



30 May 2003

Ms Helen Owens
Presiding Commissioner
Disability Discrimination Act Inquiry
Productivity Commission
Locked Bag 2, Collins Street East
Melbourne 8003

Dear Ms Owens

Please find attached the Association of Independent Schools of South Australia's submission to the Inquiry into the *Disability Discrimination Act* 1992. In addition to the submission we have included a copy of the resource guide *Students with Disabilities: Enrolment Guidelines for Independent Schools*, which was produced by the South Australian Independent Schools Targeted Program Authority as a direct response to the DDA.

AISSA would appreciate an opportunity to make a further submission to the public hearing of the Productivity Commission in Adelaide.

We would be pleased to assist the Commission in identifying site visits to Independent schools in South Australia.

Yours sincerely,

Garry Le Duff
Executive Director

A I S S A



ASSOCIATION *of*
INDEPENDENT
SCHOOLS *of* SA

**Association of Independent Schools of South
Australia**

**Submission to the Productivity Commission Inquiry
into the *Disability Discrimination Act 1992***

MAY 2003

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EXECUTIVE SUMMARY

AISSA welcomes the opportunity to contribute to the Productivity Commission Inquiry into the *Disability Discrimination Act* 1992 (DDA). AISSA and the Independent schools it represents see many benefits to the inclusion of students with disabilities in Independent school communities and are fully committed to policies of inclusiveness.

In the last ten years Independent schools have had a 340% growth in the number of students with disabilities in their school communities. It is difficult to quantify, however, the extent to which this is a direct result of the DDA. The DDA was introduced in the context of other legislation dealing with equal opportunity rights including the *Racial Discrimination Act* 1975, the *Sex Discrimination Act* 1984 and *Human Rights and Equal Opportunity Commission Act* 1986. Hence, it is a product and a part of a broader social movement for change associated with equity, social inclusion and social justice.

It is clear that the DDA has had a positive impact on the education sector, acting as an external pressure on schools and school authorities. The DDA has been instrumental in raising awareness in schools about the needs of students with disabilities.

The DDA has also had a significant impact on the level and shape of professional development provided by AISSA. Approximately 800 staff per year, from Independent schools across South Australia, attend staff development activities, directly related to the DDA and providing staff with skills to support students with disabilities. Additional capital has been allocated to develop resources to assist staff in schools to support students with disabilities; for instance, the development of a resource guide *Students with Disabilities: Enrolment Guidelines for Independent Schools* was a direct response to the DDA (See attachment).

However, Independent schools continue to experience difficulties in meeting the requirements of the DDA. This is in part due to the ineffective drafting of the legislation. The Act is not clear on the full extent of adjustment that schools must make in order to meet the needs of students with disabilities and provides no guidance on what constitutes 'unjustifiable hardship'. Moreover, 'unjustifiable hardship' is only applicable at the enrolment stage, leading to difficulties in relation to the changing circumstances of students with disabilities.

The DDA has also created considerable uncertainty within school communities about how they can support students with disabilities within the resources available and their obligations under other legislation. This uncertainty is heightened by the commitment that schools make to support the disadvantaged in their communities, based on their school ethos and their inability to resource such commitments.

Legislative intent cannot be separated from the policy environment in which it is applied. Put simply, the meeting of the objectives of the DDA is reliant on factors such as access to sufficient resources. As the Employment, Workplace Relations and Education References Committee (2002: xix) report on the *Inquiry of the Education of Students with Disabilities* noted '...there is unambiguous evidence of under-resourcing of programs aimed at bringing students with disabilities into the mainstream of learning'.

The inequitable public funding arrangements across the school education sectors in relation to students with disabilities places significant additional compliance costs on Independent schools which are currently met by school communities. There is significant variation in the ability of schools to meet the resource demands arising from meeting the needs of students with disabilities and other students. In many cases schools are struggling to meet these costs. Students with disabilities in non-government schools currently receive significantly less public funding to meet their needs than their government counterparts. In South Australia they also have no or minimal access to government support services, (e.g. Access Cabs) to enhance their inclusion in educational programs. While public funding levels to students with disabilities attending Independent schools remain inequitable, they will have difficulties meeting the needs of existing students with disabilities and enhancing choice to parents of students with disabilities. This particularly applies to small Independent schools.

AISSA considers that Commonwealth and State Government funding in regard to supporting the additional educational needs of students with disabilities should be allocated at the same level regardless of the school sector attended.

AISSA believes that there is a tension between the DDA and other legislation such as Occupational Health, Safety and Welfare in which schools are required to provide a safe workplace for staff and students. Schools also have a legal obligation to provide a duty of care for all students and staff within the school community. Moreover, one of the requirements of registration under the *Education Act 1972*, for South Australian non-government schools is the provision of 'adequate protection for the safety, health and welfare of its students' (72G3(b)). Schools are required to present a wide range of policy documents (e.g. behaviour management, anti-harassment and bullying, etc) for assessment as part of the registration process. The competing demands of different legislation and regulatory requirements faced by schools need to be eliminated by promoting consistency between regulatory regimes.

The Productivity Commission should consider the 'competing requirements' between regulatory regimes in its consideration of the need to promote consistency between regulatory regimes.

AISSA considers that HREOC and other government agencies have failed to educate the community about the DDA and its implications. While there is a general community awareness of the rights of people with disabilities, there is little real understanding of what this means in practical terms. In particular, there is little comprehension within the wider community of the requirements placed on schools by the Act. In many cases this has led to a tension within school communities, as some parents of other students perceive that the education of their children is suffering as a result of the adjustments made for the student with disabilities. In some cases other students and staff have been at risk of physical injury as the school attempts to cater for particular students with disabilities who also have acute behavioural problems.

The role of educating school communities (including school boards), in the South Australian Independent school sector, of the requirements of the DDA has largely fallen to AISSA. Substantial resources have been allocated to professional development and obtaining legal and industrial relations advice.

AISSA considers that legislation with such significant objectives as the DDA should be supported by an on-going community awareness program that focuses on clarifying the intentions of the legislation. Strategies that assist the community, business and non-government organisations to ensure equality between persons with disabilities and others should be implemented. Commonwealth, State and Territory governments and school educational authorities should establish partnerships to achieve these outcomes.

AISSA considers that uniform education standards will not enhance the effectiveness of the DDA, given the wide range of disabilities that are covered by the legislation and the varying capacities of communities and schools to support students with disabilities. Additional resources for professional development which is based on a growth model rather than deficit /conflict model and advisory guidelines based on a wide range of case studies would be a more positive approach to improving the effectiveness of the DDA.

RECOMMENDATIONS

Recommendation 1

AISSA recommends that Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) initiate a project to explore the development of a nationally consistent approach to the applications of the definitions of disability across Commonwealth, State and Territories and school sectors.

Recommendation 2

AISSA recommends that the associated costs of enhancing the ability of students with disabilities to attend the school of their choice should be borne more equitably by the whole community.

Recommendation 3

AISSA recommends that the Independent school sector's commitment to increasing access to Independent schooling for students with disabilities should be matched by increased levels of Commonwealth and State public funding for students with disabilities. Commonwealth and State Government funding for students with disabilities should be allocated at the same level regardless of the school sector attended.

Recommendation 4

AISSA recommends that HREOC should take a more proactive role in educating the wider community of the requirements and benefits of the *Disability Discrimination Act 1992*.

Recommendation 5

AISSA recommends that 'guidelines and best practice' be introduced instead of uniform standards to reflect the diversity of the education sector.

1. INTRODUCTION

- 1.1 This submission to the Inquiry into the *Disability Discrimination Act* 1992 (DDA) is presented by the Association of Independent Schools of South Australia (AISSA). AISSA represents 91 member schools in South Australia, with an enrolment in excess of 35,000 students. Approximately 55% of this figure represents primary students and 45% secondary students.¹ The Association provides a wide range of educational, human resource management, advisory, administrative/legislative and governance advisory services to its member schools. It cannot direct its members to implement policy nor the way each school allocates its resources.
- 1.2 This submission will focus on the terms of reference as they apply to preschool and school children and young people (including post-compulsory students in school).
- 1.3 The ethos of each Independent school is influenced by a particular religious faith and/or educational philosophy. This ethos underpins the support for the inclusion of students with special needs, including those with disabilities and learning difficulties, in their schools.
- 1.4 Independent schools recognise their social and legislative responsibilities in eliminating, as far as possible, discrimination toward, and providing access to education, for students with disabilities. This commitment is reflected in the increased number of students with disabilities enrolled at Independent schools in South Australia over the past 10 years and the increased diversity of disabilities that are now part of the student population.²
- 1.5 Member schools consider there are significant social and economic benefits of policies and related legislation, such as the DDA, which promote inclusion for both individuals with disabilities, their families other students and the school community and their families. Member schools have indicated, to Special Education Advisers and other AISSA staff, that there are a number of factors that limit their (member schools) capability to provide the necessary support for existing students with disabilities and further increase the number of these students in their school communities. The government (State and Commonwealth) and private funding available to member schools varies significantly across each school and in some schools a tension has emerged between the social commitment of a school to students with disabilities and their responsibilities to the overall school population; this includes their duty of care responsibilities to other students and staff and their obligations (as a registered non-government school) for the safety and welfare of students under their care.
- 1.6 In this submission AISSA provides an at ‘the school level’ view of the South Australian Independent school sector’s experience with the DDA and the interaction between the DDA and other relevant legislation. While AISSA focuses on the impact of the DDA in relation to the education of students with

¹ A more detailed sector profile is included in Section 3.

² See section 4 for details.

disabilities and the implications for school communities in the South Australian Independent school sector, it needs to be acknowledged that the DDA has implications for a range of other areas within the sector, including the role of Independent schools as employers. AISSA will indicate, where possible, the areas of concern outside the scope of this submission that warrant attention.

- 1.7 AISSA recognises that Indigenous peoples, people from ESL (English as a second language) backgrounds, and people from rural and remote areas, with disabilities, often face particular difficulties in relation to a lack of sensitivity to their cultural background and inadequate access to services. The Productivity Commission should consider the particular requirements of these groups of peoples.
- 1.8 AISSA is a member of the National Council of Independent Schools' Association (NCISA) and supports the principles and arguments outlined in their submission to the Inquiry.
- 1.9 The information in this submission has been collated from the following sources:
 - School data.
 - State and Commonwealth Government publications.
 - Legal advice provided to AISSA on individual school issues and legislation.
 - The knowledge of the AISSA Targeted Programs Special Education Advisers.
 - Documentation collected by Special Education Advisers via an annual school survey.
 - Australian Bureau of Statistics (ABS) Data.
 - School Principals Reference Group established to provide advice on the preparation of this submission.
- 1.10 The AISSA submission focuses on selected items from the terms of reference and the discussion paper provide by the Productivity Commission. Within a general framework of a consideration of appropriate modes of regulation, the AISSA submission focuses on:
 - The social and economic context in which the DDA operates.
 - Examining the effect of the DDA in relation to increasing the numbers of students with disabilities.
 - Examining the effectiveness of the DDA.
 - Inconsistencies Across Regulatory Frameworks including the implications of other government legislation such as Occupational Health and Safety

- Compliance Costs and Funding
- The Cost of Compliance and Reasonable Adjustment
- A Cost/Benefit Analysis through case studies. There is a need to reduce compliance costs and the paperwork burden on small business. While there are significant differences between schools and small businesses, there are similarities in operation and the burdens placed on both.
- Promoting recognition and acceptance of the rights of children and young people with disabilities.
- DDA Standards.

