SUBMISSION OF ALL MEANS ALL – THE AUSTRALIAN ALLIANCE FOR INCLUSIVE EDUCATION

Australian Government Attorney-General's Department

Review of the *Disability Discrimination Act* 1992 (Cth)

Endorsed by

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1. INTRODUCTION

1.1 About All Means All

All Means All – The Australian Alliance for Inclusive Education (All Means All) is a nationwide multistakeholder organisation working towards the realisation of every student's fundamental human right to inclusive education. Our work focuses on removing the legal, structural and attitudinal barriers that continue to deny this right to many students with disability.

The Board of All Means All comprises a majority of people with disability and family members of people with disability. We are a member, the Chair and national Co-convenor of the Australian Coalition for Inclusive Education (ACIE), a national alliance of 25 not-for-profit organisations with a combined membership of more than 1.2 million Australians. We are also a member of Inclusion International, the global peak body representing people with intellectual disability and their families.

This submission is informed by the voices and experiences of people with disability and their families, and by a strong body of international human rights law and evidence. We acknowledge and honour the generations of advocates, families and allies whose work has laid the foundations for the present and future realisation of inclusive education.

The organisations listed in the Appendix have endorsed this submission.

1.2 Core concepts and background

1.2.1 Inclusive education as a fundamental human right

The right to inclusive education is firmly established in the *Convention on the Rights of Persons with Disabilities* (CRPD), ratified by Australia in 2008. Article 24 of the CRPD requires States to ensure that all students learn together in general education settings with the supports and accommodations necessary to achieve equitable participation and outcomes.

Article 24(1) provides that:

> "States Parties recognize the right of persons with disabilities to education. With a view to realizing this right **without discrimination** and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning."

The CRPD Committee has unequivocally provided that the following "core rights" of Article 24 are immediately realisable:

- Non-discrimination in all aspects of education, which requires State parties to take "urgent steps to remove all legal, administrative and other forms of discrimination impeding the right of access to inclusive education"

- Reasonable accommodation to ensure non-exclusion from education.[1]

The CRPD Committee in General Comment No. 4 also makes clear that inclusion is not about placing students with disability in mainstream classes without change. Rather, it is:

> "a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers… with a vision to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences." [2]

Inclusive education therefore requires transformation of laws, policies, funding, curriculum and practice to build education systems capable of reaching all learners. It means that all students, including those with complex learning profiles:

- are educated in regular classes with their same-age peers
- access the core curriculum with adjustments and supports
- are valued participants in the school community.

Inclusive education is distinguished from:

- **Exclusion** – denial of access to education in any form
- **Segregation** – education of students with disability in separate environments, isolated from peers without disability
- **Integration** – placement in mainstream schools on the condition that students with disability adapt to existing structures.[3]

[1] Committee on the Rights of Persons with Disabilities, *General comment no. 4 (2016) on the right to inclusive education*, 16th sess, UN Doc CRPD/C/GC/4 (25 November 2016), [30], [40(a)-(b)].
[2] Committee on the Rights of Persons with Disabilities, *General comment no. 4 (2016) on the right to inclusive education*, 16th sess, UN Doc CRPD/C/GC/4 (25 November 2016), [11].
[3] Committee on the Rights of Persons with Disabilities, *General comment no. 4 (2016) on the right to inclusive education*, 16th sess, UN Doc CRPD/C/GC/4 (25 November 2016). [11].

Research consistently shows that inclusive education leads to better academic, social, emotional and post-school outcomes for students with disability, and also fosters more inclusive attitudes and outcomes for students without disability.[4]

Segregated education, by contrast, has never been shown to deliver long-term benefits.[5] Its harms are well-documented: restricting learning, isolating children from their peers, and denying the developmental advantages of diverse environments. [6]

Data analysis undertaken by the Disability Royal Commission demonstrates that students with disability in segregated schools are approximately 85% more likely to transition into segregated adult environments such as group homes or sheltered workshops, compared with peers in inclusive mainstream schools.[7]

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[4] Buckley, SJ, Bird, G, Sacks, B & Archer, T (2006) 'A Comparison of Mainstream and Special School Education for Teenagers with Down Syndrome', *Down Syndrome Research and Practice*, 9(3), 51–67; Cole, SM, Murphy, HR, Frisby, MB, Grossi, TA & Bolte, HR (2021) 'The Relationship of Special Education Placement and Student Academic Outcomes', *The Journal of Special Education*, 54(4), 217–27; De Bruin, K (2023) 'Inclusive Education: A Review of the Evidence' in Linda Graham (ed), *Inclusive Education in the 21st Century: Theory, Policy and Practice* (2nd ed, Routledge) ch 6, 95–114; Freeman, SFN & Alkin, MC (2000) 'Academic and Social Attainments of Children with Mental Retardation in General and Special Education Settings', *Remedial and Special Education*, 21(1), 3–26; Hehir, T, Grindal, B, Freeman, R, Lamoreau, R, Borquaye, Y & Burke, S (2016) *A Summary of the Research Evidence on Inclusive Education*, Abt Associates; Krämer, S, Möller, J & Zimmermann, F (2021) 'Inclusive Education of Students With General Learning Difficulties: A Meta-Analysis', *Review of Educational Research*, 91(3), 432–78; Mansouri, MC, Kurth, JA, Lockman Turner, E, Zimmerman, KN & Frick, TA (2022) 'Comparison of Academic and Social Outcomes of Students with Extensive Support Needs Across Placements', *Research and Practice for Persons with Severe Disabilities*; National Council on Disability (2018) *The Segregation of Students with Disabilities: IDEA Series*; Oh-Young, C & Filler, J (2015) 'A Meta-Analysis of the Effects of Placement on Academic and Social Skill Outcomes of Students with Disabilities', *Research in Developmental Disabilities*, 47, 80–92; Rojewski, JW, Lee, IH & Gregg, N (2015) 'Causal Effects of Inclusion on Postsecondary Education Outcomes of Individuals with High-Incidence Disabilities', *Journal of Disability Policy Studies*, 25(4), 210–19; Ryndak, D, Jackson, L & White, J (2013) 'Involvement and Progress in the General Education Curriculum for Students with Extensive Support Needs', *Inclusion*, 1(1), 28–49; Shogren, KA, Wehmeyer, ML, et al (2012) 'Predicting Postschool Outcomes of Students with Disabilities: The Role of Self-Determination'.

[5] As expressly noted in the report published by U.S. National Council on Disability, "there is no research that supports the value of a segregated special education class and school", see National Council on Disability, *The Segregation of Students with Disabilities* (Report, February 2018) 20 https://www.ncd.gov/assets/uploads/docs/ncd-segregation-swd-508.pdf.

[6] The harms of segregation on the basis of disability have been documented throughout history and in range of research, see for example Council of Europe Commissioner for Human Rights, *Fighting School Segregation in Europe through Inclusive Education: A Position Paper* (Position Paper, 2017) ed Xavier Bonal and other research evidence cited in this document. See also the Royal Commission into Institutional Responses to Child Sexual Abuse, see Royal Commission into Institutional Responses to Child Sexual Abuse, *A Brief Guide to the Final Report: Disability* (2017).

[7] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, pp 193-194.

In addition to being incompatible with inclusive education, segregation in education also constitutes a **form of discrimination**. The CRPD Committee said in General Comment No.4 that:

> "The right to non-discrimination includes the right not to be segregated and to be provided with reasonable accommodation and must be understood in the context of the duty to provide accessible learning environments and reasonable accommodation."[8]

In General Comment No.6 on non-discrimination, the Committee confirmed that segregated education models violate Articles 5(2) and 24(1)(a) of the CRPD, and that a failure to provide inclusive and quality education in mainstream settings is itself discriminatory.[9] The Committee explained that this is the case because segregated education systems are based on, and perpetuate, the assumption that some learners are "unsuitable" for regular education.[10]

Both the CRPD Committee and the Committee on the Rights of the Child (CRC Committee) have expressed significant concerns about Australia's failure to progress inclusive education and the alarming growth of segregation of students with disabilities contrary to Article 24 of the CRPD and provided a range of recommendations to address these issues.[11]

A strong *Disability Discrimination Act 1992* (DDA) is a necessary foundation for realising inclusive education in Australia. While the DDA alone is not sufficient to secure system-wide transformation, it provides essential legal protection against discrimination and minimum obligations on education providers. Strengthening the DDA to align with Australia's human rights obligations is therefore critical to ensuring that every student can enjoy their right to inclusive and quality education on an equal basis with others.

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[8] Committee on the Rights of Persons with Disabilities, *General comment no. 4 (2016) on the right to inclusive education*, 16th sess, UN Doc CRPD/C/GC/4 (25 November 2016), [13]
[9] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [63].
[10] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [64].
[11] Concluding Observations on the Combined Second and Third Reports of Australia CRPD/C/AUS/CO/2-3 [46]; Concluding observations on the Combined Fifth and Sixth Reports of Australia CRC/C/AUS/CO/5-6 at [43(c)].

1.2.2 Inclusive equality

The CRPD did more than contextualise existing equality principles to disability. It introduced a distinctive definition of discrimination and a new model of equality, *inclusive equality*, that has reshaped international human rights law.

In General Comment No. 6 (Equality and Non-Discrimination) the CRPD Committee explained that inclusive equality goes beyond traditional understandings of formal equality (treating everyone the same) and substantive equality (achieving equal outcomes). It requires the recognition and accommodation of difference, attention to structural barriers and disadvantage, and the creation of conditions that enable the full participation of persons with disability in society on an equal basis with others.[12] As a standard of equality, inclusive equality reflects the evolution of equality norms in international human rights law, drawing on the work of Professor Sandra Fredman from the University of Oxford and her model of "transformative equality", which considers the impact of institutions and relationships on the participation of all persons as equals.[13]

The framework of inclusive equality embedded in the CRPD underpins this submission. Each of our recommended reforms to the DDA is directed towards realising inclusive equality in education.

Inclusive education and inclusive equality are inextricably linked – inclusive equality informs the understanding and realisation of inclusive education, and inclusive education is a key vehicle for realising inclusive equality more broadly in society. By ensuring that all learners are educated together, with the supports they need to flourish, inclusive education dismantles systemic disadvantage and affirms the equal dignity and worth of every student.

[12] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [11].
[13] Fredman, S (2008) *Human Rights Transformed: Positive Rights and Positive Duties*, Oxford University Press.

2. OVERVIEW AND RECOMMENDATIONS

2.1 Limitations of the DDA in the education context

While the DDA was intended to promote equality for people with disability, its operation in education has proven limited.[14] The Act primarily relies on prohibitions of direct and indirect discrimination, enforced through individual complaints. In practice, this model places the regulatory burden on individuals, requiring them to identify discrimination, pursue complaints and secure individual redress and remedies.

These limitations are most visible in education, where the DDA has failed to provide the legal foundation needed to drive the systemic change required to realise the right to inclusive education under Article 24 of the CRPD. Despite over thirty years of operation, segregation of students with disability has increased,[15] and barriers to enrolment, participation and achievement remain widespread.[16] The absence of proactive duties or enforceable mechanisms means that education providers can comply formally with the DDA while maintaining exclusionary practices such as "gatekeeping",[17] denial of adjustments and reliance on segregated education.

Although the DDA introduced mechanisms such as disability standards and action plans to encourage systemic change, these have not been effectively leveraged or enforced. The result is uneven compliance: schools and tertiary institutions that act voluntarily to remove barriers bear a greater regulatory load than those that do not.[18]

The reactive, complaints-based approach at the centre of the DDA has proven inefficient, inequitable and burdensome on individuals (e.g. parents of children with disability) likely to already experience disadvantage. It falls far short of the proactive,

[14] Australian Institute of Health and Welfare (2024) *People with Disability in Australia – Justice and Safety: Disability Discrimination.* 23 April 2024. https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/justice-and-safety/disability-discrimination
[15] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, pp 105-106.
[16] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, pp 155 - 203.
[17] The term 'gatekeeping' refers to the practice of preventing or discouraging, whether formally or informally, a child or young person from applying to, or enrolling in, an educational institution, other than for a lawful and proper reason, see Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing – Summary and recommendations, p 4.
[18] Productivity Commission, *Review of the* Disability Discrimination Act 1992: *Productivity Commission Inquiry Report* (Report No 30, vol 1, Australian Government, 2004) 142–43.

systemic reform envisioned by the CRPD. To ensure all education providers are active participants in achieving equality and progressively realising inclusive education, significant legislative reform of the DDA is required.

