



Royal Commission
into Violence, Abuse, Neglect and Exploitation
of People with Disability

Inclusive education, employment and housing

Part A



Final Report
Volume 7

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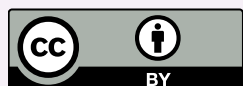
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Acknowledgement of Country

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) acknowledges Australia's First Nations peoples as the Traditional Custodians of the lands, seas and waters of Australia, and pays respect to all First Nations Elders past, present and emerging.

We recognise their care for people and country. In particular, we acknowledge the Traditional Custodians of the lands on which our offices are based: the Gadigal people of the Eora Nation where our Sydney office stands, the Jagera and Turrbal people as Traditional Owners and Custodians of the lands on which the city of Brisbane is located and the Ngunnawal and Ngambri peoples upon whose land the city of Canberra is located.

We pay our respects to all First Nations people with disability and recognise the distinct contributions they make to Australian life and to the outcome of this inquiry.

Acknowledgement of people with disability

The Royal Commission acknowledges people with disability who fought and campaigned long and hard for the establishment of this Royal Commission.

We acknowledge the courage and generosity of people with lived experience of disability who shared their knowledge and experiences of violence, abuse, neglect and exploitation with the Royal Commission. Their contributions to the Royal Commission have been indispensable in framing recommendations designed to achieve a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

Content warnings

This report contains information about violence, abuse, neglect and exploitation that may be distressing to readers.

The report contains first-hand accounts of violence, abuse, neglect and exploitation. As a result, some direct quotes in the report may contain language that may be offensive to some people.

First Nations readers should be aware that some information in this report may have been provided by or refer to First Nations people who have passed away.

Final Report

Volume 7

Inclusive education, employment and housing

Part A

*Due to the size of this Volume, it has been broken into four parts. The Table of contents can be found in the *Summary and recommendations* part of this Volume.

1. Introduction

Key points

- Under article 24 of the *Convention on the Rights of Persons with Disabilities*, Australia has obligations to recognise the rights of people with disability to education. Education is the starting point for an inclusive society.
- We agree with *General comment no. 4 (2016) on the right to inclusive education* of the Committee on the Rights of Persons with Disabilities that ensuring the right to inclusive education entails:
 - a transformation in culture, policy and practice in educational environments to accommodate the differing requirements and identities of individual students
 - a commitment to removing the barriers that impede that possibility.
- We agree mainstream schools need major reforms to overcome the barriers to safe, equal and inclusive education. However, the Commissioners hold differing views on certain aspects of inclusive education.
- Three Commissioners, Bennett, Galbally and McEwin, consider that to achieve inclusive education, all special or segregated education settings must be closed over a period of 28 years (beginning in 2024). They consider the segregation of people with disability, including in education, to be a significant human rights issue linked with violence against, and the abuse, neglect and exploitation of, people with disability.
- The Chair and Commissioners Mason and Ryan consider the policy choice is not between a non-mainstream school whose students are completely isolated from their peers and a fully inclusive school system in which all students, regardless of the nature of their disability or the complexity of their support needs, are educated together at all times. They consider that educational authorities should ensure students with complex support needs engage regularly with their peers in mainstream schools in a variety of contexts. They also consider this to be consistent with the goal of a more inclusive society.

1.1. A rights-based approach to inclusive education

Convention on the Rights of Persons with Disabilities

The Royal Commission's terms of reference recognise that:

Australia has international obligations to take appropriate legislative, administrative and other measures to promote the human rights of people with disability, including to protect people with disability from all forms of exploitation, violence and abuse under the Convention on the Rights of Persons with Disabilities.¹

Under article 24 of the *Convention on the Rights of Persons with Disabilities (CRPD)*, States Parties, including Australia, have an obligation to recognise the rights of people with disability to education. Article 24(1) and (2) provide:

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:
 - a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - c. Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
 - a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - c. Reasonable accommodation of the individual's requirements is provided;
 - d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.²

Under article 24(3) of the *CRPD*, States Parties must enable persons with disabilities to learn life and social skills so they can fully and equally participate in education and as members of the community. This includes:

- a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;³
- b. Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;⁴
- c. Ensuring that the education of persons – in particular, children – who are blind, deaf or deafblind is delivered in the most appropriate languages and modes and means of communication for the individual; and in environments that maximise academic and social development.⁵

Under article 24(4) of the *CRPD*, States Parties must:

take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille and train professionals and staff who work at all levels of education. This training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.⁶

Article 24 must be read with article 2, which states:

[‘Discrimination on the basis of disability’ is] any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.⁷

Article 2 also states:

[‘Reasonable accommodation’ is] necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with other of all human rights and fundamental freedoms.⁸

In their submission following Public hearing 24, ‘The experience of children and young people with disability in different education settings’, Counsel Assisting the Royal Commission summarised the elements of article 24 as follows:⁹

- People with disability should not be excluded from the general education system on the basis of disability. Children with disability should not be excluded from free and compulsory primary education or from secondary education on the basis of disability.¹⁰

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- People with disability should be able to access inclusive, quality and free primary and secondary education in the communities in which they live.¹¹
 - Reasonable accommodation should be provided.¹²
 - People with disability should be supported within the general education system to facilitate their effective education.¹³
 - People with disability should be given individualised support to maximise academic and social development, consistent with the goal of full inclusion.¹⁴
 - People with disability should be able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. Reasonable accommodations should be provided to people with disability.¹⁵

The right to education is generally regarded as an economic, social and cultural right.¹⁶ Therefore, States Parties must progressively realise the right to education to the maximum of their available resources.¹⁷ In contrast, civil and political rights recognised by the *CRPD*, such as the right to access justice, require immediate and full implementation.¹⁸ However, aspects of the right to education require immediate implementation. These include the duty to take all appropriate steps to provide ‘reasonable accommodation’.¹⁹

Interpreting the right to inclusive education

In 2016, the Committee on the Rights of Persons with Disabilities (CRPD Committee) published *General comment no. 4 (2016) on the right to inclusive education (General comment no. 4)* on article 24. The CRPD Committee stated that:

Ensuring the right to inclusive education entails a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to removing the barriers that impede that possibility. It involves strengthening the capacity of the education system to reach out to all learners. It focuses on the full and effective participation, accessibility, attendance and achievement of all students, especially those who, for different reasons, are excluded or at risk of being marginalized. Inclusion involves access to and progress in high-quality formal and informal education without discrimination. Inclusion seeks to enable communities, systems and structures to combat discrimination, including harmful stereotypes, recognize diversity, promote participation and overcome barriers to learning and participation for all by focusing on the well-being and success of students with disabilities. It requires an in-depth transformation of education systems in legislation, policy and the mechanisms for financing, administering, designing, delivering and monitoring education.²⁰

The CRPD Committee highlighted the importance of distinguishing between exclusion, segregation, integration and inclusion:

Exclusion occurs when students are directly or indirectly prevented from or denied access to education in any form. Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to

a particular impairment or to various impairments, in isolation from students without disabilities. Integration is the process of placing persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions. Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. [Footnote omitted.]²¹

In Section III of *General comment no. 4*, under the heading 'Obligations of States Parties' the CRPD Committee said:

Article 4(2) requires that States parties take measures to the maximum of their available resources regarding economic, social and cultural rights and, where needed, within a framework of international cooperation, with a view to achieving progressively the full realization of those rights. Progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 24.²² This is not compatible with sustaining two systems of education: a mainstream education system and a special/ segregated education system. Progressive realization must be read in conjunction with the overall objective of the Convention to establish clear obligations for States parties in respect of the full realization of the rights in question. Similarly, States parties are encouraged to redefine budgetary allocations for education, including by transferring part of their budgets to the development of inclusive education.²³

The status of General comments

In an advice to the Royal Commission, published on the Commission's website, Emeritus Professor Andrew Byrnes explained the significance and legal status of General comments in the form of a legal opinion.²⁴ The Commissioners have had regard to Professor Byrnes' opinion.

We reproduce parts of the advice as follows:²⁵

2. ... General Comments are documents issued by the United Nations human rights treaty bodies to provide guidance to States Parties and others on the measures that they should take in order to fulfil their reporting and substantive obligations under the various United Nations human rights treaties ...
3. In the case of the CRPD, the Committee on the Rights of Persons with Disabilities (CRPD Committee) has the power under Article 36(1) of the treaty to 'make such suggestions and general recommendations' on State reports. ...
5. ... [T]he purposes of General Comments are various and are not limited in practice to the articulation by a committee of what it considers to be the correct interpretation of the provisions of the relevant treaty.

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6. Nonetheless in many instances treaty bodies do intend to set out what they consider to be the correct interpretation of the treaty in their General Comments. The accepted and orthodox international legal position is that these interpretations are not legally binding on States Parties under international law. Equally, the views and recommendations adopted by treaty bodies in their decisions on individual complaints, in their reports adopted under inquiry procedures, or in concluding observations on individual State reports are also not formally binding as a matter of international law.
 7. Treaty bodies, treaty body members or other commentators and advocates sometimes describe General Comments and other outputs as 'authoritative', an ambiguous term which can in some circumstances mean legally binding and may be used to suggest that. However, the proposition that they are legally binding is not a position supported by international lawyers or States Parties to the various treaties, nor can such a position be justified by reference to the text of the treaties themselves. This is the case for the General Comments of the CRPD as well as those of the other United Nations human rights treaty bodies: they are not as such legally binding under international law.
 8. Thus describing General Comments as 'authoritative' with the intention of indicating that they are therefore binding under international law does not reflect current international law. However, the term 'authoritative' may also be understood as meaning of particular persuasive force or deserving of being accorded considerable weight, or even presumptively correct. There is significant State practice and academic commentary that suggests that States Parties should give particular attention to General Comments when considering the proper ... interpretation of a treaty and the measures required for its implementation.
 14. ... As a practical matter General Comments can also be relevant and useful in the interpretive process because they are the considered statements of the expert body entrusted under the treaty with monitoring its implementation.
 15. The special persuasive status of (at least some) human rights treaty body pronouncements has been recognised by international, regional and national courts. ...
 17. ... At the national level, there is varied practice. Many courts, including Australian courts, have recognised the potential relevance and persuasiveness of (particular) General Comments, while in other cases national courts have considered them unhelpful or irrelevant to their tasks. However, there is broad agreement that whether helpful or not to the domestic courts, they are not binding interpretations of the relevant treaty as a matter of international or national law.
 18. The weight that an international court or tribunal gives to the output of a human rights treaty body is likely to reflect the status of the particular body and the cogency of the reasoning that appears in the committee's document. ... The CRPD Committee, which began its work in 2009, is still a relatively young body, though it has been extremely active in the preparation of General Comments already. The considered pronouncements of the CRPD Committee in the form of its General Comments deserve to be given considerable weight in the interpretation of the treaty, even though they are not binding.

International human rights and the right to education

In their submissions following Public hearing 24, Counsel Assisting pointed out that over time, there has been greater recognition of the rights of people with disability to education, particularly the right not to be discriminated against on the ground of disability.²⁶

In 1948, the right to education was included in the United Nations (UN) *Universal Declaration of Human Rights*.²⁷ Article 26 states:

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

...

3. Parents have a prior right to choose the kind of education that shall be given to their children.²⁸

In 1966, the right to education was recognised in article 13(1) of the *International Covenant on Economic, Social and Cultural Rights*, which states:

education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.²⁹

Article 13(3) provides:

[States Parties should] undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.³⁰

In *General comment no. 5 (1994) on persons with disabilities*, the Committee on Economic, Social and Cultural Rights addressed education for persons with disabilities as follows:

School programmes in many countries today recognize that persons with disabilities can best be educated within the general education system. Thus the Standard Rules provide that “States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings”. In order to implement such an approach, States should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers. In the case of deaf children, for example, sign language should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment.³¹

The *Convention on the Rights of the Child* also recognises a right to education. It specifically states that the education of children with disability should ‘ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development’.³²

In *General comment no. 9 (2006) on the rights of children with disabilities*, the Committee on the Rights of the Child observed that movement towards inclusive education had received much support but noted the term ‘inclusive’ may have different meanings:

At its core, inclusive education is a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students.³³

Other United Nations initiatives have also referred to inclusive education. For example, in 1994, the United Nations Educational, Scientific and Cultural Organisation convened a conference to address education for children and young people with ‘special needs’. The conference led to the adoption of the *Salamanca Statement on Principles, Policy and Practice in Special Needs Education and a Framework for Action (Framework for Action)*.³⁴ The *Framework for Action* stated that regular inclusive schools are the most effective means of combating discriminatory attitudes and creating welcoming communities.³⁵

The *Framework for Action* requested that the international community endorse inclusive schooling.³⁶ It considered that a fundamental principle of inclusive schooling is that all children should learn together, wherever possible, regardless of any difficulties or differences they may have. It also stated that regular schools must recognise and respond to the diverse needs of their students.³⁷ It stated the assignment of children to special/segregated schools or classes should be an exception to the fundamental principle. It should only happen in infrequent cases, where it is demonstrated education in regular classrooms is incapable of meeting a child’s educational or social needs, or when it is required for the welfare of the child or other children.³⁸

The evolution of international thinking about the education of students with disabilities continued through the 1993 *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*;³⁹ a 2007 report on the right to education by the former UN Special Rapporteur on the right to education, Vernor Munoz;⁴⁰ and a report by the UN Office of the High Commissioner for Human Rights.⁴¹ The reports all noted that inclusive settings were important so that students with disability are educated in mainstream classrooms.⁴² The Special Rapporteur noted that ‘integration’ into mainstream schools has little value if there are no accompanying changes, such as organisational, curriculum, teaching and learning strategies.⁴³

In their submission following Public hearing 24, Counsel Assisting highlighted the work of the European Court of Human Rights and the European Social Rights Committee on inclusive education. Counsel Assisting noted that, while this jurisprudence is not binding on Australia, it helps to identify the elements of a right to education and protection against discrimination for people with disability in education.⁴⁴ In particular, the European Court of Human Rights

recently released a comprehensive overview of the case law. It shows how the court's case law has responded over time in determining appropriate adjustments when there may be a disproportionate or undue burden on state educational authorities.⁴⁵ As this case law illustrates, the right to inclusive education must take into account the rights and interests of other students and teachers, particularly their right to a quality education, and occupational health and safety issues in the classroom.⁴⁶

Human rights approaches

The international obligations discussed in the last section have evolved in parallel with understandings of the principles of human rights. Over the past few decades, human rights theory has shifted from focusing on formal equality to focusing on substantive and inclusive equality:

- **Formal equality** asserts that people should be treated in the same way in the same circumstances.⁴⁷
- **Substantive equality** asserts that, where people are disadvantaged, they should be treated differently with proactive or positive action that protects their rights.⁴⁸ To deliver educational outcomes comparable to those available to students without disability, there must be proactive steps that are different for students with disability.
- **Inclusive equality** (sometimes described as 'transformative equality')⁴⁹ asserts that, to protect rights, positive actions are needed to change structures and systems, with the goal to 'dismantle existing power relationships'.⁵⁰

Mr Gerard Quinn, UN Special Rapporteur on the rights of persons with disabilities, noted that this trend in equality theory is reducing focus on relative treatment and increasing focus on initiatives that reverse the processes that tend to lead to exclusion.⁵¹ These processes are replaced with processes that support social inclusion, enable people with disability to assume power over their lives, and ensure they have the opportunity to grow in free interactions with others.⁵² (See Volume 4, *Realising the human rights of people with disability*, for further details.)

Concepts such as 'substantive equality' and 'inclusive equality' do not have settled meanings. However, to achieve inclusive education for students with disability, requires transformative changes to education systems, including:⁵³

- redressing disadvantage⁵⁴
- addressing stigma, stereotyping, prejudice and violence⁵⁵
- enhancing voice and participation in society⁵⁶
- accommodating difference and achieving structural change⁵⁷
- recognising human diversity and dignity⁵⁸
- enabling people with and without disability to learn together to the maximum extent.⁵⁹

1.2. Commissioners' views on 'inclusive education'

Values and objectives of inclusive education

An inclusive education is vital because it shapes the self-esteem and aspirations of students with disability. It also maximises students' ability to gain rewarding employment, participate fully in the community and lead a fulfilling life. For all members of our society, education is vital to human flourishing⁶⁰ because it facilitates social participation, employment and resilience⁶¹ and is a worthwhile end in and of itself.⁶² Building the skills, independence and resilience of people with disability reduces the likelihood that they will experience violence, abuse, neglect or exploitation at school or later in life. Further, when people without disability learn, socialise and experience the accommodations and supports that are provided to people with disability, it is more likely they will be active participants in creating an equal society for people with disability.

School education is perhaps the most important opportunity to shape attitudes and social norms relevant to people with disability. An inclusive education fosters respect and embraces the differences, diversity and inherent dignity of people with disability. These attitudes and values are critical in preventing violence against, and the abuse, neglect and exploitation of, people with disability. They support acceptance and inclusion throughout life, including in employment, community living and community participation.

An inclusive schooling system should aim to ensure that students with disability access and participate in learning and extracurricular activities to the greatest extent they can and on an equal basis with their peers. This means:

- students with disability can access, contribute and participate to the maximum extent in all aspects of the life of their school⁶³
- all school environments are welcoming and safe, instil high expectations and aspirations, and are free from violence, abuse and neglect⁶⁴
- school supports are effective and meet the diversity of student needs⁶⁵
- students with disability achieve individual educational goals in and beyond school⁶⁶
- students with disability develop social skills and maximise their capacity to make choices⁶⁷
- the attitudes and behaviour of students, teachers, principals and educational authorities show they embrace diversity and the inclusion of students and teachers with disability.⁶⁸

Each of these outcomes is important. If school education fails to deliver any one of them, it falls short even if it delivers all the others. In practice, these outcomes support each other. Achieving one makes it more likely that others will be achieved.

A truly inclusive education system benefits students with and without disability by:

- adjusting teaching to the strengths, requirements and learning style of each student⁶⁹
- providing agency by responding to the preferences and desires of each student⁷⁰
- building social connections, both at school and for later life.⁷¹

Convention on the Rights of Persons with Disabilities

The CRPD Committee's *General comment no. 4* has played a critical role in discussions about the meaning of 'inclusive education' and the proper interpretation of article 24 of the *CRPD*. We have reproduced extracts from article 24 and *General comment no. 4* above. We have also reproduced an extract from the advice of Professor Byrnes, which explains the status in international law of general comments by UN human rights treaty bodies. Professor Byrnes' explanation reflects the generally accepted understanding of international lawyers.

In submissions and evidence at public hearings, people, organisations and governments have given different interpretations of article 24 of the *CRPD*. The different opinions generally centred on the concept of 'segregation' and whether article 24 imposes an obligation on States Parties, including Australia, to progressively phase out special/segregated schools. Submissions and evidence also showed that there are different understandings of the significance of *General comment no. 4* for the interpretation of article 24.

We highlight in Chapter 2, 'School education in Australia', that most Australian jurisdictions have formally committed to implementing principles of inclusive education in mainstream schools. In practice, educational authorities vary considerably in their understanding of the concept. The extent to which the principles of inclusive education are accepted and applied also varies across different school systems and across mainstream schools within jurisdictions.

Commissioners' views

The different approaches in the submissions and evidence are reflected in the divergent views among the six Commissioners. Commissioners have differing positions on the meaning of 'segregation' in education. They also differ on whether there is any place for students with complex support needs to be educated, at least for part of the time, in special/segregated education settings or nonmainstream schools.

Agreement

The Commissioners hold differing views on certain aspects of inclusive education. However, there is a very substantial measure of agreement. All the Commissioners accept important observations in *General comment no. 4*; however, some Commissioners consider that they are not entirely free from ambiguity. These observations have already been quoted, but we repeat them here:⁷²

Ensuring the right to inclusive education entails a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to removing the barriers that impede that possibility. It involves strengthening the capacity of the education system to reach out to all learners. It focuses on the full and effective participation, accessibility, attendance and achievement of all students, especially those who, for different reasons, are excluded or at risk of being marginalized. Inclusion involves access to and progress in high-quality formal and informal education without discrimination, including harmful stereotypes, recognize diversity, promote participation and overcome barriers to learning and participation for all by focusing on the well-being and success of students with disabilities. It requires an in-depth transformation of education systems in legislation, policy and the mechanisms for financing, administering, designing, delivering and monitoring education.

All Commissioners accept that inclusive education:

- involves specialist expertise to make reasonable adjustments for students with disability and support them to participate fully in school life
- empowers the leadership and voice of students with disability, while engaging parents/ carers in planning and decision making
- builds inclusive attitudes and behaviours among parents, students, teachers and school leadership
- enhances workforce capabilities and changes classroom and extracurricular practices (including support for post-school transitions and cultural capability).

All Commissioners agree that mainstream schools need major reforms to overcome the barriers to safe, equal and inclusive education we identify in Chapter 3, 'Overcoming barriers to safe, quality and inclusive education' and Chapter 4, 'Embedding inclusive education'. Unless this occurs, children and young people with disability, particularly those with high support needs, will not have the opportunity to participate to the maximum extent possible in mainstream schools alongside their peers.

For this reason, in chapters 3 and 4, we propose reforms to address and overcome barriers to inclusive education in mainstream schools. In doing so, we are not to be understood as suggesting that educational authorities, educational institutions, principals, teachers and governments have uniformly neglected or resisted necessary reforms. Our concern is to ensure that educational authorities and educational institutions recognise and tackle the barriers that need to be overcome if inclusive education in mainstream schools is to become a reality across Australia.

Phasing out special and segregated education settings

From the evidence and information provided to the Royal Commission, three Commissioners – Commissioners Bennett, Galbally and McEwin – consider the segregation of people with

disability, including in education, to be a significant human rights issue deeply linked with violence, abuse, neglect and exploitation experienced by people with disability. They understand that segregation has been at the very core of the struggle of people with disability for human rights and their devaluation throughout history.

In their view, the evidence and information before the Royal Commission, including what we have heard and learnt from private sessions and submissions, shows that the outcomes of special/segregated education settings are unacceptably poor. They consider that this amounts to educational neglect and contributes to experiences of violence, abuse, neglect and exploitation over the life course.

Commissioners Bennett, Galbally and McEwin are deeply concerned that almost 30 per cent of students with disability are educated in special/segregated settings⁷³ and that the use of segregated units and classes appears to be growing.⁷⁴

These Commissioners consider that to achieve an inclusive education, all special/segregated education settings must necessarily be closed over time. This needs to be coupled with reforms to ensure accessible and high-quality inclusive education in mainstream settings that does not segregate students on the basis of disability. In their view, realising the rights of people with disability to 'inclusive education' is not compatible with sustaining two systems of education (that is, an inclusive education system and a special/segregated education system) and that ultimately all resources should go into developing inclusive schools and classrooms. They consider that the *CRPD* does not permit the maintenance or the expansion of special/segregated settings. In the Australian context, this means special/segregated schools, units and classes should be dismantled and phased out.

This understanding is informed by the position of:

- the *CRPD* in its general comments, concluding observations and other instruments, in particular *General comment no. 4*⁷⁵
- the concurring opinions of eminent international human rights law experts who gave evidence to the Royal Commission or prepared analyses and reports, including UN independent experts⁷⁶
- the comprehensive expert opinion of Professor Andrew Byrnes.⁷⁷

Commissioners Bennett, Galbally and McEwin consider that continued use of special/segregated education stifles and impedes the reform of mainstream schools to deliver a truly inclusive education system. This is because the imperative to change is reduced by enabling a default segregated option. It limits the availability of resources (including specialised teachers and services) in the mainstream and perpetuates the existing 'binary' of 'segregation or 'integration'. It anchors 'parent choice' to these options. As long as 'segregation' exists, there are limited incentives and diminished opportunities to develop the mainstream system's capacity to cater to full human diversity, including disability, and provide genuine inclusive education.

In their view, education systems and society more generally will only be truly 'inclusive' if students with disability learn alongside students without disability and on an equal basis with

them. They believe that an inclusive society, where people with disability live free from violence, abuse, neglect and exploitation, begins with inclusive education. Commissioners Bennett, Galbally and McEwin believe that an inclusive society cannot be achieved unless governments commit to ensuring universally accessible, quality, inclusive education systems that do not segregate children and young people on the basis of disability. This will allow children with disability to begin their lives as equal members of our communities and with the same opportunities as their peers without disability.

Therefore, Commissioners Bennett, Galbally and McEwin consider that an education is not 'inclusive' if there are still special/segregated education settings. They believe the objective of an 'inclusive education' should always be considered with this in mind. They recommend a timetable of 28 years for phasing out special/segregated education settings (see Recommendation 7.14). They appreciate that changing education systems to make schools inclusive for all students with disability is a substantial undertaking. Their recommendation to phase out special/segregated education settings requires transition planning and a medium-to long-term timeframe. It will be important to do this while taking into account examples of inclusive education policies and practices in Australia and overseas that offer valuable lessons.

It follows that some features of the current system, which might be improved in the meantime, are transitional. They will become unnecessary when segregated education is phased out. For example, reforms to the policy and process for determining whether a student with disability will be allowed to enrol in a mainstream school (see Recommendation 7.1) and reforms to the policy on the co-location of students with disability (see Recommendation 7.4) will be redundant once special/segregated schools have closed.

These Commissioners also recommend that Australian Disability Enterprises (ADEs) should be phased out (see Chapter 7, 'Reforming Australian Disability Enterprises'). Jobs in ADEs should therefore not be considered a form of work experience or included in advice to students with disability on their transition to post-school education or employment (see Recommendation 7.5).

Inclusive education and choice

The Chair and Commissioners Mason and Ryan, share the aspirations of their colleagues. However, they have a different view about the role of non-mainstream schools in educating children and young people with complex support needs. They also have a somewhat different understanding of the concept of 'segregation'.

They make a preliminary point about terminology. Schools exclusively or primarily enrolling children and young people with complex support needs are conventionally described as 'special schools'. Commissioners have referred to those schools in previous publications as 'special/segregated schools'.

The word 'segregated' and its derivatives has negative connotations in the present context, as can be seen in the argument for phasing out these schools. The Chair and Commissioners Mason and Ryan prefer to use the more neutral expression 'non-mainstream schools' to

describe schools exclusively or primarily enrolling children and young people with complex support needs. However, they have acquiesced in the use of the expression ‘special/segregated schools’ in this chapter, except where they are expressing their own views.

It is often assumed that schools exclusively enrolling students with complex support needs inevitably must isolate those students from their peers in other educational institutions, particularly mainstream schools. These three Commissioners do not share this assumption. They consider the policy choice is not between a non-mainstream school whose students are completely isolated from their peers and a fully inclusive school system in which all students, regardless of the nature of their disability or the complexity of their support needs, are educated together at all times. In their view, there are more nuanced alternatives that are likely to be more suited to ensuring that all students with disability receive ‘an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences’.⁷⁸

These three Commissioners consider that governments and educational authorities should give the highest priority to addressing and overcoming the barriers to inclusive education in mainstream schools so that all students with disability have the opportunity to learn in mainstream schools to the maximum extent feasible. In 2021, the vast majority of students with disability who were considered in the Nationally Consistent Collection of Data on School Students with Disability (NCCD) were in mainstream schools. According to the available NCCD data we received under notice for 2021, approximately 878,000 students had a disability. Only about 5 per cent (approximately 46,700) of that cohort are enrolled in special/segregated schools.⁷⁹ When mainstream schools are better equipped to provide inclusive education to students with disability, including students with complex support needs, it is likely that fewer students with disability will need to be enrolled in non-mainstream schools.

The Chair and Commissioners Mason and Ryan accept Counsel Assisting’s submission that the terms of reference do not require Commissioners to express an opinion about conflicting interpretations of article 24 of the *CRPD*. They point out that the conflict is longstanding and will not be resolved by any opinions expressed by the Commissioners.

Transformational changes of this kind do not occur overnight. These three Commissioners accept that making inclusive education in mainstream schools available and accessible to as many students with disability as possible, including students with complex support needs, must be the objective of governments and educational authorities. This is necessarily a longer-term undertaking. It will require commitments from all Australian governments and educational authorities.

Accepting this objective does not mean also accepting that the needs of all children and young people with disability, regardless of the nature and complexity of their disability and support requirements, will be best met in a mainstream school, even one that implements the principles of inclusive education. As the evidence at public hearings suggests, there is always likely to be a relatively small group of children and young people with disability who prefer non-mainstream schools or whose parents or carers believe their complex support and educational needs are best met in a learning environment other than a mainstream school. For some, this may only

apply for part of the school week. Perhaps over time, as mainstream schools move close to achieving inclusive education for as many children with disability as possible, fewer children and young people with disability and their families will require this option.

For these reasons, the Chair and Commissioners Mason and Ryan consider that pursuing the objective of inclusive education in mainstream schools is compatible with the continuation of non-mainstream settings for a relatively small group of students with complex support needs. However, they do not accept that non-mainstream settings should isolate students with disability, including students with complex support needs, from their non-disabled peers. On the contrary, they are of the view that educational authorities should ensure, as soon as practicable, that non-mainstream schools enable students with complex support needs to engage regularly with their peers in other educational institutions, including mainstream schools. This should be done on a regular basis and in a variety of contexts: educational, recreational, social, celebratory and sporting. Similarly, other educational institutions, such as mainstream schools, should encourage and facilitate interaction between their own students and students with complex support needs enrolled in non-mainstream schools.

These measures have obvious benefits, consistent with the language in our terms of reference. They will maximise the opportunities for students with complex support needs to enhance their learning experiences, develop independence and social skills, and enjoy a range of recreational and supporting pursuits in common with their peers. They also ensure that students in non-mainstream schools will not be subject to the isolation that has characterised segregated environments.

When students enrolled in other educational institutions become involved with students with complex support needs, they will be encouraged to accept and include them. In the longer term, these measures will contribute to the development of social norms that fully respect and embrace the diversity of people with disability.

1.3. Overview of our inquiry into inclusive education

Public hearings of the Royal Commission

During the inquiry, the Royal Commission held three public hearings that focused on issues related to education.

In Public hearing 2, ‘Inclusive education in Queensland – preliminary inquiry’, held from 4 to 7 November 2019, we examined the systemic challenges and barriers that children and young people with disability can face in accessing and obtaining a safe, inclusive and quality school education. Throughout this hearing, we heard that poor educational experiences have significant negative effects on the life course of students with disability; for example, on their employment and mental health.⁸⁰

The focus of attention was on the Queensland Government education system. One of the reasons we chose to examine Queensland was that we wanted to consider whether its Inclusive Education Policy could be used as a model for other jurisdictions.

The Commissioners released a report on Public hearing 2 on 27 October 2020.⁸¹ Given the preliminary nature of the inquiry, the report did not make specific recommendations. Rather, it identified drivers and forms of violence, abuse, neglect and exploitation. Some of the drivers identified were:

- mistreatment by school staff and other students
- restrictive practices
- lack of adjustments and supports
- poor complaints-handling procedures
- insufficient teacher training
- funding complexities.⁸²

In Public hearing 7, 'Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts', held from 12 to 16 October 2020, we examined the barriers that students with disability face in accessing and obtaining a safe, quality and inclusive school education. We also examined the effects on the life course of students with disability that result from these barriers. This hearing focused on the government school systems in New South Wales and Queensland. The hearing examined a range of issues, including the:

- use of exclusionary discipline against students with disability in education
- barriers to making reasonable adjustments and supports available for students with disability
- denial or discouragement of enrolment of students with disability
- limited availability of data about the experiences of students with disability in education
- funding models used to support students with disability.⁸³

The Commissioners released a report on Public hearing 7 on 17 November 2021.⁸⁴ In that report, Commissioners made findings on reasonable adjustments, the use of restrictive practices and data collection in the New South Wales and Queensland education systems.⁸⁵

In Public hearing 24, held from 6 to 10 June 2022, we examined the experiences of children and young people with disability in different education settings, concentrating on Western Australia and South Australia. This hearing gave us the opportunity to hear from children and young people with disability and their families about their day-to-day experiences in a range of educational settings. We heard about the experiences of children and young people with disability during early childhood, primary and secondary education and the transition from school.

The importance of education for children and young people with disability was also addressed at Public hearing 9, 'Pathways and barriers to open employment for people with disability', held in December 2020;⁸⁶ and in Public hearing 22, 'The experience of people with disability working in

Australian Disability Enterprises’, held in April 2022. These hearings focused on the experiences of young people with disability who are transitioning from school to employment. This included the experiences of young people educated in special/segregated school settings in finding employment opportunities.⁸⁷

Issues papers, research and other information

The Royal Commission’s inquiry into inclusive education has also benefited from a range of other sources of information.

In October 2019, the Royal Commission released its *Education and learning issues paper*. We received 49 responses from a diverse mix of people and organisations, including two people with disability, several family members of people with disability (including parents), academics, and a range of organisations.⁸⁸ The Royal Commission noted some gaps, including the absence of responses on First Nations and culturally or linguistically diverse people with disability.

Respondents identified potential enablers of violence, abuse, neglect and exploitation in education settings; for example, schools not agreeing to reasonable adjustments recommended by parents, students or allied health practitioners, sometimes because the schools claimed to lack the necessary funding.⁸⁹ Respondents also described the inconsistent access to support and funding across different education systems and jurisdictions.⁹⁰

Responses identified concerns about reporting, investigating and responding to violence, abuse, neglect and exploitation in education settings. For example, Speech Pathology Australia explained that non-verbal students with disability sometimes cannot access the complaints processes to report violence, abuse, neglect or exploitation.⁹¹

Responses provided a variety of perspectives about the definition of ‘inclusive education’ and the role of special/segregated schools.⁹² For example, some responses said that inclusive education must involve all students learning in the same environment, while others said that it can also be achieved while maintaining separate education settings.⁹³

The Royal Commission’s terms of reference required an interim report to be presented to the Governor-General by 30 October 2020.⁹⁴ The *Interim report* identified several ‘key themes’, including the following issues concerning education for children and young people with disability:⁹⁵

- the lack of access for people with disability to education, its opportunities and benefits
- incidents of physical, verbal and emotional violence and abuse
- the need for safe, quality and inclusive education that involves strong leadership and culture, effective workforce training, collaboration, accessibility and effective provision of adjustments and supports.

Education has featured strongly in our submissions and private sessions. As of 31 December 2022, the Royal Commission had received at least 1,919 submissions and held at least

457 private sessions in which the theme of education was discussed. We have also issued at least 31 notices to obtain data and information on the education of students with disability from government and non-government organisations.

We have published two research reports specifically addressing issues relating to education:

- *Legislation and regulation in Australia: Children and young people with disability in primary and secondary education settings* (July 2021)⁹⁶
- *Outcomes associated with 'inclusive', 'segregated' and 'integrated' settings* (March 2023).⁹⁷

Other commissioned research reports have addressed important issues to do with the rights of children and young people with disability to a safe, quality and inclusive education. For example:

- the research report entitled *The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance* (October 2020)⁹⁸ considered Australia's implementation of relevant articles of the *CRPD*, including article 24 on the right to inclusive education⁹⁹
- the research report entitled *Restrictive practices: A pathway to elimination* considered the Australian 'high-level' frameworks and principles for reducing and eliminating restrictive practices in education settings.¹⁰⁰

In July 2023, the Royal Commission released a report titled *The association between segregated education and employment on the outcomes of NDIS participants*.¹⁰¹ This report uses statistical modelling to quantify the association between attending special/segregated education and employment after leaving school and the factors that are associated with autonomy in decision making in early adulthood.

The Royal Commission notes there has been limited analysis to date into the effects of special/segregated education settings on outcomes for people with disability. This is largely driven by limitations in data collection. For instance, data on the school settings in which students with disability participate (that is, mainstream or special/segregated classes or special/segregated schools) is not collected. The results and limitations of this analysis are discussed in sections 3.7 and 5.1.

We have also had regard to a wide range of national, state and territory reports and inquiries on education released in the decade before we began our work. A list of relevant past reports is contained in Volume 2, *About the Royal Commission*. We refer to these reports and inquiries in the following chapters.

Endnotes

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- 21 Committee on the Rights of Persons with Disabilities, *General comment no. 4 (2016) on the right to inclusive education*, 16th sess, UN Doc CRPD/C/GC/4 (25 November 2016), [11].
- 22 Committee on the Rights of Persons with Disabilities, *General comment no. 4 (2016) on the right to inclusive education*, 16th sess, UN Doc CRPD/C/GC/4 (25 November 2016), [40].
- 23 Committee on the Rights of Persons with Disabilities, *General comment no. 4 (2016) on the right to inclusive education*, 16th sess, UN Doc CRPD/C/GC/4 (25 November 2016), [40].
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2. School education in Australia

Key points

- The legislative and policy context for inclusive education is complex, spanning nine jurisdictions.
- Key laws governing the right of students with disability to inclusive education include the *Disability Discrimination Act 1992* (Cth) and *Disability Standards for Education 2005* (Cth). These laws operate concurrently with state and territory anti-discrimination legislation, human rights legislation and education legislation.
- States and territories are primarily responsible for establishing, maintaining and regulating public education systems, including mainstream and segregated schools and education settings.
- State and territory education legislation provides for a right to education and/or to access high-quality education. This does not translate to an unfettered right to enrol in a public school of choice.
- The Australian Government and state and territory governments share responsibility for school funding. There are also private funding sources.
- Australian Government school funding includes a disability loading that reflects the number of students with disability receiving extra support and the level of support. However, educational authorities in the states and territories use their own differing funding models to distribute this disability funding.
- According to the Australian Bureau of Statistics *Survey of Disability, Ageing and Carers*, in 2018 an estimated 380,000 children with disability, aged five to 18, attended primary or secondary school (or 10 per cent of school students in Australia). Around 5.4 per cent (or 206,000) of these children had severe or profound disability.
- In 2018, most (71 per cent) students with disability attended only regular classes in a mainstream school, 18 per cent attended special classes within a mainstream school, and 12 per cent attended a special school.

2.1 Legislative and policy context

Overview of Australia's education system

The Australian Constitution confers power on the Australian Parliament to make laws with respect to numerous subjects.¹ These subjects do not include education. Therefore, the states and territories are primarily responsible for establishing, maintaining and regulating public education systems, including mainstream and special/segregated schools. State and territory governments are largely responsible for funding government schools. They also regulate public and private (including faith-based) schools within their jurisdictions. They oversee course accreditation and student assessments, infrastructure maintenance and the employment of teachers and administrative staff.

The Australian Parliament can influence and regulate schools indirectly through its power to make conditional funding arrangements and grants,² and it does so.³ This is explained in further detail below. The Australian Parliament has other legislative powers that it uses to govern aspects of school education. Of particular significance to students with disability is the power to make laws with respect to external affairs.⁴ This power enables Parliament to enact legislation to implement in domestic law Australia's obligations under international treaties, such as the United Nations *Convention on the Rights of Persons with Disabilities (CRPD)*.⁵

The education system in Australia comprises:

- early childhood education and care (ECEC)
- primary and secondary education
- further education.

ECEC is delivered through a range of settings, including childcare centres and preschools, in the years before full-time schooling.⁶

Primary and secondary education (compulsory years) is delivered by the states and territories, and is partially funded by the Australian Government. Primary and secondary education is divided into sectors:

- government
- non-government (independent and Catholic systemic schools)
- off-campus (home schooling and distance education).

State governments operate government schools. Private schools operate independently, but they are still subject to the relevant state or territory legislation.⁷

Further education in Australia encompasses higher education and vocational education and training (VET). Higher education refers to universities,⁸ and VET includes technical and further education (TAFE), community education, private training providers and enterprise training providers.⁹ Some universities and schools also provide VET.¹⁰

Students in Australia attend either government or private schools:

- Government schools are those established and operated by a state or territory government. Australian Government and state and territory governments fund government schools directly or indirectly. Government schools deliver primary and secondary education free to students.
- Private schools are Catholic and independent schools. They usually charge fees payable by parents or guardians. Catholic schools are associated with the Catholic Church and their diocesan authorities. Independent schools may or may not be faith-based. They may also be based on particular educational philosophies or operate as single entities – for example, schools for First Nations students. Both Catholic and independent schools provide primary and secondary education (not necessarily both). Most private schools receive financial support from the Australian Government or state or territory governments. (See section 2.3 on school funding.)

Number of special/segregated schools

Government and private schools educate some students with disability in separate schools, classes or units where education is designed or used to respond to a particular disability or various disabilities. These facilities are usually separate from those for students without disability and, in Australia, are often called ‘special’ schools, units or classes.

There are government, Catholic and independent special/segregated schools and classes in almost every state and territory.¹¹ The Australian Bureau of Statistics collects data about the number of schools in Australia. It collects data on ‘special schools’ but not on the number of ‘special’ classes or units within mainstream schools.¹² The data indicates that the number of special/segregated schools in every jurisdiction increased between 2010 and 2022.

Data from the Australian Curriculum, Assessment and Reporting Authority (ACARA) shows the number of special/segregated schools in Australia increased by 26 per cent over that period, from 414 in 2010 to 520 in 2022 (see Figure 7.2.1).¹³ The growth in special/segregated schools has outpaced the growth in the number of schools overall by 1.5 per cent. As a result, the proportion of special/segregated schools (out of all schools) increased from 4.4 per cent in 2010 to 5.4 per cent in 2022.¹⁴

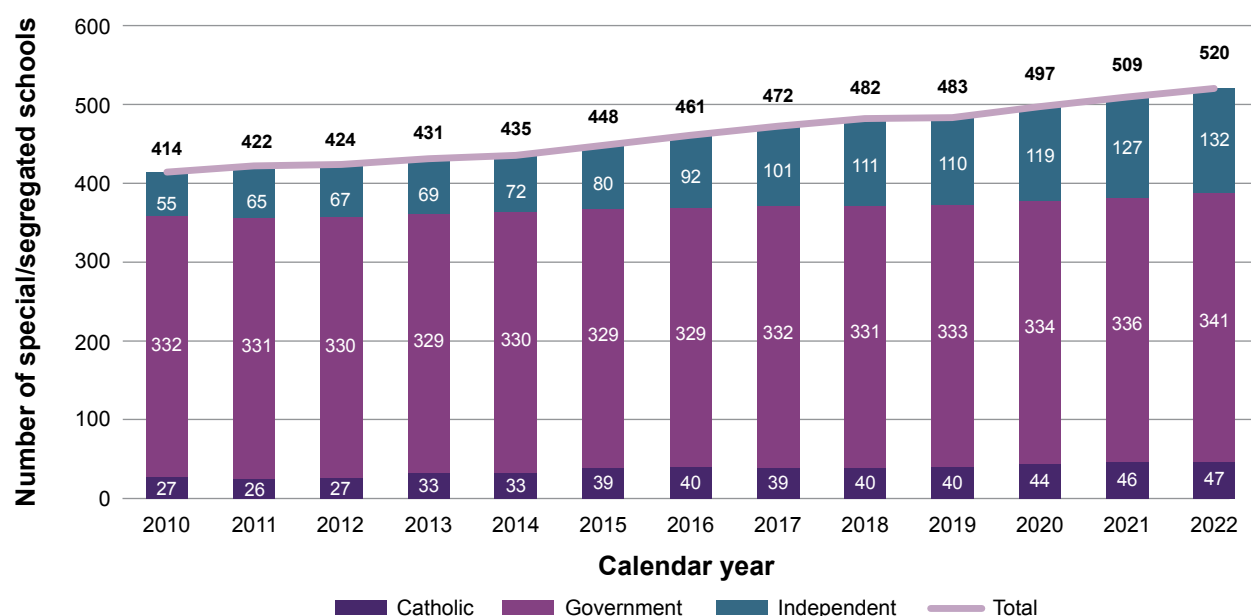


Figure 7.2.1: Number of special/segregated schools in Australia from 2010 to 2022 by school system

Source: ACARA (2022).

This growth has been led by the independent school system in which the number of special/segregated independent schools increased from 55 schools in 2010 to 132 in 2022 (a 140 per cent increase). The Catholic school system also contributed to growth in the number of special/segregated schools with the addition of 20 schools (a 74 per cent increase). The number of government schools increased by nine schools in the same period (a 2.7 per cent increase).¹⁵

Mirroring the national trends, the independent school system accounted for the majority of the growth in the number of special/segregated schools in every jurisdiction except the Northern Territory (Table 7.2.1 and Table 7.2.2).¹⁶ Similarly, the number of Catholic special/segregated schools increased slightly in all jurisdictions other than Victoria and the Australian Capital Territory. However, the government school system has not seen the same growth, with minimal increases in the number of special/segregated schools in all jurisdictions.

The largest increase in the number of special/segregated schools during this period was in Queensland, which had 60 such schools in 2010 and 95 in 2022. This increase was predominantly driven by the independent system (seven to 32) and Catholic system (seven to 14). There was an increase of three government special/segregated schools in the same period (46 to 49).¹⁷

The jurisdiction with the largest increase in the number of government-operated special/segregated schools between 2010 and 2022 was Victoria. In that state, the number increased from 76 to 82 (an increase of six). In a response to the *Education and learning issues paper*, the Victorian Government told us that the 'Departmental analysis indicates demand for specialist schools is being driven by population growth rather than changing community attitudes or government school provision'.¹⁸

Table 7.2.1: Number of special/segregated schools in 2010 by jurisdiction and school system

Jurisdiction	Government	Catholic	Independent	Total
New South Wales	110	7	28	145
Victoria	76	8	13	97
Queensland	46	7	7	60
South Australia	19	2	1	22
Western Australia	67	3	6	76
Tasmania	5	0	0	5
Northern Territory	5	0	0	5
Australian Capital Territory	4	0	0	4
National	332	27	55	414

Source: ACARA (2022).

Table 7.2.2: Number of special/segregated schools in 2022 by jurisdiction and school system

Jurisdiction	Government	Catholic	Independent	Total
New South Wales	114	14	53	181
Victoria	82	7	27	116
Queensland	49	14	32	95
South Australia	18	5	5	28
Western Australia	65	5	11	81
Tasmania	4	1	3	8
Northern Territory	5	1	0	6
Australian Capital Territory	4	0	1	5
National	441	47	132	520

Source: ACARA (2022).

Role of the Australian Government

States and territories have the primary responsibility to provide education; however, the Australian government plays an important role, particularly in funding. The Australian Parliament has power under section 96 of the *Australian Constitution* to 'grant financial assistance to any State on such terms and conditions as the Parliament thinks fit'.¹⁹ Conditional grants of financial assistance to states constitute powerful mechanisms for the Australian Government to influence, if not actually control, activities nominally subject to state control. For example, where the Australian Government wishes to influence the practices of non-government schools, it typically enacts or utilises legislation empowering it to make conditional grants to the states and territories. The terms of the grant may, for example, require the recipient jurisdiction to impose conditions on the school or school authority to which the funding is being provided.

The *Australian Education Act 2019* (Cth) and *Australian Education Regulation 2013* (Cth) set out the needs-based funding requirements that central educational authorities must meet to receive Australian Government funding. We provide more detail about education funding later in this chapter.

The Australian Government also funds and provides supports for students under the National Disability Insurance Scheme (NDIS). (The NDIS is explained in Volume 5, *Governing for inclusion*.) The Australian Government and state and territory governments agreed to Applied Principles and Tables of Services (APTOS) to clarify the responsibilities of the NDIS as distinct from other service systems, including those provided by states and territories.²⁰ In particular, the APTOS set out the respective responsibilities of the NDIS and state and territory educational authorities for providing supports to students with disability.²¹

Generally, the NDIS provides funding to a participant for 'reasonable and necessary supports' to help a student to participate in the learning environment, unless they would be more appropriately provided by the education system.²² For example, a student might receive personal supports or equipment to help them participate in school activities. These are in addition to the reasonable adjustments that schools provide.²³ (Section 3.6, 'Integrating education supports and the NDIS', provides more details about the NDIS and its interface with education.)

