



Review of the Disability Standards for Education 2005

**Submission by
The Independent Schools Council of Australia (ISCA)**

to

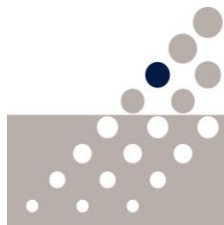
The Department of Education, Employment and Workplace Relations

About ISCA

The Independent Schools Council of Australia (ISCA) is the peak national body covering the independent schools sector. It comprises the eight State and Territory Associations of Independent Schools. Through these Associations, ISCA represents a sector with 1,090 schools and around 550,000 students, accounting for 16 per cent of Australian school enrolments. ISCA's major role is to bring the unique needs of independent schools to the attention of the Commonwealth Government and to represent the sector on national issues.

Independent schools are a diverse group of non-government schools serving a range of different communities. Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education. Independent schools include:

- Schools affiliated with larger and smaller Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist and Presbyterian schools
- Non-denominational Christian schools
- Islamic schools
- Jewish schools
- Montessori schools
- Rudolf Steiner schools
- Schools constituted under specific Acts of Parliament, such as grammar schools in some states
- Community schools
- Indigenous community schools
- Schools that specialise in meeting the needs of students with disabilities
- Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other risk factors.



Independent schools are not-for-profit institutions founded by religious or other groups in the community and are registered with the relevant state or territory education authority. Most independent schools are set up and governed independently on an individual school basis. However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example the Lutheran system. Systemic schools account for 17 per cent of schools in the independent sector.

Independent Catholic schools are a significant part of the sector, accounting for 10 per cent of the independent sector's enrolments. These schools have been included in the figures above.

Key points

1. From the perspective of the independent sector, the introduction of the Standards was a significant and positive move forward in supporting the provision of education for students with disabilities.
2. The role of the independent school sector in providing for students with disabilities has increased significantly in recent years. The growth in enrolments of students with disabilities in independent schools has been greatest in mainstream schools.
3. The Standards have provided a common framework of language and process that assist schools to be compliant with the *Disability Discrimination Act 1992*.
4. Further development of the Standards to achieve greater clarity of terminology, obligations, expectations and processes would significantly assist schools to understand their obligations under the *Disability Discrimination Act 1992*.
5. The impact of the *Disability Discrimination Act 1992* and associated Standards requires schools to accept enrolments of all students irrespective of the nature of their disability but without commensurate government funding to support them.
6. It is essential that governments provide adequate funding support to all students with disabilities, regardless of the type of school they attend, to enable schools to better meet their obligations to students with disabilities.
7. All educational providers and students with disabilities require ongoing professional learning opportunities that will enable them to maintain their legislative obligations outlined in the Standards.