2.2 Summary of recommendations

Recommendation 1

1. **Definition of disability**: Retaining a broad impairment-based definition of disability but updating it with contemporary, inclusive language consistent with the CRPD, and adding an object recognising disability as part of human diversity arising from the interaction between impairments and attitudinal and environmental barriers.

Recommendation 2

2. **CRPD alignment:** Strengthening the DDA's objects clause to:
    - **a.** make explicit the DDA's role in giving effect to Australia's obligations under the CRPD, and realising the rights of people with disability
    - **b.** require interpretation that is beneficial to people with disability, in a manner that is consistent with CRPD
    - **c.** include explicit recognition of the principle of inclusive equality.

Recommendation 3

3. **Intersectionality**: Explicitly recognising and protecting against intersectional discrimination, including by defining it as structural and indivisible and allowing claims that reflect the intersecting nature of discrimination

Recommendation 4

4. **Discrimination tests and prohibition:**
    - **a. Direct discrimination** - Remove the *comparator* requirement so that claims focus on the *unfavourable treatment or detriment* experienced by the individual
    - **b. Indirect discrimination -** Remove the "inability to comply" and "reasonableness" elements

c. **Unified definition –** Introduce a unified, inclusive definition and prohibition of discrimination that capture all direct discrimination, indirect discrimination and a failure to provide adjustments
d. **Burden of proof -** Introduce a shifting burden of proof across the entire DDA, consistent with section 136 of the UK Equality Act 2010.

Recommendation 5

5. **Positive duty**: Introducing a positive duty requiring all education providers to take reasonable and proportionate measures to eliminate discrimination and address all forms of unlawful conduct under the DDA, including non-compliance with the Disability Standards. This should:
    a. apply to all education providers
    b. build in the *ex ante* obligation in respect of accessibility under Article 9 of the CRPD
    c. not be subject to exceptions other than the reasonable and proportionate test
    d. require duty-holders to actively engage people with disability in planning how they will meet their obligation
    e. empower the Australian Human Rights Commission (AHRC) to investigate systemic non-compliance and issue binding guidance.

Recommendation 6

6. **Duty to provide adjustments:** Introduce a clear, stand-alone duty to provide adjustments, that:
    a. replaces the term reasonable adjustments with adjustments
    b. clarifies that providers hold primary responsibility for identifying and implementing adjustments, in partnership with the individual affected
    c. aligns with and complements the positive duty to eliminate discrimination.

Recommendation 7

7. **Unjustifiable hardship**:
    a. Reforming the definition of unjustifiable hardship to require consideration of consultation, alternative measures, the nature of the

human right impacted and the principles reflected in section 4.1 of the *Disability (Access to Premises – Buildings) Standards 2010 (Cth)*

b. Require duty-holders to document the factors considered, evidence consultation and provide written reasons when relying on the defence

c. Provide that unjustifiable hardship cannot be used to refuse or discourage enrolment in mainstream education settings.

Recommendation 8

8. **Inherent requirements**:
    a. Amending section 21A(2) of the DDA to require consideration of adjustments and consultation with the person with disability
    b. Tasking the AHRC to work with the Australian Skills Quality Authority (ASQA) and the Tertiary Education Quality and Standards Agency (TEQSA) to issue guidance on inherent requirement statements in tertiary education courses to ensure they are inclusive, competency-focused and compliant with the DDA.

Recommendation 9

9. **Exclusionary discipline:**
    a. Amending section 22 of the DDA to replace “expelling the student” with “subjecting the student to exclusionary discipline”
    b. Define exclusionary discipline broadly as: “any action by an educational authority or institution that results in the withdrawal, reduction or denial of a student with disability’s enrolment, attendance or participation in education or training, including suspensions, expulsions, exclusion, informal or undocumented removals, required part-time attendance, and cancellation of enrolment”
    c. Require education providers to consider: (i) whether the relevant conduct or behaviour is a symptom or manifestation of disability; (ii) whether they have met their duty to provide adjustments to the student; and (iii) whether they have met their positive duty to eliminate discrimination.

Recommendation 10

10. **Harassment and offensive behaviour, and vilification:** Amending the DDA to prohibit offensive behaviour, harassment and vilification on the ground of disability, including conduct in public and online education settings, with clear statutory definitions and carefully drafted exceptions to protect legitimate educational, artistic and scholarly activities undertaken reasonably and in good faith.

Recommendation 11

11. **Special measures**: Replacing the term “special measures” with “specific measures” and defining such measures as proportionate, CRPD-consistent actions developed in consultation with people with disability to advance equality, while clarifying that measures perpetuating segregation, isolation or stereotyping cannot qualify.

Recommendation 12

12. **Enforcement of the Disability Standards for Education**: Expanding AHRC powers to investigate and enforce systemic compliance, introducing mandatory national reporting and governance mechanisms to drive accountability and timely reviews, and aligning the Disability Standards for Education 2005 (DSE) with the DDA through CRPD-consistent reforms on adjustments, universal design, and the positive duty to eliminate discrimination.

Recommendation 13

13. **Disability Action Plans**: Strengthening the framework for Disability Action Plans, in line with recommendations from the Australian Disability Law Expert Group,[19] and in the context of education require DAPs to:
    a. demonstrate how inclusive education is being embedded into their provision of education
    b. be formally endorsed by governing bodies and linked to existing strategic and improvement planning cycles

[19] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General’s Department Review of the Disability Discrimination Act, 16 October 2025

c. report on inclusive education indicators, to developed in conjunction with students with disability, their representative bodies and inclusive education experts

d. be developed in close consultation with students with disabilities and their families.

Recommendation 14

14. Strengthening enforcement and accountability

a. Strengthening enforcement and accountability by empowering the AHRC to initiate own-motion complaints and pursue systemic non-compliance

b. Authorising disability representative organisations to lodge systemic complaints

c. Requiring regular public reporting by the AHRC on DDA and DSE compliance, including a dedicated education report supported by an expert inclusive education advisory body.

3. UPDATING UNDERSTANDINGS OF DISABILITY AND DISABILITY DISCRIMINATION (PART 1)

3.1 Definition of disability

3.1.1 Background

We agree with commentary in the Issues Paper that the current definition of disability in the DDA relies on deficit-based and medicalised terminology. Words such as *malfunction*, *malformation*, *disfigurement*, *disturbed* and *disorder* reflect outdated ways of conceptualising and describing disability.

This language is inextricably tied to the rise of eugenics. From the late nineteenth century, "scientific" movements sought to establish standards of human "normalcy." [20] These standards, embraced by early eugenicists, laid the conceptual foundations for IQ testing and other classificatory tools. [21] In this framework, individuals who conformed to the established "norm" were valued, while those who diverged were pushed to the margins. Significant difference was cast as "deviant" or "defective"; a separate category outside full humanity. [22] Eugenics thus entrenched a supposed "scientific" rationale for sorting, ordering, and ranking human beings by notions of superiority and worth. [23]

The **medical model of disability** reinforced this trajectory by treating human difference as if it were injury or illness: inherently undesirable, requiring diagnosis and treatment.[24] This perspective has left a persistent legacy, with people with disability still facing considerable barriers to assert their rights against questions of

[20] Lenard J. Davis, 'Constructing Normalcy: The Bell Curve, the Novel, and the Invention of the Disabled Body in the Nineteenth Century' In Leonard Davis (ed) *The Disability Studies Reader* (2. ed. New York: Routledge, 2006) 3-16.
[21] Ross L. Jones, 'The Master Potter and the Rejected Pots: Eugenic Legislation in Victoria*, 1918–1939* (1999) *Australian Historical Studies* 29:113, 319-342.
[22] Tom Koch, 'The Ideology of Normalcy: The Ethics of Difference' (2005) *Journal of Disability Policy Studies* 16(2).
[23] Laura I. Appleman, 'Deviancy, Dependency, and Disability: The Forgotten History of Eugenics and Mass Incarceration' (2018) *Duke Law Journal* 68(3), p 436.
[24] Oliver, Michael 1990, *The politics of disablement*, Macmillan Education, Basingstoke, United Kingdom; Shakespeare, Tom 2006, *Disability rights and wrongs*, Routledge, London, United Kingdom; Barnes, Colin, Mercer, Geoff and Shakespeare, Tom 2010, *Exploring disability: A sociological introduction* (2nd edn), Polity Press, Cambridge, United Kingdom; World Health Organization and World Bank 2011, *World report on disability*, World Health Organization, Geneva, Switzerland.

their basic humanity.[25] The CRPD challenges this legacy, affirming respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.[26]

In education, eugenic thinking and the medical model legitimised the segregation of children with disability into "special" schools, reinforced by the rise of specialised disability professions. Fears of deficit, intellectual disability, and heredity drove these decisions, while disability assessments, especially definitions and measures of intellectual disability, further entrenched and expanded segregation.[27]

The **social model of disability** brought a significant shift by challenging these medicalised and deficit-based assumptions. It reframed disability as arising not from individual impairment, but from social and material barriers that exclude and marginalise people with disability. This model revealed how discrimination, inaccessible environments and negative attitudes, not inherent "defects", are the real causes of exclusion.[28] **Critical and cultural theories of disability** further emphasise that disability is an inherent part of human diversity.[29]

The **human rights model of disability** built on the social model, along with critical and cultural theories of disability, and was given legal force through the CRPD. The CRPD affirms respect for difference and acceptance of persons with disabilities as part of human diversity and humanity. It positions disability as an evolving concept arising from the interaction between people with impairments and attitudinal and environmental barriers that hinder full participation on an equal basis with others.[30]

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[25] Errol Cocks, 'Do No Harm. People with Intellectual Disabilities and Modern Society' (1997) *Interaction* 11, 5– 11; Rachel Carling-Jenkins, *Disability and Social Movements: Learning from Australian Experiences* (Routledge, 2014).
[26] *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 3
[27] De Bruin K 2022, 'Learning in the shadow of eugenics: why segregated schooling persists in Australia', *Australian Journal of Education*, vol. 66, no. 3, pp. 218–234
[28] Mike Oliver, *Understanding Disability: From Theory to Practice* (London: Sage, 1996); Colin Barnes, Geoffrey Mercer and Tom Shakespeare, *Exploring Disability: A Sociological Introduction* (1st edn. Cambridge: Polity,1999); Rosaly Benjamin Darling, *Disability and Identity: Negotiating Self in a Changing Society* (Lynne Rienner Publishers, 2013) 68.
[29] Shane Clifton, (2020). *Hierarchies of power: Disability theories and models and their implications for violence against, and abuse, neglect, and exploitation of, people with disability*.
[30] Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018) on equality and non-discrimination, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [9]; Gerard Quinn and Theresia Degener, 'Human Rights and Disability' (2002) United Nations, New York and Geneva, 14; Theresia Degener, 'Disability in a Human Rights Context' (2016) *Laws* 5(3), 35.

As Degener and Quinn explain, the human rights model develops the social model by:

- applying human rights norms and principles, such as dignity, to the lives of people with disability regardless of impairment;
- weaving together civil, political, economic, social and cultural rights in the disability context;
- recognising intersectional discrimination;
- allowing scope for prevention and treatment of health conditions, provided this is consistent with rights and dignity; and
- linking disability with humanitarian and development frameworks to provide a roadmap for change.[31]

The current DDA definition remains rooted in the outdated medical model of disability and carries the eugenic legacy of deficit-based language. Reform is needed to align understandings of disability embedded in the DDA with the CRPD and the human rights-based understanding of disability.

3.1.2 Recommendation

Modernising the DDA definition of disability is not only terminological but normative: it must dismantle the ableist assumptions embedded in law and practice and reflect contemporary, rights-based understandings of disability.