Legislation

Commonwealth anti-discrimination legislation

Disability Discrimination Act and Disability Standards for Education

As noted above, states and territories are primarily responsible for providing schooling in Australia. However, Australian schools are also obliged not to discriminate against people with disability. This requirement is set out in the *Disability Discrimination Act 1992* (Cth) (*DDA*) and the related *Disability Standards for Education 2005* (Cth) (*Education Standards*).

The *DDA* and *Education Standards* rely for their validity on a number of Commonwealth legislative powers, including the external affairs power.²⁴

The *DDA* renders it unlawful in certain circumstances for persons or entities to discriminate against a person on the ground of the person's disability. Section 22 of the *DDA* makes it unlawful for an 'educational authority' to discriminate against a person on the ground of the person's disability by:

- refusing or failing to accept the person's application for admission as a student
- imposing terms or conditions on which it is prepared to admit the person as a student
- denying the student access or limiting the student's access to any benefit the educational authority provides
- expelling the student
- subjecting the student to any other detriment
- developing curricula or training courses that have content that either excludes the person from participation or subjects the person to any other detriment
- accrediting curricula or training courses that have any such content.

The *DDA* identifies two categories of disability discrimination: direct and indirect. A person discriminates directly against a person with disability for the purposes of the *DDA* if they:

- fail to make reasonable adjustments for the person with disability and
- that failure means that the person with disability is treated less favourably than a person without the disability would be treated in circumstances that are not materially different.²⁵

A person discriminates indirectly against a person with disability in certain circumstances where the first person requires the person with disability to comply with a condition. Discrimination occurs if, because of the disability, the person with disability would be able to comply with the condition only if provided with reasonable adjustments and the first person does not provide the adjustments.²⁶

The operation of the *DDA* is described in more detail in Volume 4, *Realising the human rights of people with disability*.

Disability Standards for Education 2005

Under the *DDA*, the relevant minister can make a legislative instrument to create standards in respect of areas in which discrimination is unlawful.²⁷ Without limiting the scope of that power, the *DDA* provides that standards may deal with a variety of matters. For example, they can cover reasonable adjustments, strategies to prevent victimisation of persons with disability, and unjustifiable hardship.²⁸

In 2005, the Attorney-General issued the *Education Standards*. These prescribe additional obligations for educational authorities, institutions and providers to those found in the *DDA*. It is unlawful to contravene these standards.²⁹ If a person acts in accordance with the *Education Standards*, the prohibitions in the *DDA* do not apply to the person's act.³⁰ The *Education Standards* are supported by Guidance Notes that contain information on how to interpret and apply the *Education Standards* in practice.

Education providers covered by the *Education Standards* include:

- preschools (such as kindergartens)
- government schools and private schools
- TAFE providers and other VET providers
- adult education providers
- higher education institutions, including universities.³¹

The *Education Standards* specify that the Australian Government Minister for Education, in consultation with the Attorney-General, must review the *Education Standards* at intervals of not more than five years. The review must examine 'the effectiveness of these Standards in achieving their objects, including a consideration of whether any amendments are desirable'.³²

The objects of the *Education Standards* include 'to ensure, as far as practicable, that persons with disability have the same rights to equality before the law in the area of education and training as the rest of the community'.³³

Under the *Education Standards*, education providers must ensure students with disability can enrol, participate in courses and programs, and use facilities and services 'on the same basis' as students without disability.³⁴ Education providers must also ensure that students with disability can participate in the courses and programs and access the provider's facilities and services on the same basis as students without disability.³⁵ In doing this, providers must consult with the student and make reasonable adjustments to help them participate.³⁶ Education providers must also develop and implement strategies and programs to prevent harassment and victimisation.³⁷ The *Education Standards* do not apply if compliance would impose 'unjustifiable hardship' on the provider,³⁸ where non-compliance occurs in compliance with another law³⁹ or where another exception applies.⁴⁰

Generally, the *DDA* and the *Education Standards* align. However, there are significant differences, and the interaction between them is complex. Understanding how they interact is not made any easier by the manner in which the *Education Standards* are drafted. For example, on a first reading of the *DDA* and the *Education Standards*, the definitions of 'reasonable adjustment' in each appear to be quite different. The *DDA* states that an adjustment is reasonable unless making the adjustment would impose 'unjustifiable hardship' on the alleged discriminator.⁴¹ The *Education Standards* state that an adjustment for a student with disability is reasonable 'if it balances the interests of all parties affected'.⁴² The *Education Standards* appear to be considerably more favourable to an educational authority than the 'unjustifiable

hardship' provision in the *DDA*. As submitted by Counsel Assisting in Public hearing 24, 'The experience of children and young people with disability in different education settings', the definition of 'reasonable adjustments' in the *DDA* does not include a requirement for an assessment of whether the adjustments are reasonable.⁴³

However, the definition of 'reasonable adjustment' in the *Education Standards* must be read with a separate provision. In combination, the two restore the 'unjustifiable hardship' standard. Section 10.2(2) of the *Education Standards* states:

These Standards do not render it unlawful for an education provider to fail to comply with a requirement of these Standards if, and to the extent that, compliance would impose unjustifiable hardship on the provider.

This provision suggests that even where an educational authority fails to provide reasonable adjustments (as defined in section 3.4 of the *Education Standards*), the authority does not act unlawfully if the provision of reasonable adjustments (as defined) would impose unjustifiable hardship on the authority.

Section 10(3) of the *Education Standards* states that the provider 'must comply with the Standards to the maximum extent not involving unjustifiable hardship'. Reconciling this direction with the definition of 'reasonable adjustments' in section 3.4(1) is not straightforward.

Even though the 'unjustifiable hardship' standard is restored by section 10.2(2) of the *Education Standards*, there are some important differences between the *Education Standards* and the *DDA*. For example, unlike the *DDA*, the *Education Standards* define 'adjustment'.⁴⁴ The *DDA* specifies the criteria to be taken into account in determining whether a hardship imposed on an alleged discriminator is 'unjustifiable'.⁴⁵ The *Education Standards* specify different criteria for determining whether a particular adjustment for a student is reasonable.⁴⁶ Also, the *Education Standards* require an education provider to consult with the student or an 'associate' of the student before making an adjustment.⁴⁷ The *DDA* does not contain this requirement.

As a result of these differences, the issues in a claim for discrimination under the *DDA* can be quite different from those in a claim under the *Education Standards*.⁴⁸ Both sets of issues can involve difficult technical questions.

State and territory anti-discrimination legislation

States and territories also have enacted legislation that makes it unlawful to discriminate against students with disability.⁴⁹ The legislation shares common features. Each:

- defines disability
- prohibits discrimination on the basis of disability by educational authorities in certain specified ways
- states that an educational authority discriminates if it fails to make reasonable adjustments for a student

- excludes schools solely for students with disability from the prohibition on discrimination
- defines a reasonable adjustment as one that does not impose an ‘unjustifiable burden’ on the educational authority
- provides for an exemption in respect of ‘unjustifiable hardship’ or a similar concept
- provides for a complaints and enforcement mechanism.

State and territory anti-discrimination law can operate concurrently with the *DDA*. The *DDA* provides that it is not intended to exclude or limit the operation of a law of a state or territory capable of operating concurrently with the *DDA*.⁵⁰ However, this does not apply to the *Education Standards*.⁵¹

The right to education

State and territory education legislation

Each Australian state and territory has legislation establishing the framework for its education system.⁵² Generally, the objectives or principles of the legislation state that every child has the right to receive an education – in some cases, a high-quality education.

Table 7.2.3 Summary of state and territory education acts

Jurisdiction	Objects and principles of Acts	Right to enrol and any refusal powers
New South Wales	The <i>Education Act 1990</i> (NSW) provides that ‘every child has the right to receive an education’: s 4(a).	<p>A parent may enrol a child at any government school that is designated for the intake area and the school can accommodate the child: s 34(1) and (2). Factors that can be taken into consideration in determining whether a school can ‘accommodate’ a child include the financial and other resources of the school: s 34(6).</p> <p>The Secretary can issue an enrolment direction that a child not be enrolled at a government school due to risk (because of the behaviour of the student) to the health or safety of any person (including the student): s 26H(2).</p>

Jurisdiction	Objects and principles of Acts	Right to enrol and any refusal powers
Queensland	The <i>Education (General Provisions) Act 2006</i> (Qld) provides that the object of the Act is to 'make available to each Queensland child or young person a high-quality education that will ... help maximise his or her educational potential; and ... enable him or her to become an effective and informed member of the community' and 'provide universal access to high quality State education': s 5(1)(a) and (b).	<p>A principal must enrol a prospective student at the school if the student is entitled to be enrolled at the school: s 156.</p> <p>The principal must refer the application to the Chief Executive if the principal reasonably believes the enrolment of the prospective student poses an unacceptable risk to the safety or wellbeing of members of the school community: s 156(2). The Chief Executive can refuse enrolment after issuing a show cause notice: s 162.</p>
Victoria	The <i>Education and Training Reform Act 2006</i> (Vic) includes the overarching principle that 'all Victorians, irrespective of the education and training institution they attend, where they live or their social or economic status, should have access to a high quality education': s 1.2.1(b).	<p>A child of compulsory school age is entitled to be enrolled at his or her designated neighbourhood Government school: s 2.2.13.</p> <p>A person may be refused enrolment if in the Minister's opinion, it is advisable to do so, to ensure the safety of the student or other students at the school: s 2.2.17(1).</p>
Western Australia	The <i>School Education Act 1999</i> (WA) states that one of its objectives is to 'recognise the right of every child in the state to receive a school education during the child's compulsory education period': s 3(1).	<p>A child of compulsory school age is entitled to be enrolled at a local-intake school subject to residence criteria and the availability of 'an appropriate educational programme' at the school: s 78(1)(a)–(b).</p> <p>Whether a school has 'an appropriate education programme' is a decision for the Chief Executive Officer, who must consult with the child's parents, take into account the child's wishes and a range of other considerations, including the effect of a child's disability on the child's participation in a programme: ss 84–87.</p>

Jurisdiction	Objects and principles of Acts	Right to enrol and any refusal powers
South Australia	<p>The <i>Education and Children's Services Act 2019</i> (SA) states that one of its objectives is 'ensuring that education provided to children and students in this State is of a high quality': s 7(1)(b).</p> <p>The objects of the Act specifically state that children and students should not be unlawfully discriminated against on the ground of mental or physical impairment in the operation, administration or enforcement of the Act: s 7(4)(d).</p>	<p>The Chief Executive has the power to direct that a child <i>must</i> be enrolled in a particular school, including a special school, and this may result in the child being refused enrolment in any other school. This direction can be based on the fact that 'the child has disabilities or learning difficulties that make it necessary or appropriate to do so': s 62(1).</p>
Tasmania	<p>The <i>Education Act 2016</i> (Tas) includes an objective to 'make available to each Tasmanian child a high-quality education': s 3. Further, s 4(1)(a) states that one of the principles of the Act is 'the right of every child to receive an education until the child completes Year 12, the year of home education equivalent to Year 12 or an approved learning program'.</p> <p>The objects and purpose of the Act refer to students with disability and the Act states, 'the provision of education at a school recognises the individual needs of children with disabilities and, to that end, persons involved in the administration of this Act and the provision of education at a school will make appropriate, reasonable provision for those needs': s 4(j).</p>	<p>School-aged children are entitled to be enrolled at a state school that has an intake area: s 99(2).</p> <p>The Secretary may refuse to accept the enrolment if the school-aged child has been expelled from, or asked to leave, another school: s 101(1).</p>
ACT	<p>The <i>Education Act 2004</i> (ACT) contains a principle that everyone involved in the administration of the Act is to apply the principle that 'every child has a right to receive a high-quality education': s 7(1).</p> <p>The director-general must establish procedures that give priority to the enrolment of children in the government school in their neighbourhood: s 21(4).</p>	N/A

Jurisdiction	Objects and principles of Acts	Right to enrol and any refusal powers
Northern Territory	The <i>Education Act 2015</i> (NT) contains a principle that 'all students are entitled to an education of a quality that is capable of enabling them to reach their potential and so maximise their achievements and contribution to the community': s 4(1)(a).	N/A

In most states and territories, education legislation provides for the establishment of 'special schools', 'support schools' or segregated learning environments specifically for students with disability.⁵³ For example, the *Education Act 1990* (NSW) expressly allows for the minister to establish 'schools for students with disabilities'.⁵⁴ In Queensland, a 'special school' is a 'State [government] school providing only special education'.⁵⁵ In Victoria, a 'specialist school' is 'a school established for the main purpose of providing instruction' for students with 'disabilities' or with 'social, emotional or behavioural difficulties'.⁵⁶

Criteria for governing enrolment at special schools or segregated educational environments differ across jurisdictions. These are summarised in section 2.4.

State and territory human rights legislation

Human rights legislation in the Australian Capital Territory and Queensland also refer to the right to education. The *Human Rights Act 2019* (Qld) states that 'every child has the right to have access to primary and secondary education appropriate to the child's needs'.⁵⁷ Under the Act, 'public entities' cannot act in a way that is incompatible with human rights or fail to properly consider a human right relevant to a decision.⁵⁸ 'Public entities' includes public schools but not private schools.⁵⁹

Under the *Human Rights Act 2004* (ACT), every child has an express right to education that is 'appropriate to his or her needs' and is provided 'without discrimination'.⁶⁰ Under the Act, public entities – including public schools – cannot act in ways that are incompatible with a human right. Also, they must not fail to give proper consideration to a relevant human right.⁶¹

Unlike the Queensland and the Australian Capital Territory human rights Acts, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) does not specifically recognise a right to education. However, the Charter does guarantee 'equality before the law, equal protection of the law without discrimination, and equal and effective protection against discrimination'.⁶² Similar to Victoria and the Australian Capital Territory, a 'public authority' cannot act in a way that is incompatible with a human right. Also, in making a decision, they must not fail to give proper consideration to a relevant human right.⁶³

Policies and agreements

National policies and agreements

There are some policies at the national level that relate to education.

Australia's Disability Strategy

Australia's Disability Strategy (ADS) was released in December 2021 (see Volume 5 for more details). It includes an outcome area entitled 'Education and learning': People with disability achieve their full potential through education and learning.⁶⁴ This outcome area is focused on ensuring educational success for people with disability. It identifies key gaps in completing year 12, undertaking VET and participation in university for students with disability. Within this outcome area, there are four policy priorities, one for each education phase:

- ensuring children with disability can access and participate in high-quality ECEC.
- building capability in the delivery of inclusive education to improve educational outcomes for school students with disability
- improving pathways and accessibility to further education and training for people with disability
- providing people with disability with increased opportunities to participate in accessible and inclusive lifelong learning.

The ADS currently contains two Targeted Action Plans (TAPs) that include measures related to education: Early Childhood and Employment.⁶⁵

The objectives of the Early Childhood TAP include:

1. Enable early identification of disability or developmental concerns and develop clearer pathways and timely access to appropriate supports. Actions underneath this objective most relevant to the education of students with disability include:
 - develop online resources for educators to promote dialogue between schools and families on adjustments for children in their first year of school. These will be culturally responsive⁶⁶
2. Strengthen the capability and capacity of key services and systems to support parents and carers to make informed choices about their child. Actions underneath this objective most relevant to the education of students with disability include:
 - increase awareness of rights and obligations under the *DDA* and *Education Standards* in ECEC settings. This will be progressed as part of the implementation of recommendations of the 2020 Review of the Standards for Education
 - negotiate a new preschool agreement for 2022 to 2025 that includes improvements to data

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- review guidance for best practice early intervention
 - develop educator resources to support inclusion in mainstream ECEC settings⁶⁷
3. Encourage a stronger sense of inclusion and provide opportunities for parents, carers and children to build peer networks, including First Nations and culturally and linguistically diverse parents and carers. Actions that sit underneath this objective that are most relevant to the education of students with disability include:
- develop a recommendation report on programs to best support diverse cohorts
 - pilot peer-led support program.⁶⁸

The objectives of the Employment TAP include:

1. Increase employment of people with disability. Actions that sit underneath this objective do not affect education settings.
2. Improve the transition of young people with disability from education to employment. Actions that sit underneath this objective that are relevant to young people with disability include:
 - implement the Individual Placement and Support program, which assists young people with mental illness to achieve and maintain sustainable participation in vocational education and competitive employment
 - implement a new national Post-School Destinations Survey
 - expand the Transition to Work program.

National School Reform Agreement

The National School Reform Agreement is an intergovernmental agreement between the Commonwealth, states and territories. It aims to lift student outcomes in primary and secondary education in Australian schools. Its objective is to ensure that 'Australian schooling provides a high quality and equitable education to all students'.⁶⁹ It sets out eight national policy initiatives against three reform directions that all parties have agreed to implement over the five years to December 2023. These are:

1. Supporting students, student learning and student achievement:
 - a. Enhancing the Australian Curriculum to support teacher assessment of student attainment and growth against clear descriptors
 - b. Assisting teachers to monitor individual student progress and identify student learning needs through opt-in online and on-demand student learning assessment tools with links to student learning resources, prioritising early years foundation skills
 - c. Reviewing senior secondary pathways into work, further education and training⁷⁰

-
2. Supporting teaching, school leadership and school improvement:
 - a. Reviewing teacher workforce needs of the future to attract and retain the best and brightest to the teaching profession and attract teachers to areas of need
 - b. Strengthening the initial teacher education accreditation system⁷¹
 3. Enhancing the national evidence base:
 - a. Implementing a national unique student identifier that meets national privacy requirements in order to support better understanding of student progression and improve the national evidence base
 - b. Establishing an independent national evidence institute to inform teacher practice, system improvement and policy development
 - c. Improving national data quality, consistency and collection to improve the national evidence base and inform policy development.⁷²

In the agreement, the implementation of these national policy initiatives is a condition of Commonwealth funding to states and territories.⁷³ The agreement refers to students with disability as a 'priority equity group' for whom improved outcomes and attendance at school is a priority.⁷⁴

Further information on the National School Reform Agreement is provided in Chapter 4, 'Embedding inclusive education'.

Alice Springs (Mparntwe) Education Declaration

The Alice Springs (Mparntwe) Education Declaration (the Mparntwe Declaration) was established in 2019 and was agreed upon by all education ministers. The Mparntwe Declaration sets out a vision for education in Australia and commitments to improving educational outcomes for young Australians. Its two stated goals are that:

- the Australian education system promotes excellence and equity
- all young Australians become confident and creative individuals, successful lifelong learners and active and informed members of the community.⁷⁵

The Mparntwe Declaration only briefly mentions children with disability as a category of learners who experience disadvantage. Goal 1 states that all Australian governments will work with the education community to provide all young Australians with access to high-quality education that is inclusive and free from any discrimination.⁷⁶

ACARA administers the Measurement Framework for Schooling in Australia. The Education Council has approved the framework as the basis for reporting to the community on progress against the Mparntwe Declaration.⁷⁷ It includes a schedule of key performance measures, which are to be disaggregated for students with disability. Data and information are then reported in the National Report on Schooling, which is also published by ACARA.⁷⁸

State and territory policies on ‘inclusive education’

As noted earlier in this chapter, the states and territories are primarily responsible for regulating and funding education. As a result, each state and territory has developed its own approach to ‘inclusive education’, usually through policy instruments. For example, states and territories have different definitions of ‘inclusive education’. Despite the distinct approaches in each jurisdiction, there are some similarities. Notably, each jurisdiction has expressly committed to continuing to fund and operate special/segregated schools within that jurisdiction’s public education system. The commitment has been made regardless of each jurisdiction’s definition of ‘inclusive education’.

Definitions of inclusive education

The Australian Government’s position on inclusive education is set out in a background paper submitted to the Royal Commission.⁷⁹ The background paper explains the Australian Government’s interpretation of article 24 of the *CRPD*. This interpretation is referred to in detail later.

New South Wales

In its reply to Counsel Assisting submissions following Public hearing 7, ‘Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts’, the New South Wales Government referred to its *Inclusive Education Statement for Students with Disability to strengthen inclusive practice across all NSW public schools*.⁸⁰ The statement defines ‘inclusive education’ as follows:

all students, regardless of disability, ethnicity, socio-economic status, nationality, language, gender, sexual orientation or faith, can access and fully participate in learning, alongside their similar aged peers, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs. Inclusion is embedded in all aspects of school life, and is supported by culture, policies and everyday practices.⁸¹

Following Public hearing 7, the New South Wales Government submitted that ‘in NSW inclusion is a practice, not a setting’ in which ‘special settings in NSW are one option available to support the education of students with moderate to high learning and support needs’.⁸² The submission also set out the New South Wales Government’s position:

a State Party will meet its obligations under article 24 through an education system that allows for funding of different education modalities so students with disability are able to participate in a range of education options, including: enrolment in mainstream classes in mainstream schools with additional support; specialist classes or units in mainstream schools; and specialist schools as is appropriate.

... an interpretation of article 24 which allows the use of both mainstream education and specialist schools for persons with disability, and consequently, respects the rights of parents of children with disabilities to choose whether to put their children in mainstream or specialist education, is consistent with article 13(3) of the ICESCR (International Covenant on Economic, Social and Cultural Rights).⁸³

In a later submission, after Public hearing 24, the New South Wales Government disagreed with suggestions that segregated schools should end ‘quickly’.⁸⁴ It agreed that ‘the issue of inclusive education should not be thought of in terms of a “binary option”’.⁸⁵ Instead, it submitted:

There is considerable evidence before the Royal Commission that schools for specific purposes are an essential part of the education system and provide parents with real choice as to the schooling that is right for their children ...

... The NSW Department of Education (the Department) is committed to schools for specific purposes as one part of an inclusive and flexible system of supports, guided by the goals of maximising student outcomes, enabling parent/carer choice, and constantly adapting to reflect the best available evidence.⁸⁶

Victoria

We did not receive evidence from Victoria that directly addressed its position on inclusive education. In its submission to the *Education and learning issues paper*, it described Victoria’s efforts to achieve ‘inclusive education’ in three education settings:

- ECEC⁸⁷
- school⁸⁸
- ‘training and skills’ (that is, TAFE and vocational training settings).⁸⁹

The response states that a ‘key principle underlying the *Education and Training Reform Act 2006* (Vic)⁹⁰ is that Victorian parents have the right to choose an appropriate education for their child’, which includes specialist schools.⁹¹ The response states that ‘Specialist schools play an important role in Victoria’s education systems’ and that parent opinion surveys indicate consistently high satisfaction rates.⁹² It concludes that the decision to enrol a child at a specialist school or mainstream schools is a decision for parents, in consultation with the school and department staff, ‘with the best interests of the student at the centre’.⁹³

Queensland

Queensland’s Inclusive Education Policy sets out a shared statement of the goals of inclusive education.⁹⁴ The policy provides that:

Inclusive education means that students can access and fully participate in learning, alongside their similar-aged peers, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs. Inclusion is embedded in all aspects of school life, and is supported by culture, policies and everyday practices.⁹⁵

The policy identifies Queensland's 'commitments' to achieving inclusive education. Its goals are that children with disability will be able to:

- attend their local state school and education centre and be welcomed
- access and participate in a high-quality education and fully engage in the curriculum alongside their similar-aged peers
- learn in a safe and supportive environment, free from bullying, discrimination or harassment
- achieve academically and socially with reasonable adjustments and supports tailored to meet their learning needs.⁹⁶

The Queensland Department of Education ceased to provide special education units (separate classrooms for students with disability within mainstream schools) in 2008.⁹⁷ However, Queensland continues to provide special segregated schools that it calls 'special schools'. The Inclusive Education Policy states that:

The department will continue to offer parents the choice of enrolling their child, who meets set criteria in highly individualised programs, including through special schools and academies.⁹⁸

South Australia

In its Children and Students with Disability Policy, the South Australian Department of Education defines 'inclusive education' to mean:⁹⁹

all students will benefit academically and socially when provided with high quality teaching. Students experience inclusive education when they can access and fully participate in learning alongside their similar aged peers supported by reasonable adjustments and strategies tailored to meet their individual needs. Inclusion is embedded in all aspects of preschool, children centre or school life and is supported by culture, policies and everyday practice.¹⁰⁰

In its submission in reply to Counsel Assisting submissions following Public hearing 24, South Australia agreed that 'inclusive education should be viewed as a practice that is ongoing and an evolving concept'. It submitted that South Australia 'is committed to continuing to develop its practices to create more inclusive schools, while still encouraging parental choice'.¹⁰¹

The Children and Students with Disability Policy provides that 'as part of an inclusive education system the department has a range of special options'.¹⁰² These options include preschools for hearing impaired children, inclusive preschool programs, speech and language programs, special classes, disability units, special schools, autism intervention programs, transitions and others.¹⁰³ In Public hearing 24, we heard evidence about the development of an indicator framework that will measure 'progress towards achieving inclusive education'.¹⁰⁴ At the time of the hearing, the first version of the document had been completed and was in the process of being implemented.¹⁰⁵

Western Australia

In a standalone submission, the Western Australian Government pointed to *A Western Australia for everyone: State Disability Strategy 2020–2030* as driving ‘the overall objectives for Western Australia to become a more inclusive community.’¹⁰⁶ The strategy is available online. It lists ‘inclusive education and training settings’ as a strategic priority;¹⁰⁷ however, it does not define ‘inclusive education’. The strategy provides:

Students with disability thrive when they and their families are in a welcoming environment and are provided with the same educational and social opportunities as students without disability. Inclusive and integrated education settings are also important to shift community attitudes about disability in the longer term by supporting inclusive and diverse learning environments from early childhood.

...

Under the Strategy, schools and training providers will focus on building inclusive school and training settings to provide strong pathways to work and economic participation for people with disability. This will involve working in partnership with students, parents, industries and the community. This includes identifying and introducing different curriculum, skill development and learning opportunities that are better tailored to the diverse range of needs of students, and that support their individual career aspirations and choices.¹⁰⁸

At Public hearing 24, we received evidence from Mr Stuart Percival, Director, Disability Inclusion at the Western Australian Department of Education. He told us about the various ‘specialist programs’ available within the Western Australian state school system.¹⁰⁹ These programs were said to ‘align with the Department’s commitment to provide parental choice about the educational environment for their child’.¹¹⁰ They allow parents to explore options to enrol their child at either the local public school or a centre offering specialist programs.¹¹¹

Northern Territory

The *Northern Territory Disability Strategy 2022–2032* makes brief references to education. Many of the references are tied to its strategy outcome 4: ‘People with disability have the skills and opportunities to participate in the economy and be financially secure.’¹¹² The strategy states that this outcome is informed by a ‘priority’ to ‘provide education that meets an individual’s lifelong learning needs’.¹¹³ The strategy makes the following comment about ‘inclusive education’:

Students with disability advance when they are in an inclusive education setting that helps them to learn and grow, where possible in an integrated setting alongside their peers. However, Australians with disability have reduced access to education due to enrolment barriers, limited opportunities for development, a lack of reasonable adjustments, and low expectations.¹¹⁴

The Northern Territory Department of Education has published a Framework for Inclusion 2019–2029, which sets out government policy on students who ‘may need additional support’.¹¹⁵ The framework makes a number of general statements about how the Northern Territory will deliver an inclusive education system. However, it notes its ‘priority actions’ are to ‘explore service delivery approaches to inclusion that involve mainstream schools, specialist schools and external specialist agencies’.¹¹⁶

Australian Capital Territory

The Australian Capital Territory Education Directorate is currently developing an ‘Inclusive Education Strategy for ACT public schools’.¹¹⁷ It began the process in 2021, although the work began in 2015.¹¹⁸ The Australian Capital Territory Government published:

- a *Community conversation summary report* in 2021¹¹⁹
- a *Disability education evidence review* in 2022. This recorded the themes of responses to community consultations and outlined different education settings for students with disability around Australia
- a discussion paper in November 2022, entitled *Strengthening inclusive education in ACT public schools*.¹²⁰

The discussion paper contains a draft position statement on inclusive education. It defines ‘inclusive education’ as:

students with disability are supported to learn alongside their same aged peers and participate in school activities on an equal basis.¹²¹

On special/segregated schools, the discussion paper states:

Based on the feedback so far, and the evidence underpinning successful inclusive practices, the intent of the Strategy is not to reduce education options, but to strengthen inclusive practice across all schools in our system in order to provide real choice for students and families. Real choice involves making quality education available for all learners in every school. It is important to acknowledge that strengthening inclusive practice will take time and sustained commitment.

As we further strengthen inclusive practices across our ACT Public Schools this may involve strengthening partnerships between specialist schools and local schools to create more opportunities for students to be included in activities and classes with same aged peers and to share expertise.

It may also involve strengthening inclusive practices within disability programs in local schools so that students spend more time in classes with same aged peers and can participate fully in school activities. Many schools already have great inclusive practices in place. For those schools this may mean sharing their inclusive practices with other schools to help build a more inclusive system for all children and young people.¹²²

Further consultations are scheduled, and the strategy is due to be published in 2023.

Tasmania

A standalone submission from Tasmania stated:¹²³

Over recent years, DECYP [Department of Education, Children and Young People] has given high priority to a continuous improvement model of supports for students with disability. DECYP aims to provide high quality, inclusive education for students with disability and to support all schools to become increasingly prepared and responsive to meet the needs of all students. DECYP's Strategic Plan 2022–2024 vision is *Learners First: Connected, Resilient, Creative and Curious Thinkers*. The Strategic Plan explicitly incorporates the United Nation's Convention on the Rights of the Child, which provides the overarching framework to ensure the child's best interest are the first priority, particularly their right to safety, their right to an education, and their right to a voice on things that affect them.

The continuous improvement model of supports for students with disability has taken place through the development and implementation of:

- A needs-based funding model – *Educational Adjustments Disability Funding* – for students with disability in Tasmanian Government Schools.
- *Planning for Improvement – Inclusive Practice* an online tool linked to school improvement to build inclusive school cultures.
- A *support school model* ensuring there is one specialist school setting within each region of the State where parents can request full or dual enrolment for their child.
- An ongoing commitment to building the expertise and capacity of all staff.

At the time of writing, the 2022–2024 Strategic Plan, entitled *Learners first: Connected, resilient, creative and curious thinkers*, was under review.¹²⁴

2.2 School regulation and management

The regulation and management of schools differs across states and territories and by school sector.¹²⁵

School regulation

Each state and territory government regulates all schools in its jurisdiction. They set minimum standards that are usually conditions of continued registration. These registration requirements also apply to government schools. A section of the relevant education department usually manages compliance with registration requirements and coordinates individual school responses if there are significant compliance questions.

School programs and oversight

Mainstream government schools and most Catholic schools are subject to a central administrative authority. That authority sets many of the policy and management frameworks for schools in that system within a specific geographic catchment. In the government or public education system, the state or territory government education department employs teachers although it may delegate responsibility to a particular departmental authority.¹²⁶ In the Catholic education system, the Catholic educational authority is at the apex of the line management pyramid that appoints and employs staff. Government education departments and Catholic educational authorities have ultimate managerial responsibility for schools in their own systems. Independent schools are typically administered on an individual basis.

For **government schools**, the state or territory government education department manages system-wide programs and oversight. For **Catholic schools**, a state-based body performs these functions. Examples include the Catholic Education Commission of Western Australia or a diocesan body, such as Melbourne Archdiocese Catholic Schools. State-based bodies are subject to an overarching state-based Catholic Education Commission.

These state-based bodies set policy and funding, manage performance and have the relationships and levers to spread good practice between schools. They usually exercise management oversight by setting policies that apply to all their schools and monitoring school performance. They administer programs to improve the quality of teaching and curriculum and student safety, learning, development and wellbeing. They have the authority and responsibility to:

- establish strategic directions for their education systems and guide system-wide actions to continuously improve value from schooling
- guide the processes, practices and decisions that benefit from system-wide consistency and those that warrant more local flexibility and adaptation

-
- allocate funding (with the Australian Government) to individual schools, establish performance expectations and oversee and manage public reporting (described in further detail in section 2.3 ‘School funding’)
 - share data and insights on good practice within schools and support innovation, school improvement and workforce development.

For **independent schools**, principals and governing boards assume many of these system management responsibilities. There are often fewer formal mechanisms for collaboration between networks of schools.

Educational authorities are ultimately subject to political oversight. State and territory education departments are part of government. Non-government schools are subject to the discipline of individual parents’ enrolment decisions. The individual schools must also meet registration requirements determined by law.

State and territory government and Catholic authorities oversee the performance of schools and have functions and relationships that shape how a school operates, but they do not run individual schools. They have responsibilities and an ability to influence change. However, school management teams are responsible for operational management responsibilities. Individual teachers and school staff also have professional autonomy.

Therefore, state and territory governments have two distinct roles in schooling:

- they regulate *all* schools in their jurisdiction
- they administer programs and oversee the management of *government* schools.

The management role includes the employment of teachers and staff.¹²⁷ Independent school boards and principals generally have both oversight and operational management responsibilities. However, the precise arrangements vary from school to school.

Because the quality of education depends on the quality of teaching in schools, reforms often depend on changes to frontline teaching and school operations. Typically, these reforms are primarily influenced by management processes rather than by the enforcement of legislation, regulations or rules. Therefore, the role of educational authorities with program and management oversight responsibilities is key. These authorities can use their powers as the manager of the system to change outcomes that are typically very difficult – if not impossible – to prescribe by regulation.

It is now well established that reform programs should clearly identify the authority responsible for setting policy, delivering programs and overseeing the management of a group of services. For example, the National Health Reform Agreement 2020–2025 is an agreement between the Australian Government and the state and territory governments. It commits ‘to improve health outcomes for all Australians and ensure the sustainability of the Australian health system’.¹²⁸ The agreement recognises the states and territories are ‘system managers of the public hospital system’.¹²⁹ This reflects the role states and territories play in:

-
- planning and funding services
 - performing industrial relations functions for employees of the public hospital system
 - ensuring the governance arrangements and legislative basis for Local Hospital Networks are consistent with the Agreement's objectives
 - managing the performance of Local Hospital Networks.¹³⁰

A number of royal commissions have recognised the crucial role these central authorities play in reform. The Royal Commission into Aged Care Quality and Safety and the Royal Commission into Victoria's Mental Health System both addressed recommendations to governments about policy, programs and oversight of government services.¹³¹

The Royal Commission into Family Violence also referred to the concept of the 'system steward'. Stewardship responsibilities include oversight of a whole service system. Stewards define system outcomes, monitor performance, establish consistent standards and regulations, manage data collection and deal with system underperformance.¹³² Drawing on work by the New Zealand Productivity Commission, the Royal Commission into Family Violence noted that stewardship responsibilities can be spread over several bodies or agencies.¹³³

School operational management

At a school level, principals are generally responsible for operating and directing all administrative functions. Principals:

- maintain the effective functioning of school systems
- represent the school in the relevant community
- oversee the implementation of legal requirements and educational policies.

Principals also act as role models and agents of change, as they play a vital role in forming organisational culture and an inclusive educational environment.

Throughout the inquiry, we have heard about and identified the considerable powers that principals can exercise. For example, they have discretionary powers in exclusionary discipline.¹³⁴ They also have discretion in ensuring that adjustments are provided to students with disabilities¹³⁵ and for enrolment.¹³⁶

Ultimately, principals have an indirect but significant influence on students' learning, as they establish operational systems and procedures that affect teaching, learning and student participation.

Teachers and other professionals working in schools interact directly with students with disability. Their actions most directly affect the teaching and learning experience of students with disability and attitudes towards them within the school environment.

2.3 School funding

Funding roles and responsibilities

School funding is complex. The Australian Government and state and territory governments share responsibility for funding, but funding can also come from private funding sources. The Australian Government is the majority funder for non-government schools and the minority funder for government schools.¹³⁷ State governments are the majority funder for government schools.¹³⁸

Sources of funding

Australian Government funding contributions operate within the Schooling Resource Standard (SRS) framework described in the *Australian Education Act 2013* (Cth).¹³⁹ (The SRS is explained below.) Under section 22A of the Act, states and territories must meet minimum funding contribution requirements for both government and non-government sectors.¹⁴⁰ This is a condition of receiving Commonwealth funding. State and territory governments retain discretion to fund above these minimum requirements.¹⁴¹

In 2021, total school funding was \$73.8 billion. The Australian Government contributed \$23.6 billion of that amount, and state and territory governments contributed \$36.9 billion. Funding sources are shown in Table 7.2.4.

Table 7.2.4: Total school funding by source of funding, Australia, 2021

Source of funding	\$ billions	Percentage of total
State/territory government	\$36.9b	50.0%
Australian Government	\$23.6b	32.0%
Fees, charges and parents' contributions	\$11.6b	15.7%
Other private sources	\$1.7b	2.3%
Total	\$73.8b	100.0%

Note: The table shows the total gross funding for schools. It does not consider deductions (that is, income allocated to current or future capital projects or allocated to debt servicing) or capital expenditure.

Source: Australian Government Department of Education and ACARA (2023).

Sources of total school funding differ between government, Catholic and independent school systems. As shown in Table 7.2.5, states and territories contribute most of the government funding for schools.

Table 7.2.5: Percentage of total school funding by source of funding by school sector, Australia, 2021

Source of funding	Government schools	Catholic schools	Independent schools
State/territory government	75.7%	16.1%	10.7%
Australian Government	20.9%	60.6%	37.6%
Fees, charges and parents' contributions	2.0%	21.1%	47.1%
Other private sources	1.4%	2.3%	4.6%
Total	100.0%	100.0%	100.0%

Note: The table shows the total gross funding for schools. It does not consider deductions (that is, income allocated to current or future capital projects or allocated to debt servicing) or capital expenditure.

Source: Australian Government Department of Education and ACARA (2023).

Allocation of funding by school setting

Mainstream schools receive the greatest share of government funding – a total of \$58 billion (Table 7.2.6). In 2021, the Australian Government provided \$22.7 billion to mainstream schools and \$1.0 billion to special/segregated schools.¹⁴²

In 2021, state and territory governments provided \$35.3 billion to mainstream schools and \$1.7 billion to special/segregated schools. This funding includes a base funding amount, student with disability loadings and other loadings.¹⁴³

Table 7.2.6: Total funding by source and school setting, 2021

Source of funding	Mainstream schools (\$ billions)	Special/segregated schools (\$ billions)	Total (\$ billions)
State/territory government	\$35.3b	\$1.7b	\$36.9b
Australian Government	\$22.7b	\$1.0b	\$23.6b
Fees, charges and parents' contributions	\$11.6b	\$0.03b	\$11.6b
Other private sources	\$1.6b	\$0.04b	\$1.7b
Total	\$71.1b	\$2.7b	\$73.8b

Note: The table shows the total gross funding for schools. It does not consider deductions (that is, income allocated to current or future capital projects or allocated to debt servicing) or capital expenditure; figures are rounded.

Source: Australian Government Department of Education and ACARA (2023).

Special/segregated schools received 3.7 per cent of total national school funding (\$2.7 billion) and educated 1.3 per cent of all students in 2021 (Table 7.2.7). This resulted in a higher national average funding per student in special/segregated schools (\$53,600) than in mainstream schools (\$17,800).¹⁴⁴

Table 7.2.7: Proportion of students and total funding by school setting, 2021

School type	Proportion of all students	Proportion of total national funding
Mainstream schools	98.7%	96.3%
Special/segregated schools	1.3%	3.7%

Note: Funding figures include Australian government and state and territory government recurrent funding, fee charges and parental contributions and other private sources of funding; figures are rounded.

Source: Australian Government Department of Education and ACARA (2023).

As Table 7.2.8 shows, the average funding per student is higher in special/segregated schools.¹⁴⁵ This reflects the higher proportion of students with disability and that students with disability in special/segregated schools typically have a higher level of adjustment than those in mainstream schools.

Table 7.2.8: Total funding for all students by school setting, 2021

School type	Number of students ('000')	Total funding (\$ billions)	Average funding per student (\$ thousands)
Mainstream schools	3,996.2	\$71.1b	\$17.8k
Special/segregated schools	50.8 ^a	\$2.7b	\$53.6k

^a The number of students enrolled in special/segregated schools includes 46,689 students who receive learning adjustments for disability and 4,090 students who do not appear to receive learning adjustments for disability. The 4,090 students are not identified in the Nationally Consistent Collection of Data on School Students with Disability.

Note: The funding figures include Australian government and state and territory government recurrent funding, fee charges and parental contributions and other private sources of funding; figures are rounded.

Source: Australian Government Department of Education and ACARA (2023).

Australia Government funding

Schooling Resource Standard

The Australian Government bases its recurrent funding for every student at school on the SRS. The SRS is an estimate of how much total public funding a school needs to meet its students' educational needs.¹⁴⁶ It is based on recommendations made in the 2011 *Review of funding for schooling*, led by Mr David Gonski AC.¹⁴⁷

The SRS is made up of two elements: a base amount and up to six needs-based loadings.¹⁴⁸ The SRS loadings provide extra funding for student priority cohorts – including students with disability – and disadvantaged schools. The Australian Government Department of Education calculates an SRS for each school every year by combining the base amount and loadings for the school. The formulas used for the calculation are set out in the *Australian Education Act 2013* (Cth).¹⁴⁹

Capacity to Contribute (CTC) reduces the SRS base amount for most non-government schools. CTC is a measure of the capacity of the parents and guardians of students at a non-government school to contribute financially to the operating costs of the school.¹⁵⁰ It is relative to the capacity at other non-government schools.¹⁵¹ The CTC reduction does not apply to the SRS loadings. Also, it does not apply to the SRS for government schools, special schools, special assistance schools, majority First Nations schools and sole provider schools.¹⁵²

The CTC reduction ranges from 10 per cent of the SRS base amount for non-government schools with the lowest CTC to 80 per cent for those with the highest CTC.¹⁵³

The Australian Government contributes at least 20 per cent of the SRS for all government schools and at least 80 per cent of the SRS for all non-government schools.¹⁵⁴ It gives this funding:

- to state or territory education departments for government schools
- to state- or territory-based Catholic bodies for Catholic schools
- directly to independent schools (subject to states and territories meeting minimum funding requirements for government and non-government sectors).

The SRS is also used in the 2019 National School Reform Agreement to describe state and territory funding contributions for schools. The National School Reform Agreement describes detailed funding arrangements between each state and territory and the Australian Government and long-term national goals for education.¹⁵⁵ Minimum state and territory funding agreements are set as a percentage of the SRS. They are included in bilateral reform agreements, which also outline state-specific reform activities to improve student outcomes. For example, there is a Bilateral Agreement between the New South Wales Government and the Australian Government on quality school reforms under the National School Reform Agreement. It provides that, in 2017, the 'starting share' of SRS funding that New South Wales was to contribute was:

-
- 71 per cent for the government sector
 - 25 per cent for the non-government sector.¹⁵⁶

A National School Resourcing Board undertakes an annual review of each state and territory's compliance with minimum funding requirements.¹⁵⁷

Nationally Consistent Collection of Data on School Students with Disability

The SRS disability loading provides extra government funding for students with disability, in addition to the SRS base amount. The loading amount for a school depends on:

- the numbers of students receiving additional support in the classroom to enable them to participate fully in school
- the level of that additional support.¹⁵⁸

The Australian Government's loading is calculated using information reported in the Nationally Consistent Collection of Data on School Students with Disability (NCCD). The NCCD was introduced at the Education Ministers Meeting (of Australian, state and territory government ministers responsible for education). It aims to 'enable schools, educational authorities and governments to gain a more complete understanding of students with disability in schools in Australia and how best to support them'.¹⁵⁹ The NCCD identifies students that have a disability – as defined by the *DDA* – and who need the physical school environment, teaching or school practices to be adjusted to be able to learn and participate.¹⁶⁰

The NCCD is an annual collection of information about the number of students with disability and the adjustments they receive. Under the *Australian Education Regulation 2013* (Cth), each year, all schools must report the data collected for the NCCD to the Australian Government.¹⁶¹

NCCD data is provided by teachers. Teachers use their professional judgement to indicate:

- the level of adjustment provided to students with disability
- the broad category of disability under which the student best fits (physical, cognitive, sensory, social/emotional).

This approach is based on the principle that teachers and school teams, in consultation with students, clinical experts and families, are best placed to judge what reasonable educational adjustments a student needs, in line with the *Disability Standards for Education 2005* (Cth).

The NCCD reports school students with disability by the level of support they receive to access and participate in learning rather than by the category or medical diagnosis of a specific disability. The funding model for disability loadings provides a set funding amount per student with disability based on the level of adjustments required. Four levels of adjustment are defined under the NCCD.¹⁶²

- *Support within quality differentiated teaching practice* provides for minor adjustments that develop and maintain a culture of inclusion. It also includes professional learning to equip staff with the knowledge and skills to support the student's wellbeing.
- *Supplementary adjustments* address a student's needs at specific times to enable them to participate in school life. For example, instruction can be modified with task analysis, intermittent specialist support or specialised technology.
- *Substantial adjustments* provide frequent individualised instruction. It also covers 'direct support or close supervision in highly structured situations', such as curriculum content at a different year level to same-aged peers and modified study materials.
- *Extensive adjustments* are highly individualised and intensive and 'needed at all times'. For example, it can cover augmentative communication and constant and intensive oversight of health needs, personal care and hygiene.

Students with disability in one of the top three levels of adjustment (supplementary, substantial and extensive) attract increasing levels of funding because of the increasing average costs of adjustments for those levels.¹⁶³ There is no extra funding under the loading for students with disability receiving the lowest level of adjustment (support within quality differentiated teaching practice).

The funding amount for the three funded NCCD levels of adjustments was informed by a study that sought to identify the extra resourcing provided for all levels of adjustment for students with disability counted in the 2015 NCCD. The former Education Council (comprising Australian Government and state and territory government, and New Zealand education ministers) commissioned the study. It analysed data from a survey of 200 schools (182 mainstream schools and 18 special schools) to determine the combined average costs for extra resourcing provided at each level of adjustment across mainstream and special schools.¹⁶⁴

Under the National School Reform Agreement, the disability loading amount is split between the Australian Government and state and territory governments. In 2021, Australian Government funding for the student with disability loading was \$3.4 billion.¹⁶⁵ In 2021, state and territory government funding for student with disability loadings was estimated to be \$1.8 billion based on information from state and territory and Catholic educational authorities.¹⁶⁶

Link between Australian Government funding and allocation of funding to students with disability

The Australian Government education legislation and regulation requires the collection of NCCD data by recipients.¹⁶⁷ However, educational authorities do not distribute funding in alignment with the NCCD levels of adjustment.¹⁶⁸ The Australian Government transfers these funds to state and territory educational departments, Catholic school authorities and individual independent schools. This allows educational authorities to operate their own funding model.

State and territory education departments and Catholic school authorities use their own funding models to distribute Australian Government disability funding between individual schools.¹⁶⁹

The distribution models differ across jurisdictions. However, such models typically include a base amount and loadings, including a student with disability loading. Within an individual school, including independent schools, funding is used at the discretion of the principal. Thus, while Australian Government funding allocations are intended to go to the individual student with a disability, this does not always happen.