1.11 The recent HREOC (2003) publication *Don't judge what I can do by what you think I can't: Ten years of achievements using Australia's Disability Discrimination Act* indicates, the DDA has had significant positive impact on the lives of people with disabilities and the wider community; however, AISSA considers that there are a number of factors inhibiting the effective implementation and operation of the Act in relation to school education. These include:

- Inconsistencies in the definitions of disability relating to education.
- The adversarial nature of the model in operation which is inconsistent with the principles of the Act.
- The tension in practice between the DDA and duty of care under common law.
- The tension in practice between the DDA and legislation such as OHS&W.
- The tension between the social obligation that many school communities consider they have to support students with disabilities, and their inability to provide the resources (human and capital).

1.12 AISSA considers that the most significant impediment to the effective implementation of the objectives of the DDA is the lack of recognition by State and Commonwealth governments in providing adequate levels of public funding and access to a wide range of support services to meet the specific and in many cases significant additional costs associated with educating students with disabilities.

1.13 Until Independent school communities have access to a sufficient and sustainable level of resources, to adequately support the needs of students with disabilities, they will continue to have difficulties in meeting the objectives of the DDA legislation.

1.14 AISSA asserts that students with disabilities attending Independent schools in South Australia are disadvantaged because they have limited, or no, access to the State government support services available to students attending

Government schools. Moreover, they receive on average approximately one-third of the level of public funds available from the State government for students with disabilities attending government schools. Parents of Independent school students with disabilities meet substantial costs of access to services such as psychological assessment, speech pathology, occupational therapy, and transport to and from school.

- 1.15 Some parents are limited in the choice of their school because of the inequitable allocation of public funds across the three school sectors (Independent, Catholic and Government) and their limited capacity to pay for support services.
- 1.16 AISSA is aware of arguments made by other organisations regarding the public funding of non-government schools. AISSA is, in particular, aware of the claim by some lobby groups that the Commonwealth Government favours non-government schools over government schools in its funding arrangements, including public funding available to students with disabilities. AISSA notes that in this claim the significant State government funding available to government schools, to which non-government schools in South Australia do not have access, is conveniently overlooked. AISSA rejects outright the arguments made by these bodies. These erroneous assertions make no contribution to the debate regarding the costs and benefits that the legislation has had upon the community or in advancing the objectives of the DDA in ensuring equality between people with disabilities.
- 1.17 AISSA is also aware of arguments, by lobby groups, which question the accountability requirements of Independent schools in relation to government funding. Independent schools and AISSA are accountable. We draw to these bodies' attention Appendix F of the *Commonwealth Programmes for Schools 2001-2004* which sets out the accountability framework with which Independent schools and the South Australian Targeted Programs Authority comply. AISSA considers that poorly researched arguments do not contribute to the debate.

2. PRINCIPLES

- 2.1 AISSA is committed to improving access to Commonwealth and State public funding to enhance educational outcomes for students with disabilities attending Independent schools. It also is also committed to seeking equity for these students in terms of access to State Government support services.
- 2.2 The following principles underpin this submission:
 - All children are entitled to receive a high quality education
 - Every child has an entitlement to a basic level of public funding and entitlement to support services in order to enhance their access to education, and choice of school, regardless of what school they attend.
 - School communities across the South Australian Independent school sector are committed to improving access to their schools for students with disabilities.

- Families with children with disabilities should have the opportunity to select the school of their choice.
- Independent schools recognise their legislative obligations under the *Disability Discrimination Act 1992*.
- The associated costs of enhancing the ability of students with disabilities to attend the school of their choice should be borne more equitably by the whole community.
- Commonwealth and State Government funding in regard to supporting the additional educational needs of students with disabilities should be allocated at the same level regardless of the school sector attended.
- Consistency in definitions of disability across State and Commonwealth Government legislation in regard to education should be a key priority.
- For students with disabilities public funding should further reflect the level of disability and support needs of each student.

3. THE SOCIAL AND ECONOMIC CONTEXT IN WHICH THE DDA OPERATES

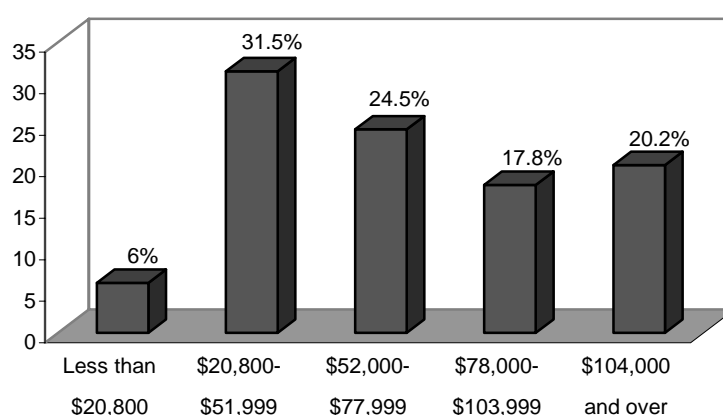
3.1 Profile Of The Independent School Sector

- 3.1.1 The implementation and operation of legislation, such as the DDA occurs in the context of social, cultural, and economic conditions. The capability of the 91 South Australian Independent schools to meet the objectives of the DDA, and increase the levels of participation within the sector of students with disabilities, is directly related to a number of factors such as school size, the level and sustainability of school income, the current constraint on resources (funds, expertise and infrastructure) for students with special needs, and school location in relation to other support services. An outline of the profile of the sector is provided below to illustrate the social and economic context, in relation to Independent schools in South Australia, in which the DDA operates.
- 3.1.2 South Australian Independent schools provide choices for families from a range of social, cultural, and economic backgrounds. Independent schools are ‘not for profit’ organizations. All school income is directed back into the school to improve education outcomes for all students.
- 3.1.3 The South Australian Independent school sector offers parents the choice of a wide range of religious (including Anglican, Uniting Church, Lutheran, Non-denominational Christian, Islamic, Jewish and Greek Orthodox) and educational (including Montessori and Waldorf Steiner) philosophies. The sector also has one special school Suneden. The latter offers specialist education and support to children with intellectual and multiple disabilities and is the only Independent school in South Australia offering such service

- 3.1.4 South Australian Independent schools are distributed across metropolitan, regional and rural areas. Twenty eight schools are located in outer metropolitan and country areas.
- 3.1.5 Over 50% of Independent schools have an enrolment of less than 300 students. There are 7.7% of schools with enrolments over 1,000 students.
- 3.1.6 Students in the South Australian Independent school community come from families with diverse economic backgrounds (see Table 1).**

TABLE 1

Percentages of South Australian Independent School Students by Family Income Range (ABS 2001)



3.1.7 Points to Note:

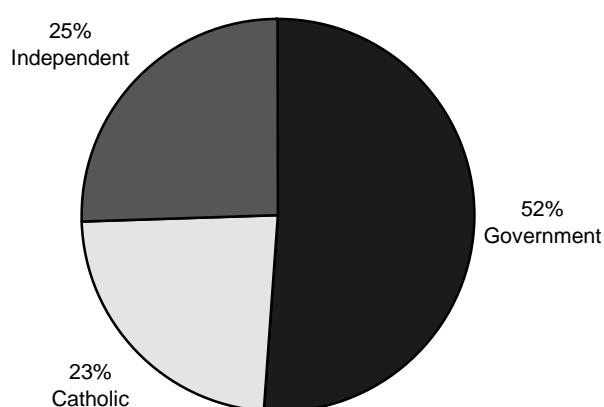
- 16.1% of students are from families with a combined income of less than \$32,000 (ABS 2001).
- Over one third of students are from families with a combined income of less than \$52,000 (ABS 2001).
- 35% of Independent schools have more than 30% of students entitled to School Card which entitles families to an additional State grant and fee remissions and other cost concessions (Advisory Committee on Non-Government schools in South Australia 2002).
- 17% of Independent schools have more than 40% of students entitled to School Card (Advisory Committee on Non-Government schools in South Australia 2002).
- There has been a significant growth in the number of Independent schools in lower socio-economic areas.
- In the South Australian Independent school sector the highest Socio-Economic Status (SES) score is 118. The SES score is an indicator of the capacity of the community to provide financial and other support to a school.

- The SES band goes up to 134 in the Eastern states.
- Approximately 65% of Independent schools in South Australia have an SES score of 99 or less.
- In South Australia the strongest growth in full-time enrolments within the Independent school sector is occurring in SES bands below 110 (NCISA 2003).

3.1.8 It is also worth noting that families from income ranges of \$78,000 and over educate their children in all three school sectors (ABS 2001, see Table 2).

TABLE 2

Percentages of Government, Catholic and Independent Students From Family Income Range \$78,000 and Over (ABS 2001)



3.1.9 Parents of Independent school students pay on average 56% of all costs for total costs. In some cases parents contribute over 75% of their school's income. In disadvantaged communities families generally contribute approximately 10-20% of the income of their school. In many schools parents and others in the wider school community contribute most or all of the capital works funding (buildings and equipment).³

3.1.10 Approximately 70% of an Independent school's running costs are in salaries. A teacher with more than seven years experience can expect to earn on average \$55,000 per annum by the end of 2003. Other costs include superannuation, public liability insurance, work cover and other amenities such as electricity and water. In South Australia, Independent schools have faced a sharp increase in the costs of public liability insurance over the past 18 months and electricity, placing a strain on the operating costs of the school. This particularly applies to small schools where a significant increase in a budget item has to be met by reallocation from other budget items. In 2002 AISSA conducted an informal survey among member schools. It found that

³ These figures are drawn from information provided to AISSA by individual member schools.

the majority had experienced a 45-60% rise in public liability insurance costs. In some smaller rural schools this rise was in excess of 100%.

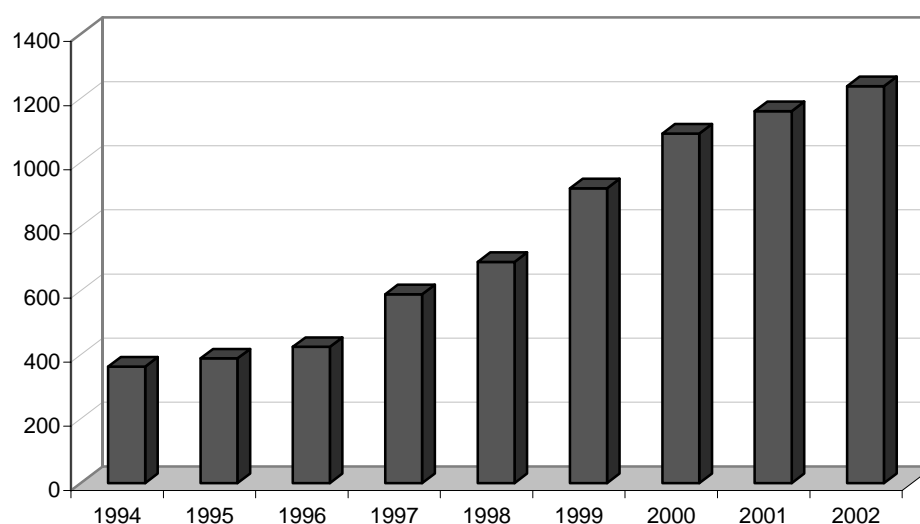
3.2 Students With Disabilities In The South Australian Independent School Sector

Enrolment Numbers

- 3.2.1 There has been a significant increase in the numbers of students with disabilities now attending 'mainstream' Independent schools in South Australia. 89 of the 91 Independent schools in South Australia have students with disabilities (under Commonwealth and State criteria). All schools have students with learning difficulties that are covered by the DDA.
- 3.2.2 In 2002 1,192 students with disabilities attended 'mainstream' Independent schools in South Australia (Advisory Committee on Non-government Schools 2002, see Table 3).⁴ A further 46 students attended Suneden Special School. It should be noted that this figure does not include all students with medically related or learning disabilities who are covered under the DDA but do not fit the Commonwealth and State education definitional categories of 'disability'. It is estimated by the Targeted Program Special Education Advisers that a further 10-15% of students have learning and behaviour difficulties.

