

# GDA: Draft Proposals for New Discrimination Legislation

 | Committee for  
Employment & Social Security

17 September 2019

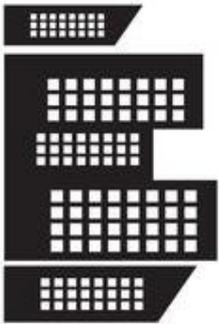
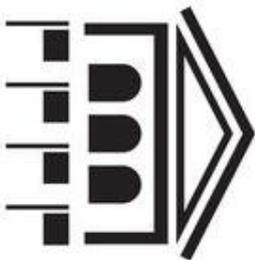
## Why new legislation?

- States resolutions:
  - Disability & Inclusion Strategy, November 2013
  - Amendment – June 2018 – expansion to multi-ground work
- Policy objectives – equality, inclusion, reputation
- International obligations
  - UN Conventions already extended
  - UN Conventions we are seeking to extend

# Overview: draft proposals

# DISCRIMINATION





# Civil Law

# Criminal Law



race



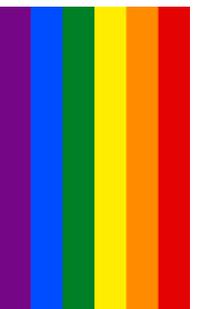
sex



religion



sexual  
orientation



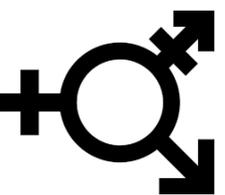
disability



carer status



trans  
status



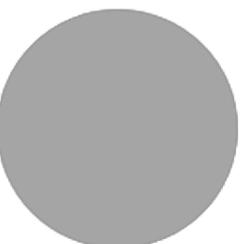
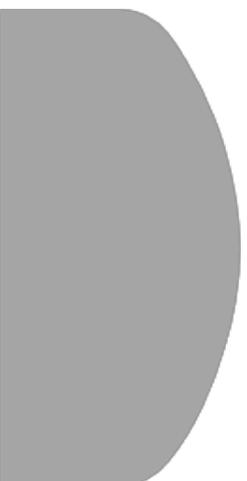
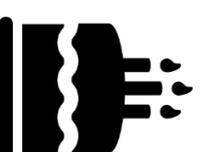
marital  
status