We support retaining a **broad, impairment related definition of disability,** but significantly updating it to use contemporary and inclusive language. This aligns with guidance from the CRPD Committee in General Comment No. 6[32] and with expert commentary emphasising the importance of maintaining broad legal protection.[33]

To ensure the definition is inclusive, it should not include any deficit-based terms, nor medicalised language such as “disorder,” where more neutral language like

[31] Gerard Quinn and Theresia Degener, ‘Human Rights and Disability’ (2002) United Nations, New York and Geneva, 14
[32] Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018) on equality and non-discrimination, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [19].
[33] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General’s Department Review of the Disability Discrimination Act, 16 October 2025, pp 26-31.

"condition" can be used. The CRPD refers to "long-term physical, mental, intellectual or sensory impairment".[34] The Disability Royal Commission defined impairment simply as a "condition or attribute of a person".[35]

An example of such a definition is:

> disability, in relation to a person, means:
>
> > (a) physical, psychosocial, cognitive, neurological or sensory impairments
> >
> > (b) health conditions or genetic traits or heritage that may give rise to impairments or variations in functioning;
> >
> > (c) differences in learning, communication, perception, cognition, behaviour or emotion arising from a condition or attribute of a person;

(With the remainder of the current definition after (g) to continue unchanged).

This approach preserves the Act's broad coverage and asymmetrical focus on advancing equality for people with disability, ensuring that no group is excluded on the basis of impairment type, cause or duration.

In addition, we recommend including in the **objects** of the DDA a recognition of modern, holistic conceptualisations of disability. This should:

- reflect disability and impairment as part of human diversity
- emphasise the role of social, attitudinal, environmental and institutional barriers consistently with the conceptualisation in the preamble to the CRPD which also underpins its substantive provisions - including Articles 5 (Equality and non-discrimination) and 24 (Education)
- affirm the inherent dignity and rights of all people with disability.

Suggested wording for such an object is:

[34] *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 1.
[35] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report – Glossary* p 321.

> "Promoting respect for difference and acceptance of persons with disability as part of human diversity and humanity, and promoting a recognition in society that disability results from the interaction between people with impairments and attitudinal and environmental barriers that hinder full and effective participation in society on an equal basis with others."

This approach maintains the existing breadth of the definition of disability, while ensuring the DDA is interpreted through a CRPD-consistent, modern, human-rights lens. Including this object would also have an educative effect, guiding duty-holders, decision-makers, and courts to always focus on removing barriers and fostering inclusion, when considering their obligations and duties under the DDA.

3.2 CRPD alignment

The CRPD is widely regarded as the most authoritative articulation of the human rights of people with disability, having been negotiated and drafted with their extensive participation and input[36]. Importantly, it was the culmination of a shift that began in the 1970s and 1980s and was led by the disability community itself in the wake of important gains from other movements for the rights of marginalised minority groups, as they too sought empowerment and self-determination, and was accompanied by a new understanding of the individual and systemic oppression experienced by people with disability.[37]

Adopted in 2006 and ratified by Australia in 2008, the CRPD applies the same standards and norms embodied by international law to guarantee human rights for every person, but it does this in a way that is specific to the situation of people with disability and the barriers they face. Further, its near universal adoption — by 191 of 193 United Nations Member States — reflects a global consensus that disability is squarely a human rights issue, not a matter of charity or welfare. Importantly, the CRPD makes clear that disability rights are indivisible from broader human rights,

[36] Rosemary Kayess and Philip French (2008) "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities." *Human Rights Law Review,* 8(1), 1–34. https://doi.org/10.1093/hrlr/ngm044.
[37] Richard Rieser (2017) "Achieving Disability Equality: The Continuing Struggle." In Mike Cole (Ed.), *Education, Equality and Human Rights: Issues of Gender, 'Race', Sexuality, Disability and Social Class* (4th ed.). Routledge.

covering civil, political, economic, social and cultural domains. The CRPD is therefore the key reference point for interpreting disability law in Australia.

At the international level, Australia is required to comply in good faith with its obligations under the CRPD.[38] However, the Disability Royal Commission highlighted the gap between Australia's international commitments and their domestic implementation. It found that existing laws, policies and practices have not given full effect to the rights recognised under the CRPD.[39] These findings make clear that the DDA must be modernised to operate as a genuinely CRPD-consistent and rights-based instrument, rather than a narrow anti-discrimination statute.

3.2.1 Recommendations

We broadly support the Disability Royal Commission's recommendations in respect of amending the objects clause but suggest:

- different expressions of the additional sub-sections, to ensure a stronger and more explicit consideration of the CRPD
- a third addition, to recognise inclusive equality.

We recommend strengthening the objects clause of the DDA to:

- make explicit the role of the DDA in giving effect to Australia's obligations under the CRPD and in realising the rights of people with disability
- require that the DDA be interpreted in a way that is beneficial to people with disability, in a manner that is consistent with the CRPD
- explicitly recognise the principle of **inclusive equality**, as elaborated in General Comment No. 6 of the CRPD Committee.

3.2.1.1 First additional object

On the first point, we agree it is critical to make explicit the role of the DDA in giving effect to the CRPD.

[38] *Vienna Convention on the Law of Treaties,* opened 23 May 1969, 1155 UNTS 331 (entered into force 27 Jan 1980) arts 26, 31.
[39] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Executive Summary* (2023) pp, 55-56.

It is critical that the DDA's objects clause explicitly state its role in giving effect to the CRPD and *realising rights*, not only meeting formal obligations. This framing recognises that human rights must be actively implemented through law, policy and practice. Including this language would signal that the DDA is concerned not only with compliance but with the practical achievement of equality and inclusion.

3.2.1.2 Second additional object

Inserting a **beneficial interpretation clause** would ensure the DDA is consistently applied to advance the rights and interests of people with disability. Such a clause would give courts, regulators and decision-makers clear direction that, where ambiguity exists, the interpretation most consistent with the CRPD and most advantageous to people with disability must prevail.

While courts can already consider international law, most DDA matters are resolved through administrative or conciliation processes. Without a binding interpretive requirement, there is no consistent expectation that schools, employers or service providers will construe their obligations through a CRPD lens.

Unlike the Royal Commission's proposal, we consider that **the CRPD should be given primacy** over other international human rights treaties. As noted above, the CRPD is the most recent and authoritative articulation of the human rights of people with disability. It builds on and updates earlier human rights instruments and is the most contemporary and holistic rights instrument for disability, providing the normative force that earlier human rights law lacked.

It represented a fundamental shift in international law, moving beyond deficit-based and welfare models towards a rights-based framework that embeds autonomy, inclusion and social transformation.[40] As Kayess and Sands observe, pre-CRPD human rights treaties "achieved very little in improving recognition and respect of the human rights of people with disability", largely because the "normative standard of the medical model of disability embedded in the international human rights

[40] Rosemary Kayess and Phillip French, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities" (2008) 8(1) *Human Rights Law Review* 1–34; Rosemary Kayess and Justin Bishop, *Disability, Human Rights and the Global Agenda: Shifting the Locus of Social Transformation* (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Research Report 1A, 2020).

framework made it challenging to interpret and apply human rights to the inequality, discrimination and segregation experienced by people with disability."[41]

Recognising the primacy of the CRPD would ensure that the DDA is interpreted in a way that aligns with modern international norms and standards.

Embedding a beneficial interpretation clause would therefore create an enduring safeguard, helping to ensure the DDA consistently operates as a proactive, rights-based instrument that gives full effect to the CRPD, including the right to inclusive education under Article 24. In the absence of such a provision, administrative decision-makers and duty-holders risk perpetuating practices that are inconsistent with the CRPD, such as the continued expansion of segregated education.

3.2.1.3 Third additional object

Finally, we call for a new object to be included in the DDA to explicitly recognise inclusive equality. As discussed earlier, the CRPD introduced a distinctive definition of discrimination and advanced inclusive equality, as a new model of equality that builds on and extends substantive equality.

Earlier models of equality were insufficient to capture the realities of discrimination experienced by people with disability. *Formal equality*, concerned only with treating people in similar situations the same, offered limited protection from direct discrimination and did not address the "dilemma of difference." *Substantive equality* went further by tackling indirect and structural discrimination and recognising power relations, but still failed to account fully for the structural exclusion and stigma faced by people with disability.

General Comment No. 6 of the CRPD Committee makes clear that *inclusive equality* is the standard required by the Convention. Inclusive equality:

- has a **redistributive dimension** to address socio-economic disadvantage
- a **recognitional dimension** to combat stigma, stereotyping, prejudice and violence, and to affirm dignity and intersectionality

[41] Rosemary Kayess and Therese Sands (2020) *Convention on the Rights of Persons with Disabilities: Shining a Light on Social Transformation.* Sydney: Social Policy Research Centre, University of New South Wales

- a **participatory dimension** to secure full membership in society, and
- an **accommodative dimension** to ensure that human difference is respected as a matter of dignity.

Inclusive equality also contains both **procedural and substantive dimensions**. It requires not only the removal of barriers to access (procedural), but also an assessment of whether a person has had a *genuinely equal chance* to participate and thrive across their life course (substantive).

This model is highly relevant to anti-discrimination law. It means that compliance cannot be achieved simply by treating everyone the same or making processes accessible. Duty-holders must examine and reform the institutional norms, rules and practices that produce exclusion in the first place. In education, for example, equality cannot be realised unless schools are designed and resourced to deliver inclusive education. Without this, students with disability will remain excluded despite formal prohibitions on discrimination.

In this way, inclusive equality positions non-discrimination law as a tool of structural transformation. It extends beyond remedying individual instances of unfair treatment to addressing the social, economic and institutional arrangements that entrench exclusion.

Embedding inclusive equality into the DDA's objects clauses would align the Act with the CRPD, and provide a clear requirement that the anti-discrimination obligations are interpreted in ways consistent with dismantling barriers and building inclusive systems.

We therefore **recommend** an addition to the objects clause to provide:

> … to ensure that this Act is interpreted and applied consistently with the principle of inclusive equality, recognising the need to remove barriers, address structural disadvantage, combat stigma and provide adjustments to secure the full participation of persons with disability in society.

3.3 Intersectionality

The concept of intersectionality, developed by Kimberlé Crenshaw and further elaborated in subsequent academic and policy work, highlights how systems of inequality interact to shape unique experiences of disadvantage.

Intersectionality is not simply about recognising that a person may hold multiple identities; it is about understanding how structures of power such as ableism, racism, sexism and ageism operate together to produce forms of discrimination that cannot be reduced to "disability plus another attribute."[42]

For example, a First Nations student with disability may experience a distinct form of exclusion arising from the interaction of racism and ableism within the structures of the education system. This is not the sum of two separate experiences of discrimination, but a unique form of intersectional discrimination produced by overlapping systems of oppression.

Intersectional disadvantage is particularly relevant in education. While all intersections of identity and oppression are relevant in the context of education, the relevance of age is particularly important. Social constructions and expectations of childhood combine with ableism to intensify exclusion from education. Research has consistently found that children with disability are often overlooked in both disability rights and children's rights discourse, leaving their rights uniquely marginalised.[43]

Applying an intersectional lens enables educators and policymakers to identify and address the structural barriers that disproportionately affect students at the margins. This positions education providers to design more effective and sustainable inclusive education approaches, ensuring that students experience genuine inclusion and support, rather than partial or fragmented measures.

At present, the DDA reflects a single-axis approach to discrimination. While complainants can bring multiple claims, the current legal framework treats each ground separately. This approach is burdensome for complainants and obscures the

[42] Kimberle Crenshaw (1991) "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color." *Stanford Law Review*, 43(6), 1241–1299; Kimberle Crenshaw (2016) "The Urgency of Intersectionality." TEDWomen

[43] Gerison Lansdown, 'Children with Disabilities: Chapter 6' In Human Rights and Disability Advocacy, Maya Sabatello and Marianne Schulze (eds), (University of Pennsylvania Press, 2013).

lived reality of intersectional disadvantage. The CRPD Committee has called on Australia to address and prohibit systemic, intersectional and multiple forms of discrimination.[44]

Embedding intersectionality into the DDA would ensure that the Act responds to the structural realities of discrimination, rather than treating grounds as separate and unrelated. It would also align the DDA with Australia's obligations under the CRPD, ensuring that the right to inclusive education in Article 24, and all other rights, is realised for people whose experiences of discrimination cannot be neatly categorised within a single ground. Recognising intersectionality in law also provides clearer guidance for regulators, courts and education authorities on how to interpret and respond to discrimination that arises from overlapping systems of exclusion.