Each state and territory has its own model for distributing funds for the education of students with disability. All of these models have slightly different criteria for determining eligibility for and rates of funding. For example, in Queensland Government schools, the key funding model for students with disability is the Education Adjustment Program (EAP). The EAP is a targeted resourcing model, which is used to allocate funding provided to schools to support students with disability. The funding is used to provide extra teachers and teacher aides.¹⁷⁰

Data collected under the EAP about verified disability is used to calculate the funding provided to schools. The EAP assists students who are 'verified' according to six categories: autism spectrum disorder, hearing impairment, intellectual disability, physical impairment, speech language impairment and vision impairment. Government schools in Queensland are required to collect data about students with disability under both the NCCD and EAP. The categories of verification under the EAP do not align with the levels of adjustment under the NCCD.¹⁷¹

In New South Wales, the integration funding support (IFS) model similarly provides targeted, individual funding designed to support students with moderate to high learning needs, based on a confirmed diagnosis of disability. IFS is used for extra teachers and school learning support officers. These staff assist with personalised learning and support. They relieve classroom teachers who are taking professional learning; and plan for adjustments.¹⁷²

The IFS model supports students who are enrolled in a mainstream class (not a support class) in a mainstream school who:

- meet the Department of Education's Disability Criteria. The categories of disability are moderate to severe intellectual disability, physical disability, mental health disorder, autism, and hearing and/or vision impairment
- need adjustments to access learning opportunities and school experiences
- have moderate to high learning and support needs and need additional resources to those available in school to personalise learning and support.¹⁷³

As with Queensland, this funding model does not align with the NCCD levels of adjustment. Problems arise for students with disability given that, as noted above, the Australian Government does not require educational authorities to distribute funding in alignment with the NCCD levels of adjustment. These issues are discussed in Chapter 4.

2.4 Enrolment of students with disability in special/ segregated [non-mainstream] education settings

Every state and territory government in Australia operates special/segregated schools and classes that primarily or exclusively enrol students with disability. There are also Catholic and independent special/segregated schools in almost every jurisdiction.¹⁷⁴ (The numbers of special/segregated schools by jurisdiction and school system are set out in Table 7.2.2.) This section briefly summarises the enrolment criteria for government special/segregated schools and classes. It does not provide a comprehensive analysis of all steps a parent or guardian must take to enrol a child in such a school.

New South Wales

The New South Wales Department of Education operates 'Schools for Specific Purposes' (SSPs). SSPs are for students with:

- mental health issues
- intellectual disability
- autism
- physical disability
- learning difficulties
- behaviour disorder
- sensory impairment.¹⁷⁵

Applications to enrol in SSPs are made through the New South Wales Access Request process.¹⁷⁶ This is arranged by the learning and support team at the local government school.¹⁷⁷ A placement panel considers and recommends placement in a SSP. The panel assesses compliance with the New South Wales Department of Education's Disability Criteria¹⁷⁸ and individual school capacity.¹⁷⁹ Students are enrolled in SSPs on a full-time basis.¹⁸⁰

Victoria

The Victorian Department of Education and Training operates 'specialist schools' for students with disability. These schools are government-operated. However, each specialist school has its own enrolment eligibility criteria, approved by the Minister for Education or their delegate.¹⁸¹ Specialist schools must publish a local enrolment policy listing the enrolment eligibility criteria on their school website in an accessible and visible way.¹⁸² Victoria also allows students with disability to hold dual enrolments in a mainstream school and specialist school.¹⁸³

Queensland

The Queensland Department of Education operates ‘special schools’ for students with disability.¹⁸⁴ The Queensland Department of Education told us it has not operated any special education units – that is, special/segregated classes located at mainstream schools – since 2008.¹⁸⁵ However, there is at least one government mainstream school in Queensland that operates a ‘Diverse Learning Centre’ for students with disability on its campus.¹⁸⁶

Before enrolling their child in a special school, parents are first given advice about enrolment options. They must then complete application and consent forms.¹⁸⁷ To enrol at a special school, a prospective student must be a ‘person with disability’ and the school must be able to cater for the prospective student’s educational needs.¹⁸⁸ Queensland Department of Education policy defines a person with disability in accordance with the definitions in the *DDA*. It provides further definitions of a person with severe disability,¹⁸⁹ including an intellectual disability,¹⁹⁰ who would be unlikely to achieve the level of development they are capable of unless they receive special education and their educational program will be delivered best in a special school.¹⁹¹ Queensland allows for the dual enrolment of students with disability attending a non-government school and a government special school.¹⁹²

South Australia

The South Australian Department for Education and Child Development operates ‘disability units’ and ‘special schools’.¹⁹³ Enrolment in these settings requires parents of a student with disability to consent to an assessment by a South Australian Department for Education psychologist. The psychologist assesses the student’s eligibility and suitability for placement in these settings.¹⁹⁴ Where the psychologist recommends a student attend a special option, parental consent is sought to formally seek a placement and to accept an offered placement.¹⁹⁵ To be eligible to enrol in a disability unit or special school, a student must:

- be diagnosed with Global Development Delay, Intellectual Disability or Unspecified Intellectual Disability
- require an extensive level of adjustment to the curriculum so they can learn and participate
- require an individualised curriculum that develops independent daily living, communication and social skills and may include specialised programs addressing mobility, safety, communication, sensory or behavioural needs.¹⁹⁶

The student may also require intensive supervision and a secure environment that is evidenced by a Safety and Risk Plan (or equivalent).¹⁹⁷ The *Education and Children’s Services Act 2019* (SA) also empowers the Chief Executive of the Department for Education¹⁹⁸ to direct a child be enrolled in a specified school, including a special school. However, this provision has never been used.¹⁹⁹

Western Australia

The Department of Education in Western Australia operates ‘education support schools’²⁰⁰ and ‘education support centres’ in which students with disability may enrol.²⁰¹ Enrolment eligibility criteria for these settings differs depending on the child’s age or grade. Children enrolling at kindergarten must have:

a diagnosis of autism, intellectual or physical disability or Global Development Delay evidence of their need for substantial supports and extensive adjustments evidence they have “significant deficits” in communication or behaviour that clearly interfere with their development and functioning.²⁰²

To enrol in all other grades, students must have evidence:

- of their physical or intellectual disability or an autism diagnosis demonstrating they are eligible for individual disability allocation
- that their disability (and any co-existing conditions) permanently and substantially reduces their functional capacity to learn
- that they require an extensive or substantial level of adjustment to take part in an appropriate education program.²⁰³

Tasmania

The Tasmanian Department for Education, Children and Young People operates ‘support schools’ for students with disability.²⁰⁴ The department operates an annual process where, in consideration of the student’s eligibility, a student can be nominated to attend a Support School.²⁰⁵ Under the *Education Act 2016* (Tas), the Secretary may determine whether a person is of a class who may be enrolled at a government support school. They may also decide the manner they may be enrolled and other matters relating to the enrolment.²⁰⁶ The Act also enables the dual enrolment of students with disability at a mainstream and support school in accordance with Ministerial Instructions,²⁰⁷ including by a student enrolled in a non-government mainstream school.²⁰⁸

Northern Territory

The Northern Territory Department of Education operates ‘specialist schools’ and ‘specialist centres’²⁰⁹ for students with disability.²¹⁰ The process for enrolment in special schools or centres is initiated when a parent or school requests a child be enrolled in one of these settings.²¹¹ To be eligible to enrol, a student must be diagnosed with Global Development Delay²¹² or intellectual disability,²¹³ confirmed through a comprehensive assessment by a psychologist.²¹⁴ They must also require extensive, highly individualised, comprehensive and ongoing adjustments to allow them to access and participate in the curriculum.²¹⁵

Students may also be eligible to enrol in these settings based on functional placement criteria. To be eligible, students need to provide evidence of their complex needs and a diagnosis of their disability.²¹⁶ The student must require extensive adjustments that are comprehensive, highly individualised and ongoing so they can access and participate in the curriculum. Schools also require a '[l]ong documented history'²¹⁷ of the student's adjustments and supports alongside an analysis of the progress the child has made. A 'history of both support and advice from multidisciplinary professionals over an extended period of time' is also required.²¹⁸

Australian Capital Territory

The Australian Capital Territory Education Directorate operates 'specialist schools'.²¹⁹ These schools are for students with:

- high and complex needs
- either moderate to profound intellectual disability or moderate to profound intellectual disability
- an Autism Spectrum Disorder diagnosis.²²⁰

Students can enrol in these schools once an Education Directorate school psychologist has confirmed their eligibility.²²¹

2.5 Data on students with disability

This chapter uses two data sources to estimate numbers of students with disability:

- the 2018 Australian Bureau of Statistics Survey of Disability, Ageing and Carers (*SDAC*)
- the NCCD.

The *SDAC* is a national survey conducted every three to four years by the Australian Bureau of Statistics. The *SDAC* is the most comprehensive source of data on people with disability in Australia.²²² We use the *SDAC* in Volume 3, *Nature and extent of violence, abuse, neglect and exploitation*, to estimate the number of people with disability in Australia. The *SDAC* defines disability as 'any limitation, restriction or impairment which restricts everyday activities and has lasted, or is likely to last, for at least six months'.²²³

The NCCD is primarily designed to collect information on the supports received by students with disability to help them participate in school education. A student is counted in the NCCD if teachers make an adjustment to their teaching practice to support the student because of a disability.²²⁴ Schools report annually on the number of students with disability via the NCCD and receive funding from the Australian Government to support the educational needs of students with disability.²²⁵

There are large differences in the overall number of students with disability reported by the two datasets. The number of students with disability reported by the NCCD is approximately 2.4 times that reported by the *SDAC* (approximately 911,000 in 2022;²²⁶ compared to approximately 380,000 in 2018).²²⁷

Differences in the number of students reported in each data source may differ due to their different purposes. The NCCD support-based model results in a broader measure of disability than the *SDAC*. Through the NCCD, teachers can report any adjustments or supports that a student may require.²²⁸ However, the *SDAC* is intended to provide a population estimate of disability for Australia.²²⁹

The NCCD appears to capture more students with disability who have fewer support needs than does the *SDAC*. This drives the differences in the overall estimates of the number of students with disability, as the number of students with high needs appears to be similar across the two data sources. For example, the number of students with disability with high needs reported in the *SDAC* (defined as having a 'profound or severe disability') is 206,000,²³⁰ while the number of students with disability with high needs in the NCCD (defined as receiving 'Substantial or Extensive supports') is 233,000.²³¹

There may also be some differences in the overall estimates because of the collection year of the data. The most recent results available for the *SDAC* are for 2018, while the NCCD estimates are reported for 2022.

School students with disability

According to the *SDAC*, in 2018, an estimated 380,000 children aged 5 to 18 with disability attended primary or secondary school (or 10 per cent of school students in Australia). Around 5.4 per cent (or 206,000) had severe or profound disability.²³² (This category covers people who always or sometimes need help with one or more core activities, which cover self-care, mobility and communication, have difficulty understanding or being understood by family or friends or can communicate more easily using sign language or other non-spoken forms of communication.)

There are gender differences in data on students with disability: 12 per cent of male school students have disability, compared with 8.2 per cent of female students.²³³

Of male school students with disability:

- two in three (65 per cent) have intellectual disability
- 40 per cent have psychosocial disability
- 36 per cent have sensory and speech disability.

This compares with 54 per cent, 38 per cent and 26 per cent of female students with disability, respectively.²³⁴

Overall, school-age children with disability attend school at similar rates to those without disability (both around 89 per cent). There is no difference between the rate of attendance of boys and girls with disability. There has been little change in this during 2003–2018.²³⁵

In 2018, most (89 per cent or 338,000) school students with disability went to a mainstream school:²³⁶

- 71 per cent (or 269,000) attend only regular classes in a mainstream school
- 18 per cent (or 67,000) attend special classes within a mainstream school
- 12 per cent (or 45,000) attend a special school.

This data can be broken down by severity of disability (see Tables 7.2.9 and 7.2.10). Of school students with severe or profound disability:²³⁷

- 59 per cent (or 122,000) attend only regular classes in a mainstream school
- 21 per cent (or 44,000) attend special classes within a mainstream school
- 20 per cent (or 41,000) attend a special school.²³⁸

Table 7.2.9: Type of school attended by school students with disability, 2018^(a)

Type of school	Severe or profound disability ^(b)	Other disability status	All with disability
Special school	19.7%	*2.3%	11.9%
Mainstream school ^(c)	80.4%	98.8%	89.0%
Total	100.0%	100.0%	100.0%

* The relative standard error of this statistic is 25–50%. Therefore, this statistic should be used with caution.

^(a) People with disability aged five to 18 years living in households and currently attending primary or secondary school.

^(b) The severity of disability is defined by whether a person needs help, has difficulty or uses aids or equipment with three core activities – self-care, mobility, and communication – and is grouped for mild, moderate, severe and profound limitation. People who always or sometimes need help with one or more core activities, have difficulty understanding or being understood by family or friends or can communicate more easily using sign language or other non-spoken forms of communication are referred to as ‘people with severe or profound disability’.

^(c) Do not attend special school.

Source: Australian Institute of Health and Welfare (2022).

Table 7.2.10: Type of class within a mainstream school attended by school students with disability, 2018^(a)

Type of school or class	Severe or profound disability ^(b)	Other disability status	All with disability
Special classes in a mainstream school	21.4%	13.4%	17.7%
Regular classes in a mainstream school only ^(c)	59.4%	85.6%	70.8%
Total attending a mainstream school^(d)	80.4%	98.8%	89.0%

^(a) People with disability aged five to 18 years living in households and currently attending primary or secondary school.

^(b) The severity of disability is defined by whether a person needs help, has difficulty or uses aids or equipment with three core activities – self-care, mobility, and communication – and is grouped for mild, moderate, severe and profound limitation. People who always or sometimes need help with one or more core activities, have difficulty understanding or being understood by family or friends or can communicate more easily using sign language or other non-spoken forms of communication are referred to as ‘people with severe or profound disability’.

^(c) Do not attend special classes in a mainstream school.

^(d) Do not attend special school.

Source: Australian Institute of Health and Welfare (2022).

As of 31 December 2022, there were around 198,000 NDIS participants aged seven to 18 years, of whom 68 per cent were male.²³⁹ This figure includes participants who have a significant impairment to their functional capacity, although not all participants attend school.

Data from the NCCD

As noted above, the NCCD also provides a source of data about students with disability. In 2022, there were around 911,000 students with an NCCD defined disability. This represents around 23 per cent of the total student population of four million.²⁴⁰

Over half of students with disability receiving an NCCD adjustment have a cognitive disability (55 per cent). Almost one-third have a social/emotional disability (32 per cent). This is shown in Table 7.2.11.²⁴¹

Table 7.2.11: Numbers and percentage of students receiving an NCCD adjustment by category of disability, 2022

Category of disability	Number ('000)	Percentage
Cognitive	500	54.9%
Social/emotional	292	32.0%
Physical	93	10.2%
Sensory	26	2.9%
Total	911	100.0%

Source: ACARA (2022).

Most NCCD students with disability receiving an NCCD adjustment have a lower level of adjustments, with under one third receiving support offered within quality differentiated teaching practice and 43 per cent receiving supplementary adjustments (Table 7.2.12).

Students with physical disability are less likely to have an extensive or substantial level of adjustment (10 per cent) than students with cognitive, social/emotional or sensory disability (26 per cent, 27 per cent and 29 per cent respectively).²⁴²

Table 7.2.12: Numbers and percentage of students receiving an NCCD adjustment by level of adjustment, 2022

Level of adjustment	Number ('000)	Percentage
Extensive	77	8.5%
Substantial	156	17.1%
Supplementary	389	42.7%
Support provided within quality differentiated teaching practice	289	31.7%
Total	911	100.0%

Source: ACARA (2022).

The number of students with disability has grown 4.7 per cent each year from 2017 to 2022. This is substantially higher than the growth of 0.4 per cent each year of students without a disability.²⁴³ As shown in Figure 7.2.2, growth has been driven predominantly by students with a social/emotional disability (9.2 per cent per annum) or cognitive disability (4.6 per cent per annum). Figure 7.2.2 also shows that the number of students with higher levels of adjustments is growing at a faster rate than that of students with lower levels of adjustments.²⁴⁴

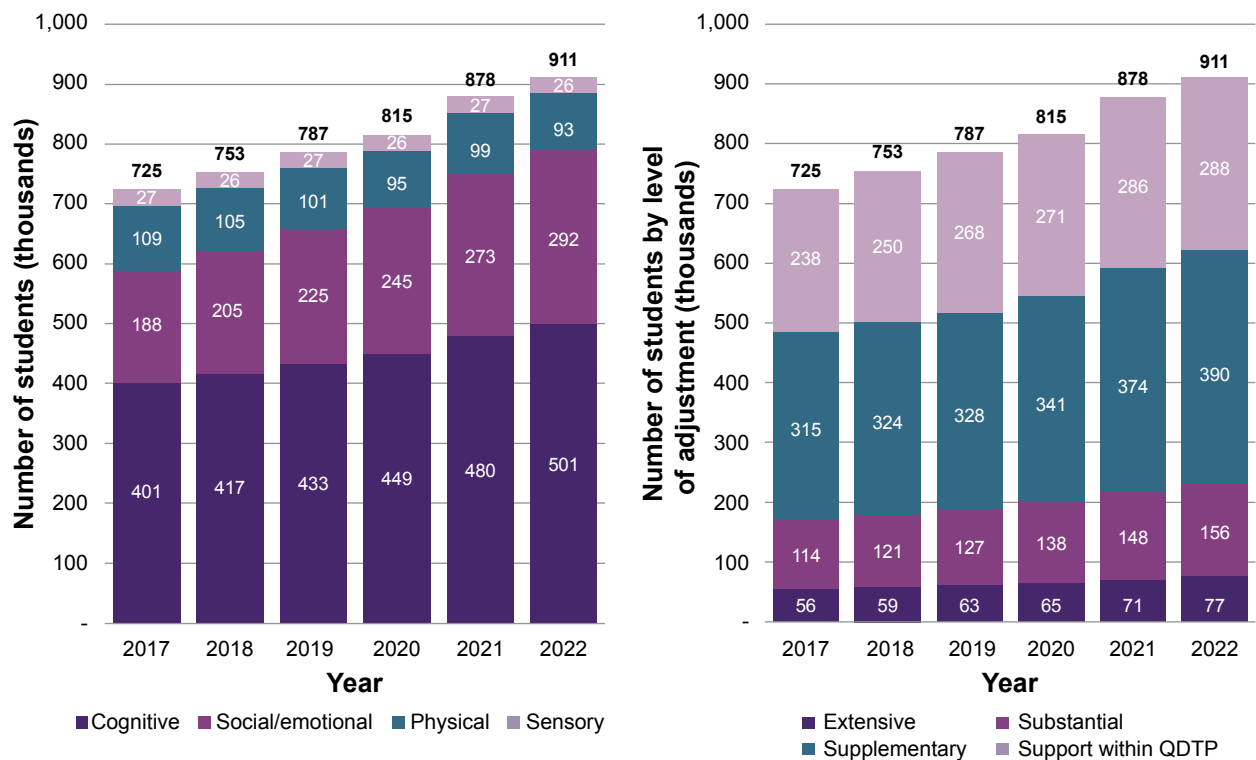


Figure 7.2.2: Number of NCCD students with disability by type and level of adjustment, 2017 to 2022

Source: ACARA (2022).

First Nations students are over-represented in the number of students with disability. Thirty-six per cent of First Nations students had an NCCD defined disability in 2020, which is double the proportion of non-Indigenous students with an NCCD defined disability (18 per cent).²⁴⁵

School education outcomes

Outcomes data for students with disability is generally poor. The limited available information from government and Catholic jurisdictions about student outcomes in all settings indicates that students with disability in all school settings have:²⁴⁶

- lower year 10 and year 12 retention rates in all jurisdictions
- lower year 12 completion certificate rates in most jurisdictions
- lower rates of receiving an Australian Tertiary Admissions Rank.

For example, across all the states and territories, students with disability in mainstream government schools were between two and 23 percentage points less likely than students without disability to obtain a year 12 completion certificate in 2021.²⁴⁷

There is a lack of comparative data about the outcomes of students with disability with comparable adjustment needs in mainstream and special/segregated education.

The limited available information from government jurisdictions indicates that retention rates are better in special/segregated schools than in mainstream schools.²⁴⁸

- Year 12 retention rates are *lower* for students with disability in mainstream schools than those for students without disability.
- Year 12 retention rates for students in special/segregated schools are generally *higher* than those for students without disability in mainstream schools.²⁴⁹

Endnotes

- 1 *Australian Constitution* ss 51(i)–(xxxix).
- 2 *Australian Constitution* ss 96, 122.
- 3 *Australian Education Act 2013* (Cth) ss 22, 22A, 23, 24.
- 4 *Australian Constitution* s 51(xxix).
- 5 See for example, *Victoria v The Commonwealth (The Industrial Relations Act Case)* (1996) 187 CLR 416.
- 6 ‘Early childhood’, *Australian Government Department of Education*, web page, 2022. <www.education.gov.au/early-childhood>
- 7 Samuel Murray, *Legislation and regulation in Australia: Children and young people with disability in primary and secondary education settings*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, July 2021, pp 7–8.
- 8 ‘Australian higher education’, *Universities Australia*, web page, 2022. <www.universitiesaustralia.edu.au/policy-submissions/teaching-learning-funding/australian-higher-education/>
- 9 Carol Ey, Parliamentary Library, Parliament of Australia, *The vocational education and training sector: A quick guide (updated)*, Research Paper Series 2020–21, 24 June 2021, pp 2–3.
- 10 Carol Ey, Parliamentary Library, Parliament of Australia, *The vocational education and training sector: A quick guide (updated)*, Research Paper Series 2020–21, 24 June 2021, pp 2–3.
- 11 According to Australian Bureau of Statistics, *Schools, 2022: Table 35b – Number of all schools by states and territories, affiliation and school type*, 2010–2022, 15 February 2023, the Northern Territory is the only jurisdiction that does not have at least one independent special/segregated school and the Australian Capital Territory is the only jurisdiction that does not have at least one Catholic special/segregated school.
- 12 See, Australian Bureau of Statistics, *Schools, 2022: Table 35b – Number of all schools by states and territories, affiliation and school type*, 2010–2022, 15 February 2023.
- 13 ‘National report on schooling data portal’, *Australian Curriculum, Assessment and Reporting Authority*, web page, 2022. <<https://dataandreporting.blob.core.windows.net/anrdataportal/ANR-ExcelDownloads/202304/School%20numbers%20dataset.xlsx>>
- 14 ‘National report on schooling data portal’, *Australian Curriculum, Assessment and Reporting Authority*, web page, 2022. <dataandreporting.blob.core.windows.net/anrdataportal/ANR-ExcelDownloads/202304/School%20numbers%20dataset.xlsx>
- 15 ‘National report on schooling data portal’, *Australian Curriculum, Assessment and Reporting Authority*, web page, 2022. <dataandreporting.blob.core.windows.net/anrdataportal/ANR-ExcelDownloads/202304/School%20numbers%20dataset.xlsx>
- 16 ‘National report on schooling data portal’, *Australian Curriculum, Assessment and Reporting Authority*, web page, 2022. <dataandreporting.blob.core.windows.net/anrdataportal/ANR-ExcelDownloads/202304/School%20numbers%20dataset.xlsx>
- 17 ‘National report on schooling data portal’, *Australian Curriculum, Assessment and Reporting Authority*, web page, 2022. <dataandreporting.blob.core.windows.net/anrdataportal/ANR-ExcelDownloads/202304/School%20numbers%20dataset.xlsx>
- 18 Victorian Government, Submission to the *Education and learning issues paper*, 6 May 2020, ISS.001.00155, p 31.
- 19 *Australian Constitution* s 96.
- 20 Exhibit 24-080, CTD.9999.0065.0038.
- 21 Exhibit 24-080, CTD.9999.0065.0038, pp 12–15.
- 22 *National Disability Insurance Scheme Act 2013* (Cth) s 34(f)(i).
- 23 Exhibit 24-080, CTD.9999.0065.0038, p 13; *National Disability Insurance Scheme Act 2013* (Cth) s 34(f)(ii).
- 24 *Disability Discrimination Act 1992* (Cth) s 12.
- 25 *Disability Discrimination Act 1992* (Cth) ss 5(2).
- 26 *Disability Discrimination Act 1992* (Cth) s 6(2).
- 27 *Disability Discrimination Act 1992* (Cth) s 31.
- 28 *Disability Discrimination Act 1992* (Cth) s 31(2).
- 29 *Disability Discrimination Act 1992* (Cth) s 32.
- 30 *Disability Discrimination Act 1992* (Cth) s 34.

31 Australian Government Department of Education Skills and Employment, *Final report of the*
32 *2020 review of the Disability Standards for Education 2005*, March 2021, p 11.
33 Australian Government, Department of Education Skills and Employment, *Final report of the*
34 *2020 review of the Disability Standards for Education 2005*, March 2021, p 11.
35 *Disability Standards for Education 2005* (Cth) s 1.3.
36 *Disability Standards for Education 2005* (Cth) ss 4.2(1), 4.2(2), 5.2(1), 6.2(2).
37 *Disability Standards for Education 2005* (Cth) s 7.2(1–3).
38 *Disability Standards for Education 2005* (Cth) ss 4.2(3), 5.2(2), 6.2(2), 7.2(5–6).
39 *Disability Standards for Education 2005* (Cth) s 8.3.
40 *Disability Standards for Education 2005* (Cth) s 10.2.
41 *Disability Standards for Education 2005* (Cth) s 10.3; *Disability Discrimination*
42 *Act 1922* (Cth) s 47.
43 *Disability Standards for Education 2005* (Cth) ss 10.4, 10.5.
44 *Disability Discrimination Act 1992* (Cth) s 4.
45 *Disability Standards for Education 2005* (Cth) s 3.3(a).
46 Submission of Counsel Assisting the Royal Commission following Public hearing 24, 21
47 October 2022, SUBM.0041.0001, [341]–[342] citing *Harvey v Dioceses of Sale Catholic*
48 *Education Ltd (St Joseph’s Primary School Wonthaggi) (No 2)* [2021] FCA 1102 [21].
49 *Disability Standards for Education 2005* (Cth) s 3.3.
50 *Disability Discrimination Act 1992* s 11(1). The burden of proof is on the person claiming that
51 an adjustment would impose unjustifiable hardship.
52 *Disability Standards for Education 2005* (Cth) s 3.4(2–3).
53 *Disability Standards for Education 2005* (Cth) s 3.5.
54 See *Sklavos v Australian College of Dermatologists* 256 FCR 247 at [142–145] (Bromberg J),
55 [196] (Griffiths J).
56 See also the *Discrimination Act 1991* (ACT) s 7(1)(e); *Anti-Discrimination Act 1977* (NSW)
57 pt 4A; *Anti-Discrimination Act 1992* (NT) s 19(j); *Anti-Discrimination Act 1991* (Qld) s 7(h);
58 *Anti-Discrimination Act 1984* (SA) pt 5; *Anti-Discrimination Act 1998* (Tas) s 16(k);
59 *Equal Opportunity Act 2010* (Vic) s 6(e); *Equal Opportunity Act 1984* (WA) pt IVA;
60 *Human Rights Act 2004* (ACT); *Human Rights Act 2019* (Qld) s 95(4)(iii); *Charter of*
61 *Human Rights and Responsibilities Act 2006* (Vic).
62 *Disability Discrimination Act 1992* (Cth) s 13(3). See *Australian Constitution* s 109.
63 *Disability Discrimination Act 1992* (Cth) s 13(4).
64 *Education Act 2004* (ACT); *Education Act 1990* (NSW); *Education Act 2015* (NT);
Education (General Provisions) Act 2006 (Qld); *Education and Children’s Services Act 2019* (SA);
Education Act 2016 (Tas); *Education and Training Reform Act 2006* (Vic); *School Education*
Act 1999 (WA).
See *Education Act 1990* (NSW) s 29(1); *Education (General Provisions) Act 2006* (Qld) s 13;
Education and Training Reform Act 2006 (Vic) s 2.2.16; *Education and Children’s Services Act*
2019 (SA) s 56; *Education and Children’s Services Regulations 2020* (SA), reg 11(b); *Education*
Act 2016 (Tas), s 5, which defines a ‘support school’ as a school established by the Minister
for the ‘purpose of providing specialised, and personalised, teaching and learning programs for
students with disability’. In the ACT, the legislation does not expressly refer to special schools.
However, the Minister may decide ‘the kind’ of government schools to be established:
Education Act 2004 (ACT), s 20(2)(a).
Education Act 1990 (NSW) s 29(1).
Education (General Provisions) Act 2006 (Qld) sch 4 – Dictionary.
Education and Training Reform Act 2006 (Vic) sch 10.
Human Rights Act 2019 (Qld) s 36(1).
Human Rights Act 2019 (Qld) s 58(1)(a–b).
See *Human Rights Act 2019* (Qld) s 9(h).
Human Rights Act 2004 (ACT) s 27A.
Human Rights Act 2004 (ACT) s 40B(1).
Charter of Human Rights and Responsibilities Act 2006 (Vic) s 8(3).
Charter of Human Rights and Responsibilities Act 2006 (Vic) s 38(1).
Australian Government Department of Social Services, *Australia’s Disability Strategy 2021–2031*,
2021, p 22.

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- 65 Australian Government Department of Social Services, Australia's Disability Strategy 2021–2031: Employment Targeted Action Plan, December 2021; Australian Government Department of Social Services, Australia's Disability Strategy 2021–2031: Early Childhood Targeted Action Plan, December 2021.
- 66 Australian Government Department of Social Services, Australia's Disability Strategy 2021–2031: Early Childhood Targeted Action Plan. December 2021, p 6.
- 67 Australian Government Department of Social Services, Australia's Disability Strategy 2021–2031: Early Childhood Targeted Action Plan. December 2021, pp 7–8.
- 68 Australian Government Department of Social Services, Australia's Disability Strategy 2021–2031: Early Childhood Targeted Action Plan. December 2021, p 9.
- 69 Council of Australian Governments, National School Reform Agreement, 2018, p 6.
- 70 Council of Australian Governments, National School Reform Agreement, 2018, p 9.
- 71 Council of Australian Governments, National School Reform Agreement, 2018, p 9.
- 72 Council of Australian Governments, National School Reform Agreement, 2018, p 9.
- 73 Council of Australian Governments, National School Reform Agreement, 2018, p 9.
- 74 Council of Australian Governments, National School Reform Agreement, 2018, pp 8, 10.
- 75 Education Council, Alice Springs (Mparntwe) Education Declaration, December 2019, p 4.
- 76 Education Council, Alice Springs (Mparntwe) Education Declaration, December 2019.
- 77 'Measurement framework for schooling in Australia', *Australian Curriculum, Assessment and Reporting Authority*, web page, 2016. <www.acara.edu.au/reporting/measurement-framework-for-schooling-in-australia>
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- 187 A consent form is not required if a student is already enrolled in a special school. Where a student is already enrolled in a special school, the process starts with the parent completing an application form: Queensland Government Department of Education, State special school enrolment decision-making guidelines, p 8.
- 188 *Education (General Provisions) Act 2006* (Qld) s 166(1).
- 189 The person must have a disability as is defined by the *Disability Discrimination Act 1992* (Cth). The *Special School Eligibility* ("person with a disability" criteria) policy defines severe disability as 'a disability where the impact of the intellectual disability, or multiple impairments (including an intellectual disability), results in the student requiring a highly individualised program to access and participate in education': Exhibit 2-01.12, QLD.9999.0007.0156, p 4.
- 190 The policy defines intellectual disability as being 'characterised by deficits in intellectual functioning and adaptive behaviour requiring significant education adjustments': Exhibit 2-01.12, QLD.9999.0007.0156, p 3.
- 191 Exhibit 2-01.12, QLD.9999.0007.0156, p 2. For greater detail on the evidence to be provided to satisfy the criteria, see Queensland Government Department of Education, State special school enrolment decision-making guidelines.
- 192 'Enrolment in state primary, secondary and special schools procedure', *Queensland Government*, web page. <ppr.qed.qld.gov.au/pp/enrolment-in-state-primary-secondary-and-special-schools-procedure>
- 193 Transcript, Caroline Croser-Barlow, Public hearing 24, 10 June 2022, P-346 [9].
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SAG.0006.0211.0267, pp 18–19.

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SAG.0006.0211.0267, pp 18–19.

198 Of the administrative unit of the public service that is responsible for assisting a minister in
administering the *Education and Children's Services Act 2019* (SA): *Education and Children's
Services Act 2019* (SA) s 3 (definition of 'Chief Executive').

199 *Education and Children's Services Act 2019* (SA) s 62. In response to questions taken on notice,
Caroline Croser-Barlow said that as at 24 June 2022, the Chief Executive had not used section 62
of the Act. However, she provided that the Chief Executive used a similar power under section 75
of the former *Education Act 1972* (SA) on one occasion: Exhibit 24-045, SAG.9999.0016.0001, [4].

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to their final year of school: 'Children with special educational needs', *Government of Western
Australia Department of Education*, web page. <[www.education.wa.edu.au/children-with-special-
educational-needs](http://www.education.wa.edu.au/children-with-special-educational-needs)>

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secondary schools. Some education support centres have early specialist programs for students
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with students who attend the local school: 'Children with special educational needs', *Government
of Western Australia Department of Education*, web page. <[www.education.wa.edu.au/children-
with-special-educational-needs](http://www.education.wa.edu.au/children-with-special-educational-needs)>. Education support centres have their own principal:
Exhibit 24-047, 'Statement of Stuart Ian Percival', 6 May 2022, at [8].

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with Disability in Public Schools, July 2022, s 1.3; See also Exhibit 24-047, 'Statement of
Stuart Ian Percival', 6 May 2022, at [69].

203 Government of Western Australia Department of Education, Enrolment Framework for Students
with Disability in Public Schools, July 2022, s 1.3; See also Exhibit 24-047, 'Statement of
Stuart Ian Percival', 6 May 2022, at [70].

204 'Students with disability', *Department for Education, Children and Young People*, web page.
<www.decyp.tas.gov.au/supporting-student-need/support-students-disability/>

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206 *Education Act 2016* (Tas) s 102.

207 *Education Act 2016* (Tas) s 11(4).

208 *Ministerial Instruction No 2 for Dual Enrolment of Students with a Disability 2017* (Tas), cl 3.1.1.

209 Specialist centres being special education settings for students with an intellectual disability,
as approved by the Chief Executive, that are attached to mainstream schools: Northern Territory
Government Department of Education, Enrolment in Special Schools and Special Centres
Guidelines, October 2019, p 12.

210 'Approved specialist schools and centres', *Northern Territory Government*, web page,
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211 Northern Territory Government Department of Education, Enrolment in Special Schools and
Special Centres Guidelines, October 2019, pp 6–7; 'Enrolling students with disability',
Northern Territory Government, web page. <[nt.gov.au/learning/special-education/enrolling-
students-with-disability](http://nt.gov.au/learning/special-education/enrolling-students-with-disability)>

212 To enrol in early years, i.e. pre-school to year 3.

213 To enrol in primary, middle and senior years.

214 Or a paediatrician for Global Development Delay. The Enrolment in Special Schools and
Special Centres Guidelines contain further criteria with respect to Global Development Delay
or Intellectual Disability confirmed through assessments: Northern Territory Government
Department of Education, Enrolment in Special Schools and Special Centres Guidelines,
October 2019, pp 5–6.

215 Northern Territory Government Department of Education, Enrolment in Special Schools and
Special Centres Guidelines, October 2019, p 5. The Enrolment in Special Schools and Special
Centres Guidelines also provide that by the time a child with disability is eight years old, 'sufficient
valid and reliable assessment evidence must be compiled to confirm diagnosis, identify education
needs and program development options'.

- 216 This requires evidence of deficits in general adaptive functioning with a standard score either at or below the second percentile, resulting in the prospective student's failure to meet socio-cultural and developmental standards for personal independence and social responsibility. The deficits place limitations on the prospective student's functioning in a large amount of daily life: Northern Territory Government Department of Education, Enrolment in Special Schools and Special Centres Guidelines, October 2019, p 6.
- 217 Northern Territory Government Department of Education, Enrolment in Special Schools and Special Centres Guidelines, October 2019, p 5.
- 218 Northern Territory Government Department of Education, Enrolment in Special Schools and Special Centres Guidelines, October 2019, p 6.
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- 227 Australian Institute of Health and Welfare, *People with disability in Australia 2022*, July 2022, p 266.
- 228 'When is a student eligible to be included?', Nationally Consistent Collection of Data on School Students with Disability, web page, 2022, <www.nccd.edu.au/wider-support-materials/when-student-eligible-be-included?parent=/understanding-nccd&activity=/wider-support-materials/what-nccd-model-1&step=0>
- 229 Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings methodology, 2018*, Catalogue number 4430, 24 October 2019.
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- 231 'School students with disability', *Australian Curriculum, Assessment and Reporting Authority*, web page, 2022. <www.acara.edu.au/reporting/national-report-on-schooling-in-australia/national-report-on-schooling-in-australia-data-portal/school-students-with-disability>
- 232 Australian Institute of Health and Welfare (AIHW), *People with disability in Australia 2022*, July 2022, p 267. Data from the AIHW report is largely sourced from Australian Bureau of Statistics 2018 Survey of Disability, Ageing and Carers (SDAC). The SDAC is the most detailed and comprehensive source of data on disability prevalence in Australia.
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- 248 Material received by the Royal Commission from government state and territory education departments in response to notice, 2022, WA.0025.0001.1676, TAS.9999.0022.0022, ACT.9999.0012.026, QLD.0005.0050.0002, NTT.0001.0003.0001, SAG.0006.0259.0001, NSW.0078.0001.0001, VIC.0003.0510.0001; VIC.0003.0510.0003, VIC.0003.0510.0005, VIC.0003.0510.0007 and VIC.0003.0510.0009.
- 249 Retention rate analysis was based on real retention rates (reflecting ongoing enrolment of the same students across school years) in New South Wales, Victoria, South Australia, the Northern Territory and the Australian Capital Territory, and direct retention rates (number of students in the cohort in the calendar year divided by the same cohorts number in the base year) in Queensland, Western Australia and Tasmania.

3. Overcoming barriers to safe, quality and inclusive education

Key points

- Students with disability face multiple barriers to inclusive education, which are underpinned by negative attitudes and low expectations of students with disability.
- Key barriers include:
 - gatekeeping practices, which deny students with disability access to the school of their choice or informally discourage their attendance
 - the inappropriate use of exclusionary discipline, particularly from an early age (for example, the exclusion of a student with disability from the classroom)
 - the failure to provide students with disability with adjustments, supports and individualised planning
 - a lack of opportunity to participate in the broader school community, form friendships and develop the skills needed for lifelong learning and success
 - poor integration between the National Disability Insurance Scheme (NDIS) and education supports
 - inadequate support to transition from school to open employment and further education
 - a lack of avenues for meaningful communication between school leaders and teachers and parents and students.
- To address these barriers to inclusive education, we recommend:
 - legislative and policy changes
 - improved procedures and support services
 - changes in culture, capability and practice 'on the ground'.

3.1 Negative attitudes and low expectations

Schools are critical in shaping attitudes towards people with disability.¹ However, persistent negative attitudes towards students with disability and low expectations of their capabilities were a consistent theme in evidence and other information gathered by the Royal Commission.² It is necessary to bear this phenomenon in mind when considering specific barriers to inclusive education.

As noted in *Our vision for an inclusive Australia*, people with disability encounter negative attitudes and discriminatory behaviours throughout their lives. 'Ableism' is the word most commonly used to describe the attitudes that motivate harmful behaviour directed at people with disability.³ The word pinpoints attitudes that perpetuate the idea that people with disability are different from, less than and inferior to people without disability, incapable of exercising choice and control, and a burden on society.⁴ Ableism leads to low expectations of people with disability. In the context of education, it means there is a tendency to steer people with disability to segregated schools (see section 3.2 on 'Gatekeeping practices'). Ableism also negatively influences the behaviour of teachers and other students towards children with disability.

The attitudes of teachers and principals towards students with disability are key determinants of students' success in the education system.⁵ The 2016 Senate Committee report *Access to real learning: The impact of policy, funding and culture on students with disability*, notes that school culture is key to the quality of education that students with disability receive.⁶

Successive reviews of the *Disability Standards for Education 2005 (Cth) (Education Standards)* have reported concerns about a 'culture of low expectations' of students with disability. The 2020 review reported:⁷

A culture of low expectations, especially of Aboriginal and Torres Strait Islander students with disability, was a feature of the Review consultations. This expectation often affected both the diagnosis and the support provided to these students and, in many cases, served to compound disadvantage.

Our public hearings also found that teachers and school leaders influence attitudes in their treatment of students with disability.⁸ Their attitudes can contribute to the exclusion of students with disability from education.⁹ At Public hearing 7, 'Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts', 'Leif' gave evidence that their school 'trivialised my challenges by assuming that I was unable to understand the content of classes, not realising that what I often required was help with processing the information'.¹⁰ Experiences of bullying also demonstrate that negative attitudes towards students with disability can contribute to interpersonal mistreatment.¹¹

As in any organisation, the leaders of a school shape its culture.¹² In their evidence, government representatives from Queensland and New South Wales recognised that the understanding of disability among principals varies.¹³ Therefore, students with disability may have very different experiences, depending on the school they attend.¹⁴ In its submissions on Public hearing 7, the State of New South Wales accepted 'that the school experience of a student with disability may be significantly impacted or even determined by the culture and attitude of educators and school leadership'.¹⁵

The evidence included illustrations of the effect principals can have on the educational experiences of students with disability. For example, we heard of:

- a principal intervening to prevent a student from being provided with adjustments¹⁶
- principals refusing enrolment to children or young people with disability¹⁷
- teachers trivialising the challenges faced by a student who needed help in processing information.¹⁸

There is no single way to change attitudes towards people with disability and address ableism in school. In the analysis and recommendations that follow, we recognise that negative attitudes are a root cause of systemic exclusion of people with disability. We know that changing attitudes is a complex and multifaceted endeavour. Changing attitudes to promote inclusive education requires concerted effort from all sectors of society, including governments, schools, teachers and parents.

Workforce training is critical (see Recommendation 7.8) as is the leadership of principals in setting school culture and values. Historically, the segregation of people with disability was driven by and reinforced ableism. Conversely, policies that facilitate inclusion and increase the presence of people with disability in mainstream schools are critical to changing attitudes. These policies can address gatekeeping and provide appropriate adjustments and support, initiatives and programs that allow students with disability to be part of the wider school community. As teachers and students engage with people with disability in day-to-day life, they can develop a greater understanding of and appreciation for diversity.

The legislative and regulatory frameworks in which schools operate can also play an important role in bringing about attitudinal change. For example, to address gatekeeping, legislative changes are needed so that students with disability are entitled to enrol in a local government school (Recommendation 7.1). There is a need for greater awareness and guidance to help schools and educators meet their obligations to students with disability under anti-discrimination legislation (Recommendation 7.8).

Holistic transformation towards inclusive education is needed. To achieve this, legal change will be needed along with changes in culture, capability and practice ‘on the ground’ to improve the day-to-day experiences of students with disability and embed rights in the way schools operate. Negative attitudes drive maltreatment in schools, but inclusive attitudes and positive relationships set the tone, help build trust and confidence, and ensure effective communication between the families and the school. An inclusive school is a welcoming school.¹⁹

3.2. Gatekeeping practices

Enrolment

Gatekeeping excludes students with disability from their school of choice

‘Gatekeeping’ describes the practice of preventing or discouraging a child or young person from applying to or enrolling in an educational institution, for a reason that is not lawful and proper. Gatekeeping occurs when schools deny students with disability access to the school of their choice or informally discourage their attendance.²⁰

Gatekeeping can take many forms. For example, it can be refusing enrolment, permitting enrolment only part time, encouraging enrolment in a special/segregated school rather than a mainstream school, or encouraging home schooling.²¹ School representatives may tell families, for example, that they cannot accommodate a child's enrolment because of resourcing constraints or because supports, such as teacher assistant hours, are not available.²²

Several past inquiries and reports have found that gatekeeping is a barrier to inclusive education.²³ We have received evidence that supports this conclusion.

Gatekeeping often occurs when children with disability transition from preschool into school.²⁴ In Public hearing 2, 'Inclusive education in Queensland – preliminary inquiry', Dr Lisa Bridle, Senior consultant at Community Resource Unit Ltd said parents are told:

We don't cater for students with this level of disability. We won't have the resourcing. We can't ensure that your child will be safe if they enrol at this school. You will find that the resources are somewhere else.²⁵

In another example, 'Sharon' told us that, when looking to enrol her son in a high school, a number of local private schools told her they 'just don't take children like Jack'.²⁶ She also told us that a segregated/special school refused to enrol 'Jack', as his intelligence quotient was too high.²⁷

'Sarah' gave evidence that her son, 'Kobe', was placed on an arrangement of reduced school hours. The arrangement was undocumented and did not include a plan to increase his attendance over time.²⁸ As a result, Kobe did not return to full-time attendance for the rest of his time at that school.²⁹

We have heard that some families have trouble accessing education before children are of school age.³⁰ A parent of a child with disability told us about her struggle to enrol her son in preschool. Sixteen early childhood centres refused his enrolment. When learning of her son's disability, centres repeatedly went back on their enrolment commitments. They were subjected to extended waitlist periods and offered enrolment only on certain days.³¹

The Commissioners agree with the submission of Counsel Assisting the Royal Commission following Public hearing 7, which stated:

[There is] compelling evidence of gatekeeping practices presenting a barrier to students accessing a safe, quality and inclusive education. It can contribute to educational neglect of students with disability.³²

Notably there is little or no reliable data measuring the extent of gatekeeping in each sector and in each state and territory. In the *Report of Public hearing 7: Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts*, the Commissioners made a general finding that New South Wales and Queensland state school systems do not routinely record and use data and information about incidents of denial or discouragement of enrolment experienced by students

with disability.³³ Responses from jurisdictions to notices to produce issued by the Royal Commission confirm that the states did not routinely collect data on denial or discouragement of enrolment experienced by students with disability.³⁴

The case for an entitlement to enrol

As noted in Chapter 4, 'Embedding inclusive education', the *Disability Discrimination Act 1992* (Cth) (*DDA*) makes it unlawful for an educational authority to discriminate against a person on the grounds of disability by refusing to accept the person's application for admission as a student. The *Education Standards* further clarify the obligations of education providers under the *DDA*. Contravention of the *Education Standards* is also a breach of the *DDA*.

Under the *Education Standards*, an education provider must take reasonable steps to ensure that the prospective student is 'able to seek admission to, or apply for enrolment in, the institution on the same basis as a prospective student without a disability', and without experiencing discrimination. In deciding whether to offer a place to a prospective student, the education provider must ensure that they are treated on the same basis as a prospective student without disability, and without experiencing discrimination. These obligations do not apply to the extent that compliance would impose unjustifiable hardship on the provider.³⁵

In Chapter 2, 'School education in Australia', we also noted that state and territory education legislation take different approaches to enrolment in a school of choice. Some state and territory laws acknowledge or expressly confer a right to education. This is the case with the *Education Act 2004* (ACT), the *Education Act 1990* (NSW), the *Education Act 2016* (Tas), the *School Education Act 1999* (WA) and the *Children's Services Act 2019* (SA). This right is often only recognised in the legislative statement of principles, which ordinarily means that an apparent breach of the 'right' does not give rise to an enforceable remedy. In other legislation, a right to education is not explicit. It is expressed merely as an entitlement to a quality education or to something similar. This is the case with the *Education (General Provisions) Act 2006* (Qld), the *Education Act 2015* (NT) and the *Education and Training Reform Act 2006* (Vic).

Schools, the chief executive of the education department or the responsible minister usually have a discretion whether to enrol a particular student in a particular school. For example, they may deny enrolment based on a judgment about:

- the safety of the student or other students³⁶
- the unavailability of an appropriate educational program for the child³⁷
- the school's access to financial and other resources.³⁸

Under existing state and territory education legislation, there is no enforceable right for parents of children with disability to enrol in a particular school, even if they satisfy residential or other general entrance criteria. The *DDA* and *Education Standards* provide protection against discrimination on the basis of disability by ensuring that 'reasonable steps' are taken to ensure that the prospective student can 'apply for enrolment'. However, under the *Education Standards* there are exceptions to the right to enrol, including if an adjustment would impose an 'unjustifiable hardship' on the educational authority. Thus, there is a right to apply but not a right to enrol.³⁹

Insights on gatekeeping from previous government inquiries and reviews suggest that far more needs to be done to enforce the law prohibiting the prevention of enrolment of students.⁴⁰

The Royal Commission considers that legislation and policy for enrolment should be clarified. In Volume 4, *Realising the human rights of people with disability*, we recommend amendments to the *DDA* that would create a standalone duty to make ‘adjustments’ unless doing so would cause ‘unjustifiable hardship’ on the person. These proposed changes to the *DDA* would also apply to non-government schools.