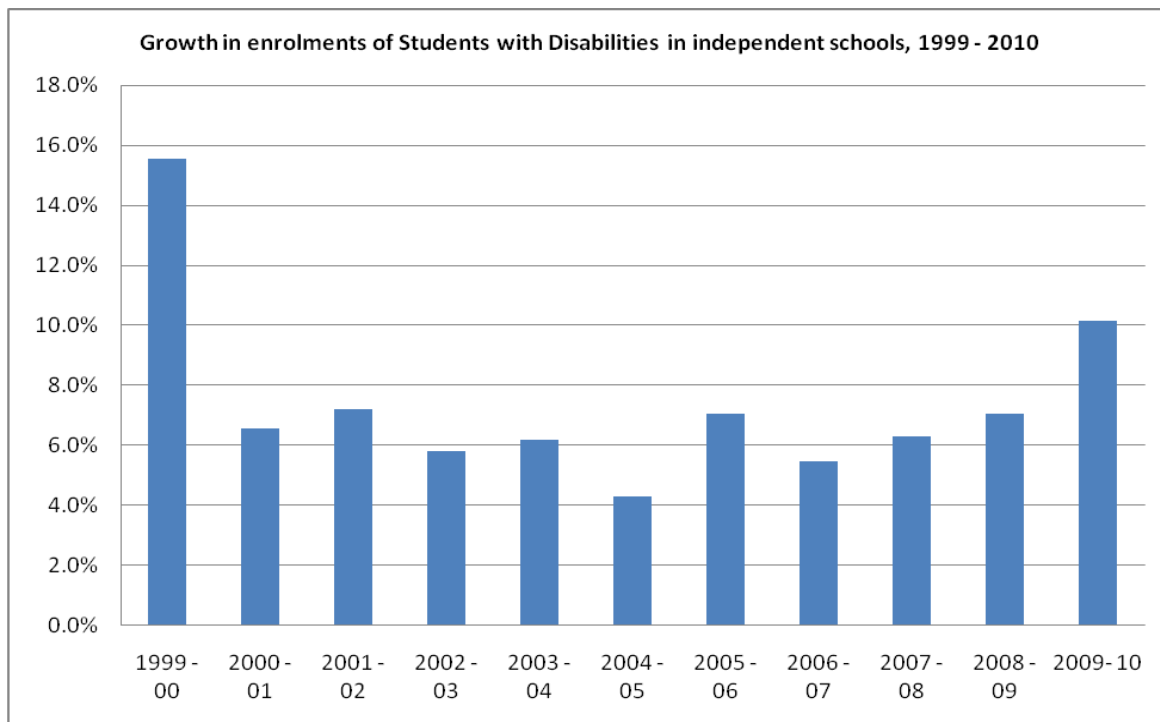
Introduction

The Independent Schools Council of Australia (ISCA) is pleased to have the opportunity to make this submission in response to the Review of Disability Standards for Education 2005. This submission addresses a range of issues directly related to the Reviews' Terms of Reference, and other issues related to the provision of education for students with disabilities that are of particular concern to the independent schools sector.

ISCA and the eight State and Territory Associations of Independent Schools (AISs) are not, strictly speaking, 'education providers' as defined by the institutions and organisations described in the Standards. Unlike other sectors, the majority of independent schools operate autonomously. While almost all independent schools choose to become members of their state and territories AIS, the AIS does not act as a 'system authority' for the sector.

As the Independent sector is not a system and therefore cannot develop systemic policies the introduction of the standards was significant in setting a clear direction for students with disabilities, their associates and for schools within the sector. **The Standards have provided a much needed process and consistent language to enable schools to be compliant with the legislation and for state AISs to support them in the implementation of this process.**

The role of the independent school sector in providing for students with disabilities has increased dramatically in recent years. In 2010, around 12,170 students with disabilities were enrolled in independent schools, an enrolment increase of 89 per cent since 1999. About 79 per cent of these students were enrolled in mainstream schools and around 21 per cent enrolled in special schools which provide alternative educational settings for students with high-level needs.¹



¹ DEEWR Non-Government School Census 2010 – includes independent Catholic enrolments

Factors influencing the increased enrolments are:

- The changing trend in all sectors, to students with disabilities being educated in mainstream schools
- The *Disability Discrimination Act 1992* gave parents a choice as to where their children would be educated
- There was recognition that students with disabilities be offered the same educational opportunities as other students

The growth in enrolments of students with disabilities has been greatest in mainstream schools, which now account for some 79 per cent of students with disabilities in independent schools, including those with high to very high support needs.

As an example of this growth, in 1992, the year the Disability Discrimination Act was enacted, students with disabilities enrolled in independent special schools in New South Wales outnumbered those in mainstream classes at regular independent schools in New South Wales by 2 to 1. By 2010, this situation had been reversed with more than twice as many students with disabilities enrolled in regular schools compared to those enrolled in special schools.

However, it is also the case that in other states, such as Victoria, **there has been significant growth in the number of students enrolled in independent special schools** due to the number of independent special schools that have opened in the last 10 years.

The *Disability Discrimination Act 1992* and associated Disability Standards for Education 2005 require schools to accept enrolments of all students irrespective of the nature of their disability, without commensurate funding to support them. **Lack of adequate government support for students with disabilities in independent schools is a major constraint for schools seeking to enrol these students.** The independent sector believes that students with disabilities must be appropriately and equitably resourced by governments regardless of the type of school they attend.

