



Australian Special Education Principals Association (ASEPA)

Submission to the Review of the Disability Discrimination Act 1992

November 2025

ASEPA thanks the Attorney-General's Department for the opportunity to provide a submission to the Review of the Disability Discrimination Act 1992 (DDA). As the national peak body representing leaders of special schools and specialist support provisions, ASEPA provides this submission grounded in the lived realities of more than 5,500 educators and over 65,000 students with the most complex needs.

1. Introduction

The DDA remains a landmark enabling instrument in the protection of the rights of people with disability. However, the experiences documented by the Disability Royal Commission (DRC) confirm that discrimination in education remains pervasive, persistent, and structurally embedded. Students with disability continue to face exclusion, under-support, and inconsistent adjustments across systems nationally, but this is not the case in special schools.

For special school leaders, the DDA is not an abstract legal document. It defines the parameters within which we enrol, support, protect, and advocate for Australia's most vulnerable young people. Yet the Act requires modernisation to reflect contemporary understandings of disability, consistent interpretation, and enforceable protections.

ASEPA's contribution focuses on implications for education, school leadership workload, student safety, and systemic barriers identified in the Royal Commission.

2. Definitions: Updating the Understanding of Disability

The Issues Paper highlights concerns that the current statutory definition of disability uses outdated, deficit-based terminology such as *malfunxion*, *malformation*, *disfigurement*, and *disturbed behaviour*.

ASEPA position

ASEPA supports updating the definition to align with:

- The social and human rights models of disability, as emphasised by the CRPD.
- Language that avoids pathologising students, while retaining clarity for schools that must make adjustments in highly complex settings.
- Recognition that manifestations of disability-related behaviour are part of the disability, consistent with existing provisions.
- Inclusion of intersectional experiences, acknowledging the compounding discrimination experienced by First Nations students, culturally and linguistically diverse students, and young people living in poverty.

Why this matters to schools

Outdated language reinforces stigma and fuels negative public narratives around students with complex behaviours. Modernising definitions improves the legal clarity around the obligations of principals.

3. Positive Duty to Eliminate Discrimination

The review proposes introducing a positive duty on schools to proactively prevent discrimination, similar to the Sex Discrimination Act model.

ASEPA position

ASEPA supports a positive duty **with major safeguards**, noting:

(a) The need for nationally consistent guidance

Without clear, authoritative standards, principals risk punitive consequences when operating amid insufficient staffing, insufficient allied health access, or inadequate physical infrastructure.

(b) Workload and risk implications

Special school principals already face extreme administrative and compliance loads. A positive duty must not create additional paperwork, audit processes, or compliance layers without resourcing.

(c) The duty must apply equally to all education settings, including systems.

Current practice often results in mainstream schools informally “triaging” or redirecting students with high needs to specialist settings. A positive duty must explicitly prevent:

- gate-keeping
- enrolment avoidance
- informal suspensions
- short-day timetables

These practices disproportionately affect students with disability and are documented in the Issues Paper. Inclusionist ideology deems that the only place inclusion can occur is in mainstream settings. As found in the Disability Royal Commission, this is in fact where inclusion most often fails. Specialist schools and settings are truly inclusive as they do not gate-keep or discriminate regarding the needs and complexity of the students they enrol. Inclusion isn't a place, it's a practice.

(d) The Australian Human Rights Commission's enforcement powers

ASEPA supports enforceability, but only where schools have access to:

- clear guidelines
 - practical advice
 - non-punitive compliance pathways
 - funding for implementation
 - system support
 - the necessary staffing
 - appropriate facilities
 - allied health providers embedded into schools
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4. Adjustments, Unjustifiable Hardship, and Clarifying Obligations

The Issues Paper proposes clarifying obligations around adjustments, inherent requirements, and unjustifiable hardship.

ASEPA position

(a) Replace “reasonable adjustments” with “adjustments”

ASEPA supports removal of the word *reasonable*. The term has been used to deny supports in mainstream settings by reframing student needs as burdensome.

(b) Clarify who is responsible for providing adjustments

Families frequently face a confusing system with overlapping responsibilities between:

- schools
- allied health
- NDIS-funded providers
- state/territory departments

ASEPA urges a nationally consistent statement that education systems, not individual schools alone, hold the obligation to resource adjustments.

(c) Strengthen safeguards around “unjustifiable hardship”

Too often, unjustifiable hardship has been invoked to deny enrolment or limit inclusion. ASEPA supports the requirement that duty holders **must first consult the student and family**, explore supports, and demonstrate genuine attempts to meet need before invoking hardship. There must also be considerations for indigenous students and rural remote communities as well as culturally and linguistically diverse families.