TABLE 3

Numbers of South Australian Independent Students with Disabilities 1994-2002



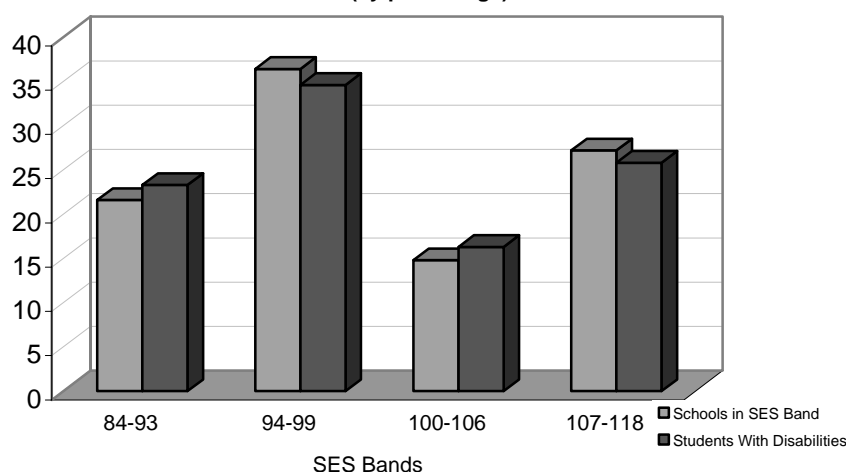
- 3.2.3 Since 1994, the sector, not including Suneden Special School, has witnessed a 340% increase in enrolment of students with disabilities. Overall enrolment growth during the same period has increased by approximately 51%.

⁴ These figures are based on the Commonwealth definition of 'disability' which is consistent with the South Australian State definition.

- 3.2.4 Enrolment distribution of students with disabilities correlates with the overall distribution of SES scores (see Table 4).

TABLE 4

Distribution of South Australian Independent Schools and Students with Disabilities in South Australian Independent Schools Across SES Bands in 2002 (by percentage)



- 3.2.5 The increase in numbers of students with disabilities in the Independent school sector is a reflection of the greater accessibility to Independent schools across the socio-economic spectrum of the community, in particular, in outer suburbs and country towns.

Diversity of Disabilities

- 3.2.6 Independent schools educate students with a range of physical, intellectual, behavioural, multiple and medical disabilities (see Table 5).

TABLE 5

Numbers of Students With Assessed Disabilities in SA Independent Schools in 2002 (Non-government schools secretariat 2003).

Disability	Number of Students
Intellectual	113
Autism/ Asperger Syndrome	81
Visual Impairment	20
Hearing Impairment	60
Physical Disability	360
Language Disorder	308
Severe Multiple Disability	1
Emotional or Behavioural Difficulties	249

(NB. This does not include students enrolled at Suneden Special School. Approximately three-quarters of Suneden students have severe to profound or severe multiple disabilities)

- 3.2.7 A comprehensive analysis of the sector reveals that, although the numbers of students with disabilities remain comparatively small, it has witnessed an increase in the numbers of students with severe or profound disabilities impacting on the level of support services needed. This rise is expected to continue in the foreseeable future.
- 3.2.8 There has also been a corresponding growth in numbers of students with medically assessed high health and personal care needs such as toileting, mealtime management, invasive health procedures including gastrostomy, and students who require intensive supervision.⁵ There are significant costs for parents in providing support for these young people and OHS&W and training implications for staff. The Employment, Workplace Relations and Education References Committee (2002: 80-86) inquiry into *education of students with disabilities* noted the importance in relation to special education of the need for professional development of teachers and school assistants.⁶

4. EXAMINING THE EFFECTS OF THE DDA

The Increase of Students with Disabilities into Independent Schooling

- 4.1 There can be no doubt that the introduction of the DDA has had a significant impact on the growth of numbers of students with disabilities attending Independent schools. However, the significant growth in numbers of students with disabilities attending Independent schools over the last 10 years can be attributed to a range of other factors including: parental choice, decrease in the number of specialist facilities, improved identification processes, growth in the number of Independent schools particularly in low to middle income areas, recognition by parents of other educational and pastoral services provided by Independent schooling, and growth in awareness of general equal opportunity legislation. For example, many of the students attending Suneden Special School would have been institutionalised ten years ago in places such as James A Nelson.
- 4.2 Other factors influencing the growth in numbers of students into the Independent school sector include advances in medical technologies which are increasing the survival rates of premature babies. In many cases these children have long-term and complex health needs such as gastrostomy (tube feeding). Medical intervention is also increasing the life expectancies of children with disabilities such as cerebral palsy, and the survival rates of children who are injured in serious accidents or have illnesses or diseases such as cancer (Ministerial Advisory Committee: Students with Disabilities 2001: 7). This has led to an increased capability for these students to attend long-term schooling.

⁵ This information has been drawn from the records kept by AISSA Special Education Advisers.

⁶ Copies of this report are available from the website

http://www.aph.gov.au/senate/committee/eet_ctte/ed_students_withdisabilities/report/index.htm

- 4.3 Anecdotal evidence provided to AISSA Special Education Advisers by schools and parents suggests that parents of students with disabilities increasingly wish to educate all their children in the same school, where in the past they might have made different choices. This has impacted on enrolments of students with disabilities in Independent schools. In many cases families are part of the wider religious or social community of a school.
- 4.4 It is difficult to accurately measure the impact of the DDA in generating the above trend; however anecdotal evidence indicates that it has raised the awareness of individual schools to their legislative obligations and improved the enrolment procedures and support for students with disabilities. Nonetheless, there is clear evidence that there is significant variation in the ability of member schools to meet what they see as their social and legislative obligation to children and young people with disabilities. The DDA in itself does not restrict competition but it places obligations on schools which are difficult, if not impossible, to meet in many circumstances.
- 4.5 An effect of the increase in students with disabilities in Independent schools, and the closure of specialist government facilities, has been the loss of specialist knowledge in the education sector regarding the area of disability. The expectation is that classroom teachers and some teacher assistants will provide support. This has had major ramifications for the level of professional development and support that is available to assist schools in educating students with a range of disabilities including as autism and vision impairment. The Employment, Workplace Relations and Education References Committee (2002) inquiry into the *Education of students with disabilities* indicated there were a large number of glaring deficiencies in the ability of teachers to manage a range of disabilities. The Committee report also pointed out the low level of specialist training available to teachers aides required to support students with disabilities. Parents had also expressed concern at the shortage of specialists. The Committee concluded that overall professional development for teachers was inadequate throughout the education system.

5. EXAMINING THE EFFECTIVENESS OF THE DDA

- 5.0 The DDA is effective in ensuring equality of access to students with disabilities. AISSA considers, however, that there are a number of factors undermining the equitable implementation of the DDA and hence ensuring equality between people with disabilities and others. Legislation does not operate in isolation of other policies or the social and economic context in which it is applied.

5.1 Definitional Issues

- 5.1.1 The inconsistency between definitions of disability across the DDA and other areas of Commonwealth and State legislation, particularly in relation to funding, has a negative impact on the effectiveness of the DDA.
- 5.1.2 The broad definition of ‘disability’ within the Act does not equate with the definitions relied on in the provision of funding for education by State and

Commonwealth governments. For example the Commonwealth defines an eligible student as follows:

A student who is attending a government or non-government school and who has been *assessed by a person with relevant qualifications* as having intellectual, sensory, physical, social/emotional or multiple impairments *to a degree that satisfies the criteria for enrolment* in Special Education services or programs provided by the government of the State or Territory in which the school or centre is located (Commonwealth Programs for Schools Quadrennial Administrative Guidelines 2001-2004, emphasis added).

Within the above definition there is an emphasis on a professionally assessed disability. There is no such requirement for assessment in the DDA.

- 5.1.3 This places schools in the position of (potentially) being required under the DDA to enrol students who are not eligible for the additional public funding necessary to meet their educational needs, a situation which disadvantages both the school and the individual student. For example, students with dyslexia and learning disabilities are covered under the DDA but are ineligible for Commonwealth (and receive minimal State) funding despite the significant additional costs, in some cases, incurred in educating these students with appropriate support.
- 5.1.4 Inconsistencies further apply in the application of definitions of disability across States and Territories. Consequently, students with the same disability receive different levels of Commonwealth funding depending on their location. This has particular implications for families who move between states. In 2001 AISSA received a request for information from an interstate family of a child with Autism wishing to enrol in a South Australian Independent school. The student was eligible for \$18,000 for annual support funding in another State but would have been ineligible for the same level of assistance in South Australia. A 'choice' was made by the parents to seek an alternative placement outside the Independent sector and in a government school.
- 5.1.4 The inequitable State and Commonwealth funding arrangements in relation to definitional inconsistencies has created a conflict between the intentions of the DDA and the fulfilment of the Act's objectives.

Recommendation 1

AISSA recommends that the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) initiate a project to explore the development of a nationally consistent approach to the applications of the definitions of disability across Commonwealth, State and Territories and school sectors.

5.2 Clarity Of Legislation

- 5.2.1 AISSA considers that there are significant issues relating to the drafting of the DDA legislation. As a piece of legislation the DDA is difficult to understand for most lay people, leading to an increased need for schools and AISSA to seek professional (particularly legal) expertise in order to understand the full extent of their obligations under the Act. Rather than setting out the legislative requirements in clear and precise language, the Act appears ambiguous and convoluted to schools and families.
- 5.2.2 Further clarification of the requirements of schools under the Act has not, so far, been obtained through case law. In part this is due to the very specific nature of cases taken to HREOC; however, the extended time period that it takes for these cases to proceed through the court system is also undermining the ability for AISSA to give proper guidance. For example, the case of *Purvis v State of New South Wales*, which should provide some guidance to member schools in relation to issues of behaviour, was initially lodged with HROEC on March 22 1999 but is at present, in 2003, under appeal in the High Court.
- 5.2.3 Currently, in operation the Act produces an adversarial model which is of little benefit to any party and is inconsistent with the objectives of the DDA. Cases such as *Purvis v State of New South Wales* provide evidence of this. While recent case law has not provided direction regarding the true nature of the obligations it has shown the necessity for comprehensive documentation and investigation by schools. This process has the potential to undermine the building of a trusting relationship between the schools and families.
- 5.2.4 Since the DDA's inception AISSA has conducted a series of training sessions to explain the obligations for schools of the legislation. At each session a legal representative is present at a cost to AISSA. The Association has also noted a significant increase in the inquiries from member schools that require legal advice often because the legislation and case law does not provide sufficient clarity.

5.3 The Concept Of 'Unjustifiable Hardship'

- 5.3.1 In its current form the notion of 'unjustifiable hardship' does not clearly assist schools in making a decision as to whether they have the resources to support the education needs of students with disabilities.
- 5.3.2 The complexity associated with establishing 'unjustifiable hardship', is not clarified by case law because of the highly individualised circumstances associated with each situation. For example, s11 states:
 - ... in determining what constitutes unjustifiable hardship all relevant circumstances of the particular case are to be taken into account including: '
 - the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned...
- 5.3.3 The reference to 'any persons concerned' necessitates consideration of the impact on the whole schooling community.

