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## **Reasonable Adjustment?**

### **The intersection between Australian disability discrimination legislation and parental perceptions of curriculum adjustments in Queensland schools**

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#### **Abstract**

Despite the enactment of legislation in the area of disability discrimination, continued tensions are experienced between educational authorities and parents. This chapter details a proposed methodological framework for doctoral research, examining the possible source of these tensions: the meaning of the phrase “*reasonable adjustments*”. A forensic linguistic analysis of this phrase is proposed considering how it has been argued in case law and, more recently, by a set of Queensland parents of students with disabilities who have sought legal remedy. A review of previous research in this field, the literature detailing the history of educational provisions for Queensland students with disabilities, and the complex nature of the legislation, reveals some of the reasons why the provision of reasonable adjustments is so complex for regular educators in Queensland classrooms. It is proposed an analysis of educational literature and policy as well as a critique of court and tribunal decisions will expose clearer understandings of “*reasonable adjustments*” to curriculum and how legal and educational interpretations of this phrase align and differ.

#### **Introduction**

Internationally, since the enactment of anti-discrimination legislation, a growing number of complaints have been made on the grounds of disability discrimination in education. By comparison, in Australia, the actual number of discrimination cases which have been heard is comparatively small (Dickson, 2007; Hannon, 2000). However, these few cases have generated much academic discussion and in-depth investigation to enhance understanding of the educational experience of students with disabilities, and their families, to help chart a better future (LaNear & Frattura, 2007): perhaps T. S. Eliot’s “dream kingdom”. Examining the cases that have been heard reveals that much of the literature focuses on the following areas:

- Problem behaviour (Dickson, 2004; Keeffe-Martin, 2000; Tait, 2004; Varnham, 2004);
- Physical impairment and access to premises and excursions (Stewart, 2003); and
- Hearing impairment and provision of education in students' first language, said in some cases to be Australian Sign Language (Dickson, 2005, 2005/2006; Keeffe, 2004b; Komesaroff, 2007; Tucker, 1995).

A small number of authors have considered the issue of discrimination from a leadership and management perspective (Keeffe, 2003, 2004c, 2004d; Keeffe-Martin & Lindsay, 2002; Stewart, 1996, 1998, 2005). Others have also considered the use of discrimination law as a vehicle for promoting human rights and inclusive practices (Dickson, 2003, 2007; Fitzgerald, 1994; Foreman & Arthur-Kelly, 2008; Forlin & Forlin, 1998; Jones & Bassar, 1998; Keeffe-Martin, 2001).

To date, no decided cases involving a Queensland school student have been argued solely on the grounds of reasonable adjustments to curriculum. However, by undertaking a comparison of these Queensland anti-discrimination cases in education, it is envisaged that the court and tribunal transcripts, along with the case studies, will allow some conclusions to be drawn about the provision of *reasonable adjustments* to curriculum (Freebody, 2003; Stake, 1995). This will thus allow the study's central research question to be addressed: To what extent do legal and educational interpretations of "reasonable adjustments" to curriculum align and differ? The sub-questions include:

1. How are "reasonable adjustments" interpreted in education literature and in Queensland education policy and practice?
2. How is the phrase "reasonable adjustments" argued and interpreted in case law for Queensland students?
3. What adjustments to curriculum are being sought by parents of Queensland children with disabilities?

An examination of Queensland's brief history of educational opportunities given to students with disabilities helps in understanding the issue of providing reasonable adjustments for this group of learners. This history exemplifies "the selective provision of services" (Keen & Arthur-Kelly, in press) and explains some of the complexity facing regular educators in classrooms. Queensland, like many education authorities world-wide, does not have the inside history of special education as viewed from the perspectives of the consumers of and those most affected by the service. Instead, there is an official history as told by the Public Servants, Principals and Teachers who diligently worked to meet the educational needs of students identified as belonging to this group, in a way that reflected the best educational practice of their time. Some of the history of educating children with disabilities in Queensland can be told through exploring the work of Swan (1978, 1988) and public records including those recorded in Education Queensland's Library Services archives. This chapter next provides a brief

overview of the education of Queensland children who have additional learning needs arising from their disabilities.

### *Queensland's educational history*

Prior to the middle of the 1900s, there are few records of the formal educational provisions for children with disabilities in the State of Queensland (Swan, 1988). Some children, particularly those who were blind or who were hard of hearing, were sent to residential institutions interstate, mainly in Sydney and Melbourne, where teachers had been employed so that the children in care could receive an education, however unconventional (Ashman & Elkins, 2005). Other students lived in institutional care where no formal educational provisions were made available. Some families, against medical advice, cared for their children in the home where they also provided educational support. In 1886, the Queensland State Government vested a site at Woolloongabba in Cornwall Street in Trust for the benefit of deaf and blind persons with this Institution opening in 1893 with 20 students. This is considered the year of the birth of “special education” in Queensland despite the fact that educators would only later realise that children who are deaf or blind are capable of engaging in the regular curriculum.

In 1923, as the result of parent interest, the Queensland government established the first classes for “backward children” in New Farm, Fortitude Valley and South Brisbane, as well as in Ipswich, Toowoomba, Rockhampton and Townsville. In 1926 a decision was made to rename these as “Opportunity Classes”. Ashman and Elkins (2005) point to two reasons for this decision. First, the classes were meant to provide failing students relief from the rigorous demands of a rigid curriculum that allowed no adjustments, opening the door to new opportunities for the children who attended these classes. Second, they freed the regular class teachers, many of whom had only one or two years’ preservice training, from providing adjustments to students with difficulties, a task considered too complex when classes often involved more than 40 students.

By the 1930s, children with mild intellectual impairment attended special schools (sometimes known as ‘training centres’) staffed by personnel who were not always qualified teachers (Ashman & Elkins, 2005). In 1951, the Queensland Subnormal Children’s Welfare Association (later renamed the Endeavour Foundation) was formed by parents/community members who went about establishing private schools. The Department of Public Instruction was given responsibility for the payment of a teacher’s salary to provide instruction to these students. The Endeavour Foundation had permission to provide education for students with intellectual disabilities who had been assessed as having an IQ lower than 50 and who were, at that time, considered ‘ineducable’ (but possibly ‘trainable’). From the beginning of educating children in Queensland, children with disabilities or deviant behaviour who required any sort of adjustment to the cognitive demands of their schoolwork were segregated from regular classrooms and schools and were provided differing educational opportunities to those given to their peers (Peters, 1996).

