



Australian Associations of Christian Schools

Incorporated in ACT
ABN 39 288 207 931
Email: info@aaccs.net.au
Telephone: 02 6257 3026

Po Box 140 or
3 Karri Street
O'CONNOR ACT 2602
Facsimile: 02 6257 6637

Submission to:

THE PRODUCTIVITY COMMISSION

on

**The Inquiry into the
Disability Discrimination Act
1992
(DDA)**

**Peter A Crimmins, Executive Officer
Australian Associations of Christian Schools
TEL: 02 6257 3026
PO Box 140, O'CONNOR ACT 2602
E-MAIL: pcrimmins@aaccs.net.au**

EXECUTIVE SUMMARY

The Disability Discrimination Act 1992 (DDA) and the subsequent Disability Discrimination Regulations 1996 together with the pending Disability Standards for Education 2003 have implications for the education of students with disabilities in both government and non-government schools.

AACS, as an Association representing 253 Protestant Christian schools across Australia, is concerned to ensure that the economic and social benefits of mainstream school education should be available to the over 1,200 students with disabilities attending our schools.

The benefits to students with disabilities, other students, staff (particularly teachers) and parents of mainstream education is manifest. Community attitudes supported and reinforced by legislation have changed the culture in mainstream schools for the better. AACS wants to ensure that parents of children with disabilities can choose a Christian education for their children and know that that education will be appropriately resourced.

Currently, the Commonwealth makes the major government contribution to the education of students with disabilities in non-government schools. State and Territory governments by and large offer little support to non-government schools. The additional funds needed to educate students with disabilities should be the same in both government and non-government sectors. Otherwise, there is no competition or choice consistent with the legislation.

(1) THE AUSTRALIAN ASSOCIATIONS OF CHRISTIAN SCHOOLS (AACS)

AACS is an Association representing at the Commonwealth level, the interests of **253 Protestant Christian schools** across Australia. The constituent members of AACS are Christian Schools Australia (CSA), Christian Parent Controlled Schools (CPCS) and a number of independent member Christian schools. These primary and secondary schools educate over **72,000 students** and employ nearly **5,000 teachers**. All schools are co-educational. The schools are to be found in every Australian State and Territory.

Protestant Christian schools that are members of AACS **serve largely middle and working class Australian families and communities**. This is borne out by the socio-economic status (SES) scores of the schools. These scores are derived from ABS Census data based on the students residential address and the income, education and occupation of their parents/carers.

These schools serve urban, regional, rural and remote communities across Australia. **68% of AACS member schools are located in regional and remote communities**. Increasing emphasis is being placed on the mainstream education of students with disabilities and indigenous students.

(2) TERMS OF REFERENCE

The Terms of Reference of the Inquiry refer specifically to the **Disability Discrimination Act 1992 (DDA)** and the subsequent **Disability Discrimination Regulations 1996**. In considering both the Act (DDA) and the subsequent legislation (1996), the Commission has been asked to consider the social and economic impacts of the DDA and the legislation on both people with disabilities and others in the community.

Consideration is also given to the cost/benefit effect of the DDA and the legislation on the community as a whole. The Inquiry calls for consideration of "relevant alternatives to the legislation" as well as issues relating to **compliance**.

The relationship between the Inquiry and the **AACS submission** is in the field of **school level mainstream education**. AACS member schools offer education from Year 1 minus 1 to Year 12. Some schools are primary only.

Others are secondary only. Only one (indigenous school, WA) is senior secondary only. Many schools are both primary and secondary with some finishing at Year 10. This provides the educational context for the AACS submission.

(3) PROVISION FOR STUDENTS WITH DISABILITIES IN NON-GOVERNMENT SCHOOLS INCLUDING AACS MEMBER SCHOOLS

One of the significant and **positive outcomes** of the DDA legislation and prior community response to people with disabilities has been the **increased participation of students with disabilities (SWD) in mainstream schooling.**

In 2002, AACS requested the Commonwealth Department of Education, Science and Training to provide numbers of students with disabilities in **AACS member schools** in each State and Territory receiving Commonwealth funding support. The data set out below is based on the 2001 Commonwealth DEST School Census.

