QUT Centre for Inclusive Education

QUT's Centre for Inclusive Education (C4IE) produces research on matters that affect students in education with the aim of improving the educational experiences and outcomes of *all*, particularly those experiencing marginalisation. Realisation of the right to inclusive education is dependent on the knowledge and skills of all stakeholders involved: students, educators, parents, academics, allied health professionals, policy officers, public servants and politicians. One of C4IE's objectives is to address knowledge gaps and positively influence attitudes by disseminating research evidence, engaging in public debate, and providing quality professional learning opportunities. C4IE makes this submission in response to the 2025 Review of Disability Discrimination Act 1992.

Our submission is structured in two sections. Section 1 outlines core recommendations to create the necessary foundation for successful reform. Section 2 provides responses to the Consultation Questions specific to our knowledge and expertise.

Section 1: Core Recommendations

To achieve the foundation necessary for successful reform of the *Disability Discrimination Act 1992* (DDA; *Cth*), such that it is compliant with the Convention on the Rights of Persons with Disabilities (hereafter CRPD), and aligns with contemporary philosophy and practice, we recommend:

- → **adoption of the human rights and social models of disability which frame disability as the outcome of an interaction between a person with an impairment and barriers to their access and participation**. Through these perspectives, a person is disabled, not by their impairment, but by their environment. This environment is therefore the focus for proactive intervention through the application of universal design principles to remove barriers at the design stage and/or addressing any remaining barriers through the provision of adjustments.
- → **changing the language of the DDA to refer to 'disabled person' rather than 'aggrieved person', reflecting their disablement by social and environmental barriers**. Currently the language of the DDA reflects the medical model of disability which perceives disability as the outcome of individual impairment. The medical model directs focus towards remediation of individuals, contributing to negative perceptions of people with disability and leaving the barriers that disable people with impairments in place.
- → **that the Act's objects and provisions incorporate the Convention on the Rights of Persons with Disabilities** (CRPD; United Nations, 2006) and paying close attention to General Comments that have been published since. The Australian government ratified the CRPD more than a decade and a half ago, but is yet to align legislation, policy or practice with it. The DDA should be reshaped to ensure compliance with the CRPD nationally and should reflect the same strengths- and rights-based intent, including the use of inclusive language. Interpretation of the CRPD, DDA and the *Disability Standards for Education 2005 (DSE; Cth*), and have been problematic in the past, with the most recent example being variable interpretation by Commissioners of the Disability Royal Commission.
- → **amending the DDA to stipulate that the Act be interpreted in the most beneficial way for people with disability.**

Section 2: Our Responses to Relevant Consultation Questions

1 How should disability be defined in the Disability Discrimination Act?

The current definition of disability in the DDA is inaccessible and confusing but also reflects the medical model of disability which has long been rejected by the disability community due to its framing of disability as the consequence of individual deficit. We understand the challenges associated with developing legislation with clear criteria and actionable parameters; however, this can still be achieved using contemporary models and respectful, inclusive language. The social and human rights models of disability are superior in this respect, and we offer an adapted version of the definition used in the *Disability Inclusion Act 2024 (ACT)* as an example:

> Disability is defined as: (a) any physical, mental, intellectual or sensory impairment that, in interaction with barriers may hinder the full participation of a person on an equal basis in society; and (b) includes an impairment that is permanent, temporary or episodic in nature, whether it can be noticed by others or not.

2 What factors should be considered in developing a new definition of disability?

A new definition of disability must consider **disability to be the result of an interaction between a person with an impairment and barriers that prevent that person from accessing and participating in society on an equal basis as person without that impairment**. The barriers are the focus point for reduction or removal through the application of universal design principles or through the provision of reasonable adjustments. This reduction or removal should be the required action (positive duty) imposed by the Act.

3 Would the Disability Discrimination Act be strengthened by expressly allowing claims to be brought for multiple or combined protected attributes?

We agree that the DDA would be strengthened by expressly allowing claims to be brought for multiple or combined protected attributes. The DDA and other federal anti-discrimination laws currently treat protected attributes separately, which fails to reflect how discrimination is often overlapping and compounding. Ignoring intersectionality can marginalise individuals who face disadvantages due to multiple identities or characteristics. It also obscures the fact that these challenges are complex and cannot be fully understood or explained through a single perspective (Blackham & Temple, 2020). We recommend that the Act explicitly acknowledge and protect individuals against intersectional discrimination, enabling claims that capture the intersecting nature of discrimination.