The DDA's purpose is to respond to discrimination, not to force complainants to disaggregate their experience of discrimination. Explicit recognition of intersectionality ensures the Act functions as intended, enabling effective responses to discrimination without requiring complainants to separate or prioritise aspects of their experience.

To be effective in practice, amendments recognising intersectional discrimination should also be reflected in the *Australian Human Rights Commission Act 1986 (Cth)*, ensuring that complaint-handling and remedies can respond to the full experience of discrimination.

3.3.1 Recommendations

We recommend modernising the Act to:

- explicitly recognise, within the objects clause, the role of the DDA in protecting people with disability from intersectional discrimination
- expressly allow claims that recognise the intersectional nature of discrimination, where multiple systems of power and inequality interact to create unique forms of exclusion, and

[44] Concluding Observations on the Combined Second and Third Reports of Australia CRPD/C/AUS/CO/2-3, [10(a)].

- define intersectional discrimination to capture the structural and indivisible nature of intersectional disadvantage, rather than reducing it to “multiple” or “compounded” claims.

3.4 Discrimination prohibitions

3.4.1 Direct discrimination

Sections 5 and 22 of the DDA prohibit direct discrimination in education. However, as the Disability Royal Commission found, the current provisions have proved too narrow in scope, making it unduly difficult for students with disability to establish unlawful conduct and limiting the DDA's capacity to drive systemic change.

We support implementation of the Disability Royal Commission’s recommendations that the DDA be amended to remove the need for a comparator, focusing instead on the *unfavourable treatment or detriment* experienced by the person with disability.

This reform would provide clearer protection where students are treated less favourably because of disability, without the need for complex comparator analysis. This would help to ensure that discrimination is assessed by reference to the lived experience of the student, rather than abstract comparisons.

3.4.1 Indirect discrimination

We agree with the Disability Royal Commission’s findings that the current test for indirect discrimination is overly complex and imposes unnecessary hurdles. The existing requirements, including the “inability to comply” element and the “reasonableness” test, create confusion, are inconsistently applied, and frequently disadvantage students with disability.

These provisions assume a level of choice or control that many students do not have. A student may technically be able to comply with a rule or condition, such as attending school without adjustments, completing assessments in standard formats, or participating in unmodified activities, but only at significant detriment to their learning, wellbeing or inclusion.

The “reasonableness” element shifts the focus away from whether a requirement disadvantages students with disability, and onto whether an education provider can justify the requirement. In practice, it has allowed discriminatory practices to be

defended on resource or convenience grounds, undermining the right to equality. The CRPD Committee is clear that consideration of the detriment on the duty-holder is to occur at a later stage, once discrimination has been established[45] i.e. at the stage of considering whether there is an "unjustifiable hardship".

We support the reforms to the indirect discrimination test proposed by the Disability Royal Commission to remove the "inability to comply" and "reasonableness" element from the test, as they would:

- simplify the law and make it more accessible for students and families
- focus attention on whether a requirement or practice creates disadvantage for students with disability, rather than on justificatory arguments and
- bring the DDA closer to the approach taken in other discrimination statutes internationally.

We do *not* support replacing the reasonableness element of the test being replaced with a "legitimate and proportionate test", which calls for a balancing of competing interests and a high risk of perpetuating similar issues and disadvantaging students with disability.

3.4.3 A unified, inclusive definition and prohibition

We support the recommendation of a **single, unified definition** and consequent single **prohibition** that captures all forms of discrimination, including failure to make adjustments.[46] This model better reflects the reality of how exclusion operates in education and other contexts, where discriminatory conduct often arises from a combination of both direct and structural factors.

A unified definition would eliminate the technical barriers that currently force complainants to fit their experience into rigid legal categories of either "direct" or "indirect" discrimination, and would make the law easier for schools, systems and regulators to apply consistently. It would also bring Australia's domestic law into

[45] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [18(c)], [25].
[46] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, pp 37-44.

conformity with the CRPD, by reflecting its focuses on the *purpose or effect* of discrimination, rather than its formal classification.[47]

Elements within the definition that describe direct discrimination and indirect discrimination should reflect the recommendations made above in this section.

An updated definition should be supported with robust guidance and examples, would further clarify what discrimination looks like in practice. In education, this could include examples such as gatekeeping at enrolment, shortened school days, exclusion from excursions, or refusal of or delay in providing adjustments. Such examples would have a powerful educative effect and help duty-holders translate legal obligations into non-discriminatory and inclusive education practices.

3.4.4 Burden of proof

The Disability Royal Commission and Australian Disability Law Expert Group recognised that the current burden of proof in discrimination cases places an unrealistic evidentiary burden on complainants, particularly where the reasons for a decision are held by the respondent. This imbalance is especially evident in the education context, where students and families have limited access to information and face significant power differentials.

We support ADLEG's recommendation to introduce a shifting burden of proof across the entire DDA, consistent with section 136 of the UK *Equality Act 2010*. Once a student establishes facts from which discrimination can be inferred, the onus should shift to the school or education authority to show that the conduct was lawful and justified. This change would promote procedural fairness and recognise the practical reality that respondents typically hold and control most of the relevant information about decision-making processes.

[47] See Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018).

4. POSITIVE DUTY TO ELIMINATE DISCRIMINATION (PART 2)

We strongly support the introduction of a positive duty into the DDA. Such a duty should apply to all duty-holders, including education providers across government, Catholic and independent sectors, and at every stage of education from early childhood through to tertiary.

A positive duty within the DDA would mark a necessary shift from a reactive, complaint-driven model to a proactive, systemic framework. It would ensure that education providers are obliged to address and eliminate discrimination before harm occurs, and encourage them to embed realisation of inclusive education to meet their positive duty. **Eliminating discrimination should centre on taking proactive steps to identify and remove barriers to inclusion, including by ensuring accessibility across all** aspects of education.

4.1 Current issues

The Disability Royal Commission found that students with disability face multiple barriers to inclusive education, including:

- gatekeeping practices, which deny students with disability access to the school of their choice or informally discourage their attendance
- the inappropriate use of exclusionary discipline, particularly from an early age (for example, the exclusion of a student with disability from the classroom)
- the failure to provide students with disability with adjustments, supports and individualised planning
- a lack of opportunity to participate in the broader school community, form friendships and develop the skills needed for lifelong learning and success
- poor integration between the National Disability Insurance Scheme (NDIS) and education supports
- inadequate support to transition from school to open employment and further education

- a lack of avenues for meaningful communication between school leaders and teachers and parents and students.[48]

Commissioners Bennett, Galbally and McEwin also noted that research demonstrates segregation of students with disability has increased over the past decade.[49]

Because the DDA operates largely as a reactive tool, placing the burden on students and families to challenge discrimination after it has occurred, [50] it has failed to address these systemic issues or supported the progressive realisation of inclusive education required under Article 24 of the CRPD. A positive duty would change this dynamic — shifting the focus from responding to individual breaches to preventing discrimination and driving structural reform. It would require education providers to take active steps to identify and remove barriers, promote equality, and create inclusive learning environments.

4.2 Comparative models

Comparative research indicates that disability anti-discrimination laws, when framed primarily as compliance tools, rarely drive systemic change. Sépulchre found that disability administrators in Sweden and the United States tended to treat such laws as procedural obligations rather than instruments for social justice, underscoring the need for proactive duties and structural accountability in legislation like the DDA.[51]

Positive duties are not unprecedented, as identified in the Issues Paper.

- **Sex Discrimination Act 1984 (Cth)**: Since 2022, the SDA has imposed a positive duty on employers and persons conducting a business or undertaking to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation. This duty is enforceable

[48] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, p 155.
[49] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, p 105.
[50] Dickson, Elizabeth, 'Barriers to inclusion embedded in the *Disability Discrimination Act 1992 (Cth)*', *Australian Journal of Education* (2022) vol. 66, no. 3, pp. 265–280
[51] Sépulchre, Marie, 'Disability anti-discrimination law: A tool for compliance or path towards social justice?', *Social & Legal Studies* (April 2025) OnlineFirst, https://doi.org/10.1177/09646639251333130.

by the AHRC and provides a direct federal precedent for embedding proactive obligations within anti-discrimination law.

- **The ACT, NT and Victoria:** State and Territory discrimination laws already impose proactive obligations on duty-holders to eliminate discrimination and promote equality. The Victorian *Equal Opportunity Act 2010*, for example, requires organisations to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation.
- **United Kingdom**: The *Equality Act 2010* imposes a Public Sector Equality Duty (PSED) requiring public bodies, including education providers, to have due regard to eliminating discrimination, advancing equality of opportunity, and fostering good relations.

Reviews of the effectiveness of the PSED in the UK have found that it has contributed to progress in:

- organisations embedding equality consideration into their operational processes
- involvement of affected groups in decision-making and monitoring.[52]

The reviews have also identified scope for improvement in ensuring practical compliance and oversight, which we discuss in sections 7 and 8 of this discussion paper.

4.3 Nature and scope of a positive duty

ADLEG has recommended that a positive duty encompass a duty to address all forms of unlawful conduct in all areas of activity under the Act, including non-compliance with the disability standards.[53] We support the proposed scope of the positive duty.

[52] Simonetta Manfredi, Lucy Vickrs and Kate Clayton-Hathway, 'The Public Sector Equality Duty: Enforcing Equaluty Rights Through Second-Generation Regulation" 47(3) *Industrial Law Journal* September 2018, pp 365-398; Equality and Human Rights Commission, *Reviewing the aims and effectiveness of the Public Sector Equality Duty (PSED) in Great Britian*, August 2018.
[53] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, Recommendation 2.3.

Framed this way, the duty would cover all forms of unlawful conduct under the DDA discrimination, non-compliance with disability standards, harassment and victimisation. It would require proactive steps to prevent this unlawful conduct, including the structural elements of discrimination and barriers to inclusion.

In the education context, this would work to encourage providers to:

- embed inclusion across curriculum, pedagogy, culture and policy
- view inclusive practices as a core operational responsibility; not an optional add-on
- shift from reactive, individualised adjustments towards universal design and systemic reform of education delivery
- ensure approaches to behaviour support do not contribute to the use of exclusionary discipline on the grounds of disability (see also section 5.4),

To be effective on the ground, education providers will require support and guidance to ensure they have the capability to meet and monitor compliance with the duty, including through training, consultation, guidance and data collection (see sections 8 and 9 for further discussion on practical implementation and accountability).

Properly framed and supported, a positive duty to eliminate discrimination could be a cornerstone reform in realising Australia's commitments to inclusive education.

4.3.1 Costs, benefits and other impacts

In the education context, the benefits of a positive duty far outweigh the costs. By embedding equality as a proactive responsibility, the duty would reduce discrimination at its source and ensure that equality becomes a standard feature of educational planning, not a reactive adjustment after exclusion has occurred.

Many of the steps that may be required to comply with such a duty would reflect recognised best practice for delivering high-quality inclusive education, in line with policy commitments at the federal, state and territory level. These include:

- developing inclusive enrolment policies
- ensuring educators are trained and supported to provide adjustments and to teach using universal design for learning

- auditing accessibility of the learning environment (including physical and digital).

Benefits include:

- reduction in discrimination complaints and disputes, saving time and resources for schools, families and education departments
- more consistent, sector-wide practices that provide greater clarity for educators
- accessible environments and systems that reduce ongoing barriers and prevent the need for repeated individual adjustments
- greater access to education and stronger inclusion of students with disability
- safer and more respectful classrooms and schools that benefit all students.

Costs include:

- initial investment in professional learning and upskilling of educators in respect of the requirements of the positive duty
- additional time for leadership teams to plan, monitor and report on meeting the positive duty
- short-term administrative costs for establishing new compliance and accountability processes
- undertaking accessibility audits and improvements to learning environments

These costs are manageable and can be built into existing planning and professional development cycles. Over time, efficiencies gained from consistent inclusive practice, together with fewer reactive disputes, will offset the initial investment. Introducing the duty will make the prevention of discrimination, and realising equality and inclusion, a core operational requirement, ensuring that inclusion is embedded sustainably rather than treated as an add-on.