pregnancy



age





# Key question: Definition of Disability

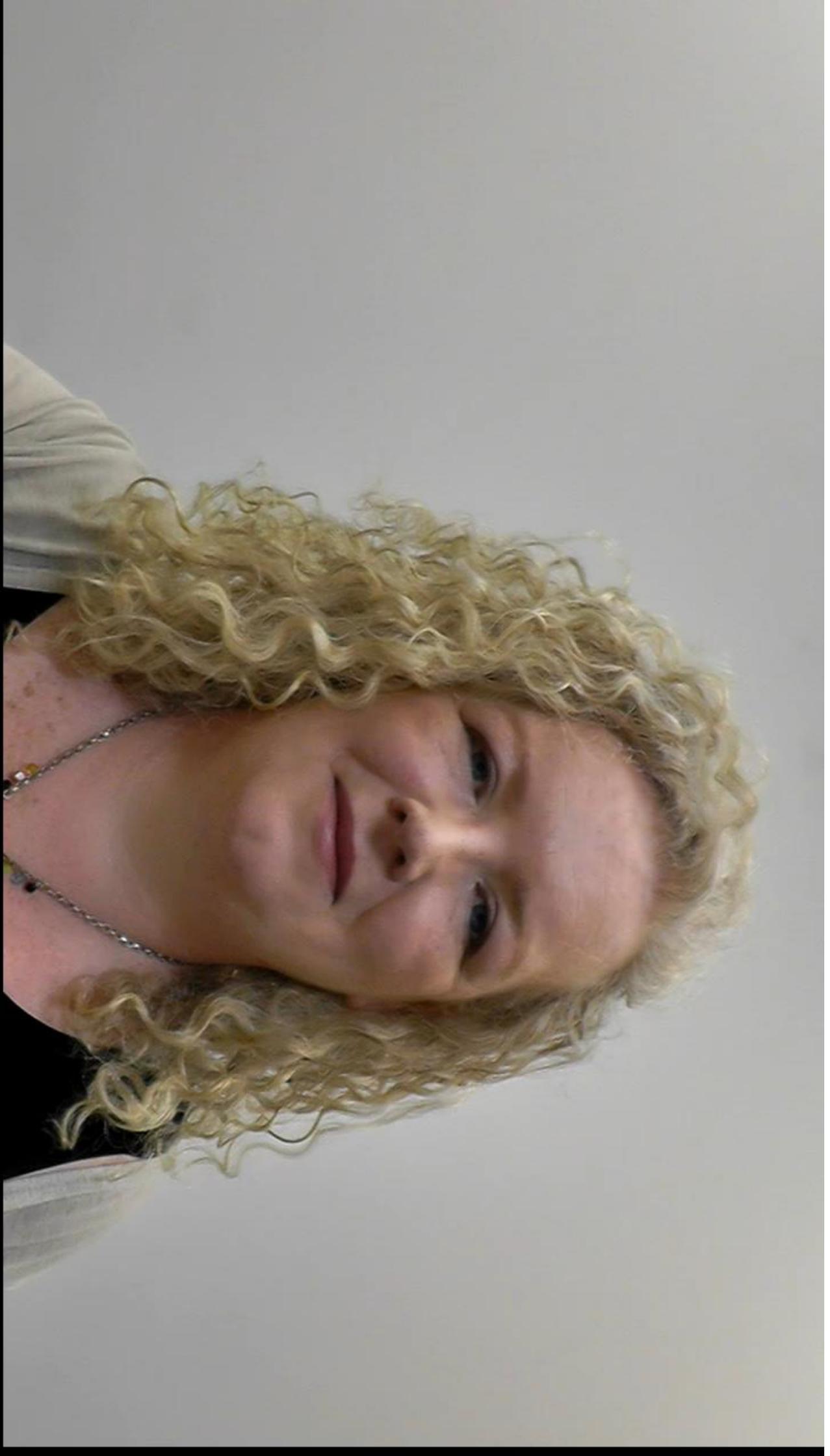
## *Working draft definition*

‘disability’ includes but is not limited to –

- (a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,
- (b) the presence in the body of organisms or entities causing, or likely to cause, disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person’s body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, disease or illness which affects a person’s thought processes, perception of reality, social interactions, emotions or judgement or which results in disturbed behaviour;

To avoid doubt, where a disability is otherwise covered by this definition, the source or duration of the disability is not relevant and there is no required level of impact on the ability of the affected person to function.