We have not responded to Question 4 it is better answered by legal experts.

5 What test should be used to ensure that the definition of direct discrimination is easy to understand and implement for both duty holders and people with disability, and why?

We agree with the view of the Disability Royal Commission that the current definition of direct discrimination is difficult to understand and implement due to the technical nature of the comparator test and the burden placed on complainants to establish a link between the unfavourable treatment, and their disability. Hence, any test should (a) eliminate the need for a comparative analysis when proving

direct discrimination and (b) focus on the unfavourable treatment experienced by individuals with disability.

6 How should the burden of proof be addressed in the Disability Discrimination Act?

A similar model to the *Fair Work Act 2009 (Cth)* could be used to address the burden of proof in the DDA. In this model, **the complainant must prove that the treatment occurred, and the burden of proof then shifts to the respondent, who then is required to demonstrate that their treatment of the person with a disability was lawful and justified.** These amendments would make the DDA more user-friendly and accessible. The amendments would also help duty holders better understand their obligations, thereby reducing the risk of inadvertent violations of the law. Such changes can improve effectiveness and accessibility of anti-discrimination laws, ensuring that legal protections for individuals with disability are both theoretically sound and practically enforceable.

7 How could the definition of indirect discrimination be amended to ensure that it is easy to understand and implement for people with disability and duty holders?

The definition of indirect discrimination and its language should be amended to ensure that it is easy to understand and implement for people with disability and duty holders.

8 Should the reasonableness element in the definition of indirect discrimination be:

(a) removed (b) retained and supplemented with a list of factors to consider (c) replaced by a legitimate and proportionate test (d) other. Please expand on your response.

The reasonableness element should be removed from the definition. This term is poorly understood in schools with some educators believing that they can determine whether making adjustments for students with disability is a reasonable ask of *them* as individuals, e.g., reasonable within their workload.

We recommend the term reasonable be replaced with 'relevant' to improve alignment between adjustments, impairment, and barriers that result in disability with explicit reference to the obligation to consult. A significant problem impacting students with disability is the provision of generic adjustments (e.g., extra time in exams, provision of a reader or scribe), yet such adjustments may not be related to the barriers experienced by specific individuals. Greater clarity on the connection between adjustments, barriers, and consultation is urgently needed.

Importantly, **the definition of indirect discrimination should require the duty holder to proactively identify and remove barriers through universal design**, rather than relying solely on reactive complaints. Another key consideration for the strength of the revised legislation, based on the experiences of children and people with disability, is to ensure that the wording around 'unfavourable treatment' does not provide a loophole for employers, education providers, and other organisations by referring only to *acts against* (e.g., gatekeeping enrolment) and not including the failure to *act for* (e.g., failure to provide reasonable adjustments). **The legislation must therefore clearly define the duty to make relevant adjustments**, and the burden of proof regarding whether the adjustments would cause unjustifiable hardship should lie with the respondent.

We have not responded to Question 9 it is better answered by legal experts.

10 Should the Disabilities Convention be included in the objects provision of the Disability Discrimination Act?

The CRPD should be included in the objects provision of the DDA and the Act revised to ensure clear alignment, consistency and compliance with the CRPD to actively promote its realisation. The DDA should also be amended to reflect the same strengths- and rights-based intent, including the use of inclusive language. **Importantly, close attention to General Comments to the CRPD that have been published since its adoption in 2006 is needed to provide more explicit guidance and stronger protections against discrimination.** Historically, interpretation of the DDA, DSE, and CRPD have been problematic across states/territories and sectors, and highly vulnerable to partisan politics, particularly at state government level. We strongly recommend this be addressed by amending the DDA to stipulate that the Act be applied in conjunction with Australia's international obligations to ensure compliance and effective implementation of the legislation as intended.

11 Should the Disability Discrimination Act be expressly required to be interpreted in a way that is beneficial to people with disability, in line with human rights treaties?

The DDA should be expressly required to be interpreted in a way that is beneficial to people with disability, in line with human rights treaties. We agree that this amendment would have both symbolic and substantive impact for people with disability by clarifying and strengthening the link between the CRPD and the DDA.

12 If there was a positive duty in the Disability Discrimination Act, who should it apply to?

The positive duty should be applicable to all duty holders including employers from both the public and private sectors, service providers, government agencies, police and justice systems, and education providers across all levels of education, inclusive of both childcare and vocational training.

13 Are there lessons from the operation of the positive duty in the Sex Discrimination Act that could be incorporated into a positive duty in the Disability Discrimination Act?