Question 1 - Providing clarity

1. The introduction of the Standards was a significant move forward in supporting the provision of education for students with disabilities.
2. One of the most important features of the Standards is that they have provided a common framework of language and processes that enable schools to be compliant with the *Disability Discrimination Act 1992*. However, **while the Standards have provided a common language with which to discuss the provision of education for students with disabilities**, it is also the case that **certain terminology has, in practice, raised further issues that need to be addressed.**
3. Whilst some explanation has been made available within the Standards further clarification is required around the following terminology used within the Standards such as, '*on the same basis*', '*reasonable adjustments*', '*the inherent requirements of the course*'. The clear and consistent understanding of these terms is critical to the effective implementation of the intent of the Standards, since currently each of these terms is open to a varying array of interpretations. **The variety of interpretation may lead to the intent of the Standards not being effectively met in practice.**

4. *'Unjustifiable hardship'* is another term that requires further clarification. Schools in the sector have advised that in their experience, parental opinion and professional opinion of what constitutes *'unjustifiable hardship'* can often vary markedly. There is in general, a lack of understanding that *'unjustifiable hardship'* refers to more than only unjustifiable financial hardship. In addition there is confusion that the financial resources available to the educational authority are more than those resources quarantined to support students with disabilities. Legal advice is typically required should schools wish to appeal for a case of *'unjustifiable hardship'*. Clearer guidance around the use of this term is required in the Standards.
5. **A more complete and comprehensive understanding of the terminology used within the Standards can be gained through reference to the Guidance Notes.** For example, the Guidance Notes provide a more extensive overview of the concept of *'reasonable adjustments'* than the Standards. This can be problematic as the Standards are often read in isolation of the Guidance Notes and thus important elements to provide clarity are missed.
6. Further clarification is required relating to the obligations entailed by the Standard for student support services as this Standard often involves a considerable degree of judgement. **The area of student support services is one in which there is often a divergence between users and providers in the interpretation of obligations.** The provisions may relate to services such as Applied Behavioural Analysis, assistance dogs, and other significant interventions.
7. While such services may be considered to be a reasonable support service in a particular context, the provision of the service often raises queries that are not adequately covered by the Standards. For example, in the case where an ABA intervention program to operate within a school is recommended by a specialist and requested by the associate of the student questions may be raised regarding who in the school is responsible for the oversight and supervision of the ABA program who will the ABA therapist be directly responsible to; and the factors considered in determining this pedagogical approach employed. Is this a *'reasonable adjustment'* given the context of a particular school?
8. The Standards for Student Support Services currently does not provide sufficient information to resolve these issues.
9. **The Measures for compliance have, in many cases, been the most useful aspect of the Standards for providers and have been essential to demonstrate to schools their obligations towards students with disabilities.** However, the measures of compliance relating to the Standard for curriculum development, accreditation and delivery lack clarity such that it is very difficult to determine the obligations of the provider under this Standard.
10. **The Standards also appear to be unclear in their objectives in a number of other areas.** For instance, Day Care Centres are not considered to be education providers under the Standards but Out of Hours School Care Centres are covered by the Standards if they are a support service provided by the school.
11. The objective of the Standards in relation to boarding facilities run by providers also appears to be unclear. A boarding facility run by a school may be required to provide constant 24 hour care to a

student with disability. The Standards currently lack clarity as to whether this kind of situation may be considered a *'reasonable adjustment'*.

12. **Greater clarity could be facilitated by the provision of case studies from conciliations and case law.** Case examples of imputed disabilities, disabilities that previously existed, and disabilities that will exist in the future would be extremely beneficial. This information may be contained within a Standards support document that is regularly updated.
13. As stated previously, a more comprehensive understanding and application of the Standards is made through reference to the Guidance Notes that accompany the Standard. However, this can be problematic as the Guidance Notes are not a legal document and the Standards are often read in isolation of the Guidance Notes. In order to avoid confusion and to support schools in the best possible manner, **the Standards and critical elements of the Guidance Notes should be merged in to one comprehensive legal document.**

