



## **Australian Education (Consequential and Transitional Provisions) Bill 2013**

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## Children with Disability Australia (CDA)

CDA is the national peak body that represents children and young people with disability. The organisation is primarily funded through the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and is a not for profit, community based organisation. Additional project funding is also received from the Department of Education, Employment and Workplace Relations (DEEWR).

CDA has a national membership of 5000 with the majority being families. CDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

### CDA'S ROLE

CDA represents children and young people with disability living in Australia and undertakes the following to achieve its purpose:

- **Education** of national public policy-makers and the broader community about the needs of children and young people with disability.
- **Advocacy** on behalf of children and young people with disability to ensure the best possible support and services are available from government and the community.
- **Inform** children and young people with disability, families and care givers about their rights and entitlements to services and support.
- **Celebrate** the successes and achievements of children and young people with disability.

### GUIDING PRINCIPLES

**Children and youth the priority:** the rights and interests of children and young people with disability are CDA's highest priority consistent with Australia's obligations under the UN Conventions, Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

**Right to childhood:** children and young people with disability are children first and foremost and have a right to all aspects of childhood that children without disability are afforded.

**Right to participation:** children and young people with disability have the right to participate, in whatever capacity, in the decisions that impact on their lives.

**Inclusion:** children and young people with all types of disability, from all cultural and religious backgrounds and all geographic locations are supported by the work of CDA.

**Recognition:** for the contributions made by families and care-givers to support the rights and interests of children and young people with disability.

**Partnerships:** CDA works collaboratively with relevant government, non-government and private sector agencies to promote the rights and interests of children and young people with disability.

**Transparency:** CDA is accountable, effective and ethical as the national peak body charged with the mandate of advocating for children and young people with disability

## GENERAL COMMENTS

This brief submission is concerned with the provisions of the Australian Education Bill (2013) ('the Bill') and how the *Australian Education Regulations 2013* ('the Regulations') and how they will deliver the much needed educational reform for students with disability.

Overall CDA congratulates the government and welcomes the legislation package and the additional funding that can flow to education systems as a result. Improving the capacity of the entire education sector in Australia is long overdue and will deliver a range of benefits to students, including those with disability. As indicated in the review of funding for schooling, particular educational disadvantage accrues to students with disability and more targeted approaches are also needed.

The key issues facing students with disability in Australia are detailed in CDA's submissions to the House Standing Committee's *Inquiry into the Australian Education Bill (2012)* and the Senate Education, Employment and Workplace Relations References Committee's inquiry into *Teaching and Learning – Maximising the Investment in Australia's schools*.

As was stated in these submissions, students with disability are performing comparatively worse than their peers in Australian schools. There is a culture of low expectations of students with disability in Australia that has been acknowledged as a national disgrace:

- 63 per cent of school children with disability experienced difficulty fitting in at school<sup>1</sup>
- 29.6 per cent of people aged 15 to 64 years with reported disability had completed Year 12 compared to 49.3 per cent of people without a disability<sup>2</sup>
- 12.7 per cent of people with a disability had completed a bachelor degree or higher compared to 19.7 per cent of people without a disability<sup>3</sup>
- Around 15% of Australian students require additional assistance but only 5% receive funded supports<sup>4</sup>

Improving these measures over time is complex, but it is also urgent. The current reform initiatives in disability and education have shone a light on some of the solutions and while positive progress is being made in some areas, it is patchy and slow. Students with disability have been marginalised in education for a long time, and although the new funding model promises improvements, more

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<sup>1</sup> AIHW, Disability Updates: Children with Disabilities, Canberra June 2006

<sup>2</sup> ABS Survey of Disability, Ageing and Carers 2009: Summary of Findings

<sup>3</sup> taken from *Developing a National Disability Strategy for Australia*, FAHCSIA, Canberra 2008

<sup>4</sup> AIHW, Making Progress: The Health, Development and Wellbeing of Australia's Children and Young People, Canberra 2008

deliberate and targeted action is required to ensure that disability does not become the residual part of this education reform.

The fact that the work on the disability loading and associated policy is running one year behind the rest of the reform means that there is significant risk to achieving the required reform outcomes for students with disability. There is a high degree of difficulty associated with the part of the reform program developing the disability loading, and there is a lot yet to be finalised and negotiated before its planned introduction in 2015.

Because of this practical uncertainty, CDA believes it is imperative that both the Bill and the Regulations are strengthened at the outset to clearly state the reform outcomes, educational practice expectations and accountability requirements for education systems for students with disability.

There is nothing specific in the Bill or the Regulations that create concrete expectations for education systems to deliver fully on Australia's obligations as a signatory to the United Nation Convention on the Rights of People with Disabilities (Article 24), Convention on the Rights of the Child (Articles 2, 23, 28 & 29) and the National Disability Strategy (Learning and skills policy objectives). CDA believes that these need to be specifically named.