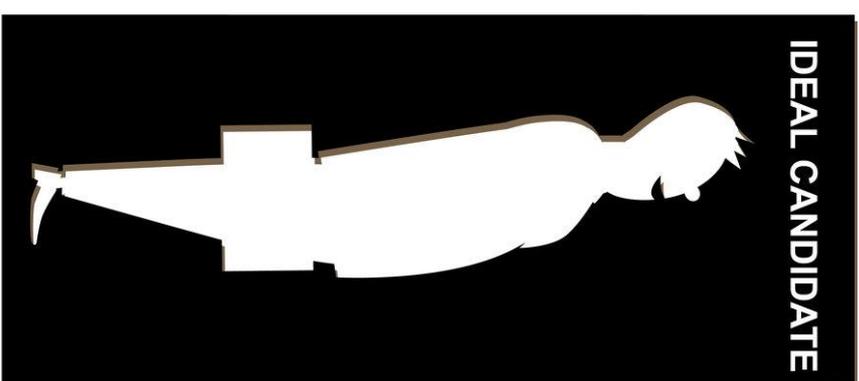
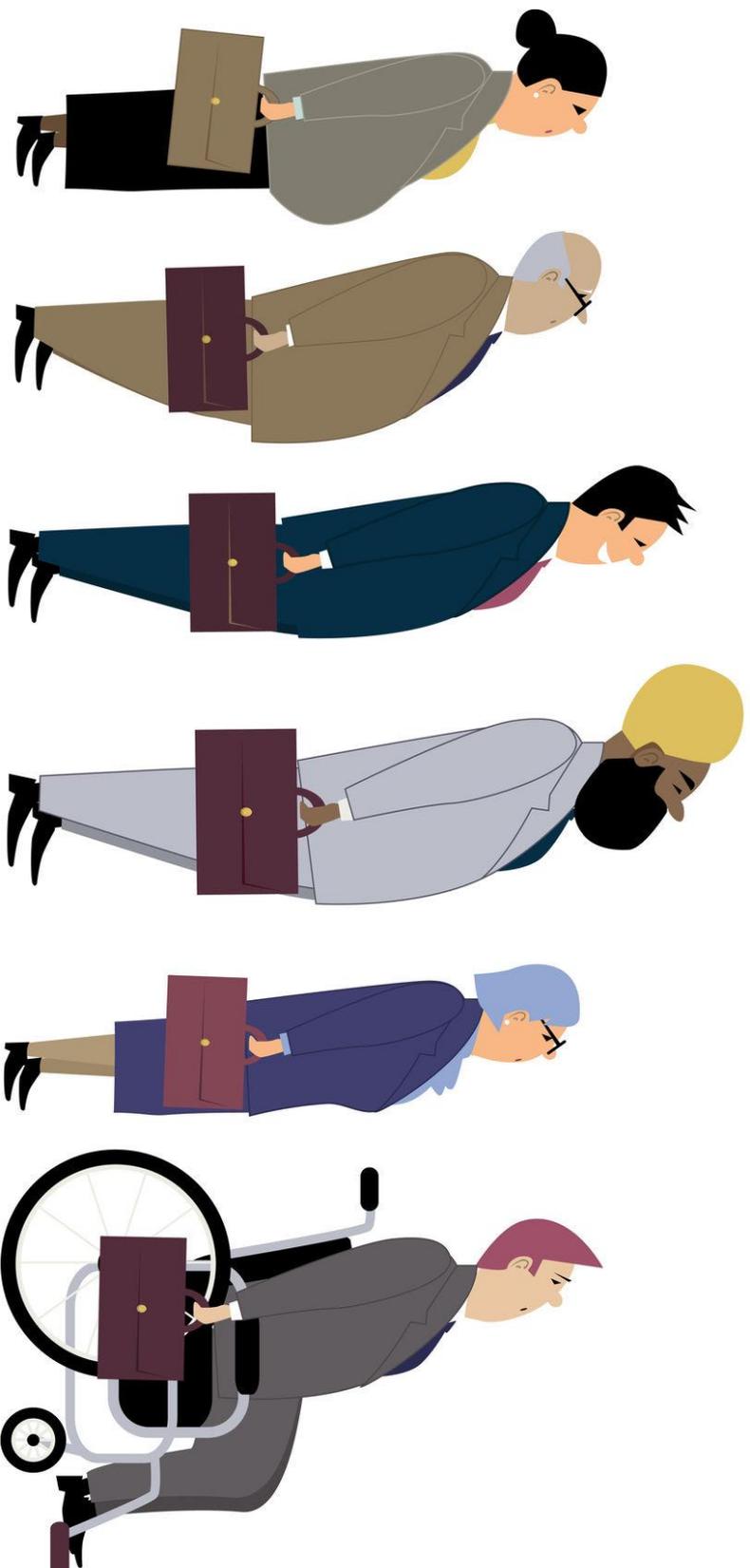
## Definition of Carer status

We are proposing that the 'carer status' ground covers people who provide care or support (in a non-professional capacity) on a continuing, regular or frequent basis for:

- a dependent child, or
- a person aged 18 or over with a disability which is of such a nature as to give rise to the need for care and support.