The *Sex Discrimination Act 1984 (Cth)* requires duty holders to proactively prevent unlawful conduct instead of merely responding to complaints, offering a great opportunity to support implementation and accountability under the DDA. **To improve effectiveness of the DDA, amendments should require duty holders to proactively remove barriers through the implementation of universal design principles PLUS provide relevant adjustments while also preventing discrimination.** Positive duty offers a proactive way to protect the rights of people with disability, and it is likely to reduce experiences of discrimination and harassment, as well as decrease the number of discrimination claims.

We have not responded to Questions 14 and 15 as they are better answered by legal experts.

16 Would the creation of a stand-alone duty to provide adjustments better assist people with disability and duty holders to understand their rights and obligations?

Establishing a positive obligation to provide adjustments will support people with disability to understand their rights, while also clarifying the responsibilities of duty holders. Making it unlawful for a duty holder to fail or refuse to make adjustments, except where making the adjustment would impose an unjustifiable hardship, will offer better protections for people with disability in practice, making the DDA's implementation more effective. Please note our earlier responses regarding the need for the term 'relevant' to replace 'reasonable' to improve alignment between impairments, barriers and adjustments.

17 Should the scope of the duty to provide adjustments apply only to the existing areas of public life covered by the Disability Discrimination Act, or extend to other contexts?

The duty to provide adjustments should have broad applications, extending to all settings and contexts, if and when a person with disability may require adjustments. The duty to provide adjustments should be made as soon as it becomes apparent and in consultation with the person with disability or their associate to establish the relevance of the adjustment in eliminating the experienced barrier.

18 Would removing the word 'reasonable' from the term 'reasonable adjustments' to align the language with the legal effect create any unintended consequences?

We do not believe that removing the word 'reasonable' from the term 'reasonable adjustments' would create unintended consequences; in fact, we think that it would be extremely beneficial given the unintended consequences that already flow from the existing term. As we note earlier, **we recommend replacing the word 'reasonable', with the word 'relevant' to promote the provision of adjustments relevant to the barriers disabling the person with an impairment**. As mentioned in earlier responses, a significant problem impacting people with disability is the provision of generic adjustments that may not address the specific barriers faced by individuals. The introduction of the word 'relevant' will provide greater clarity on the connection between adjustments, barriers, and consultation.

19 What is your preferred approach to achieving greater fairness and transparency in claims of unjustifiable hardship: *(a) the Disability Royal Commission amendment as proposed, (b) a new definition of unjustifiable hardship, (c) other. Please expand on your response.*

We agree with the Disability Royal Commission proposed amendment to ensure that additional factors should be considered when deciding whether the making of a specific adjustment would impose unjustifiable hardship on duty holders, such as an employer or school. Factors to be considered include how much the person with disability has been consulted and what alternative options were available to remove or reduce hardship.

We note that consultation has often been neglected in anti-discrimination law and is a particular issue in education. Consultation is a proactive, intentional and collaborative process that is essential to ensure students with disability can participate in education on the same basis as their peers without disability (Tancredi, 2020a). The DSE outline the obligations of educators and education providers to ensure that students with disability can access and participate in education on the same basis as their peers without disability, and consultation is one of three explicit obligations. However, what constitutes consultation is not explicitly defined and is often misinterpreted as the provision of information *after* the delivery of predetermined and often generic adjustments has already occurred.

Importantly, the obligation to consult extends beyond the content and implementation of the educational programme to include identifying and implementing relevant adjustments. This obligation must take place before adjustments are implemented, and students must be involved in reviewing the success of the adjustment. A consultation process is crucial for ensuring that the adjustments genuinely address the barriers faced by individual students with disability. Hence, without consultation with people with disability or their associates, duty holders cannot determine whether an adjustment is appropriate or claim that it would cause unjustifiable hardship to implement.

We also agree with the recommendation of the Disability Royal Commission to require duty holders to document factors they considered and give reasons for claiming unjustifiable hardship. We add however, that **duty holders should also be required to retain detailed information around the consultation process, including the extent of consultation, which can be examined in claims of unjustifiable hardship**.

We have not responded to Question 20 it is better answered by legal experts.

21 Are there other amendments to the Disability Discrimination Act that could support engagement between prospective or current employers and prospective or current employees to better understand the inherent requirements of a job?