Current examples of positive inclusive practice in Australian schools do exist, however they are not evenly distributed. This is in fact the ultimate goal of reform in this area, and there needs to be an articulated way of achieving this through funding and accountability mechanisms in the legislation.

The quality of inclusive education is determined largely by individual leadership, attitudes of school staff and/or the result of effective advocacy. Inclusive education is not yet a systemic expectation of every school, but it is essential that it becomes so at the earliest opportunity. The Bill provides a unique opportunity to codify these expectations and make them central to the funding model, and we should not let it pass.

The Bill and the Regulations set out processes and funding mechanisms that largely delivers a business as usual approach for students with disability in 2014 while the details of the new loading are developed.

While this is the reality of the agreements made by jurisdictions since the release of the Gonski Review in 2012 in regard to the funding model, CDA believes that by not putting strong markers in the Bill about expectations in this area, that it downplays the bleak educational reality faced by students with disability and defers urgently needed action.

Simply changing the way funding is distributed and relying on the Disability Education Standards to guide the delivery of education cannot be described as real reform. The reforms that are needed are systemic, and CDA does not believe they will be achieved by a per student funding model without fundamentally

changing expectations, accountability, practice and culture. In its present form the Bill does not contain these expectations.

CDA recognises the work being undertaken to fully define funding arrangements for students with disability but we have real concerns that unless this Bill defines the fundamental reform outcomes for students with disability they may never be realised. It must be afforded priority in the legislation from day one and not be left to lag until 2015.

The main issues covered in this submission relate to the definition of disability, the calculation and operation of the disability loading (for both mainstream and special schools) and the associated accountabilities for schools and systems.

## **SPECIFIC COMMENTS**

To ensure that the Bill and the Regulations include the required descriptions and requirements to demand the systemic change that is needed, CDA suggests the following sections be amended:

### **Implementing national policy initiatives in relation to school education Conditions of financial assistance (Regulations - Part 2 Section 10, Section 22 of the Bill)**

Obligations need to be set out in the relevant sections of the Bill and the Regulations that States and Territories need to demonstrate their implementation of the relevant section of the National Disability Strategy the relevant United Nations Conventions as a national policy initiative.

### **Anti- Discrimination provisions are not substitutable for inclusive education guidelines**

Section 77 2(e) of the Bill (Ongoing policy requirements for approved authorities)

specifies that systems need to comply with Australia's discrimination legislation, which effectively restates the current minimum position and the legal obligations of schools and systems.

Avoiding discrimination is an essential part of the universal service obligation of any service system. The Disability Education Standards (DES) provide the anti discrimination framework for schools and systems, but they need to be seen for what they are — a marker of actionable discrimination, and not as a guide as to how to provide quality inclusive education. Considerable work is currently underway to raise awareness of the DES, which is welcome, but without companion development of inclusive practices, the misunderstanding about the role of the DES is likely to continue.

The DES are certainly important but they are not sufficient to ensure quality provision of inclusive education to students with disability, and are certainly not substitutable for a detailed set of practice guidelines, performance benchmarks,

accountability requirements that are required in this reform for students with disability.

This is simply the wrong framework to guide inclusive educational practice. Compliance with the DES can only be fully tested in an anti discrimination tribunal. CDA members frequently express that the standards are not useful in day to day negotiations with schools, so to base the reform on these is simply not going to deliver meaningful results.

The Bill needs to specify overall requirements for inclusion of students with disability in addition to compliance with the Disability Education Standards Section 80 (4) of the Bill needs to include provision that failures in this area can lead to funding revocation.

### **Portability of the loading**

CDA is pleased to see that the loading is payable to non-government systems, however it is not clear how this funding will be used for students as it is being given to systems to re-distribute, and there is no specific requirement for transparency of this distribution. It appears that the distribution of the disability loading in 2014 relies on present funding systems across States and Territories and so there will not be equality of funding exists across school types in 2014 in government and non-government systems.

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### **Students with disability attending school part time**

Many students with disability are forced into part time attendance at school for a range of reasons apart from a lack of support funding. Section 10 (1) (a) (i) refers to funding for students who 'attend school on a daily basis'. It is important that this clause is clarified to cater for students with disability who for some reason cannot attend school full time so as to avoid the unintended consequence of students otherwise eligible for the disability loading to not attract it.

The other key group of students are those who are home-schooled or enrolled in distance education programs. Both these options are taken up by students with disability, sometimes as a result of negative experiences in schools. In most cases these students are ineligible to receive support that they may have received if they had been enrolled in a physical school. CDA recommends that these students be eligible to receive support in the same way that other students are.