Question 2 - Obligations under the Standards

1. The Standards outline significant obligations of providers which have implications for them in general and specific implications for providers in the independent sector. As noted above, in various places the Standards lack the required clarity to ensure that all providers clearly understand their obligations under the Standards. As a result, there may be a considerable number of schools who are not fully aware of all their obligations under the Standards.
2. **While the Standards have assisted schools**, in that they make clear what obligations the providers have with regard to students with disabilities and their associates, **it is also the case that various complicated issues have arisen as a result of the obligations.**
3. The impact of the *Disability Discrimination Act 1992* and associated Standards requires schools to accept enrolments of all students irrespective of the nature of their disability. **The overall costs to facilitate access to and participation in the education provided by the school as specified in the Standards, are often substantial.** To meet the needs of students with disabilities schools are required to provide a range of adjustments which incur significant additional costs. These costs are unique to each student depending on the specific nature of their support needs and can vary widely.
4. Costs may involve capital and/or ongoing recurrent expenditure. Capital expenditures can take the form of the costs to modify buildings to allow the student with disabilities access to the school campus (for example, lifts, ramps, widening of doorways and modifications to toilet facilities) and specific equipment (for example, specialist computing facilities, and braille resources).
5. Additional recurrent expenditure is often incurred to meet the cost of specialist teaching advice, teacher aides, therapy services and the development of specialist teaching resources. **The obligations that have been outlined for providers to meet have not been matched by commensurate and equitable funding provisions to support students and providers in the independent schools sector.** This important issue will be further discussed below.
6. The sustainability of knowledge for education authorities is a major difficulty for schools in meeting their obligations under the Standards. The traction of education in this area is limited due to the

complex and mobile nature of the educational environment. **It is imperative that improved, targeted, ongoing professional development is undertaken by all teachers in order to ensure that they are well equipped to respond to the full range of students needs to appropriately implement the Standards.**

7. It is ISCA's view that the funding to support this process is the responsibility of the Commonwealth. Significantly **there has been no educational support stemming from the Commonwealth to support the implementation and operation of the Standards**; it has been left to each individual educational jurisdiction. Ongoing training is required to support the interpretation and implementation of the Standards.
8. **Education at pre-service and post-graduate special education training is critical** with regard to the interpretation of the *Disability Discrimination Act 1992* and the Standards. Currently there appears to be limited pre-service training to prepare classroom/subject teachers for educating students with disabilities. This situation is compounded by a lack of available, appropriately qualified post-graduate special education teachers to provide advice and support in the legislated individual planning process.
9. There is no argument about the willingness of independent schools to meet their social and legal obligations to enrol students with disabilities. It should, however, be recognised that **enrolment of a student with disabilities may operate differently in an independent school than an enrolment in a school that is part of a system.**
10. Education providers operating within a system that enrolls students with disabilities, as they are but one part of a systemic structure, have the opportunity to investigate and provide a reasonable alternative educational location in another part of that system. Schools systems are able to benefit from efficiencies of scale and have the capacity to move funds across education providers in order to appropriately support students with disabilities. Independent schools, as they are governed independently on an individual school basis, have no such opportunity. This issue is referred to in the Guidance Notes but not in the Standards themselves.
11. **The Standards present the obligations of the education provider; however there is no guidance within the Standards on the expectations of students with disabilities and their associates.** Arranging the Standards to outline both the obligations and the responsibilities of both the provider and the user would assist to further clarify the process for both providers and users.

Question 3 - Access to education and training opportunities

1. **Using Commonwealth Government targeted funding, AISs provide special education services to independent schools enrolling students with disabilities.** This service includes working collaboratively with school principals, staff, students with disabilities and associates to develop an appropriate individual plan for each student with a disability. These individual plans identify the student's needs and outline adjustments and procedures for implementing appropriate strategies to maximise student access, participation and the provision of support services. Consultants also support schools in determining needs in terms of adjustments to school facilities and the equipment and resources required for individual students

2. These consultants are educators with post-graduate qualifications in special education and vast experience in both management and teaching in the area of supporting schools enrolling students with disabilities. This level of expertise and experience is necessary to assist schools to adequately interpret their obligations outlined under the Standards.
3. Specific support may be required in order to work through the consultation process to indentify a reasonable adjustment and also to assist schools in the determination of mechanisms that are appropriate to the particular individual and school context to implement that adjustment. Adjustments must be considered at ‘point in time’; within a specific context and based on the individual student. It is at this time that schools gain the greatest knowledge regarding the implementation of the Standards.
4. **There is a clear lack of specialist trained teaching staff and allied health professionals** in rural and remote areas. Families are often required to travel extensive distances to access appropriate support. This inhibits families from obtaining much-needed professional opinion, diagnosis and access to services.
5. Students with mental health issues are not always able to access counselling and child and adolescent mental health support services, particularly those within smaller independent schools, and are again reliant on government agencies with extensive waiting lists or on private services to provide the necessary support to the student, family and the school.
6. **Even in metropolitan areas** where the lack of specialist trained teaching staff and allied health professionals is not as severe as regional areas, **there still remains limited access to trained staff.** In addition, the high cost of accessing allied health professionals is a barrier to many families, particularly given the limited funding available to schools.
7. This support often requires staff from schools to be released to travel to and attend meetings with specialist staff. The reality of this situation makes it very difficult at times for schools to meet their obligations stated in Standards around the provision of support services.