Engagement between prospective or current employers and employees can be supported through clarification on the positive duty to consult and and provide relevant adjustments. While a prescribed definition of consultation may be difficult to be incorporated in legislation, clarification can be provided on what actions prospective and current employers must engage in to demonstrate the extent of the consultation process. Details regarding the extent of the consultation can include the content and format of the information shared with prospective or current employees, the timing of when this information was provided, and the opportunities available for clarification and discussion about the relevant adjustments needed for that person to successfully carry out the inherent requirements of the job.

We have not responded to Question 22 it is better answered by legal experts.

23 Should the concepts of exclusion and exclusionary discipline be defined in the Disability Discrimination Act?

The concepts of exclusion and exclusionary discipline should be defined in the DDA and the CRPD provides a model for achieving this, albeit with some caveats as noted below. **The CRPD broadly frames exclusion as a form of discrimination that directly or indirectly denies full participation in society.** With respect to education, General Comment No. 4 on Article 24 of the CRPD (GC4) defines exclusion as occurring "when students are directly or indirectly prevented from or denied access to education in any form" (para 11).

However, in this case, we are of the view that the GC4 definition is insufficient because of the words 'in any form'. For example, students who are not provided with adjustments or who are provided with adjustments that are ineffective because they are irrelevant to the barriers faced by individual students are indirectly excluded; however, in a court of law where words are debated, the phrase 'in any form' could be interpreted in a way that accepts irrelevant and ineffective adjustments as a 'form' of education.

Further, **we note that there are many tens of thousands of students across the country who are**

***informally* excluded**; that is, students whose attendance is not enforced, students who are suspended repeatedly, students who are placed on partial (part-time) enrolment, students whose needs are not being met in schools and whose parents have turned to home schooling or unschooling.

A definition of exclusion must capture both formal and informal exclusion. This is critical given the ubiquity of the term, especially in education systems where it has a specific meaning with respect to exclusionary discipline. Exclusionary discipline is commonly described as a form of disciplinary consequence that results in the removal of a student from the regular school environment; however, this would be an inadequate definition for inclusion in the DDA because it suggests that placement in or outside school is the only factor. In her evidence as an expert witness at Hearing 7 of the Disability Royal Commission, C4IE Director Professor Linda Graham defined **exclusionary discipline as "the application of a consequence that results in the withdrawal of educational provision to children"** (Expert Witness Statement, 2020, para 38a, p. 12).

Graham's (2020) definition is based on evidence from Australian research which has found that students who have been excluded from school are not typically provided with a program of work to complete during the exclusion period (Quin & Hemphill, 2014). The material result is therefore withdrawal of educational provision. **The DDA must make it unlawful to formally or informally exclude children with a disability from school without providing them with an equivalent education program to complete at home.**

Further, the DDA should require documentation of genuine consultation with students with disability and/or their associates to determine the factors driving undesired behaviours and identifying relevant adjustments. This documentation must also record the design, implementation, and effectiveness of relevant adjustments, as well as follow-up consultation with the student and/or their associates. **The use of suspension and exclusion with a student with disability should only be permissible when all legislative obligations have been met and that the continuation of undesirable behaviours is not due to lack of consultation or ineffective adjustments.**

Further, a range of large-scale Australian studies have been conducted to investigate overrepresentation, intersectionality, and disproportionate risk in the last 10 years. These studies have found similar patterns in South Australia (Graham et al., 2020), Queensland (Graham et al., 2024), and New South Wales (Piltz et al., 2025). **Most suspensions are issued for low-level behaviours like being out of bounds or not following instructions.** In NSW, for example, 83% of exclusions were for the two lowest categories: continued disobedience and aggressive behaviour. **Students with disability are significantly overrepresented in suspension and exclusion statistics, even more so than students in out of home care or Indigenous students; however, the risk of suspension or exclusion increases with intersectional disadvantage**. In Queensland, for example, Indigenous students with a disability who are living in out of home care had 8.34 times the risk of being excluded from school than non-Indigenous, non-disabled students not living in out of home care (Graham et al., 2024).

Case studies from the South Australia Inquiry (Graham et al., 2020) investigating repeated use of exclusionary discipline found that 100% of the 64 students who received more than 15 take homes (part-day suspensions) in 2019 had a disability. More than two-thirds of these incidents were for minor reasons (e.g., rules violations, minor physical acts), and as many as 1 in 5 of these students were not receiving the level of adjustments necessary to prevent these outcomes (Graham et al., 2020). Similarly, 80% of students suspended 15 days or more in 2019 had a disability, and six of the seven students who were excluded for more than 20 weeks in 2019 had a disability. The recorded reasons for exclusion were threatening gestures, not attending to instruction, not responding to reasonable instructions, and minor physical acts (Graham et al., 2020). Notably, these are reasons for which the use of exclusionary discipline has been banned in many public-school systems in the United States.

