisation to do their recruitment for them. However, responsibility for the recruitment process still lies with that employer, not just the recruitment agency.

### Employer is governed by a parent company overseas

The DDA applies to discrimination which occurs in Australia. However, if a company or organisation is based overseas but provides employment in Australia it may be argued that the DDA applies and that the company’s recruitment processes and workplaces should be accessible.

## Related resources

#### Vision Australia National Call Centre

Call this number to connect with the Employment Services team or the Advocacy team.

Telephone: 1300 847 466

Email: info@visionaustralia.org

#### Job Access Assistance

Telephone: 1800 464 800

Website https://www.jobaccess.gov.au/people-with-disability/available-support

#### Job in Jeopardy

Website https://www.humanservices.gov.au/individuals/services/centrelink/job-jeopardy-assistance

#### Fair Work Australia

Telephone: 1300 799 675

Website: https://www.fwc.gov.au/termination-of-employment

## Further information

For information on self-advocacy strategies or to obtain this guide in another format, call Vision Australia’s advocacy team on 1300 847 466 or email advocacy@visionaustralia.org

#### Australian Human Rights Commission (AHRC)

National Information Service: 1300 656 419

Email: infoservice@humanrights.gov.au

Web: https://www.humanrights.gov.au/complaint-information

#### Anti-Discrimination Commission Queensland (ADCQ)

State-wide telephone information and enquiry line: 1300 130 670

Web: https://www.adcq.qld.gov.au/contact-us

#### Victorian Equal Opportunity and Human Rights Commission (VEOHRC)

Enquiry Line: 1300 292 153

Web: http://www.humanrightscommission.vic.gov.au/making-a-complaint

#### Equal Opportunity Commission (WA)

Ph 08 9216 3900

Email: eoc@eoc.wa.gov.au

Web: http://www.eoc.wa.gov.au/complaints-inquiries/making-a-complaint

#### Anti-Discrimination Board NSW

Ph: 02 9268 5544 between 9am – 1pm and 2pm – 4pm

Email: adbcontact@justice.nsw.gov.au

Email: complaintsadb@justice.nsw.gov.au

Web: http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1\_makingacomplaint/adb1\_makingacomplaint.aspx

#### ACT Human Rights Commission

Ph: 02 6205 2222

Email: human.rights@act.gov.au

Web: http://hrc.act.gov.au/

#### Northern Territory Anti-Discrimination Commission

Ph: 1800 813 846

Email: antidiscrimination@nt.gov.au

Web: http://www.adc.nt.gov.au/index.html

#### Equal Opportunity Commission (SA)

Ph: 08 8207 1977 between 10am – 3pm

Email: eoc@agd.sa.gov.au

Web: http://www.eoc.sa.gov.au/eo-you/making-complaint

#### Equal Opportunity Tasmania

Ph: 03 6165 7515

Email: office@equalopportunity.tas.gov.au

Web: http://equalopportunity.tas.gov.au/complaints