- 5.3.4 'Unjustifiable hardship' is only applicable at the enrolment stage. Immediate financial implications such as building modifications and necessary equipment purchase are relatively easy to determine, however, the associated costs of educating students with disabilities, such as undue stress on teachers and other students (which lead to absences due to stress related illnesses), the necessary levels of extra assistance, and the effects on the whole school community are often very difficult to quantify with any accuracy prior to enrolment. Some Independent schools have found themselves in the dilemma of offering a place and then over time finding via on-going review that they do not have the sufficient resources to meet the needs of the individual student as they develop and mature or their condition deteriorates. For example, on a number of occasions schools have enrolled a student with an initial (mis)diagnosis of a learning difficulty but have found upon later assessment that the student has autism spectrum disorder and hence requires an increased level of support. This is due to the difficulties involved in assessing young children with autism spectrum disorder and is not uncommon.
- 5.3.5 Independent schools have further found themselves in the situation of having to contend with changing needs of students due to an accident or a degenerative illness.
- 5.3.6 The applicability of 'unjustifiable hardship' only at the enrolment stage complicates the process of enrolment and places a significant burden on schools. It necessitates intensive work at the initial stage of the process to attempt to evaluate fully the educational needs and costs of individual students. However, as noted above, intensive investigation does not guarantee against changing circumstances and the law does not protect the school in the latter situation.
- 5.3.7 It needs to be emphasised that schools do not refer to the definition of 'unjustifiable hardship' in order to avoid their social and legal obligations. Member schools express their distress that parents choose an alternative placement, because of concern over lack of resources. In many cases the uncertainty over what constitutes 'unjustifiable hardship', the concern over potential litigation, and the issue with commitment to families in their community, has resulted in some member schools enrolling students with disabilities, despite not having sufficient resources to adequately meet their needs.
- 5.3.8 The lack of clarity of the Act to most people has led to an increase in enquiries to AISSA from parents, advocates for people with disabilities and member schools. Member schools are aware of their responsibilities under the Act, however, as indicated previously, there is confusion over the full extent of these obligations. AISSA plays a significant role as a facilitator and adviser in the more significant cases.
- 5.3.9 The increasing intricacies of the situations schools are dealing with have necessitated an increasing reliance on expert legal opinion before advice can be given to member schools. This comes at a significant cost to both the school and AISSA, as will be illustrated in the case studies in Section 9.

6. INCONSISTENCIES IN REGULATORY FRAMEWORKS: THE DDA, OTHER LEGISLATION AND COMMON LAW

- 6.1 The DDA operates in tension with legislation such as state based Occupational Health, Safety and Welfare and the common law Duty of Care.
- 6.2 Under Occupational Health and Safety legislation schools are obliged to provide a safe workplace for their staff. Hence, schools must consider the risk of injury to staff. The *NSW WorkCover Authority of NSW v NSW Department of Education and Training* case is illustrative of the difficulties that schools face.
- 6.3 In regard to students with intellectual disabilities, resulting in behavioural problems, a recent legal paper presented to an AISSA seminar noted:

This puts schools in the situation of a fine balancing act. On the one hand, under the *Disability Discrimination Legislation*, they must provide a ‘reasonably proportionate response’ to the behaviour of a student with an intellectual disability. On the other hand they must move to ensure that their teachers are not at risk of physical or psychological injury (Deuter 2001).

- 6.4 Schools also have a legal obligation to provide a Duty of Care to all students within the schooling community. Schools are obligated to protect students from the risk of anticipated harm. This obligation extends to the student with a disability and is of particular importance in cases where the student is self-harming or has a propensity for fitting (Deuter 2001).
- 6.5 One of the requirements for registration of non-government schools under the *Education Act* (1972) is the ‘adequate protection for the safety, health and welfare of its students’ (72G3(b)). The registration process is undertaken by the Non-Government Schools Registration Board.
- 6.6 As previously indicated it is not always possible to determine the medium to long-term needs prior to enrolment.

7. COSTS OF COMPLIANCE AND FUNDING

- 7.1 AISSA, and the member schools it represents, are committed to the further increase in numbers of students with disabilities in Independent schools and ensuring equality of students with disabilities and others. However, as noted in the issues paper the addressing, through regulation, of disability discrimination needs to be seen in the context of other ‘supporting legislation’. The significant additional costs of educating students with disabilities are not recognised in current funding arrangements and place significant compliance burdens on individual Independent schools and AISSA.
- 7.2 The funding arrangements for students with disabilities significantly inhibit the capability of Independent schools to further increase numbers of students with disabilities and undermine the realisation of the objectives of the Act.

7.3 A brief outline of current funding arrangements is presented below.

Funding Arrangements

Most Independent Schools rely on Commonwealth and State recurrent funding to support students with disabilities.

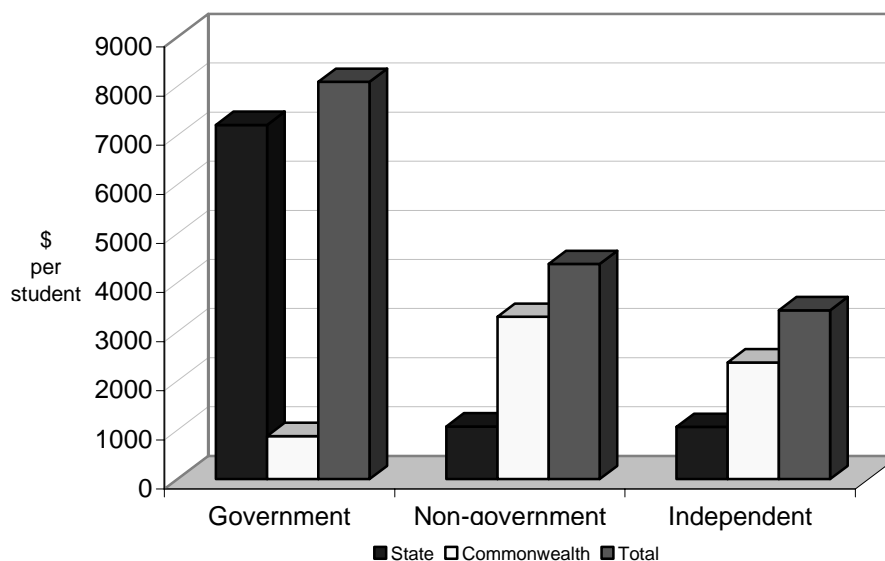
General recurrent funding for students attending Independent schools (including students with disabilities) is available from the following sources:

- Commonwealth per capita general recurrent grants according to the school's Socio-Economic Status Score (SES). This figure measures the socio-economic status of the ABS census collector district where the parents of each school community reside. The score determines the per capita funding received by the school. The higher the SES score, the lower the per capita recurrent grant. On the basis of 2003 per capita figures a school with an SES score of 118 would receive \$1,624 per primary student and \$2,144 per secondary student. A school with an SES score of 84 would receive \$3,960 per primary student and \$5,299 per secondary student.
- State general recurrent grant according to a per capita entitlement/ needs based funding model. The per capita entitlements are \$466.31 (primary) and \$648.00 (secondary). The needs based formula includes the number of students with special needs (students with disabilities) in the calculation of an Index of Disadvantage for each school to determine its level of needs based funding. Non-government schools are placed in six different categories with the most disadvantaged schools receiving \$330.47 per student and the least disadvantaged \$33.05.
- School Fees and other private income. The level of school fees varies significantly from school to school. Depending on the year level, a lower fee R-12 school charges vary between \$900 (primary)-\$2,500 (secondary) and a higher fee school varies between \$6,000 (primary) -\$12,000 (secondary).

The socio-economic profile of the school and particular characteristics of the student impact on the mix of the funding sources. On average Independent schools across Australia receive less than half the public funding provided by the Commonwealth and State Governments to government schools (see Table 6).

TABLE 6

State and Commonwealth Expenditure on Schools (per student) in South Australia (Productivity Commission 2003, National Report on Schooling 2000)



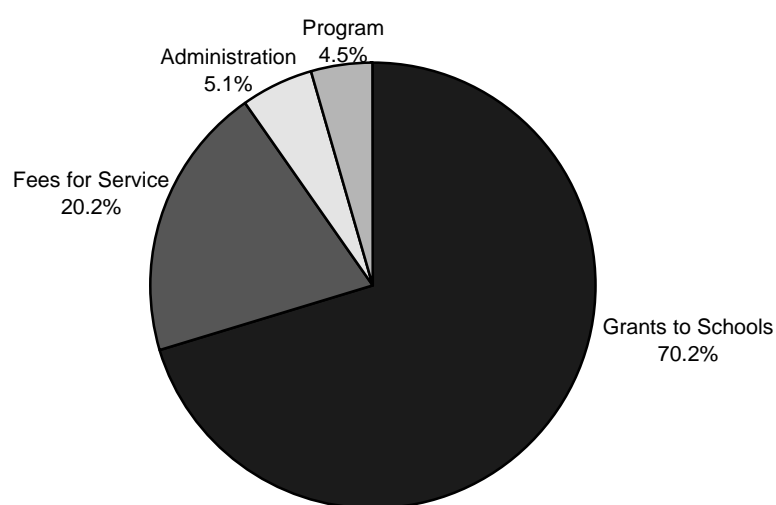
Non-systemic Independent schools directly receive all Commonwealth and State recurrent funding.

7.4 Additional Funds Associated with Disability

- 7.4.1 State grant administered through Advisory Committee for Non-Government Schools, based on severity of disability (mild: \$338.38, moderate: \$676.76 and severe: \$1353.52).
- 7.4.2 The SA Independent Schools Targeted Programs Authority administers the Commonwealth Per Capita Special Education grants (\$767,622 with supplementation, this equates to \$620 per student with disability no matter the severity of the disability) and the Compensation amounts (\$457,216).⁷ These funds are allocated directly to schools on the basis of data collected by DEST in the Commonwealth Census.
- 7.4.3 Independent schools have access to Commonwealth Targeted Program Funds. The South Australian Independent Schools Targeted Program Authority Inc administers these funds on behalf of all Independent schools in South Australia. Programs include Strategic Assistance for Improving Student Outcomes Program (SAISOP), Country Areas Program and Language Other than English (LOTE).
- 7.4.4 In 2003, \$1,888,000 has been allocated through Commonwealth Strategic Assistance for Improving Student Outcomes Program (SAISOP). As is illustrated by Table 7, the majority of the funds are directed toward schools in the form of grants.

⁷ The Compensation amounts are due to finish at the end of the quadrennium. Some students are also eligible to receive support from non-government agencies. This will vary from student to student.

TABLE 7



Distribution of SAISOP Targeted Program Funds in 2002 (2002 Program Budgets)

- 7.4.5 One-third of the SAISOP figure is assigned directly to the Special Education Program to address the specific needs of students with disabilities. 2.6 EFT staff are employed to support the schools and plan sector wide special education initiatives with the above funds. Students with disabilities and staff also have access to other SAISOP funding through specific Literacy and Numeracy and Vocational Education and Training (VET) initiatives developed by the Targeted Programme Advisers based at AISSA.
- 7.4.6 In 2002 the following amounts were allocated, under the Targeted Programs, in the Special School Grants:
- Key Teachers Project \$96,900 (approximately \$160 per eligible student with a moderate to severe disability).
 - Capital Grants: \$86,830.30 for essential access to school.
 - Psychological and Speech Pathology Assessments: \$35,000
 - Social Skills Programs: \$3,000 for lower secondary students.
 - Workplace Learning Program: \$10,000 (\$10,000 was also allocated under VET).