Students with disability are at increased risk of exclusionary discipline because the interpretation of behaviour is highly subjective and because they do not receive timely and relevant adjustments. Research with students with disabilities impacting language and information processing, such as Attention

Deficit Hyperactivity Disorder (ADHD) and Developmental Language Disorder (DLD), has found that they get in trouble at school for "not listening", "not following instructions", and "not doing work". Seldom, however, are adjustments made to support these students' language and information processing such that they can engage and participate on the same basis as students without these types of disabilities (Tancredi et al., 2023). Moreover, these students are commonly unidentified. In a recent study that identified 59 students with language and attention difficulties consistent with ADHD and/or DLD, only one third had ever previously been identified and, of that group, only one third was receiving adjustments (Tancredi et al., 2023). Similarly, students on the autism spectrum have been suspended for being out of bounds or for truancy when seeking to escape the school environment due to emotional overwhelm (Graham et al., 2020).

A key question raised during the South Australia Inquiry regarded the relationship between suspensions for minor physical acts and bullying (Graham et al., 2020). **The DSE obligation to eliminate harassment and vilification is quite possibly the least addressed of the three key obligations for education providers.** As noted in the recent Final Report from the Anti-Bullying Rapid Review, students with disability are disproportionately impacted by bullying. Steps must be taken to strengthen implementation of the DDA/DSE obligation to eliminate harassment and vilification of students with disability. Further, altercations between students that stem from harassment and vilification, whereby a student with disability responds physically to bullying, should not result in exclusionary discipline as restorative practices and skill-building are more effective and appropriate responses.

The permissible grounds for suspension are commonly ableist and open to subjective interpretation. The South Australia Inquiry found that principals may suspend if "the student shows persistent and wilful inattention or indifference to schoolwork" (Graham et al., 2020, p. 115); however, inattention is a key element in the diagnostic criteria for ADHD: how is a principal to determine what is and what is not 'wilful' for a student with this type of disability? We note that the Procedures have since been augmented with a footnote saying: *"This ground should not be used where the inattention or indifference may be connected to a student's disability"*. However, this brings us back to the problem of identification, together with educators' ability to correctly interpret students' presenting characteristics: many students with a disability are unidentified, particularly those with 'invisible' disabilities like ADHD and DLD. The new footnote also does not say that the student should not be excluded, simply that this ground should not be used.

From these students' perspectives, the problem is the inaccessibility of physical and pedagogical learning environments. Students with disabilities impacting language and information processing say they *want* to learn but that they find schoolwork hard and their teachers difficult to understand, nominating preference for clear instructions, repetition, and examples (Graham et al., 2022). **A positive duty to remove barriers through the implementation of universal design principles in both physical and pedagogical learning environments will help to address the inaccessibility of education for a large proportion of students with disability** (Tancredi et al., 2025). Recent research has even demonstrated that improving the accessibility of assessment and pedagogy improves the educational experiences, cognitive engagement, and academic outcomes for students both with and without disability (Graham & Willis, 2025). **More should be made of the universal benefits of removing barriers to access and participation, such as reducing the need for costly identification and remediation processes and improving access for all.**

24 Should there be exceptions or limits on when exclusion is unlawful?

No, not if the CRPD definition of exclusion is applied. With respect to exclusionary discipline, as per the distinction we made earlier, exclusion from the school environment must not result in exclusion from education. All children have the right to education regardless of the circumstances surrounding their exclusion. Current exclusion practices typically remove **both** the access *and* the learning as the emphasis is placed on removal of the child from the environment rather than supporting the appropriate access to learning while removed. Despite the obligation of states to "do all that is reasonable to secure their re-entry into mainstream education", the reality is that, once excluded, children often do not rejoin school or any mainstream education. A rights-based response requires that "*if* an individual's (or individuals') rights are denied, that continual effort and action is taken to realise the right in question" (Gillett-Swan & Lundy, 2022, p. 101), even if that means a temporary reduction in the full enjoyment of the rights in question.

25 Should any of the state and territory provisions relating to exclusionary discipline be adopted in the Disability Discrimination Act?