State/Territory	Funded SWD 2001
New South Wales	544.7
Victoria	174.1
Queensland	173.0
Western Australia	73.5
South Australia	170.5
Tasmania	44
Northern Territory	17
Australian Capital Territory	15.8
TOTAL	1,212.6

In the same year, AACS member schools educated nearly 64,000 students. Students with disabilities funded by the Commonwealth represented **1.9% of the student population in 2001**. There may have been other students with disabilities educated in AACS member schools in 2001 who, for a variety of reasons, did not attract Commonwealth funding. The reasons for not attracting Commonwealth funding include:

- differing definitions of disability from State to State rendering some students ineligible for funding;
- insufficient funds available to provide support for the student in question; and
- no application made by the school authorities for Commonwealth funds for the student with disabilities.

The Commonwealth government allocates funds to the independent sector to support the education of students with disabilities. These funds are sourced through a variety of Commonwealth Targeted Programmes. In 2001, the funds made available by the Commonwealth that could have been sourced to support the education of students with disabilities were as follows:

State	Total Allocation	Former Literacy & Numeracy Programme Element	Former Special Education School Support Element	Strategic Assistance/Per Capita Amount Allocation \$589	Compensation Allocation
NSW	\$12,872,246	\$4,836,000	\$5,805,000	\$1,198,909	\$1,032,337
VIC	\$10,028,780	\$4,241,000	\$3,642,000	\$862,178	\$1,283,602
QLD	\$3,821,701	\$2,341,000	\$923,000	\$415,716	\$141,985
WA	\$2,762,620	\$1,428,000	\$1,009,000	\$193,722	\$131,898
SA	\$2,994,510	\$1,281,000	\$513,000	\$672,991	\$527,519
TAS	\$634,205	\$267,000	\$222,000	\$69,619	\$75,586
NT	\$437,728	\$185,000	\$199,000	\$52,774	\$954
ACT	\$290,531	\$135,000	\$20,000	\$42,290	\$93,241
TOTAL	\$33,842,321	\$14,714,000	\$12,333,000	\$3,508,199	\$3,287,122

While nearly **\$34 million** was available from the Commonwealth, significant allocations would have been made under the former Literacy and Numeracy element for students without disabilities. The Strategic Assistance Programme is targeted on a per capita basis. In 2001, eligible students with disabilities received \$589.00 per capita.

Support for students with disabilities in the non-government sector varies from State to State. Profoundly disabled students in WA in the non-government sector received significant support (\$17,000.00 per student) in 2001. In other States, similar students would have been fortunate to attract \$5,000 per student.

In 2002, AACS organised a conference for Christian school executives in Canberra. One of the keynote speakers at that conference was **Margaret**

Verick, Policy Officer at ACROD, the National Industry Association for Disability Services. In her address, *"Including Students with Disabilities in Mainstream Learning: what's it all about?"*, Margaret Verick noted that in 1998 according to the ABS, 277, 400 children aged between 5 and 17 years had a disability. This represented 8% of the age cohort. Margaret also noted that most of these children attended "regular" schools.

In the same presentation, Ms Verick noted:

"In 1998, 68% of the school students with a disability who attended a regular school had some difficulty, at least, above the usual, in accommodating the requirements of their school environment. Those whose main condition was an intellectual or developmental disorder or another mental or behavioural condition were much more likely to experience difficulties than those whose main condition was a physical disorder (76% and 84% compared to 55% respectively)".

In the same year, 1998, Ms Verick also noted that 45% of students with a disability attending a regular school received some form of additional assistance, eg. tuition support services, counselling or special arrangements.

Obviously, one of the positive outcomes resulting from changed community attitudes and DDA legislation is the involvement of the majority of students with disabilities in mainstream schools. This involvement not only has **benefits** for the students themselves but also for their **fellow students** in terms of their preconceived ideas and societal stereotypes. **Staff** in schools and **parents** with students at schools educating students with disabilities likewise benefit from the more realistic composition of the school population and the achievements of the students with disabilities and their contribution to school life.

(4) ECONOMIC AND SOCIAL IMPLICATIONS

Legislation cannot, of itself, prevent discrimination. Education providers, including schools, are often unable to prevent discriminatory actions due to limited financial resources or the actions of others beyond the control of school authorities.