# Types of unlawful discrimination

# Direct discrimination



# Indirect discrimination



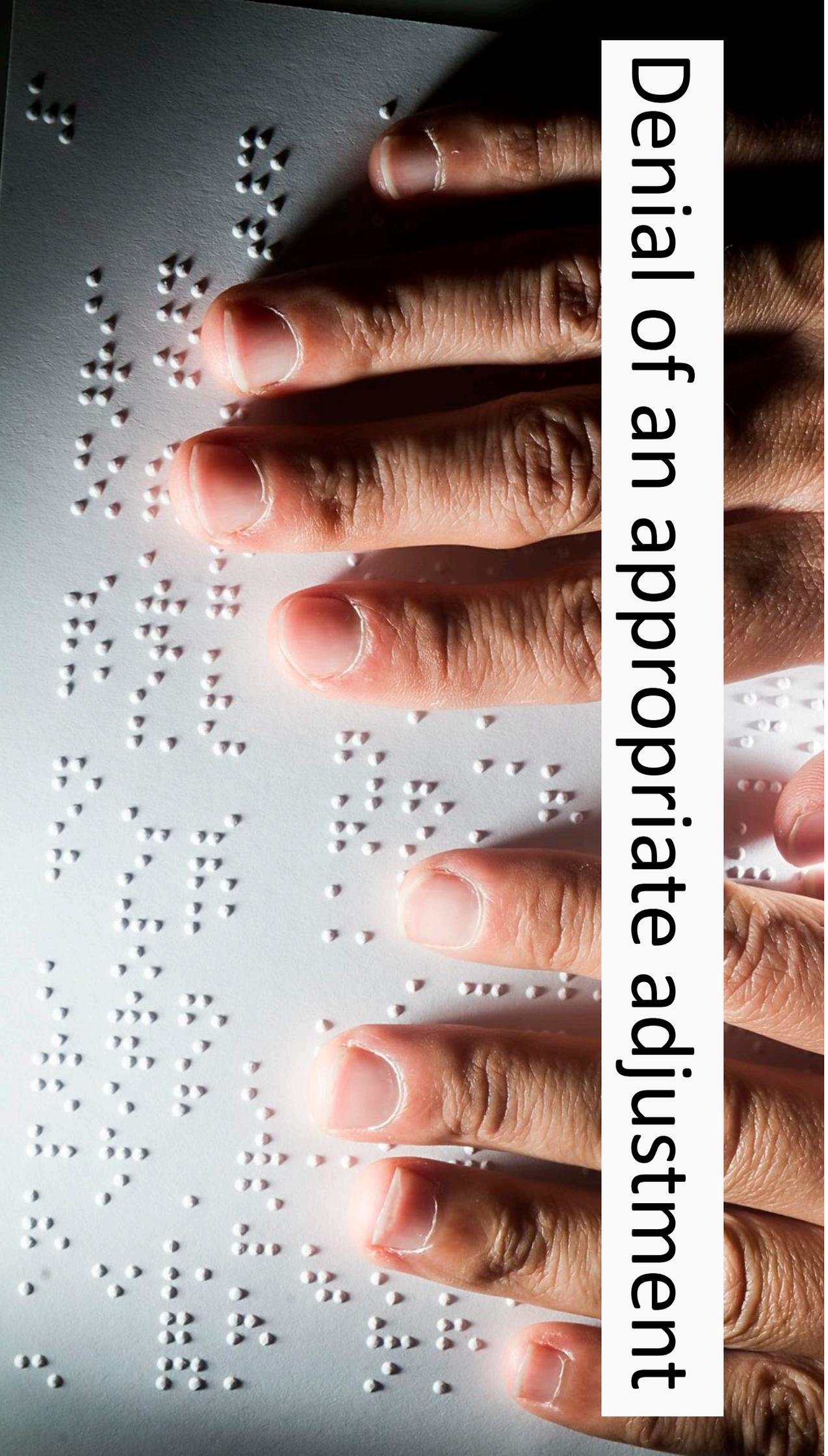
# Discrimination by association



# Discrimination arising from disability



# Denial of an appropriate adjustment

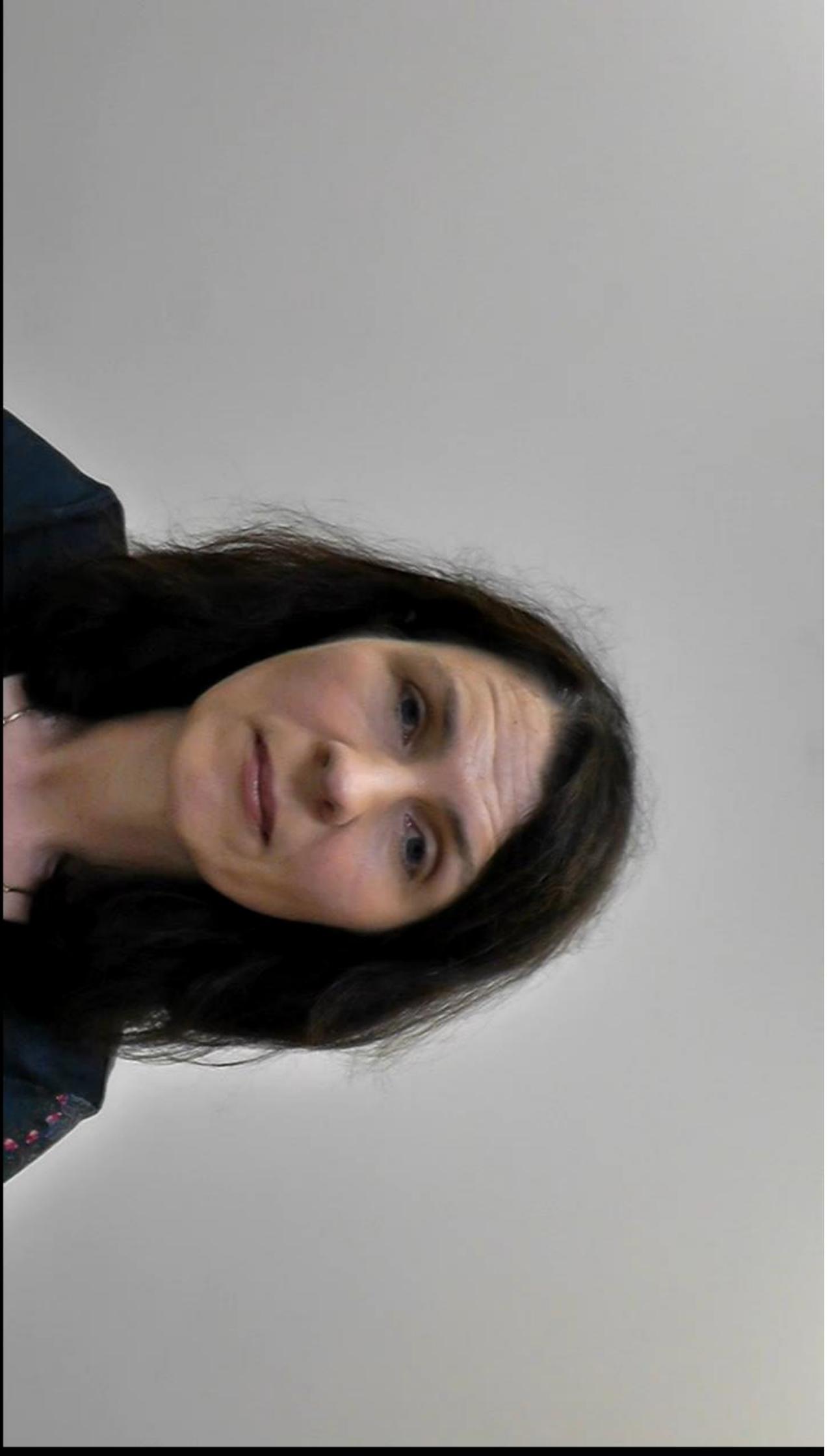


## Other prohibited conduct

- Harassment
- Sexual harassment
- Discriminatory advertisements
- Victimisation
- Instructions or pressure to commit a prohibited act
- Failing to provide equal pay for equal work

# Lawful different treatment

- There is an explanation not related to a protected ground
- A person cannot do the essential functions of a role
- Positive action
- Objective justification
  - Direct age discrimination
  - Indirect discrimination
    - Genuine and Determining Occupational Requirements
- Exceptions



## Exceptions

- Legislation will mean you can't treat people differently related to protected grounds.
- Exceptions for well justified or necessary circumstances.
- We have published a list of proposed exceptions.



## Key question

Do we have the exceptions list right?