7.5 Access to Other Services

- 7.5.1 School communities and individual families are meeting the significant costs for the wide range of services, essential to ensure access for students with disabilities to the school of their choice. These include transport (including access cabs), speech pathology, occupational therapy, physiotherapy and psychological assessments and programs for some health care and personal care needs. Independent schools and parents consider that they are disadvantaged relative to their State government school counterparts in that

they face fee for service charges for many specialist services. This impacts on the degree of choice of school for many families.

- 7.5.2 Independent schools in South Australia have access to a range of visiting teacher and consultancy programs through the Commonwealth Non-Government Centre Support funding, which is administered by the SA Minister for Education and Children's Services through the Ministerial Advisory Committee: Students with Disabilities on behalf of the three school sectors. The non-government agencies are funded under the Non-Government Support Centre Programme and receive funding (on average) of \$5,171 for a school student requiring intensive and specific educational support of more than 20 hours per term, \$1,477 for a student requiring significant education support equivalent to 5-20 hours per term and \$740 per school student requiring additional specialist educational support equivalent to less than five hours per term. Agencies include, the Down Syndrome Society, Autism Association, Crippled Children's Association, Cora Barclay Centre for Hearing Impaired Students, Townsend House for Vision and Hearing Impaired Students and the Access Assistant Program. These agencies have a limited capacity to meet the increasing demands for their services. This has resulted in some now charging a service fee to families and schools.

- 7.5.3 The Access Assistant Program is indicative of the increasing strain placed on the resources of these organisations.

The Access Assistant Program was set up in 1993, by the South Australian State Government⁸, to provide extra assistance to students with multiple or severe physical disabilities in entering preschools and schools. Initial emphasis of the program was placed on providing support in areas such as assistance with eating, personal hygiene, and mobility. A recent study by the Ministerial Advisory Committee: Students with Disabilities (2001) has confirmed that funding for this program has not kept pace with the increase in numbers of students with disabilities and medically related health care needs in the three school sectors. Moreover, the necessary priority given to students with intensive or invasive health needs is limiting access to this assistance by students with other disabilities, who were the original clients of the program.

- 7.5.4 The lack of sufficient support through funding arrangements necessitates that, in many cases, schools divert funds away from key budget items and educational programs. This can have significant ramifications on the ability of the school to attract students and, hence, there is a potential for impact on the school's long-term viability. In many cases these very programs are part of the reason behind the choice by parents of students with disabilities of the individual school.

7.6 Joint Sector Intensive and Crisis Support

- 7.6.1 The three school sectors in South Australia also have access to limited funds from the state Ministerial Advisory Committee- Students with Disabilities, (provided from a state special education grant by the South Australian Minister for Education and Children's Services) for support in crisis situations

⁸ This program receives Non-Government Centre Support, Commonwealth and State Funds.

relating to areas of health, access, extreme behaviours, and medical issues.
The criteria for access to the funds are:

- An urgent response is required to maintain the student in their current setting and to enable them to access the curriculum
- The call for an urgent response is unpredictable in its nature and, therefore, outside of normal funding processes available to sectors
- Crisis funding is applied for on the understanding that short term allocations will be made available, after which time alternative funding or services will be sought to maintain the student in their current setting
- The nature of the funding would typically relate to issues of: health, access, extreme behaviours and medical issues
- The request for crisis funds is understood to be supplementary in nature. The sector takes prime responsibility for the student's participation in and access to the curriculum

7.6.2 In general, requests for crisis funding include support for students:

- with terminal illness
- on medication trials
- whose seizures have increased in frequency requiring intensive reorientation to school following surgery, which has resulted in disability
- with extreme emotional/behavioural/mental health issues where services are unavailable or restricted
- where duty of care/legal issues have arisen and require immediate intervention
- whose access is not possible without urgent injection of funds.

7.6.3 The emerging demand for crisis funding is greater than the funds available.

7.7 Commonwealth Block Grant Funds

7.7.1 Independent Schools also have access to Commonwealth Block Grant Funds. Applications are assessed on the basis of Commonwealth Criteria. Commonwealth Block Grant funds administration guidelines **do not permit grants to be allocated to support individual students with disabilities.** However, if the school is building new facilities or renovating existing buildings either through a Commonwealth Block Grant or by using funds raised by parents and others in the school community, they are required to comply with the Australian Building Code in relation to access of people with disabilities. This may include access provision such as lifts at a cost of \$150,000 to \$200,000 dollars and toilets for people with disabilities. This

requirement has not been matched by a relative increase in overall funding. Recently a school included a lift at a cost of \$180,000 in an extension of their current facilities, which was paid for by the school community.

- 7.8 Independent Schools in South Australia appreciate the access to these funds. However, they are rarely sufficient to sustain the on-going one-to-one support needs required by students to remain at school. In extreme cases this has led to families being forced to seek an alternative placement in the government sector once the funding ceases.
- 7.9 The realisation of the objective to increase the numbers of students with disabilities in the Independent school sector is reliant on a comparable commitment, through funding arrangements and the provision of support services, by State and Commonwealth governments and the wider community.
- 7.10 The cost of educating students with disabilities is borne disproportionately by the individual student's family and each school community. The availability of funds and access to support services varies significantly across schools and hence so does the viability of schools to meet the complex requirements of the DDA.

Recommendation 2

AISSA recommends that the associated costs of enhancing the ability of students with disabilities to attend the school of their choice should be borne more equitably by the whole community.

- 7.11 As will become clear through the case studies the present level of public recurrent funds and access to professional services for students with disabilities in the Independent school sector is grossly inadequate. This is particularly the case in relation to students with severe and multiple disabilities. In South Australia, students in the Government school sector receive a significantly higher level of financial support than those in the Independent School Sector. While it is difficult to identify a benchmark that could be used to determine the adequacy of the level of funding, under the former South Australian State government's Partnership²¹ global budget approach, government schools will receive funding in 2003 for students with disabilities ranging from \$1,1343 to \$24,876 depending on the nature of the disability, the specific severity of the disability and the level of schooling. This is in addition to the standard provision of recurrent funding per student. Moreover, government schools have access to a central infrastructure that is not available to a predominantly non-systemic school sector. South Australian government schools, for instance, have access to support centres and units in cases of extreme behaviour. These centres provide specialist advice, support and in some instances short-term student relocation to a unit for intensive support.

8. THE COST OF COMPLIANCE AND REASONABLE ADJUSTMENT

- 8.1 Technological advances have increased the ability of students with disabilities to access schooling. However, they involve significant financial outlay and

associated costs in set-up, insurance, maintenance, time and paperwork for member schools. Moreover, the technology often requires constant upgrading throughout the schooling to ensure that the best educational outcomes and support services continue to be provided to the student. Hence, these costs are ongoing.

- 8.2 Below is a breakdown of 2003 approved grants allocated to individual Independent schools under the Special Education Capital Component of the Strategic Assistance for Improving Student Outcomes Programme (SAISOP). This provides an illustration of the range and cost of the technology provided to support students with disabilities.

TABLE 8

School SES Score	Agreement Description	Disability	Grant Amount
100	Notebook, Toshiba Satellite, and Mouse	Physical	\$2,484.00
92	AHS Twin FM Soundfield Amplification System Stand alone computer and printer. Alpha Smart,	Physical (hearing 2); Intellectual; Intellectual; Intellectual	\$4,650.00
102	Alpha Smart 3000, wireless pod	Intellectual	\$705.00
95	Alpha Smart 3000	Physical	\$650.00
105	Alpha Smart 3000	Physical	\$650.00
91	Alpha Smart 3000	Intellectual and Hearing	\$650.00
102	Sennheiser Soundfield System	Hearing	\$2,695.00
98	Acer Power Computer and monitor, Kid Trackball and sloping desk, Epson Printer and speakers, FM Soundfield system, 4 Alpha Smart, Xerox Phaser Printer	Intellectual & vision; Physical; emotional/behavioural; physical; physical	\$6,517.00
91	Tiles in toilet area; Vocabulary Organiser	Physical	\$700.00
103	Dana Word Processor	Intellectual	\$1,100.00
97	Stand Alone Computer	Physical	\$1,400.00

114	Stand Alone Computer	Physical	\$1,210.00
94	Personal FM System	Intellectual	\$1,580.00
99	Hand Rail Stairs- paint Hexagon Blocks seating unit	Vision	\$2,314.00
99	ACER Colour Model	Vision	\$330.00
97	Change Table and Motor Skills Universal Kit	Intellectual	\$1,250.00
116	2 Alpha Smart 3000, Ramp	Physical; Physical; Physical	\$1,300.00
94	Air Conditioner, Safety Rails, Hand Rails	Hearing; Physical	\$5,507.00
Sp	Resurface of Play Equipment Area	Intellectual, Physical	\$10,000
103	Individual FM System	Physical	\$1,580.00
97	2 Dana Word Processors	Physical; Physical	\$2,200.00
98	Alpha Smart 3000 and Infrared	Intellectual	\$1,000.00
109	2 Alpha Smart Word Processors	Physical; Physical	\$1,300.00
112	Alpha Smart 3000, Personal FM System	Physical; Physical	\$2,230.00
101	Dana Word Processor	Physical	\$1,100.00
92	Sloping Desk and Chair, Alpha Smart 3000, Ramp	Physical; Physical; Physical; Physical	\$5,790.00
95	Ramps, Gas Lift Chair, Laptop, Toshiba, memory upgrade	Physical; Physical	\$3,987.00
92	FM System	Physical	\$999.00
89	Stand Alone Computer, Market Umbrella, Alpha Smart 3000	Hearing; Physical	\$780.00
109	2 Dana Alpha Smart	Physical; Physical	\$1,970.00
99	Laptop	Vision	\$2,441.00

	Ramps	Physical	\$10,000.00
		TOTAL	\$81,069

(NB. This does not include grants applications still under consideration.)

- 8.3 **For many of AISSA's member schools these are significant amounts and the provision of these items would not be possible, without the grant allocations, because of financial constraints.**
- 8.4 It needs to be re-emphasised that while the grant allocation pays for the actual equipment it does not pay for installation, insurance, technical advice, software, upgrading and other related costs. These are borne by the schools.
- 8.5 Significantly, one-third of this year's applicants did not receive a grant as demand was far in excess of the funds allocated in the 2003 Targeted Programs Special Education budget. The increase in demand has led to a constraining of the criteria by which the allocations are determined and a protracted process for AISSA staff to assess the grant allocations. The criteria is now focussed on grants that deal specifically with personal care, access modifications and curriculum. In some cases schools are being offered word processors (\$700.00) rather than laptops (\$3000.00) or stand alone computers (\$1200.00) so that the program can meet the current demand for technology.
- 8.7 Independent schools have made, and continue to make, significant efforts to purchase equipment and modify the curriculum and school premises in order to assist students with disabilities. This has come at significant cost to individual schools. Increasingly this is occurring in a context where other associated costs such as the rise in public liability insurance and electricity are severely impacting on the financial viability of many schools.
- 8.8 In some cases building modifications have only been achieved after significant private and community fundraising. For example, one small school ran a series of sausage sizzles in order to assist in the purchase of specific equipment. Funding from Block Grants does not meet the costs of the building upgrades.
- 8.9 It needs to be noted that for many long established Independent schools the cost of making modifications to 'old' buildings are significant.⁹
- 8.10 The South Australian Independent school sector recognises that families of students with disabilities often face significant other costs associated with their child's disability including medication and necessary equipment. Individual parents in Independent schools have often, at their own discretion, purchased equipment not available at the school. Parents in Independent schools must also meet other costs such as Access Taxis. Students with disabilities in government schools have far greater access to these services through current funding arrangements.