Despite the conclusions of a recent **Senate Report on the Education of Students with Disabilities** including a particularly flawed Appendix 6, there is differential funding for government and non-government schools.

It is a well known fact that students with disabilities attending non-government schools attract from government sources a fraction of the financial support the same students would legitimately attract if they attended a government school.

Non-government schools in general and Protestant Christian schools in particular receive limited support from government sources for the education of students with disabilities. **The DDA and subsequent legislation together with draft Disability Standards for Education 2003 will have the force of law** regardless of the sector in which students are educated. It would be untenable for the DDA, legislation and Standards to apply unequally to students with disabilities in different sectors of education.

The economic and social impact of differential funding can best be illustrated by a letter written by a parent to AACS in 2001.

Dear (AACS),

(My husband) and I have a child, (Andrew), who is now twelve years old and has entered Year 7 at (XYZ) Christian Community School, the school he has attended since Kindergarten. (Andrew) has Aspergers Syndrome, ADHD and intellectual disabilities. He exhibits many of the signs associated with Aspergers, notably poor social skills and a restricted pattern of behaviour and interests coupled with hyperactivity and an inability to adjust and cope with changes in his routines and environment.

Given these problems, (Andrew) finds it extremely difficult to cope academically and socially in a mainstream class at year seven-age/grade level. Frustration from a lack of understanding and an inability to cope further exacerbates (Andrew's) behavioural problems.

(Andrew) requires a high level of support and recent recommendations from specialists at the Royal Far West Children's Scheme, along with the experiences of the staff at his school and our own observations suggest (Andrew) requires an STLD. (Andrew's) school is currently unable to provide a full time STLD due to a lack of funding. A part-time aid is available to assist (Andrew) for half a day per week.

An alternative would be to send (Andrew) to (Government) High School, which has a program for children with moderate levels of disabilities, as well as the support resources and staff required. To gain access to the funding and STLD support that (Andrew) needs, it has been suggested that we move (Andrew) to this school.

However, inherent in the child with Asperger's is an inability to cope with change and we and his specialists feel the move would not be beneficial to (Andrew). Coupled with this, (Andrew) would be required to catch two buses each way to (Government High School), a trip fraught with hazards. (Andrew) has already experienced problems catching one bus that goes directly to his current school.

I feel (Andrew) is being disadvantaged by the current funding situation for disabled children in non-Government schools. I know that a disabled child in a Government school will receive a much higher level of funding than a child with the same disability enrolled in a non-Government school.

I would like to see (Andrew) receive the support he requires supplied at our school of choice.

(Andrew's) disability is no more or no less regardless of the school he attends and the support he requires is the same regardless of the school we have chosen for him.

I would like to see the Government understand the plight of families caring for children with disabilities. In particular, I am asking that the Government supply the same level of funding for each disabled child regardless of the school their families have chosen for them. The current system of funding is putting strain on the child, the family and the school he or she attends.

In our case, it is an almost impossible decision. Do we keep him where he is, where (Andrew) is on familiar ground, but limited funding which means limited support available, or do we force him to make a very difficult transition in order to access a higher level of support including an STLD?

We would like freedom of choice in this issue. Currently, our only choice is dependent on the differing levels of support for children with disabilities that exists between Government and non-Government schools. We would like to be able to choose the school for (Andrew). In our case, our choice is (XYZ) Christian Community School, which provides the Christian education we desire for (Andrew) within an environment in which (Andrew) feels safe and familiar.

Yours sincerely,
(Mother)

Another letter received at AACS includes the following:

"We are parents of a severely vision-impaired child who attends a non-Government (Christian school) in (Western Sydney). The Deaf and Blind Children's Centre at North Rocks have been assisting in (Richard's) special academic requirements for the past six years.

The work involved has been quite extensive as (Richard) requires all his textbooks and readers to be reproduced in a large print format. (Richard) needs various vision aids such as large screen computer, binoculars, monocular visulette and slope board. The Deaf and Blind Children's Centre have assessed (Richard's) itinerant support needs as five and a half hours broken up over two days per week.