We recommend:

- You think about **when you use the protected grounds** in the management of your business.
- You **let us know** if something you want to keep doing is not included in the exceptions list

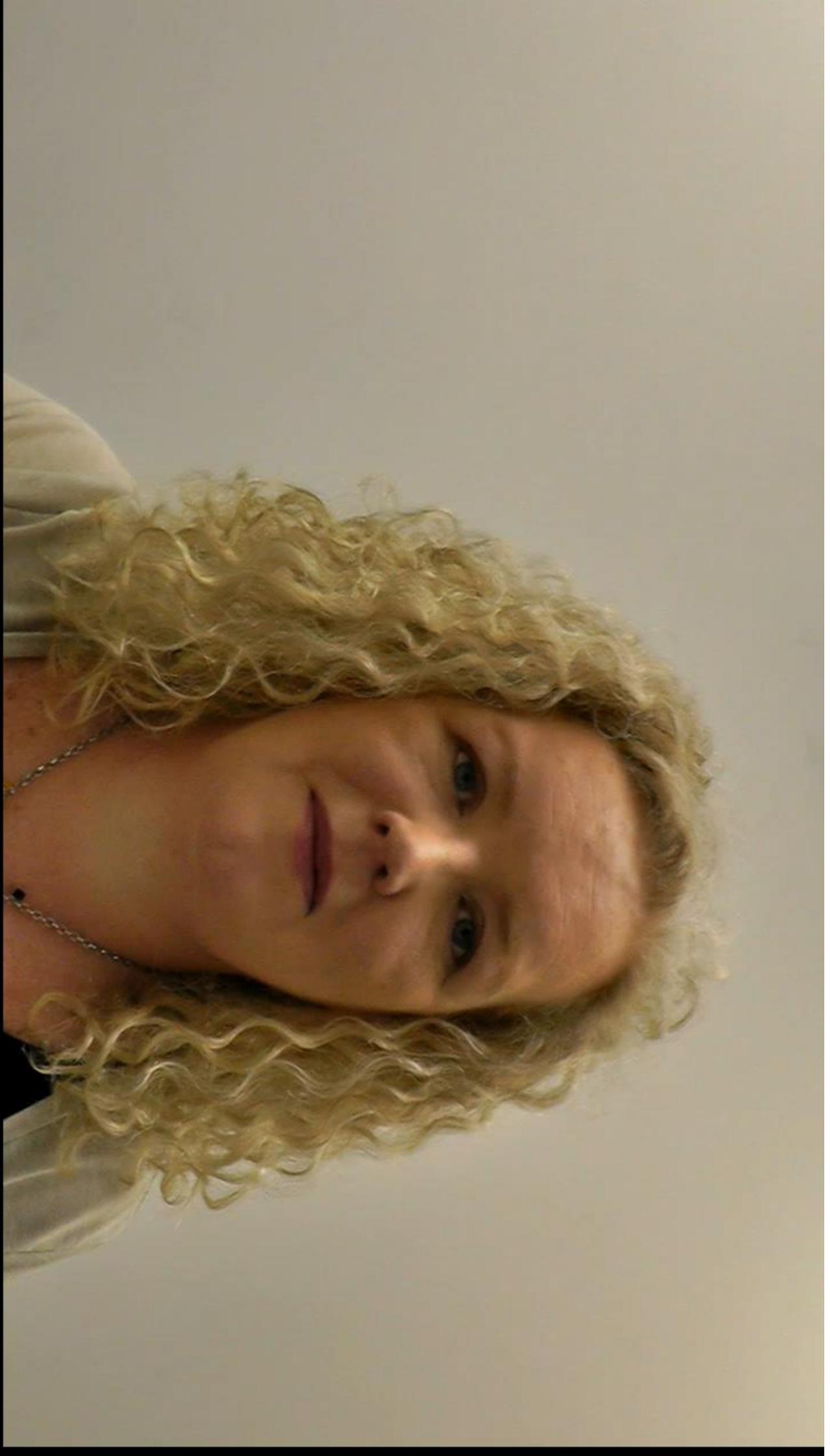
## What is an 'appropriate adjustment'?

- To ensure **equality of opportunity** for disabled people, not special treatment.
- Necessary and appropriate modifications or adjustments for a disabled person, where needed in a particular case.
- An appropriate adjustment should not impose a **disproportionate burden** on the person providing the adjustment.
- Implementation of an appropriate adjustment should always follow **consultation** with the individual concerned.

