Appendix 5 Dissenting statements

**Hon Sarah Mitchell MLC, The Nationals and Hon Natasha Maclaren-Jones, Liberal Party**

The Opposition thanks all individuals and organisations who made submissions and gave evidence to this inquiry. We believe this report largely reflects the experiences of children and young people with disability in NSW, along with their families, and offers findings that highlight many of the challenges they face in educational settings.

Similarly, the majority of the recommendations were supported by all committee members and offer tangible steps the NSW Government can take to improve the educational experience for these young people with disability and their families.

We do note however that there were two recommendations, Recommendation 24 and Recommendation 25, which were not supported by Opposition members. These two recommendations suggested consideration of amendments to the *Anti-Discrimination Act 1977* that would impact educational institutions.

We recognise that the issues around exemptions in the *Anti-Discrimination Act 1977* are complex, and we do not believe the committee heard sufficient evidence to make recommendations in relation to this matter.

We would like to make it clear that we believe there is a community expectation that all schools and educational institutions will treat children and young people with disability with respect and provide reasonable adjustments for their learning. During the course of the inquiry we heard from a number of students, parents and teachers who gave evidence of positive experiences at both Government and non-Government schools.

While the issues of discrimination in school settings were addressed generally within the terms of reference, there was no specific mention of considering changes to the *Anti-Discrimination Act 1977* as part of this inquiry. As such, we do not feel that impacted schools or organisations would have been aware the committee was considering this matter as a substantive issue, and therefore we are concerned that there was not a sufficient opportunity for witnesses to offer feedback on any changes to the *Anti-Discrimination Act 1977.*

It is for these reasons that we cannot support Recommendation 24 and Recommendation 25.

**Hon Tania Mihailuk MLC, Pauline Hanson's One Nation**

I participated in the Children and young people with disability in New South Wales educational settings Inquiry on the proviso it was a genuine attempt to recommend improvements for meeting the challenging yet rewarding aspects of educating our most vulnerable.

I thank the many stakeholders, educational institutions, staff, and volunteers who work diligently to provide opportunities that only decades ago did not exist. As a long-term MP, I have worked with many families of those with disabilities. Further, having a family member with a profound disability, I'm acutely aware of the many challenges and struggles families and carers face.

***Anti-Discrimination Act 1977* ('*ADA Act'*)**

I strongly oppose the inclusion of recommendations 24 and 25. The amended Recommendation 24 now reads, “the NSW Government refer the issue of the removal of exemptions which allow private educational institutions to discriminate against a person on the basis of disability to the NSW Law Reform Commission for consideration as part of its review into the *Anti-Discrimination Act 1977*”.

Originally, the Chair proposed recommendation 24 to read, “the NSW Government seek to amend the *Anti-Discrimination Act 1977* to remove exemptions which allow private educational institutions to discriminate against a person on the basis of disability”.

Recommendation 25 reads, “the NSW Government seek to amend the *Anti-Discrimination Act 1977* to include a positive duty on educational institutions to provide reasonable adjustments for a person with disability”.

The inclusion of recommendations 24 and 25 tarnishes the Inquiry's potential. In my view, it’s a blatant attack on religious and faith-based schools and their institutions. These recommendations should be omitted.

At no stage throughout the hearings did this issue arise. I note the Inquiry's terms of references didn’t refer to any suggestion that exemptions to the *ADA Act* were being considered. Stakeholders within the non-public school sector, including representatives of the Catholic systemic, Catholic independent, Christian (including Anglican), Orthodox, and other denominations including Islamic and Jewish faith-based religious schools, and their respective institutions, were not invited to make submissions, or to provide evidence of the consequences of removing such exemptions.

No legal or other evidence was presented. The Committee didn’t seek separate legal briefing, counsel, or advice as to the impact such recommendations could have, nor did the Committee consider the potential legal consequences.

The small number of those who made submissions calling for exemptions to the *ADA Act* to be removed for the non-public school sector weren’t invited to provide substantial evidence, or to have their claims fact checked. The non-public school representatives and their respective associations were largely excluded from the hearings. The Associate Chief Executive of Student Services, Association of Independent Schools (AISNSW) was the only representative invited and tagged to the final day of the hearings.

Upon reviewing the transcript, it's clear this significant proposal for the *ADA Act* was never touted by the Chair; therefore, no feedback from the sector was canvassed.

I note the Chair asked the following 'glowing' questions of the only non-public school representative present at the Hearing:-

CHAIR: “There is anecdotal evidence, at least, that there are fewer suspensions and expulsions within independent schools than within the public sector…”

And: -

CHAIR: “It seems that non-public schools are also a little bit more proactive and better at putting in requests for adjustments when it comes to HSC time as well…”

The non-public school sector, which assists the Government in teaching thousands of NSW children including children with disabilities, has been denied the right to reply to such a proposal. I can only conclude the non-public school sector has been ambushed. Interestingly, no legislative amendments have been suggested for the *Education Act 1990*. The majority of recommendations proposed seek basic reviews, or are general assertions.

In my view, the Committee has not sufficiently engaged, sought, or tested any evidence that can substantiate recommendations 24 and 25.

Recommendation 25 is not supported by findings, case examples, legal brief notes, or tested evidence. Recommendation 24 refers the removal of exemptions that allow private educational institutions to discriminate against a person on the basis of disability to the NSW Law Reform Commission for consideration as part of its review into the *Anti-Discrimination Act 1977*. The submissions for that review have closed. I note any stakeholders with dissenting views have again been denied the opportunity to engage in the matter. The final wording of Recommendation 24 is the lesser of the two evils.

Children and young adults with a disability, and their families, deserve tangible solutions, not to be used as pawns in unnecessary culture wars.