Recommendation 3

⁹ The Heritage status of some Independent school buildings can complicate the modification process.

AISSA recommends that its commitment to increasing access to Independent schooling for students with disabilities should be matched by increased levels of Commonwealth and State public funding for students with disabilities. Commonwealth and State Government funding for students with disabilities should be allocated at the same level regardless of the school sector attended.

9. COST/BENEFIT ANALYSIS THROUGH CASE STUDIES

- 9.1 AISSA provides the following case studies, drawn from the records of the Special Education Advisers, to illustrate the complex situations, and increasing demands on resources, that member schools and AISSA are encountering in practising policies of inclusion and meeting the requirements of the DDA. The costings relate specifically to meeting the needs of the student's disability. They do not include the general costs of educating the student or the infrastructure costs associated with running a school. As previously indicated, approximately 70% of a schools running costs are in salaries. Other costs include superannuation, public liability insurance, work cover and other amenities such as electricity and water. South Australian Independent schools have faced a sharp increase in the costs of public liability insurance over the past 18 months and electricity, which have placed a strain on the operating costs of the school. The case studies demonstrate that the current format of the Act places significant compliance costs on member schools and AISSA which are not met by current funding arrangements. **Note: A more comprehensive breakdown of costs is included in the NCISA submission.**
- 9.2 The cost of compliance includes indirect costs with financial implications. These can be grouped around:
- Time: assessment of students, employees and facilities. This is generally prior to enrolment when no funding is available.
 - Time: dealing with those directly and indirectly affected; for example, parents of other students and specialist agencies.
 - Paperwork burden: the Act makes it necessary to keep precise documentation.
 - The undue stress placed on the staff, other students and the schooling community, which cannot always be quantified prior to enrolment.
 - The increased educative role that AISSA has had to take, lessening the time available to provide individual support to member schools for existing students.
 - Legal consultation.
 - Specific professional development for staff relating to support for a particular disability.

No 1: Physical Disability

This case study illustrates the significant *direct financial costs* of educating students with severe physical and communication difficulties.

Disability: Severe. Cerebral Palsy (Athetoid Quadriplegia). The student uses a wheelchair and has severe communication difficulties, requiring the use of an Augmentative Communication Device. The student is considered to be of average to above average intelligence.

Year Level: 2

School Location: Rural, more than 250 kms from Adelaide.

SES Score: 91 (Note: Average SES score for South Australia is 99)

School Population: Less than 200 students

Number of Students with Disabilities: Nine (two severe, four moderate, three mild). (Note: This figure does not include students who meet the criteria of the DDA but not the Commonwealth definition.)

The student is a part of a church community and currently attends the local church school. The student has siblings and other relatives attending the same school.

The student requires assistance in the following areas:

- Curriculum Modification.
- Building Modification.
- Toilet Assistance
- Mealtime Management
- Bus Transfers
- An individualised Student Support Plan to document issues, goals and interventions.

The School has the following income sources per annum:

General <ul style="list-style-type: none">• Fees• Commonwealth Recurrent Grants (based on SES score)• State Government Funding via the Advisory Committee on Non-Government Schools	<p>\$1,200.00</p> <p>\$3,536.00</p> <p>\$466.31</p>
Additional Disability Funding <ul style="list-style-type: none">• Commonwealth Per Capita Funding• State Government Needs-Based Funding• Access Assistant for mealtimes, toileting management and transfers• SAISO Per Capita Grant	<p>\$620.00</p> <p>\$1,353.52</p> <p>\$4,200.00</p> <p>\$160.00</p>

Maximum Total	\$11,535.83
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The School incurs the following direct costs per annum:

School Assistant (15 hours per week @ \$21.00 not including oncosts)	\$12,600.00
Bus Transport (\$20.00 per week; the school and parent pay half each). Note: Legal advice was required to obtain access to this service at a cost of \$2,000.00.	\$400.00
Professional Development (1 hour Teacher salary; 1 hour Assistant per week)	\$2080.00
<u>Total</u> Note: Costing is only in regard to provision for student's disability. It does not include the regular cost of educating the student.	<u>\$15,080.00</u>

The per annum costs incurred by the school are NOT met by the recurrent per annum income sources.

The school has been able to access the following support services through Commonwealth and State Government Funding:

- **AISSA Commonwealth Targeted Program Capital Grants (1999-2002): \$15,189.00.** These are one-off grants available through application. The maximum allocation is \$10,000 per annum. As previously indicated there has been a constraining of the criteria because of increased demand. AISSA Targeted Program Capital Grants provided items of equipment and building modifications for essential access including toilet modifications, Information Technology, specialised PE equipment, ramps, library door modifications and modifications to the local 'bus. **\$6,848.00** had been spent previously on modifications for another student with physical disabilities. **Note: the rural location of the school placed significant limitations on the ability of the school to access building services.**
- **The Crippled Children's Association (CCA)** visits the school once a term (limited by the geographical location). City students are better placed to receive a more regular service. Regular review meetings are conducted between the school, the family, and other associated parties. CCA is allocated approximately **\$1,477.00** through the Ministerial Guidance Committee: Students with Disabilities (from Commonwealth Non-Government Support Centre Programme) for this student. CCA spend a considerable amount of time providing telephone support, for which funding is not available.

The school is grateful for the Commonwealth and State support that is received. However, as illustrated above, it is insufficient to meet the direct costs and the needs of the student and the school community. The student will continue to need a high level of support throughout schooling, and further building modifications and equipment upgrades will be required. The low socio-economic location of the school is an impediment to the ability of the school to raise the necessary capital by means such as a general increase in fees. A fee increase would place an unjustifiable burden on families in the school community.

No 2: Severe Behaviour

This case study highlights tensions in relation to *compliance with the DDA* including the legislative ramifications for schools in cases where *undue stress* is placed on teachers, students and school communities. In cases where the disability results in severe behaviour problems, the cost for schools is predominantly associated with providing adequate support levels to meet the student's needs and ensuring the safety of the school community. These are not easy to quantify in monetary terms. This case study is indicative of the difficulties faced by schools when the initial diagnosis of the student's disability is not confirmed.

Disability: Severe Behavioural related to Autism Spectrum Disorder. The student is violent to self, staff, and students. The behaviour includes:

- **Biting**
- **Kicking**
- **Strangling**
- **Absconding**
- **Screaming**
- **Limited concentration/motivation.**

At enrolment, the student was initially diagnosed with a language disorder. Further assessments produced a diagnosis of Autism Spectrum Disorder. Initial misdiagnosis is not uncommon in relation to Autism and Asperger syndrome, due to the difficulties in early assessment.

Year Level: 4

School Location: Outer Metropolitan

SES Score: 98

School Population: less than 200 students

Number of Students with Disabilities: Thirteen (one severe, eight moderate, four mild). Three students have Autism Spectrum Disorder in 2003. **(Note: This figure does not include students who meet the criteria of the DDA but not the Commonwealth definition.)**

The student requires assistance in the following areas:

- Written modified behaviour policy and a specialist program developed by a psychologist.
- Modified curriculum.
- Intensive Curriculum Programs such as Reading Recovery.
- Liaison by AISSA Targeted Program Special Education Advisers and the school with a range of agencies and health professionals, including legal advice.
- Intensive one-to-one support.

The school has the following income sources for the student per annum:

General <ul style="list-style-type: none"> • Fees • Commonwealth Recurrent Grants • State Government Capital Funding via the Advisory Committee on Non-Government Schools 	\$2,000.00 \$3,038.00 \$466.31
Additional Disability Funding <ul style="list-style-type: none"> • Commonwealth Per Capita funding • State Government Needs-Based Funding • SAISO Per Capita Grant 	\$620.00 \$1,353.52 \$160.00
Maximum Total	\$7,637.83

The School incurs the following costs per annum:

Special Education Support (3 hours per week) – this is not adequate.	\$3270.00
School Assistant Support (3 hours per week)	\$2520.00
Total Note: the school has also sought legal advice on occasion. Note: Costing is only in regard to provision for student's disability. It does not include the regular infrastructure costs of educating the student.	<u>\$5790.00</u> <u>\$1500.00</u>

The school has been able to access the following support services through Commonwealth and State Government Funding:

- **\$1,500.00** Crisis Funding for short-term, one-to-one, support in behavioural crisis times. There is a lack of sufficient expertise available to assist the student with the intensive support required at crisis times and to provide an ongoing effective program to manage the behaviour.
- Autism Association support of 3 hours per week for additional one-to-one Teacher Aide support. The Autism Association is allocated approximately **\$5,171.00** through the Ministerial Guidance Committee: Students with Disabilities (from Commonwealth Non-Government Support Centre Programme) for this student.
- AISSA, through Targeted Programs, has met some of the assessment costs (**\$440.00**).

The School has incurred the following indirect costs

- Time spent in negotiation with agencies, the Union, parents of the student, and other parents and documentation of all meetings.
- Undue stress on staff and other students
- Loss of reputation.

Note: While the school is grateful for the support it receives, the level is not adequate to meet the needs of the student. Advice indicates that the student requires 20 hours of support to meet their needs. **The minimum cost for the extra 11 hours would be \$9240.00 per year (not including oncosts).** This cost would be on top of the \$5790.00 that the school is currently incurring. The school does not have the financial or human capital resources to meet this need. It needs to be noted that the school is supporting the needs of a further 12 students with disabilities, including 3 with autism spectrum disorder.

The severity of the behaviour problems has led to a number of other issues related to the DDA.

Compliance Issues with the DDA

- Issues relating to Duty of Care and Occupation Health and Safety have arisen for the student, staff and other students. As previously indicated there is a tension between the requirements of the DDA and other regulatory regimes such as Duty of Care and Occupation Health and Safety. The school administrators have been placed in the position of having to conform to competing forms of regulation. Union involvement has occurred in relation to staff safety and undue stress, creating tension in the school community.
- Complaints have been made by other parents concerned about the safety of their children; in some cases parents have threatened to remove their children from the school. This has the potential to have a long-term impact on the reputation, and hence viability, of the school. Extensive negotiation has had to take place with parents of other students to try and alleviate their genuine concerns regarding safety.
- AISSA has obtained legal advice about duty of care for students and staff on behalf of the school on at least two occasions in regard to excluding the student from the school. The school is reluctant to exclude the student, as they are committed to supporting the educational needs of the student and are aware of the limited options available elsewhere. Exclusion is seen by the school to be a last resort, as the student is part of the church community, despite awareness that they do not have adequate resources to meet the student's needs.
- The nature of the disability and the severity of the behavioural problems have necessitated meetings with the parents of the student on a frequent basis. The parents are often required to take the student home because of the severity of the behaviour, resulting in the student at times attending the school on a part-time basis. This is an inefficient use of school resources and imposes a cost on the parents of the student that other parents do not have to meet.
- The DDA requires the school to keep comprehensive documentation relating to the behaviour incidents.