In the late 1960s, in countries across Scandinavia, the “normalisation principle” (Nirje, 1969, 1985) gained momentum. At this time, there was a groundswell of support for the education of children with disabilities as part of a human rights agenda, emphasising that people with disabilities deserved the same rights and opportunities that are made available to other members of society (Casey, 1994). The philosophy of normalisation challenged the dichotomy of regular and special education, and, in some instances, argued that separate special education stigmatised and segregated students with impairments by separating students with disabilities from mainstream social life (Bowd, 1990; Oliver, 1996). The impact of this in Australia, like other countries, was that it became a moral imperative to desegregate public schools.

By the 1970s, an array of services for students with disabilities in Queensland was provided in regular schools, special education units attached to schools, and special schools. These changes were significant for a number of reasons. First, the special education units, while co-located on regular school sites, *generally* operated as a separate entity with the children who attended these Units spending most of their day isolated from the rest of the school community. An exception to this was children with hearing or vision impairments did, to some extent or other to a greater or lesser degree, attend regular classes. However, regular classroom teachers were still not required to accommodate or make reasonable adjustments for *most* children with disabilities but, at that time in Queensland’s history, the movement of children with disabilities out of special schools and into mainstream settings mirrored best international practice. Second, with this move came the birth of “educational specialists”; personnel employed to support the educational needs of the children in the Units and advisory personnel whose role it was to provide advice and guidance to the schools.

In the past two decades, many special schools in Queensland have been closed (see Figure 1). However, enrolments of students with disabilities in Queensland government schools (Primary, Secondary and Special) have increased over the same period (see Figure 2). This increase of children with disabilities now attending regular schools (Dempsey, 2007) requires schools to make adjustments to curriculum and service provision.

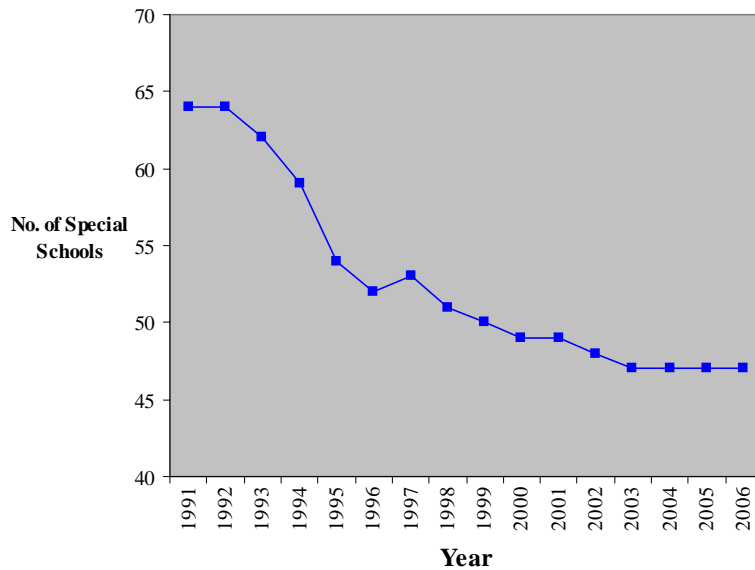


Figure 1: Number of State Special Schools in Queensland 1991-2006  
 (Source: Australian Productivity Commission 1995-2007)

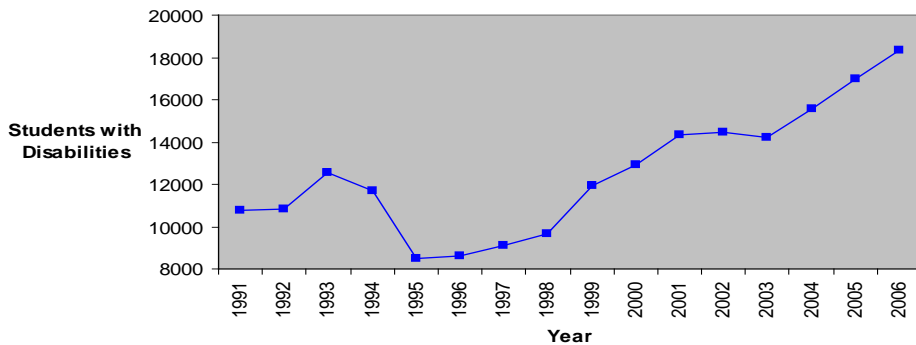


Figure 2: Students with Disabilities Enrolled in Queensland Government Schools 1991-2006  
 (Source: Australian Productivity Commission 1995-2007)

In addition, this short historical overview of education for children in Queensland, including children who required adjustments to the cognitive demands of their curriculum, can be mirrored by tracing both Federal and State legislative provisions for this set of learners. At the State and Federal levels, there exists a ‘two-tiered system of legislative prohibition of discriminatory conduct’ (Cumming & Dickson, 2007, p. 204). Prior to the introduction of State and Commonwealth anti-discrimination legislation educational authorities were under no obligation to ensure children with disabilities were afforded the same educational opportunities as their peers without disabilities. By the beginning of the 20<sup>th</sup> Century, despite all Australian States and Territories having passed legislation mandating education for

all children between the ages of 6 and 13, additional clauses and regulations were still promulgated that excluded children with disabilities (Swan, 1994). However, during the 1980s and 90s, States and Territories across Australia passed legislation that ensured the rights of people with disabilities were protected in accordance with the nation's obligations as a signatory to a range of international conventions.

