

## **PRODUCTIVITY COMMISSION**

# **Submission to the Inquiry into the Disability Discrimination Act**

On behalf of:



**Royal Institute for Deaf and Blind Children**

Prepared by:

Associate Professor Greg Leigh, PhD, FACE  
Assistant Chief Executive (Educational Services)/  
Conjoint Associate Professor of Special Education  
The University of Newcastle, NSW

Royal Institute for Deaf and Blind Children  
Private Bag 29  
PARRAMATTA NSW 2124  
Ph: 02 9872 0372  
Fax: 02 9873 1614  
email: [greg.leigh@ridbc.org.au](mailto:greg.leigh@ridbc.org.au)

## INDEX

	<b>Page</b>
1. Summary	3
2. Brief Background	4
3. Response to the “General Issues for this inquiry”	4
3.1 Definitional Issues—Who is covered by the DDA? (Section 2.1)	4
3.2 Effectiveness in achieving objectives (Sections 2.3—Eliminating discrimination, and 3.2—Education)	5
▪ Recommendation	8

## **1. Summary**

In this submission, the Royal Institute for Deaf and Blind Children has targeted the area of education and the potential for schools across the education sectors to mount cases of unjustifiable hardship as a basis for discriminating against children with disabilities in the provision of educational services. The Institute would welcome the opportunity to give further evidence about this issue, and/or to address other issues relating to the education of children with sensory disabilities that may be raised with or by the Productivity Commission's Inquiry into the Disability Discrimination Act (DDA).

Specifically, the submission that follows addresses the issue of the adequacy of funding support made available by the two tiers of government to prevent schools being able to evoke the unjustifiable hardship provisions of the DDA as a basis for excluding or otherwise discriminating against children with disabilities who opt for integrated education in a regular school.

### **Recommendation:**

The Royal Institute for Deaf and Blind Children recommends that the Productivity Commission Inquiry investigate and report upon the current undesirable circumstances created by the combination of inadequate funding for the support of children with disabilities in independent schools and the unjustifiable hardship provisions of the DDA. Specifically, it is suggested that the Commission recommends a review of these circumstances with a view to assuring adequate and better targeted government funding to support the integration of students with disabilities in non-government schools to prevent possible lawful exclusion of, or discrimination against, those students under the terms of the DDA.

## **2. Brief Background**

The Royal Institute for Deaf and Blind Children is Australia's largest non-government provider of special education services for children with disabilities. It is also the oldest provider of educational services to children with disabilities in Australia, having continually provided such services since 1860.

The Institute's primary purpose is to provide high quality educational services to children who have significant hearing and/or vision impairment, including children who have additional disabilities. To this end, it operates three independent special schools, five preschools, an extensive home-based and remotely delivered early-intervention program, extensive support services for children with sensory disabilities who are integrated into regular schools, and a wide range of ancillary and support services including an assessment and advisory support service for children with vision impairments, and alternate format production facilities.

In affiliation with the University of Newcastle, the Institute conducts Renwick College, Australia's largest centre for research and professional development in the education of children with impaired hearing or vision.

## **3. Response to the "General Issues for this inquiry"**

It is noted that in 2002 the Senate Employment, Workplace Relations and Education References Committee conducted an inquiry into the Education of Students with Disabilities. Where issues of discrimination in the area of education are concerned, the findings of that Inquiry would appear to be of particular relevance to the current inquiry. This submission draws significantly on the one presented by the Royal Institute for Deaf and Blind Children to that Inquiry.

The sections that follow are structured as responses to "issues" identified in the *Disability Discrimination Act Inquiry Issues Paper* (Productivity Commission, March 2003). The section of that publication in which each "issue" appears is included in brackets after each section heading below.

### **3.1 Definitional Issues—who is covered by the DDA? (Section 2.1)**

In the Institute's experience, the definition of disability used in the Disability Discrimination Act is not problematic and would it therefore support the retention of the current definition of "disability". Conversely, the Institute would not be supportive of any move to narrow that definition as a consequence of the current inquiry.