**This is a sample of the font size that
(Richard) requires for all his textbooks and
readers.**

We are very pleased with the support (Richard) has received from his Christian school and the Deaf and Blind Children's Centre.

In Terms 3 and 4 of 2000, the Deaf and Blind Children's Centre charged the Christian school \$892.50 for their services. This year (2001) for Terms 1 and 2, they have charged \$1,740 (an agreement has recently been made that the Christian school will only pay 50% of yearly charges). It seems that Government funding has not increased accordingly.

It seems that because we have chosen to send (Richard) to a non-Government school, that he is being severely disadvantaged as opposed to a child attending a Government school.

Shouldn't ALL students with special needs, whether Government or non-Government, receive the same level of funding?

Yours sincerely,
(Mother and Father)

Parents of students with disabilities should be able to choose a non-government Christian school for their children. Choice in schooling is a democratic expectation of Australian families supported by Commonwealth and State governments of both major political persuasions. To effectively limit that choice for parents with children with disabilities is discriminatory.

Government schools receive significant (up to \$20,000) additional funds to educate students with disabilities. Non-government Christian schools receive only a fraction (5% to 25%) of the additional funds needed to educate students with disabilities. AACS asks if there is any DDA or subsequent legislation requirement that would render this differential funding discriminatory?

All students with disabilities should receive the same additional funding regardless of whether they are attending a government or non-government school.

Currently, in the Government school sector, there is a balance of funding provided by the Commonwealth and State/Territory governments to meet the additional needs of students with disabilities. AACS is not in a position to comment on the detail or appropriateness of this balance.

In the non-government sector when a disabled child moves from a government school to a non-government school, only a fraction of the additional funds follows that child.

For example, a student legitimately attracting an additional \$20,000 in a government school to meet their educational needs is likely to attract at best an additional \$4,000 in a non-government school. The bulk of this additional money in the non-government school comes from the Commonwealth government.

This is a cost shifting exercise by State/Territory governments to non-government school parents and the Commonwealth.

Why should State/Territory governments discriminate in funding students with disabilities on the basis of whether they attend a government or non-government school? Is this practice legally defensible in the light of the Disability Discrimination Act, legislation and decisions of the Human Rights and Equal Opportunities Commission?

AACS considers that the responsibility for the additional funding to provide equity for students with disabilities rests with both the Commonwealth and State/Territory governments.

The balance of this funding arrangement is obviously a matter for negotiation between the governments involved. It would seem appropriate that the balance that currently exists in the government sector should be the same in the non-Government sector. If it can be argued that government and non-government schools are in **competition** as education providers then funding support should not be deliberately favourable to one sector.

The additional funding for students with disabilities in both government and non-government schools should be the same and shared between Commonwealth and State/Territory governments.

(5) DISABILITY STANDARDS FOR EDUCATION

For some time now, the Ministerial Council for Employment, Education, Training and Youth Affairs (MCEETYA) has been considering Disability Standards for Education. Some consultation took place regarding these standards in the year 2000. AACS formally responded to the then Commonwealth Department of Education, Training and Youth Affairs.

More recently, the Commonwealth Minister for Education in co-operation with his State and Territory counterparts has accelerated the movement

towards the adoption of Disability Standards for Education. At the time of writing this submission, a draft **Disability Standards for Education 2003** has been prepared by the Commonwealth Attorney General. These Standards have been formulated under paragraph 31 (1) (b) of the Disability Discrimination Act 1992.

The Standards apply to the education of students at school level and cover the areas of enrolment, participation, curriculum development, accreditation and delivery, student support services and elimination of harassment and victimisation. The Standards are delineated in three ways; the first addresses the **rights** of students with disabilities; the second, the legal **obligations** of education authorities/providers and the third describes the measures/criteria that will be used in evidence for **compliance**.

AACS supports the development of appropriate standards and their application to both government and non-government schools. Advice from the Australian Government Solicitor's Office is that the Standards would "meet the legal requirements of disability standards under the DDA." This would accord the Standards "delegated or subordinate legislation".

For schools, both government and non-government, to comply with the Standards and, therefore, the legislation in order to meet their obligations and the rights of students with disabilities, they will need to be resourced appropriately.

Peter A Crimmins
Executive Officer, AACS

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