We recommend the AHRC be tasked with, and properly funded to co-design sector-specific guidance for education providers, together with inclusive education academics, practitioners, and students with disability, to show how the positive duty can be met in practice.

4.3.2 Exceptions or limits

The positive duty should apply universally to:

- all education providers: government, Catholic, and Independent
- in every education sector: early childhood education and care (ECEC), primary and secondary schooling, and further education.

We recommend that no broad exceptions apply. The only limitation should be a standard of reasonable and proportionate measures, consistent with comparative models, so the scale of the obligation is responsive to the size and resources of the provider. Allowing wider exceptions risks replicating the current reactive approach and undermining systemic reform. In the context of education, this should consider:

- the public funding provided to education providers, including independent schools, with specific and dedicated funding for including students with disability
- the fundamental importance of inclusive education as a human right under Article 24 of the CRPD.

4.3.3 Integrating accessibility into the positive duty

It is useful to consider how a positive duty to eliminate discrimination should incorporate accessibility duties and operate alongside, and be distinguished from, a standalone duty to provide adjustments (discussed in section 5.1).

The CRPD Committee has provided useful guidance in this respect, distinguishing the duty to provide adjustments from obligations under Article 9 of the CRPD in respect of accessibility.[54] The Committee explains that accessibility is a *proactive, systemic (ex ante)* obligation; one based on the doctrine of progressive realisation.[55] It requires governments and institutions to design environments, services and systems to be accessible from the outset — through universal design and assistive technologies — without reference to any individual's needs.[56]

[54] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [24].
[55] Committee on the Rights of Persons with Disabilities, General comment no. 2 (2014), article 9: Accessibility, CRPD/C/GC/2, (22 May 2014), [24].
[56] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [24(a)].

By contrast, reasonable accommodation is an *individualised, reactive (ex nunc)* duty that arises when a person with disability encounters a barrier or requires an adjustment to exercise their rights. It must be provided as soon as the need becomes apparent, often through dialogue with the person concerned. The duty applies even where the person has not formally requested an adjustment, if the provider knew or ought reasonably to have known that an adjustment was required.[57]

Together, these duties ensure both systemic accessibility for all and individualised adjustments where gaps remain.

In articulating the positive duty and providing guidance to duty-holders we recommend drawing on this distinction, and embedding in the positive duty a focus on progressively ensuring accessibility to enable inclusion.

4.4 AHRC enforcement powers

To be effective, a positive duty must be enforceable. The AHRC should be empowered to:

- investigate systemic non-compliance
- issue compliance notices and publish compliance findings
- receive systemic complaints from representative organisations (defined in line with General Comment No.7)
- initiate own-motion inquiries and binding determinations.

We discuss this further in sections 7 and 8 of this submission.

4.5 Duty to engage with people with disability

A positive duty to eliminate disability discrimination will only be effective if it is shaped and informed by people with disability. We recommend embedding within the duty a clear requirement for duty-holders to closely and actively involve people with disability, and their representative organisations, in identifying and implementing the measures needed to eliminate discrimination.

[57]Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality a nd non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [24(b)].

Article 4(3) of the CRPD requires governments and institutions to closely consult and actively involve people with disability, through their representative organisations, in all decisions affecting them. The Royal Commission recognised this principle, recommending that the extent of consultation with people with disability be considered when assessing whether actions under the duty are reasonable and proportionate. While welcome, this formulation does not go far enough. Engagement should not be one consideration among many; it must be an essential component of compliance.

Similar participatory duties already exist under workplace health and safety laws, where consultation and cooperation are built into compliance frameworks. A comparable approach under the DDA would normalise engagement as part of organisational governance, not an optional or symbolic process.

The scope and form of engagement should be *reasonable and proportionate* to the organisation's size and resources. This could range from information sharing and consultation, to more in depth co-design.

4.6 Recommendations

In summary, we recommend:

- Introducing a positive duty under the DDA:
    - requires duty-holders to address all forms of unlawful conduct in all areas of activity under the DDA, including non-compliance with the disability standards
    - that applies to all education providers
    - builds in the *ex ante* obligation of ensuring accessibility
    - is not subject to broad exceptions, other than a reasonable and proportionate test
    - embeds a requirement for duty-holders to actively engage with people with disability and their representative organisations in developing and implementing measures to meet their positive duty
- Empowering the AHRC to:
    - investigate systemic non-compliance, initiate own-motion inquiries and make binding determinations

- develop sector-specific guidance, demonstrating how the duty can be met, for example, an education specific guide that is grounded in progressive realisation of inclusive education.

5. ENCOURAGING INCLUSION IN EDUCATION (PART 2)

In this section we focus on encouraging inclusion and strengthening DDA protections in the context of all stages of education.

5.1 Duty to provide adjustments

We support the Disability Royal Commission's recommendations to:

- replace the term *reasonable adjustments* with *adjustments*
- introduce a stand-alone duty to provide adjustments unless doing so would impose unjustifiable hardship, subject to clearer limitations and guidance.

5.1.1 Removing the word "reasonable"

Adjustments are central to participation, engagement and achievement for students with disability. However, they are routinely denied or not provided consistently or effectively.[58] The Disability Royal Commission found that failures to provide appropriate adjustments can amount to educational neglect of students with disability.[59]

Members of the Australian Coalition for Inclusive Education (which All Means All co-chairs), consistently report that the term *reasonable adjustments* has created significant confusion for students, parents/caregivers and educators. Far too often it is interpreted to mean that adjustments are subject to an education providers' discretion about what is "reasonable." This misunderstanding has led to inconsistent and inadequate provision of supports, unnecessary conflict between educators and families, and, in many cases, discrimination.

The CRPD Committee has made clear that the term *reasonable accommodation* (the term used in the CRPD for *reasonable adjustments*) must be understood as a single, integrated concept. The word *reasonable* is not intended as a limiting qualifier or exception; it does not permit an assessment of costs or resources at this stage. Such

[58] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing pp 172-173.
[59] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing p 174.

considerations arise only later, when determining whether providing the accommodation would impose a *disproportionate or undue burden*.[60]

The Committee clarifies that *reasonableness* refers solely to whether the accommodation is relevant, appropriate and effective for the person with disability — that is, whether it achieves its intended purpose and is tailored to the individual's requirements.[61]

The confusion of the term "reasonable adjustment" is evident when you compare the DDA, and the case law that has interpreted it,[62] with the Disability Standards for Education. These Standards define reasonable adjustment as: "an adjustment is reasonable if it 'balances the interests of all parties affected'".[63] This requires education providers to weight competing interests. Only after this balancing exercise, may the provider then consider unjustifiable hardship as a separate exemption.

This is inconsistent with provisions in the DDA, leading educators to be confused as to their requirements.

We believe that removing the term *reasonable* from the definition and duty to make adjustments in the DDA would strengthen both understanding and implementation. Referring simply to *adjustments* would promote clarity, support consistent practice, and align with inclusive pedagogy focused on identifying and removing barriers to participation and learning for every student.

Consequential amendments are needed urgently to the Disability Standards for Education.

5.1.2 Stand-alone duty

The current provisions are subsumed into direct and indirect discrimination tests, and courts have interpreted them narrowly, such that no positive obligation to provide

[60] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [25(a)].
[61] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [25(a), 26].
[62] *Watts v Australian Postal Corporation* (2014) 222 FCR 220; *New South Wales (Department of Justice – Corrective Services) v Huntley* [2017] FCA 581; *Tropoulos v Journey Lawyers Pty Ltd* (2019) 287 IR 363.
[63] Disability Standards for Education (2005), ss 3.3-3.4.

adjustments is effectively imposed.[64] This has left significant uncertainty and limited protection for students with disability.

We agree with the Disability Royal Commission that the failure to make adjustments should be recognised as a distinct form of unlawful discrimination, rather than being subsumed within the definitions of direct or indirect discrimination.

We support the Disability Royal Commission recommendations for a clear, stand-alone duty to provide adjustments for people with disability, applicable across all contexts and settings where adjustments may be required. This duty would fill the current gap in protection by explicitly requiring education providers to take proactive steps to enable students with disability to participate on an equal basis with others.

Such a duty would help duty-holders better understand their obligations and reinforce that providing adjustments is a core element of teaching and learning. It would also provide clarity to students and families about their rights and the basis for any complaints.

We note the Commission's view that this reform would not impose an unrealistic burden on duty-holders. We agree in the context of education providers. The duty would necessarily require providers to have some knowledge of the adjustments needed by the individual and would continue to be subject to the existing unjustifiable hardship defence.

Consequential amendments to the Disability Standards for Education would be required to align with this new duty and to emphasise that adjustments must be relevant, appropriate and effective for the individual student.[65]

5.1.3 Shifting the burden of identifying adjustments and clarify guidance

Recent cases have shown that students and families are often expected to identify and describe the precise adjustments required to enable inclusion.[66] This is

[64] Watts v Australian Postal Corporation (2014) 222 FCR 220, p 275 [233].
[65] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [25(a)]
[66] *EIX20 v State of Western Australia* [2022] FCA 1357;
Izzo v State of Victoria (Department of Education and Training) [2020] FCA 770;
Connor v State of Queensland (Department of Education and Training) (No 3) [2020] FCA 455;
Varasdi v State of Victoria [2018] FCA 1655.

unrealistic, places a heavy burden on families, and inconsistent with the collaborative nature of education.

As ADLEG has noted, this interpretation undermines the intent of the DDA and the Disability Standards for Education, which envisage shared responsibility between education providers, students and families to identify and implement adjustments through consultation and cooperation.[67]

However, courts have interpreted the provisions narrowly, often requiring complainants to specify the exact nature of the adjustment sought, rather than recognising an ongoing duty of inquiry and collaboration on the part of the education provider.[68] This approach overlooks the expertise, information, and authority that rest with the school or education authority to determine how a student's learning can best be supported. It also disregards the structural power imbalance between families and institutions, particularly when parents are advocating for adjustments within complex school systems and funding arrangements.

A reformed duty should make clear that responsibility for identifying and implementing adjustments rests primarily with education providers, working in partnership with the student and their family. Duty-holders must take active steps to explore what adjustments are relevant, appropriate and effective,[69] rather than waiting for families to propose them in detail.

The Disability Standards for Education should also be strengthened to explain how duty-holders are expected to consider, design and implement adjustments, including the requirement to act without unreasonable delay. Inaction or prolonged indecision should be recognised as non-compliance, as such conduct effectively denies the student's right to participate on an equal basis with others.

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[67] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, pp 69-70.

[68] *EIX20 v State of Western Australia* [2022] FCA 1357;
Izzo v State of Victoria (Department of Education and Training) [2020] FCA 770;
Connor v State of Queensland (Department of Education and Training) (No 3) [2020] FCA 455;
Varasdi v State of Victoria [2018] FCA 1655.

[69] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [25(a), 26].

5.1.4 Link to the positive duty

The duty to provide adjustments should operate in tandem with the positive duty outlined in Part 2 of this submission. As discussed in section 4.3.3, these duties are distinct but complementary: the positive duty imposes a proactive, systemic obligation, that should build in progressively realising accessibility (*ex ante*), while the duty to provide adjustments is an individualised, responsive obligation (*ex nunc*) that arises when barriers persist.

Alignment between the two should be embedded in both legislative design and implementation guidance. Clear guidance from the AHRC should outline how education providers can meet both their duties in an aligned and complementary way through inclusive education planning, universal design and regular review of inclusion practices.

Together, these duties would establish a coherent framework requiring education providers to embed accessibility system-wide and respond to individual needs through the provision of adjustments.

5.1.5 Recommendations on a duty to provide adjustments

Introduce a clear, stand-alone duty to provide adjustments that:

- replaces the term *reasonable adjustments* with *adjustments*,
- clarifies that providers hold primary responsibility for identifying and implementing adjustments, in partnership with the individual affected
- aligns with and complements the positive duty to eliminate discrimination.

5.2 Unjustifiable hardship

We have considerable concerns about the current unjustifiable hardship test and its application in education.