In our view, non-government and government schools should be subject to the same duties. Therefore, we recommend that state and territory governments amend their education legislation to be consistent with requirements under Commonwealth legislation. We suggest that state and territory legislation should create an entitlement for students with disability to enrol in a local government school. An educational institution should only be able to refuse enrolment on the basis of the revised ‘unjustifiable hardship’ provision of the *DDA*. The effect of this change would be to narrow the grounds on which enrolment can be refused. Additionally, the onus would be placed on the educational institution to show why the hardship is unjustifiable.

Policy and practical measures to prevent gatekeeping

In addition to our recommendations for amendments to education legislation, we propose three recommendations to policy and practice to prevent gatekeeping.

As noted above, states and territories do not routinely keep data on gatekeeping practices, such as the reasons for refusing enrolment. This lack of data hinders educational authorities’ ability to identify areas for improvement. Therefore, we recommend that educational institutions create and maintain a register that records refusals to enrol. This register should be forwarded to a central record maintained and evaluated by state and territory educational authorities. This record would serve as a useful control mechanism and a means of compiling significant data. This type of reporting mechanism will not capture informal gatekeeping practices. However, it will provide better insights into the nature and extent of exclusion. It will also reveal additional actions needed to ensure students can access an inclusive local school.

Further, we consider that state and territory governments should implement an independent review mechanism for parents or supporters of a child or young person with disability. The mechanism would allow them to challenge a refusal to enrol the child or young person in a school.

In response to a recommendation of the 2020 *Review of the Disability Standards for Education*,⁴¹ the Australian Government worked with Children and Young People with Disability Australia to co-design information resources to help students with disability and their caregivers understand their rights under the *Education Standards*.⁴² Consistent with this, we recommend that state and territory educational authorities develop clear, accessible, transparent material for students with disability and their families covering their rights and schools’ obligations concerning applications to attend a local school.

This should also cover any review processes established as a result of our recommendations. Schools should be encouraged to provide this information at the time of enrolment. The material should be publicly available and used across all school sectors.

Commissioners Bennett, Galbally and McEwin consider that no new special schools or segregated settings should be built from 2025 onwards. Therefore, they also recommend a sunseting of measures to prevent gatekeeping once special/segregated education settings are phased out and when no students are in special/segregated schools (see Recommendation 7.14).

Recommendation 7.1 Provide equal access to mainstream education and enrolment

States and territories should amend education Acts (or the equivalent) to:

- create a legal entitlement for students with disability to enrol in a local mainstream school
- provide that the right to enrolment is subject only to 'unjustifiable hardship' in the sense used in the *Disability Discrimination Act 1992* (Cth).

State and territory governments should take the following actions to prevent gatekeeping in mainstream schools:

- maintain a central record of decisions on enrolment refusal or cancellation and provide an annual report to the responsible minister for education on trends and any additional actions required to address barriers
- establish an independent review process to enable a parent or supporter of a child or young person with disability to challenge a refusal to enrol the child or young person in a school.

State and territory educational authorities should disseminate clear, accessible, transparent material for students with disability and their families on their rights, the obligations of schools relating to applications to attend a local school, and review processes.

3.3 Exclusionary discipline

Legislation and policy

'Exclusionary discipline' refers to the exclusion of a student from a classroom, extracurricular activities or a school as a whole in response to what is perceived as negative or disobedient behaviour.⁴³ The exclusion can be temporary or permanent.⁴⁴ Examples of exclusionary discipline include suspensions, exclusions and expulsions. These have different definitions depending on the jurisdiction.⁴⁵ An informal suspension is where a parent is called to pick up a child during the school day, but it is not recorded as a formal infraction.⁴⁶

States and territories use different combinations of legislation and policy to regulate exclusionary discipline in government schools. The legal authority to discipline students, including by suspending, excluding or expelling a student in a government school, is set out in legislation.⁴⁷ The process of applying exclusionary discipline is also governed by legislation or a legislative instrument, other than in New South Wales, where it is governed by policy. Principals, often with delegated authority, are primarily responsible for administering and managing the implementation of these procedures in their school.⁴⁸

In brief, the grounds for exclusionary discipline across states and territories can be summarised as follows:

- In New South Wales, there are procedural guidelines that govern the exercise of the powers conferred by legislation to suspend or expel students. The guidelines provide grounds for suspension based on actual harm or unacceptable risk to the health, safety or wellbeing of any person.⁴⁹
- In Victoria, suspension is imposed in response to a failure to comply so as to impose a real, threatened or perceived danger to the health, safety and wellbeing of others, and in response to consistently unproductive behaviour that interferes with the wellbeing, safety or educational opportunities of another student.⁵⁰
- In Queensland, some of the grounds for suspension are disobedience, misbehaviour, conduct that adversely, or is likely to adversely, affect other students or the good order and management of the school, and when the student's attendance at school poses an unacceptable risk to safety or wellbeing of other students or staff.⁵¹
- In South Australia, grounds for suspension include threatening or perpetrating violence, acting in a manner that threatens the safety or wellbeing of a student or staff member, interfering with the ability of a teacher to instruct students, conduct that threatens the good order of the school, and persistent and wilful inattention or indifference to school work.⁵²
- In Western Australia, suspensions may be imposed in response to a breach of school discipline. This can include conduct that adversely affects or threatens the safety of any person on school premises or participating in the school's educational programs, has caused or is likely to result in damage to property, or has disrupted the educational instruction of other students.⁵³
- In the Northern Territory, a student may be suspended if their presence is likely to constitute a risk of physical or psychological harm to other persons at the school (for example, the student is repeatedly disobedient or is guilty of a serious breach of discipline).⁵⁴
- In the Australian Capital Territory, under amendments to the *Education Act 2004* (ACT), a student can only be suspended where the student has engaged in 'unsafe or non-compliant behaviour',⁵⁵ the school has exhausted all reasonable alternatives to suspending the student, and it is reasonable to suspend the student considering all of the circumstances.⁵⁶
- In Tasmania, three elements must be met for a suspension to be imposed: unacceptable behaviour; the behaviour poses a risk to the health and safety of others; and the risk may be removed only by the immediate removal of the student.⁵⁷

In a number of jurisdictions, the grounds for more severe sanctions, such as expulsion, relate to an escalation of behaviour.⁵⁸ Policies or guidelines in Victoria, Queensland, South Australia and Northern Territory attempt to limit the scope of grounds for exclusionary discipline by obliging decision makers to consider students' individual circumstances, including disability, in decision making.⁵⁹ In Western Australia, the *Requirements relating to the student behaviour policy and procedures* document includes guidance on the relationship between behaviour and disability.⁶⁰

Data on exclusionary discipline

Data from 2019 obtained and analysed by the Royal Commission demonstrates that students with disability were far more likely to be suspended than students without disability in public schools in all jurisdictions⁶¹ and three times as likely to be suspended than those without disability in some jurisdictions.⁶²

Additionally, students with disability were suspended more times on average than students without disability.⁶³ On average, students with disability received between 14 and 73 per cent more suspensions than students without disability.

In the jurisdictions for which we have data:

- Male students with disability were significantly more likely to be suspended than both female students with disability and male students without disability. Male students with disability were also more likely to have multiple suspensions.⁶⁴
- First Nations students with disability were much more likely to be suspended and suspended more times than non-Indigenous students with and without disability.⁶⁵ In almost every jurisdiction, First Nations students with disability were more than twice as likely to be suspended as non-Indigenous students with disability.
- Of the four disability types – cognitive, physical, sensory and social – students with a social or emotional disability⁶⁶ were most likely to be suspended.

Only limited data was obtained in respect of exclusions and expulsions.⁶⁷

Inappropriate use of exclusionary discipline

Throughout our inquiry, we have heard evidence and received information about the inappropriate use of exclusionary discipline on students with disability, particularly from an early age. Our report on Public hearing 7 highlighted that repeated and lengthy suspensions prevent students with disability from receiving a safe, quality and inclusive education.⁶⁸

We heard evidence that students subject to multiple suspensions can be at heightened risk of complete disengagement from education.⁶⁹ For example, the length of Kobe's suspension from school in Queensland had a significant impact on his education.

Kobe's mother, Sarah, a teacher, told the Royal Commission how Kobe was suspended four times during his attendance at one particular school, which amounted to approximately 11% of

his time there. This included Kobe being suspended twice in less than two weeks in September 2018, when in Year 9. Sarah considered this use of formal discipline to be “an overly harsh and punitive response”.⁷⁰

At Public hearing 7, we heard about ‘Sam’'s case.⁷¹ Sam was issued a formal caution within three weeks of beginning kindergarten at the age of five. He was subject to seven suspensions in his first 18 months in a New South Wales government school.⁷² In Sam's case, the *NSW Suspension and Expulsion Procedures 2011*,⁷³ in force at the time, dictated that suspensions were an automatic consequence of physical violence resulting in injury. This was regardless of whether the staff or students needed protection and of the student's intention.⁷⁴ This was a key driver of the multiple suspensions issued to Sam. Mr Frank Potter of the New South Wales Department of Education acknowledged that the policy could disproportionately affect students with disability and should not operate in that way.⁷⁵

The State of New South Wales accepted that the Department of Education imposed seven suspensions on Sam, including two suspensions of 20 days' duration. Suspensions of this length were in line with policy at the time. However, the State of New South Wales recognised them to be inappropriate for Sam having regard to his age and disability.⁷⁶

Commissioners found the repeated suspensions of Sam were inappropriate in light of his young age, as well as other factors.⁷⁷ The Counsel Assisting proposed a finding of neglect of Sam. The State of New South Wales argued against the finding, taking into account the effects of Sam's behaviour and its intersections with the New South Wales department's duty of care and workplace health and safety obligations.⁷⁸ The Commissioners' report found that imposing repeated suspensions on Sam effectively denied his right to access quality, inclusive education.⁷⁹

We heard evidence that informal suspensions can be used as a form of punishment against students with disability. At Public hearing 2, witnesses AAC and Dr Bridle gave evidence that ‘informal’ suspensions can include ‘encouragement’ or ‘requests’ from schools to keep a child at home or to collect them from school.⁸⁰ They noted it is difficult to accurately quantify the full extent to which students with disability are suspended because informal suspensions are not recorded.⁸¹

At Public hearing 7, Sarah described the use of ‘informal’ exclusions by Kobe's school. These exclusions appeared to escape any form of oversight or monitoring.⁸² She explained:

Although the high use of formal discipline against Kobe by School 2 was alarming, I was more troubled by the extent to which the school relied upon “soft” or informal suspensions to remove Kobe from the school. These are not recorded in OneSchool records as formal suspensions and would often take the form of absences following instances of the school ringing me up and requesting that Kobe be taken home for the day. For example, OneSchool records show that he had numerous part day absences while enrolled at School 2. Several of these absences are listed as “unexplained”, “other” or “unauthorised” without formal arrangement.⁸³

Past inquiries recognise that informal types of exclusionary discipline are a concern for students with disability and are not effectively monitored or prevented.⁸⁴

The effects of exclusionary discipline

A factor contributing to the negative effects of exclusionary discipline is the lack of adequate educational support while the student is forced to stay at home.⁸⁵ Suspensions reduce the amount of time students are in school and receiving instruction, and they adversely affect educational attainment.⁸⁶ The process of re-enrolment following a student's expulsion can be lengthy and can be met with resistance from the school. Both factors can be detrimental to a student's academic achievement, self-esteem and engagement in education.⁸⁷

Most jurisdictions require education providers to ensure that students have access to an educational program while suspended.⁸⁸ However, the quality of support provided appears to vary. For example, in Western Australia, the obligation is only imposed after the student has been subject to a suspension of three or more days.⁸⁹

Generally, the obligation sits with the school principal to provide continuous learning. In the Northern Territory, the suspension guidelines suggest school principals, teachers and senior educators are responsible for providing appropriate school work for the student during a suspension 'if appropriate'.⁹⁰ This suggests that the decision makers have a discretion as to whether they ensure continuous learning while the student is suspended. In South Australia, information provided to parents states the school does not have to provide a child with school work when suspended.⁹¹

States and territories do not impose consistent obligations to ensure continuous learning for students with disability during exclusion and expulsion. The obligation exists in New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory.⁹² However, there is no apparent obligation to provide continuous learning for students subject to exclusion or expulsion in Tasmania, Western Australia and the Northern Territory.

States and territories take different approaches to assisting students subject to exclusionary discipline to successfully re-enter school:

- In New South Wales and the Northern Territory, procedures provide general guidance.⁹³
- In South Australia, schools must meet with the student and their families before re-entry to facilitate their transition.⁹⁴
- In the Australian Capital Territory, schools are to consider the timing of re-entry meetings and whether they should occur before the return to school.⁹⁵ Amendments to the *Education Act 2004* (ACT) following the *Education Amendment Act 2022* (ACT) strengthen obligations in the ACT by providing that a school must make any reasonable adjustments to support the student to return to school safely.⁹⁶
- In Queensland, there is no specific policy or procedure on the re-entry of school students following formal suspension or exclusion in Queensland state schools.⁹⁷

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- In Victoria, Western Australia and Tasmania, there is also no apparent advice provided for student re-entry.

These inconsistent approaches mean that students with disability may not be entitled to education on the same basis as their peers during and after periods of exclusionary discipline, depending on where they live.

In particular, students with complex behaviours may face a situation where they have no more options and they are effectively lost to the education system.⁹⁸ This was demonstrated in the evidence of 'Alex' and 'Sharon' at Public hearing 7.⁹⁹ Counsel Assisting submitted that the serious issue of students becoming 'lost' to the system needed further exploration.¹⁰⁰ They proposed that all students subject to exclusionary discipline be provided with plans for their re-engagement at the earliest opportunity.¹⁰¹

We consider that barriers to re-entry into school may lead to significant periods of disengagement. This can affect educational and other development opportunities.¹⁰² Research and past inquiries have shown there is a risk of early criminalisation for students with disability when they become disengaged from education.¹⁰³ This is known as the 'school to prison pipeline'.¹⁰⁴ Research commissioned by the Royal Commission identified that children in the criminal justice system, a large proportion of whom are children with disability, had previously experienced school exclusion (suspensions and expulsion).¹⁰⁵

Drivers of inappropriate use of exclusionary discipline

Lack of understanding of behaviour

We have heard evidence that educators and school staff mischaracterise 'behaviours of concern' related to disability as wilfully disruptive or unsafe behaviour. Schools and educators respond punitively rather than attempting to understand or address the underlying cause of the behaviours.¹⁰⁶

The Commissioners' Report on Public hearing 7 identified that there is an expectation that a period of suspension allows time for reflection, acts as a deterrent to bad behaviour and encourages compliant behaviour in the future.¹⁰⁷ However, for students with disability, so-called 'behaviours of concern' are frequently a form of communication. Children may self-harm or harm others to express boredom, frustration or dysregulation in the face of environmental stimuli.¹⁰⁸ There is also a correlation between a lack of reasonable adjustments and the exclusion of students with disability.¹⁰⁹ The assumption that a disciplinary consequence is enough to lead to behavioural change is inappropriate for students with disability whose behaviour is not intentional. The behaviour will often be inappropriate even if the behaviour can be characterised as intentional.¹¹⁰

Past reports and inquiries have found little to suggest that exclusionary discipline is effective for promoting positive behaviour change, particularly where there are no reasonable adjustments.¹¹¹ The use of exclusionary discipline can actually reinforce unwanted behaviour and encourage disengagement from learning.¹¹² Following Public hearing 7, Counsel Assisting

submitted that punishing students for behaviour that is a manifestation of a disability does not generally achieve behavioural change or enhance the student's desire and capacity to learn.¹¹³ We accept this submission.

Also, we accept and recognise the importance of adjustments to support students with disability to behave appropriately. We make recommendations on this issue below at section 3.4, 'Adjustments and supports'.

Inadequate review and appeal mechanisms

At Public hearing 24, 'The experience of children and young people with disability in different education settings', Julie, a mother of a child with disability, described the limited mechanisms for students with disability and their family to resolve issues with their schooling.¹¹⁴ Julie reflected that complaints processes that are internal to the school or education department put parents in a 'low, powerless position'.¹¹⁵

In most jurisdictions, reviews or appeals of a decision can only be requested for exclusion or expulsion decisions. Usually there is no clear avenue for review for the lesser, although still very significant, sanction of suspension.¹¹⁶

An escalation pathway for suspension only exists in New South Wales, Queensland and the Australian Capital Territory.¹¹⁷ The *NSW Student Behaviour Procedure* states that in New South Wales government schools, students, parents and carers may appeal a principal's decision to suspend a student if they believe that the principal has not followed the correct procedures and/or that the principal has made an unfair decision. Only one appeal can be made per decision, and extensions to suspensions are not subject to the appeals process.¹¹⁸

Similarly, in Queensland, a student may make submissions for review of suspension decisions.¹¹⁹ In the Australian Capital Territory, the parents of a suspended student may seek review of the decision internally and to the ACT Civil and Administrative Tribunal (ACAT).¹²⁰

This means that students with disability do not have consistent entitlements for review of exclusionary discipline decisions.

The review processes that exist do not have a consistently independent mechanism across jurisdictions. For example, in New South Wales, appeals can be made to the Director, Educational Leadership or the Executive Director, School Performance, depending on the circumstances.¹²¹ In Victoria, the Secretary may appoint an Expulsion Review Panel to review the principal's decision, although the Secretary is not bound by the panel's recommendation.¹²²

In South Australia, a panel, nominated by the Chief Executive, must be established to hear an appeal.¹²³ The panel's recommendation on exclusion decisions is final.¹²⁴ For expulsion decisions, the Chief Executive or Minister is the final decision maker.¹²⁵

Review of or appeal from an exclusionary discipline decision to a court or tribunal is expressly only available in Queensland, Tasmania, the Northern Territory and the Australian Capital Territory:

- In Queensland, a student who is excluded from all state schools can apply for review to the Queensland Civil and Administrative Tribunal.¹²⁶
- In Tasmania, an appeal may be made against an expulsion decision and confirmation of that decision to the Magistrates Court (Administrative Appeals Division).¹²⁷
- In the Australian Capital Territory, the parents of a student who has been suspended or excluded may apply to ACAT for review of the decision.¹²⁸
- In the Northern Territory, a student or their parent may apply to the Northern Territory Civil and Administrative Tribunal for review of confirmation of the decision to exclude the student or the decision not to revoke the student's expulsion.¹²⁹

This means that students with disability do not have access to independent decision making and procedural fairness in all jurisdictions.¹³⁰

Preventing the inappropriate use of exclusionary discipline

We consider that students with disability should have equal levels of protection from inappropriate exclusionary discipline, regardless of which state or territory they live in. States and territories vary markedly in their approach to exclusionary discipline, including:

- the grounds on which students can be subject to exclusionary discipline
- the avenues to independent review and the complaint mechanisms
- supports to continue education and re-engage in schools.

We consider that reform across states and territories should continue the existing momentum, which shifts the focus from mandatory, lengthy and repeated suspensions towards a more nuanced response to student behaviour. For example, states and territories should consider ensuring that exclusionary discipline is used as a last resort and takes account of the needs of the student with disability and the effect of any discipline on the student's education and ability to learn.

Legislative and policy frameworks should limit the repeated use of exclusionary discipline and ensure there is a robust process for review of or appeal from exclusionary decisions. Students with disability should be supported to access educational materials appropriate to their needs while subject to exclusionary discipline. They should be supported to re-engage in education post exclusionary discipline. We recommend that state and territory governments and education departments review all mechanisms relevant to the regulation of exclusionary discipline to ensure that they address the range of issues that we have identified.

We also recommend that state and territory governments review provisions on the registration of non-government schools to ensure they contain obligations that policies on exclusionary

discipline in the non-government sector are, at minimum, commensurate with those of the government sector. This is necessary to ensure equal protections for students with disability in all education sectors.

In the non-government sector, schools must comply with national legislation that applies to all schools.¹³¹ They are required to meet certain policy requirements in state and territory legislation to be registered.¹³² These requirements do not always specify the approach they must take to regulate exclusionary discipline or to support students with disability. However, we consider that they provide an appropriate policy lever for facilitating reform. For example, the *Education Amendment Act 2022* (ACT) introduced non-government school registration standards. Standard 2.18 states that the proprietor of a registered school must ensure that the school has a behaviour management policy and procedures. This Act also established a Registration Standards Advisory Board to oversee the new standards.¹³³

Building on existing good practice

During our inquiry, we have observed positive examples of reform by some states and territories. For example, following the Royal Commission's findings in Public hearing 7, in mid-2022, the New South Wales Department of Education released new *Student Behaviour Procedures*, which took effect from 10 October 2022.¹³⁴ This significant reform places new limitations on the application of exclusionary discipline for all students.

The *Student Behaviour Procedures* state that the grounds for suspension must be actual harm or unacceptable risk to the health, safety or wellbeing of any person.¹³⁵ Therefore, it reduces the opportunity for it to be applied inappropriately to students with disability. It also makes the power to suspend discretionary rather than mandatory in cases of physical violence. This allows for alternatives to be considered as appropriate. It elaborates on the factors to consider when considering a suspension, including the behaviour, the student, proportionality, procedural fairness and inclusive education principles.¹³⁶ This section of the procedure makes specific reference to disability, reasonable adjustments and the obligations under the *Education Standards*.¹³⁷

The new *NSW Student Behaviour Policy* places limits on the number of suspensions. A principal cannot impose:

- two consecutive suspensions
- more than three suspensions per calendar year without the approval of the Director, Education Leadership
- a suspension that carries over from one calendar year to the next.¹³⁸

It also places shorter time limits overall, and limits on the use of suspensions for young children:

- For students in kindergarten to year 2, the maximum number of consecutive school days for a suspension is five school days.
- For students in year 3 to year 12, the maximum number of consecutive school days for a suspension is 10 school days.¹³⁹

In 2022, the Australian Capital Territory amended its *Education Act 2004* (ACT) and its *Education Regulation 2005* (ACT) to clarify and update the processes for suspension, transfer, expulsion and exclusion for all schooling sectors.¹⁴⁰ This was driven in part by the Royal Commission's *Interim report*, which identified the disproportionate use of suspensions and expulsions for students with disability.¹⁴¹ As well as narrowing the grounds for exclusionary discipline, changes to the Act limit the length of suspension to no more than 20 days and prevent concurrent suspensions.¹⁴² The Act also requires that, if a student is suspended, they *must* be given the materials and support needed to continue their education during the period of suspension. This ensures that suspension is consistent with the Australian Capital Territory human rights legislation.¹⁴³

Queensland advised that it would be undertaking a procedural review of its policies and procedures.¹⁴⁴ The review was anticipated to start in 2022, with results available in 2023.¹⁴⁵ Queensland submitted that the student discipline procedure could be 'explored as part of this process'.¹⁴⁶

In South Australia, 'a set of behaviour and engagement reforms with funding of \$15 million' will 'seek to address issues focusing on exclusionary discipline and develop practical, evidence-based measures that schools can be confident to use to keep more students with and without disability engaged in learning'.¹⁴⁷

In May 2022, the Western Australian Department of Education was reviewing its *Student Behaviour in Public Schools* policy and procedures.¹⁴⁸

Strengthening anti-discrimination legislation

In Volume 4, we make recommendations to amend the *DDA* to create a standalone duty to make adjustments, as well as changes to the definitions of 'direct discrimination' and 'indirect discrimination'. These recommendations, along with the recommendations in the section below on adjustments and supports, will help to ensure that exclusionary discipline is used as a measure of last resort.

To support these recommendations, we also recommend that section 22(2)(b) of the *DDA* be amended to clarify that it would be unlawful for an educational authority to discriminate against a student by suspending or excluding a student on the ground of the student's disability. We note that this is arguably already covered by section 22(2)(c), under which it is unlawful to subject a student to any other detriment not covered by sections 22(2)(a)–(b). However, we consider that clarification would assist in ensuring that students with disability can re-engage with the education system following exclusionary discipline.

Recommendation 7.2 Prevent the inappropriate use of exclusionary discipline against students with disability

State and territory educational authorities should review all regulations, rules, procedures and other instruments regulating exclusionary discipline to ensure they:

- adopt the principle that education providers:
 - should avoid the use of exclusionary discipline on students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff
 - in considering the use of exclusionary discipline, consider the student's disability, needs and age, and the particular effects of exclusionary discipline for young children
 - require steps to be taken before exclusion to ensure an individual behaviour plan and reasonable adjustments have been implemented for the student, including consultation with the student and their family, carers or supporters.
- include a duty for principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management
- include a robust review or appeals process for students with disability and their families or carers and supporters
- ensure students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline
- support students with disability to re-engage in education post exclusion.

State and territory educational authorities should review provisions governing the registration of non-government schools to impose obligations relating to exclusionary discipline in the non-government sector that are commensurate with those of the government sector.

Section 22(2)(b) of the *Disability Discrimination Act 1992* (Cth) should be amended to cover 'suspension and exclusion' as well as expulsions.

3.4 Adjustments and supports

Lack of appropriate adjustments and supports

A common theme in evidence and information before the Royal Commission was that schools often failed to provide students with disability with adjustments, supports and individualised planning. These failures were often driven by negative attitudes, low expectations and lack of understanding of legal requirements.

At Public hearing 2, witnesses shared examples of schools failing to provide access to necessary equipment or being inflexible in the practices used to promote learning. For example, AAA asserted that the first primary school of her daughter AAB did not treat AAB as an ‘authentic learner’. The school removed AAB from her year 1 classroom and placed her in a special education unit, where she was assigned ‘colouring in’.¹⁴⁹

Evidence at Public hearing 7 illustrated the direct link between educators’ negative attitudes about disability and the exclusion of students with disability from education.¹⁵⁰ Dr Kate de Bruin of Monash University spoke about her research, which identified:

there remain misconceptions about the ability of students, as if students’ capacity to learn is somehow predetermined, and their ability to achieve is fixed ... This resulted in low expectations for the students with disabilities in their classroom and created an attitudinal barrier regarding their adoption of effective techniques ... Or, in fact, engaging in implementing reasonable adjustments.¹⁵¹

This failure was echoed in Leif’s evidence. Leif described how schools’ assumptions about the abilities of students with disability directly affected their access to the adjustments needed to participate:

I felt that the school trivialised my challenges by assuming that I was unable to understand the content of classes, not realising that what I often required was help with processing the information.¹⁵²

Similarly, at Public hearing 7, Sarah gave evidence that Kobe was not provided with an individual education plan detailing his adjustments. His adjustments were implemented inconsistently if at all. In Sarah’s view, the adjustments were inadequately implemented, and this led to an escalation of Kobe’s behaviours of concern and anxiety, resulting in his exclusion from school.¹⁵³

We received information that students with autism or barriers to communication can experience significant delays in receiving supports or may not receive them at all. Ms Kimberly Langcake told us that her son Mitch did not receive support for his alternative communication needs at school and that collaboration with the school to address concerns was poor.

Students with disability from First Nations and culturally and linguistically diverse backgrounds are at risk of being denied essential culturally safe adjustments and supports.¹⁵⁴ For example, schools have failed to provide First Nations support workers and interpreters.¹⁵⁵ At Public hearing 7, Ms Yarraka Bayles, a First Nations woman, recounted the lack of culturally appropriate supports for her son, Quaden. Quaden feels most comfortable and culturally

safe with a First Nations male support worker assisting him.¹⁵⁶ Quaden was assigned a non-Indigenous woman as his support worker. His support worker was supposed to assist him with toileting.¹⁵⁷ Quaden did not feel comfortable with the support worker assisting him with toileting. Because of his discomfort, he refused to go to the toilet while at school.¹⁵⁸ Quaden had accidents as a result and was teased by his peers.¹⁵⁹ Ms Bayles expressed concern that refusing to go to the toilet could cause serious problems with Quaden's internal organs, including his bladder.¹⁶⁰

At Public hearing 29, 'The experience of violence against, abuse, neglect and exploitation of people with disability from culturally and linguistically diverse communities', we examined the experiences of people from culturally and linguistically diverse communities, including people from the d/Deaf, d/Deafblind and hard of hearing community. We heard evidence of concerns that options currently available for deaf students do not lead to an adequate inclusive education. For example, many parents report having to advocate or lobby for their children to have access to an Auslan interpreter within an educational setting.¹⁶¹ Similarly, we have received information that the failure to provide interpreters means that culturally and linguistically diverse families are unaware of the support services available to their child at school.¹⁶²

Students and their supporters also recounted experiences of:

- not receiving explicit, clear instructions, tailored lessons or access to additional support for coursework¹⁶³
- inadequate access to assistive technologies or adaptive software to support learning and communication, assuming these technologies are available at all¹⁶⁴
- being denied subject choices, especially in senior secondary school¹⁶⁵
- being denied participation in standardised assessment, such as National Assessment Program – Literacy and Numeracy¹⁶⁶
- not receiving the necessary adjustments to complete assignments and assessments and participate in examinations¹⁶⁷
- not being provided with consistent routines and schedules necessary to provide a predictable and structured environment for learning¹⁶⁸
- being denied sensory breaks and opportunities for physical movement during the day to help regulate sensory input and manage stress¹⁶⁹
- not receiving consistent and positive reinforcement for appropriate behaviours and facing increased use of expulsions and suspensions as a result.¹⁷⁰

The Royal Commission received evidence and information consistent with findings of past reports and inquiries. For example, a 2016 Senate standing committee inquiry found that there is a gap between research and practice in schools and classrooms, leading to inappropriate or ineffective adjustments.¹⁷¹ The committee found that 'far too often' reasonable adjustments are not provided.¹⁷² In 2022, the Productivity Commission found that the curriculum schools deliver to students with disability fails to foster high expectations or reflect student aspirations.¹⁷³

Consequences of failure to provide adjustments and supports

Following Public hearing 24, Counsel Assisting submitted that failures to provide appropriate adjustments can amount to the educational neglect of students with disability.¹⁷⁴ We accept this submission.

We agree that systemic barriers to schools identifying and implementing effective adjustments limit the quality of education for students with disability.¹⁷⁵ We heard about students with disability being ‘more or less babysat’,¹⁷⁶ excluded from learning opportunities and standardised testing¹⁷⁷ and provided with coursework below their learning potential.¹⁷⁸ Some schools withdrew students with disability from standard curriculum classes¹⁷⁹ including ‘life-skill’ classes.¹⁸⁰ Low expectations became normalised and students with disability were discouraged from pursuing their goals and realising their full potential.¹⁸¹

A lack of access to appropriate adjustments and supports can significantly affect a student’s school experience. We have heard about students feeling isolated and excluded and being denied opportunities for academic attainment and social development. Feelings of frustration¹⁸² can lead to reduced self-esteem¹⁸³ and confidence. This can hinder the acquisition of the skills, competencies and social networks the students require for successful transition to adulthood.¹⁸⁴ The life course effects of educational neglect are outlined in Volume 3, *Nature and extent of violence, abuse, neglect and exploitation*.

These problems are particularly acute for students with disability from First Nations and culturally and linguistically diverse backgrounds.¹⁸⁵ For example, the failure to provide communication adjustments to students with disability from culturally and linguistically diverse backgrounds or students who are d/Deaf or hard of hearing leave them at risk of language deprivation.¹⁸⁶ In Public hearing 29, we heard that early language deprivation is linked to poor educational outcomes, mental health issues, greater challenges engaging with the community and an increased risk of a d/Deaf person being exposed to violence, abuse, neglect and exploitation.¹⁸⁷

Similarly, following Public hearing 24, Counsel Assisting noted that these problems are also acute for students with cognitive and social or emotional disability, who are much more likely to require extensive adjustments.¹⁸⁸

Enhancing adjustments and supports

This section focuses on the role of state and territory educational authorities to provide guidelines, tools and resources that would help to equip schools and educators to provide necessary adjustments and supports. It also considers a possible role for the *Education Standards*.

Throughout the inquiry, we have received evidence and information about the barriers and factors that contribute to the education system’s inability to provide adjustments and supports. These include:

-
- poor knowledge and understanding of the requirements of the *DDA* and the *Education Standards*
 - gaps in educators' skills and knowledge, including negative attitudes and expectations of students with disability
 - limited compliance and oversight mechanisms
 - neglecting the personal needs of students with disability
 - a lack of integration of education supports and the National Disability Insurance Scheme (NDIS)
 - a lack of collaboration with students with disability and their families in planning, decision making and providing adjustments.

Some of these barriers are directly addressed by other recommendations we make, such as those on workforce (Recommendation 7.8) and oversight and complaints (Recommendations 7.10 and 7.11).

Guidelines to comply with statutory obligations

In Chapter 2, we explained the relationship between the *DDA* and the *Education Standards*. We noted that there are significant differences between them and the interaction between them is complex.

In Public hearing 7, we heard evidence that the concept of 'reasonable adjustment' under the *DDA* and *Education Standards* are either poorly understood or inconsistently applied. Witnesses suggested that the definition of a 'reasonable adjustment' needed clarification.¹⁸⁹

Following Public hearing 24, Counsel Assisting submitted that parents rarely describe their child's experiences by reference to the *DDA* or the *Education Standards*; rather, they focus on how their child was mistreated at school.¹⁹⁰ Counsel Assisting submitted that parents are unsure of the adjustments and supports to which their child is entitled. They lack information about how to seek recourse when those adjustments and supports are not provided.¹⁹¹ As a result, parents are often left to inform themselves of their rights to advocate for their children.¹⁹²

In Public hearings 7 and 24, we received evidence that principals and other educators are not required to undergo training about the language and meaning of the *DDA* and the *Education Standards*.¹⁹³ Evidence and material before the Royal Commission support the conclusion that the awareness and understanding of educators, school principals and families of students with disability of the obligations vary.¹⁹⁴

Evidence at Public hearing 7 addressed decision-making processes in New South Wales and Queensland on the provision of adjustments for students with disability. The Commissioners made a general finding that 'ultimately, the provision of reasonable adjustments is largely left to the judgment and discretion of educators, with little departmental oversight'.¹⁹⁵

Similarly, following Public hearing 24, Counsel Assisting submitted that the approaches used to make reasonable adjustments for a student in South Australia and Western Australia appear to be localised and dependent on teachers recognising an adjustment should be made.¹⁹⁶ Additionally, Counsel Assisting submitted that ‘there was no dispute’ that the Western Australian Department of Education ‘had no policies, procedures or guidelines to help educators plan for the proper supports or adjustments in the classroom for students with communication needs’.¹⁹⁷ South Australia and Western Australia did not respond directly to the first submission. Western Australia responded to the second submission, conceding there are no formal policies on the topic.¹⁹⁸ However, it added that the submission ‘fails to represent the full range of supports which are available to educators in Western Australia to assist in planning for students with communication needs’.¹⁹⁹ Both Western Australia and South Australia pointed to a range of supports available to educators.²⁰⁰

Following Public hearing 7, Counsel Assisting submitted that, in the absence of training, decision makers are unlikely to fully appreciate their legal obligations when considering whether to provide adjustments to a student with disability.²⁰¹

We accept the submissions of Counsel Assisting. Our findings accord with those of past reports and inquiries that highlighted that the concepts of reasonable adjustments and unjustifiable hardship are not well understood.²⁰² The most recent review of the *Education Standards* found that ‘many educators are unaware of their obligations under the Standards or lack the resources to implement them, and those who are aware struggle to find guidance and clarification to implement them.’²⁰³ Submissions to that inquiry also indicated the limited guidance about the concepts of ‘reasonable adjustments’ and ‘unjustifiable hardship’ meant that parents and carers are unsure of what to expect of educators. This occasionally leads to conflict.²⁰⁴

The review recommended the Australian Government Minister for Education write to the education ministers (or educational authorities where relevant) to encourage them to:²⁰⁵

- ‘ensure all school teachers and leaders have appropriate training on the *[Education] Standards* and supporting students with disability’
- ensure induction processes for graduate teachers across education systems include an ‘appropriate focus’ on the *Education Standards* and supporting students with disability.²⁰⁶

Submissions to the Royal Commission’s *Education and learning issues paper* expressed similar views. Submitters told us that there would be value in providing clear policy and practice guidance, training resources and access to expert advice.

To address these barriers to understanding the *Education Standards*, the Royal Commission recommends the following.

First, the *Education Standards* should be amended to provide further guidance and clarity on the proposed changes to the *DDA* in Volume 4 and in this volume. Guidance and clarification is required on the standalone duty to make adjustments, the ‘unjustifiable hardship’ provision and the prohibition on discrimination against students with disability by way of bullying or exclusionary discipline. In Recommendation 7.11, we set out the consequential amendments to registration requirements of schools to support our recommendations.

Second, state and territory educational authorities should develop guidelines to:

- equip and encourage schools, principals and teachers to comply fully with their statutory obligations to provide adjustments for students with disability
- address the relationship between the statutory duty to provide adjustments for students with disability and other duties of care, such as those imposed by occupational health and safety legislation and by the general law.

It is a matter for the educational authorities in each jurisdiction to determine how guidelines should be developed. However, one approach is for each state and territory to task their inclusive education unit (see Recommendation 7.7) with developing guidelines. These units already have existing duties to develop resources and administer programs to support schools and families.²⁰⁷ These guidelines should cover:

- the legal entitlement of students with disability to adjustments to enable them to participate as fully as possible in all aspects of school life
- the processes for identifying, planning, implementing and evaluating adjustments for individual students with disability, including the role of individual education plans
- the nature and content of the obligation under the *Education Standards* to consult with students with disabilities and their parents and supporters about the provision of adjustments
- the information explaining the sources of funding for the provision of supports to students with disability and the procedures governing the allocation of funds for that purpose.

The guidelines and policies that accompany them should be regularly reviewed to ensure they are kept up to date and reflect contemporary inclusive practices.

The need for guidelines and policies is illustrated by evidence from educational authorities in New South Wales and Queensland. For example, in New South Wales, the Assisting Students with Learning Difficulties Policy is the key document used by classroom teachers who are primarily responsible ‘for identifying and meeting the specific learning needs of students with difficulties in basic areas of learning’.²⁰⁸ The policy states that ‘[p]rincipals are responsible for ensuring implementation of support for students experiencing difficulties in learning’.²⁰⁹ However, the policy does not describe the process by which principals and teachers should identify and implement reasonable adjustments.

Mr Potter appeared on behalf of the State of New South Wales at Public hearing 7. He stated that his expectation was that ‘professional people in schools would clearly understand what was required to be in place to support students with disabilities’.²¹⁰ He also expected that school personnel would take advice from experts, both within and outside the New South Wales Department of Education, when making decisions about students with a disability.²¹¹ However, he said it was ultimately a decision for the principal to identify appropriate adjustments for the student.²¹² Mr Potter accepted that identifying a reasonable adjustment was a matter that involves considerable discretion. This could lead to very different experiences for students at different schools.²¹³

New South Wales agreed that, in principle, better direction and guidance should be given to educators about the requirements under the *DDA* and the *Education Standards*.²¹⁴ Since July 2020, the New South Wales department requires school leaders, including principals, to complete training in the *DDA* and the *Education Standards* every three years.²¹⁵ The New South Wales Department of Education website now provides additional resources that outline the legal obligations of educators in New South Wales and the training available to support their skills and capabilities in this area.²¹⁶

In Queensland, the Inclusive Education Policy explains that ‘inclusive education means that students can access and fully participate in learning, alongside their similar-aged peers, supported by reasonable adjustments’.²¹⁷ The policy does not include guidance for principals and teachers on how to identify and implement reasonable adjustments. Also, it does not set out standards or a review process for assessing whether adjustments are adequate and effective. The Queensland Department of Education indicated in evidence that it proposes to wait for amendments to the *Education Standards* before developing formal policies on consultation with students and families on adjustments.²¹⁸

Records on the provision of adjustments

Very often, to put in place adjustments for students with disability, individual plans suited to the needs of the student must be formulated and implemented. Yet the *Education Standards* do not require schools or educators to document the contents or effectiveness of individual plans. Evidence before the Royal Commission suggests that individual planning for students with disability can be poorly implemented, sometimes to the point where the individual plan is simply ignored.²¹⁹ There is also evidence that the *Education Standards* do not oblige educational authorities, schools or educators to evaluate the effectiveness of adjustments, including the effectiveness of individual plans.²²⁰ Therefore, ineffective individual planning for students with disability may not come to light or may be revealed only after the student has been held back in learning and socialisation.

In the most recent review of the *Education Standards*, participants said the standards ‘lack teeth’ and ‘there are few consequences when providers are non-compliant’.²²¹ The *Education Standards* do not oblige educators to evaluate the outcomes of adjustments.²²² Therefore, there is no accountability for whether an adjustment or the funds allocated to providing it have resulted in a benefit to the student.²²³ The *Education Standards* oblige schools to repeat ‘as necessary’ the process of ensuring a student with disability can participate in education or use support services.²²⁴ It is unclear who decides what is necessary and whether students with disability and their families can compel schools to undertake this process.

Relevantly, the 2020 review of the *Education Standards* made recommendations to improve transparency and accountability in educator compliance with the standards. In particular, it recommended efforts to produce national alignment of education policies and regulations with the *Education Standards*. This would have the effect of ensuring all education regulators have regard to the *Education Standards*.²²⁵ The review also recommended educational authorities publish information about the services and supports their schools offer.²²⁶

We recommend that state and territory educational authorities develop requirements for schools and principals to keep records and to report on the provision of adjustments for individual students with disability. This would add a measure of accountability for schools to adhere to their obligations under the *DDA* and *Education Standards* that currently does not exist.

To support schools and principals, we also recommend that state and territory educational authorities develop guidelines to help schools and families identify the strengths and needs of students with disability. The guidelines could also identify the educational adjustments that will help students participate with their peers and support their educational, social and emotional progress.

For example, the Victorian Department of Education has developed the Victorian Disability Inclusion Profile.²²⁷ This tool draws upon the World Health Organization's International Classification of Functioning, Disability and Health. It also aligns with the Nationally Consistent Collection of Data and the *Education Standards* by focusing on strengths-based approaches to understanding a student's functional needs.

Equal access to consent, relationships and sexuality education

Education about consent, relationships and sexuality supports people to exercise one of the most fundamental human rights - choosing how and with whom to form relationships.²²⁸ Evidence to the Royal Commission has indicated that some students with disability do not have access to this critical part of the curriculum during the school years.²²⁹

Research shows that a lack of relationships and sex education is one factor leading to people with disability being more at risk of predatory behaviour and sexual assault.²³⁰ Poor access to education in this area can lead to people with disability, including children and young people, being unable to recognise abuse. It can also mean that perpetrators can manipulate them into sexualised behaviours and lead them to believe they have consented.²³¹

The Australian Government has stated that, from 2023, all schools will be required to teach students about age-appropriate consent and respectful relationships, including coercion, gendered stereotypes and power imbalances, from foundation to year 10.²³² This was funded in the October 2022 Australian Government budget with budgetary allocation until 2027.²³³ The funding is directed to teacher training and provider partnerships guided by an expert review from the National Respectful Relationships Education Expert Group. This commitment provides an opportunity to ensure respectful relationships education meets the needs of students with disability.

The importance of consent, relationships and sexuality education as a prevention measure is recognised in the *National Plan to End Violence Against Women and Children 2022-2032*.²³⁴ People with disability are subjected to domestic family and sexual violence at higher rates than the general population.²³⁵ Therefore, it is even more important that they have access to this preventative measure.

We recommend that state and territory educational authorities provide guidelines to address gaps in delivery and access for students with disability. The guidelines should also ensure that consent and respectful relationship education programs take careful account of the perspectives, experiences and needs of people with disability.²³⁶

Teacher training should address discomfort with delivery to people with disability, including LGBTIQ+ people with disability. It should also support teachers to understand and respond to parental concerns about relationships education for students with disability.

Provider partnerships should include partners with expertise in disability. Any commissioning should prioritise the meaningful engagement of people with disability in development and review of resources. This includes:

- organisations that provide disability-specific relationships, sexuality and consent education
- people with disability and their representatives and advocates.

Adapting curriculum and teaching and assessment practices

We have received evidence that students with disability need access to better quality, differentiated curriculum. High-quality curricula are available in Australia; however, this aspect of education is often compromised for students with disability. This is particularly the case for those with complex learning, communication and behavioural support needs.²³⁷ Also, this is despite the Australian Professional Standards for Teachers requiring teachers to be capable of teaching activities that incorporate differentiated strategies to meet the specific learning needs of students across the full range of abilities.²³⁸

The New South Wales Education Standards Authority has identified the types of supports and adjustments that can help students with disability to access mainstream curriculum.²³⁹ These include:

- visual and/or verbal prompts when completing classwork and/or assessments
- physical prompts and/or physical assistance when taking part in an activity
- provision of partial information or responses to assist the student to demonstrate understanding of knowledge, skills or concepts.

Evidence from Public hearings 7 and 24 suggests that adjustments are still frequently understood as requiring students with disability to adapt to fit into mainstream classrooms. However, adjustments should be understood as changes the school and individual teachers need to make to enable students with disability to participate and achieve educational outcomes on an equal basis as their peers.²⁴⁰

A 2017 New South Wales parliamentary inquiry heard that while many teachers have positive attitudes towards inclusion, they report a need for more planning time, more training on the topic of inclusive teaching and added resources.²⁴¹ The 2020 Education Standards review identified

a need for educators to be given more guidance on how to develop effective reasonable adjustments and make appropriate modifications to curriculum.²⁴²

We recommend that state and territory educational authorities develop and make available tools and resources to assist principals and teachers to adapt curriculum and teaching and assessment practices. We note that there are existing good-practice examples in this regard. For example:

- The Victorian Department of Education has established an Inclusive Education Professional Practice Branch, which has developed guidance material for parents and schools about reasonable adjustments. The material is published on the department's website.²⁴³ The guidance material covers planning for adjustments, examples of adjustments and guidance for parents on how to talk to their child's school about reasonable adjustments and legal rights and obligations.
- The New South Wales Department of Education maintains an inclusive education practice hub that provides resources for schools to support students with disability and diverse learning needs. These materials were developed with the assistance of Monash University.²⁴⁴

We also consider that state and territory education departments should consider providing specialist support to assist classroom teachers to adjust their teaching to students with disability.

International research and information provided by witnesses to the Royal Commission indicated four promising approaches to provide teachers with more access to specialist coaching and support for differentiating teaching:²⁴⁵

- a multi-tiered system of instruction that helps classroom teachers to adapt learning experiences for students based on their individual strengths, needs and challenges and provides additional support for students at risk of falling behind²⁴⁶
- the use of specialist coaches to support generalist teachers in lesson planning, observe and provide assistance to students as necessary²⁴⁷
- small group scripted remedial learning programs delivered by teaching assistants²⁴⁸
- co-teaching models that pair generalist and specialist teachers together to share the responsibilities of lesson planning and instructing and assessing students.²⁴⁹

These four approaches are not mutually exclusive and can be understood as elements of a comprehensive differentiated teaching program.