No 3: Hearing Impairment, Rural

This case study highlights the pre-enrolment costs of *complying with the DDA for transition* from Preschool to Reception. Schools often spend up to 18 months in evaluating their ability to meet the educational needs of students. It needs to be noted that transition funding is not available at this time. AISSA provides a breakdown of the time spent in a case of pre-enrolment.

Disability: Severe Physical. Hearing impairment and cochlear implant. With the cochlear implant, the student is able to hear some sounds but is still considered to have a significant hearing impairment. The student has associated language and social difficulties and is considered to be of average intelligence.

Year Level: Reception

School Location: Rural.

SES Score: 89

School Population: Approximately 800

Number of Students with Disabilities: Twenty-nine (thirteen moderate, eight mild). (Note: This figure does not include students who meet the criteria of the DDA but not the Commonwealth definition.)

The student is part of the school community as the sibling attends the same school.

The School incurred the following indirect costs prior to enrolment:

- Extensive resources, planning and collaboration with specialists, the kindergarten and parents were required during the pre-enrolment of this student.
 1. **Six 1½-hour** meetings between the Head of the Junior School, parents, speech pathologist, Kindergarten Director, and Integration Aide.
 2. **Two 1½-hour** meetings between the Class teacher and the above people.
 3. **4 hours**- discussions between Head of Junior School, Kindergarten and Special Education Adviser.
- Acoustic Assessment
 1. **1 hour**- Head of Junior School
 2. **1 hour**- Class teacher
- An AISSA Special Education Adviser spent
 1. **4 hours** in visiting kindergarten and meetings.

2. **2 hours** in documenting and other visiting duties. (**Note: this does not include travel time to the rural area, approximately 50 minutes each way**).
- Professional Development
 1. **1½-hour** Staff Inservice for all staff
 2. **1 hour** training session for Class teacher, First Aid Officer and parent on cochlear mapping.
 - Grant Applications
 1. **3 hours** spent by Head of Junior School on grant applications for essential equipment.
 - Documentation
 1. **3 hours** spent by Head of Junior School on extensive documentation.
 - Modification of general processes and procedures such as emergency and evacuation, supervision during yard time and considerations for camps and excursions.

A minimum of 30 hours was spent preceding the enrolment of the student. In many cases the operation of a school is equivalent to that of a small business. The time spent in pre-enrolling a student places significant compliance costs and paper work burdens on the school, as it would on a small business. The diversity of students with disabilities in school communities necessitates identification and consultation with a wide range of agencies. Teachers do not have the specialist training, and in many cases the time, necessary for this process. A rural location compounds the difficulties due to lack of access to services.

No 4: Severe Physical Disability

This case study highlights issues of *accommodating parental choice, which the Independent school sector is committed to providing and the costs of complying with the DDA for an inaccessible site.* The student originally attended another Independent school. The parents moved the student because of what was perceived to be a lack of appropriate support levels at the initial school.

Disability: Severe Physical, Spina Bifida. The student requires a powered wheelchair and has significant difficulties negotiating the site quickly. Access has been restricted because of the inaccessibility of some school and public buildings.

Year Level: 7

School Location: Outer Metropolitan. The school is on a sloping and confined site.

SES Score: 117

School Population: Approximately 800

Number of Students with Disabilities: eighteen (one severe, twelve moderate, five mild) **(Note: This figure does not include students who meet the criteria of the DDA but not the Commonwealth definition.)**

The student requires the following assistance:

- An individualised Student Support Plan to document issues, goals and interventions.
- Supervision and management on camps and excursions.
- Powered wheelchair.
- Access to some co-curricular activities has been restricted because of the inaccessibility of some public buildings.

The school has the following income sources for the student per annum:

General	
• Fees	\$3,800.00
• Commonwealth Recurrent Grants	\$1,698.00
• State Government Funding via the Advisory Committee on Non-Government Schools	\$466.31

Additional Disability Funding <ul style="list-style-type: none"> • Commonwealth Per Capita funding • Compensation Amount • State Government Needs-Based Funding • Access Assistant Program for personal care on camps • SAISO Per Capita Grant 	\$620.00 \$667.52 \$1,353.52 \$200.00 \$160.00
Maximum Total	\$8,965.35

The School has incurred the following costs:

<i>Per annum:</i> Approximately 2 hours per week to support curriculum (\$21.00 per hour) <ul style="list-style-type: none"> • Access Program for personal care on camps per annum 	\$1,680.00 (per annum) \$200.00 (per annum)
Total	<u>\$1,880 per annum</u>
<i>One off Costs</i>	
<ul style="list-style-type: none"> • Installation of Lift 	\$100,000.00
Total	<u>\$100,000.00</u>
Note: Costing is only in regard to provision for student's disability. It does not include the regular cost of educating the student.	

The school has been able to access the following support services through Commonwealth and State Government Funding:

- **Targeted Program Capital Grants** for a stair lift, paving, ramps and secondhand computer – total **\$28,000.00**. (Note: there is a current request for \$10,000.00 pending). The student's first school received **\$18,535** through Targeted Program Capital Grants for the installation of ramps. (**Note: The school has contributed a corresponding amount.**)
- The Crippled Children's Association (CCA) provides consultancy advice to the school. CCA is allocated approximately **\$5,171.00** through the Ministerial Guidance Committee: Students with Disabilities (from Commonwealth Non-Government Support Centre Programme) for this student.

The School has incurred the following indirect costs:

- Extensive time, planning, and resources for negotiation with architects and builders regarding site modification due to inaccessibility of the site.
- Development of Emergency Plans.

As is illustrated above there are significant infrastructure costs in meeting the needs of students with severe physical disabilities. (For example, the cost of installing a lift is in excess of \$100,000.00.) This situation is compounded when the site does not lend itself to alteration. Schools are reliant on Commonwealth funding to undertake these modifications. However, Commonwealth funding rarely accounts for the total cost,

placing a significant cost compliance on schools. In this instance significant modifications have been made to two schools to accommodate the student. These modifications are ongoing. The sources of income for the school (including fees) do not meet the infrastructure costs of building modifications.

No 5: Independent Special School

This case study highlights the *complexity of issues for non-Government Special Schools* since the implementation of the DDA. While Independent Special schools have access to a relatively high level of funding it does not meet the changing profile and demands of the student population.

Enrolment: 44 students with disabilities - 11 Primary and 33 Secondary.

School Location: Metropolitan

SES: 70

The school has the following income sources per annum:

General <ul style="list-style-type: none">• Fees• Commonwealth Recurrent Grants• State Government Funding via the Advisory Committee on Non-Government Schools	\$1,001.00 to \$2,000.00 per student \$3,590.00 per student (Primary) \$5,083.00 per student (Secondary) \$6,705.00 per student
Additional Disability Funding <ul style="list-style-type: none">• Commonwealth Per Capita Funding• Additional State Government Funding via the Ministerial Advisory Committee: Students with Disabilities	\$620.00 per student \$5,615.00 per student
Average Per Student	<u>\$ 19,239.75</u>

The School incurs the following per annum costs

<ul style="list-style-type: none">• Three buses salaries and running costs. The school relies heavily on charity for the purchase of new buses.• Expert services such as speech pathology, occupational therapy, physiotherapy and psychology are required to manage the complex nature of the student's health, behaviour and learning issues. Approximate cost in 2002• A specialised swimming program - approximately per annum:• Increased fencing arrangements. approximately per year:• Credentialing.	\$80,000.00 (This does not account for major repairs). \$29,468.00 \$20,000.00 \$1,000.00 \$645.00
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Total	<u>\$131,113.00</u>
Note: The needs of the student population necessitate a higher staff to student ratio and hence greater salary costs.	
The school has met the following costs	
• Resurfacing of playground area – approximately	\$22,500.00
• Replacement of air-conditioning to meet the needs of new students with Autism Spectrum Disorder who could not tolerate noise (including the removal of old system):	\$15,800.00
• Upgrading to new metal post, pool type fencing at 10 metres high. Note: The school is unable to do this at present.	\$40,000.00

The school accesses the following:

- Access Assistant reimbursement based on student need – approximately \$45,000.00 in 2003.
- Commonwealth Targeted Programs SAISO Capital Grant and other grants – approximately \$20,000.00.
- Limited consultancy support from Crippled Children’s Association, Autism Association, Down Syndrome Society and other agencies, as required.

Changed Profile of Student Population

- Increased numbers of students with complex needs since the implementation of the DDA and the closure of specialist facilities.
- Parents are increasingly choosing to enrol their son or daughter with profound and severe multiple disabilities in an education setting rather than health care settings. The majority of these students are enrolling in Special Schools. Previous students in Special Schools are now often in mainstream settings.
- More than two-thirds of the students have severe to profound intellectual, physical and behavioural disabilities.

The complex needs of students include:

- Specialist staff training is required to cater for the learning and physical needs of the students.
- Health needs in conjunction with severe and profound physical and intellectual disabilities.
- Invasive health care needs such as gastrostomy and tracheostomy, requiring full-time, one-to-one, support.

- Administration of Intranasal Midazolam and Rectal Valium for Epilepsy, requiring that staff are credentialed annually by a registered nurse.
- Personal care assistance for mealtime management, toileting, communication, positioning and transfers.
- One-to-one support and modifications to cater for students with challenging behaviours.
- Higher staff/ student ratios required due to the increasing complexity of behavioural and physical needs of some students. Significant flexibility may be required to cater for each individual new enrolment.

Independent Special schools have seen a change in the profile of their student populations, which can be linked to the DDA. This has necessitated that teachers undertake continuous professional development to meet the changing needs of their student populations. Independent Special schools appreciate access to the funding they receive, however, as is illustrated above the costs of educating students with profound disabilities are significant. In some cases students with challenging behaviours require one-to-one support. Teachers are now dealing also with complex medical issues. For example, almost \$30,000 is now spent by the above school in essential services such as speech pathology and occupational therapy. Students in government schools have a greater level of access to these services. Independent Special schools must also bear the significant costs of transport.

No 6: AISSA

This case study illustrates *the impact of the DDA on organizations that provide support to students with disabilities*. AISSA, through its Targeted Program Special Education Advisers assists, as far as possible, the smooth progression of the enrolment procedure, particularly for students with significant disabilities. AISSA Special Education Advisers provide guidance and support to member schools and families of students with disabilities throughout the individual student's schooling.

Due to the growing numbers of students with disabilities in the sector, the following services are offered as a priority:

- Support for the enrolment and inclusion of students with disabilities in primary and secondary schools including: liaising with schools, families and outside agencies in this process; assisting schools to write inclusive enrolment policies; and supporting schools to use and prepare student support plans for students with disabilities.
- Promotion of an understanding of the DDA and equal opportunity legislation through seminars, workshops and responses to individual school enquiries. A legal representative is present at all seminars at a cost to AISSA and Targeted Programs.
- Development of a resource package, "Students with Disabilities: Enrolment Guidelines for Independent Schools". The guide addresses legislative requirements of the DDA and provides advice concerning enrolment procedures. AISSA sought significant legal advice in the preparation of these guidelines.
- Support for schools in completing the annual Commonwealth Census. Maintenance of database of students with disabilities.
- Assistance to schools to verify eligible students.
- Professional development for Teachers and Principals in disability awareness and curriculum development.
- Advice about the access and participation of students with disabilities in Commonwealth initiatives - specifically Literacy and Numeracy and VET. A current focus is on participation in the literacy and numeracy benchmarks, including issues around the types of tests used; exemptions; and accommodations for students with specific disabilities.
- Collection of information through an annual survey of schools and through Key Teacher Days about emerging needs of students with disabilities and issues associated with grants and professional development. Allocations to specific Special Education programs are adjusted according to demand and feedback from schools and specific issues for students with disabilities in the sector.