In our experience, the defence is often invoked by mainstream education settings to refuse or discourage the enrolment of students with disability, steering them instead toward segregated schools or units. However, the true barrier is not hardship on an individual education setting, but inflexible systems. Australia's current education systems reflect a systemic bias toward segregation, particularly for students with

complex learning profiles. The issue is not a lack of resources by mainstream education — but the inaccessibility and inflexibility of existing resources. If current funding were redistributed or made portable to follow the student, situations characterised as “hardship” could be avoided altogether.

When the defence is invoked by an education provider (whether formally, or through informal discouragement), they avoid any costs but transfer the costs of exclusion to students and families, and ultimately to the public, through the ongoing long-term social and economic costs of segregation and exclusion.

These observations are supported by academic literature, which documents how schools have invoked unjustifiable hardship in enrolment decisions to limit their obligations under the DDA.[70] Scholars have argued that the defence operates as a “cap” on the obligation to make adjustments and is most commonly applied at the point of enrolment, effectively functioning as a gatekeeping tool that restricts access to mainstream education.[71]

This practice has undermined the intent of the DDA and is inconsistent with Australia’s obligations under Article 24 of the CRPD.

Reform of the *unjustifiable hardship* defence is essential to prevent it being used as a gatekeeping mechanism to exclude students with disability. The defence should operate only as a narrow and legitimate exception, not as a justification for systemic failure to provide inclusive education.

5.2.1 Reforming the test

The CRPD provides that:

> “’Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the

[70] Waldeck, Elizabeth and Robert Guthrie, *Disability Discrimination in Education and the Defence of Unjustifiable Hardship* (Working Paper No 2004–06, School of Business Law, Curtin University of Technology, 2004).
[71] Waldeck, Elizabeth and Robert Guthrie, *Disability Discrimination in Education and the Defence of Unjustifiable Hardship* (Working Paper No 2004–06, School of Business Law, Curtin University of Technology, 2004); Neil Rees, ‘Disability Discrimination, Unjustifiable Hardship and Students with Disabilities: A Case Note on Finney v Hills Grammar School’ (2004) 9(1) *Australia and New Zealand Journal of Law and Education* 109.

enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."[72]

The CRPD Committee has explained that:

> "the determination of whether a reasonable accommodation is disproportionate or unduly burdensome requires an assessment of the proportional relationship between the means employed and its aim, which is the enjoyment of the right concerned".[73]

To align the DDA with the CRPD, we support the Disability Royal Commission's recommendation that the unjustifiable hardship test be strengthened by requiring explicit consideration of:

- how much the person with disability has been consulted
- what alternative options were available to remove or reduce hardship.

These additions would create greater accountability, ensuring duty-holders cannot invoke unjustifiable hardship without first engaging directly with the person affected and exploring possible alternative solutions.

We also endorse the ADLEG submission's argument that the Premises Standards provide a strong model for reforming the unjustifiable hardship test.[74] The Premises Standards set out a more comprehensive and transparent framework for assessing hardship, requiring consideration of factors such as:

- the extent to which an organisation's operations are publicly funded or perform a community function
- the resources reasonably available to it (including grants or subsidies)
- the benefits to people with disability and the broader community of implementing the measure, and

[72] *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 2.
[73] Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018) on equality and non-discrimination, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [26(d)].
[74] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, pp 74-75.

- any genuine efforts made to consult disability experts and disability representative organisations.

Adopting a similar approach in section 11 of the DDA would provide clearer guidance to duty-holders and decision-makers and ensure that assessments of hardship are grounded in principles of proportionality, transparency and human rights compliance.

We note that the current definition requires courts to consider the "benefit or detriment to any person concerned". As the Issues Paper notes, in education contexts, this has sometimes been interpreted to include the supposed impact of inclusion on other students or the school environment.[75] This risks importing ableist assumptions that frame students with disability as a disruption or burden, despite research consistently showing that inclusive education benefits the whole school community.[76]

Courts should be guided to assess detriment in proportion to the human right at stake, not in isolation from it. We therefore recommend adding a further factor to the section 11 list — the nature and significance of the human right impact. In education, this would recognise the fundamental importance of every child and young person accessing inclusive education. Including this factor would help prevent unjustifiable hardship from being applied in ways that treat inclusion as a burden rather than a benefit and means to eliminate discrimination.

5.2.1.1 Recommendation on the unjustifiable hardship test

We therefore recommend that the definition of unjustifiable hardship be reformed to:

- require consideration of consultation and alternative measures (as recommended by the Disability Royal Commission)
- incorporate the principles in section 4.1 of the Disability (Access to Premises – Buildings) Standards 2010 (Cth)

[75] *Purvis v New South Wales (Department of Education and Training)* (2003) 217 CLR 92; *Hills Grammar School v Human Rights & Equal Opportunity Commission* [2000] FCA 658.
[76] Kate De Bruin, 'Inclusive Education: A review of the evidence' in Linda Graham (2nd ed), Inclusive education in the 21st Century: Theory, policy and practice, Routledge 2023, ch 6 pp 95–114; Cole, C. M., Waldron, N., & Majd, M. (2004). *Academic progress of students across inclusive and traditional settings. Mental Retardation*, 42(2), 136–44; Dessemontet, R. S., & Bless, G. (2013). *Impact of including children with intellectual disability on peers' academic achievement. Intellectual and Developmental Disabilities*, 38(1), 23–30.

- include an additional factor - the nature of the human right impacted.

Adopting this approach would ensure that unjustifiable hardship operates as a narrow and temporary exception in education, not a justification for maintaining structural barriers or failing to ensure continuous improvement in line with the proposed positive duty.

5.2.2 Enrolment rights

We further submit that the unjustifiable hardship defence should not apply to the right to enrolment in education, under any circumstances.

Article 24 of the CRPD recognises access to inclusive education as a foundational right and requires States Parties to ensure that no child or young person is excluded from the general education system on the basis of disability. The article is clear: enrolment in general primary and secondary education must be unconditional. [77] Further compulsory, free *primary* education available to all is a core right of Article 24 that has immediate effect.[78]

Under the CRPD reasonable accommodations are an ongoing duty that arises once a student is enrolled and should not be displaced by claims of hardship at the threshold of access. Allowing unjustifiable hardship to be used as a defence to deny enrolment in mainstream education undermines Australia's obligations under Article 24 and perpetuates segregation.

The Disability Royal Commission identified gatekeeping practices as a key barrier to inclusive education.[79] Gatekeeping includes preventing or discouraging, whether formally or informally, a child or young person from applying to, or enrolling in, an education setting. In the context of primary and secondary education, the Commission heard extensive evidence that such practices deny students with disability access to their local school or school of their choice. Past inquiries and

[77] Article 24(2)(b); Committee on the Rights of Persons with Disabilities, *General comment no. 4 (2016) on the right to inclusive education*, 16th sess, UN Doc CRPD/C/GC/4 (25 November 2016) [19], [23].
[78] Committee on the Rights of Persons with Disabilities, *General comment no. 4 (2016) on the right to inclusive education*, 16th sess, UN Doc CRPD/C/GC/4 (25 November 2016) [40(b)].
[79] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, pp 182-183.

reports have reached the same conclusion, recognising gatekeeping as a persistent obstacle to inclusion.[80]

Permitting unjustifiable hardship to apply at the point of enrolment entrenches gatekeeping practices. It allows early childhood education providers and schools to deny or deter enrolment rather than build inclusive capacity, creating systemic incentives to divert students with disability into segregated schools or units. Families are then left with an unfair choice between accepting segregation or pursuing lengthy and burdensome complaints processes.

5.2.2.1 Recommendation on enrolment rights

Amend the DDA to provide that unjustifiable hardship cannot be relied upon to refuse enrolment in a mainstream education setting.

This reform would remove a major legal pathway for gatekeeping, align Australia's laws with Article 24 of the CRPD, and ensure every child's right to inclusive education is protected from the first point of access.

5.2.3 Accountability and transparency

We support the Disability Royal Commission's recommendation, also supported by the ADLEG, [81] that duty-holders be required to document the factors they considered and provide reasons when claiming unjustifiable hardship. This would enhance accountability and transparency, ensuring that claims can be properly scrutinised by students, families, regulators and the courts.

This could be achieved by adding new sub-sections into **section 11:**

> **(3)** Where a person seeks to rely on the defence of unjustifiable hardship, they must:
> (a) set out in writing the factors considered under this section;
> (b) evidence of consultation with the person affected
> (c) consideration of all viable alternatives to avoid or minimise hardship
> (d) provide reasons for their decision;

[80] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, p 183
[81] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, pp 72-75.

(e) make this documentation available, on request, to the affected person, the Commission or a court.

(4) Failure to comply with subsection (3) may be taken into account in determining whether the person has discharged the burden of proof.

5.3 Inherent requirements

The DDA provides an exception to unlawful discrimination in employment where a person with disability is unable to perform the “inherent requirements” of a job. While this test is directed to employment, its influence extends into tertiary education through the accreditation requirements of professional courses such as teaching, nursing, allied health and law.

Universities and accreditation bodies increasingly adopt “inherent requirement statements” that mirror employment assumptions rather than focusing on genuine course learning outcomes. These statements are often framed in terms of physical or behavioural capacities — for example, lifting unassisted or completing continuous shifts — and risk excluding students with disability from professional courses even where adjustments could enable equal participation. This practice shifts the focus of higher education away from its true purpose of achieving learning outcomes and prematurely imports employment-based exclusions.

In many professional fields, universities design their courses to secure accreditation from regulatory bodies. Accreditation bodies often publish inherent requirement statements or capability standards, which universities then import into curricula. In this way, employment-style inherent requirements filter into higher education and function as gatekeeping tools, deterring or excluding students with disability at the point of enrolment or choice of degree. This practice undermines section 22(2A) of the DDA, which makes it unlawful for education providers to develop or accredit curricula that exclude students with disability.

Section 22(2A) of the DDA already makes it unlawful for education providers to develop or accredit curricula that exclude students with disability. In practice, however, exclusionary inherent requirement statements persist, often under the influence of accreditation bodies. Clarifying the relationship between section 21A and

section 22(2A) is therefore critical to ensuring that professional standards and course accreditation processes comply with the DDA's prohibition on exclusionary curricula.

The Disability Royal Commission found that the operation of the inherent requirements exception can act as a barrier to participation and recommended that decision-makers be required to consider the nature and extent of adjustments and the degree of consultation with the person with disability (Recommendation 7.26). These safeguards are equally important in tertiary education. Accreditation-linked inherent requirements should not be used as a gatekeeping device to prevent enrolment but should instead be designed and applied to enable participation wherever possible.

While section 21A is primarily directed to employment, its scope is broader. Subsection 21A(3)(e) extends the provision to professional accreditation bodies that are empowered to confer or withdraw qualifications needed to practise a profession. Because many tertiary courses are tied to such accreditation, inherent requirements set by these bodies flow directly into higher education curricula.

Amending section 21A to require consideration of adjustments and consultation, as recommended by the Disability Royal Commission, would also strengthen protections for students with disability in tertiary education by ensuring that professional accreditation bodies apply inclusive standards that flow through to course design and accreditation.

Any inherent requirement statements in tertiary education courses should:

- comply with section 22(2A) of the DDA, which prohibits developing or accrediting curricula that exclude or disadvantage students with disability
- be designed to support inclusion, focusing on genuine learning outcomes rather than assumptions about how, or by whom, those outcomes can be achieved.

To give effect to these obligations, clearer guidance and stronger compliance mechanisms are required. Accreditation-linked inherent requirements should never operate as gatekeeping tools to prevent enrolment or course selection, but should instead reflect enabling, competency-focused standards consistent with section 22(2A). This could be supported through coordinated oversight and guidance by the

Australian Human Rights Commission, working with the relevant tertiary education regulators.

5.3.1 Recommendations on inherent requirements

- Amend section 21A(2) of the DDA to require consideration of:
    - the nature and extent of adjustments that have been or could reasonably be made
    - the extent of consultation with the person with disability.
- Task the AHRC, in partnership with the Australian Skills Quality Authority (ASQA) and the Tertiary Education Quality and Standards Agency (TEQSA), to develop guidance and conduct regular reviews of inherent requirement statements in tertiary education to ensure they remove exclusionary requirements, comply with the DDA, and promote enabling, competency-focused standards. This work should be undertaken in close collaboration with Disabled People's Organisations, student organisations, and accreditation bodies.