Culturally safe adjustments and teaching strategies

A range of professional expertise is required, beyond that which is the expected knowledge of educators, to ensure students with disability have the support they need to access and participate in education.²⁵⁰ This is particularly so for First Nations students with disability and d/Deaf students from culturally and linguistically diverse backgrounds. For example, Ms Yarraka Bayles told us at Public hearing 7:

In my view, one of the problems is that cultural awareness training isn't compulsory within schools, it is up to schools to decide. It should be compulsory for all teachers. It's cross-cultural communication and helps people understand different approaches to teaching and learning, which is very beneficial.²⁵¹

At Public hearing 29, we heard evidence that most d/Deaf students are enrolled in mainstream schools.²⁵² However, we heard that adjustments and supports are not consistently provided to support communication for d/Deaf students and that there is a lack of consistent access to Auslan.²⁵³

We also received submissions from organisations about:

- the need for allied health services, such as occupational therapy, in all education settings, including special schools²⁵⁴
- the need for funding for Auslan interpreters²⁵⁵
- the importance of speech pathologists being able to work in partnership with students, school principals and teachers and families.²⁵⁶

For example, Speech Pathology Australia told us that having access to detailed knowledge of a student is essential to ensure that supports are effective, particularly for children from culturally and linguistically diverse backgrounds. This includes Aboriginal and Torres Strait Islander children who may need different instruction if English is not their first language.²⁵⁷ Similarly, the Australian Education Union told us that 'early career teachers should have access to advice from someone with expertise in disability education in their first two years of work'.²⁵⁸

Past reports have recommended better access to expertise and support personnel for educators.²⁵⁹ The 2020 Inquiry into the Teaching Profession in New South Wales examined changes required in the policies, procedures and/or practices of the New South Wales and Australian governments and other government agencies.²⁶⁰ It also noted the need for specialist support staff in schools.²⁶¹

There are examples of education departments making available a range of expertise for schools to support students with disability, including the:

- South Australia Department of Education administering a 'Special Education Resource Unit' – a state-wide service providing support to parents and department personnel to enhance the learning outcomes of students with disability²⁶²
- New South Wales Department of Education operating a 'Specialist Allied Health and Behaviour Support Provider Scheme' to schools that may need to engage specialist allied health services to ensure learning adjustments are appropriate and effective for students.²⁶³

We consider that state and territory governments should develop and publish accessible and culturally safe resources for parents and schools on good practice in adapting teaching practices. If not already available, specific guidance should be developed on communicating effectively with students who experience learning difficulties and who have complex communication and behavioural support needs. For First Nations and d/Deaf students, we make recommendations for greater resources and supports.

Recommendation 7.3 Improve policies and procedures on the provision of reasonable adjustments to students with disability

- a. State and territory educational authorities should develop and make available in accessible form:
 - guidelines to enable schools, principals and teachers to comply with their statutory obligations to provide adjustments for children and young people with disability
 - guidelines addressing the relationship between the statutory duty to provide adjustments and duties of care imposed on educational authorities, schools, principals, teachers and staff, such as those imposed by occupational health and safety legislation and the general law
 - guidelines addressing the processes for identifying, planning, implementing and evaluating adjustments required for individual students with disability
 - guidelines explaining the nature and content of the obligation under the *Disability Standards for Education 2005 (Cth) (Education Standards)* to consult with students with disability and their parents, carers and supporters
 - information explaining the sources of funding for providing supports to students with disability and the procedures governing the allocation of funds for that purpose
 - requirements for schools and principals to keep records and to report on the provision of adjustments for individual students with disability
 - guidelines for developing individual learning plans for students with disability, including requirements for keeping records on the learning program for each student and for making the records available to parents, carers and supporters
 - guidelines for ensuring equal access to consent, relationships and sexuality education for students with disability through learning resources, including for neurodiverse students and LGBTIQ+ students.
- b. State and territory educational authorities should ensure that education providers have greater access to tools and resources to:
 - assist principals and teachers to adapt the curriculum and teaching and assessment practices to enable diverse learners, especially those with complex communication or support needs, to participate in learning experiences on the same basis as students without disability enrolled in the same course (subject to the unjustifiable hardship qualification in the *Disability Discrimination Act 1992 (Cth)*)

- support culturally safe adjustments to teaching strategies for particular students with disability, such as First Nations students and students from culturally and linguistically diverse communities.
- c. The Australian Government, through the responsible minister, should consider whether the *Education Standards* should be amended to address the proposals in a. and b.. However, any such consideration should not delay state and territory educational authorities implementing a. and b..

3.5. Participation in school community

Participation in school is not only about academic learning. It is also about enabling social inclusion in the wider school and local community. Students with disability have a right to feel included as a peer, form firm relationships and friendships and develop skills for lifelong learning and success. Participation includes full involvement in the life of the school through events, trips, camps, school plays, sports and community events. It is about finding an avenue for students with disability to contribute and feel that their contribution is valued.

The isolation of students with disability from their classmates and from the broader school community negatively affects their social and emotional development. It also hinders the opportunities they have to build social networks and informal supports that provide important protections from violence, abuse, neglect and exploitation during their childhood and for the rest of their lives.

In Public hearing 31, 'Vision for an inclusive Australia', Mr Gerard Quinn, United Nations Special Rapporteur on the rights of persons with disabilities reminded us that the *Convention on the Rights of Persons with Disabilities* 'owes a lot to the social conception of the "self"', stating:

I am who I am because of the range and depth of my immersion in my community. That might be taken for granted for most people. But it assumes special importance in the context of a minority denied these opportunities because of the invisibility due to the 'medical model'.²⁶⁴

Throughout the inquiry, we heard that students with disability are excluded from full participation in school activities, such as excursions, sporting events, school assemblies and school camps.²⁶⁵ We also heard that students with disability can feel socially isolated in special/segregated and mainstream school settings.²⁶⁶ As noted above, schools do not consistently provide adjustments and supports to enable students with disability to participate in extracurricular and social activities.

Advancing participation

We also heard evidence that, when segregated schools or education settings are physically located close to or co-located with mainstream schools, this creates opportunities for inclusion.

For example, Western Australia has Education Support Centres co-located on mainstream school sites, each with their own school principal.²⁶⁷ These centres provide a low to moderate needs program for students who typically require substantial and extensive adjustments to develop functional independence. Some of these centres also include Early Intensive Intervention Programs for small groups of kindergarten and pre-primary children to support entry into a mainstream year 1 class.²⁶⁸

Another example is the Just Like You program, which is ‘designed to build empathy towards people living with a disability’.²⁶⁹ The program has been delivered in New South Wales and the Australian Capital Territory.²⁷⁰ The program consists of workshops for primary-age students that celebrate difference, share first-hand experiences of people with disability and highlight the importance of social inclusion. The program aims to develop understanding, acceptance and inclusion of people with a disability and encourage social connection between students with and without disability.²⁷¹

Similarly, Disability Education Programs in the Australian Capital Territory offer small group learning classes with a mainstream ‘buddy’ class for same-age peer connection.²⁷² Catholic Schools South Australia have ‘hub’ schools for students with complex substantial and extensive adjustment needs. The hub schools aim to facilitate links to other school settings.²⁷³

A previous review identified an innovative example of a special/segregated school co-located with a mainstream school in Queensland. Co-location provides benefits through shared physical environments, activities and resources and opportunities to expose students with disability to interactions with students without disability.²⁷⁴

States and territories are at different stages in their implementation of ‘inclusive education’ policies. State and territory governments should continue to promote opportunities for students with disability to be included in the broader school community. We recommend that this be achieved by a combination of:

- locating schools or segregated education settings close to mainstream schools or settings
- creating programs and initiatives that enable students with disability to build social connections with students without disability and the broader school community.

There is limited evidence on the most effective programs to foster positive social relationships between students with disability and students without disability. States and territories should continue to trial programs and initiatives and to monitor and evaluate their outcomes. Schools should also consider changes to school policies and procedures that support students with disability to participate in a range of social, cultural and sporting activities.

No state or territory has committed to abolishing special/segregated schools. The Chair and Commissioners Mason and Ryan consider that, wherever practicable, non-mainstream schools should be located close to mainstream schools. This will facilitate interactions between the students in the non-mainstream school and the students in the mainstream school. It means that, where practicable, new non-mainstream schools should be physically co-located within existing mainstream schools. For existing non-mainstream schools and education settings, physical co-location or location close to mainstream schools may not be possible. Where this is the case, schools should still establish programs that enable students with disability to interact with their peers in nearby mainstream schools.

The Chair and Commissioners Mason and Ryan also acknowledge that, in practice, co-location may look different across schools, depending on the circumstances. For example, in some cases, it will be feasible for students enrolled in a mainstream school, whether they have a disability or not, to spend a significant portion of the school week in a nearby non-mainstream school, participating in classes and activities in that school. In other cases, it may be better for educational and social reasons for students with disability enrolled in a non-mainstream school to spend significant time in classes or activities in a mainstream school. Sometimes, all students from both schools might participate in educational, extracurricular, sporting and other activities together.

Commissioners Bennett, Galbally and McEwin consider that no new special schools or segregated settings should be built from 2025 onwards. Therefore, they also recommend a sunsetting of Recommendation 7.4 once special/segregated education settings are phased out and when no students are in special/segregated schools (see Recommendation 7.14).

Recommendation 7.4 Participation in school communities

State and territory school educational authorities should:

- wherever practicable, locate any new non-mainstream schools and, over time, relocate existing non-mainstream schools within or in close proximity to mainstream schools
- facilitate, to the maximum extent feasible, participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers (whether with or without disability) enrolled in mainstream schools
- create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between students enrolled in each setting.

3.6 Integrating education supports and the NDIS

NDIS and school education

As noted in section 2.1, the Australian Government funds and provides supports for students under the NDIS. As of 31 December 2022, there were around 198,000 NDIS participants aged 7 to 18 (although not all would be attending school).²⁷⁵

At Public hearing 24, we received evidence from the National Disability Insurance Agency (NDIA) about NDIS participants in schools. As of 30 June 2021, 122,763 NDIS participants had a school education goal in their participant plan.²⁷⁶ The NDIA does not hold structured data about the number of NDIS participants who receive funding for school education supports or the total monetary value of these supports.²⁷⁷

To receive NDIS funding, students with disability must establish that funding is for ‘reasonable and necessary supports’.²⁷⁸ This satisfies the criteria under the *NDIS Act*. Those criteria include ‘what it is reasonable to expect families, carers, informal networks and the community to provide’ and whether support is ‘most appropriately funded or provided’ by the NDIA instead of other service systems.²⁷⁹ The *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) (*NDIS Rules*) operational guidelines²⁸⁰ and the Applied Principles and Tables of Support (APTOS)²⁸¹ inform and guide delegates’ decisions about whether a support is a ‘reasonable and necessary support’ and should be funded under a participant’s plan.

The *NDIS Rules* set out the NDIS responsibilities for school education, including that:²⁸²

- The NDIS will be responsible for supports that a student requires that are associated with the functional effect of the student’s disability on their activities of daily living (that is, those not primarily relating to education or training attainment). This includes personal care and support, transport to and from school and specialist supports for transition from school education to further education and training and/or employment that are required because of the student’s disability.
- The NDIS will not be responsible for personalising either learning or supports for students that primarily relate to their educational attainment (including teaching, learning assistance and aids, school building modifications and transport between school activities).

To support the implementation of the NDIS, the Australian Government and state and territory governments agreed to the APTOS. The APTOS aims to ‘further guide and clarify how the NDIS works alongside other service systems’.²⁸³ Table 7.3.1 details the indicative role of the NDIS and other parties for school education as described in the APTOS.²⁸⁴

Table 7.3.1: APTOS indicative role of the NDIS and other parties – school education

NDIS – Reasonable and necessary supports for eligible people	Other parties
<p>Personal supports at school/education facility that are required by an individual regardless of the activity they are undertaking (e.g. feeding, managing airways/ventilation)¹</p> <p>Aids and equipment at school/education facility that are required by an individual due to the impact of the person's impairment on their functional capacity and are additional to reasonable adjustment obligations of schools regardless of the activity they are undertaking (e.g. hearing aids, wheelchairs, personal communications devices)</p> <p>Specialist transport to and from school/education facility required as a result of a person's disability (where no other transport option is available and not substituting for parental responsibility)¹</p> <p>Specialised support and training for school staff related to the specific personal support needs of a student with disability, including specialised behaviour intervention and support</p> <p>Responsibility for funding and coordinating allied health and other therapies to support a student's functional capacity including those which may be delivered during school times, as negotiated with the school, for non-educational purposes</p> <p>Specialist transition supports required due to the impact of the student's impairment on their functional capacity and additional to the reasonable adjustment obligations of schools</p> <p>The coordination of NDIS supports with the supports offered by the school education system and other relevant service systems.</p>	<p>Skills, capacity and other forms of training and transition support, including reasonable adjustment for students with disability, delivered in schools through the Australian curriculum</p> <p>Learning assistance (this may include teachers' assistants), and inclusion support (for example Auslan interpreters) to enable the participation of students with disability in education services, in line with reasonable adjustment</p> <p>Reasonable adjustment to campuses, including capital works (e.g. ramps, lifts, hearing loops)</p> <p>Aids and equipment which are fixed or non-transportable in schools that enable a student access to education (e.g. hoists)</p> <p>Aids and equipment for educational purposes (e.g. modified computer hardware, education software, braille textbooks)</p> <p>Transport for school activities (e.g. excursions, sporting carnivals)</p> <p>General support, resources, training and awareness building for teachers and other school staff to support and engage students with disability at school and in the classroom</p> <p>Therapy delivered in schools for education purposes (e.g. allied health practitioners assisting classroom teachers to make adjustments to the curriculum)</p> <p>Intensive case coordination operated by the school education system where a significant component of case coordination is related to education supports.</p>

¹ The Australian Government and state and territory governments agreed that personal care and specialist school transport would be funded through in-kind arrangements until the end of 2023. This means that the services would still be delivered through state and territory governments as part of NDIS funding contributions.

Source: Department of Social Services (2015).

As Table 7.3.1 shows, the division of responsibility between the NDIS and school education systems for the provision of 'reasonable and necessary supports' for school students with disability is complex. Some states and territories provide guidance on working with NDIS providers and Local Area Coordinators. However, most have devolved responsibility to school principals to manage relationships with NDIS providers.²⁸⁵

All jurisdictions have a policy or procedure designed to assist families to apply for NDIS or external service provider supports in schools.²⁸⁶ In most cases, there must be a request from a parent or guardian and approval from the school principal for services from external providers to be provided within school hours.²⁸⁷ Some policies make the connection with the protection from discrimination provided under the *DDA* and the *Education Standards* for children and young people with disability to access education on the same basis as their peers.²⁸⁸

Some states and territories have developed specific initiatives to support the school interface with the NDIS:

- Catholic Education South Australia has a partnership with Local Area Coordinators to ensure schools, students and their families understand the NDIS and can access services or explore other services if they are not eligible²⁸⁹
- the Tasmanian Government Department of Education engages NDIS representatives in special/segregated schools²⁹⁰
- the New South Wales Department of Education employs NDIS coordinators across all schools.²⁹¹

However, despite the legislation, policies and initiatives in place, we have heard about confusion between the NDIS and education systems and how they interact.

Experiences of parents and children and young people with disability

Public hearing 24 focused on '[t]he experience of children and young people with disability in different education settings'. During this hearing, we heard from a number of parents and children and young people with disability about their experiences at school and interaction with the NDIS. These experiences highlight the difficulties in coordinating supports between the NDIS and schools.

Mitch is a young person who lives with autism and epilepsy. He has also presented with dyspraxia from birth.²⁹² Mitch appeared at Public hearing 24 with his mother, Ms Kimberly Langcake. Mitch became an NDIS participant at age 14.²⁹³ Through his NDIS plan, Mitch was funded to engage directly with people like speech pathologists.²⁹⁴ However, there was difficulty transferring the support into what Mitch was doing at school. Ms Langcake said:

[I]t meant we could engage speech and [Occupational Therapists], and we did find some great local providers. But it meant they were working separate. They were seeing Mitch out of school. We did inquire about how those allied health could become

a part of a team meeting and it was incredibly difficult. We understood that therapy couldn't happen at school because if we had 10 different speechies and 10 different [Occupational Therapists] coming in, it would be chaos. But at the same time we weren't really supported with the strategy ...²⁹⁵

We also heard from 'Emerson' and his mother 'Isabella'.²⁹⁶ Emerson is 16 years old and was diagnosed with autism at a young age. He also has an intellectual disability, dyspraxia, sensory processing disorder and a language disorder. He enjoys swimming and water, collecting 'Hot Wheels' cars and marbles, balloons, spending money and going to the shops.²⁹⁷

Emerson became an NDIS participant in 2014. He was provided funding for support outside school. Isabella told us that, while this assistance was helpful, it was not well integrated with the school environment.²⁹⁸

Other evidence provided to the Royal Commission also highlights issues regarding the clarity of responsibilities between these service systems in practice.

Implementation issues

Following Public hearing 24, Counsel Assisting submitted that, for students with disability who are NDIS participants, when it comes to provision of adjustments and supports, the relationship between education providers and the NDIS can be confusing.²⁹⁹

Because of the local approach to implementation, different schools will determine a child's particular adjustment and supports locally. For example, at Public hearing 24, Counsel Assisting asked Mr Stuart Percival, Director, Disability Inclusion, Department of Education Western Australia, if a teacher has any discretion to expend funds to obtain adjustments. Mr Percival answered that in Western Australia:

It depends on the school. And so, you know, in most cases, in – but you know, given 85 per cent of our kids are in mainstream school, it's likely that they would go through an application process through the school finance committee, for example, or they would at least seek the authority of the principal to expend school funds. Teachers aren't allowed to expend school funds without authorisation.³⁰⁰

In school, as described above, personal care is currently provided by state and territory governments through in-kind contributions under the NDIS. This means that arrangements are made with the school.³⁰¹ Mr Peter De Natris, Special Advisor, Early Childhood Intervention and Autism, NDIA, said that based on his knowledge, there are no circumstances in which a participant could exercise choice and control over who provides the personal care.³⁰²

The availability of some supports may be linked to particular educational settings. Following Public hearing 24, Counsel Assisting submitted that specialist school transport is provided for children and young people with disability who attend special/segregated schools. However, it appears that it is not provided for children and young people with disability who attend or want to attend mainstream schools.³⁰³

Ms Mary Sayers, CEO of Children and Young People with Disability Australia, said this arrangement results in a ‘perverse incentive’ towards segregated education:

if you go to a special school, you’re going to get transport, but if you don’t, you’re going to get nothing because the NDIS won’t pay for it.³⁰⁴

In response to a question on notice about whether children with disability can receive funding to attend mainstream schools,³⁰⁵ the NDIA confirmed that ‘[state and territory governments] administer and determine eligibility criteria for mainstream school transport’.³⁰⁶

Addressing interface issues

Following Public hearing 24, Counsel Assisting submitted:

From the perspective of students who are NDIS participants and parents, some clarity about the respective roles and responsibilities of the NDIS and education providers in the day to day participation at school would be welcomed.³⁰⁷

In response, New South Wales submitted that its experience is there is not a significant amount of confusion as to what the NDIA will fund and what is the responsibility of the school.³⁰⁸

However, Queensland’s response drew attention to the complexities of future arrangements for the provision of personal care. As noted above, currently state and territory governments fund personal care for NDIS students through in-kind arrangements. From 2024, personal care will be funded by the NDIS. Queensland submitted:³⁰⁹

The issue of NDIS funded PCIS [personal care in schools] at schools is complex and involves a range of considerations including:

- that schools would continue to have a duty of care regardless of whether an NDIS provider is delivering the support at school;
- the duty of care obligations to the safety of other students if NDIS providers engaged by parents are on school grounds; and
- the possible interruption to learning – in some schools a large number of adults including teachers, teacher aides and NDIS providers would be in classrooms.

Given what we have heard from families about the experiences of children and young people with disability, it is clear that the roles and responsibilities of the NDIS and the school system should be clarified to ensure the service systems work together.

As noted in Volume 5, *Governing for inclusion*, an independent review of the NDIS is considering issues about the interaction between the NDIS and other services, including mainstream services:

[The review will make findings and recommendations to Disability Reform Ministers on] improving the interaction between the NDIS and other significant related policies and systems, including mainstream services delivered by the Australian Government, the states and territories, local government, and the community sector.³¹⁰

Given that the NDIS Review Panel is due to report in October 2023, we have not made specific recommendations to clarify the interface between the NDIS and education systems. However, we consider that it is important for the NDIS review to consider interface issues and make strong and specific recommendations to address them. This should include interactions with schools, particularly the coordination and cooperation between schools and the NDIS. The NDIS Review's terms of reference note:

The Independent Review Panel will also have careful regard to the findings and proceedings of previous and ongoing reviews and inquiries, including the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.³¹¹

3.7 Transitions from school to work and study

Data on transitions

There is a lack of comprehensive national data about the trajectories of young people with disability after they leave school. However, available data and research show that young people with disability have lower rates of educational attainment and labour force participation compared with people without disability.³¹²

Looking at educational attainment, based on data from the Australian Bureau of Statistics *Survey of Disability, Ageing and Carers*, in 2018:³¹³

- around one in 10 (11 per cent) people aged 15 to 24 who acquired disability before age 15 left school before age 16, compared with around 4 per cent of those without disability
- among people aged 20 to 24, 68 per cent of people with disability had completed year 12 or equivalent, compared with 85 per cent of people without disability
- for people aged 20 and over, for 17 per cent of people with disability, the highest level of educational attainment was a bachelor's degree or higher. This can be compared with 35 per cent of people without disability.

Young people with disability are much less likely to be in the labour force or in full-time work than young people without disability (Figure 7.3.1). In 2018:

- of young people with disability aged 15 to 24, 52 per cent were in the labour force compared with 72 per cent of young people without disability
- of those in the labour force, 24 per cent of young people with disability were in full-time employment compared with 36 per cent of young people without disability.

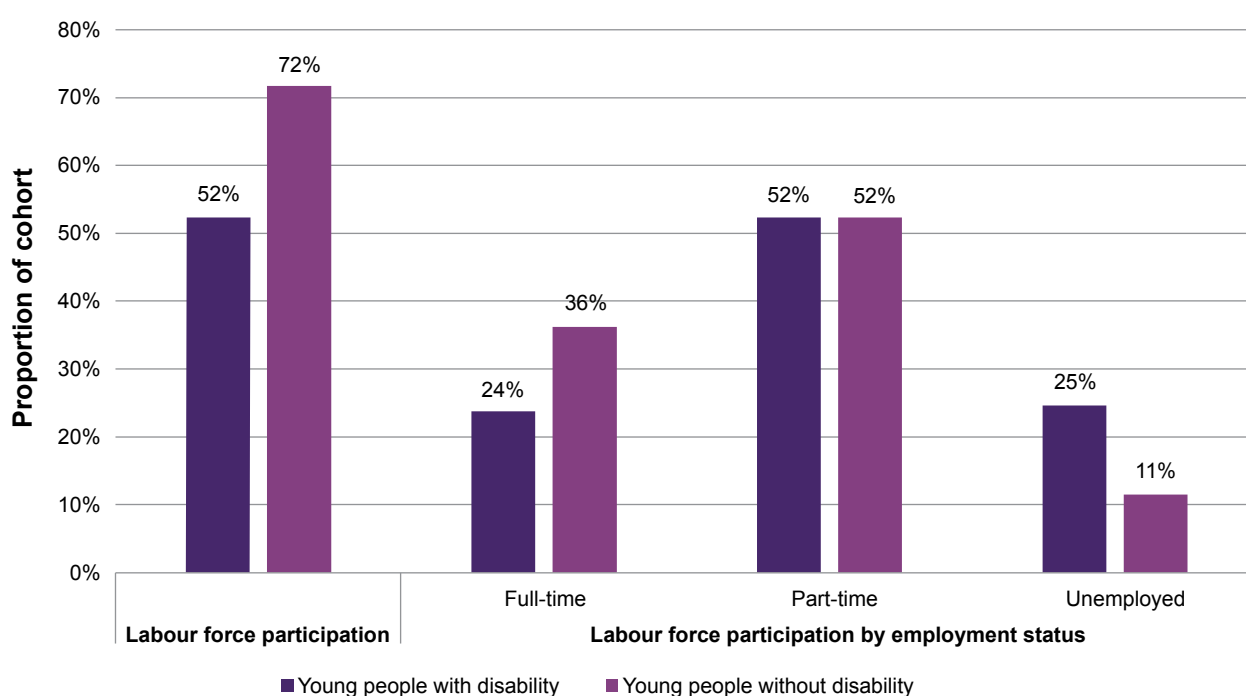


Figure 7.3.1: Youth labour force participation and employment, 15 to 24 year olds, 2018

Source: Australian Institute of Health and Welfare, *People with disability in Australia 2022*, July 2022, Catalogue number DIS 72-2022 – Employment

A study undertaken by the Royal Commission of NDIS participants aged 15 to 24 found that in 2022:³¹⁴

- 85 per cent were not in paid employment:
 - 56 per cent were not working and not looking for work
 - 26 per cent were not working but were likely to be looking for work
 - 2.8 per cent were not working in a paid job but were working in an unpaid job
- 15 per cent were in paid employment:
 - 12 per cent were employed in the open employment market
 - 3.5 per cent were employed in Australian Disability Enterprises (ADEs).

The Royal Commission undertook statistical modelling to understand the association between special/segregated schools and the employment outcomes of NDIS participants after leaving school, while accounting for any differences in the cohort of participants (such as disability type or required levels of adjustment).³¹⁵

The results showed that:

- in relation to working in open employment:
 - young adult NDIS participants who previously studied in special/segregated schools were significantly (70 per cent) less likely to be employed in the open employment market compared to those who previously studied in mainstream schools
 - young adult NDIS participants who previously studied in special/segregated classes in mainstream schools were (30 per cent) less likely to be employed in the open employment market compared to those who previously studied in mainstream schools
- in relation to working in an ADE:
 - young adult NDIS participants who previously studied in special/segregated schools were twice as likely to work in ADEs as those who previously studied in mainstream schools
 - young adult NDIS participants who previously studied in special/segregated classes in mainstream schools were about four times as likely to subsequently become employed in an ADE as those who previously studied in mainstream schools.

The results showed that young adult NDIS participants who attended either special/segregated schools or special/segregated classes were significantly more likely to work in an ADE than open employment. It was also found to be highly likely that young adult NDIS participants who previously studied in special/segregated schools were not employed in any setting.

These model results indicate a strong association between education and employment for young adult NDIS participants but the report notes there are limitations to the analysis. The analysis is:³¹⁶

- limited to NDIS participants and is not able to be generalised to all people with disability
- based on survey responses, meaning individual bias may be introduced in responses, including when a parent or carer responds on behalf of a person with disability
- limited to the period that the NDIS has been in operation and that the Royal Commission holds data for (1 June 2016 to 31 March 2022)
- limited to the factors that the NDIA holds data on and the varying quality of the data held for these factors
- based on assumptions about how the survey responses and data can be used in accordance with public reporting by the NDIA.

Failure to support students with disability to transition from school

Throughout our inquiry, we heard evidence that schools fail to support students with disability to transition from school to further education or employment.³¹⁷

Parents and advocates told us that students with disability are not given access to work experience, careers counselling or role models and mentors.³¹⁸ This lack of support for young people with disability affects their opportunities to find work.³¹⁹

Lack of opportunities for work experience

For young people, work experience or part-time work provides an opportunity to develop skills, understand the workplace, explore areas of interest, learn about personal strengths and build a resume for future work.³²⁰ Because they are often denied this opportunity, people with disability are at a disadvantage in finding work later in life. At Public hearing 9, 'Pathways and barriers to open employment for people with disability', we heard from Ms Suzanne Colbert AM, the CEO of the Australian Network on Disability, that 'one of the best predictors of ongoing employment is work experience during the time of study'.³²¹

People with disability have told us that the mainstream schools they attended failed to provide meaningful opportunities for work experience. At Public hearing 9, Ms Pamela Darling shared her experience at school. She said she felt 'they assumed I couldn't do anything'.³²² Ms Darling said she felt excluded and treated like a baby rather than supported.³²³ Ms Darling did not get to do any work experience.³²⁴ No one at her school spoke to her about what she might like to do when she finished her high-school education.³²⁵ With the assistance of Disability Employment Services (DES) providers, and through her own connections and tenacity, Ms Darling went on to have several part-time jobs.³²⁶

We also heard from people with disability who have benefited from work experience opportunities, including those who were able to enter open employment through work placements. At Public hearing 9, witness Oliver Collins described how his work experience positively affected his career development. It allowed him to demonstrate his skills and build connections. He felt that the work experience allowed him to 'really demonstrate my positive attributes and skills that I could bring to the job'.³²⁷

Lack of support to access the skills and training

Young people with disability can face difficulties pursuing further education and qualifications after school. Again, these difficulties result from inadequate transition planning, low expectations about capacity (ableism) and inaccessible post-school education providers.

Information suggests that people with disability are more likely to be in casual and insecure work where employees are more likely to be paid 'under the table'. This creates greater opportunities for economic exploitation.³²⁸ This exploitation is more likely to affect young people with disability who enter the workforce without prior work experience and lack transition support.³²⁹

Professor Anne Kavanagh and Ms Alexandra Devine told us the most commonly reported vocational barrier to young people with disability is a lack of qualifications and skills.³³⁰ Ms Devine pointed out that this is often because people with disability experience other barriers such as 'discrimination in their educational settings and in their transitions from education to school'.³³¹

At Public hearing 24, we heard from Ms Kim Langcake, the mother of Mitch, a young man with disability. Ms Langcake reflected that young people with disability can be generally categorised as either being ‘employer ready’ and only requiring assistance to further enhance skills to enter employment; or not ‘employer ready’ and requiring more intensive support to build basic workplace skills.³³² Ms Langcake recommended that schools should assume a greater role in assisting with basic job skills, including developing resumes and recognising individual skills.³³³

At Public hearing 21, ‘The experience of people with disability engaging with Disability Employment Services’, Mija Gwyn from Youth Disability Advocacy Service (YDAS), reported that the young people in YDAS Leadership program (who often have leadership roles in their communities already) aspire to work in a wide range of professional jobs in fields such as healthcare, education and law. However, DES providers tend to offer jobs in retail or warehouses or roles involving cleaning or physical labour. Simon Green from YDAS attributed this lack of alignment of goals and work opportunities offered to disabled young people in part to DES providers failing to place participants in a broad range of industries.³³⁴

Ms Dani Fraillon from Get Skilled Access told us that ‘everybody talks about just getting a job for a person with disability as opposed to what is the career that they would like to pursue’.³³⁵

At Public hearing 21, we heard that transition planning for students with disability lacks adequate career counselling, specialised support, role models and mentors. Representatives from YDAS told us that:

[T]here is not enough specialised support to help disabled young people gain the confidence, skills and capability to be able to represent themselves and advocate for themselves when they need to, particularly when they are gaining their first employment.³³⁶

Failure to engage in early transition planning

In their submission to the *Employment issues paper*, Children and Young People with Disability Australia (CYDA) told us that in their 2019 post-school survey of young people with disability:

- 80 per cent of respondents said their school did not provide support or appropriate information about career planning
- more than half reported they did not receive adequate support to think about or plan for their future or that they did not find the assistance and information from their school useful
- fewer than one in five reported receiving assistance in understanding their strengths and skills for post-school transition; practical assistance, such to write a resume; or assistance to plan study or training.³³⁷

At Public hearing 9, we heard evidence from Ms Owen Turner. She told us that, despite meeting with counsellors, her daughter’s school pushed her to go into a day support program for people with disability in her final years of school. This program involved packing and delivery, which she did not enjoy.³³⁸ Another witness at Public hearing 9, Ms Darling, told us her school did not

provide her with her work experience or speak to her about what she might like to do when she finished high school.³³⁹ It was only through DES providers, and her own connections and tenacity, that she went on to secure a number of part-time jobs.³⁴⁰

At Public hearing 21, Ms Mija Gwyn told us that students with disability should be provided with information about options as early as possible in the classroom: ‘young people thinking about their dreams, their aspirations, what is possible. It’s important to have these conversations early’.³⁴¹ Ms Gwyn also spoke of the importance of a person-centred approach to transition planning. This is ‘an approach that is responsive to the individual’s requirements, their needs, that takes full consideration of the individual, their aspirations, what their goals are’.³⁴²

Mr Rick Kane told us that ‘what’s missing at the moment is the ability to provide effective work experience and lack of supports’ for young people with disability. He said that support is too often ad hoc and a more ‘developed model would be a better way to go about it’.³⁴³

A failure to engage in early transition planning means that students with disability and their families are left without support post-school. At Public hearing 24, Edward Croft spoke about the experience of his son Ryan, who received assistance during school to explore different work placements, including gardening, handywork, laundry and office cleaning. This assistance provided Ryan with a sense of confidence and a variety of different skills. However, since the end of his school career, the responsibility for supporting Ryan to gain employment and manage his routine has fallen to Edward and his family. Edward gave evidence that ‘[t]here is nothing for Ryan’ once school finished. Ryan’s behaviour deteriorated without the support and structure that his school provided.³⁴⁴

Similarly, Gi Brown described their experience post-school as being ‘pushed off the edge of a cliff’³⁴⁵ where they had nowhere to turn for assistance. They described the difficulty they had managing after school, culminating in a psychotic episode and thoughts of self-harm and suicide.³⁴⁶

Inconsistent transition programs and services

At Public hearing 9, Ms Catherine McAlpine said that programs for transition from school to open employment need to be improved and made more consistent.³⁴⁷ Swinburne University research suggests that ‘Australia does not have a nationally consistent transition model for young people with intellectual disability leaving school and data is not collected at the national level to provide evidence of outcomes’.³⁴⁸ The level of support to assist with post-school transition varies according to a person’s jurisdiction, school setting and NDIS status.

Submissions to the *Education and learning issues paper* also told us about the need to improve national consistency in post-school transition activities and develop tailored support for students with disability.³⁴⁹

Past inquiries and reports have made various recommendations aimed at improving transition planning for students with disability.³⁵⁰ For example, in its *Willing to work* report, the Australian Human Rights Commission (AHRC) recommended:

[The Australian Government should] allocate funding to enable a collaboration between state and Commonwealth education authorities and relevant agencies to develop guidance materials for teaching staff about supporting students with disability to transition from school to work.³⁵¹

Improving the transition of young people with disability from education to employment is a national commitment under Australia's Disability Strategy 2021–2031. However, the actions to address this issue vary across states and territories. Some actions also lack clear, specific and measurable outcomes to ensure they support students with disability with their future outcomes. For example, the Western Australian Government action plan says:

Students with disability are engaged in early pathway planning to support them to transition through their education and into work or further study', with the indicator to measure this action as 'students are engaged'.³⁵²

This does not outline how students are engaged or what supports are available or the quality of their engagement and future outcomes.

DES can provide supports through the Eligible School Leavers program. However, this program is only available to assist students with 'significant disability'. The NDIS School Leaver Employment Supports is an early intervention employment support focused on building foundational employments skills.³⁵³ However, it is only available to people with disability who are NDIS participants. This leaves a significant gap in support for young people with disability who are not NDIS participants. Both of these programs are targeted at young people with disability only when they have already left school.

We heard that schools and NDIS providers share responsibility for supporting work experience opportunities for NDIS participants but do not always work well together to coordinate planning and supports. Schools are responsible for supporting work experience as part of the curriculum.³⁵⁴ However, NDIS plans can support participants who need more support to participate, such as one-on-one support or travel support.³⁵⁵ An NDIS participant who is still in school can receive funding through their capacity building budget to explore employment and post-school options.³⁵⁶

At Public hearing 24, Mr De Natris of the NDIA gave evidence that the NDIA was aware that post-school transition was 'an area of great concern'. He said the NDIA was in the process of developing a post-school strategy. This recognised that:

transition to ... post-school was not optimal for many, many students with disability. While the NDIA recognised that schools had a role in that, we felt that the evidence was clear that additional support was required, that needed to start earlier, that it needed to be more – need to be better supported and more focused to give young people with disability leaving school real options in the post-school environment.³⁵⁷

We heard that this strategy is targeted at students in years 10 to 12. It focuses on developing individual plans through Local Area Coordinators and earlier engagement with schools and

the post-school environment to develop employment options for people with disability.³⁵⁸ At the time of Public hearing 24, the NDIA was ‘actively engaged with all school systems to raise awareness of this type of opportunity’.³⁵⁹ The NDIA gave evidence that it was developing an evaluation framework that will collect outcome data and information from participants on their experience with this approach.³⁶⁰

The National Disability Coordination Officer (NDCO) Program provides funding to employ a national network of NDCOs who operate within 31 regions across Australia. NDCOs work with stakeholders at a local level to reduce systemic barriers, facilitate smooth transitions, build links and coordinate services for people with disability between the education, training and employment sectors.³⁶¹

A 2017 evaluation of the NDCO reported the program was effective at building stronger engagement between service providers and ensuring better transitions for people with disability from school or community to tertiary education and employment.³⁶² The evaluation found that both employment and participation in post-secondary education by young people with disability have increased in the majority of regions in which the NDCO Program is operating.³⁶³

State and territory programs and approaches

The extent to which schools facilitate post-school transition planning and the availability of specialised support for students vary according to each state and territory’s education policies.

For example, in Public hearing 24 we learnt that in Western Australia there is no specific policy, procedure or requirement for educators on the transition of students with disability from school to further education, employment and/or independence in the community. Instead, transition planning from school to further education is managed locally by individual schools for all students.³⁶⁴

In South Australia, the Department for Education collaborates with the NDIA to deliver ‘Pathway to Post School Life’ sessions for students with disability in years 10 to 12 in special/segregated settings. Dr Caroline Croser-Barlow told us South Australia also delivers pathways planning for children with disability in mainstream settings but in a non-systematic ‘personalised response’.³⁶⁵

In New South Wales, the School to Work Program is for all students in New South Wales public schools with a secondary enrolment. The program aims to actively support informed, planned and quality transitions from school for each student. A 2021 report overview indicated that, as part of the program:

[Sixty-four per cent of schools had] organised individual support and partnered with external agencies to build work-related skills and confidence to assist students with disability to develop their skills, career and transition planning.³⁶⁶

It is not clear what other measures exist in the program that specifically target students with disability.

In Queensland, principals in state schools are to ensure that students develop a Senior Education and Training (SET) plan by the end of year 10. This maps out a plan of action to ensure students remain on track for success in senior secondary, post-school education and work. The policies and procedures for SET planning state that principals or nominated officers should 'consider the need for more targeted and intensive transition strategies and support for students with disability, as required'. However, it is not clear what this entails.³⁶⁷

In the Northern Territory, the Transition from School for Students with Disability service ensures that every student with an educational adjustment plan also has an Individual Transition Plan (ITP) that 'scaffolds and informs the transition of a student with disability from school into adult life'.³⁶⁸ Under the policy, the ITP is developed 'during year 10 or earlier as required and is reviewed and revised every 6 months throughout senior school'.³⁶⁹ The Department of Education provides education advisor and/or transition support officer support to schools to engage with parents or carers, students, professionals, teachers and external support agencies throughout the development and implementation of an ITP. The service includes offers of work experience and community participation to assist students to develop strengths and skills that may be identified throughout the transition process.

Career guidance and transition services

The Royal Commission welcomes the work the NDIA has done to improve post-transition support for students with disability who are NDIS participants. We also welcome the initiatives and programs that states and territories have undertaken to improve transition opportunities for students with disability.

However, we consider that reform is necessary to ensure that all students with disability are provided with a minimum level of support to make the transition from school to further education or employment.

We recommend that state and territory governments create dedicated career guidance and transition services or programs that prioritise students with disability (Recommendation 7.5). The overall goal of the service or program should be to create a transition plan that reflects the needs and wishes of the individual. We consider that, at a minimum, every student with a disability identified as requiring an adjustment under the NCCD in all school sectors (government, non-government, home schooling and distance education) should be eligible for this service. State and territory school registration authorities should make information about the service available to students with disability who are registered for home schooling or distance education services and connect them to their local service.

Key elements required for successful transition include starting support in earlier school years,³⁷⁰ providing work experience in a range of settings³⁷¹ and engaging with families.³⁷² Our thinking has also been informed by international experiences and benchmarks. In particular, we have considered the Gatsby Benchmarks for good career guidance services, developed by Sir John Holman in the United Kingdom in 2014. These benchmarks were informed by international best practice (see Table 7.3.2).³⁷³

The Gatsby Benchmarks were piloted in schools and colleges in North East England between 2015 and 2017. These benchmarks led to improvements in learner engagement in class and the career readiness of students, a reduction in the number of students not in education, employment or training and an uplift in academic results.³⁷⁴ Since 2018, the benchmarks have been embedded in statutory guidance³⁷⁵ on how schools and colleges carry out their duty to provide students with independent careers guidance.

During the pilot stage, Sir Holman examined the relevance and application of the benchmarks for students with disability. He emphasised that the same framework of high expectations should be available to all students.³⁷⁶ Any application of the framework should allow for adjustments and supports so that students with disability can transition to the world of work on an equal basis as students without disability. A toolkit has been developed to provide guidance on using the benchmarks to deliver better career guidance and transition support for students with diverse needs and abilities.³⁷⁷

Table 7.3.2: Gatsby Benchmarks of good career guidance

Benchmark	Summary
A stable careers programme	Every school and college should have an embedded program of career education and guidance that is known and understood by students, parents, teachers and employers
Learning from career and labour market information	Every student and their parents should have access to good-quality information about future study options and labour market opportunities. They will need the support of an informed adviser to make the best use of available information
Addressing the needs of each pupil	Students have different career guidance needs at different stages. Opportunities for advice and support need to be tailored to the needs of each student. A school's careers programme should embed equality and diversity considerations throughout
Linking curriculum learning to careers	All teachers should link curriculum learning with careers
Encounters with employers and employees	Every student should have multiple opportunities to learn from employers about work, employment and the skills that are valued in the workplace. This can be through a range of enrichment opportunities, including visiting speakers, mentoring and enterprise schemes
Experience of workplaces	Every student should have first-hand experiences of the workplace through work visits, work shadowing and/or work experience to help their exploration of career opportunities and expand their networks
Encounters with further and higher education	All students should understand the full range of learning opportunities that are available to them. This includes both academic and vocational routes and learning in schools, colleges, universities and in the workplace

Benchmark	Summary
Personal guidance	Every student should have opportunities for guidance interviews with a careers adviser, who could be internal (a member of school staff) or external, provided they are trained to an appropriate level. These should be available whenever significant study or career choices are being made. They should be expected for all pupils but should be timed to meet their individual needs

Source: The Gatsby Foundation (2018).

The Gatsby Benchmarks suggest that transition planning should begin no later than year 9.³⁷⁸ (In Year 9 in schools in England, young people are aged 13 to 14).³⁷⁹ This allows adequate time for exploring options, setting goals and making informed decisions about post-school plans. This also provides opportunities for developing skills, building connections and gaining experiences relevant to chosen paths. Early planning can also help alleviate stress and uncertainty during the later years of high school.

Recommendation 7.5 Careers guidance and transition support services

State and territory educational authorities should implement a careers guidance and transition support service for students with disability to aid transition from all educational institutions to further education and/or open employment. The service should:

- commence transition planning in year 9 in collaboration with students, their parents and carers to help students define and articulate their goals and aspirations beyond school
- take into account the diversity of students with disability, including students with higher levels of support needs, First Nations students and students from culturally and linguistically diverse backgrounds
- provide students with disability and their families access to clear and accessible information and resources about future study options and labour market opportunities
- provide students with opportunities to undertake work experience in open employment aligned with their goals and interests
- provide linkages to further education providers, employment service providers and government services (including the National Disability Coordination Officer Program, the National Disability Insurance Scheme (NDIS) School Leaver Employment Support, Disability Employment Services, and NDIS Local Area Coordinators).

Variations to careers guidance and transition support program

Commissioners Bennett, Galbally and McEwin recognise that students with disability currently have worse transition outcomes to further learning and work than students without disability. However, they are concerned that a program targeted at students with disability might reinforce low expectations and aspirations and maintain a ‘polished pathway’ into segregated employment.

To prevent the stigmatisation and segregation of students with disability, Commissioners Bennett, Galbally and McEwin therefore recommend (see Recommendation 7.14) that the careers guidance and transition support programs for students with disability:

- be delivered alongside careers guidance for students without disability
- have clear rules that no student with disability can be referred to work experience or employment through ADEs.

3.8 Communicating with parents and students

A common theme in evidence was that students with disability and their parents or supporters feel school leaders and teachers do not listen to them, communicate with them or consider their lived expertise when making critical decisions about their or their child’s education.

Under the *Education Standards*, education providers must consult with students with disability and their associates on a variety of issues affecting the student’s participation in education.³⁸⁰ For example, before an education provider makes an adjustment for a student, they must consult the student or the student’s associate on whether the adjustment is reasonable, the extent to which the adjustment would achieve the aim and whether an alternative might be better.³⁸¹

The *Education Standards* impose limited obligations on educational authorities and schools. As the Federal Court has explained:

[The relevant provisions do not require] that such consultation take any particular form or occur at any particular time. Those involved may meet formally or informally. Discussions can be instigated by either the school or the parents. Consultation may occur in face-to-face meetings, in the course of telephone conversations or in exchanges of correspondence. Once consultation has occurred it is for the school to determine whether any adjustment is necessary in order to ensure that the student is able, in a meaningful way, to participate in the programmes offered by the school. The school is not bound in making these decisions, by the opinions or whether any reasonable adjustment is possible in order to further the prescribed aims. There may, therefore, be cases in which an adjustment is necessary but no reasonable adjustment is able to be identified which will ensure that the objectives contained in the relevant Disability Standards are achieved.³⁸²

A consultation requirement is embedded in the *Education Standards*.³⁸³ However, a 2020 Review of the *Education Standards* observed that '[e]ducators could do a better job of reaching out, genuinely, to students with disability and their families'.³⁸⁴

Several inquiries have reported on the absence of meaningful consultation with students with disability or their supporters.³⁸⁵ For example, the 2016 Senate Education and Employment References Committee inquiry into access to learning by students with disability found that many parents were frustrated because they were not adequately consulted about – or even informed of – decisions made about their child's education.³⁸⁶ Some parents reported to the committee that their relationship with their child's school was based on feelings of shame rather than being a productive relationship concerned with education.³⁸⁷ The New South Wales Ombudsman's *Inquiry into behaviour management in schools* found that a high proportion of complaints about schools involving students with disability involved a fundamental breakdown in communication, trust and respect between schools and families.³⁸⁸

Lack of consultation, including culturally appropriate consultation, can also compromise cultural safety for students with disability from First Nations and culturally and linguistically diverse backgrounds.³⁸⁹ The Select Committee on Access to the South Australian Education System for Students with a Disability found that culturally and linguistically diverse families may face significant hurdles in having their voices heard because of language barriers.³⁹⁰

We heard from students with disability, parents and advocates about the effect of not having a voice in decisions about adjustments and supports, subject choices and strategies to manage their own behaviour.³⁹¹ Leif gave evidence that, in their senior school years, their subject options were limited because the school advised support was only available in particular subjects.³⁹² Leif considered that the lack of supports available in class 'prevented me from achieving my best possible academic grades'.³⁹³

Schools and educational authorities do not always effectively collaborate and engage with parents or carers in planning and decision making.³⁹⁴ Relationships between parents and supporters and teachers can become 'fraught' when there is disagreement over issues like whether an adjustment is reasonable.³⁹⁵ Parents and teachers alike often perceive 'reactivity' and defensiveness from the other group.³⁹⁶

Witnesses gave evidence that schools did not view them as experts in their own child's disability. Schools were reluctant to involve them in developing the school's approach to the child's education.³⁹⁷ Mr Edward Croft, a parent of a child with very high support needs, gave evidence that he and his wife knew that Pragmatic Organisation Dynamic Display communication was not right for their son, Ryan, but felt the school paid little attention to their views on the issue.³⁹⁸

We heard from parents/carers who felt they were excluded and their expertise was undervalued. The AHRC also informed us that consultation and the level of communication between education providers and parents is a recurring theme of complaints that they receive.³⁹⁹

Ineffective communication can lead to poor outcomes, such as deteriorating relationships with schools,⁴⁰⁰ inappropriate adjustments,⁴⁰¹ underestimation of a student's capabilities,⁴⁰² movement of students to different schools⁴⁰³ and a lack of transition planning.⁴⁰⁴

We agree with the submissions of Counsel Assisting following Public hearings 7 and 24 that:

- there ought to be a commitment to a student's voice being heard and carrying weight⁴⁰⁵
- students with disability should have genuine choice and support to achieve their personal educational goals.⁴⁰⁶

Open communication is essential for genuine inclusion

As part of all educational experiences, it is a student with disability's right to have a say in matters that affect them.⁴⁰⁷ Students with disability should be supported to know their rights. They should have the opportunity to express their views in an age-appropriate way. Those views should be valued in decisions about adjustments and supports.