## Examples of 'appropriate adjustment'

Many adjustments cost very little. Could include:

- Making changes to facilities or buildings to make them more accessible
- Making information accessible
- Modifying equipment
- Reorganising activities
- Rescheduling work
- Adjusting curricula, learning materials and teaching strategies
- Adjusting medical procedures
- Enabling access to support personnel



## Anticipatory Accessibility Duty

- Duty means providers of education and providers of goods or services would have to:
  - carry out an **access audit**;
  - develop an **Accessibility Action Plan** (appropriate and proportionate); and
  - take steps to **implement** the plan.
- Plan should **prioritise** – you don't have to do everything at once. Review every 5 years.
- Audit will compare to **best practice standards** – including Part M of Building Regulations

## Appropriate adjustments

## Anticipatory Accessibility Duty

<b>Respond to individual</b>	<b>Proactive – inclusive design</b>
Specific to individual needs	About needs which might arise reasonably frequently
Must consider adjustment unless <b>disproportionate burden</b>	Must develop and implement an appropriate and proportionate <b>action plan</b>
Form of discrimination	Not a form of discrimination – but might be used in evidence
Enforced by individual	Could be enforced by a compliance notice
All fields (except structural alterations to accommodation)	Only in education provision and goods and services provision

## Extent of duty on accommodation providers to provide 'appropriate adjustments'

- Landlords would not be required to make adjustments:
  - which require physical alterations to the fixed features of a building, or
  - which are a disproportionate burden.
- Landlords would be required to **provide and pay for other appropriate adjustments** if required by a disabled tenant or service user.
- Not complying with this duty would be a form of discrimination.

## What if physical alterations to fixed features are necessary?

- Proposed duty **not to unreasonably refuse** to allow a tenant to make a change to the physical features of a building for accessibility purposes.
- Accommodation provider may specify that the:
  - change is to be made at the tenant's own expense, and
  - tenant must agree, and have the resources available, to return the building to its original condition at the end of the tenancy.



## Key questions

Should some of the parts of the law be phased in?

In particular, is a delay needed in relation to:

- the anticipatory accessibility duty
- equal pay for work of equal value

## Equality and Rights Organisation

- Disability and Inclusion Strategy 2013: States agreed the principle of establishing an “Equality and Rights Organisation” which was envisaged as:
  - an independent statutory organisation
  - covering both equality and broader human rights
- **We are currently developing a business case for this organisation.**

## What might an Equality and Rights Organisation do?

- Education and awareness raising
- Advice about equality and human rights
- Codes of practice
- Research and monitoring of equality and human rights issues
- Investigations and action to ensure people comply with their responsibilities
- Support to people to bring cases



## Key questions

What functions would be most important to include in the mandate of an Equality and Rights Organisation?

Where would you feel most comfortable obtaining advice on discrimination issues?

# The consultation

Public Consultation  
**Discrimination  
 Legislation**  
 Sabiedriskā apspriešana  
**Diskriminācijas  
 novēršanas  
 tiesību akti**  
 Technical Draft  
 Proposals  
 Priekšlikumu  
 projektu kopsaukums



 Committee for  
 Employment & Social Security

Discrimination legislation: draft proposal  
 Frequently Asked Questions  
 Employers and service providers

Last updated: July 2019

This leaflet has been created in order to answer  
 have been asked to date regarding the discrimi-  
 proposals.

The content of this leaflet explains what it v  
 service providers if the proposals for discrimi-  
 by the States in their current form. The d  
 consultation and could be amended as a  
 States. Consequently, this leaflet provid  
 proposals and does not constitute advi  
 contain, as this may change.

More information, as well as an oppo  
 proposals, is available online at [www.guernsey.gov.gi](http://www.guernsey.gov.gi)

Question 1: How long do I have to  
 Answer 1: The Committee is aim  
 debate by April 2020  
 would need to be p  
 final agreement. T  
 that everything is  
 to hear cases. Th  
 2021.