5.4 Exclusionary discipline

Exclusionary discipline denies students with disability their right to education and perpetuates systemic discrimination and excuses a systematic failure to properly support students.

The Disability Royal Commission heard extensive evidence of inappropriate use of suspension and exclusion in primary and secondary education. They found that these practices:

- disrupt learning and social development
- increase the risk of disengagement, poor educational outcomes, and contact with the justice system

- disproportionately affect students with disability, often before adjustments or trauma-informed supports have been provided.[82]

ACIE members consistently report that exclusion is often applied pre-emptively or punitively, rather than as a last resort. Behaviour plans are frequently developed after incidents to justify exclusion, rather than to prevent recurrence. School disciplinary frameworks tend to reflect ableist expectations, emphasising strict compliance and predetermined consequences, rather than inclusive and educative responses.

Research reinforces these concerns. A South Australian review in 2021 identified systemic overuse of suspension and exclusion, with children with disability disproportionately affected.[83] It also discussed that informal "take-home" practices, where parents are asked to collect their child early from school, are widespread and often undocumented. Although framed as temporary or voluntary, these practices constitute forced removals from the classroom without procedural safeguards, formal documentation, or evidence that appropriate adjustments have been made.[84] These practices deny students with disability their right to education and breach Australia's obligations under Article 24 of the CRPD.

5.4.1 Legislative reform

We support the intent of Recommendation 7.2 of the Disability Royal Commission, which called for the DDA to be amended to clarify that it is unlawful for an education provider to suspend or exclude a student on the basis of disability. However, we recommend broader wording to ensure the protection applies across *all* education stages. We endorse the recommendation of the ADLEG that the DDA be amended directly to define and prohibit *exclusionary discipline* in education.[85]

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[82] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, pp 163-166.
[83] Graham et al., (2020). *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report.* The Centre for Inclusive Education, QUT, Brisbane, Queensland.
[84] Graham et al., (2020). *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report.* The Centre for Inclusive Education, QUT, Brisbane, Queensland.
[85] UN Committee on the Rights of Persons with Disabilities, *General Comment No. 6 on equality and non-discrimination* (2018) [29].

To give effect to these recommendations, section 22(2) of the DDA should be amended to replace “by expelling the student” with:

> “by subjecting the student to exclusionary discipline.”

Exclusionary discipline should then be defined in the DDA as:

> “any action by an educational authority or institution that results in the withdrawal, reduction or denial of a student with disability’s enrolment, attendance or participation in education or training, including suspensions, expulsions, exclusions, informal or undocumented removals, required part-time attendance, and cancellation of enrolment in early childhood education and care.”

A broad definition is essential, as exclusionary discipline takes several forms, with many of them informal and unrecorded, but all have the same effect of denying access to education.

ACIE members also report that:

- there is a persistent lack of understanding among many education duty-holders that “disability” under the DDA includes behaviour that is a symptom or manifestation of disability
- exclusionary discipline is typically justified on the grounds of safety or disruption, without any requirement to demonstrate that appropriate adjustments or trauma-informed supports were in place for the student with disability.

As such, we recommend including in section 22 a requirement that education duty-holders, in ensuring that they are not subjecting the student to exclusionary discipline on the ground of disability, consider:

- whether the reasons for the use of exclusionary discipline relates to conduct or behaviour that is a symptom or manifestation of disability
- whether they have met their duty to provide adjustments to the student
- whether they have met their positive duty to prevent discrimination and promote inclusive equality.

Further, any decision to impose exclusionary discipline should be documented, with written reasons provided to the student and family, and be subject to review. We recognise that these procedural requirements may be better suited to state and territory education legislation, in line with the Disability Royal Commission's Recommendation 7.2.

5.4.2 Recommendations on exclusionary discipline

- Amend section 22(2) of the DDA to replace "by expelling the student" with "by subjecting the student to exclusionary discipline."
- Insert a definition of "exclusionary discipline" as noted above
- Include in section 22 that provides education duty-holders must consider:
    - whether the relevant conduct or behaviour is a symptom or manifestation of disability
    - whether they have met their duty to provide adjustments to the student
    - whether they have met their positive duty to eliminate discrimination.

6. IMPROVING ACCESS TO JUSTICE (PART 4)

This section addresses two areas of reform with particular significance for education: harassment and offensive behaviour, and vilification. These issues are not peripheral to education, but go to the heart of whether students with disability are safe and supported to participate in education on an equal basis with others.

As the Disability Royal Commission observed, negative attitudes and low expectations of students with disability are among the most persistent barriers to inclusion.[86] Such attitudes often manifest as gatekeeping, inappropriate use of exclusionary discipline, failure to provide adjustments, and denial of opportunities to participate fully in school life.[87]

Strengthening the DDA to prohibit harassment, offensive behaviour and vilification would help dismantle these attitudinal barriers. It would send a clear normative message that disability-based hostility and prejudice have no place in schools or the broader community, and it would provide students and families with enforceable legal protections.

6.1 Harassment and offensive behaviour

Sections 35–39 of the DDA already make harassment unlawful in education, but the Act does not define harassment or extend protections to offensive behaviour. The Disability Standards for Education includes a definition of harassment, but this should be reinforced in the DDA itself to provide clarity and consistency.

Negative attitudes and ableist behaviours in schools and other education settings often manifest as offensive, humiliating or intimidating conduct — not always reaching the threshold of "harassment" as currently understood. This leaves a gap in protection: students may be subjected to derogatory jokes, slurs or other humiliating treatment that undermine their right to inclusive education, but which are not adequately captured by existing provisions. The absence of a statutory definition of

[86] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, pp 155 -157
[87] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final report, Volume 7: Inclusive Education, employment and housing, pp 155.

harassment in the DDA compounds this gap, leading to inconsistency in enforcement and weakening protections.

We therefore support Recommendation 4.29 from the Disability Royal Commission, which called for a new provision modelled on section 18C of the *Racial Discrimination Act 1975* (Cth). This would make it unlawful to do an act, otherwise than in private, that is reasonably likely to offend, insult, humiliate or intimidate a person or group of people, where the act is done because of disability.

This reform is essential to tackling ableism in education — that is, the prejudice, stereotyping and systemic disadvantage that is directed at students with disability. A growing body of research has demonstrated that ableism is pervasive in Australian education systems and drives exclusion from meaningful participation and learning.[88]

We recognise that strong protections must be balanced with freedom of expression. Limited exceptions may be appropriate, drawing on the model in section 18D of the *Racial Discrimination Act 1975*. That provision excludes from liability conduct done "reasonably and in good faith" in the course of artistic work, academic or scientific discussion, or in making a fair and accurate report. A comparable approach could be adopted in the DDA to ensure that legitimate educational, artistic or scholarly activity is not inadvertently constrained. For example:

- a teacher facilitating a respectful classroom discussion about stereotypes, ableism and discrimination
- a student undertaking a drama performance exploring the impact of prejudice on people with disability
- researchers publishing findings on systemic ableism in education, even where they describe offensive attitudes.

[88] Campbell, Fiona Kumari 2001, *Inciting legal fictions: Disability's date with ontology and the ableist body of the law*, *Griffith Law Review*, vol. 10, no. 1, pp. 42–62; Rauscher, Laura, and McClintock, Mary 1997, *Ableism curriculum design*, in Maurianne Adams, Lee Anne Bell and Pat Griffin (eds), *Teaching for diversity and social justice: A sourcebook*, Routledge, New York, pp. 198–216; De Bruin, Kate 2019, *Towards inclusive education: A necessary process of transformation*, Macquarie University, Sydney; Duncan, Judith, Punch, Renée and Crothers, Linda 2020, *The rights of students with disability in Australian education: Towards a more equitable future*, *Australian Journal of Education*, vol. 64, no. 1, pp. 7–24; Graham, Linda J. 2018, *Questioning the impact of applied behaviour analysis on disabled students and their inclusion*, *Disability & Society*, vol. 33, no. 7, pp. 1114–1119.

Any exception must, however, be tightly confined to prevent misuse. It should apply only to conduct undertaken reasonably, in good faith and for a genuine purpose — and never in ways that humiliate, exclude or diminish the equal participation of students with disability.

6.2 Vilification

We support Recommendation 4.30 from the Disability Royal Commission, which called for the DDA to be amended to prohibit vilification on the ground of disability or perceived disability. Vilification should be defined consistently with other vilification laws to include conduct that incites hatred, serious contempt or severe ridicule, or that threatens violence, towards people with disability.

This reform is necessary because the DDA currently contains no protection against vilification. While recent reforms to the *Criminal Code* extend certain hate crime offences to disability, criminal law is confined to the most extreme cases. It does not capture the full spectrum of harmful conduct that fosters hostility and exclusion. A civil prohibition in the DDA would fill this gap, complement state and territory anti-vilification laws, and provide an important educative function.

In education, such a provision would send a clear signal that disability-based hate, contempt and ridicule have no place in classrooms, lecture halls, training environments, or online platforms linked to learning. It would support providers across all education settings to take stronger action where students with disability are targeted, and reinforce that building inclusive learning communities requires challenging not only overt discrimination but also vilification and hate.

6.3 Recommendations

- **Amend the DDA to include a new provision on offensive behaviour**, modelled on section 18C of the *Racial Discrimination Act 1975* (Cth), making it unlawful to do an act, otherwise than in private, that is reasonably likely to offend, insult, humiliate or intimidate a person or group of people because of disability. This should apply to conduct in public and online education settings.

- **Insert a statutory definition of harassment in the DDA**, consistent with the definition in section 8.1 of the Disability Standards for Education, to ensure clarity and consistency across the legislative framework.
- **Amend the DDA to prohibit vilification on the ground of disability or perceived disability**, defined consistently with existing vilification laws to include conduct that incites hatred, serious contempt, or severe ridicule, or that threatens violence.
- **Limit and carefully draft exceptions** (drawing on the model in section 18D of the *Racial Discrimination Act*), to ensure that legitimate educational, artistic or scholarly activities undertaken reasonably and in good faith are not inadvertently restricted, while preventing misuse in education contexts.

7. EXEMPTIONS (SPECIAL MEASURES) (PART 5)

In this section we focus on section 45 of the DDA, given its direct relevance to education. While special measures can play an important role in advancing equality, the current drafting of section 45 is inconsistent with Australia's obligations under the CRPD and progressively realising inclusive education.

7.1 Consistency with the CRPD

Article 5(4) of the CRPD provides that "specific measures", which are necessary to accelerate or achieve de facto equality, are not discrimination. The CRPD Committee has clarified that such measures must be consistent with the CRPD's principles and provisions, and must not perpetuate segregation, stereotyping or discrimination.[89]

As such, the adoption of affirmative action measures does not constitute a violation of the right to non-discrimination in the area of education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups.

As discussed in section 3, multiple UN treaty bodies have affirmed that segregation in education, including so-called "special" schools, units or co-located facilities, is a form of discrimination. These settings perpetuate inequality by removing students with disability from the general education system and denying them the supports and accommodations to genuinely participate on an equal basis with others.

The DDA should be strengthened to recognise that segregation in education constitutes unlawful discrimination, consistent with the authoritative interpretation of the CRPD.

Section 45, as currently drafted, does not include these safeguards. In particular:

- it allows segregated education to be justified as a "special measure," even though segregation breaches Article 24 of the CRPD

[89] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [29].

- it uses the outdated language of “special” needs, which has been associated in the education context with othering and marginalisation[90]
- it does not specify that measures must be consistent with the aims and objects of the DDA.

7.2 Recommendations

To bring section 45 into line with the CRPD we recommend:

- the term “special measures” be replaced with “specific measures”
- define specific measures as one that meets the following criteria:
    - is a positive or affirmative action designed to accelerate or achieve de facto equality of opportunity for people with disability
    - is consistent with the principles and provisions of the CRPD and the objects of the DDA, including inclusive equality
    - is based on reasonable and objective criteria, serves a legitimate objective, and is a proportionate means of achieving that objective
    - has been developed in consultation with, and is supported by, representative organisations of people with disability;
- explicitly specify that no measure may be considered “specific” if it perpetuates segregation, isolation, stereotyping or other forms of discrimination.