We know that poor communication is a barrier to achieving substantive equality for students with disability. Conversely, we know that open and proactive communication can enhance student outcomes. We heard that, when schools had open communication and involve students and parents in important decisions, it can make a significant difference in the lives of students with disability and their families.⁴⁰⁸ Research suggests that students who can exercise agency in the learning process can be more motivated and experience better learning satisfaction.⁴⁰⁹ This is beneficial for educational outcomes.⁴¹⁰

The 2020 Education Standards review similarly highlighted that:

overwhelmingly that the best results are achieved for students with disability when educators engage proactively with the Standards and initiate regular, authentic communication and consultation with students with disabilities and families.⁴¹¹

Many studies and practice guides point to the benefits of family and school connection in addressing learning needs and improving outcomes for students with disability.⁴¹² For example, strong communication and relationships between schools and families can:⁴¹³

- foster mutual respect
- be an important source of expertise regarding a student's unique needs
- provide students with agency
- improve a student's attitudes to learning and to themselves as learners
- increase a student's educational engagement
- reduce the risk of exclusion
- support continuity between home and educational environments.

Achieving the goal of better communication and collaboration with students with disability and families will involve policies and guidance that help embed open communication and collaborative decision making in local schools.

Strengthening policy and practice

We appreciate that states and territories recognise the importance of parental and carer engagement in their inclusion policies and are taking actions to improve policies and practices. For example, the New South Wales *Inclusive Education Policy* (2022) recognises that all staff should:

‘work in partnership with students, parents and carers, external service providers and the community, to achieve the best outcomes for students with disability’ and ‘support students, parents and carers with key transition points’.⁴¹⁴

In its *Inclusive education policy statement booklet*, Queensland is seeking to strengthen the options parents and caregivers have to enrol their child at their local state school. They plan to ‘work with students, parents and caregivers, and other organisations, including teacher and professional associations, as respected and valued partners in inclusive education’.⁴¹⁵ Queensland ‘supports students, parents, caregivers and families to have a voice and be heard’.⁴¹⁶

Similarly, the South Australian Government’s ‘One Plan’ program is a personalised learning plan for students, including students with disability. It set outs students’ functional needs, education aspirations, aims and objectives. It has a guiding principle that ‘parents or carers and advocates will be engaged in all stages of the program planning process’.⁴¹⁷

All state and territory education departments, schools and educators across Australia should apply collaborative decision-making models with students and parents of students with disability.

This means state and territory governments should update policies and supporting guidance for schools. These policies and guidance should clearly outline how and when students and parents can expect to receive information and be involved in decision making. For example, additional guidance is needed on methods of communication and how parents/carers will be informed about educational progress. Guidance is also needed on key stages of engagement, such as pre-enrolment assessments of needs, the development of individual learning plans and start and end of school transitions.⁴¹⁸ Policies should help to enable continuous improvement in delivering on communication expectations.

Locally, school principals should work with their governing bodies and school communities to establish school policies, procedures and practices to enable students with disability and their parents and carers to fully and effectively take part in the school community and decisions that affect a student’s educational experience. This will be supported by recommendations in this chapter to lift the capability of the school workforce.

The implementation approach for these policies should involve people with disability and their families. Policies should respect the distinct cultural identities, perspectives and practices of families from First Nations communities, multicultural communities and the Signing Deaf community.

Consistent with recommendations from previous government inquiries and reviews,⁴¹⁹ schools should be transparent with students and parents about student rights and school obligations. This information should be provided in an accessible way to all students and parents.

Recommendation 7.6 Student and parental communication and relationships

- a. State and territory educational authorities should update their policies and guidance for schools to support the implementation and continuous improvement of requirements for student and parental communication and relationships. These should:
 - include clear, accessible material for students with disability and their families on their rights and school obligations
 - target decision-making for individual students and at the whole-of-school-level
 - cover applications to attend a local school and address how students and parents should expect to be involved in decision making, adjustments and complaints handling and informal resolution processes
 - indicate types of decisions that require formal parental agreement, such as approaches to behaviour management
 - be co-designed with people with disability and their families
- b. State and territory educational authorities should develop material similar to that outlined in a. specifically for First Nations students with disability in consultation with First Nations students with disability, parents and kinship carers. The cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures should be considered in this process.
- c. School principals should work with their governing bodies and school communities to establish local school policies, procedures and practices to enable students with disability and their parents, carers and advocates to fully and effectively take part in the school community and decisions that affect a student's educational experience.
- d. In undertaking c., school principals should consult with First Nations parents and kinship carers and consider the cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures.

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- e. The Australian Government, through the responsible minister, should consider updating the *Disability Standards for Education 2005* (Cth) to:
- ensure students with disability can participate as fully as possible in an age-appropriate manner in decision making concerning their educational programs and the adjustments they require
 - entitle parents, supporters and carers of students with disability to be assisted by schools or principals on decisions relating to school-wide adjustments to facilities and classroom practices of particular significance to students with disability.

Commissioners Bennett, Galbally and McEwin agree with Recommendation 7.6(e) about entitling parents, supporters and carers of students with disability to be assisted on decisions relating to school-wide adjustments to facilities and classroom practices of particular significance to students with disability. In addition, the three Commissioners consider the decisions should include those concerning adjustments and supports for the students' education, safety, development and participation in the school's activities.

Endnotes

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- 11 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 7: Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts*, November 2021, [174–83].
- 12 Submissions of Counsel Assisting the Royal Commission following Public hearing 7, 1 April 2021, p 71 [243]; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 2: Inclusive education in Queensland — preliminary inquiry*, October 2020, [124].
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- 14 Transcript, Frank Potter, Public hearing 7, 13 October 2020, P-146 [22–32]; Submissions of Counsel Assisting the Royal Commission following Public hearing 7, 1 April 2021, p 77 [268].
- 15 Submissions by the State of New South Wales in response to Counsel Assisting’s submissions in Public hearing 7, 30 April 2021, SUBM.0012.0001.0004, p 4 [21].
- 16 Transcript, AAC, Public hearing 2, 5 November 2019, P-94 [25–38].
- 17 Exhibit 7-166, ‘Statement of Ann Howlett’, 27 March 2020 at [55].
- 18 Exhibit 7-100, ‘Statement of ‘Leif’’, 13 March 2020, at [33].
- 19 Submissions of Counsel Assisting the Royal Commission following Public hearing 24, 21 October 2022, p 143 [384].
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37 For example, *School Education Act 1999* (WA) s 78(71).

38 For example, *Education Act 1990 No 8* (NSW) s 34(6).

39 *Education Act 1990 No 8* (NSW); *Education and Training Reform Act 2006* (Vic); *Education (General Provisions) Act 2006* (Qld); *Education and Children’s Services Act 2019* (SA); *School Education Act 1999* (WA); *Education Act 2015* (NT); *Education Act 2004* (ACT).

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44 Exhibit 7-167, ‘Statement of Linda Graham’, 25 September 2020, at [38].

45 Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020, at [38].
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 47 *Education and Training Reform Act 2006* (Vic) s 2.2.19(1); *Education (General Provisions) Act 2006* (Qld) ss 282–83, 292, 298–99, 316–17; *Education and Children's Services Act 2019* (SA) ss 76–79; *Education Act 2016* (Tas) ss 130–32; *School Education Act 1999* (WA) ss 90–91, 95; *School Education Regulations 2000* (WA) s 43; *Education Act 2004* (ACT) ss 17G, 17H, 17J, 17ZA, 17ZC; *Education Act 2015* (NT) ss 90–91, 93; *Education Act 1990* (NSW) s 35.
 48 Samuel Murray, *Legislation and regulation in Australia: Children and young people with disability in primary and secondary education settings*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, July 2021, p 76.
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 51 *Education (General Provisions) Act 2006* (Qld) s 282(1).
 52 *Education and Children's Services Act 2019* (SA) s 76(1).
 53 *School Education Act 1999* (WA) ss 90(1), 91.
 54 *Education Act 2015* (NT) s 91.
 55 Unsafe or non-compliant behaviour is defined as 'behaviour that reduces the safety or effectiveness of the learning environment at the school in a way that is persistently or disruptively noncompliant or poses an unacceptable risk to the safety or wellbeing of another student, member of staff or other person involved in the school's operation': *Education Act 2004* (ACT) s 17B.
 56 *Education Act 2004* (ACT) ss 17H(1), 17H(2).
 57 *Education Act 2016* (Tas) s 130.
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 60 Exhibit 24-047, 'Statement of Stuart Percival', 6 May 2022, at [215].
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 65 Material received by the Royal Commission from state and territory education departments in response to notice, 2022, ACT.9999.0003.0001, NSW.0064.0002.0001, NTT.0001.0002.0001, QLD.9999.0040.00001-8, SAG.0006.0178.0001, TAS.9999.0011.0010-11, VIC.0003.0508.0001, WA.0016.0001.0001.

- 66 Social or emotional disability refers to a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement, or that results in distributed behaviour: See 'Definitions of disability and the NCCD categories', *Nationally Consistent Collection of Data on School Students with Disability*, web page, 2022. <www.nccd.edu.au/wider-support-materials/definitions-disability-and-nccd-categories>
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- 84 Victorian Ombudsman, *Investigation into Victorian Government school expulsions*, Final report, August 2017, p 8 [47]; Linda Graham, Tony McCarthy, Callua Killingly, Hayley Tancredi & Shiralee Poed, Centre for Inclusive Education, *Inquiry into suspension, exclusion and expulsion processes in South Australian Government schools*, Final report, October, 2020, p 23 (Finding 5.4).
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- 92 New South Wales Department of Education, Student behaviour procedures Kindergarten to Year 12 – Implementation document for the Student Behaviour Policy, October 2022, p 29 [4.4.1.2]; *Ministerial Order 1125 – Procedures for suspension and expulsion of students in government schools 2018* (Vic), (version incorporating amendments as at 3 February 2022), cl 15(2)(f), 16(4)(h), 17(1)(2)(3); *Education (General Provisions) Act 2006* (Qld) ss 301, 304; South Australia Department for Education, Suspension and exclusion information for parents and carers, 07 November 2022, p 5; *Education Act 2004* (ACT) s 36(4)(e); Linda Graham, Tony McCarthy, Callula Killingly, Haley Tancredi & Shiralee Poed, Centre for Inclusive Education, *Inquiry into suspension, exclusion and expulsion processes in South Australian Government schools*, Final report, October 2020, p 81.
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- 131 *Australian Education Act 2013* (Cth); *Disability Discrimination Act 1992* (Cth); *Disability Standards for Education 2005* (Cth).
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- 149 Transcript, AAA, Public hearing 2, 4 November 2019, P-24 [15–25]; Exhibit 2-9, ‘Statement of Witness AAA’, 31 October 2019, at [18].
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- 152 Exhibit 7-199, ‘Statement of ‘Leif’’, 13 March 2020, at [33].
- 153 Exhibit 789, ‘Statement of ‘Sarah’’, 23 July 2020, p 11–26 [91].
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- 157 Exhibit 7-01, 'Statement of Yarraka Bayles', 24 September 2020, at [61].
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4. Embedding inclusive education

Key points

- Fundamental changes are required at the systemic level to embed inclusive education for students with disability. These include:
 - establishing inclusive education units, with First Nations expertise, to provide advice and resources on issues, policies and practices
 - improving workforce capabilities and expertise to embed a human rights-based approach to inclusive education across teachers' careers
 - improving the collection and reporting of data on the educational experiences and outcomes of students with disability
 - improving the research evidence base for best practice for inclusive education
 - improving complaint management, such as by including new duties relating to complaint management procedures in the *Disability Standards for Education 2005* (Cth)
 - strengthening enforcement of practices for inclusive education by expanding school registration requirements; for example, inclusive school enrolment policies and complaint handling duties
 - improving funding for students with disability, including by ensuring the funding bears close relationship to the actual cost of supporting students with disability in classrooms
 - developing and reporting on a 'National Roadmap to Inclusive Education' for students with disability, detailing outcome measures, targets and actions.

4.1. Inclusive education expertise

Inclusive education units

Some state and territory education departments have inclusive education units or directorates responsible for advising their government on policies for inclusive education that apply to all schools, and funding to deliver on those policies. They also develop resources and administer programs to support schools and families.¹

For example, in South Australia, the Inclusive Teaching and Learning Directorate provides training, policy and programs enabling all children and young people with disability and/or functional needs to achieve education and wellbeing outcomes. The resources and advice provided to schools is intended to support their capacity to improve education outcomes for students receiving adjustments under the Nationally Consistent Collection of Data on School Students with Disability. Also, within the directorate, the Special Education Resource Unit provides resources and training to educators to support them in meeting their obligations under the *Disability Standards for Education 2005* (Cth) (*Education Standards*) and *Disability Discrimination Act 1992* (Cth) (*DDA*).²

In Western Australia, the Disability Inclusion Unit is responsible for:³

- leading implementation of strategies to improve achievements and outcomes
- developing and overseeing the delivery of professional learning initiatives for schools to strengthen the capability of the profession to improve the achievement of students with disability.

In the Northern Territory, Student Wellbeing and Inclusion Programs and Services is a business unit within the Department of Education. It is responsible for advising schools on support for students with disability.⁴ In Victoria, the government has stated that it will introduce new disability support roles and dedicated teams to help schools implement disability inclusion.⁵

We recognise the value of these inclusive education units. Where states and territories have not yet established them, we recommend they do so. All states and territories should review and strengthen the goals and capacities of their inclusive education units to enable them to develop inclusive education within their jurisdictions. These units should have two broad functions:

- to provide advice to departments and governments on inclusive education issues
- to provide resources and advice to schools about implementing inclusive education.

We foresee that these units can assist in implementing our recommendations, including:

- providing guidelines and resources to schools to assist them with making adjustments (Recommendation 7.3)
- developing policies and guidance for schools to support implementation and continuous improvement of requirements for student and parental communication and relationships (Recommendation 7.6)
- working with schools to help develop workforce skills and expertise (Recommendation 7.8).

First Nations expertise

As documented in Volume 9, *First Nations people with disability*, First Nations people with disability experience a 'double disadvantage' at the intersection of racism and ableism, sometimes called intersectional discrimination.⁶ First Nations students with disability face more barriers to inclusive education than non-First Nations students. They experience:

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- a lack of cultural safety in the delivery of education programs and provision of supports and reasonable adjustments⁷
 - higher rates of exclusionary discipline compared with non-First Nations students without disability⁸
 - bullying and mistreatment by staff and other students⁹
 - exclusion through low expectations¹⁰
 - under-diagnosis and misdiagnosis of disability, which affects access to supports at school.¹¹

In Volume 9, we explain the impact of dual discrimination on First Nations people with disability. Appreciation of the impact is generally absent, or its significance misunderstood, because government policy making and funding decisions are generally compartmentalised.¹² This 'leads to poorly designed initiatives, that are either disability or culturally inaccessible or both'.¹³ In the effort to realise inclusive education for First Nations students with disability, we have to remove barriers that contribute to compartmentalisation in government policy making and funding, resulting in poor learning outcomes for First Nations students with disability.

Despite the nature and extent of issues faced by First Nations students with disability, currently there appears to be no dedicated mechanisms to support their access to inclusive education. We have heard about the lack of dedicated units with cultural and disability expertise within state or territory education departments.¹⁴ There is no dedicated First Nations community-controlled organisation focused on disability to advocate for inclusion and adoption of culturally responsible supports and adjustments. We are also not aware of any unit within any state or territory education departments specifically focused on First Nations students with disability.¹⁵

Existing initiatives to improve the experience and outcomes for First Nations students with disability are limited. For example:¹⁶

- the Queensland Department of Education is developing culturally appropriate communication materials for First Nations families on supports for students with disability, to improve attendance and engagement¹⁷
- the New South Wales Government has culturally appropriate communication on how to help First Nations students access supports funded by the National Disability Insurance Scheme (NDIS).

To address these barriers, we also recommend that state and territory governments ensure that their inclusive education units contain both disability and First Nations expertise. This will mean inclusive education units, along with school leadership and teachers can be tasked with, and have joint accountability for, improving experiences and outcomes for First Nations students with disability.¹⁸

Having First Nations expertise embedded within inclusive education units will assist when advising government on how to remove barriers to inclusive education. First Nations education and community groups, including the Secretariat of National Aboriginal and Islander Child Care

and the Aboriginal Education Consultative Group should have input into inclusive education units. These units can also draw on collaborative expertise for disability and First Nations support to address the intersectional needs of First Nations people with disability.

Also, embedding First Nations expertise within inclusive education units will allow the units to:

- assist First Nations people, especially parents and kinship carers, with training and resources to participate in educational decision making (see Recommendation 7.6)
- provide specialist expertise for schools in regional and remote areas
- advise education departments on professional development strategies to improve knowledge, skills and attitudes needed for inclusive education and cultural competency (see Recommendation 7.8).

In implementing this recommendation, state and territory governments should align with existing agreements at the national, state and territory levels to improve educational outcomes for First Nations students. For example, they should consider the Closing the Gap agenda¹⁹ and any reforms to the National School Reform Agreement in which First Nations students are a priority equity cohort.²⁰

Recommendation 7.7 Inclusive education units and First Nations expertise

- a. State and territory educational authorities should establish inclusive education units within the relevant departments. These units should provide:
 - advice to educational authorities, educational institutions and principals on inclusive education issues and policies, and on funding priorities
 - resources and advice to schools and teachers about implementing inclusive education.
- b. Educational authorities should ensure that inclusive education units contain First Nations expertise to allow them to take actions required to improve access to inclusive and culturally appropriate education for First Nations students with disability.

4.2. Workforce capabilities, development and expertise

Knowledge and skills

High-quality teaching by skilled teachers has a positive influence on learning outcomes of students.²¹ All students, particularly students with disability, require a student-centred approach to teaching and learning, with lesson content and teaching methods tailored to individual student needs.

Past reports and inquiries have made a series of recommendations to strengthen the capacity of principals and teachers to support students with disability.²² For example:

- The 2016 Senate Standing Committee on Education and Employment inquiry into access to learning by students with disability noted the need for greater awareness of the rights of students with disability. It also supported training in teaching practice for students with disability as part of both Initial Teacher Education and continuing professional development.²³
- Both the 2015 and 2020 reviews of the *Education Standards* recommended that training in the *Education Standards* and in supporting students with disability should be included in compulsory pre- and in-service training for teachers.²⁴
- The 2017 New South Wales Ombudsman's report on behaviour management in schools also recommended that principals be trained on the *Education Standards*.²⁵
- The Queensland Government's *Review of education for students with disability in Queensland state schools* recommended that the Queensland Department of Education work with universities to ensure adoption of an inclusive education curriculum.²⁶
- The 2016 Victorian Government Department of Education and Training's *Review of the program for students with disabilities* found:

There is no disability specific workforce capability strategy and although there are a range of existing professional learning opportunities, there remains a lack of consistent disability specific professional learning for most school leaders and teachers. This means that the education workforce is often not well equipped to provide an inclusive environment or to respond to the differing needs of students with disabilities.²⁷

These reviews identified that teachers need particular skills and knowledge to support students with disability. This type of training helps students to participate in education and attain individual learning and development goals on an equal basis with students without disability. Teachers should have knowledge about:

- laws and policies on inclusive education (including the *DDA*, the *Education Standards* and relevant state and territory laws), how these embed rights expressed in the *Convention on the Rights of Persons with Disabilities (CRPD)* and any changes in their duties over time²⁸
- different types of disabilities and their impacts on learning²⁹
- Universal Design for Learning principles and the ability to design and implement inclusive and differentiated lesson plans and teaching methods for diverse learners³⁰
- the causes of challenging behaviour and how to identify patterns and triggers.³¹

Teachers need skills in:

- managing their own behaviour and not over-reacting
- de-escalating challenging behaviour and promoting positive behaviours³²

- using assistive technology and the factors to consider in selecting and using these tools³³
- delivering effective consent and respectful relationships education³⁴
- cultural competency and an ability to respect diverse backgrounds and experiences³⁵
- communicating and collaborating with parents, teaching assistants and other specialist roles in the school.³⁶

Strengthening teaching standards

The Australian Professional Standards for Teachers (APST) describe the key elements of quality teaching. The APST was developed by the Australian Institute for Teaching and School Leadership (AITSL), with advice from more than 6,000 educators.³⁷ It articulates what teachers are expected to know and be able to do at four career stages: Graduate, Proficient, Highly Accomplished and Lead.³⁸ According to the APST preamble:

[The APST] define the work of teachers and make explicit the elements of high-quality, effective teaching in 21st century schools that will improve educational outcomes for students. The Standards do this by providing a framework which makes clear the knowledge, practice and professional engagement required across teachers' careers.³⁹

The APST have not changed since being endorsed by Australian education ministers in 2010.⁴⁰ To embed a human rights-based approach to inclusive education for students with disability, we recommend the Education Ministers Meeting task AITSL with reviewing and amending the APST for all four career stages. The review should take into account the knowledge and skills required to teach and support students with disability identified in the past inquiries and reviews discussed above. AITSL should develop content on:

- the obligations of schools and teachers under the *Education Standards*
- differentiating instruction to support a diversity of learners
- classroom management methods for creating a positive climate for learning and techniques for positive behaviour support
- addressing commonly experienced disability needs such as intellectual disability, alternative communication preferences and neurodiversity.

To provide guidance for teachers on the revised APST, the Education Ministers Meeting should also task AITSL with developing an inclusive education capability framework, using co-design principles. The framework should set out the knowledge, skills and attitudes needed to support teachers to deliver inclusive education. This project could be similar to AITSL's project on Indigenous cultural competency in the Australian teaching workforce. As AITSL explains:

AITSL was tasked to work with the profession to scope and develop resources that will build the capacity of the Australian teaching workforce and increase cultural safety in schools. Alongside this, AITSL has endeavoured to lay out a 'roadmap' that explores how teachers and school leaders will be able to access these products to

best suit their existing knowledge and context. AITSL has partnered with Aboriginal and Torres Strait Islander education experts and the profession to deliver this work and recognises that implementation will be most successful when progressed through continued partnership and with action taken across all levels of the education sector.⁴¹

As part of the project, AITSL developed an intercultural capability framework, which is compatible with the APST:

[The capability framework] defines the knowledge, skills and behaviours required to improve or enhance knowledge in teaching to and about Aboriginal and Torres Strait Islander people and applies to teaching and learning in a range of contexts including urban, regional, remote and very remote.⁴²

AITSL could develop a similar capability framework for inclusive education.

Initial Teacher Education

Initial Teacher Education (ITE) is the training for student teachers as part of their qualifications to enter the education workforce. ITE programs are benchmarked against the Accreditation of initial teacher education programs in Australia: Standards and Procedures (ITE Standards and Procedures), a national framework endorsed by all Australian education ministers. The ITE Standards and Procedures require teacher education programs to be aligned with the APST to receive accreditation.⁴³ Universities must apply to state and territory regulatory authorities to have their programs accredited against the ITE Standards and Procedures.

To be registered with the regulatory authority in their jurisdiction,⁴⁴ a teacher must:

- be appropriately qualified
- have completed an accredited ITE program
- demonstrate competency against the APST
- be considered suitable to teach.⁴⁵

New teachers not well equipped to support students with disability

The Royal Commission has heard evidence that ITE does not consistently equip new teachers with the skills and knowledge to support students with disability and provide reasonable adjustments.⁴⁶

Inquiries have also reported that many new teachers in Australia consider themselves underprepared to teach students with disability. A 2022 report prepared for the Australian Government Department of Education found that 30 per cent of new teachers do not believe their ITE sufficiently prepared them for complexities in classrooms. Among those who were unprepared:⁴⁷

- 47 per cent identified teaching students with disability as an area where they were lacking
- 55 per cent said they were not well prepared to deal with difficult behaviour
- 35 per cent said that their ITE was not helpful in preparing them to manage classroom activities.

Similarly, the Organisation for Economic Co-operation and Development (OECD) 2018 Teaching and Learning International Survey reported that 74 per cent of teachers were trained to teach in mixed-ability settings as part of their formal teacher education, yet only 38 per cent of teachers felt prepared to teach in such settings when they finished their studies.⁴⁸

Consultations conducted during the 2020 review of the *Education Standards* identified the need to improve teacher training, identifying a ‘near universal call to strengthen training for educators’.⁴⁹ The 2022 *Next steps: Report of the Quality of ITE Review* (*Next steps* report) found many initial teacher graduates are underprepared, particularly in supporting diverse learners.⁵⁰ Graduates were also found to have insufficient opportunities to practise classroom management before teaching in a school.⁵¹

We received evidence reinforcing these findings. For example, Mr Kevin Bates, President of the Queensland Teachers’ Union, told us most teaching qualifications in Australia do not require detailed consideration of disability.⁵² To develop skills in teaching children and young people with disability, student teachers would have to select specific electives.⁵³ Professor Susan Carrington observed that pre-service teachers who study at least one inclusive education subject at university generally have more positive beliefs about students with disability and are more willing to support an inclusive approach to education in schools.⁵⁴

Given that one in five students in 2022 had a disability,⁵⁵ we conclude that, as a core part of the curriculum, ITE should provide training on how to teach students with disability. Consequently, we agree with Counsel Assisting’s submission in Public hearing 7, ‘Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts’, that ITE should include mandatory content on:

- behavioural support for diverse learners
- students’ entitlements to adjustments and supports
- the obligations of educational authorities and institutions under the *DDA*, the *Education Standards* and applicable state or territory legislation
- the funding sources available to support students with disability.⁵⁶

We acknowledge that some jurisdictions are working to improve ITE programs. For example, in Victoria, higher education providers seeking accreditation of their ITE programs must ensure a specific focus on the APST descriptors at the graduate teacher level that focus on differentiating teaching (APST descriptor 1.5) and student participation (APST descriptors 1.6 and 4.1).⁵⁷ New South Wales has also identified the area of students with disability as a priority for elaboration of the guidance set out in ITE Standards and Procedures.⁵⁸

In response to the *Next steps* report, the Australian Government established the Teacher Education Expert Panel. Its terms of reference are to provide advice on reforms to:⁵⁹

- strengthen ITE programs to deliver confident, effective, classroom-ready graduates
- strengthen the link between performance and funding of ITE
- improve the quality of practical experience in teaching
- improve postgraduate ITE for mid-career entrants.

In early 2023, the Teacher Education Expert Panel released a discussion paper for consultation.⁶⁰ The discussion paper identifies reform areas and associated findings. The panel will advise the Education Ministers Meeting on the reform areas in 2023.⁶¹

Reform Area 1 is ‘Strengthen ITE programs to deliver effective, classroom ready graduates’. The discussion paper identifies types of ‘core content’ that are supported by ‘rigorous and relevant evidence and should be prioritised in all ITE programs’. This includes core content on ‘enabling factors for learning’, which covers the diverse learning needs of students, including students with a disability.⁶² We welcome the Teacher Education Expert Panel’s focus on students with disability. We agree with the panel’s approach to defining ‘core content’ on diverse learning needs to strengthen ITE so that graduates are ‘classroom ready’.

Continuing professional development

Continuing professional development is key to developing a teacher’s skills and competency throughout their career. Teachers must renew their registration periodically by giving evidence on their continued competency and suitability, set against the APST, and on their professional development activities.⁶³ However, there is evidence that existing professional development opportunities do not fully support teachers to gain capabilities to better support students with disability.⁶⁴ For example, Mr Chris Lassig from the Queensland Department of Education told us there was no specific training given to principals about providing reasonable adjustments.⁶⁵

A 2020 South Australian inquiry found ‘professional development for staff is inconsistent across the state, and there is no unifying framework to guide and commit schools to investing in professional development’.⁶⁶ In its submissions, the State of New South Wales accepted in principle that better direction and guidance should be given to educators about the requirements of the *DDA*, the *Education Standards* and the state-based anti-discrimination legislation, going on to say that this had now been made mandatory ‘for all school leaders’.⁶⁷

In a review of disability training in the education sector, the Australian Council of Learned Academies reported that:⁶⁸

- disability is often covered broadly, and characteristics of less visible disabilities are often missed
- programs often lack involvement by people with lived experience of disability
- information about active support, supported decision making and positive behaviour support practices are often not explored.

We also heard about the need for cultural awareness and cultural competency training in supporting students with disability from culturally diverse backgrounds.⁶⁹

Inadequate professional development opportunities result in part from the generic nature of the APST. Professional training must align to the APST,⁷⁰ but it does not have to cover all seven *Education Standards* and underlying focus areas.⁷¹ Therefore, teachers may not be accessing professional development focused on increasing their capability to teach students with disability.⁷²

Teachers can also find it difficult to access and participate in the high-quality professional learning they need. Teachers may need to negotiate what they can access at the school level, and this may be subject to budgetary constraints.⁷³ The impediments are greater for teachers in regional areas because of the cost of travel and accommodation and the need to arrange classroom relief.⁷⁴

At Public hearing 7, we heard evidence about the need for greater support and training for teachers to develop the skills and expertise to teach students with disability, particularly students with cognitive impairment or intellectual disability.⁷⁵ Past reports and inquiries have also recognised this need.⁷⁶ There is a strong argument for enhancing the scope and quality of in-service professional development for teachers in this area.

State and territory educational authorities are best placed to address these issues in their jurisdiction. Some jurisdictions are already developing and funding specific professional development. For example:

- As part of their Student Behaviour Strategy, the New South Wales Department of Education is developing a suite of foundational and specialist professional learning, tools and resources on behaviour support and management for the government school workforce.⁷⁷
- Western Australia has developed postgraduate qualifications in positive behaviour support and complex communication needs.⁷⁸
- Victoria has funded two postgraduate courses – a Master of Inclusive Education program (75 places)⁷⁹ and a Graduate Certificate in Education (Learning Difficulties) program (75 places).⁸⁰ The courses help teachers understand different types of learning difficulties and the interactions between them; and strengthen knowledge and skills in responding to behaviours of concern.
- The Victorian Government also offers a Diploma in Auslan and an Advanced Diploma in Interpreting (Auslan) through its Free TAFE program.⁸¹

Strategies such as these are an excellent start. However, more is needed beyond a voluntary system for ad hoc professional development. We agree state and territory educational authorities should:

- create professional development strategies that incorporate an inclusive education capability framework and associated disability knowledge, skills and attitudes
- curate and publish on their websites lists of professional development units containing compulsory and optional programs

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- use a mix of online self-guided learning and face-to-face sessions to develop programs of study. These programs should be co-designed and co-produced with education professionals and people with lived expertise, with the latter having a prominent role in delivery.
 - require all school teaching staff to complete programs covering legal obligations under the *DDA*, *Education Standards* and relevant state and territory laws; and knowledge, skills and attitudes established in an inclusive education capability framework
 - deliver optional modules of professional development that cover topics such as:
 - knowledge about different types of disabilities and their impacts on learning
 - differentiating instruction for diverse learners and engaging students with complex learning needs
 - de-escalation using positive behaviour management
 - consent and respectful relationships education
 - effective communication strategies and use of assistive technologies, including for students who are deaf or hard of hearing or have vision impairment
 - consultation and communication with parents/carers
 - delivering culturally safe and responsive adjustments for First Nations students with disability and students from culturally and linguistically diverse backgrounds
 - working in multidisciplinary teams, including collaboration with National Disability Insurance Agency (NDIA) planners.

Educating principals

It is important to build the knowledge and skills of principals to lead inclusive cultures.

The 2017 New South Wales Ombudsman's report into behaviour management in schools recommended that all principals be required to complete training on their legal obligations.⁸² We support that recommendation. Leadership programs for principals and other school leadership positions should address the skills, knowledge and values necessary to develop, lead and champion inclusive cultures.

School leaders, particularly school principals, play a significant role in creating conditions for inclusive education.⁸³

A strong message we have heard is that, when principals and senior leaders were not supportive of including students with disability, this shaped the culture of an entire school and the experience of students with disability.⁸⁴ When school principals were more welcoming and proactive, parents felt more confident their child would be safe.⁸⁵

Witnesses highlighted the importance of school leadership. They noted the value of school principals adopting a ‘moral imperative’ towards inclusive change.⁸⁶ They also highlighted the influence of principals and teachers in making students with disability feel welcome to enrol in the school and supported if they require adjustments.⁸⁷

At Public hearing 7, principals discussed how they addressed resistance from staff to transitioning towards inclusive education. Ms Judith Fenoglio, Principal of Ingham State High School, said:

as a leadership, we addressed staff concerns about their professional knowledge and application of inclusive practices, associated legislation and policy through a whole school professional learning plan.⁸⁸

Ms Loren Swancutt, Acting Regional Head of Special Education Services (Inclusion), Queensland Department of Education, said:

genuine inclusive education isn’t achieved overnight by closing a segregated class and having those students turn up into a regular class the next day. It’s actually far more involved than that.⁸⁹

She said that in her role and leadership work:

[I spend] a considerable amount of time analysing our data and understanding what our current position was, and envisioning what we wanted it to be and very systematically planning and mapping out how we would bridge the gap between the two and make sure that we bring everybody along with us in a manner that would ensure that it would be successful, you know, not for one day, but for years to come.⁹⁰

Principals spoke to us about the importance of having high expectations of students with disability and the positive impact this can have on outcomes for students with disability.

Mr Grant Dale, Principal of Thuringowa State High School, said:

we’ve given students reasonable aspirations and high aspirations to reach ... and I’ve asked teachers to ... work hard to meet those high expectations as well ... we’ve definitely raised the bar.⁹¹

Disability expertise and skills shortages

Inclusive education requires all principals and teachers to understand disability rights and strategies for teaching diverse learners. However, it is also critical that schools have access to people with specific disability expertise. For example, people with disability should be part of their workforce.

Skills shortages

In 2022, the Education Ministers Meeting committed to tackling teaching workforce shortages. To that end, they undertook consultations on improving teacher supply and retention. In December 2022, the ministers released the National Teacher Workforce Action Plan.⁹²

The plan identifies five priority areas:

- improving teacher supply
- strengthening ITE
- keeping the teachers we have
- elevating the profession
- better understanding future teacher workforce needs.

The plan also includes 27 key actions to address each of the priority areas. Among these were actions to strengthen ITE and attract and keep First Nations teachers and people prepared to teach First Nations people in culturally safe ways. However, the plan did not contain key actions to address the needs of students with disability. Therefore, we recommend that the Education Ministers Meeting expand the action plan to include key actions that address disability.

Lead practitioners in inclusive teaching and behavioural support

According to the APST:

[Lead teachers] are recognised and respected by colleagues, parents/carers and the community as exemplary teachers. They have demonstrated consistent and innovative teaching practice over time. Inside and outside the school they initiate and lead activities that focus on improving educational opportunities for all students. They establish inclusive learning environments that meet the needs of students from different linguistic, cultural, religious and socioeconomic backgrounds.⁹³

The Tasmanian Ministerial Taskforce report on improved support for students with disability recognised the need to develop teacher skills so they can modify the content they teach, the strategies they use and how they assess and report on learning for people with disability. Teachers need ongoing professional learning and in-school support to develop these skills.⁹⁴

Some states and territories are already investing in specialist roles to provide this in-school support. For example, New South Wales has been increasing recruitment of behaviour specialists (from 70 to 200), and the number of leadership positions and inclusive education co-ordinators. These staff will support positive behavioural management and inclusion at schools across the state.⁹⁵ South Australia has begun upskilling teachers under the Autism Lead Teachers program. These teachers can assist primary schools to understand the adjustment needs of students with autism and support improvements in practice in their classroom.⁹⁶

We recommend that all states and territories employ behavioural specialists, lead inclusive education teachers and interpreters. These staff should be shared between groups of schools and across school sectors to build workforce capability in inclusive practices. These roles should not be a substitute for the responsibilities of classroom teachers. The specialist staff should offer guidance and support to build confidence and capability in planning and adjusting classroom teaching practices.

These specialist roles would assist in implementing school-wide behavioural management strategies and support classroom teachers in modifying their teaching, especially for students with learning difficulties, complex communication needs and/or challenging behaviours. They should help classroom teachers to understand triggers for individual student behaviour and develop student skills in self-monitoring and self-regulation.

Attracting people with disability into education careers

State and territory governments should also set targets for the employment of people with disability in inclusive education units, other policy and administration roles and inside government schools. We would also encourage Catholic education commissions and independent schools to set employment targets for people with disability within their schools.

To improve the experience of working in school education for people with disability, state and territory governments should publish guidance on making reasonable adjustments for employees. They should also establish mentoring and peer networks, including networks for aspiring leaders and people working in deaf education.

State and territory education departments should track and publicly report the number and levels of people with disability:

- employed within government policy and administration roles
- employed or engaged in the full range of principal, teaching, allied health and specialist roles.

Schools and government education departments should be appealing places to work for people with disability. This would help to attract talent to education professions and bring diverse perspectives on how best to create environments for inclusive education. Increased representation of people with disability in teaching and leadership roles would also give students with disability role models and could contribute to broader attitudinal change.

Deaf education: Auslan interpreters and teachers of the deaf

Failures in education was a strong theme in evidence relating to the deaf community. Many deaf students leave school with poor educational outcomes and experience isolation at school.⁹⁷ There is no consistent national approach to educating deaf children.⁹⁸ The level of support is varied and inconsistent across states, which results in deaf children leaving schools with 'very different skill sets and education and levels of education they have received'.⁹⁹ Many parents report having to advocate and lobby for their children to have access to an interpreter within an educational setting.¹⁰⁰

An issue facing many deaf students is the lack of development in foundational language skills during early years before starting school.¹⁰¹ Language deprivation is linked to poor educational outcomes, mental health issues, isolation and loneliness, and greater challenges engaging with the community.¹⁰² It also increases the risk of a deaf person being exposed to violence, abuse,

neglect and exploitation.¹⁰³ Language allows someone to understand the difference between right and wrong. When a person has language, they can have conversations about ‘what’s okay and how you should be treated and how you should not be treated’.¹⁰⁴ An absence of language means a person might be more willing to accept certain behaviours or treatment as normal.¹⁰⁵

Language development underpins cognitive, social and literacy development. It is critical deaf children acquire language skills early in life, before they start school.¹⁰⁶ Deaf people experience language deprivation because preschool language supports focus on spoken English and do not support Auslan and sign bilingualism.¹⁰⁷ However, schools have a critical role in helping students acquire language skills. When school workforces and systems are not appropriately skilled for the task, it has severe repercussions on the language development of deaf students.

In most states, there is no requirement for an educational interpreter to have a formal qualification as an interpreter or be accredited by the National Accreditation Authority for Translators and Interpreters.¹⁰⁸ This can mean interpreters lack the skills needed to deliver information in a clear and meaningful way at the most critical time in a child’s life.¹⁰⁹ Educational interpreters may not be trained to work with children and therefore lack the skills and experience to work effectively in a classroom setting.¹¹⁰ Mr Brett Casey, CEO of Deaf Connect, said the quality of the education that deaf children receive is contingent on their educational interpreter’s signing skill set.¹¹¹

Over-reliance on Auslan interpreters can also be a problem for students in early primary school. Students in early primary school are unlikely to have developed enough knowledge and skills to use interpreting services.¹¹² Auslan interpreters are better suited to students in later primary years as they transition to high school and have foundational language skills in place.¹¹³ We discuss the impact of limited qualified interpreters employed at schools due to an interpreting workforce shortage in Volume 6, *Enabling autonomy and access*, Chapter 1, ‘Accessible information and communications’.

At Public hearing 29, ‘The experience of violence against, and abuse, neglect and exploitation of people with disability from culturally and linguistically diverse communities’, Mr Casey said direct instruction or being taught in Auslan was a preferred method for educating deaf children.¹¹⁴ An education that is not mediated by an interpreter and that operates in a direct learning experience is best because otherwise:

[There is a risk of deaf students] becoming ‘bystanders’ or observers in the classroom rather than active learners. It has been noted that those deaf students who have experience of direct instruction (eg in a deaf school or small group setting) are often better able to make effective use of interpreters in a mainstream setting.¹¹⁵

Teachers of the deaf provide direct instruction to students in Auslan.¹¹⁶ This is a specialised role, requiring teachers to add postgraduate study to their foundational teaching qualification.¹¹⁷ Even so, there is presently no requirement for teachers of deaf students to be accredited interpreters or to have achieved a particular level of competence in Auslan.¹¹⁸

There is presently no single model or consistent national approach that lays out the best way to educate deaf children in Australia.¹¹⁹ State-based education systems are varied in modality and approach. As a result, deaf children leave school with very different levels of educational success.¹²⁰ Currently, approximately 83 per cent of deaf children attend mainstream schools. Those schools need to do better to ensure deaf students receive an inclusive and equal education.¹²¹

Other models for educating deaf students, such as Deaf or hybrid schools, also require ongoing support. Deaf people who identify as being culturally and linguistically diverse can attend Deaf schools. In these schools, sign language is the primary form of communication. Deaf schools also provide access to Deaf culture and values. They can be very successful places for deaf children to be educated. However, they are too often used as a last resort option for deaf children who have not succeeded with other educational approaches and models.¹²² The CEO of Deaf Australia, Ms Jen Blyth, said that the closure of some Deaf schools has meant deaf children are being encouraged to attend mainstream schools. This limits their interactions and communication with deaf peers.¹²³

Witnesses at Public hearing 29 also spoke of ‘hybrid options’, or schools that incorporate strategies to deliver education in both Auslan and English.¹²⁴ Usually, deaf students are taught in Auslan, as the Languages Other than English (LOTE) subject offered to all students in the school. There are very few schools like this around the country, but they have demonstrated a strong commitment to being very deaf-friendly environments.¹²⁵

A variety of approaches are taken to deaf education and the varied needs of students and local schools. A key way to improve deaf education across school systems would be to use the specialist support of lead practitioners in deaf education. State and territory governments should employ lead practitioners who are experienced teachers of the deaf to support the education of deaf students. Lead practitioners would be shared between groups of schools to build workforce capability and support inclusive practices for deaf students. These roles would not be a substitute for the responsibilities of classroom teachers and instead support the spread of best practice.

Recommendation 7.8 Workforce capabilities, expertise and development

Knowledge and skills

- a. The Education Ministers Meeting should commission the Australian Institute for Teaching and School Leadership (AITSL) to review and amend the Australian Professional Standards for Teachers (APST) to embed a human rights-based approach to inclusive education for students with disability across teachers’ careers.
- b. To provide guidance for teachers on the revised APST, the Education Ministers Meeting should instruct AITSL to develop an inclusive education capability framework, setting out the knowledge, skills and attitudes to deliver inclusive education.

Continuing professional development

- c. State and territory educational authorities should create and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of deaf children.

Disability expertise and skills shortages

- d. The Education Ministers Meeting should expand the National Teacher Workforce Action Plan to identify actions that can strengthen initial teacher education in inclusive education and attract and retain people with disability and others with expertise in delivering inclusive education.
- e. State and territory governments should increase access to expertise in inclusive education in government schools by:
 - employing lead practitioners specialising in inclusive teaching, behavioural support and deaf education to work across schools in a regional catchment to initiate and lead activities that focus on improving educational opportunities for students with disability, including by establishing inclusive learning environments that meet the needs of students
 - employing skilled and qualified Auslan interpreters
 - setting employment targets for people with disability in government schools and working with all school sectors in their jurisdiction to increase disability employment.

4.3. Data, evidence and building best practice

Importance of data

Article 31 of the *CRPD* requires that ‘States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention’.¹²⁶ The *CRPD* is the only human rights treaty to require the collection of statistics and other data.

The Australian Government and state and territory governments do not routinely collect and report publicly on data that would contribute to a better understanding of violence, abuse and neglect experienced by students with disability in education.¹²⁷

The Committee on the Rights of Persons with Disabilities (CRPD Committee) has recommended that the Australian Government collect or expand the collection of data on:

- the number of students with disability who do not qualify for an adjustment and who are not enrolled in mainstream schools
- rates at which students with disability are suspended or excluded

- educational attainments of students with disability
- use of restrictive practices in schools
- the incidence of bullying.¹²⁸

The 2020 review of the *Education Standards* explained that obtaining disaggregated data is vital because it allows for a full understanding of the situation for students with disability in Australia.¹²⁹ Data is essential to enable educational authorities and oversight bodies to:

- determine whether schools are following policies¹³⁰
- create funding models¹³¹
- identify students who may be falling behind
- develop appropriate policies.¹³²

Inadequate data collection and analysis in all school sectors constrains system accountability and monitoring.

Problems with disability data

In this section, we identify two problems with data about students with disability:

- inadequate data
- lack of use of data for monitoring and reporting of student outcomes and inclusive education.

Inadequate data

The Nationally Consistent Collection of Data on School Students with Disability (NCCD) is improving transparency and reliability of data about the number of school students with disability receiving an adjustment and their level of adjustment. However, governments have limited information to enable them to monitor:

- the types and costs of adjustments and supports used in schools
- participation in standardised testing such as the National Assessment Program – Literacy and Numeracy (NAPLAN) and year 12 assessments
- use of restrictive practices and exclusionary discipline
- home schooling rates
- educational attainment and progression during and beyond school.

Little data is available on the extent of violence, abuse and neglect of people with disability across a range of settings, including schools. This critical data gap makes it difficult to better identify and support students who are at risk of or who have experienced violence, abuse or neglect.¹³³

There is also limited data available on skills, qualifications and the mix of the workforce supporting students with disability. For example, there is limited understanding of the ITE pipeline and workforce characteristics data.¹³⁴ This data is an important 'enabler' to support improvement of experiences and outcomes for students with disability.

The Royal Commission's public hearings drew attention to the paucity of available data. The Commissioners' *Report of Public hearing 7: Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts (Report of Public hearing 7)*, made a general finding that:

The New South Wales and Queensland state school systems do not routinely record and use data and information about incidents of denial or discouragement of enrolment, bullying, exclusionary discipline and restrictive practices experienced by students with disability.¹³⁵

Counsel Assisting's submissions following Public hearing 24, 'The experience of children and young people with disability in different education settings', identified the need for a system to collect, monitor and analyse data about complaints that concern students with disability.¹³⁶ Counsel Assisting submitted it is concerning that South Australia and Western Australia do not have reliable information on a number of matters, including:¹³⁷

- the implementation and funding of practices for inclusive education
- the extent to which parents and students with disability are consulted or included in the development of inclusive education policies
- educational outcomes for students with disability
- whether inclusive practices advance the human rights of children with disability, particularly communication, independence and decision making
- whether practices for inclusive education are being embedded more frequently.

Following Public hearing 7, Counsel Assisting suggested a 'possible future recommendation' about the collection and publication of data about students with disability.¹³⁸ In response, the New South Wales Government told the Royal Commission it 'does not currently collect and centrally hold the data referred to in the possible future recommendation'.¹³⁹ The New South Wales Government also commented 'this proposal raises questions of whether a national project is warranted with agreed definitions and methodologies to ensure public reporting is not misleading or confusing'.¹⁴⁰

In its Review of the National School Reform Agreement, the Productivity Commission found that outcomes for students with disability could not be measured due to lack of data. It recommended governments make this a data development priority, including by:¹⁴¹

- considering opportunities to use the NDIS outcomes framework data and options for data linkage
- asking students to state whether they identify as having a disability as part of NAPLAN and National Assessment Program sample assessments.

