

ADDITIONAL COMMENTS BY SENATOR GREIG ON BEHALF OF THE AUSTRALIAN DEMOCRATS

1.1 The Australian Democrats fully support the principle of the Disability Discrimination Amendment (Education Standards) Bill 2004, and are keen to see the Bill and its associated Standards introduced in a timely and efficient manner.

1.2 We acknowledge the Standards have been in development since 1995 and that a range of government and non-government education, training and disability sector stakeholders have been engaged in that process.

1.3 The Australian Democrats further recognise that given repeated delays and the continuing uncertainty created by the lack of comprehensive Disability Standards for Education, there is a degree of urgency amongst stakeholders, particularly those within the disability sector, to ensure the Standards' immediate introduction.

1.4 Notwithstanding this urgency, the Democrats have remaining concerns about certain elements of Bill, particularly in relation to the extension of unjustifiable hardship provisions within the Act and the provision of adequate transitional funding for professional development.

1.5 As a matter of principle, the Australian Democrats are concerned about any reduction in the capacity of the Disability Discrimination Act to protect people with a disability from discrimination, or any watering down of their rights under the Act.

1.6 We acknowledge evidence from disability advocates including the Australian Federation of Disability Organisations (AFDO), Public Interest Advocacy Centre (PIAC), People with Disability Australia (PWD) and the Australian Learning Disability Association (ALDA) that is consistent with these concerns.

1.7 While we note the evidence that an extension of unjustifiable hardship provisions is consistent with recommendations made by the Productivity Commission's Review of the Disability Discrimination Act, we wish to highlight that this recommendation was subject to the inclusion of a reasonable adjustment safeguard within the Act.

1.8 We share concerns that the Bill extends the defence of unjustifiable hardship, thereby removing rights of people with disabilities and extending greater rights to education providers, without providing the balancing check of an express obligation on education providers to make reasonable adjustments *to the point of unjustifiable hardship*.

1.9 The Australian Democrats concur with evidence questioning the adequacy of reasonable adjustment provisions being solely included within the Standards rather than in the Act itself.

1.10 Concerns arising from this omission are further compounded by the Standards' failure to create any direct link between reasonable adjustment and unjustifiable hardship.

1.11 Finally while we note the inclusion of reference to the concept of reasonable adjustment in the amending Bill, there is no corresponding inclusion of a definition.

1.12 The Australian Democrats note support for the Draft Standards from State and Territory Education Departments at the July 2003 MCEETYA meeting being conditional on a Commonwealth commitment to providing new, non-recurrent funding for all professional development costs and the sharing of unforeseen costs arising from the Standards and further, that these costs were regarded by independent consultants engaged by the DEST as legitimately attributable to the Standards' introduction.

1.13 We acknowledge suggestion that the Standards do not create additional obligations upon education providers, but would argue that if the Standards are properly implemented we would expect a greater investment would be needed in both training and provision of services - particularly for those with learning disabilities who currently fall outside the definition used to determine additional Commonwealth funding.

1.14 The Australian Democrats further note evidence provided to this Inquiry by the Australian Learning Disability Association regarding poor overall knowledge about the Disability Discrimination Act, as well as evidence to the previous Inquiry into Education of Students with a Disability regarding funding and training deficiencies, that have left many teachers ill-equipped to properly respond to the needs of students with diverse learning needs.

1.15 On this basis, the Democrats support both one-off funding to support the introduction of the Standards and ongoing funding that is based on a proper assessment of the shortfall in funding to meet those standards. These funds should not be diverted from an already under resourced system.

1.16 Overall the Australian Democrats support the views of the Committee in light of the overwhelming community desire that the standards be introduced as a matter of priority.

1.17 On the balance of this support and the concerns outlined above, the Australian Democrats will not oppose the introduction or passage of the Bill, but make the following recommendations:

Recommendation 1

1.18 That the Bill be amended to include a definition of reasonable adjustment;

Recommendation 2

1.19 That the Bill be amended to place an express requirement upon education providers to ensure all reasonable adjustments to the point of unjustifiable hardship are made in the provision of education service to students with a disability; and

Recommendation 3

1.20 That the government provide immediate additional funding, as identified in the Regulation Impact Statement, for professional development and for additional services that will support the introduction of the Disability Standards for Education.

Senator Brian Greig

Australian Democrats