### *Queensland Legislation*

In Queensland in 1908 a request was made to have clauses added to the Queensland *Education Act 1875* so that compulsory education was applicable to blind students. It was not until 1924 that this was agreed to and also extended to children who were deaf as well as those who had communication difficulties with the introduction of a new *Blind, Deaf and Dumb Children Instruction Bill*. This was the first legislation in Queensland that made provision for the education of children who required adjustments to the cognitive demands of their curriculum (although as educators learnt more about the needs of children who were Blind, Deaf or lacked formal communication methods, it was discovered many of these students could learn at the same rate as their peers when provided appropriate adjustments). The next major legislative change in Queensland occurred in 1938 with the *Backward Persons Act*, which transferred administrative responsibility for the education of such children to the recently established Department of Health and Home Affairs and which placed them in mental health institutions. Shifting the responsibility for the education of these children to the Health Department further reinforced the notion that these children were ineducable.

The *Backward Persons Act* was finally repealed in 1985 and, under the *Education (General Provisions) Act 1989*, the Education Minister took responsibility for educating *all* students. Under the provisions of this Act, children were defined as having a disability if they were unable to attain educational outcomes unless they received special educational services or programs (s3.1). The legislation made provisions for children both of compulsory school age as well as those who were below compulsory school age (at least 6 years) but in the need of early intervention programs and services. The Act had a strong emphasis on "special education" for children with disabilities despite an international focus on mainstreaming or integration of children with disabilities within the least restrictive environment. While it described "special education" as "educational programs and services appropriate to the needs of persons with a disability" (S3.2), it made no reference to the most appropriate location where these programs and services should be made available.

In 2006, a new *Education (General Provisions) Act* was passed by Queensland Parliament. During the debate on the Education (General Provisions) Bill, the Honourable Rod Welford, Minister for Education and Minister for the Arts, emphasised that "all students, including students with a disability, should be treated with dignity and enjoy the benefits of education in an educational, supportive environment which values and encourages the participation of all students" (Parliament of Queensland Legislative Assembly, August 8, 2006, p. 2643). In accordance with S156 of the Act, Principals are required to enrol any prospective

student, except where there is reasonable evidence that a child would pose a risk to the wellbeing of staff or students.

The Queensland *Anti-Discrimination Act 1991* provides a legal framework that clarifies for educational authorities what does and does not constitute discrimination in the provision of education. In particular, Division 3 considers prohibitions in the area of education specifically with reference to enrolment, access to benefits and services, treatment of students and exclusion. It clarifies exemptions for discrimination, including schools that educate students of a particular gender, religion or impairment. It also considers a limit on what is reasonable by indicating *unjustifiable hardship* will be considered when determining discrimination claims (a concept discussed in more detail later in this chapter).

### *Australian Legislation*

At the federal level, the *Commonwealth Disability Discrimination Act 1992* makes it unlawful for educational authorities to discriminate against a person on the grounds of the person's disability. In relation to education, Section 3 calls for the elimination of discrimination against people with a disability, as far as possible, with the goal for education to ensure, as far as practicable, students with disabilities have the same educational rights as their peers. The objectives make it unlawful for an educational authority to directly or indirectly treat a student with a disability less favourably than they would with a student who does not have a disability (S3). The objectives also promote positive discrimination or differential treatment for students with a disability (Keefe, 2004a). Schools are able to provide an array of support services to students with a disability that will assist in minimising the negative effects of disability. Finally, the third objective of the DDA calls upon schools to "promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community" (S3). Section 22 of the Act further clarifies the obligation of educational providers to ensure both students with disabilities and their associates (parents, carers, etc) are not discriminated against in the following areas:

- by refusing or failing to accept the person's application for admission as a student; or
- in the terms or conditions on which it is prepared to admit the person as a student.
- by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or
- by expelling the student; or
- by subjecting the student to any other detriment.

*Disability Discrimination Act 1992 (Cth.) S22*

Whilst the objects of the DDA are paraphrased above, two fundamentally important clauses have been retained. These are "as far as possible" and "as far as practicable". The inclusion of these two phrases recognises that there are times where it may not be possible for discrimination to be avoided and clarifies there is



legal recognition to the limits of what can or needs to be done. An education example of these limits would be that the academic integrity of a course could not be compromised simply to allow a student with a disability to “pass” and, under these circumstances, a student with a disability could not successfully claim discrimination.

The DDA provided the power to the Federal Education Minister to develop standards that would clarify the obligations of educational authorities and providers in the provision of educational services to students with a disability. Section 32 of the DDA also made it unlawful for these standards, once enacted, to be violated. In March 2005 the Commonwealth *Disability Standards for Education 2005* (Standards) were tabled in Parliament and came into effect in August 2005.

In February 2005, the DDA was amended to include a legislated obligation of educational authorities and providers to ensure students with disabilities were provided “reasonable adjustments to eliminate, as far as possible, discrimination against those persons” (DDA, S31-1A). The Standards broadened the areas of adjustments previously determined by the DDA to go beyond enrolment. This amendment now obligates schools to ensure students with disabilities are provided with a mandated level of support in all aspects of their educational program (Nelson, 2003). Schools are now required to also provide reasonable adjustments in the areas of curriculum development, accreditation and delivery, participation, student support services and the assessment and elimination of harassment and victimisation.

The central tenet of the Standards is that students with disabilities are treated “*on the same basis*” as those without a disability. Since many disputes between schools and parents are battles over the meaning of “*on the same basis*” or what constitutes a “*reasonable adjustment*”, commissioners (such as those from the Australian Human Rights Commission or the Queensland Anti-Discrimination Commission) or judges must interpret events and determine whether the legislative requirements have been met. Dickson (2006) found “educational authorities and providers and students with disabilities are legitimately interested in how the ‘reasonableness’ of proposed adjustment will be determined” (p. 23). Section 3.4 of the Standards provides clarity from the statutory perspective:

- (1) For these Standards, an adjustment is ***reasonable*** in relation to a student with a disability if it balances the interests of all parties affected.

*Note* Judgments about what is reasonable for a particular student, or a group of students, with a particular disability may change over time.

- (2) In assessing whether a particular adjustment for a student is reasonable, regard should be had to all the relevant circumstances and interests, including the following:
  - (a) the student’s disability;
  - (b) the views of the student or the student’s associate, given under section 3.5;

- (c) the effect of the adjustment on the student, including the effect on the student's:
    - (i) ability to achieve learning outcomes; and
    - (ii) ability to participate in courses or programs; and
    - (iii) independence;
  - (d) the effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students;
  - (e) the costs and benefits of making the adjustment.
- (3) In assessing whether an adjustment to the course or program in which the student is enrolled, or proposes to be enrolled, is reasonable, the provider is entitled to maintain the academic requirements of the course or program, and other requirements or components that are inherent in or essential to its nature.