Lack of monitoring and reporting

The Australian Government and state and territory governments do not routinely collect and report publicly on data that would help them better understand the inclusiveness of Australian schools and educational outcomes for students with disability.¹⁴² There is also little comprehensive and consistent use of data to enable governments to monitor progress in addressing barriers to access, participation, and achieving learning and development goals.

To the extent that data is collected, there is little differentiation by types and levels of student need.¹⁴³ We recognise the challenge of balancing student privacy with the need to collect reliable and informative data. Even so, the lack of data about student experiences and outcomes makes it difficult to develop policy and build the right capabilities to meet different student needs.

Previous reviews suggest:

- there are limited nationally consistent principles and practices on collection and public reporting of data for students with disability¹⁴⁴
- there is limited collection and publication of data about the education of students with disability¹⁴⁵
- there is a lack of monitoring and reporting on learning outcomes for students with disabilities and the different factors that influence those outcomes.¹⁴⁶

Improving students with disability data

Minimum data requirements

In our view, the Education Ministers Meeting should commission a national project to develop minimum data requirements for students with disability, building on the NCCD. This would include data definitions and data collection methods to enable consistent and comparable reporting on educational experiences and outcomes for students with disability.

In Volume 12, *Beyond the Royal Commission*, we discuss the problems with having multiple different definitions to identify disability across services and in population surveys. This reduces our ability to understand and respond to the experiences of people with disability. The data collected is difficult to interpret and compare. It affects how we monitor progress towards social inclusion for people with disability. We recommend the Australian Government and state and territory governments address the lack of consistent disability data by developing a nationally consistent approach to collecting disability information. This should include agreeing to a core set of questions to identify disability status, to be used across all mainstream services and population surveys (Recommendation 12.5). If governments accept this recommendation, the national project to develop minimum data requirements for students with disability should be consistent with it.

State and territory governments should enhance data systems and processes to enable all schools to submit the minimum data requirements in a prescribed format. State and territory school registration authorities should require schools in their jurisdictions to meet minimum data requirements as part of their registration so they can monitor and enforce compliance. The minimum required data and information we recommend that should be collected by state and territory departments is shown in the Appendix.

The three broad categories of data and information to be collected are:

- student experiences data including:
 - suspension, exclusion and expulsion rate of students with disability
 - incidents and rate of the use of restrictive practices
 - number of students with disability enrolled in mainstream classes in mainstream schools, special/segregated units or classes in mainstream schools, special/segregated schools, distance learning and home schooling
 - reports on violence against or abuse of students with disability, including bullying and harassment
- data on school outcomes for students with disability including:
 - full-time and part-time enrolment and attendance rates of students with disability
 - proportion of deaf students with access to bilingual learning that includes Auslan
 - year 10 and year 12 retention rates and learning outcomes
 - proportion of young people with disability who have completed year 12 and have a high school certificate and/or an Australian Tertiary Admission Rank score
 - proportion of young people with disability transitioning to further education and/or employment (including open employment and employment in an Australian Disability Enterprise)
- data on progress in addressing barriers to practices for inclusive education including:
 - number and proportion of complaints resolved at a school level
 - number and type of regulatory actions taken in response to school non-compliance with inclusive education registration requirements
 - number and proportion of teaching staff who have completed a minimum number of units with a focus on their legal obligation and practices for inclusive education as part of ITE or professional development.

Student experiences and school outcomes data should be disaggregated to understand the demographics of students with disability including:

- NCCD type of disability
- level of adjustments required
- gender
- age
- stage of schooling
- First Nations status
- culturally and linguistically diverse background status
- LGBTIQ+ status.

The minimum data requirements include the number and proportion of students with disability enrolled in distance learning and home schooling. The method for reporting required data for students with disability enrolled in distance learning should be the same as for students enrolled in schools. However, student experience and outcome required data is unlikely to consistently capture students enrolled in home schooling.

To improve understanding of students with disability who are being home schooled and their experiences and outcomes, we recommend governments require parents to submit further information about all students being home schooled. Parents should be required to submit standardised information about their child's education, social and behavioural progress, and support needs. This would ensure adequate data is captured for all students with disability, and that data is consistent with the NCCD. Governments should enforce this requirement through state and territory school registration authorities. This would also improve accountability and oversight of students with disability in home schooling.

Monitoring and public reporting

State and territory educational authorities should publicly report data on the educational experiences and outcomes for students with disability annually, for their jurisdiction as well as nationally.

To support national reporting, state and territory departments should report annually to the Education Ministers Meeting. This would:

- ensure joint national and state accountability for improving experiences and outcomes of students with disability
- enable the monitoring of progress in tackling the issues the Royal Commission has identified.

We also encourage education systems and schools to do more than just meet the minimum annual public data reporting requirements. They should consistently track the experience and outcomes for students with disability within the school year. This provides the greatest opportunity for education systems to improve outcomes for individual students with disability. We recognise some education bodies, such as Catholic Education South Australia and Catholic Education Northern Territory,¹⁴⁷ have data management systems and processes that support analysis and system oversight for all students with disability in their schools.

In addition to reporting on the required data described in the Appendix, the Education Ministers Meeting should publish school-level NCCD student numbers (by adjustment level) on the My School website, having due regard for privacy issues. This would be consistent with reporting other Schooling Resource Standard inputs. The National School Resourcing Board recommended this in its 2019 *Review of the loading for students with disability*.¹⁴⁸ The education ministers had already agreed in 2012 that NCCD reported data would be made available on the My School website from 2016, subject to confirmation of data quality. The National School Resourcing Board considered:

it is timely to enhance transparency by publishing NCCD data at the school level and making it publicly available on My School. Transparency measures drive compliance behaviour and ongoing improvement through public scrutiny.¹⁴⁹

The Education Ministers Meeting should further improve data insights by:

- commissioning the Australian Curriculum Assessment and Reporting Authority to work with states and territories on data collection requirements. This would enable reporting on NAPLAN results for students with disability. This is necessary given the potential privacy concerns of small cohorts.
- including broader school workforce characteristics and shortages information in annual state and territory government reporting to the Education Ministers Meeting. This should include information from AITSL and Jobs and Skills Australia on workforce demographics, qualifications and shortages, and factors influencing the supply of the teaching workforce.¹⁵⁰

Inclusive education research

Australia does not have a national repository of research, incorporating international literature, into how to deliver inclusive education. There are also limited translational supports for the application of research findings to assist school workforces to improve their practices.

Previous reviews and research suggest the following:

- There is a lack of applied research evaluating interventions to support students with a disability and diverse learning needs,¹⁵¹ such as research and resulting practice guides that have been published on students with autism.¹⁵² Research is limited on effective differentiated teaching for students with other learning difficulties.

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- Educators are not consistently encouraged to ensure that their teaching strategies are grounded in evidence-based practices.¹⁵³
 - Educators find it difficult to source high-quality information because there is no central repository of evidence-based practices and limited guidance on how to acquit legal obligations.¹⁵⁴
 - There is a research–practice gap limiting the access of students with disability to evidence-based, best practice programs.¹⁵⁵ While there is research on best practice approaches to teaching students with disabilities, these practices have not yet become widespread in their use in Australian schools.¹⁵⁶ Closing the gap between research and classroom practice requires support for schools, teachers and principals.¹⁵⁷
 - Effective professional collaboration networks are important, including for inclusive education, to give teachers access to real-time support and guidance.¹⁵⁸ For example, South Australia has school networks for students with complex communication needs.¹⁵⁹
 - Support from other teachers is a powerful and necessary resource to empower teachers to problem solve instructional challenges for students with disability.¹⁶⁰

The Australian Education Research Organisation (AERO) is a national independent education research body established to give teaching professionals the most up-to-date and relevant education research on effective teaching practices.¹⁶¹ AERO is jointly funded by the Australian Government and state and territory governments.

We recommend the Education Ministers Meeting commission AERO to work with teachers, schools, education systems, people with disability and academics to develop a research program about practices for inclusive education. AERO should also support schools to translate this research into teaching and school practices.

Our recommendations align with AERO’s vision for Australia to achieve excellence and equity in educational outcomes for all children and young people through effective use of evidence. It aims to:¹⁶²

- generate high-quality evidence that is both relevant and accessible
- encourage adoption and effective implementation of evidence-based practices and policies.

State and territory governments should partner with AERO to:

- conduct, commission and coordinate high-quality, practical research into inclusive education. We heard support for an Australian federal research organisation that funds and translates the latest research evidence for schools in how to deliver inclusion and respond to challenging behaviour.¹⁶³
- curate existing evidence of inclusive education and produce high-quality synthesis reports, systematic reviews and guidelines in areas of inclusive education.

To support AERO to become a research centre of excellence in inclusive education, it should:

- include inclusive education as a standalone priority area in its next annual Research Agenda. This would align with one of AERO's seven priority areas for 2023 on addressing educational disadvantage, including for students with disability.¹⁶⁴
- be given targeted funding to establish an inclusive education unit and conduct and commission leading researchers to examine inclusive education.

Recommendation 7.9 Data, evidence and building best practice

Data development and collection

- a. The Education Ministers Meeting should:
 - commission a national project to develop data definitions and data collection methods to enable consistent and comparable reporting on educational experiences and outcomes of students with disability
 - ensure data and information (as detailed at the Appendix and disaggregated by Nationally Consistent Collection of Data on School Students with Disability (NCCD) category, gender, age, stage of schooling, First Nations students, students from culturally and linguistically diverse backgrounds and LGBTIQ+ status) is collected by state and territory departments on:
 - student experiences
 - school outcomes for students with disability
 - progress in addressing barriers to inclusive education practices.
- b. State and territory governments should enhance data systems and processes to enable all schools to submit at least the minimum data required in the prescribed format.
- c. State and territory school registration authorities should:
 - embed data requirements set by the Education Ministers Meeting in registration requirements for all schools in their jurisdiction
 - require parents registering children with disability for home schooling with the state or territory school regulator to submit standardised information about their child's educational, social and behavioural progress and support needs to improve understanding of students with disability who are being home schooled and their outcomes.

Monitoring and reporting

- d. State and territory education departments should annually report jurisdictional data to the Education Ministers Meeting on minimum data requirements for students with disability. Based on the jurisdictional data, the Education Ministers Meeting should monitor and publicly report annually on:
 - the educational experiences of students with disability
 - outcomes of students with disability
 - progress in addressing barriers to inclusive education practices.
- e. To improve reporting of disability data, the Education Ministers Meeting should:
 - publish school-level NCCD student numbers (by adjustment level) on the My School website, having due regard for privacy issues
 - commission the Australian Curriculum Assessment and Reporting Authority to work with states and territories on data collection requirements to enable reporting on National Assessment Program – Literacy and Numeracy results for students with disability
 - include broader school workforce characteristics and information about workforce shortages in state and territory and Australian Government annual inclusive education reporting.

Improving the evidence base

- f. To improve the evidence base for best practice for inclusive education, the Education Ministers Meeting should commission the Australian Education Research Organisation to:
 - develop a research program about inclusive education practices, working with teachers, schools, education systems and people with disability
 - conduct and coordinate inclusive education research
 - support schools to translate research into school practices.

4.4. Complaints management

Barriers to making complaints

In evidence from Public hearing 2, 'Inclusive education in Queensland – preliminary inquiry', Public hearing 7 and Public hearing 24, witnesses said they faced barriers when raising concerns about their child's experience in educational settings. Unless parents can safely and quickly raise complaints and concerns and have these resolved, there is a risk that violence, abuse and neglect will continue.

Following Public hearing 24, Counsel Assisting summarised the barriers to raising and resolving complaints as:¹⁶⁵

- lack of information about what concerns and complaints could be raised and to whom
- limited or no options for students to make complaints, so relying on parents was the only option
- fear of retribution or jeopardising adjustments or enrolment
- damage to the relationship and being perceived as a ‘troublemaker’
- lack of information about how complaints would be addressed and the delays in resolution
- lack of information about outcomes
- lack of support to make complaints or resistance to advocates
- lack of transparency in the processes used by education providers and lack of independence.

In section 3.8, ‘Communicating with parents and students’, we identified concerns about the challenges students with disability and their families face in communicating with educators and developing positive and collaborative relationships.¹⁶⁶ Schools often fail to recognise the lived expertise of people with disability and their families. These failures create the situations that give rise to parental complaints and make those complaints more difficult to resolve.

Strong and collaborative relationships between families and schools can reduce the need for complaints. However, it is important that, when problems do arise, processes for resolution are clear, fair, efficient and independent. Unwieldy and ineffective complaint handling processes intensify the difficulties faced by students with disability and their families.

Inaccessible, slow and ineffective processes

Students with disability and their families can face significant barriers when challenging school decisions or making complaints to education departments or authorities. When challenges or complaints, particularly those concerning violence against or abuse and neglect of students, are not resolved in a timely and satisfactory manner, there is a risk that the student will continue to be exposed to harmful behaviour or practices.

Witnesses told us that parents are often discouraged from making complaints because the process is time-consuming, exhausting and inaccessible.¹⁶⁷ ‘Julie’, a parent of a child with disability, told us that in her experience it was reasonably common to ‘start to think you’re wrong’¹⁶⁸ when you have concerns about the supports being provided to your child. In her experience, parents do not know they are entitled to escalate or challenge a decision. Julie said she was not told about the *Education Standards* but read them so she could advocate for her child.¹⁶⁹ Lack of information can mean that parents accept their situation and do not raise a complaint that might otherwise be appropriate.

Submissions also told us that complaint and investigative processes are not adapted to the needs of students with disability and are not trauma-informed.¹⁷⁰ For example, culturally and linguistically diverse students with disability and their families may be unaware of the supports they can access. If they have limited English, school staff may not engage an interpreter.¹⁷¹ One person told us:

[W]e never had that support during our formative years, we did not even understand we had rights and that we could complain. It was never in the format that was easy for us and nor for any Deafblind person'.¹⁷²

One submission highlighted the significant emotional investment required for families to hold schools to account when they are already managing the trauma of their child being abused.¹⁷³

Fear of retribution

Parents of students with disability can be reluctant to raise concerns about the student's educational experience because they fear negative consequences, including putting the student's enrolment at risk.¹⁷⁴

At Public hearing 2, Dr Lisa Bridle, Senior Consultant at Community Resource Unit Ltd, said that families who make a complaint 'may have experienced a short-term win but then experience a frosty relationship with the school, and a return to the same practices as before'.¹⁷⁵ Families may fear making a complaint because they worry about the potential impact on the long-term relationship with the school or fear retribution.¹⁷⁶ These fears arise from the inherent power imbalance between students, parents and the educator or school.¹⁷⁷

Families may lack the financial and emotional resources to pursue complaints or have limited access to advocates for support.¹⁷⁸ If a family of a student with disability does complain, educational authorities may not respond promptly or appropriately. We heard that investigation of complaints can be inadequate or slow and lead to minimal outcomes or resolution.¹⁷⁹

The challenges of pursuing a complaint are amplified when a student with disability, parent or supporter experiences intersectional disadvantage.¹⁸⁰ For example, culturally and linguistically diverse students with disability and their families may not be provided with an interpreter to assist them. Also, where supports are available, they may not be aware of them.¹⁸¹

Research commissioned by the Royal Commission into complaint mechanisms also revealed that education settings have institutional cultures that create barriers to complaint making and expectations of retribution. This places children and parents in difficult situations where they may be 'compelled to either accept situations of violence and mistreatment or, alternatively, complain and face loss of educational opportunity and/or further violence'.¹⁸²

Lack of independence

In Public hearings 2, 7 and 24, we heard about the (real or perceived) absence of an independent mechanism in schools and education departments to quickly and effectively review and resolve parents' concerns. When a parent does complain, they are sometimes directed to

try to resolve the complaint with the very classroom teacher who is the subject of the complaint. Unsurprisingly, that process can be damaging to the relationship between the parent and the teacher.¹⁸³

At Public hearing 2, AAC said that, in her view, independent recourse is limited. She noted that parents need to ‘exhaust every option’ before complaining to regional offices of the department. In some cases, regional offices direct a complaint back to the school.

At Public hearing 7, the case study of ‘Sam’ highlighted the difficulties of parents and supporters appealing exclusion decisions. Sam’s mother, ‘Amy’, said the appeal process made her feel like she was ‘stuck in a loop’ and unable to obtain independent review.¹⁸⁴ She stated:

You’re reaching out for help, and begging someone to help and look at it and support, and you get referred back to the situation that you’re in already. So we had already been through those processes, we had already had those discussions, we had hit a brick wall. We were looking for independent guidance and support.¹⁸⁵

Amy said, ‘parents need somebody who is independent who can investigate what is going on’.¹⁸⁶ At Public hearing 24, Ms Mary Sayers, CEO of Children and Young People with Disability Australia, said that the ‘absolute lack of independent avenues for review and complaint resolution’ was a ‘significant source of concern’.¹⁸⁷

At Public hearing 7, Mr Frank Potter, Executive Director, School Performance at the NSW Department of Education, accepted that, after the department refuses an appeal, the only option for parents would be to turn to external bodies such as the Australian Human Rights Commission (AHRC), the Federal Court or the Ombudsman.¹⁸⁸

Counsel Assisting pointed out that pursuing most of these options is time consuming and expensive. Also, as is common with litigation, it rarely results in ‘win-win’ outcomes for the student, families and school. Effective and swift complaints handling processes that focus on achieving solutions are preferable to formal complaint mechanisms or commencing litigation.¹⁸⁹

Examples of complaints systems

In Public hearings 2 and 24, we heard evidence from Queensland, South Australia and Western Australia about school complaint processes. That evidence demonstrated the absence of independent complaint mechanisms. We also commissioned research that mapped out education complaint mechanisms across all states and territories, and we have considered this information.¹⁹⁰

South Australia

In Public hearing 24, Dr Caroline Croser-Barlow, Executive Director, Support and Inclusion, Department for Education South Australia, told us that, where there is a disagreement between the family and the school about the kind of adjustment that is recommended or sought by the school, it is suggested that families should ‘deal with things at a local level, if possible’, from teacher to principal.¹⁹¹

If the matter is not resolved, the parent is then directed to the Customer Information Unit within the Department for Education.¹⁹² That unit cannot impose a decision but can make a recommendation.¹⁹³ The Customer Information Unit recommendation can be made to the Executive Director of Partnerships, Schools and Preschools, and that person (who is the line manager of principals) can impose a decision.

Western Australia

Evidence about the complaints process in Western Australian government schools was also obtained in Public hearing 24. Mr Stuart Percival, Director, Disability Inclusion, Department of Education Western Australia, told us that, where a dispute arises about individual adjustments, the first recourse for a family is the school itself.¹⁹⁴ If the matter is not resolved locally, it can be progressed to the region.¹⁹⁵ The parent would separately be able to use the complaints hotline or Parent Liaison Office.¹⁹⁶

The Parent Liaison Office provides access and assistance to parents, carers and community members regarding complex complaint processes.¹⁹⁷ Under the Complaints Management Framework, a person making a complaint has the option to request a review of the matter if they are dissatisfied with the outcome.¹⁹⁸ However, these processes do not provide an option for the independent resolution of the issue identified.¹⁹⁹

In his written statement, Mr Percival advised that the department is expanding 'the suite of resources and services available through the Parent Liaison Office to build a culture of support around complaint management'. The resources include 'a list of government and not for profit service providers' from which families can seek additional support.²⁰⁰

Queensland

In Public hearing 2, Ms Deborah Dunstone, Assistant Director-General of Disability and Inclusion at the Queensland Department of Education, stated that a centralised complaint management process had been established following recommendations made in the *Review of education for students with disability in Queensland state schools*.²⁰¹

Ms Dunstone told the Royal Commission that families are initially directed to try and resolve the complaint with the classroom teacher before escalating the complaint within the school. Complaints that can't be resolved by the principal can be referred to the regional office.²⁰²

Each of the principals who provided evidence at Public hearing 2 provided information about complaint processes in their school. Ms Judith Fenoglio, Principal of Ingham State High School, stated that it is 'a rare instance' when complaints cannot be resolved within her school. However, there have been occasions where the regional office has been contacted. In those cases, she works with staff in the regional office to resolve the issue. Mr Grant Dale, Principal of Thuringowa State High School, told the Royal Commission that complaints are 'dealt with by the most appropriate person in the school'.²⁰³

What is apparent across these three jurisdictions is that the complaint process can be time consuming, expensive and emotionally burdensome for students with disability and their families. This may deter them from making complaints.²⁰⁴ Complainants lack support by ‘independent third parties’ to help navigate the system. Too often, complaint processes do not produce win-win outcomes for the student, parent and school.²⁰⁵

Improving complaints management

Inclusive and student-centred

Following Public hearing 24, Counsel Assisting submitted that complaint management policies should have the objective of ‘achieving effective responses and resolution early’:

[This requires] principals or school leaders to have the training and skill to respond to concerns and complaints in a manner that does not escalate or result in an adversarial outcome. This requires a strong investment in a partnership-based, relationship-oriented model of service delivery by education providers that is:

- centred on meeting the rights of the student with disability;
- inclusive of parents/carers of students with disability; and
- strongly focused on building trust and communication between schools and parents.²⁰⁶

Central to the concept is managing complaints in a way that students with disability and their families trust. In practice, this means addressing the needs of complainants with an open mind and without prejudice.²⁰⁷ The approach taken should be tailored to their individual circumstances and, wherever possible and reasonable, accommodate their needs and preferences.

Accessible

It is important that complaint management processes are accessible, with strong awareness of the pathways to initiate a complaint and the review of decisions or complaints.²⁰⁸

To help address this, past government reviews have recommended increasing the amount of user-friendly, plain language advice to students with disability and their parents/carers about their rights.²⁰⁹ For example:

- The 2020 review of the *Education Standards* recommended the review and expansion of information products explaining rights and responsibilities for students, parents, carers and education providers.²¹⁰
- The New South Wales Legislative Council Portfolio Committee recommended that ‘the NSW Department of Education reform its complaints policy so that plain English advice is provided to parents about the right to complain’.²¹¹

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- South Australia's Select Committee recommended easily accessible information for students and parents on the rights and avenues for resolution of issues and complaints.²¹²

While some improvements have been made following these reviews, the Australian Government and state and territory educational authorities should continue to improve the transparency and clarity of complaint management options and entitlements. Accessing this information should be as 'frictionless' as possible.

Complaint management policies should be communicated in external-facing material that is designed to be accessible to students and parents/carers. Students and parents/carers should be given clear information about the kind of issues they may wish to speak up about (for example, enrolment decisions or access to reasonable adjustments) and should be supported to access this information where required.

Efficient and safe

Previous reviews have noted that:

- educators reaching out 'proactively' can alleviate the power imbalance that is often perceived between educators and students and their parents/carers, making it difficult to raise concerns²¹³
- 'complaints should be handled in a way that is proportionate and appropriate to the matter being complained about using a clear and logical process'²¹⁴
- complaint management and alternative dispute resolution training should be provided to school leaders to help reduce the risk of complaints escalating.²¹⁵

Schools and education departments should prominently communicate that parents/carers have the right to speak up about any concerns or complaints they have about the education of their child with disability. Complaint management processes should seek to resolve complaints in a timely way. Policy and practice should make it clear that, if parents/carers raise concerns, this will not be seen as a hostile act and will not result in detriment to the student or family. Policies should anticipate that there will be various reasons why students and parents/carers may be unable to directly raise concerns with their school and provide avenues to address this. Where feasible, support or specialist expertise should be provided to act as a 'conduit' for concerns to be raised and resolved without further premature escalation.

Trauma-informed and culturally appropriate

Following Public hearing 7, Counsel Assisting proposed a 'possible future recommendation' that:

[Each state and territory education department, and non-government school body should] ensure that such policies set out a process by which a student, and/or their parents or guardians can raise complaints about bullying in a responsive, timely, transparent, trauma-informed, culturally sensitive manner underpinned by the goal of ensuring the safe, quality and inclusive education for students with disability.²¹⁶

Complaint processes should consider how a complainant's experience of traumatic events and culturally and linguistically diverse background may impact their interaction with complaint management procedures.²¹⁷ The Western Australian Commissioner for Children and Young People told us that the National Office for Child Safety's Complaint Handling Guide should be used as a benchmark.²¹⁸ The guide explains how to ensure processes are trauma-informed and respect diversity and cultural difference, including for children with disability.²¹⁹

Independent

Consistent with complaint handling best practice, when early and local resolution is not possible, parents/carers should have access to a 'second tier' of internal resolution and a 'third tier' of external resolution.²²⁰

For government education departments, the second tier will generally be a regional office or centralised complaint handling unit that operates arm's length from the school. For non-government schools, depending on whether they are part of a network of schools (for example, the Catholic system) or truly independent, the second tier may be a regional office, a centralised professional standards unit, or a board or management committee.

Past reports and recommendations have highlighted the importance of:

- providing greater support to families to understand and navigate complaints and appeal processes and access advocacy support²²¹
- being able to escalate complaints at arm's length from a school, and involving at least one independent person²²²
- having disability experts involved in the internal complaints process to support informed decision making²²³
- independently recording, reporting and analysing school-based complaints data to help identify systemic trends and service delivery improvements.²²⁴

The 2020 review of the *Education Standards* noted that:

Input to the Review often suggested the need for independent third parties or advocates to help families navigate the system or to resolve issues between students, families and education providers. It was suggested that this would support timely resolutions and mitigate the escalation of parents' concerns to formal complaint levels.²²⁵

There are examples of state or territory complaints management teams, information or supports that operate arm's length from schools. They provide:

- parents/carers with support to understand the complaint process or 'broker specialist advice in assisting with complex matters'²²⁶
- specialist arm's length complaint handling and dispute resolution resources, including sourcing of disability expertise²²⁷
- recording and tracking of complaints, improving analytical and reporting capabilities.²²⁸

However, these types of independent supports are not offered consistently in all jurisdictions.

We recommend that state and territory governments create or improve existing complaint management offices, which should operate at arm's length from schools to help resolve complaints. The complaints offices should operate impartially and be empowered to:

- provide students and parents with information about rights and options when managing complaints
- request information and conduct conciliations, connecting families with advocacy support and specialist disability expertise where needed
- initiate a formal investigation if a complaint is serious or otherwise indicates systemic issues
- support and assist the complainant in referring matters to the appropriate regulator or independent oversight body if a complaint cannot be effectively resolved
- work with schools to analyse complaints and regularly report on how education systems might improve to reduce the number of complaints.

In creating this new/expanded complaints office, state and territory policies should make it clear that the schools and education departments should strive for early and local resolution when it is possible and appropriate. Schools also need to clearly communicate with parents/carers when early and local resolution is not appropriate and, if so, why not (for example, meeting legislative requirements to investigate reportable conduct).

For government schools, Ombudsmen provide the third tier of external complaint resolution. All states and territories have Ombudsmen with jurisdiction to receive and investigate complaints about public sector agencies, including schools. Despite non-government schools receiving public funding, Ombudsmen do not have jurisdiction to receive and investigate complaints about them, except if the Ombudsman is the reportable conduct administrator and the complaint involves reportable conduct.

In Volume 11, *Independent oversight and complaint mechanisms*, we discuss the role of independent oversight bodies in handling complaints and in administering reportable conduct schemes. We recommend states and territories establish an independent complaint reporting, referral and support mechanism to receive reports of violence, abuse, neglect and exploitation of people with disability. We also recommend that such mechanisms should be located within an independent, preferably existing, organisation.

Complaints about non-government schools may be made to state and territory school registration bodies.

For example, in New South Wales, complaints about non-government schools can be made to the New South Wales Education Standards Authority (NESA), provided there is evidence that options for addressing the complaint at the school level have been pursued without resolution or there is a reason that this would not be appropriate.²²⁹ Complaints must show how the issue

relates to the requirements detailed in the NESA registration manuals. When it receives a complaint, NESA determines whether there is a line of inquiry for it to pursue in relation to the school's compliance with the requirements of the *Education Act 1990* (NSW) for registration.²³⁰

The South Australian Education Standards Board regulates schools as outlined in the *Education and Early Childhood Services (Registration and Standards) Act 2011* (SA).²³¹ Under section 30 of the Act, the Board can decide to pursue serious complaints if it concerns a breach of a condition of registration or failure to comply with a legal obligation under the *Education and Early Childhood Services (Registration and Standards) Act 2011* (SA).²³² This could include situations where the complaint relates to the school failing to provide 'adequate protection for the safety, health and welfare of students to whom it provides education services'.²³³

Western Australia, the Northern Territory and the Australian Capital Territory differ. In these jurisdictions, the departments of education regulate and register government and non-government schools.²³⁴ They also receive complaints about both types of schools.

In addition, complaints about unlawful discrimination by government and non-government schools may be made to the AHRC.²³⁵ We discuss this option in more detail in Volume 4, *Realising the human rights of people with disability*.

As part of the 2020 review of the *Education Standards*, the Australian Government recommended that the *Education Standards* should be amended to include principles on issues resolution and complaint handling. At the time of writing this report, these principles had not been released, but amendments are expected to be tabled in Parliament in 2023.²³⁶

We acknowledge that some state and territory governments, such as New South Wales, are reviewing or improving their complaints and reporting processes following recent reviews.²³⁷

We recommend that important expectations for effective complaints systems be captured in the *Education Standards* and school registration requirements. Schools should be required to demonstrate that their complaints policies and practices are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.²³⁸

The complaint process should also build in accountability and be subject to continuous improvement. States and territories should track and analyse complaints to help ensure consistency in how complaints are treated within a system and to identify potential improvements to complaints systems. Aggregate de-identified complaints data should be reported publicly.

School principals should ensure their school-level operating policies and procedures for handling complaints reflect the proposed complaint management requirements. Principals should establish internal reporting and monitoring processes to ensure that these are observed in practice.

Recommendation 7.10 Complaint management

- a. State and territory governments should create or expand existing complaint management offices that operate within educational authorities at arm's length from schools to help resolve complaints about schools, specifically complaints concerning the treatment of students with disability. These offices should be empowered to:
 - provide students and parents with information about their rights and options when managing complaints
 - request information and conduct conciliations, connecting families with advocacy support and specialist disability expertise where needed
 - initiate a formal investigation if a complaint is serious or otherwise indicates systemic issues
 - support and assist the complainant in referring matters to the appropriate regulator or independent oversight body if a complaint cannot be effectively resolved
 - work with schools to analyse complaints and regularly report on how education systems might improve to reduce future complaints
 - work with school principals to ensure school policies are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.
- b. The Australian Government should include new duties and measures relating to complaint management procedures in the *Disability Standards for Education 2005* (Cth) (*Education Standards*) to help achieve national quality and consistency, and ensure complaint handling processes are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.
- c. State and territory school registration authorities should embed new complaint handling duties and measures for compliance, as defined in the *Education Standards*, in registration requirements for all schools in their jurisdiction as a basis to monitor and enforce compliance.
- d. School principals should ensure their school-level operating policies and procedures for handling complaints:
 - satisfy the *Education Standards* requirements
 - are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate
 - are observed in practice.

4.5. Oversight and enforcement of school duties

Education standards

In the *Report of Public hearing 7*, we highlighted the need to strengthen mechanisms used to meet obligations under the *DDA* and the *Education Standards*, including those on adjustments and enrolments.²³⁹ We also emphasised the need to consider policy and regulatory levers available to address the disproportionate use of exclusionary discipline against students with disability.²⁴⁰

To enforce their rights under the *DDA* or the *Education Standards*, a person who has experienced discrimination must initiate action by making a complaint to the AHRC.²⁴¹ This process involves investigation, conciliation and then proceedings in a court. Following Public hearing 24, Counsel Assisting submitted that ‘it is rare for an applicant to establish contravention of the *DDA* and even rarer of the *Education Standards*’.²⁴² Counsel Assisting also submitted:

the *DDA* and the *Education Standards* do provide rights with respect to formal equality but do not presently create any incentive or require education providers to address ‘substantive equality’ that involves recognising difference and then treating people differently with the objective of achieving equal opportunities or outcomes.²⁴³

We recognise that additional measures are needed to promote inclusive education and, in particular, to remove the barriers to inclusive education in mainstream schools. We consider targeting registration requirements for schools to be an appropriate policy lever to facilitate change.

School registration and accreditation

Registration requirements for schools are part of the regulatory framework for ensuring the quality of education in Australia. In most states and territories, education legislation requires that schools can only be established if they are registered by an authority and comply with minimum standards in order to operate.²⁴⁴ The exceptions are government schools in the Northern Territory, Western Australia and the Australian Capital Territory, where government schools are established through the exercise of executive authority.²⁴⁵

Non-government schools are independent, but in each jurisdiction they are regulated through the registration requirements, including compliance with certain compulsory standards.²⁴⁶ The conditions for registration vary between states and territories, but typically they include requirements on the quality and accessibility of education provided, the physical and learning environment, and the qualifications and experience of teachers.

In most states and territories, registration requirements are described in legislation.²⁴⁷ In some states and territories, authorities have also issued guidance on meeting registration requirements.²⁴⁸ By controlling the standards, the jurisdiction is able to influence how non-government schools operate.

The *Education Standards* and the registration requirements for schools are separate and are formulated by different governments. However, they both play important roles in ensuring the quality and accessibility of education for students with disability.

The school registration or accreditation processes can be used to establish baseline expectations of inclusive practices that are beyond the scope of the *DDA*. School registration authorities can continuously monitor rights-based outcomes and intervene more quickly to enforce compliance. They do not need to rely on complaints and lengthy court processes. Schools that are denying the rights of students with disability can be identified earlier and non-compliance with their obligations can be resolved more quickly through a graduated range of regulatory interventions. These interventions can include public reporting of non-compliance, conditions on registration that require schools to take certain actions and, ultimately, cancelling a school's registration.

Actions taken by registration authorities attract public attention. The reputational effects of being subject to regulatory actions tend to motivate schools to not only address issues for an individual student but also improve their practices for all students.

Given this, we expect that school registration will be the primary mechanism to strengthen monitoring and enforcement of baseline requirements on schools to prevent violence, abuse and neglect, and provide an inclusive learning environment. However, the *DDA* and the *Education Standards* remain important mechanisms to protect the rights of students with disability. We recommend that they be amended to provide greater clarity and guidance on our recommendations.

School registration authorities should release guidance to schools on the data and evidence on inclusive education that schools must submit and have available at initial registration, registration renewal and on request from the authority at any time.

School registration authorities should use their cyclical reviews to monitor compliance and use their regulatory powers to make inquiries and require documents in response to complaints or other information about non-compliance.

The Western Australian, Australian Capital Territory and Northern Territory governments will need to consider an alternative mechanism to enforce mandatory requirements on their government schools. Ministerial orders or chief executive directions could be considered.

Recommendation 7.11 Stronger oversight and enforcement of school duties

- a. State and territory governments should strengthen the enforcement of inclusive education practices by expanding school registration requirements to include:
 - school enrolment policies (see Recommendation 7.1)
 - procedures to ensure members of the school workforce understand their obligations and are supported to access professional development (see Recommendation 7.8)
 - procedures to collect, analyse and report on complaints and the use of restrictive practices and exclusionary discipline (see Recommendations 7.2 and 7.10)
 - reporting on the use of funding for students with disability (see Recommendation 7.12).
- b. State and territory school registration authorities should monitor compliance with these requirements through cyclical reviews of schools and out-of-cycle reviews in response to individual complaints (or complaint trends) or other information that indicates possible non-compliance with regulatory requirements.
- c. The Western Australian, Australian Capital Territory and Northern Territory governments should identify appropriate mechanisms to ensure government schools in their jurisdictions are subject to these mandatory obligations, with appropriate monitoring, compliance and enforcement.

4.6. Funding

Two public hearings identified funding as a barrier to inclusive education for students with disability: Public hearing 7 and Public hearing 2.

Our *Report of Public hearing 7* noted:

Funding for reasonable adjustments should be an enabler of participation for students with disability. However, funding models can create barriers to participation if funding is perceived as a pre-requisite for the provision of adjustments or where the provision of funding is reliant on specific medical diagnoses or categories of disability.²⁴⁹

The primary mechanism for allocating Australian Government funding to students with disability is the Schooling Resource Standard (SRS). The SRS provides a loading for students with disability that is calculated on the basis of the NCCD. The SRS, NCCD and disability loading are explained in section 2.3, 'School funding'. The state and territory education departments and Catholic school authorities use their own funding models to distribute funding from the Australian Government and state and territory governments between individual schools.

Individual schools then allocate funds to support individual students. Through these transfers, Australian Government funding allocations are intended to flow to the individual student with disability. However, this does not always happen.

This section discusses four key issues with these funding arrangements for students with disability:

- inadequacy of the disability loading
- lack of alignment with NCCD funding categories
- funding not being allocated to individual students with disability
- lack of transparency and accountability.

Inadequacy of disability loading

Inadequate funding can mean students with disability do not receive the adjustments they need for inclusive education. Submissions, responses to issues paper and participants in private sessions have reported experiences of the use of funding constraints as a reason to deny the enrolment of, or reasonable adjustments for, students with disability.²⁵⁰

In 2018, the Australian Government Minister for Education commissioned the National School Resourcing Board to review the SRS settings for the loading for students with disability. The board reported in 2019.²⁵¹ Three research projects were undertaken as part of the review, each using a different approach, to test the validity of the current settings for the loading. In testing the validity of the settings, the research projects examined both the dollar value of the loading for each funded level of adjustment and the relative difference between the dollar amounts at each level.

Key findings from the review include:

Finding 1: Cost estimates varied across the research projects conducted for the review and there is insufficient evidence to determine whether the current loading settings are the most appropriate inputs for the SRS.

Finding 2: The degree of overlap in cost estimates at all three levels, particularly the substantial and extensive levels, suggests a need for better differentiation.

Finding 3: Funding relativities differ according to the method used to cost adjustments and there is insufficient evidence to determine whether the current relativities are appropriate or not.

Finding 4: Funding allocations for students with disability show:

- variation in funding provided to students within the same NCCD disability level of adjustment
- divergence between the numbers of students reported in the NCCD and those funded under targeted programs.

Finding 5: Stakeholders reported that the cost of adjustments varies according to school context and stage of schooling.

Finding 6: There is insufficient evidence to determine changes to the current loading settings without further research to build the evidence base for change.²⁵²

The Royal Commission received information that is consistent with these findings. States and territories reported to the Royal Commission that funding for some levels of adjustment under the NCCD were modified or expanded under their own funding model, particularly for students requiring the highest level of adjustment. These practices indicate that the NCCD categories may need refinement and that current funding under NCCD may not cover costs.²⁵³ For example:

- The Queensland and Northern Territory governments provide additional funding for students who require more extensive adjustments.²⁵⁴
- The Victorian Government and Tasmanian Catholic education system have introduced a model under which students receive funding for different levels of adjustments across different domains. This allows students with higher needs across all domains to receive increased funding compared with the SRS NCCD model.²⁵⁵

The National School Resourcing Board made three relevant recommendations following its review:²⁵⁶

- Recommendation 1: The Australian Government should retain the settings for the disability loading in the short term while further work is undertaken to evaluate the validity of the settings.
- Recommendation 2: The Australian Government, in collaboration with state and territory governments, should invest in the development of a strong evidence base (over two years) to inform a refined costing model for the students with disability loading.
- Recommendation 3: The work program to develop an evidence base to inform a refined costing model should be an Education Council priority. It should be supported by a reference panel comprising representatives from all states and territories, and the Catholic and independent schools sectors.

The Australian Government accepted these recommendations, noting:

the Government, in consultation with the sector through state and territory education Ministers, will commission research commencing early in the 2020–21 financial year to build the evidence to inform a refined costing model for implementation in 2023. This research will use a range of approaches to determine the cost of adjustments, cognisant of the varying contexts in which these adjustments are made: school location, systemic and non-systemic, numbers of students with disability within a school, and stage of schooling.²⁵⁷

The Australian Government commissioned a report in response to the board's review of the loading for students with disability. As of May 2023, the report, *Student with disability loading settings review*, had yet to be made public.

We understand there is ongoing work comparing funding and actual costs of adjustments for individual students with disability and the aggregate NCCD level of adjustments.²⁵⁸ The aim is to enable the Australian Government to determine if NCCD funding amounts cover costs and are sufficiently fine-grained to reflect different levels of adjustments required.

Lack of alignment with NCCD funding categories

Historically, the Australian Government and all state and territory funding models were based on the medical diagnoses of specific disabilities or categories of disability. In 2018, the Australian Government shifted to an NCCD funding model for students with disability. This is based on the level of adjustments and supports school students receive to be able to access and participate in learning, rather than on the category or medical diagnosis of a specific disability.²⁵⁹

State and territory education departments and Catholic school authorities use their own models to distribute funding from the Australian Government and state and territory governments between individual schools. Most states and territories and Catholic systems have changed or are currently changing to a needs-based NCCD or modified NCCD funding model:

- Queensland and New South Wales are moving to align their targeted funding model towards a modified NCCD funding program.²⁶⁰
- In 2020, as part of the implementation of its inclusive education approach, Victoria announced an overhaul of funding for students with disability in schools. It has a tiered funding model that identifies student's strengths and needs and the educational adjustments schools can make. The model will be introduced over five years through a staged rollout across school regions.²⁶¹
- South Australia and Tasmania have recently implemented needs-based funding models that more closely align with the NCCD adjustment levels.²⁶²
- In Tasmania, this has led to schools receiving funding for 2,000 more students than were previously eligible through the deficits-based model.²⁶³
- The Northern Territory Government uses a funding model for mainstream schools that incorporates NCCD levels of adjustment, alongside universal students with disability funding and variable student needs-based funding.²⁶⁴ The Northern Territory Government told us in 2022 that it was undertaking consultation to look at a more nuanced funding model. The intention is that the model and policy framework will support data collection on the level of inclusion for each student.²⁶⁵
- The Australian Capital Territory Government is currently reviewing its funding model for students with disability.²⁶⁶
- All Catholic educational authorities use the NCCD or a modified NCCD needs-based funding model to distribute funding for the disability loading.²⁶⁷

However, Western Australia still uses a medical model of disability for funding of students. The Individual Disability Allocation provides funding to schools to support the learning needs of individual students with an eligible diagnosed disability (such as 'autism spectrum disorder', 'deaf and hard-of-hearing', and 'intellectual disability') who require high levels of adjustments.²⁶⁸

The Victorian Government model for funding for students with disability appears similar. As part of its Student Resource Package, funding for students with disability is allocated using disability type categories – ‘Physical disability’; ‘Visual impairment’; ‘Hearing impairment’; ‘Severe behaviour disorder’; ‘Intellectual disability’; ‘Autism Spectrum Disorder’; and ‘Severe language difficulties with critical educational needs’.²⁶⁹ Its funding model does not allocate funding specifically in line with the NCCD.²⁷⁰

Previous reviews have highlighted the benefits of a strengths- and needs-based funding model. The model takes into account the level of adjustments and supports students receive to access and participate in learning.²⁷¹ It is aligned to the Australian Government NCCD funding model.²⁷² However, a medical funding model does not align with the Australian Government funding model. This creates funding gaps for students with disability, where the student requires adjustments at school, but they do not receive funding to support this.²⁷³ Past reports have shown that the number of students with disability receiving funding through state-based resourcing programs was substantially different from the number of students that require adjustments under the NCCD.²⁷⁴

Public hearing 7 investigated the funding models of the government school systems in New South Wales and Queensland.²⁷⁵ Public hearing 2 also looked at the complexities of funding in Queensland. The evidence highlighted the problems for students with disability with the New South Wales and Queensland funding models. Under those models, eligibility for funding is determined by reference to a specific, ‘diagnosed’ category of disability. New South Wales and Queensland funding models are explained in section 2.3, ‘School funding’.

The eligibility requirements of these funding models can create barriers to access to education for students who do not fall within these categories. It can also put pressure on parents of students with disability to seek out a particular diagnosis to ensure their child is able to access targeted funding for reasonable adjustments.²⁷⁶

In Queensland government schools, the key funding model for students with disability is the Education Adjustment Program (EAP).

The Royal Commission heard consistently from Queensland-based families about their problems with receiving support when they do not fit into a verified EAP category.²⁷⁷ At Public hearing 2, Ms Loren Swancutt, Acting Regional Head of Special Education Services (Inclusion), Queensland Department of Education,²⁷⁸ told the Royal Commission that students with disability may not be verified under the EAP for a range of reasons. The most common reason is that the student’s diagnosed disability does not align with the six categories covered under the EAP.²⁷⁹ Ms Swancutt said the EAP applies a medical model approach to disability that requires the school to show a child’s ‘deficit’. This may be a reason why some students are not verified under the EAP.²⁸⁰

This approach to funding can lead to schools encouraging families to seek out particular diagnoses to be eligible for funding. This was the case for Jack and his parents, Sharon and Alex, who gave evidence of their experiences in Queensland. Sharon said that because Jack did not have a ‘top six’ diagnosis to bring him within a defined EAP category, his school told her there was no funding available to help him.²⁸¹ Sharon said that as a potential solution:

[The school] strongly suggested that we take Jack back to the doctors to get him diagnosed with autism as well, because then they would give us funding for a teacher's aide and then they would help us.²⁸²

When the psychologist told Sharon she was unable to 'tick the box' required for funding because Jack did not have autism, Sharon broke down in tears because she believed she had lost the only opportunity to obtain support for her son.²⁸³

Some teachers and schools believe that funding is a prerequisite to receiving adjustments, and this exacerbates issues for people with disability. For example, Ms Emma Louise Haythorpe, a former Senior Guidance Officer for the Queensland Department of Education, said in her experience students with complex behavioural disorders or mental health diagnoses would not obtain support if they did not also fit into one or more of the EAP categories.²⁸⁴

However, all students with disability are entitled to receive reasonable adjustments in accordance with the *DDA*.²⁸⁵ Mr Lassig from Education Queensland²⁸⁶ confirmed this in the Public hearing 7. In evidence, he said 'regardless of whether a student has a verified disability in the EAP', they should receive adjustments and that Queensland Education's inclusion policy makes clear 'that all students should be provided the adjustments they need to access and succeed in the curriculum ... a lot of the adjustments we talk about don't require additional resources'.²⁸⁷

He accepted that in the past students without an EAP verification sometimes received less support than their EAP-verified peers.²⁸⁸ He also agreed that while there should be no distinction between students with disability with an EAP verification and those without, that distinction 'may still play out'.²⁸⁹

Mr Lassig further conceded, based on the disparities in the NCCD and EAP datasets, that there is 'a huge difference' between students with EAP verification and those who actually need adjustments.²⁹⁰ He stated it was 'not good enough' that Sharon and Alex had to spend a lot of money to try to get a diagnosis to fit Jack within the EAP.²⁹¹

Mr Lassig said he did not know why the Queensland Government used the EAP verification process,²⁹² given disability support is intended to be provided regardless of verification status under a particular category.