**2. What discrim**

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States of  
 Guernsey  
**Discrimination  
 Legislation**  
 Public Consultation  
 Summary of  
 Draft Proposals  
 July 2019

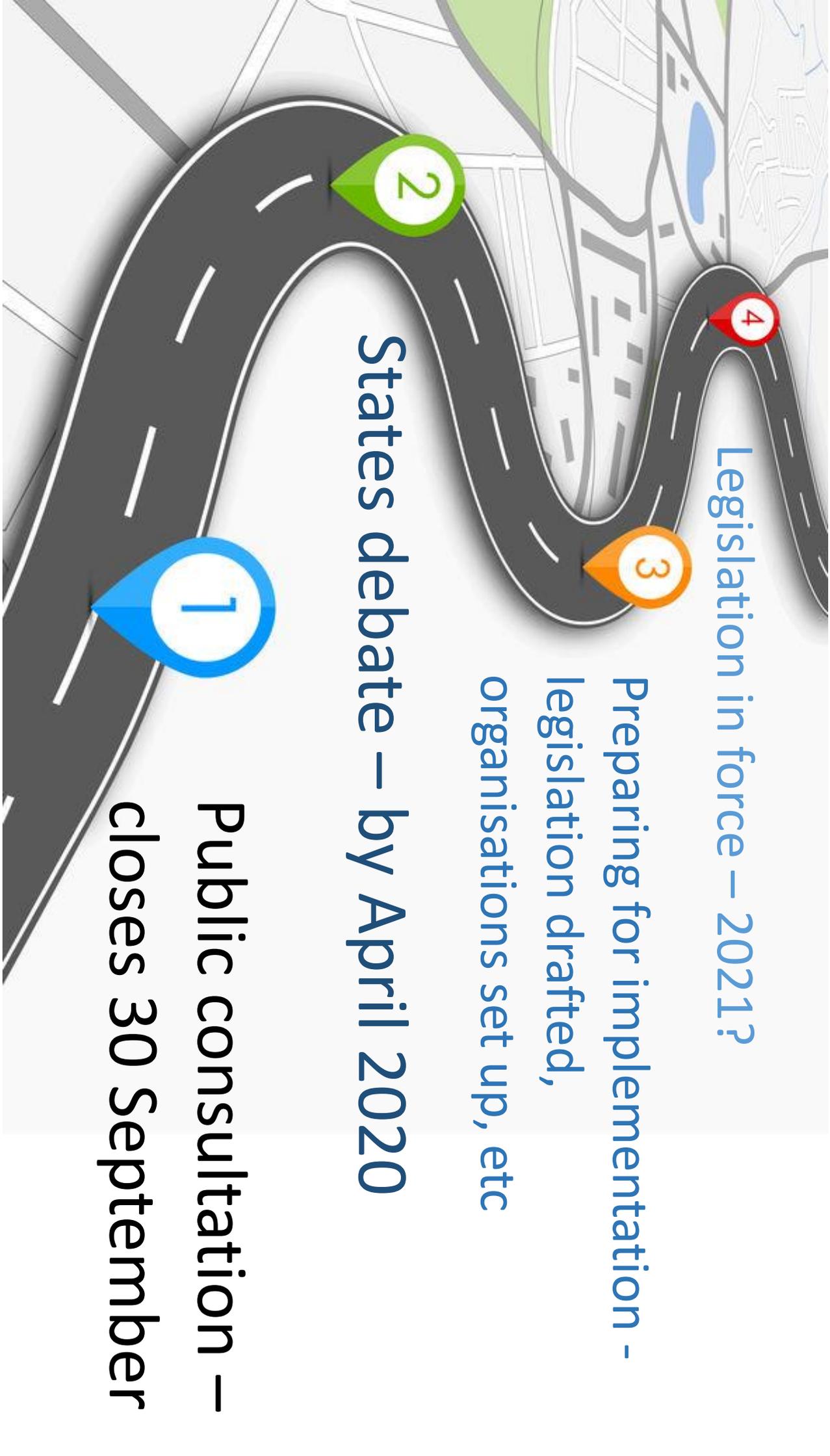


How can I find out more and respond to the consultation?

Please respond by 30 September 2019

[www.gov.gg/discriminationconsultation](http://www.gov.gg/discriminationconsultation)

[equality@gov.gg](mailto:equality@gov.gg)



Legislation in force – 2021?

3  
Preparing for implementation -  
legislation drafted,  
organisations set up, etc

2  
States debate – by April 2020

1  
Public consultation –  
closes 30 September