Disability Standards for Education 2005 (Cth) s3.4

#### *Direct and Indirect Discrimination in Schools*

In considering claims of discrimination, judges and commissioners are required to determine whether there has been direct or indirect discrimination in the provision of “reasonable adjustments”. Direct discrimination against a person with a disability may arise when less favourable treatment is provided in the same or similar circumstances (DDA s1.5). An example of direct discrimination might be when a child who requires adjustments to the cognitive demands of his or her work is refused enrolment in a regular school. Under the DDA schools are obligated to make reasonable adjustments for students with disabilities. In determining whether direct discrimination has occurred, a comparison needs to be made between how the student with a disability has been treated and how another student without a disability would be treated in the same circumstances. This raises the crucial question as to the “appropriate comparator”; which peer without a disability is the most appropriate choice for determining whether or not there has been less favourable treatment (Dickson, 2007, p. 239)?

By comparison, indirect discrimination occurs when the school policies and practices appear neutral, but actually have a detrimental impact on the student with a disability, which in the circumstances is unreasonable (DDA, s1.6). In his speech on the DDA and its impact on the area of education, the then Deputy Disability Discrimination Commissioner, Graeme Innes, provided the following indirect discrimination example:

A timetabling decision is made that all maths classes will occur in the upstairs part of a building, where there is no physical access. This would appear to be neutral treatment, but would have a disparate impact on students with a physical disability. If the downstairs classrooms were equally as adequate for maths classes it would not be reasonable in the circumstances. However if we were talking about

science classes, there were no science labs downstairs, then the reasonableness argument may not apply.

(Innes, 2003)

That is, to establish indirect discrimination, evidence is required that there is an obligation, term or condition that has been imposed, which is reasonable for those without a disability but is not reasonable for those who have a disability (Lindsay, 2004).

### *Unjustifiable Hardship*

The concept of unjustifiable hardship, borrowed from the American concept of “undue hardship” (*Americans with Disabilities Act*, 1990) is prescribed in sections 11 and 22 of the DDA. Simply, if a student with a disability required facilities or services that would impose a financial hardship on an educational authority, it would not be unlawful for the educational authority to refuse enrolment. The *Disability Standards for Education 2005* (Cth.) further extended the provision of unjustifiable hardship. Slee and Cook (1999) contend that schools need to address hardship through changing their curriculum, pedagogy and organization if they are going to eliminate discrimination. Schools may be able to argue that the provision of adjustments to curriculum for a child with a disability would impose unjustifiable hardship where the costs of providing the adjustment (staffing, resources or modification to resources) is considered in association with any benefit or detriment likely to be experienced by the student. This can be a point of discordance between parental expectations and school provisions (or will).

This research draws upon two different sets of literature; the educational one that defines adjustments and the legal/case law interpretations of “reasonable adjustments”. It seeks to understand the types of curriculum adjustments being sought by parents who have brought forward legal claims of discrimination in light of the adjustments schools argue they have provided. Dickson (2006) claims “it is only possible to look at how the concept of ‘reasonableness’ has been addressed in decided education discrimination cases to inform speculation about the kind of matters that will influence the reasonableness enquiry under the Education Standards” (p. 24).

### **Research Design**

There are some significant parameters that define the design and scope of this research. First, only discrimination in education cases will be considered. Whilst “reasonable adjustments” is a concept that has been tested in other fields such as employment, this research focuses on its application in education. Second, the forensic linguistic analysis will only cover adjustments to curriculum. Many of the Queensland cases have argued other key concepts: enrolment, behaviour, provision of support services, access, etc. These concepts, whilst important, are not relevant to this research. Third, this research focuses on cases that involve Queensland school-aged students only. This enables ready access to the case study participants as the

first researcher is Queensland-based with background knowledge of local educational policy. As indicated, there are cases involving only 15 Queensland students, indicating that the results may not be generalised more widely with confidence. However, their fine-grained analysis will provide an informed and trustworthy representation of the key phenomenon of intersection or discrepancy as experienced by invested parents. An area for future research could include an examination of how this Queensland data compare nationally or internationally. Other Australian discrimination cases will only be mentioned where legal precedent is provided. Fourth, this research is not limited to any particular type of disability. It will examine cases where adjustments to curriculum have been sought. These adjustments may have been required by a student with an intellectual impairment, a learning difficulty, a health condition, etc.

### Methodology

This research follows a qualitative line of inquiry. The central phenomenon, the intersection between Australian disability discrimination legislation and parental perceptions of reasonable adjustments to curriculum for students with disabilities in Queensland schools, will be examined through the lens of two sets of data. The first, a forensic linguistic analysis of legal cases, and the second, parent/child case studies.

#### *Forensic Linguistic Analysis of Legal Cases*

Forensic linguistics, a subset of applied linguistics, is the term that has been used since the 1980s to describe the analysis, by linguists, of the language of the law (Olsson, 2004; Shuy, 2001). Attempts to analyse the language used in court and tribunal decisions and to translate this material into language educators can understand presents a difficult challenge yet it is the responsibility and an expected role of educational authorities. Each discrimination claim brings educators closer to understanding what constitutes “reasonableness”. Conducting a forensic linguistic analysis of the judgments in Queensland discrimination cases in education will shed light on what is considered reasonable by courts and tribunals and what sorts of adjustments, perhaps highly valued by schools, are not considered reasonable.