AISSA Special Education Advisers estimate that:

- Assistance with enrolment procedures, directly related to meeting the requirements of the DDA, requires approximately 1.2EFT staff per year.
- Professional Development and grant allocations require approximately 0.8EFT staff per year.
- Representation on Government and Non-Government Agency Special Education committees requires approximately .6EFT staff.

AISSA have also experienced increasing demands on its resources directly related to the requirements of the DDA. There is a tension with providing professional development for the teachers of students with disabilities against the time and money spent on increasing numbers of severe cases, which schools require individual support.

AISSA Special Education Advisers have documented the following trends:

- Significant increase in requests for assistance in applications for enrolments of students with disabilities. Fourteen requests requiring significant use of resources were received in Term 1, 2003.
- Significant increase in relation to advice required for managing extreme behaviour problems. In Term 1, 2003, three of these cases required assessment, legal advice and a crisis response.
- Increase in requests for Capital Grants for items of essential equipment and building modifications for students with disabilities requiring a review of guidelines and lengthening the assessment process.

In a seven-week period, AISSA Special Education Advisers documented the following incidents:

Incidents which required more than one full day's assistance:

Assistance was provided in regard to individual students with:

- Palliative Care needs (school visit, agency negotiation, documentation).
- Fragile X syndrome (school visit, multiple telephone calls, general special education services, assistance with enrolment).
- Asperger syndrome resulting in severe behaviour problems (legal advice).
- Severe physical disability not disclosed prior to enrolment (assistance with enrolment, expertise provided around disability).
- Autism resulting in severe behaviour problems such as biting teachers and students (school visit, assessment, crisis fund, possible legal advice).

More than one full day's intervention was necessary also to assist:

- In regard to a kindergarten enrolment where there was a difficulty of diagnosis (support regarding employment of an aide, legal advice, possibly more legal advice).

- The enrolment of a student requiring tracheostomy (staff training, Health Support Plan and emergency plan, further issues are emerging regarding school camps).

Incidents which required more than one half-day assistance:

Assistance was provided in regard to individual students with:

- Severe behaviour problem (this is ongoing).
- Enrolment, family and diagnostic issues.
- Nut allergies (two students).

In one week AISSA Special Education Advisers had the following new requests

- Assistance with the enrolment of a student with Autism and a severe behaviour problem.
- Assistance with the enrolment of a student with Autism.
- The development of a Post School Option Plan for a student with an intellectual disability in secondary school.
- Support with an enrolment policy requiring significant legal advice.
- Assistance in relation to a student enrolled in reception with an emerging major disability.
- Training for administering Intranasal Midazolam (prescribed for epilepsy).
- Assistance with the enrolment of a student with an intellectual disability, behavioural problems, cultural issues and multiple previous school placements. Possible legal advice will be required.

(In many cases these issues are ongoing).

Note: This does not include the frequent requests for assistance in relation to comparatively minor issues.

AISSA provides assistance to schools by:

- Arranging for assessment.
- Mediating between schools and parents.
- Sourcing areas of funding.
- Assisting with curriculum development.
- Obtaining legal advice.

Note: The Special Education Advisers have specialist knowledge within the field of special education. They are not qualified lawyers. Consequently, in providing advice to schools, outside legal opinion often has to be sought.

AISSA has been required to seek legal advice in the following areas:

- In regard to re-assessment of an enrolment of a student with severe behavioural difficulties that were not indicated in the initial professional reports obtained by the school.
- In relation to a student with a disability resulting in behavioural problems. The initial assessment indicated a diagnosis of Attention Deficit Disorder, which was later shown to be incorrect. The student exhibits violent and aggressive behaviour. On one occasion the student was physically restrained, with the parent's permission, because of danger to other students and staff. A supporting non-government agency considered the student had been discriminated against; the school considered it had a duty of care to its staff and other students. The legal advice indicated the school took the appropriate action. This student required constant one-to-one support that could not be provided at that school. It needs to be noted that these situations are not easily resolved by changing schools, particularly in the case of Autism Spectrum Disorder, as the students require management by personnel who have specialist knowledge and skills.
- Whether it would be possible for other students to carry a student with a physical disability up several stairs to a science class. While permission was given by all the parents concerned, legal advice indicated that the school would be exposed to an unjustifiable risk. The advice recommended the installation of a chair lift.
- Whether schools are legally able to administer Epi-Pen injections of adrenalin in cases of anaphylaxis.
- In relation to the enrolment of a student with a learning difficulty in a school where there were already a number of other students with similar difficulties. The school's resources were under considerable strain at the time.
- In relation to the application for enrolment in one year level of several students with disabilities. The year level at that point already had a number of other students with disabilities that required additional support and there were concerns regarding the strain this would place on the special education resources.

Note: this is a brief list of cases for which legal opinion has been sought. While the cases listed above are not unique the focus within the DDA on the individual specifics of each situation, particularly in the area of unjustifiable hardship, means that the advice is not applicable to other instances.

AISSA would be unable to provide this support without access to Commonwealth Targeted Program funding. As has been illustrated above AISSA has experienced increased demands on its resources related to the operation of the DDA. This has lessened the amount of time available to give support to students with more moderate and mild disabilities.

The case studies are indicative of the difficulties faced by Independent school Communities in complying with the requirements of the DDA. They illustrate that the associated compliance costs of meeting the needs of students with disabilities are not covered through current funding arrangements. It is clear that, in regard to education, in order to meet the objectives of the DDA and eliminate discrimination toward students with disabilities, the costs of compliance must be reduced.

AISSA provides the following instances to further illustrate the complex situations that Independent schools are facing in relation to complying with the DDA:

- A student with a life threatening food allergy, covered under the DDA but not by education funding, requires intensive supervision at mealtimes. Legal advice indicated that the parents of other children needed to be informed about the danger of this type of food, which limited the food their children could bring to school. This created tension in the school community placing the school in an untenable position.
- A Special Education Adviser provided approximately 25 hours assistance to support the family and the rural school during the enrolment process for a student who requires a two hourly gastrostomy feed. This necessitated wide-spread consultation and identification of resources.
- A Student with cerebral palsy, enrolled at an Independent school, received an additional diagnosis of intellectual disability. The student developed epilepsy, disorientating them in the school environment. The school provided 10 hours per week of one to one support in the classroom and 3 lessons per week with the special education teacher. This cost was met by the school. The Access Assistant Program provided two and a half hours per week for personal care and the Targeted Program capital was allocated to provide a computer for the student in the classroom. At this point the parents were dissatisfied with the perceived lack of support of the student from the school. The parents wrote to the School Board and AISSA to outline their concerns. They further contacted other agencies and AISSA staff. The classroom teacher became extremely stressed. The teacher was spending at times 14 hours per day at school in an attempt to plan and provide an appropriate program for this student and the others in her class. AISSA special education staff supported the school in resolving the situation. This involved approximately 30 hours in meetings with parents, the teacher, the school administration and agencies involved with the student to stabilize the situation. The student will transition to middle school soon and again a great deal of concern is developing around the management of this situation.
- A school in a rural area, in order to enrol two students with intellectual disabilities, must significantly upgrade its fencing. The school has an SES score of 87. The schools fees are less that \$1000. Both students have a known propensity for wandering and current fencing arrangements are inadequate. The school's small size means that this will impose a significant cost burden on the schooling community.

- A small school spent \$18,000 on toilets, ramps, paving and other modifications for an individual student, with a severe physical disability and terminal illness, whose parents insisted they attend the particular school. The student transferred to another school after one term.
- A student with a physical disability enrolled in an Independent school in Year 4. During the school holidays the student's condition deteriorated significantly. The student started school with a tracheostomy and gastrostomy, requiring a full time credentialed access assistant to support their medical needs. In year 7 the student's parents insisted that the student attend the school camp with the student's peers even though there was not appropriate medical supervision. The student required an intensive care nurse overnight to manage his ventilator. It took 6 weeks of AISSA and school staff time and significant legal input from AISSA lawyers and the managers of the Access Assistant program to achieve a solution. Ultimately the student attended the camp with support from family members. No avenue could be found to resolve the legal, industrial and duty of care issues.
- A student with a disability demonstrated aggressive behaviour against other students on a number of occasions, with threats from the parents of an injured child that they would take legal action against the school in order to guarantee the safety of their children at all times.

10. PROMOTING RECOGNITION AND ACCEPTANCE OF THE RIGHTS OF CHILDREN AND YOUNG PEOPLE WITH DISABILITIES

10.1 The third objective of the Act is:

to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

10.2 In the third objective the DDA, the Act and HREOC have largely failed.

10.3 Parents, care givers, individual students, and those directly affected by the DDA, such as schools, are more aware of the rights of students with disabilities under the Act, however, this awareness has not been extended to the broader community. While the broader community have a general awareness of the rights of students with disabilities and the benefits of practices of inclusion, they have little understanding of what this entails legislatively, a situation which impedes the DDA objectives of ensuring equality between people with disabilities and others, and acceptance of the rights of people with disabilities.

10.4 The lack of education about the requirements of the Act and the broad definition of disability within the Act have produced tensions in many school communities. Other parents often perceive that individual students with disabilities are receiving 'special' treatment to the detriment of their child. This places schools and their staff in an untenable situation.

- 10.5 It has been largely left up to schools, with the assistance of AISSA, to educate the broader school community about the requirements of the Act and the benefits of including students with disabilities within the schooling community. This is not only resource intensive and time consuming, but, moreover, the ambiguities and lack of clarity within the Act lead to a situation where schools are not confident that the information they are providing is correct.
- 10.6 The necessity of AISSA to take on an educative role has impacted on the efficient allocation of resources. For example, the time AISSA spends in an educative role could be better spent providing support to member schools and individual students.

Recommendation 4

AISSA recommends that HREOC should take a more proactive role in educating the wider community of the requirements and benefits of the *Disability Discrimination Act 1992*.

11. DDA STANDARDS/ ACTION PLANS

- 11.1 The draft Education Standards have provided AISSA with an increased awareness of the extent to which schools need to provide assistance in relation to students with disabilities. They have, moreover, provided guidance in some cases and identified particular areas schools that schools need to address.
- 11.2 However, the DDA draft Education Standards provide little practicable benefit to schools in their current format. The term ‘standards’ implies that there is a demonstrable measure by which schools can audit their position. This is, however, a theoretical concept and does not account for the individual circumstances of each school and the diversity of disabilities within the school population. As has been illustrated above the economic, social and cultural diversity of Independent schools in South Australia mean that there are differences in the ability of individual schools to provide adequate support levels to students with disabilities.
- 11.3 Of particular concern is the inattention given to the issue of unjustifiable hardship within the standards. This is, as has been noted before, an area where there is a distinct lack of clarity of the full extent of the obligations.
- 11.4 With NCISA, AISSA is not confident that the draft Education Standards will be able to provide a clear outline of the requirements for all schools.
- 11.5 AISSA sees no benefit to the introduction of detailed uniform standards, as they will provide little assistance in handling the diversity of disabilities and individual circumstances of each school. AISSA is opposed to voluntary action plans for similar reasons.

Recommendation 5

AISSA recommends that ‘guidelines and best practice’ be introduced instead of uniform standards to reflect the diversity of the education sector.

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- Sex Discrimination Act 1984*
- States Grants (Primary and Secondary Education Assistance) Act 2000*
- WorkCover Authority of NSW v NSW Department of Education and Training*