Question 4 - Eliminating discrimination

1. Further to the provisions in the *Disability Discrimination Act 1992*, in order to operate as education providers independent schools are required to be registered with the relevant state or territory education authority. **It is a requirement of registration that independent schools have grievance procedures in place for students** who wish to lodge a complaint relating to discrimination, harassment or victimisation.

Question 6 - Compatibility with current education system

1. **The Standards make clear the requirement of the Australian Curriculum, Assessment and Reporting Authority (ACARA) to develop courses and programs that are inclusive of students with disabilities.** This necessitates providing curriculum and performance standards that are based on student achievement, and thus addressing the diverse range of learning needs. The Standards have also made clear the requirement for ACARA to provide course options for the full range of students.

2. The obligations set out in the Standards for education providers to ensure courses and programs allow students with disabilities to develop their skills, knowledge and understanding on the same basis as those without disabilities
3. The design of the Australian Curriculum must build on the framework established by the Standards by providing access for, and be inclusive of, every student. The Curriculum must provide sufficient scope and flexibility in recognition of the diverse learning needs of all students including those with disabilities and special learning needs, regardless of the educational setting in which they are educated. For each curriculum area a continuum of learning must be provided with sufficient scope and detail to determine learning entry points, to plan, monitor and record the progression of learning and achievement of every student.
4. **The independent sector** applauds the capacity for the Australian curriculum to acknowledge individual difference but **seeks clarification of ‘education provider’ responsibilities** under the *Disability Discrimination Act 1992*. If ACARA is an ‘education provider’, does this also extend to the International Baccalaureate Organization (IBO), Accelerated Christian Education (ACE), or any other body that develops curriculum? It appears under sections 1.5(g) and 2.1 of the Standards that all of these bodies may automatically be considered as ‘education providers’.
5. A specific issue in New South Wales is the substantial number of students with disabilities in mainstream settings who access TAFE delivered Higher School Certificate Courses. For students with disabilities and special learning needs in independent schools, the costs to support their access and participation in the TAFE delivered curriculum must be funded by the school, in addition to the course fees. However, the Standards clearly articulate that it is the education provider (in this circumstance TAFE NSW) which is responsible for making and financing any reasonable adjustments required. The situation as it currently stands appears to be inconsistent with the application of the Standards.
6. It is recommended that a more direct reference is made to the obligations of education providers in relation to development of an inclusive curriculum and the recognition and acceptance of students with disabilities within the content and structure of the curriculum and programs.

Question 7 - Other comments

Funding of Students with Disabilities in Independent Schools

1. The numbers of students with disabilities in independent schools continues to grow and the primary constraint on that growth is lack of equitable government assistance. Since 2000, enrolments in independent schools have increased on average at 3.2 per cent per annum while, for example, the number of students with disabilities has increased by 6.6 per cent per annum².
2. **The impact of the *Disability Discrimination Act 1992* and associated Standards requires schools to accept enrolments of all students irrespective of the nature of their disability but without commensurate government funding to support them.** There is no argument about the

² ABS *Schools, Australia* data and DEEWR Non-Government Schools Census 2010 – does not include independent Catholic enrolments.

willingness of independent schools to meet their social and legal obligations to enrol students with disabilities. The growth of enrolments of these students in the sector attests to this. This legislation, however, obliges independent schools to accept students with disabilities without adequate acknowledgement by the Australian Government of the compliance costs to individual independent school communities.