[90] L Graham, M Medhurst, H Tancredi, I Spandagou and E Walton, ‘Fundamental concepts of inclusive education’ in L Graham (eds) *Inclusive Education for the 21st Century – Theory, Policy and Practice* (1st ed) 2020, p 47.

8. MODERNISING THE DDA (PART 6)

8.1 Enforcement of the Disability Standards

The Disability Standards for Education 2005 (DSE) were introduced to clarify the obligations of education providers under the DDA, and to ensure that students with disability could access and participate in education on an equal basis with others. In practice however the DSE have not achieved this objective.

8.1.1 Key issues

- **Lack of systemic enforcement mechanisms**: There are no effective levers to drive compliance across education systems. The DSE provide limited incentives for proactive compliance by providers and fail to address systemic patterns of discrimination.
- **Absence of transparency and accountability**: There is no systematic reporting on whether education providers are meeting their obligations under the DSE, and no accessible data to monitor progress toward inclusive education.
- **Weak integration with regulators:** School registration and accreditation processes rarely assess compliance with the DSE. Providers can satisfy sectoral regulations yet still breach their obligations under the DDA.
- **Content misalignment:** The DSE contain several provisions which are misaligned with the DDA, that weaken rights protection and create confusion. These include:
    - Defining adjustments as “reasonable” if it balances the “interests of all parties affected” (s 3.4) contrary to case law on the meaning of “reasonable adjustment” under the DDA and proposed DDA reforms
    - Using the phrase *on the same basis,* which is not used in the DDA or the CRPD, and implies formal equality, obscuring indirect discrimination and systemic barriers. The CRPD instead adopts on “an equal basis with others”, which the CRPD Committee has explained links all

substantive rights to the non-discrimination principle,[91] informed by the model of inclusive equality that underpins the CRPD.

- The inclusion of a defence of *unjustifiable hardship* (in addition to the DDA) undermines the Standards' role as minimum benchmarks, in addition to existing tests under the DDA.

- **Delayed reviews:** Although reviews of the Disability Standards are required every five years, they are routinely delayed for years. Even when they do occur, action by the government to implement the recommendations of the review are rarely taken, leaving critical reforms unimplemented.

8.1.2 Recommendations

8.1.2.1. Strengthened AHRC powers

To ensure effective enforcement of the DSE, the AHRC should be granted enhanced statutory powers under the DDA to:

- **Investigate systemic non-compliance** with the DSE, including powers of own-motion inquiry.
- **Issue compliance notices** requiring education providers to remedy breaches within a specified timeframe.
- **Enter into and enforce undertakings**, ensuring that systemic issues are addressed beyond individual cases.
- **Publish sector-wide findings** and compliance reports to promote accountability and sector-wide learning.

We discuss broader accountability and enforcement measures across the DDA in section 9.

[91] Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on equality and non-discrimination*, 19th sess, UN Doc CRPD/C/GC/6 (26 April 2018) [7].

8.1.2.2. National reporting framework

A robust reporting obligation should require all education providers to demonstrate compliance with both the DDA (including the positive duty)[92] and the DSE.

The DDA's Action Plans provide a practical mechanism for this purpose and could be strengthened to require education providers and systems to develop, submit and report on plans demonstrating how they are meeting their duty to advance equality and inclusion (see section 8.2 for discussion on DAP requirements).

A revised reporting framework should:

- be co-designed with education stakeholders, inclusive education academics, and representative disability organisations
- require education providers to report on progress in taking proactive steps to (i) identify and remove barriers to inclusion and (ii) ensure accessibility, consistent with their positive duty
- include reporting on enrolment, participation, adjustments, exclusionary discipline, and outcomes for students with disability
- be integrated, where possible, with existing processes such as the Nationally Consistent Collection of Data on School Students with Disability (NCCD), to minimise duplication and ensure consistency.

8.1.2.3 Reviews and governance that deliver change

- **Hard five-year completion rule**. Amend the DDA to require each DSE review be completed within five years of the previous legislative completion date.
- **Standing expert advisory group**. Establish a standing, resourced expert advisory group (including people with disability and representative organisations, and inclusive education experts) to inform reviews and guide development of resources to support implementation.

[92] See also Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, Recommendations 2.5

- **Timely government response**. Require a government response to DSE review recommendations within a fixed timeframe (e.g., six months), with an implementation plan and progress updates.

8.1.2.4. Alignment between the DDA and DSE

A range of amendments are required to the DSE to address the content misalignment issues and to ensure coherence with amendments to the DDA. We recognise these are not within scope of the current review, and some of these will be dependent on the final amendments to the DDA, but note the key changes would be:

- **Remove "reasonable" from "reasonable adjustments"** – and amend s 3.4 to align with the proposed standalone duty in the DDA. Even if this standalone duty is not introduced, amendments are urgently needed to align with the current requirements under the DDA, as interpreted by the Courts.
- **Clarify discrimination concepts** – replace "on the same basis" formulations with language that expressly engages both direct and indirect discrimination and systemic barriers, aligning with the unified discrimination definition we propose for the DDA.
- **Embed Universal Design for Learning (UDL)** – Insert explicit UDL obligations in Part 6 (curriculum development, accreditation and delivery) to prevent barriers at source and reduce reliance on individual adjustments.
- **"Disability-ready and responsive"** – Insert provisions requiring education providers to: (a) audit accessibility and remove barriers and (b) maintain educator capability and resources for inclusion.
- **Anticipatory planning to meet the positive duty** – Expand on the requirements to meet the positive duty in the context of realising inclusive education.
- **Remove the unjustifiable hardship section** from the DSE, instead relying on the test in the DDA.

8.2 Disability Action Plans

We support strengthening the DAP framework in line with recommendations from the ADLEG.[93] For education related DAPs, we make the additional recommendations:

- **Whole-of-setting implementation focus:** Require education DAPs to demonstrate how inclusion is embedded across curriculum, pedagogy, assessment, enrolment processes, facilities and culture. Each plan should outline how inclusive education principles (including Universal Design for Learning principles) are built into teaching practice and professional learning.
- **Governance alignment:** Require DAPs for education providers to be formally endorsed by the governing body (e.g. school board, system authority or university council) and linked to existing strategic and improvement planning cycles. This ensures inclusion planning is not siloed or optional.
- **Data integration and accountability:** Education DAPs should:
    - Interlink with existing reporting frameworks, including the Nationally Consistent Collection of Data on School Students with Disability (NCCD). DAPs could record and publicly report on aggregated data on adjustments provided
    - report annually on inclusive education indicators, developed in conjunction with inclusive education experts and disability and student representative organisations.

  This will help to strengthen transparency and national monitoring of inclusive education under Article 24 of the CRPD.
- **Student voice and co-design:** Mandate consultation with students with disability (and families) in developing, monitoring and reviewing education DAPs, using accessible engagement processes appropriate to children and young people with disability.

[93] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, pp 102-108.

9. FURTHER OPTIONS FOR REFORM – ACCOUNTABILITY AND ENFORCEMENT (PART 7)

In addition to the areas outlined above, there remain important gaps in the DDA that limit its effectiveness as a tool for achieving systemic change. In particular, the current framework lacks the accountability mechanisms needed to monitor compliance, track progress and ensure continuous improvement towards eliminating discrimination and realising inclusion, including in education.

To build a legislative regime capable of driving and sustaining inclusive education, three key reforms are recommended: systemic investigations and representative complaints, stronger enforcement powers, and transparent public reporting.

9.1 Systemic investigations and representative complaints

The DDA's current individual complaints model is not well-suited to addressing systemic discrimination in education because:

- it places a disproportionate burden on individual students and families, who often lack the resources and support to pursue complaints
- it fragments systemic problems into isolated disputes, preventing identification of broader patterns of discrimination
- it creates risk of re-traumatisation and exposure to adversarial processes, discouraging students and families from pursuing their rights.

To address these shortcomings, we support ADLEG's recommendations that the DDA should be amended to:

- **Permit own-motion investigations:** Empower the AHRC or the Disability Discrimination Commissioner to initiate investigations into potential breaches of the DDA as if they had received a complaint, and, where a prima facie case exists, to commence proceedings in the Federal Court.[94]

[94] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, Recommendation 7.1.

- **Introduce a "super complaint" mechanism:** Designate key disability representative bodies (that, importantly, meet the criteria of a DPO under General Comment No.7) as authorised entities to make complaints about significant or systemic issues, [95] including:
    - institutional non-compliance with the Disability Standards
    - suspected non-compliance with the positive duty.[96]

  The AHRC should be required to respond within a set timeframe and allow a full range of responses including inquiry, compliance undertakings, education or enforcement.[97]

These reforms would align the DDA with contemporary enforcement models in consumer and workplace law and enable structural remedies to systemic discrimination in education.

9.2 Enforcement and remedies

To be effective, systemic investigations must be supported by clear powers to enforce compliance and secure remedies that extend beyond individual cases. We recommend amendments to the DDA to empower the AHRC to take enforcement action where breaches or systemic non-compliance are identified, including in respect of the positive duty and the Disability Standards. This should include making binding determinations to remedy systemic discrimination and a range of other sanctions for non-compliance.[98]

Remedies should extend beyond compensation to include structural orders — such as policy reform, accessibility improvements or mandatory training — to prevent recurrence and promote continuous improvement. These powers would align the DDA with modern enforcement frameworks in workplace and consumer law and

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[95] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, Recommendations 6.3.1–6.3.2.
[96]Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, Recommendation 2.14
[97] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, Recommendations 2.14, 7.2.
[98] See for example, Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, pp 64-65.

ensure that discrimination in education is addressed proactively, consistently and transparently.

9.3 National reporting on systemic issues

At present, there is no robust national reporting on compliance with the DDA and DSE in education. This undermines transparency and prevents effective monitoring of progress towards inclusive education. We support the ADLEG's recommendations for amendments to the DDA to empower the AHRC to identify systemic issues regarding individual complaints and/or positive duty complaints, similar to the Administrative Review Tribunal.[99]

We recommend specific reporting across areas of public life covered by the DDA, with a standalone national report on education. This report should analyse trends, highlight systemic barriers, and identify progress in implementing inclusive education reforms.

The AHRC should establish an Inclusive Education Advisory Body, comprised of inclusive education experts and representative organisations of people with disability, to support this function through co-design, data interpretation, and lived experience input.

Together with provider-level reporting (see section 8.1.2.2), these measures would create a cohesive national reporting system that links compliance, transparency, and systemic reform.

[99] Australian Discrimination Law Experts Group, Submission in response to the Commonwealth Attorney-General's Department Review of the Disability Discrimination Act, 16 October 2025, Recommendation 7.3.

10. CONCLUSION

The DDA was a landmark piece of legislation when it was introduced in 1992. But more than three decades on, it has become clear that it has not delivered on its promise of addressing discrimination in education. Segregation has deepened, exclusion remains routine, and the burden of enforcing rights continues to fall on students and families.

Reform is now essential. The DDA must evolve from a reactive, complaints-based model to a proactive, rights-based framework that drives systemic transformation. A modernised Act, aligned with the CRPD, would no longer treat equality as an afterthought to be claimed one student at a time, but as a collective responsibility embedded in law, policy and practice.

A strengthened DDA can help realise the fundamental human right of every student with disability to inclusive education – shifting the focus from individual remedies to systemic accountability, from adjustment to transformation, and from integration to genuine inclusion.

APPENDIX

This submission is endorsed by the following organisations:

- Australian Disability Clearinghouse on Education and Training (ADCET)
- Autistic Self Advocacy Network of Australia and New Zealand (ASAN AUNZ)
- Community Resource Unit (CRU)
- Down Syndrome Australia
- Family Advocacy
- Imagine More
- Queensland Collective for Inclusive Education (QCIE)
- Sa4i – Student Alliance 4 Inclusion
- Square Peg Round Whole
- YDAN Youth Disability Advocacy Network