5. Exclusionary Discipline and Suspension

The Issues Paper highlights unacceptable patterns of exclusion of students with disability, including suspensions and expulsions due to disability-related behaviours.

ASEPA position

ASEPA strongly supports making it explicit that:

- **students cannot be suspended or expelled for disability-related behaviour**, except where this conflicts with the principal's duty to uphold workplace protections and child safety.
- **shortened school days can be a form of exclusion**, but not when a family has been consulted when using this as a strategy for transitions into school, from school to school or from school to post school options.
- **systems must collect, publish, and act upon data on disability-related exclusions.**

But ASEPA emphasises:

(a) Mainstream schools must stop offloading high-needs students

Special schools are absorbing disproportionate numbers of students who have been excluded, marginalised or refused meaningful adjustments.

(b) Positive duty obligations must be system-wide

Principals must not be set up for failure. Systems must provide:

- specialist staffing
- behaviour supports
- therapeutic services
- crisis and safety supports
- appropriate built environments

(c) Legal clarity must reflect the reality of extreme and dangerous behaviours

Students with significant disability-related behaviours require trauma-informed, highly structured, safe environments. A strengthened DDA must provide clarity about:

- when temporary safety measures are permissible

- the distinction between “exclusionary discipline” and **immediate safety actions**
 - the role of multidisciplinary risk assessment teams
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6. Offensive Behaviour, Vilification and Access to Justice

ASEPA welcomes proposals to:

- prohibit vilification and online harassment
- ensure protections when students interact with police
- strengthen protections around offensive conduct.

ASEPA additions

School leaders face significant harassment, including online, when enforcing disability rights or advocating for students. Offensive behaviour protections should extend to:

- threats made against principals for upholding disability adjustments
 - discrimination expressed through social media targeting students or school staff
 - situations in which parents oppose inclusion of children with disability due to perceived classroom disruption
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7. Modernisation: Assistance Animals, Action Plans, Standards

ASEPA supports modernisation in these areas. The Issues Paper notes uncertainty around assistance animal certification, enforcement of Disability Standards, and action plan effectiveness.

ASEPA position

- Nationally consistent **assistance animal certification** is essential; schools currently manage inconsistent state frameworks.
- Disability Action Plans should be **required**, not voluntary, for all state/territory education systems.

- Disability Standards need stronger **enforcement**, especially in relation to school design, transport, minimum standards and emergency evacuation. This needs to be for new and existing builds.
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8. Systemic Issues Not Explicitly Covered in the Issues Paper

ASEPA raises the following additional considerations:

(a) Resourcing equity

Legal protections fail without adequate staffing, facilities, and funding, especially for:

- intensive behaviour support
- significant health needs
- personal care
- complex communication needs
- protective factors for students exposed to violence or trauma

(b) Workforce capability

Any expansion of obligations must be matched with mandatory, consistent professional learning for:

- teachers
- school leaders
- early childhood staff
- system leaders
- police and justice partners

(c) A National Inclusive Education Framework

The DDA review is occurring in a vacuum of national consistency. ASEPA urges the Commonwealth to develop a **National Inclusive Education Framework** aligned with the updated DDA.

9. Recommendations

ASEPA recommends that the Commonwealth:

1. **Modernise the definition of disability** to reflect social and human rights models.
2. **Introduce a positive duty** with appropriate resourcing, guidance and non-punitive, low workload compliance mechanisms.
3. **Clarify responsibility for adjustments** at the system level, not solely at the school or principal level.
4. **Strengthen protections against exclusionary discipline**, ensuring safety-related actions are distinct from unlawful exclusion.
5. **Mandate national transparency principles** for disability-related suspensions, informal exclusions and partial timetables.
6. **Strengthen the unjustifiable hardship threshold**, requiring genuine consultation and evidence-based assessment.
7. **Enhance enforcement of Disability Standards**, particularly in education.
8. **Modernise assistance animal certification** with a single national framework.
9. **Protect school staff from vilification**, harassment, and threats linked to disability-related decision making.
10. **Fund national professional learning** and workforce development aligned to the updated Act.

ASEPA supports a strengthened, modernised Disability Discrimination Act that delivers real protections for students with disability and the leaders who support them. The Review provides a once-in-a-generation opportunity to address systemic inequities and create a consistent, nationally coherent framework that supports inclusion, protects safety, and reduces discrimination.

ASEPA welcomes further discussion and can provide case studies, practitioner panels, and evidence to assist the Review.

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