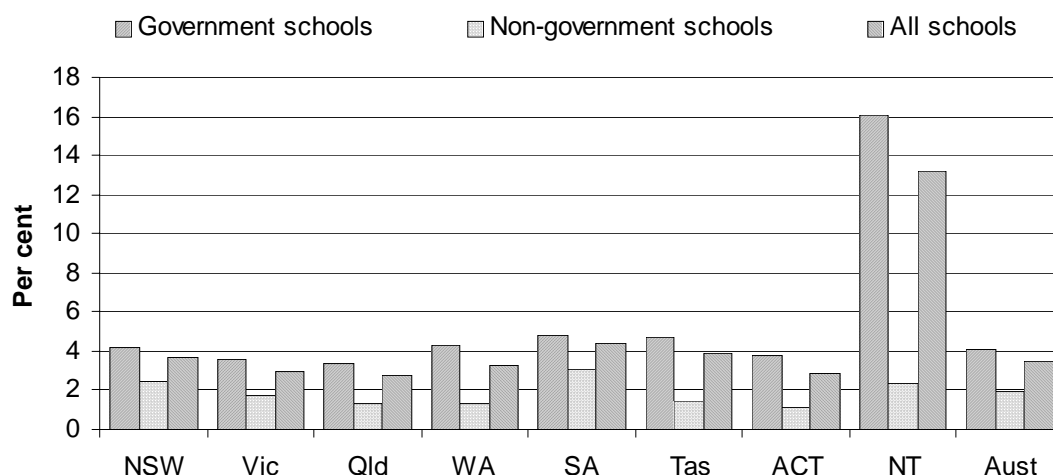
### 3.2 Effectiveness in achieving objectives (Sections 2.3—Eliminating discrimination, and 3.2—Education)

The single issue considered in this submission is the inadequacy of funding support made available by the two tiers of government to allow students with disabilities (particularly sensory disabilities) to opt for integrated education in non-government schools. Of particular concern here is the potential for many schools (particularly independent schools) to evoke the unjustifiable hardship provisions of the DDA as a basis for excluding or otherwise discriminating against students with disabilities.

The majority of children with sensory disabilities are educated in regular educational environments—typically with significant (often very high) levels of additional special educational support.

The federal government has, in recent years, significantly reinforced its commitment to the availability of parental choice between the government and non-government sectors for schooling. However, it is evident from available data that proportional representation of students with disabilities across the various sectors of the educational system (government and non-government) is not occurring (see Table 1). Children with disabilities of all types are significantly under-represented in non-government schools (particularly in independent schools). Indeed, across Australia the proportion of students with disabilities in government schools is around twice that in non-government schools.

Figure 1. **Students with disabilities as a proportion of all students, 2001**



Source: DEST (unpublished) cited in "Report on Government Services, 2003"

In the experience of the Royal Institute for Deaf and Blind Children (i.e., in providing support for many students with sensory disabilities in regular schools) there is either a lack of preparedness or a lack of ability on the part of many independent schools to meet the cost of the provision of additional services

necessary to provide full access to the curriculum for children with sensory disabilities. As a consequence, in spite of the legal and educational imperatives (including recent case law concerning disability discrimination), schools may deny entry to students with disabilities or simply fail to provide adequate support for them to have full access to the curriculum of the school. Hence, it is often questionable whether choice of a non-government school is a viable option for many children with disabilities.

According to generally accepted community standards, the cost of “choosing” a non-government school education is met in part by the parents of each student, and in part by the Australian tax-paying community. The contribution by Governments (State and Commonwealth) to the education of a student in a non-government school is, on average, approximately half of that contributed for each student in a government school.

It is clear, however, that this financial commitment to giving parents a right of choice between schools and sectors does not apply equally well in the case of students with disabilities. Although there is a government commitment to choice, there is only a limited strategy for giving practical effect to that commitment where children with disabilities are concerned.

The Commonwealth Disability Discrimination Act (1992) obliges non-government schools to provide students with disabilities with the necessary support to permit their access to the curriculum. However, the Act places no obligation upon the Commonwealth to assist in meeting the cost of such provision. The cost of the special support required by a student with a disability is expected to be borne largely by the school community. In the case of a child with a sensory disability, the cost of such support is many times greater than the cost of educating a child without disabilities.

It is acknowledged that there is an existing mechanism for funding both government and non-government schools in regard to the special educational needs of students with disabilities across both government and non-government sectors (i.e., the Strategic Assistance for Improving Student Outcomes Program—SAISO). However, the level of funding available under this program (in both its recurrent and capital components) falls considerably short of the amounts needed to support a student with significant disabilities—particularly a student with a sensory disability.

The per-capita grant available to an independent school that enrolls a student with a sensory disability under the SAISO program is \$620 (this may be supplemented by additional integration support funds that could amount to, perhaps, \$1,000 - \$2,000 per annum).