Since the introduction of disability discrimination legislation the following cases involving 15 Queensland students have been heard in the Queensland Anti-Discrimination Tribunal (QADT), the Federal Court of Australia Full Court (FCAFC), or the Federal Court of Australia (FCA):

2008	<i>Beanland v State of Queensland and Queensland Studies Authority</i>	QADT
2007	<i>N on behalf of N v State of Queensland</i>	QADT
2006	<i>Hurst v State of Queensland</i>	FCAFC
	<i>JC on behalf of BC v State of Queensland</i>	QADT
	<i>I on behalf of BI v State of Queensland</i>	QADT

2005	<i>I on behalf of BI v State of Queensland</i>	QADT
<b>08/2005</b>	<b>Introduction of the Commonwealth Disability Standards for Education</b>	
2005	<i>Hurst and Devlin v Education Queensland</i>	FCA
	<i>N v State of Queensland</i>	QADT
	<i>Cordery v State of Queensland</i>	QADT
2004	<i>Hurst and Devlin v Queensland</i>	FCA
	<i>Pagura-Inglis v State of Queensland</i>	QADT
2003	<i>Pagura-Inglis v Minister for Education</i>	QADT
2001	<i>I v O'Rourke and Corinda State High School and Minister for Education of Queensland</i>	QADT
1997	<i>P v Director-General, Department of Education</i>	QADT
	<i>K v N School</i>	QADT
1996	<i>Ross v Minister for Education</i>	QADT
	<i>P v Minister for Education</i>	QADT
	<i>L v Minister for Education</i>	QADT
	<i>K v N School</i>	QADT
	<i>Hashish v Minister for Education</i>	QADT
1995	<i>Finn v Minister for Education</i>	QADT
	<i>L v Minister for Education</i>	QADT
	<i>K v N School</i>	QADT

Table 1: Queensland cases of disability discrimination in education

The use of a forensic linguistics methodology in law and education is still new. To date few authors have used this type of methodology to analyse court and tribunal decisions in order to consider the issue of reasonable adjustments to curriculum for students with disabilities. A lexical analysis will be performed on the above cases to take into account word usage, frequency and collocation (Gibbons, 1994) of the following key terms: adjustments, reasonable and curriculum. It is envisaged that, in some of these cases, this analysis may not reveal anything as they did not focus on adjustments to curriculum. However, where cases do reveal discussion regarding adjustments to curriculum, Hutchinson's (2002) Heuristic Framework will also be used to gain further understanding of the concept. The heuristic method outlined in the framework will form a protocol to consider reasonable adjustments to curriculum in each case across four areas:

1. definition (how 'reasonable' and 'adjustment' is defined (generally, in the legislation, in court and tribunal decisions),
2. comparison (opposite of 'reasonable', what was considered unreasonable),

3. testimony (that have key groups argued when it comes to 'reasonable adjustments' – complainants, respondents, expert witnesses, educators), and
4. circumstance (are 'reasonable adjustments' to the cognitive demands of work possible, under what conditions, are they feasible, what would prevent them from happening).

### *Parent/Child Case Studies*

In April 2008, six families from a large regional centre located in the south-west of Queensland went public with their concerns about the lack of reasonable adjustments being made for their children. The six children all have different educational needs arising from their disabilities. The children all attend a co-educational, government-run school which educates children from the Preparatory Year through to Year 12 across three separate campuses. At that time, the school had a Special Education Program catering for 38 children with disabilities across all three campuses of the College, employing 4.9 full-time equivalent teachers and 131.5 hours/week of teacher aide time (Wenham, 2008). The families, having sought remedy at the school and district level, were planning to lodge separate though linked complaints of discrimination by the educational authority in its alleged failure to provide reasonable adjustments for their children. By May 2008, four of the six families had decided to lodge their complaints with the Commission and, at this time, one case has so far been decided with three cases still pending. At present, due to the confidential nature of the hearings, no other information is available that details the precise nature of the discrimination claims.

These collective case studies will provide insights into families' expectations of schools in the provision of reasonable adjustments to curriculum for students with disabilities and the four families will provide a demonstrably salient sample that assists in understanding the central research questions. The use of semi-structured interviews will allow the participants to provide a personal account of their child's educational experience with a pre-determined interview protocol consisting of clarifying and elaborating probes (Creswell, 2005) designed to assist the researcher obtain additional information pertinent to the central research questions. Only families who have sought remedy for discrimination in the area of reasonable adjustments to curriculum will be interviewed.

Each of these complaints will be studied to determine whether there were claims regarding the types of adjustments being made to the curriculum. If so, the parents of these children will be invited to participate in this study. The lawyer representing these families has agreed to forward the written claims submitted to the Queensland Anti-Discrimination Commission and to seek expressions of interest from each parent regarding their willingness to participate in this study once ethical clearance for this research has been approved. Additional insights from the families will assist in understanding the types of educational adjustments they were seeking for their children. The Principal of the school will be approached for clearance to contact the staff to obtain more detailed information about the types of curriculum adjustments made in the school for children with disabilities so as to consider divergence between provision and desired adjustments.

Initial background materials, from both the Anti-Discrimination Tribunal and from the lawyer representing the families, will be examined to determine the array of curriculum adjustments sought by families to determine the suitability of each participating parent. As Freebody (2003) contends, interview questions “shape the grounds or the footings on which participants can and should speak” (p. 137). One-on-one interviews with each parent using the pre-determined interview protocol will enable them the opportunity to share the story of their experiences. Interviews will occur in 2009 subject to ethical clearance and availability of the interviewer and interviewees. Subject to permission from the Department of Education, Training and the Arts, interviews with school-based personnel would also occur in 2009.

Once transcribed and verified, the interview data will add to other written materials provided by the complainants’ lawyer as well as by the Anti-Discrimination Commission. A forensic linguistic analysis of these materials will then be undertaken.

There are potential limitations for data collection. It is possible that the families targeted for this case study may not consent to an interview. Due to the ongoing nature of discrimination claims, it is envisaged that further claims of discrimination will continue to be brought forward. It is also possible, pending the outcome of these specific claims, that there may be subsequent appeals. Future claims brought forward between now and the completion of this research will also be examined with a view to undertaking further and longitudinal data collection on new cases, if necessary. Again, only claims that specifically relate to the types of adjustments applied in the area of curriculum will be examined.

It is also possible that, due to the legal nature of this research, the Principal of the school may not give permission to interview personnel. While it would be important to speak directly with these personnel to attempt to understand how schools view curriculum adjustments for children with disabilities, an understanding of this can also be gained from examining the Anti-Discrimination Tribunal decisions. However, the findings from this study would have significance for the Department. An area for future research may include the application of the findings from this research on educational policy in Queensland.