No, none is ideal. There is significant inconsistency across states/sectors, and many provisions are seriously flawed. For example, **we have noticed that some states have removed the stipulation that suspension be used as a last resort from their student behaviour and discipline policies, despite Disability Royal Commission (2023) Recommendation 7.2 clearly stipulating that exclusionary discipline should only ever be used as a last resort.** A revised DDA is an opportunity to achieve consistency across jurisdictions and to provide clear parameters that set a standard that are in the best interests of children and our society.

26 Would a different approach to exclusionary discipline be more appropriate in the higher education and vocational education and training sectors?

Inclusive education is a human right across all levels of education and the principles that inform the development of policy in education and practice apply equally to prior-to-school and higher education and vocational education and training. This does not mean that exclusionary discipline cannot be used or that it is inappropriate in all cases. There are instances where exclusionary discipline is appropriate, for example, in cases of sexual or genuine physical violence. As noted above in relation to exceptions or limits, education providers must balance the rights of all involved and ensure the continuation of education provision through alternate means (e.g., online) during the period of suspension.

27 How could the Disability Discrimination Act be amended to protect people with disability from offensive behaviour and/or harassment?

The DDA should be amended to clearly define what constitutes offensive behaviour and harassment with the aim of better protecting people with disability from such behaviour. The definition could draw from and extend the DSE definition: "any action taken in relation to the person's disability that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the person' with disability".

28 If the Disability Discrimination Act were to prohibit offensive behaviour and/or harassment, how should these terms be defined?

We agree with the **Disability Royal Commission's suggestion to use section 18C of the *Racial Discrimination Act 1795 (Cth)* regarding offensive behaviour as a model for the DDA**. This proposed change would make it unlawful for a person to act in public spaces in a way that is reasonably likely to offend, insult, humiliate, or intimidate another person or group based on a person's disability or other protected attributes. Additionally, amendments should include a broad definition of what constitutes public spaces to ensure that social media and other online platforms are covered under the legislation.

29 Should there be exemptions for any behaviour, similar to the Racial Discrimination Act?

Offensive behaviour and/or harassment of people with disability should never be condoned, even when this is "said or done in the performance, exhibition or distribution of an artistic work or for any genuine academic, artistic or scientific purpose", as per the *Racial Discrimination Act 1795 (Cth)*. For too long, people with disability have been mocked, excluded from, and/or portrayed as monsters in so-called artistic works and this has contributed to stereotyping and fear of people with disability, which have over time led to widespread social acceptability of such beliefs and actions. While legislation can be a blunt instrument and an effective deterrent only when it is applied through the courts, it is nonetheless a line in the sand. One such line in the sand is Rosa's Law, which was enacted by the US Congress in 2010. The aim of the legislation was to replace the clinically outdated, anachronistic, needlessly insensitive, and stigmatising term 'mental retardation' with 'intellectual disability' to "further and support the equality of all individuals, without regard to disability" (p. 3). The DDA could serve the same function.

30 Given the recent legislative developments, are there any further gaps in the legislative framework that could be addressed by amendments to the Disability Discrimination Act to protect people with disability from vilification?

We agree with the Disability Royal Commission and other reviews that support an increase in vilification protections for people with disability. While there are some parallels between vilification based on race, ethnicity, or religion and vilification based on disability, they differ in important ways and occur in different contexts. Racial, ethnic, and religious vilification often arises from an individual's affiliation with a distinct social group or community. In contrast, there is considerable diversity within the disability category, and people with disability may not identify as part of a specific community group. Although racial, ethnic, and religious vilification is a widespread issue, it tends to be more visible in society (Disability Discrimination Legal Service Inc., 2012). Disability vilification may also go unnoticed by the general public. Protections against vilification is contained in most Australian states and territories criminal law, but disability vilification is not covered by all jurisdictions. Hence, **the DDA should be amended to prohibit vilification on the ground of a person's protected attributes, or perceived attributes.**

31 How could the Disability Discrimination Act be amended to ensure that it covers policing?

To ensure that the DDA covers policing, Section 4 could be amended to (a) to prohibit disability discrimination in all aspects of public life, and (b) explicitly include police services as part of the definition of 'services'.

With respect to (a), this would be consistent with the *Racial Discrimination Act 1795 (Cth)*, preventing gaps whereby disability discrimination is not prohibited in some areas of social policy and avoiding gaps leading to confusion and/or inconsistency across types of service providers.

With respect to (b), we agree with the Disability Rights Commission's recommendation to include the statement: "services provided by police officers in the course of performing policing duties and powers." This addition would clarify that all aspects of policing, including the arrest of suspects, are addressed under the Act, giving suspects greater clarity about their rights to file discrimination claims under Section 24.