Taking the specific case of a student who is blind; it is apparent that the support necessary to provide equitable curriculum access greatly exceeds these levels of available funding. Indeed, it *may* be very considerable indeed. The costs could include:

Itinerant teacher support (including motor vehicle costs)	=	\$ 30,000 (plus)
Braille production	=	\$ 30,000 (plus)
<b>TOTAL</b>	<b>=</b>	<b>\$ 60,000 (plus)</b>

For a deaf student\* costs could include:

Itinerant teacher support (including motor vehicle costs)	=	\$ 21,000 (plus)
Speech pathology, etc	=	\$ 4,000 (plus)
<b>TOTAL</b>	<b>=</b>	<b>\$ 25,000 (plus)</b>

\*these costs relate to a deaf student who is able to communicate using speech and listening. Costs associated with the provision of sign language interpreters or real time captioning would equal more than three times the total in this case.

In the government education system, when such specialist support is considered necessary to support a student with a hearing or vision disability, it is provided to students in the integrated setting via a range of centrally administered mechanisms. This is not to say that the cost of such provisions is not frequently an issue or impediment to satisfactory service provision. Indeed, the costs of these provisions are no less in the government sector than in the independent sector. However, such costs are amortised across a much larger population and funding base than in the independent sector where those same detailed and expensive provisions may be required for just one student in a single non-systemic independent school. Clearly, in these cases, the costs may go way beyond the resources that can be made available by such an independent school under the terms of the SAISO program.

There is no question that, under the terms of the DDA, independent schools should bring their own resources to bear to provide for the access needs of students with disabilities. Indeed, it must be acknowledged that there is a legal role and responsibility for any school to seek to provide the support structures necessary to support a student with a disability within their school program. However, the provision of extremely costly services may be an unachievable outcome for many independent schools, particularly for “low-fee” and poorly resourced independent schools that may be expected to bear the full cost of providing access and support for a student with a sensory disability with only the funding provided under the SAISO program as an additional financial resource. Many independent schools could not, and consequently will not, provide such supports—particularly where the defence of “unjustifiable hardship” makes such discrimination a legal action.

The question here is not the legality or otherwise of the action but the actual consequences for a child and their family—particularly where the choice of school is one that reflects deeply held commitments to a particular cultural or religious belief. In the context of the current inquiry, it could be argued that it is unfair and inconsistent with the “spirit” of the DDA, for governments (at both state and federal levels) to administer funding mechanisms that are sufficiently inadequate to routinely allow any school—government or non-government—to be able to mount a successful defence of “unjustifiable hardship” when a student with requirements for complex and costly support services seeks to

enrol. The noble objective of the Act is not thwarted by the existence of the “unjustifiable hardship” provision but by the inadequacy of associated public policy and funding mechanisms. At issue is the funding system that is in place to provide for schools to meet the difference between their own capacity to provide services and the real cost of services where children with complex support needs are involved.

The perpetuation of a funding system that routinely allows schools to revert to the provisions of the DDA as a basis for discrimination seems particularly unfair and inequitable when the federal government is actively promoting access to non-government schools through subsidy mechanisms that benefit non-disabled students and encourage their participation in that sector. If it is accepted that Australian schoolchildren with disabilities ought to have the same opportunity and choice in schooling as other Australian school students, then a number of changes might be constructive. A necessary starting point in such a process would appear to be a review of funding arrangements made available to schools to support students with disabilities as expected and required under the terms of the DDA.

Without speculating upon the outcomes of any such review, the most desirable funding system would be one that met the actual costs of additional support for students with disabilities on an equitable basis in both government and non-government schools. A strong social policy argument could be mounted to suggest that this should be 100% of the actual costs in both cases. At very least, however, funding should be relative to real costs, taking into consideration the real capacity of individual schools and other educational services to provide the necessary support services.

Among others, possible responses to this situation may include: (a) a process of means testing of schools resources and funding individual schools according to individual capacity to meet the needs of particular students with disabilities that may seek to enrol, (b) the adequate funding of common and centrally administered support services (such as itinerant teacher, interpreter, and Braille production services) that can be extended across a range of schools within the independent school sector, or (c) the extension of government-funded and provided services (such as itinerant teacher, interpreter or Braille production services) to schools and students in the independent school sector (as currently occurs in some Australian states).

Mechanisms such as these, and other possible responses, should be considered as a basis for better ensuring that choice of educational sector is a reality for all students across Australia without the provisions of the DDA being evoked as a basis for exclusion or discrimination in certain circumstances.

### **Recommendation:**

The Royal Institute for Deaf and Blind Children recommends that the Productivity Commission Inquiry investigate and report upon the current undesirable circumstances created by the combination of inadequate funding for the support of children with disabilities in independent schools and the



unjustifiable hardship provisions of the DDA. Specifically, it is suggested that the Commission recommends a review of these circumstances with a view to assuring adequate and better targeted government funding to support the integration of students with disabilities in non-government schools to prevent possible lawful exclusion of, or discrimination against, those students under the terms of the DDA.