### *Data Analysis*

Once completed, these two sets of data will be analysed for commonalities and differences which have significance for implementation of the legislation with fidelity. To guide this analysis, an adaptation of part of Horrigan’s Project Analysis Matrix (Hutchinson, 2002) (Figure 3) will be utilised. This matrix has application for analysis of legal issues as it provides a framework for researchers to consider both the content of the law and the approaches to the law. In particular, the general discussion chapter will attempt to answer the following:



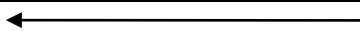

Approaches  	Critique	How does disability discrimination law work in practice and what changes in motivations, behaviour and other actions are needed?	How might the relevant law be redesigned outside its existing frame of reference to create an ideal law? How might educational practice be changed?
	Policy / Reform	What must happen in practice to accommodate incremental changes or developments from case law?	How might policy/practice be changed, reformed or developed within its existing frame of reference?
	Empirical / Doctrinal	What happens in practice in light of the relevant law / literature?	What is the relevant law? What does the literature tell us about curriculum adjustments?
		Practical / Operational Dimension	Elements of Law / Literature
	 Content 		

Figure 3: Adaptation of Horrigan's Project Analysis Matrix  
 Source: Adapted from Hutchinson (2002)

### Conclusion and Future Directions

This chapter has outlined a detailed proposal for a study examining educational literature and policy as well critiquing of court and tribunal decisions to expose clearer understandings of *reasonable adjustments* to curriculum and how legal and educational interpretations of this phrase align and differ. A detailed review of literature has revealed historically there was little requirement for teachers to make reasonable adjustments for children with disabilities due to the separate provision of educational opportunities. More recently, despite the legislative requirement to accommodate, parents continue to seek legal remedy.

Whilst, to date, no case has emphasised the issue of curriculum provision alone, it is envisaged through a comparison of anti-discrimination cases in education, court and tribunal transcripts, and parent/child case studies, will expose parental views of curriculum adjustments currently provided for children with disabilities in Queensland schools with insights into how parents feel teachers can best provide children with disabilities an educational program *on the same basis* as their peers. Not only will this add to the knowledge about variables that contribute to the current tensions between parents and educational authorities in relation to disability discrimination, the findings will also inform educators in how they can better understand and negotiate 'reasonable adjustments' that reduce the risk of future litigation.



## References

- Anti-Discrimination Act 1991* (Qld.). Reprinted as in force on 1 July, 2009. Reprint No 7E. Retrieved from [http://www.austlii.edu.au/au/legis/qld/consol\\_act/aa1991204/](http://www.austlii.edu.au/au/legis/qld/consol_act/aa1991204/)
- Ashman, A., & Elkins, J. (2005). *Educating children with diverse abilities* (2<sup>nd</sup> ed.). Frenchs Forest, Australia: Pearson Education.
- Australian Productivity Commission (1995-2007). *Report on Government Services*. Retrieved on November 3, 2008, from <http://www.pc.gov.au/gsp/reports/rogs>.
- Australian Research Council. (2007). *National statement on ethical conduct in human research*. Retrieved August 22, 2008, from [http://www.nhmrc.gov.au/PUBLICATIONS/synopses/\\_files/e72.pdf](http://www.nhmrc.gov.au/PUBLICATIONS/synopses/_files/e72.pdf)
- Beanland v. State of Queensland & Anor (9 April 2008) QADT 5. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2008/5.html>
- Bowd, A. (1990). *Exceptional children in class*. Melbourne, Australia: Hargreen.
- Casey, K. (1994). *Teaching children with special needs: An Australian perspective*. Wentworth Falls, Australia: Social Science Press.
- Cordery v. State of Queensland (3 February 2005) QADT 2. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2005/2.html>
- Creswell, J. W. (2005). *Educational research: Planning, conducting, and evaluating quantitative and qualitative research* (2<sup>nd</sup> ed.). New Jersey: Pearson Education.
- Cumming, J. J., & Dickson, E. A. (2007). Equity in assessment: discrimination and disability issues from an Australian legal perspective. *Education and the Law*, 19(3), 201 – 220.
- Dempsey, I. (2007). Legislation, policies and inclusive practices. In P. Foreman (Ed.), *Inclusion in Action* (2<sup>nd</sup> ed.). Southbank, Australia: Thomson.
- Dickson, E. (2003). Understanding disability: an analysis of the influence of the social model of disability in the drafting of the *Anti-Discrimination Act 1991 (Qld)* and its interpretation and application. *Australia and New Zealand Journal of Law and Education*, 8(1&2), 45-68.
- Dickson, E. (2004). Disability discrimination, unjustifiable hardship and students with disability-induced problem behaviour. *Australia and New Zealand Journal of Law and Education*, 9(2), 37-51.

Dickson, E. (2005). The instruction of students with hearing impairments in Auslan: *Hurst and Devlin v. Education Queensland*. *Australia and New Zealand Journal of Law and Education*, 10(1), 95-104.

Dickson, E. (2005/2006). Coping, complying and indirect discrimination: *Hurst v. State of Queensland*. *Australia and New Zealand Journal of Law and Education*, 10(2) & 11(1), 103-108.

Dickson, E. (2006). *Disability Standards for Education* and the obligation of reasonable adjustment. *Australia and New Zealand Journal of Law and Education*, 11(2), 23 – 42.

Dickson, E. (2007). *Equality of opportunity for all? An assessment of the effectiveness of the Anti-Discrimination Act 1991 (Qld) as a tool for the delivery of equality of opportunity in education to people with impairments*. Unpublished doctoral dissertation, University of Queensland, Australia.

*Disability Discrimination Act 1992* (Cth.). Act No. 135 of 1992 as amended. Retrieved from [http://www.austlii.edu.au/au/legis/cth/consol\\_act/dda1992264/](http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/)

*Disability Standards for Education 2005* (Cth.). Retrieved from <http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/all/search/4B28EE956766891FCA256FCC0004EF81>

Education Queensland Library Services Archives (n.d.). *A chronology of special education in Queensland*. Retrieved April 14, 2009, from <http://education.qld.gov.au/library/edhistory/state/chronology-spec/>

Finn v. Minister for Education (19 July 1995) QADT 4. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1995/4.html>

Fitzgerald, J. (1994). *Include me in: Disability rights and the law in Queensland*. Brisbane, Australia: Queensland Advocacy Incorporated.