3. **Students with disabilities in independent schools do not receive the same level of additional funding to meet their individual learning needs as their counterparts in government schools.** Despite decades of representations to governments of all persuasions on this issue by the independent sector, lack of adequate funding continues to be a major constraint for schools seeking to enrol students with disabilities or to improve the educational outcomes for students with disabilities who are already enrolled.
4. It must also be recognised that in many cases the students who currently meet the criteria to be eligible for funding are a subset of those whose needs must be addressed by definition under the *Disability Discrimination Act 1992*. It should also be noted that **whilst widening the eligibility criteria for funding of students with disabilities would be the preferred position for schools, the current levels of funding are totally inadequate for those eligible under the existing criteria.** Any widening of the definition must be accompanied by significant increases in government funding to ensure appropriate support for eligible students.
5. The independent sector believes that school choice should be available for the parents of students with disabilities just as it is for other parents. It is highly inequitable and possibly discriminatory that parents of students with disabilities should have their access to the school of their choice constrained by the differential application of government financial support.

Impact of Inequitable Funding of Students with Disabilities in Independent Schools

6. This differential level of support is most manifestly unjust when a student with disabilities is constrained in their capacity to attend the same school as their siblings because of the differential in funding they attract between government and non-government schools.
7. Despite the best intentions of independent schools, the harsh reality is that once parents realise the resource constraints experienced by independent schools for students with disabilities compared to what their child could attract in a government school, they often have to make the difficult decision to send their child to a school which is not their first choice, often leading to separating siblings.
8. **Students with disabilities should receive additional funding support because of their disability, not because of the type of school they attend.**
9. For students with disabilities in government schools, the cost of their education provision is met by the Australian community as a whole. Students with disabilities in independent schools generally receive significantly less government funding for their educational support needs than if they were educated in a government school.
10. For students with disabilities in independent schools, the Australian Government provides a small amount of additional support under its Targeted Programs, specifically the Literacy, Numeracy and Special Learning Needs Program, but there often remains a significant gap in funding to meet the

needs of these students. The funding differential is usually greatest for students with high-level support needs who may require, for example, a full-time aide. As is evidenced by the data available on the My School website, the gap in funding for these students is often in excess of \$40,000 per student per year.

11. Independent schools are not-for-profit institutions that are set up and governed independently, the majority on an individual school basis. **As autonomous, independent entities, most independent schools cannot rely on support from a systemic school authority to provide additional resources to meet the needs of students with disabilities.** Unlike government or Catholic systemic schools where there is capacity to move funding across schools to meet the cost of high need students, individual independent schools need to raise the often significant additional costs of special needs students from within the school community. This means that enrolling special needs students, particularly in middle to low fee schools can place a significant impost on the school community.
12. Many independent schools would like to increase their enrolments of students with disabilities, but must be mindful of the impact on their operations and their school communities and how much additional contribution it is reasonable to ask school communities to make. This is particularly relevant in communities with high numbers of special needs students, and/or schools serving low SES communities or for students who are educationally disadvantaged due to a range of factors including multiple aspects of disadvantage.

Overcoming the Gap in Funding of Students with Disabilities in Independent Schools

13. **For students with disabilities in independent schools, the gap in funding must be met by individual school communities.** The school must either adjust the quality of provision to other students or increase school fees for all families. In some instances, insufficient resourcing means that the needs of particular students with disabilities are barely met and that an optimal educational experience is difficult to provide; this is an unsatisfactory outcome for the student, their family, the school and the broader community.
14. The independent sector is not arguing that any school or sector should receive less support, rather that **the needs of all students with disabilities be appropriately funded by the community through government expenditure, regardless of the type of school in which they are educated.** Students with disabilities should be funded according their educational needs and this funding should follow the student regardless of the type of school they attend.
15. As outlined, the current Australian Government funding arrangements do not adequately meet the costs of addressing the needs of students with disabilities enrolling in independent schools. **It is essential that governments provide adequate funding support to all students with disabilities, regardless of the type of school they attend, to enable schools to better meet their obligations** to students with disabilities and for governments to specifically and appropriately support adherence to their legislative requirements.

Conclusion

The Independent Schools Council of Australia (ISCA) is pleased to have this opportunity to make a submission in response to the Review of Disability Standards for Education 2005.

The introduction of the Standards has been a significant first step in endeavouring to ensure the rights and responsibilities in education and training are understood and effectively applied.

Further development of the Standards to achieve greater clarity of terminology, obligations, expectations and processes would significantly assist schools to understand their obligations under the *Disability Discrimination Act 1992*.

The independent schools sector looks forward to continuing to work with students and their associates, education providers, and governments to ensure that students with disabilities are able to access and participate in education on the same basis as other students.

Bill Daniels
Executive Director
21 April 2011