Including policing within the definition of services would introduce a positive duty requiring police and other public authorities to actively prevent discrimination, rather than merely responding to complaints. This change would make it clear that discriminatory conduct by police—such as failing to make adjustments or not using accessible communication—falls within the scope of the DDA.

We have not responded to Questions 32, 33, 34, 35, 36, 37, 38, 39 and 40 as they are better answered by legal experts.

41 Should there be minimum requirements for action plans (such as through guidelines) and what should the minimum requirements cover?

Yes, there should be minimum requirements for action plans. As formalised in the *Disability Rights, Inclusion and Safeguarding Act 2024 (TAS)*, action plans should be developed in consultation with people with disability, and address planning and reporting progress of delivering actions outlined in the plans. Action plans should state the criteria used for monitoring and evaluation. The Australian Human Rights Commission could provide guidelines on criteria that may be used for monitoring and evaluation.

42 Should the Australian Human Rights Commission be able to reject action plans that fail to meet these requirements?

Yes, the Australian Human Rights Commission should be able to reject action plans that fail to meet the minimum requirements.

43 Should there be a set period of time for which an action plan is valid?

Yes, a specific timeframe should be established for action plans to be revised and valid. We recommend that action plans be revised every 3-5 years.

We have not responded to Question 44 as it is better answered by legal experts.

45 How could compliance with and enforcement of the Disability Standards be improved?

Our response focuses on the Disability Standards for Education (DSE). As we noted in our submission to the 2020 Review of the DSE, there have been very few successful disability discrimination in education cases brought before the federal courts since the DSE came into force in August 2005. Multiple inquiries, audits and reviews since have highlighted deficiencies in the protective scope of the DSE, which prevent the advancement of legitimate claims. Breach of the DSE triggers a right to take action under the DDA for either direct or indirect discrimination, however, as the DDA is complaints-based legislation, it falls on victims to take legal action. This is a classic 'David and Goliath' situation, pitting individuals against the State or well-resourced non-government school/ system. **The current legislation is also weighted towards discrimination against a person due to their disability and not the failure to consult, proactively remove barriers, provide adjustments or eliminate harassment and victimisation.** Complaints are therefore difficult to make and sustain, while failures and non-compliance continue unabated.

The DSE cases that have been litigated suggest that some schools or school systems are more willing to fund expensive legal defences than to fund support of the complainant child with disability. If the complainant loses, they must pay their own costs as well as the costs of the respondent, which presents yet another disincentive to take legal action. Furthermore, implications of courts' interpretation of the DDA and DSE since *Purvis v NSW* [2003] 217 CLR 92 make it more difficult for a student with disability to bring a successful discrimination action than students with other protected attributes such as race or sex, and even when unlawful discrimination is proved, schools have recourse to a defence that it would cause 'unjustifiable hardship' to eliminate the discrimination (Dickson, 2014; 2018). Unjustifiable hardship can be raised, even by the State, as a result of the cost of eliminating discrimination. **This defence is not available for any other protected attribute.**

A survey of relevant case law indicates that it is difficult for a student with disability to prove that they have been discriminated against *because* of their disability, hence the impetus for the DDA to impose a positive duty to prevent and reduce barriers to access and participation, as well as eliminate harassment and vilification. **A reverse onus system, where there is a presumption of breach of the DSE and DDA which must be disproved by the respondent, may assist in giving complainants confidence to take legal action.** This change would bring the system into greater alignment with the intent of the DSE and international human rights obligations by shifting the burden of ensuring education rights are respected from individuals to service providers (Dickson, 2014). So too would the availability of proper government funding of disability agencies to support complainants to have their complaint heard and to take legal action.

Under the DDA, individuals must personally make a complaint about a breach of the Disability Standards to the Australian Human Rights Commission (AHRC). However, even if clear cases of non-compliance are evident, only those directly impacted can file a complaint. As a result, organisations that advocate for individuals with disability or the AHRC, cannot initiate a claim for unlawful discrimination on behalf of individuals. To improve this situation, **we recommend that an independent body, like the AHRC or the Attorney-General's Department, be given the authority and necessary funding to take action against alleged breaches of the Disability Standards**. Additionally, we suggest amending the DDA to explicitly allow disability organisations to file complaints about alleged breaches.