Foreman, P., & Arthur-Kelly, M. (2008). Social justice principles, the law and research, as bases for inclusion. *Australasian Journal of Special Education*, 32(1), 109-124.

Forlin, C., & Forlin, P. (1998). The legal implications of including students with disabilities in regular schools. In M. Hauritz, C. Sampford, & S. Blencowe (Eds.), *Justice for people with disabilities: Legal and institutional issues*. Sydney, Australia: The Federation Press.

- Freebody, P. (2003). *Qualitative research in education: Interaction and practice*. London, England: Sage.
- Gibbons, J. (1994). Forensic linguistics. In J. Gibbons (Ed.), *Language and the Law* (pp. 319-325). London, England: Longman.
- Hannon, M. (2000). The *Disability Discrimination Act* – Protection against discrimination in the provision of education. *Law in Context*, 17(2), 28-53.
- Hashish v. Minister for Education (9 January 1996) QADT 1. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1996/1.html>.
- Hurst & Devlin v. Queensland (31 March 2004) FCA 427. Retrieved from <http://www.austlii.edu.au/au/cases/cth/FCA/2004/427.html>
- Hurst and Devlin v. Education Queensland (15 April 2005) FCA 405. Retrieved from <http://www.austlii.edu.au/au/cases/cth/FCA/2005/405.html>
- Hurst and Devlin v. Education Queensland (No. 2) (16 June 2005) FCA 793. Retrieved from <http://www.austlii.edu.au/au/cases/cth/FCA/2005/793.html>
- Hurst v. State of Queensland (28 July 2006) FCAFC 100. Retrieved from <http://www.austlii.edu.au/au/cases/cth/FCAFC/2006/100.html>
- Hurst v. State of Queensland (No. 2) (27 October 2006) FCAFC 151. Retrieved from <http://www.austlii.edu.au/au/cases/cth/FCAFC/2006/151.html>
- Hutchinson, T. (2002). *Researching and writing in law*. Sydney, Australia: Lawbook.
- I. on behalf of B. I. v. State of Queensland (14 December 2005) QADT 37. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2005/37.html>
- I. on behalf of B. I. v. State of Queensland (11 May 2006) QADT 19. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2006/19.html>
- I. v O'Rourke and Corinda State High School and Minister for Education for Queensland (31 January 2001) QADT 1. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2001/1.html>
- I. v O'Rourke and Corinda State High School and Minister for Education of Queensland (30 April 2001) QADT 2. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2001/2.html>

- Innes, G. (2003). *The DDA and its impact in the area of education*. Paper presented at the Special Indeed conference, Sydney, Australia.
- J. C. on behalf of B. C. v. State of Queensland (11 July 2006) QADT 27. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2006/27.html>
- Jones, M., & Bassar Marks, L. A. (1998). The limitations on the use of the law to promote rights: an assessment of the *Disability Discrimination Act 1992* (Cth). In M. Hauritz, C. Sampford, & S. Blencowe (Eds.), *Justice for people with disabilities: Legal and institutional issues*. Sydney, Australia: The Federation Press.
- K. v. N. School (1 December 1995) QADT 16. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1995/16.html>
- K. v. N. School (23 August 1996) QADT 18. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1996/18.html>
- K. v. N. School (7 January 1997) QADT 1. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1997/1.html>
- K. v. N. School (5 August 1997) QADT 19. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1997/19.html>
- Keeffe, M. (2003). The principal's governance of inclusion and the requirements of the disability discrimination legislation: Are they worlds apart? *Australia & New Zealand Journal of Law & Education*, 8(1&2), 69-76.
- Keeffe, M. (2004a). *Legal Tensions in the Governance of Inclusion: Principals' perspectives on inclusion and the law*. (Doctoral dissertation, Queensland University of Technology, 2004). Retrieved on March 17, 2007, from <http://adt.library.qut.edu.au/adt-qut/uploads/approved/adt-QUT20050616.093310/public/01front.pdf>.
- Keeffe, M. (2004b). Communication in learning and the provision of Australian Sign Language (Auslan) interpreters for a student with a hearing impairment. *Australia & New Zealand Journal of Law & Education*, 9(1), 109-113.
- Keeffe, M. (2004c). *Legal tensions in the governance of inclusion: Principals' perspectives on inclusion and the law*. Unpublished doctoral dissertation, Queensland University of Technology, Australia.
- Keeffe, M. (2004d). Principal's stress: tensions between the requirements of the disability discrimination legislation and the governance of inclusion in schools. In *Proceedings AARE Annual Conference*, Melbourne, Australia.

- Keefe-Martin, M. (2000). Students with disabilities and challenging behaviours: Implications for educators from *Hoggan v. The State of New South Wales (Department of Education)* (2000) Human Rights and Equal Opportunity Commission, 98/127, 13 November, Inquiry Commissioner Innes. *Australia & New Zealand Journal of Law & Education*, 5(2), 74-86.
- Keefe-Martin, M. (2001). Legislation, case law and current issues in inclusion: an analysis of trends in the United States and Australia. *Australia & New Zealand Journal of Law & Education*, 6(1&2), 25-45.
- Keefe-Martin, M., & Lindsay, K. (2002). Issues in Australian disability discrimination case law and strategic approaches for the lawful management of inclusion. *Australia & New Zealand Journal of Law & Education*, 7(2), 141-159.
- Keen, D., & Arthur-Kelly, M. (in press). Assessment, disabilities and inclusion priorities. In C. Wyatt-Smith and J. Cumming (Eds.), *Educational Assessment in the 21<sup>st</sup> Century*. Dordrecht, Netherlands: Springer.
- Komesaroff, L. (2007). Denying claims of discrimination in the Federal Court of Australia: Arguments against the use of native Sign Language in Australia. *Sign Language Studies*, 7, 360-386.
- L. v. Minister for Education (18 August 1995) QADT 7. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1995/7.html>
- L. v. Minister for Education (18 January 1996) QADT 2. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1996/2.html>
- LaNear, J., & Frattura, E. (2007). Getting the stories straight: Allowing different voices to tell an 'effective story' of special education law in the United States. *Education and the Law*, 19(2), 87-109.
- Lindsay, K. (2004). 'Asking for the moon'? A critical assessment of Australian disability discrimination laws in promoting inclusion for students with disabilities. *International Journal of Inclusive Education*, 8(4), 373 – 390.
- N. on behalf of N. v. State of Queensland (No 2) (30 March 2007) QADT 12. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2007/12.html>
- N. v. State of Queensland (3 February 2005) QADT 3. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2005/3.html>