### **Subdivision D – School Improvement Framework and Plans (Section 99(2) (i) of the Bill, S41 of the Regulations)**

There needs to be a requirement for both systems and schools to clearly articulate how they are making improvements in their policies and practices for students with disability. Demonstration of completing and implementing individual education plans for all students requiring adjustments needs to be a

minimum requirement for school improvement plans, along with accessibility and ongoing professional development for all staff. CDA believes these features should be detailed in the regulations.

Students with disability need to be given specific reference in the part of the School Improvement Plan addressing the Safe School Framework because of the high incidence of bullying in schools experienced by students with disability.

Section 49 of the Regulations deals with student reports. Specific mention needs to be made in this section about reporting on individual education plans for students with disability. The experience of CDA members reveals that this is done in a haphazard manner with often no clear methods of measuring, monitoring or recording student progress.

### **The Loading for Students with Disabilities (regulations s15)**

Given that there are significant capacity building issues across all education systems, the introduction of a temporary loading that is calculated on a per student basis without any other mechanism to fund these systemic improvements provides limited opportunities for immediate reforms.

Key issues are:

- A flat loading doesn't recognise differences in students at the school level, and raises some major issues in accountability and transparency in the ways that educational systems re-distribute the loading amounts to schools to support individual education programs for students.
- The loading only appears to be payable on the current year's enrolment of (eligible) students with disability, thereby preventing schools and systems from developing real capacities for inclusive education (funding for this must be endemic, recurrent and permanent without major cross subsidization of activity, or receiving external funding. While the extension of the More Support for Students with Disabilities national partnerships will provide a bridge in this area, there is no sense of how a per student loading will in fact generate the required systemic capacity that is required.
- The funding model appears to rely on cross-subsidies within systems without any real examination of how authorities divide up the gross loading funding to cover a range of activity inside and outside of schools. Professional development for teachers and school leaders, access to system wide specialist consultancy, peer support programs, whole school and system level adjustments to encourage inclusive practice are all things that are outside a per student funding expectation but are critical to deliver systemic improvements.

With the disability loading being calculated as a percentage of the SRS, this means that primary school students receive proportionally less per year than secondary students, meaning that there are likely to be cross-

subsidies in this area as well. CDA would like to a requirement for systems to report on how they distribute the loadings in 2014.

- Students in special Schools receive a 20% higher loading than those attending mainstream schools. It is not clear how this figure was calculated, and CDA expects to see a rigorous piece of work undertaken across the jurisdictions in 2013/14 to build a particular funding model for special schools. It is important that there are no perverse incentives built into the 2015 funding model for systems to encourage enrolments in special schools. It should always be a choice for the student and parents based on individual circumstances.

### **Definitions of students**

The definition of students with disability does not deviate from existing definitions, thereby missing an opportunity to soften the edges of the current highly rationed support programs. The diagnostic divisions in some states are some of the worst features of our present system and entrench these further at the beginning of such wholesale reform misses an opportunity.

As stated earlier CDA recognises that there is work being done on the definition through the Nationally Consistent Collection of Data program (NCCD), and the outcome of this is to agree on a single non-diagnostic definition. This is universally recognised as a major challenge given the diversity of students and the number of current working definitions.

CDA believes it is essential that there is a requirement that education systems need to begin breaking down these diagnostic divisions in 2014 and using this experience to inform the development of the disability loading for 2015. Using the existing definitions, eligibility and exclusion criteria maintain the significant disadvantage that exists.

The NCCD relies on schools recognising and recording the levels of adjustments for students with disability. At the time of writing the report from the trial of the NCCD is not available, so there is no public sense of how this will be done, or how schools will be prepared to undertake the student identification and data collection.

This process needs input from families and allied health professionals to ensure that teachers and school staff identify student need accurately. In addition to this data there is a lot of other research and analysis that will be needed to construct the loading.

Requiring systems and schools to formally expand the group of students that are eligible for funded supports in the interim 2014 year would provide valuable experience, richer data as well as better experiences for a greater number of students.

### **National Education Plan for Students with Disability.**

CDA believes that the development of a specific plan detailing the work required to deliver the range of specific reforms needed for students with disability is timely. Recognising the need for substantial and targeted reforms and gaining agreement from jurisdictions and systems about their implementation and funding is essential if we are to ensure that students with disability will not be marginalized in the future. This national plan should include outcomes, performance indicators and targets.

Such a plan would focus on how the relevant provisions in the United Nations Convention on the Rights of People with Disabilities, Convention on the Rights of the Child and the National Disability Strategy would be delivered within the 6-year implementation of the education reforms.

Thank you for the opportunity to contribute to this consultation.

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