Further, **we highlight the absence of independent, effective, accessible, transparent, safe and enforceable complaints mechanisms** by which individuals can safely raise breaches of the legislation. Implementation of such mechanisms at a national level is stipulated in General Comment No. 4 as a means to address the challenges facing States parties in the implementation of Article 24 of the CRPD. We note that implementation of an independent, effective, accessible, transparent, safe and enforceable complaints

mechanism was a key recommendation to the South Australian government in the Final Report of the 2020 Inquiry into suspension, exclusion and expulsion processes in South Australian government schools, a recommendation that was not accepted by the state government and therefore never implemented. As the signatory to the CRPD, it is incumbent on the Australian government to ensure compliance. **Revising the DDA to ensure greater accountability through, for example, establishment of a national statutory authority** to which breaches can be reported and with the powers to investigate breaches is a necessary next step.

46 Should the Disability Discrimination Act be amended to encourage relevant duty holders to self-report on their compliance with the Disability Standard(s) in disability action plans?

We agree that the DDA should be amended to encourage duty holders to self-report their compliance with Disability Standards through disability action plans. Self-reporting would enhance transparency and accountability, helping organisations monitor progress and identify areas for improvement. This recommendation also complements *Australia's Disability Strategy 2021–2031* (Department of Social Services, 2024), which highlights the importance of measurable outcomes and continuous evaluation across various sectors, including education, employment, and justice. The potential risk of inconsistent reporting and the resource burden on smaller organisations can be addressed through standardised reporting frameworks and government support. **Self-reporting, however, should be complemented by accountability measures to periodically check veracity.**

47 Could the Australian Human Rights Commission provide additional guidance to duty holders regarding how to self-report on the Disability Standards in disability action plans?

Yes. The Australian Human Rights Commission (AHRC) could provide additional guidance to duty holders regarding how to self-report on the Disability Standards in disability action plans. **The AHRC should consider updating and expanding its existing Disability Action Plan Guides to include a dedicated section on self-reporting.** This section could outline best practices, provide reporting templates and examples of measurable indicators aligned with the relevant Disability Standards. This addition would help organisations understand how to structure their reporting and what data to include.

Additionally, **sector-specific advisory notes could be developed to clarify expectations for different types of duty holders, such as education providers, in accordance with the relevant Disability Standards**. These notes could feature case studies and benchmarking tools to facilitate continuous improvement.

We have not responded to Question 48 it is better answered by legal experts.

49 What additional guidance materials should be provided to the community, including duty holders, about the operation of the Disability Discrimination Act or specific amendments proposed in this paper?

Significant and proactive community education is required. It is not enough to publish materials on a website. Web-based materials have existed for a long time but have not been effective. With respect to the DSE, our experience is that most educators who enrol in our Master of Education (Inclusive Education) either do not know about the DDA/DSE or, if they have heard of them, do not know what their

legislative obligations are. In Queensland, 'DDA' has become shorthand vernacular to describe a student who meets criteria for NCCD (the Nationally Consistent Collection of Data on School Students with Disability). In our experience, this does not typically extend to knowledge that individual teachers are required to (i) consult students in the design and implementation of adjustments, (ii) provide those adjustments, and (iii) eliminate harassment and victimisation.

As mentioned earlier, there is also belief that the word 'reasonable' pertains to whether it is reasonable for an individual teacher to make those adjustments and that reasonableness can be determined by that individual teacher. We note that this is a point in the DDA training modules, however, those modules are extremely boring—even we have struggled to get through them! **Another problem is that Australian educators are currently awash with guidance materials which are being produced and disseminated by the Australian Education Research Organisation (AERO). The volume of the materials being produced is greatly disproportionate to the bandwidth of overburdened educators and nor are they accurate**. Something a bit more inventive is needed and educators need to be met where they are at. The bulk of empirical evidence is that quality ongoing professional learning with a mix of synchronous and asynchronous activities is needed to achieve meaningful and lasting impact. That professional learning should teach the DDA and DSE in the context of inclusive education and practice. Isolated, decontextualised modules and briefs on the DDA/DSE will not result in practice change.

50 How can we ensure the Disability Discrimination Act remains fit-for-purpose into the future?

Review the DDA, and the subordinate DSE legislation, more often and – *most importantly* – act on the findings. We are really pleased that this review is happening but the 5-yearly review of the DSE tills the same earth every time and the key issues are never addressed. **The Australian government must do more than review; it must act.**

51 Are there any other issues with the Disability Discrimination Act that should be considered as part of this review?

Potentially change the name of the Act. The UK has the Equality Act which is a better name for an Act looking to impose a positive duty on duty bearers. **We recommend renaming as the Disability Equality Act.**

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