- N. v. State of Queensland - costs (24 October 2005) QADT 31. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2005/31.html>
- Nelson, B. (2003). *Most Australian State and Territory Education Ministers vote against Disability Standards*. (Press Release, 11 July 2003).
- Nirje, B. (1969). The normalization principle and its human management implications. In R. Kugel & W. Wolfensberger (Eds.), *Changing patterns in residential services for the mentally retarded* [Monograph]. Washington DC: President's Committee on Mental Retardation. Retrieved from [http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/36/0e/df.pdf](http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/36/0e/df.pdf)
- Nirje, B. (1985). The basis and logic of the normalization principle. *Australia and New Zealand Journal of Developmental Disabilities*, 11(2), 65-68.
- Oliver, M. (1996). *Understanding disability: From theory to practice*. London, England: MacMillan.
- Olsson, J. (2004). *Forensic linguistics: An introduction to language, crime and the law*. London, England: Continuum.
- P. v. Director-General, Department of Education (13 March 1997) QADT 11. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1997/11.html>
- P. v. Minister for Education (23 January 1996) QADT 5. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1996/5.html>
- Pagura-Inglis v. Minister for Education (23 October 2003) QADT 18. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2003/18.html>
- Pagura-Inglis v. State of Queensland (7 December 2004) QADT 42. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/2004/42.html>
- Parliament of Queensland Legislative Assembly. (2006). *Parliamentary debates (Hansard)*. Queensland, Australia: Queensland Government Printers.
- Peters, S. (1996). The politics of disability identity. In L. Barton (Ed.), *Disability and society: Emerging issues and insights* (pp. 215 – 234). London, England: Longman.
- Ross v. Minister for Education (2 February 1996) QADT 6. Retrieved from <http://www.austlii.edu.au/au/cases/qld/QADT/1996/6.html>

- Shuy, R. W. (2001). Forensic linguistics. In M. Aronoff & J. Rees-Miller (Eds.), *The handbook of linguistics*. Malden, Mass.: Blackwell.
- Slee, R., & Cook, S. (1999). The cultural politics of disability, education and the law. *Discourse: Studies in the Cultural Politics of Education*, 20(2), 267-277.
- Stake, R. E. (1995). *The art of case study research*. Thousand Oaks, CA: Sage.
- Stewart, D. J. (1996). Principals' knowledge of law affecting schools. *Australia & New Zealand Journal of Law & Education*, 1(1), 111-129.
- Stewart, D. J. (1998). Legislation of education: Implication for principals' professional knowledge. *Journal of Educational Administration*, 36(2), 129-145.
- Stewart, D. J. (2003). Inclusion: How far does a school have to go? Ensuring best practice: The case of 'I'. *Australia & New Zealand Journal of Law & Education*, 8(1&2), 77-86.
- Stewart, D. J. (2005). The place of law in the leadership and management of schools. *Education and the Law*, 17(4), 127-136.
- Swan, G. (1978). *Cerebral palsy – Integration*. Unpublished master's thesis, University of Queensland, Brisbane, Australia.
- Swan, G. (1988). Educational provision for mildly intellectually disabled children in Queensland: Development and decline. *The Exceptional Child*, 35(2), 71-84.
- Swan, G. (1994). Approaching integration: Australia. In K. Mazurek & M. A. Winzer (Eds.), *Comparative Studies in Special Education*. Retrieved October 10, 2008, from [http://books.google.com.au/books?id=zOl\\_hpr0MiEC&printsec=frontcover&dq=Comparative+Studies+in+Special+Education#PP1,M1](http://books.google.com.au/books?id=zOl_hpr0MiEC&printsec=frontcover&dq=Comparative+Studies+in+Special+Education#PP1,M1).
- Tait, G. (2004). *Disability and the ethical responsibilities of the teacher: Issues arising from the case of L v. Minister for Education*. In Proceedings AARE Annual Conference, Melbourne, Australia.
- The Blind, Deaf and Dumb Children Instruction Act 1924 15 Geo 5 No. 21(rep 1964 No. 73 s 3 sch)(Qld.)*.
- The Backward Persons Act 1938 2 Geo 6 No. 30 (rep 1985 No. 11 s 3(1)) (Qld.)*.

*The State Education Act of 1875 and Regulations of the Department of Public Instruction in Queensland*, as approved by the Governor and Executive Council, 8th April, 1876. Retrieved from <http://www.nla.gov.au/apps/doview/nla.aus-vn1323799-p>

*The Education (General Provisions) Act 1989* (Qld.). Retrieved from [http://www.legislation.qld.gov.au/LEGISLTN/REPEALED/E/EducGenProvA89\\_06F\\_060101.pdf](http://www.legislation.qld.gov.au/LEGISLTN/REPEALED/E/EducGenProvA89_06F_060101.pdf)

*The Education (General Provisions) Act 2006* (Qld.). Retrieved from [http://www.austlii.edu.au/au/legis/qld/consol\\_act/epa2006305/](http://www.austlii.edu.au/au/legis/qld/consol_act/epa2006305/)

Tucker, B. (1995). *The Disability Discrimination Act: Ensuring rights of Australians with disabilities, particularly hearing impairments*. *Monash University Law Review*, 21(1), 15-52.

Varnham, S. (2004). Current developments in Australia. *Education and the Law*, 16(1), 47-59.

Wenham, M. (2008, April 4). Skills shortage makes a mockery of promises – Frustrated parents of disabled children take education authority to task. *The Courier Mail*, p. 23.