In New South Wales, the Integration Funding Support (IFS) model similarly provides targeted, individual funding to support students with moderate to high learning needs, based on a confirmed diagnosis of disability. At Public hearing 7, 'Sam' spoke of his experience with the IFS in the New South Wales government school system.²⁹³ Sam received IFS, but there were nonetheless gaps in support. Although teacher's aide support is not necessarily tied to the amount of IFS a student receives, in Sam's case that appears to have happened.²⁹⁴ A request for additional funding for Sam noted that the amount of teacher's aide time Sam had been receiving was decreasing because the school had to fund that time instead of relying on IFS.²⁹⁵

'Amy', Sam's mother, said the number of hours of teacher's aide support provided to Sam was limited to the funding available to him under the IFS.²⁹⁶ This meant a teacher's aide was only

available in the mornings – even though Sam often absconded from school in the afternoons.²⁹⁷ In his evidence, Mr Frank Potter, Executive Director, School Performance in the New South Wales Education Department, said teacher's aide support is not necessarily tied to the amount of funding a student receives and schools have discretion in how funding is used.²⁹⁸

These experiences in Queensland and New South Wales point to common issues where state and territory funding models do not align with the NCCD. The 2019 National School Resourcing Board review of the loading for students with disability also identified substantial variation in the funding provided to students at the same NCCD levels of adjustment.²⁹⁹

Australian Government education legislation and regulation requires recipients to collect NCCD data as a condition of funding.³⁰⁰ However, it does not require recipients to distribute funding in alignment with the NCCD levels of adjustment.³⁰¹ This allows states and territories to operate their own funding model. Therefore, schools have not always been funded to support students with needs that the NCCD has identified. The NCCD has therefore not fulfilled its intended purpose of supporting a nationally consistent funding allocation across jurisdictions based on the individual needs of students with disability.³⁰²

Funding to individual students with disability

Individual funding – or lack of – can contribute to denial or discouragement of enrolment for students with disability.³⁰³

When a school is allocated money under a state or territory funding model that recognises the needs of the school's students with disability, the school may not always use the money for each student with needs identified under the funding model.

Within an individual school, funding is used at the discretion of the principal. In evidence at Public hearing 7, Mr Potter, from the New South Wales Department of Education, said the provision of a teacher's assistant, as a reasonable adjustment for an individual student with disability, may not necessarily be tied to the amount of funding the school received for that student. He said schools have discretion over how funding is used.³⁰⁴

We also heard evidence from Mr Lassig that in Queensland the principal determines the allocation of resources at the school level, although teachers are consulted as part of this process.³⁰⁵ Mr Lassig accepted the proposition that the additional funding a school receives through loadings associated with EAP verifications does not have to be spent on students with disability and therefore not on a specific student with disability.³⁰⁶

At Public hearing 7, Counsel Assisting proposed a finding that there remains confusion at the school level as to how funding can and should be used as a result of the EAP process in Queensland.³⁰⁷ Counsel Assisting proposed improved oversight and guidance to increase the accountability of schools that do not direct funding to the right types or levels of supports for particular students with challenging needs.³⁰⁸

Lack of assurance and accountability

Education funding for students with disability lacks sufficient assurance and accountability. We heard there is a lack of transparency, assurance and accountability to ensure funding is being used to provide reasonable adjustments that meet the needs of students with disability. Insights from previous reviews have highlighted the importance of aligning resourcing use with its intended purpose.³⁰⁹ There is also a lack of quality assurance in NCCD data.

The Royal Commission heard there was broad support for improved accountability for disability-specific school funding.³¹⁰

Increased transparency is supported by recommendations from a 2017 New South Wales parliamentary inquiry into the education of students with disability³¹¹ and findings from a 2016 Senate Standing Committee inquiry into access to learning for students with disability.³¹² Both inquiries identified that governments should ‘monitor and account for how funding is used’ at school and system levels.³¹³ Public reporting would demonstrate how all sources of funding for students with disability are being used and increase accountability for students with disability, their families and the community.

Past reports have indicated that the NCCD data varies in quality³¹⁴ and lacks a method of quality assurance to ensure accuracy in collection or consistency across the population.³¹⁵

The National School Resourcing Board found in the 2019 review of the loading for students with disability that, while the process for assessing the accuracy of reported NCCD data is sound, there is room for ongoing improvement.³¹⁶ To address these concerns, the board identified investment is needed in building schools’ capacity to administer the NCCD. This would ensure consistency of the ‘post enumeration process’ and greater transparency of NCCD data.³¹⁷

Past reports have also indicated that governments have not used available data to effectively monitor the impact of school funding and to provide greater transparency and accountability.³¹⁸ The Productivity Commission’s Review of the National School Reform Agreement found a lack of data on school-level spending for students from priority equity cohorts, which includes students with disability:

There is no publicly available data on school-level spending on students from priority equity cohorts. This means that policymakers, parents, groups representing students and the public have little visibility of school-level actions to lift outcomes for students in priority equity cohorts, which limits accountability.³¹⁹

Improving funding

We propose a series of recommendations to address the four key issues with funding arrangements for students with disability discussed above.

NCCD levels of adjustments and associated funding

As soon as possible after receiving the *Student with disability loading settings review report*,³²⁰ the Australian Government should work with the Education Ministers Meeting to refine the NCCD levels of adjustments and associated funding.

In addition to modifications to levels of adjustment and funding, the Australian Government and the Education Ministers Meeting should review the settings for loading and total funding for adjustments every five years to determine appropriate indexation and distribution of funding. This should involve commissioning reviews of settings for loading to compare the per student cost of providing adjustments to the given level of funding. This is necessary to ensure funding continues to be sufficient to support provision of adjustments and supports to students with disability.

Needs-based funding model

Governments that currently use a funding model based on category or medical diagnosis should, as a matter of urgency, transition to a strengths- and needs-based funding model. This funding model should align with the Australian Government NCCD funding model.

As noted, Queensland and New South Wales are moving to align their targeted funding models with a modified NCCD funding program. We emphasise the importance of doing this, particularly in light of the evidence we heard in public hearings about the problems their funding models create for students with disability in accessing appropriate adjustments.

We support strengths- and needs-based funding models that modify the NCCD funding model but still allow alignment with the Australian Government NCCD funding model. We recognise these modifications allow jurisdictions to take into account the local population of students with disability, including differing proportions of levels of adjustments and potentially different costs of providing adjustments.

Assurance and accountability for funding

State and territory governments should increase funding accountability by improving public transparency on the use of funding to support educational participation and outcomes for students with disability.

We recognise funding is applied at a whole-of-system and whole-of-school level, as well as through adjustments and supports for individual students. To respect student privacy, public reporting on expenditure should not include a breakdown of support for individual students.

To enable meaningful reporting, state and territory education departments will need to develop a reporting methodology and template that captures categories of expenditure and sources of funding and whether the expenditure is managed at a school or system level.

The reporting template for schools should include all sources of funding, including base school funding to adjust the design of school facilities, curriculum and teaching practices for all students, disability loadings and other needs-based loadings such as for First Nations students.

State and territory school registration authorities should require all schools to complete the template and submit it to state and territory education departments. Departments should also record their own expenditure on behalf of schools, such as funding of specialist positions, and careers guidance and transition support services.

We recognise there will be complexity in capturing base funding allocations. Therefore, we recommend a phased approach to implementation of improved public reporting. Early priority should be given to capturing and reporting how disability loadings and any other disability-specific program funds are being spent.

State and territory education departments should be responsible for consolidating information from government and non-government schools. They should publicly report on how the needs of students with disability are being met from all sources of Australian Government and state and territory government funding. Public reporting should capture individual school results as well as system-wide allocation of funding for each category of adjustment and support.

Recommendation 7.12 Improving funding

- a. The Australian Government should work with the Education Ministers Meeting to refine the Nationally Consistent Collection of Data on School Students with Disability (NCCD) levels of adjustments and associated funding for students with disability in response to the findings of the *Student with disability loading settings review*.
- b. The Australian Government and the Education Ministers Meeting should review disability loading settings and total funding for adjustments every five years to ensure the funding allocated bears a close relationship to the actual cost of supporting students with disability in classrooms and to determine appropriate indexation and distribution of funding.
- c. State and territory governments should ensure they are using a disability funding model based on strengths and needs that aligns with enhanced NCCD levels of adjustment and Australian Government needs-based funding arrangements to enable students with disability to access and participate in education on an equal basis to their peers.
- d. State and territory education departments should improve transparency on the use of disability funding in the government school sector by:
 - developing a methodology and reporting template to record the use of all sources of school funding against defined categories of adjustments and support for students with disability
 - applying this methodology and template to record expenditure on services and staff commissioned by the department on behalf of schools for students with disability

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- publicly reporting on how the needs of students with disability are being met from all available resources, with early priority given to capturing the use of disability-specific loadings and other disability-specific program funding.
 - e. State and territory school registration authorities should require schools to complete the funding template mentioned at d. and submit the template to the relevant state or territory education department.

4.7. National Roadmap to Inclusive Education

Chapters 3 and 4 set out our recommendations for changes to legislation, policy and practices to provide a safe, quality and inclusive school education for students with disability. These changes are consistent with the human rights of students with disability and aim to deliver them substantive and inclusive equality.

The recommendations for inclusive education are wide in scope and will take many years to achieve. All governments will need to work together collaboratively, and individual governments will need to ensure dedicated action.

To guide the implementation of the recommendations, in this section we recommend the Australian Government and state and territory governments develop a 'National Roadmap to Inclusive Education'. The section begins with an outline of the key mechanisms for intergovernmental collaboration on education.

Current mechanisms for intergovernmental collaboration

Education Ministers Meeting

The Education Ministers Meeting is the peak intergovernmental forum for collaboration and decision making on:³²¹

- early childhood education and care (ECEC)
- school education
- higher education
- international education.

Australian Government and state and territory government ministers responsible for education attend the meeting. It is chaired by the Australian Government Minister for Education, and is generally held four times a year.

The Education Ministers Meeting reports annually to National Cabinet on progress in its workplan and priorities for the upcoming year. In December 2022, education ministers agreed to focus on three national priorities for 2023:³²²

- developing a long-term vision for the ECEC sector
- implementing the National Teacher Workforce Action Plan
- developing the next National School Reform Agreement.

National School Reform Agreement

The National School Reform Agreement is a joint agreement between the Commonwealth, states and territories to lift student outcomes across Australian schools.³²³ It outlines a set of strategic reforms in areas where national collaboration will have the greatest impact on driving improved student outcomes. The current agreement identifies students with disability as a priority equity cohort.

The Education Ministers Meeting is responsible for overseeing implementation of this agreement. The agreement commits governments to implement a set of national policy initiatives. It is anticipated that the education ministers will vary the national policy initiatives over time. Under the current agreement, the national policy initiatives are focused on three areas:³²⁴

- supporting students, student learning and student achievement
- supporting teaching, school leadership and school improvement
- enhancing the national evidence base.

Under the agreement, states and territories are required to have a bilateral agreement with the Commonwealth that sets out state-specific actions to improve student outcomes. Bilateral agreements include activities that support particular student cohorts such as:

- First Nations students
- students in regional, rural and remote areas
- students with disability
- students from a low socioeconomic status background.

Annual reports set out state and territory progress in implementing reform initiatives against agreed milestones, as detailed in bilateral agreements.

The implementation of these national policy initiatives is a condition of Commonwealth funding to states and territories under section 22 of the *Australian Education Act 2013* (Cth).³²⁵

Productivity Commission Review of the National School Reform Agreement

In 2022, the Australian Government requested that the Productivity Commission review the National School Reform Agreement to:³²⁶

- assess the effectiveness and appropriateness of the national policy initiatives under the agreement, recognising that reforms take time to implement and mature
- assess the appropriateness of the Measurement Framework for Schooling for measuring progress towards achieving the outcomes of the agreement
- make recommendations to inform the design of the next agreement and improve the National Measurement Framework.

The Productivity Commission reported in December 2022. Headline points from the review include:³²⁷

- The National School Reform Agreement's initiatives have done little, so far, to improve student outcomes.
- The agreement is still a sound platform for intergovernmental collaboration.
- The next agreement should include firm targets for improving academic achievement for all students, including students from priority equity cohorts, in each jurisdiction.

The review made several findings and recommendations on students from priority equity groups. Particularly relevant to students with disability, they include:

Finding 4.2: Governments are yet to achieve the equitable outcomes for students from the priority equity cohorts that they endorsed in the National School Reform Agreement.

Outcomes for students with disability cannot be measured because national reporting does not report on the [National School Reform Agreement's] outcome measures for this priority equity cohort.

Finding 4.3: Governments have failed to demonstrate how state-specific reforms are addressing the educational needs of students from the priority equity cohorts. Bilateral agreements between the Australian Government and each state and territory – which were supposed to enable transparent reporting on measures to lift outcomes of students from priority equity cohorts – have patchy coverage, lack meaningful detail, and contain few new measures.

Finding 4.6: Students from priority equity cohorts face multiple types of barriers to access a high quality education. The learning environment, including the culture within the classroom, is not always well suited to improve outcomes for students from priority equity cohorts.

Some Aboriginal and Torres Strait Islander students do not see their identities, cultures, and knowledges reflected in what they are learning.

Teachers and leaders often have insufficient time, skills, and/or resources to support students from priority equity cohorts and their families.

Students from priority equity cohorts can lack access to an inclusive learning setting that supports their learning needs and wellbeing.

Recommendation 4.4: Parties should design the next intergovernmental school reform agreement so that it identifies and reports on their actions to lift outcomes for students from priority equity cohorts. Parties to the next intergovernmental school reform agreement should:

- include national targets for students from each priority equity cohort so the community can assess equity of outcomes across students
- ensure state and territory bilateral agreements, developed in consultation with people with lived experience, systematically set out for students from each priority equity cohort:
 - the outcomes and relevant sub-outcomes they are seeking to achieve for students in the priority equity cohort
 - the reforms government will implement to achieve those outcomes by addressing the various barriers to accessing high quality education that students from that priority equity cohort face
 - the theory of change linking reforms to long-term outcomes and arrangements for collecting data to enable monitoring and evaluation over time
 - publicly report each year on progress in implementing reforms and achieving the outcomes and targets they set.³²⁸

Expert panel to advise on next National School Reform Agreement

Following the Productivity Commission review, the Australian Government announced an expert panel to inform the development and negotiation of the next National School Reform Agreement and bilateral agreements with states and territories. The expert panel is advising on key targets and specific reforms that should be tied to funding. There is a particular focus on students who are most at risk of falling behind and in need of more assistance, including students with disability.³²⁹ The expert panel is building on the work of the Productivity Commission's Review of the National School Reform Agreement.

The expert panel will deliver its report to education ministers by 31 October 2023. The current National School Reform Agreement has been extended for 12 months to 31 December 2024 to enable sufficient time for the review to be considered.

A plan for inclusive education

The Royal Commission agrees with the Productivity Commission's Review of the National School Reform Agreement findings on the limitations of the National Schools Reform Agreement to improve outcomes for students with disability. We also welcome the expert panel's focus on students with disability in targets and reforms for inclusion in a revised National Schools Reform Agreement. We consider the new agreement could be a possible mechanism for enshrining an enduring commitment and accountability for progressive realisation of the rights of students with disability.

The Productivity Commission and expert panel reviews appropriately focus on improving student outcomes, including outcomes for students with disability. We recognise the importance of this. However, we also emphasise that, to achieve this, governments must understand the foundational significance of the human rights of students with disability and that these rights must be protected and promoted.

Our recommendations for inclusive school education are consistent with the human rights of students with disability and aim to deliver them substantive and inclusive equality. They also aim to improve the educational outcomes of students with disability.

We recommend the Education Ministers Meeting develop a National Roadmap to Inclusive Education that sets out how the Royal Commission's recommendations for inclusive education will be delivered. We also recommend, in its 2024 report to National Cabinet, the Education Ministers Meeting identify the National Roadmap to Inclusive Education as one of its priorities and include it in its workplan.

The roadmap should set out what is necessary to implement the Royal Commission's recommendations and provide public transparency. It should:

- define the goals of inclusive education for students with disability
- identify the outcomes to be achieved
- set out the major steps and actions to progress toward the outcomes
- detail the approach to tracking and measuring performance, including milestones, performance measures and targets
- set out the associated timelines
- include an approach to evaluation and reporting.

As acknowledged in the National Schools Reform Agreement, the constitutional responsibility for school education lies with states and territories. The states and territories, as well as non-government schools, have in place their own regulatory frameworks and local policies and priorities intended to maximise local students' educational outcomes. Given this, each state and territory should set out in greater detail the necessary actions to achieve the milestones and outcomes of the National Roadmap to Inclusive Education. State and territory education ministers should report annually to the Education Ministers Meeting on progress.

Commissioners Bennett, Galbally and McEwin further recommend that the National Roadmap to Inclusive Education and the National School Reform Agreement should include commitments to phasing out and ending special/segregated schools (see Recommendation 7.14).

To provide additional accountability for progress, we recommend that the National Roadmap to Inclusive Education be subject to comprehensive external review every five years.

Recommendation 7.13 National Roadmap to Inclusive Education

- a. The Education Ministers Meeting should publicly release a 'National Roadmap to Inclusive Education' for students with disability. The roadmap should:
 - detail the outcome measures, targets, actions and milestones for delivering the Royal Commission's recommendations for inclusive education
 - provide public transparency on how the recommendations will be implemented and progress tracked and publicly reported.
- b. State and territory education ministers should report annually to the Education Ministers Meeting on progress against agreed milestones and associated outcome performance measures in the roadmap. Annual progress reports should outline actions to overcome identified barriers to progress and be publicly released.
- c. The Education Ministers Meeting should identify the National Roadmap to Inclusive Education in its 2024 report to National Cabinet as one of its priorities and include it in its workplan.

Endnotes

- 1 See for example 'Inclusive Education for students with disability', *New South Wales Government*, web page, 2022. <www://education.nsw.gov.au/teaching-and-learning/disability-learning-and-support/our-disability-strategy/inclusive-education>; 'Inclusive education', *Queensland Government Department of Education*, web page, 2023. <www://education.qld.gov.au/students/inclusive-education>; 'Disability and inclusive education', *Victorian Government*, web page, 2022. <www.vic.gov.au/disability-and-inclusive-education>
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- 5 'Disability inclusion: increased support for students with disabilities', *Victorian Government Department of Education*, web page. <www.education.vic.gov.au/school/teachers/learningneeds/Pages/disability-inclusion.aspx>
- 6 Lester Bostock, 'Access and equity for people with a double disadvantage', (1991), vol 2, *Australian Disability Review*, pp 3–8.
- 7 Exhibit 7-1, 'Statement of Yarraka Bayles', 24 September 2020, at [77–87].
- 8 Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020, at [108]; Exhibit 11-24.1, 'Written statement of Cheryl Axleby', 5 February 2021, STAT.0309.0001.0001, at [40], [56]; Jocelyn Jones, Lynn Roarty, John Gilroy, Juliet Brook, Mandy Wilson, Cathy Garlett, Hannah McGlade, Robyn Williams & Helen Leonard, *Wangkiny Yirra "Speaking Up" Project: First Nations women and children with disability and their experiences of family and domestic violence*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2022, p 165.
- 9 Exhibit 7-1, 'Statement of Yarraka Bayles', 24 September 2020, at [103–04]; Exhibit 11-28.1, 'Written statement of Geoffrey Thomas', Public hearing 11, 15 January 2021, at [14]; Transcript, 'Melanie', Public hearing 11, 16 February 2021, P-36 [5–7]; Jocelyn Jones, Lynn Roarty, John Gilroy, Juliet Brook, Mandy Wilson, Cathy Garlett, Hannah McGlade, Robyn Williams & Helen Leonard, *Wangkiny Yirra "Speaking Up" Project: First Nations women and children with disability and their experiences of family and domestic violence*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2022, pp 225–26.
- 10 Exhibit 9-2, 'Statement of Cody Skinner', 3 November 2020, at [22].
- 11 Exhibit 7-167, 'Statement of Linda Graham', 25 September 2020, at [108].
- 12 First Peoples Disability Network, Submission in response to *Promoting inclusion issues paper*, 4 June 2021, ISS.001.00651, p 3.
- 13 First Peoples Disability Network, Submission in response to *Promoting inclusion issues paper*, 4 June 2021, ISS.001.00651, p 13.
- 14 Material received by the Royal Commission from jurisdictions in response to notice, NSW.0078.0003.0001; QLD.0005.0050.0099; VIC.0003.0517.0501; SAG.0006.0259.0002; STAT.0684.0001.0001; STAT.0661.0001.0001; ACT.9999.0012.0254; TAS.9999.0022.0001.
- 15 Material received by the Royal Commission from state or territory education departments in response to notice, 2022, WA.0025.0001.1676; TAS.9999.0022.0022; ACT.9999.0012.0267; QLD.0005.0050.0002; NTT.0001.0003.0001; SAG.0006.0259.0001; NSW.0078.0001.0001; VIC.0003.0514.0555.
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- 31 New South Wales Ombudsman, *NSW Ombudsman inquiry into behaviour management in schools*, A special report to Parliament under s 31 of the *Ombudsman Act 1974* (NSW), August 2017, p 24.
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5. Special/segregated or non-mainstream education settings

Key points

- Commissioners have different perspectives on whether special/segregated schools and settings are compatible with Australia's obligations under the *Convention on the Rights of Persons with Disabilities* to provide students with access to an inclusive education.
- Commissioners Bennett, Galbally and McEwin recommend phasing out and ending special/segregated education settings and setting out a framework for achieving this.
- The Chair and Commissioners Ryan and Mason refer to special/segregated schools as non-mainstream schools and do not support phasing out those schools. They consider that there are alternatives that involve a variety of interactions between students with complex support needs and their peers, consistent with the goal of a more inclusive society.

As summarised in Chapter 1, the Commissioners hold different views about the treatment of special/segregated or non-mainstream education settings to ensure non-discrimination and to advance progressive realisation of equality and inclusive education for students with disability. We set out a detailed explanation of these views below.

5.1. Achieving inclusion while phasing out special/segregated education settings

Introduction and context

Commissioners Bennett, Galbally and McEwin consider that the continued maintenance or expansion of special/segregated education settings is incompatible with Australia's obligations under the *Convention on the Rights of Persons with Disabilities (CRPD)* and the rights of students with disability. In our view, segregated education stems from, and contributes to, the devaluation of people with disability, which is a root cause of the violence, abuse, neglect and exploitation they experience in education and beyond.

The Royal Commission heard many stories of educational neglect and negative experiences directly from people with disability and their families and representative organisations. Despite numerous inquiries at federal and state or territory level,¹ as well as recommendations and attempts at improvement over several decades, progress has been limited.

The poor experiences and outcomes for students with disability are a damning indictment on the current education systems and the approach of maintaining both mainstream and special/segregated education settings. These poor outcomes include low rates of school completion, post-school study and employment, poor decision-making skills, having to remain in segregated settings such as Australian Disability Enterprises (ADEs), poverty and limited community participation.

We acknowledge the important common ground with the Chair and Commissioners Mason and Ryan about the need to reform mainstream education. However, we consider that the failure to commit to the ending of segregation in our education systems perpetuates a deep injustice against people with disability. This injustice will continue to taint and stymie efforts to achieve an inclusive society where people with disability can live free from violence, abuse, neglect and exploitation. Commissioners Bennett, Galbally and McEwin consider that inclusion must begin in children's formative schooling years when their values towards themselves and others are formed. Inclusive education sets the foundation for people with and without disability to engage fully in society as adults.

We consider that the need for transformational change is clear. Transformation requires phasing out and ending special/segregated education and ensuring inclusive education systems. This is to ensure that future generations of people with disability are not condemned to a lifetime of segregation. It will ensure they are free from violence, abuse, neglect and exploitation and are able to claim their rightful, equitable place in our shared world.

We consider that Australia cannot hope to achieve an inclusive society, free from violence, abuse, neglect and exploitation of people with disability, without committing to systemic reforms in education that have at their foundation the phasing out and ending of special/segregated education.

The serious problems of segregated education

Segregated education was a critical issue at the Royal Commission

Directly and through their representative organisations,² many people with disability and their families told the Royal Commission that segregation on the basis of disability devalues and 'others' students with disability. It also legitimises their devaluing in other spheres of life. Educating children with disability separately from their non-disabled peers in special schools and classes can, for many, be the first step to a lifetime of segregation in employment, housing and community participation.

Commissioners Bennett, Galbally and McEwin respect the views of the disability community as the experts on their lives, and the issues they have raised as a priority, including segregation in education. They listened and were guided by the disability community and their representative organisations and recognise that they are leading change to ensure an inclusive society.

We are not surprised that special/segregated education has been a key theme throughout this inquiry. The goal to end segregation has been at the core of the disability rights movement and at the heart of the *CRPD*. It is considered a critical aspect of equality and full inclusion.³ As Ms Rosemary Kayess and Ms Therese Sands note in their research report for the Royal Commission:

From the 1960s to the present day, the disability rights movement has continuously exposed the significant levels of inequality, discrimination and segregation experienced by people with disability.⁴

The Royal Commission heard that once a student is placed in a special/segregated school or class, it is rare that they will transition to a mainstream school or classroom.⁵ This initial placement contributes to them remaining in other segregated environments throughout their lives.⁶ This has been described as the ‘polished pathway’⁷ or ‘institutionalisation from cradle to grave’.⁸

We also heard that segregation in education contributes to the broader stigmatisation of people with disability in the community.⁹ It normalises the separation of students with disability from their non-disabled peers.¹⁰ People told us that when children with disability are cut off from the same opportunities as their peers, they learn to see themselves as limited.¹¹ Gi Brown, a youth advocate with Children and Young People with Disability Australia (CYDA), gave evidence that the ‘total segregation of schools is a detriment to development and connectedness and participation, and potential’ of all young people, including young people with disability.¹²

We also note that segregation remains a significant issue affecting a considerable proportion of students with disability. As discussed in section 2.5, data from 2018 indicates that approximately 30 per cent of students with disability are educated in segregated education settings. This comprises:¹³

- 18 per cent of all students with disability attending a special class in a mainstream school
- 12 per cent of all students with disability attending a special school.

In addition, we are aware of recent data and research that suggest segregated/special classes are increasing in Australia, especially for autistic students.¹⁴ This increase is at odds with government statements that their goal is for mainstream educational settings to be fully inclusive of students with disability. The substantial cost to continue to support and maintain segregated education of children with disability reduces the capacity for governments to invest in making mainstream education fully and genuinely inclusive. We discuss this in the next section.

Special/segregated education settings provide a default position for mainstream schools

Australia’s education system concentrates disability resources and expertise in special/segregated schools.¹⁵ This concentration leads to a perception and expectation that discourage mainstream schools from providing adequate support to include students with disability.¹⁶

At Public hearing 24, 'The experience of children and young people with disability in different education settings', Julie, a parent of a child with disability, said 'there's no driving factors for mainstream schools to become inclusive. So there's this ability just to keep doing what we're doing.'¹⁷

These individual experiences are consistent with past reports and inquiries that examined the situation for students with disability in a variety of contexts and jurisdictions. These reports repeatedly identified gatekeeping as a key barrier to education for students with disability.¹⁸

The existence of special/segregated education settings influences attitudes and behaviours in mainstream systems. The perceived concentration of resources and expertise in special/segregated education contribute to mainstream schools abrogating their responsibility to provide a quality education to students with disability. This is apparent in what one parent told us:

Our vision for our daughter is to have all the typical life experiences as that of her peers or siblings ... Our society will never come to grips with genuine inclusion unless all children learn together and learn from each other ... We feel the special unit is out of sight and out of mind and whilst 'special units' exist, they give mainstream teachers an excuse to not meet their responsibility of educating our daughter.¹⁹

Professor Suzanne Carrington, Associate Dean (Research) in the Faculty of Education at the Queensland University of Technology, told us in Public hearing 2, 'Inclusive education in Queensland – preliminary inquiry', that, 'as soon as there's a place that is special, then that sends a message about who's going to that place as being separate and different'.²⁰ In Public hearing 7, 'Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts', Maria Scharnke, a young autistic person, said, 'segregation enables the mindset that if we don't see people with disability, they don't exist, and are therefore not our problem'.²¹

Abuse and poor outcomes in special/segregated education settings

People with disability and their families have consistently told us of the abuse and poor educational experiences of their children with disability in special/segregated education settings. A person with intellectual disability told us, 'I did not learn anything in the special/segregated school. I've taught myself how to read and write'.²² Similarly, a teacher told us that in their experience, special/segregated schools 'have few positive effects for students with disability'.²³

Likewise, advocates told us:

there is nothing special about special schools. Because it's not special education. It's segregated education ... We've got decades worth of evidence now that says kids do better in mainstream school even if it's dire.²⁴

We heard that special/segregated education denies students with disability the opportunity to achieve a sense of belonging that is the very essence of inclusion.²⁵ All Means All, the Australian

Alliance for Inclusive Education, argues that ‘there is no substantive body of evidence that supports better outcomes for students with disability in segregated “special” settings despite their purported advantages’.²⁶ This is consistent with the evidence of academic experts at Public hearings 2 and 7.²⁷

The Royal Commission also heard that special/segregated education settings lead to higher risk of violence, abuse and neglect.²⁸ There is less oversight in these settings so mistreatment may occur unchecked.²⁹ We heard many reports of mistreatment in mainstream education settings. It is particularly egregious when it occurs in special/segregated settings, given they position themselves as providing a safer and more supportive environment.

Special/segregated settings construct segregation as ‘a benevolent, nurturing form of intensive care that is provided by teachers with specialist training to the benefit of “special children”’.³⁰ However, the presumption that they are protective of people with disability is not supported by the evidence and is contrary to what many people told us.

A parent told us that their two sons, who both attend a special/segregated school, ‘suffered 120 injuries and incidents of clear violence and neglect’.³¹ They said, ‘rather than care for the child, they physically and psychologically thrash the child into conforming, more worried about “burning out” than the despicable treatment they are handing out to little children who can’t understand’. This parent told us, despite these children being treated ‘worse than animals’ and efforts to report each incident, the education department took little action.³²

Parents also report experiences of restrictive practices in special/segregated schools.³³ One parent told us that her daughter, who attended a Catholic specialist education facility for students with intellectual disability, was secluded in a dark room and physically restrained multiple times, including having her head and mouth restrained, resulting in bruising on both arms. This parent said the school denied requests for a positive behaviour support plan. It implemented a policy on the use of restrictive practices with little to no external oversight.³⁴

We discuss restrictive practices in Volume 6, *Enabling autonomy and access*.

Research commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse recognised that:

Segregation and exclusion in closed institutional contexts away from public scrutiny leaves children (and adults) with disabilities at heightened risk of violence and harm including sexual abuse. Further, when children with disabilities are stereotyped as dependent and passive and unable to ‘speak up’, they are at heightened vulnerability to being segregated, abused, overlooked and not heard.³⁵

Ending segregated education to achieve inclusive education

Commissioners Bennett, Galbally and McEwin formed the view that ensuring an inclusive education system requires a phased transition away from segregating students with disability to fully including them in mainstream education settings. This transition must occur alongside reforms to mainstream schools that ensure all students with disability can access quality, universally accessible and genuinely inclusive education.

We consider that the continued maintenance of segregation on the basis of disability is not compatible with promoting an inclusive society, free from violence, abuse, neglect and exploitation. This is because:

- the systemic segregation of students on the basis of disability is discriminatory practice with no justifiable basis
- segregated education breaches human rights norms of equality and non-discrimination that Australia has endorsed by ratifying the *CRPD* and other binding human rights treaties
- the two systems of mainstream and segregated education settings create barriers to access and opportunities on an equal basis to others
- segregation on the basis of disability is at the core of the ‘othering’ and devaluation of people with disability, which leads to violence, abuse, neglect and exploitation.

Students with disability will continue to be feared, treated as ‘other’, experience violence, abuse, neglect and exploitation, and ultimately be discriminated against as long as education systems continue to separate them. Education systems must instead create conditions that foster authentic and positive day-to-day connections and relationships between all students who share the same spaces.

As said by Mr Gerard Quinn, the United Nations (UN) Special Rapporteur on the rights of persons with disabilities, in Public hearing 31, ‘Vision for an inclusive Australia’, States Parties need to make a clear switch in public policy defaults, away from segregation and in favour of a policy of people with disability ‘thriving in the community’:

We have imagined, designed and implemented a service paradigm to match the segregationist or institutionalist default. There is nothing natural or inevitable about this – although it has the air of being natural or neutral. If we switch our policy defaults in favour of thriving in the community then we have to turn around the large ship of services to make it a reality. This is where all the action is in the future – once the policy switch away from segregation is made. What matters is a clarity of purpose to end segregation – followed by the creation of an intentional programme to achieve progressively the kinds of systems changes needed to give it reality.³⁶

The resistance to accept special/segregated education as inconsistent with academic, social and economic inclusion points to deep ableism in our society that is the major barrier to the inclusion of people with disability in economic, social and cultural life.

As Kayess and Sands told us in their report for the Royal Commission:

It has been over a decade since the adoption of the *CRPD*, but the disability rights movement continues to fight for the social transformation that is its promise. The conceptualisation of disability as an individual deficit, and the normative standard of the medical model is now commonly referred to as ‘ableism’. The ableist norm is generally internalised and seems benign; is often unstated, and appears natural and neutral. Ableism is still entrenched in contemporary legal, policy and practice

frameworks which continue to segregate people with disability from the general population – in special schools, special institutions and accommodation arrangements, segregated employment, segregated transport systems, special access arrangements, special sporting events...³⁷

Article 24 of the *CRPD* requires the elimination of segregated education settings

Article 24 of the *CRPD* requires States Parties to recognise the right of people with disability to education and ensure an inclusive education system at all levels.³⁸ In doing so, States Parties must ensure that people with disability:³⁹

- are not excluded from the general education system on the basis of disability
- receive an inclusive and quality education on an equal basis with others in their communities
- are provided with reasonable accommodation and supports within the general education system, consistent with realising an inclusive education system.

The right to education is a multiplier right essential to the exercise of all human rights. It is a powerful facilitator for addressing disadvantage and for full participation in all facets of life.⁴⁰ It has had profound social impacts in all communities.⁴¹ The rights in the *CRPD* recognise the particular struggle of people with disability against structural and systemic forms of severe exclusion that have resulted in harm.⁴² The right to inclusive education, in particular, views separation on the basis of disability as a negative phenomenon and rejects the notion of 'separate but equal'.⁴³ Inclusive education is consistent with the enactment of 'the grand moral purpose of education itself: to create well-developed citizens who are freely accepted and are valued members of society'.⁴⁴

Mr Quinn gave evidence to the Royal Commission that inclusion is 'a defining theme of the entire UNCRPD'.⁴⁵ Former UN Special Rapporteur on the rights of persons with disabilities, Ms Catalina Devandas, said that segregated education is against the *CRPD* and that segregation is a grave source of discrimination.⁴⁶ Australian legal academic Rosemary Kayess gave evidence that 'the *CRPD* is about addressing segregation on the basis of disability'.⁴⁷ At the time, Ms Kayess was then Chair of the *CRPD* Committee. She had also been appointed at the time of the negotiations of the *CRPD* to facilitate the drafting of article 24 on education. A range of contributors to the Royal Commission also cite article 24 of the *CRPD* as requiring the inclusion of all students with disability in mainstream settings with all necessary supports and the phasing out of special/segregated education settings.⁴⁸

General comment no. 4 and human rights norms of equality and non-discrimination

In 2016, the *CRPD* Committee published *General comment no. 4* on inclusive education, which explains the obligations of States Parties under article 24.

We recognise and respect the CRPD Committee's role and expertise and consider its explanation of article 24 to be authoritative. The members of the CRPD Committee are independent experts and jurists with disability who were elected following nomination by countries that have ratified the *CRPD*. The CRPD Committee is the only body with a specific mandate under international law to monitor compliance with the *CRPD* and to further explain its provisions and the obligations of States Parties.

General comment no. 4 states:

Exclusion occurs when students are directly or indirectly prevented from or denied access to education in any form. Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities. Integration is the process of placing persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions.

Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences.⁴⁹

We adopt these clear definitions of exclusion, segregation, integration and inclusion. The CRPD Committee uses 'segregated education settings' to capture any type of setting that meets the definition of segregation. Segregation includes special/segregated:

- schools
- units or classes that exist within mainstream schools, where children receive education in separate units or classes designed to respond to particular impairment(s).

As Mr Quinn said in his evidence at Public hearing 31, the norms embodied in the *CRPD* have clear implications for the status of segregation in public policy:

the switch at the level of ideas from the 'medical model' to the 'social model' to the 'human rights model' has concrete implications with respect to traditional disability policy and especially its tolerance for segregation. The new predicates – personhood, inclusion and inclusive equality – all point away from segregationist solutions of the past.⁵⁰

It is clear to Commissioners Bennett, Galbally and McEwin that article 24 evokes the overarching equality and non-discrimination norms that are at the heart of the *CRPD*. The article repeatedly uses the wording 'on an equal basis with others' and the prohibition on exclusion on the basis of disability. It is also evident that the right to equality and non-discrimination is integral to, and indissoluble from, the right to inclusive education even though article 24 does not refer to specific forms of disability discrimination in education. This is consistent with the primary focus of article 24 on the positive obligations of States Parties to ensure inclusive education.

While article 24 does not specifically prohibit special/segregated schools, the practice of segregation on the basis of disability is inconsistent with the inclusive equality norms derived from international human rights law at the heart of the *CRPD*.⁵¹ Special/segregated education is, therefore, a form of disability discrimination. Equality and non-discrimination in international human rights law incorporate the principle that segregation is inherently unequal and discriminatory.⁵²

For example, the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965) rejects the ‘separate but equal’ standards.⁵³ The prohibition of ‘separate’ standards for ‘separate’ groups is reinforced in the *International Covenant on Economic, Social and Cultural Rights* (1966) (*ICESCR*). In its general comments, or guidance papers on interpretation and implementation of *ICESCR*, the Committee on Economic, Social and Cultural Rights (CESCR Committee) outlines that disability-based discrimination includes segregation, isolation and separation based on impairment.⁵⁴

It is our view that these equality and non-discrimination standards do not permit discrimination on the basis of disability that legitimises a system of parallel, segregated education for people with disability.⁵⁵

In *General comment no. 6*, where it provided guidance about what constitutes ‘disability discrimination’ under the *CRPD*, the CRPD Committee stated:

Segregated models of education, which exclude students with disabilities from mainstream and inclusive education on the basis of disability, contravene articles 5(2) and 24(1)(a) of the Convention.⁵⁶

The CRPD Committee also recommended that non-discrimination legislation should address ‘disability-specific discrimination, such as segregated education’.⁵⁷

General comment no. 4 also states that progressive realisation requires States Parties ‘to move as expeditiously and effectively as possible towards full realisation’ of article 24, and that ‘[t]his is not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system’.⁵⁸ It calls on States Parties to ‘transfer resources from segregated to inclusive education environments’.⁵⁹

In *General comment no. 6*, the CRPD Committee elaborates on the right to equality and non-discrimination and says that this includes ‘the right not to be segregated and to be provided with reasonable accommodation and must be understood in the context of the duty to provide accessible learning environments’.⁶⁰

In 2020, in *Rubén Calleja Loma and Alejandro Calleja Lucas v Spain*,⁶¹ the CRPD Committee considered its first case under the Optional Protocol to the CRPD on the right to education. It concluded that the government of Spain had violated the right of a child with disability to education by placing the child in a segregated ‘education centre’ after the provision of support was terminated at the child’s mainstream school. The CRPD Committee said Spain must prevent similar violations and undertake reforms to ‘eliminate any educational segregation of students with disabilities in both special education schools and specialised units within mainstream schools’.

Together, *General comments nos. 4 and 6* reflect the evolved and current understanding of human rights standards concerning equality and non-discrimination, and their application to students with disability's right to education.

All people with disability, including those with complex support needs, have a right to inclusive education and to not be discriminated against. In its submission to the Royal Commission, All Means All state that neither article 5 nor article 24 limits the right to inclusive education on the basis of disability 'type', categorisation or complexity.⁶² In this way, the *CRPD* differs from earlier global statements on inclusive education, such as the Salamanca Statement, which did not conceptualise inclusive education for people with disability through a human rights lens.⁶³

Commissioners Bennett, Galbally and McEwin consider that the *CRPD*, including the right to inclusive education, represents a paradigm shift away from this limited and 'deficit'-based approach. It applies human rights norms to the situation of people with disability, including the concept of 'universality' of human rights. This recognises all people with disability have the same fundamental rights to inclusion and non-discrimination regardless of impairment.⁶⁴

In 2020, the Royal Commission sought advice on the interpretation of article 24 from Professor Andrew Byrnes, a Professor of International Law from the University of New South Wales. Professor Byrnes advised the Royal Commission that in his view the description of inclusive education in *General comment no. 4* provides a 'sound legally based working definition of the concept',⁶⁵ based on applying the rules of treaty interpretation.

Professor Byrnes' advice states that article 24 obliges States Parties to transition to a system of fully inclusive education. He says that over the medium to long term, this will involve the allocation of resources to general schools to support the transition and eventual closure of special/segregated education for children with disability.⁶⁶

Professor Byrnes provides that the 'better view' of the meaning of 'inclusive education' in article 24 does not support the maintenance of special or other forms of segregated education settings as an option that is consistent with States Parties' obligations under the Convention, generally, or article 24, in particular.⁶⁷

Professor Byrnes further states that some commentators have noted that article 24 does not explicitly prohibit special/segregated education. However, these views are incorrect as they fail to give adequate weight to the wording of article 24 in the context of the overall treaty, its broader objective and purpose. They also ignore the drafting history of the *CRPD* and the proposals that were or were not accepted during that process.⁶⁸

Professor Byrnes argues that the drafting history of the *CRPD* supports an interpretation of article 24 that requires the progressive phasing out of special/segregated education. As explained by Ms Kayess, who was the facilitator of article 24 negotiations, 'the arguments in favour of inclusion prevailed'⁶⁹ and States Parties decided to remove from the draft provision wording that would have provided a choice between mainstream and special/segregated education.⁷⁰ This clearly demonstrates States Parties rejected special/segregated education as being incompatible with achieving inclusive education.

Similarly, Professor Ron McCallum states in his research report that:

Article 24 exhorts ratifying countries to ensure that children and persons with disabilities are able to access inclusive education, that is, education alongside other children and persons. Put another way, inclusive education means that children with disabilities learn alongside other children in the same classrooms.⁷¹

We note that Australia's position at the time of drafting article 24 was in favour of a clear statement that students with disability are to be educated 'within the general education system and in the communities in which they live' and did not support embedding exceptions.⁷² Unlike the United Kingdom, which sought to limit its obligations through an interpretive declaration to protect its operation of special/segregated education,⁷³ Australia accepted the full effect of article 24. It did not lodge any reservations or declarations. Thus, some aspects of the Australian Government's submission⁷⁴ are inconsistent with this drafting and ratification history.

At Public hearing 18, 'The human rights of people with disability and making the *Convention on the Rights of Persons with Disabilities* a reality in Australian law, policies and practices', Professor Byrnes gave evidence that:

Australia needs to move progressively over some time to have a transformed system with inclusive education, which does not, as a matter of principle, include special schools as a long-term separate form of education.⁷⁵

This is consistent with his written advice in which he expressly rejected the proposition in the Australian Government's submission that the *CRPD* permits the indefinite or long-term maintenance of special/segregated schools.⁷⁶

Article 24 and dismantling segregated education

A range of contributors to the Royal Commission cite article 24 of the *CRPD* as the basis for the inclusion of all students with disability in mainstream settings with all necessary supports and the phasing out of special/segregated education settings.⁷⁷

However, the Australian Government has previously told the Royal Commission it does not agree with this interpretation of article 24.⁷⁸ This is despite the Australian Government not qualifying its acceptance of article 24 through, for example, an interpretative declaration, at the time of ratification of the *CRPD*.

The Australian Government asserts that the deliberate absence of a definition of inclusive education in article 24 suggests that this obligation can be fulfilled in a range of ways.⁷⁹ It also argues that the wording of article 24(3)(c) explicitly permits the use of specialist schools or classes in certain circumstances.⁸⁰ The Australian Government argues that the ordinary meaning of the terms of article 24 does not support a view that special/segregated schools are prohibited.⁸¹ It told the Royal Commission:

a State Party will meet its obligations under article 24 through an education system that allows for funding of different education modalities so students with disability are able to participate in a range of education options, including: enrolment in mainstream classes in mainstream schools with additional support; specialist classes or units in mainstream schools; and specialist schools as is appropriate. A range of education options ensure that the best interests of the student are a primary consideration.⁸²

Counsel Assisting the Royal Commission also submitted her view in submissions that ‘the international laws do not expressly prohibit segregated or special education settings’.⁸³

In response to this submission, the New South Wales Government told us that their position was that special/segregated schools play an important part of an inclusive education system. They said that inclusive education should not be thought of in terms of a ‘binary approach’. They do not support the proposition that ‘segregation is incompatible with the principle of inclusive education’.⁸⁴ The Western Australian Government indicated that it accepts the Australian Government’s interpretation of article 24 as correct.⁸⁵ The South Australian Government indicated it will continue to operate special/segregated schools.⁸⁶

We do not agree with the Australian, New South Wales, Western Australian and South Australian governments’ views outlined above. This is based on our understanding of article 24, informed by the CRPD Committee and the opinion of leading human rights experts.

The CRPD Committee explicitly criticised the Australian Government for a lack of progress on implementing inclusive education and growth of segregated education settings.⁸⁷ During the Constructive Dialogues held on 12 and 13 September 2019, the Disability Discrimination Commissioner Dr Ben Gauntlett stated:

Australia has a segregated education system, where schools have turned away students because of their disability, and the rate and extent of segregation is growing, which is contrary to article 24 and *General Comment No. 4*.⁸⁸

The 2019 *Australian Civil Society shadow report* to the CRPD Committee also raised concerns about increasing levels of segregation and recommended that Australia address this by redirecting adequate resources to full inclusion in mainstream schools.⁸⁹ Also, Mr Quinn stated that ‘crystal clarity [is] needed to commit to end segregation’ and that this must be supported by a ‘thoroughgoing examination of practices past and a commitment to re-build from the ground up’.⁹⁰

We endorse Professor Byrnes’ legal advice that article 24 requires the complete dismantling of special/segregated education settings over time. The arguments in favour of maintaining segregation fail to understand the underlying purpose of the *CRPD*. The consequence of this failure is the continued denial of people with disability’s human rights, including the right to full and equal participation and inclusion in society. We are of the view the Australian Government and state and territory governments must reconsider their positions on article 24 so that it is line with the CRPD Committee and pre-eminent human rights experts’ views.

In forming this view, we drew extensively on a wide range of significant information, materials and evidence provided to the Royal Commission, including the:

- General comments (in particular *General comment no. 4*) and Concluding observations of the CRPD Committee
- Byrnes analysis and his conclusions in disagreeing with the Australian Government's position on *General comment no. 4*
- Kayess and Sands research report
- research report by Professor McCallum, a former Chair of the CRPD Committee and the first person with a disability to hold the position of Chair in a UN human rights treaty body
- unequivocal evidence from two UN Special Rapporteurs on the rights of persons with disabilities and the then Chair of the CRPD Committee
- submission on Ending Segregation from the Disabled Persons Organisations
- internal Royal Commission statistical modelling on the impact of segregated settings on National Disability Insurance Scheme (NDIS) participants.

We are not persuaded by arguments that there is insufficient clarity about the right to inclusive education such that segregation on the basis of disability can be accepted. For some time after the 1954 landmark civil rights case of *Brown v Board of Education of Topeka*, governments staunchly resisted the enforcement of the equality and non-discrimination principles in that case. They continued to spend taxpayers' funds to build and maintain racially segregated schools.⁹¹ Governments did this in a range of ways, including through narrow legal interpretations that argued they were not required to stop funding racially segregated schools.

The primary objective of the Royal Commission is to establish ways to create a more inclusive society where people with disability are not subjected to violence, abuse, neglect and exploitation. We consider that a failure to address the segregation of people with disability fundamentally undermines the purpose and outcomes of this Royal Commission. This is our view based on what people with disability, their families and disability representative organisations, and human rights experts told us through public hearings, submissions and private sessions.

Learning support in addition to the inclusive classroom

Professor McCallum's view is that article 24 allows that 'children with disabilities who are enrolled in mainstream schools may attend specialist classes in separate classrooms for some time during the school week'.⁹² We understand that Professor McCallum's comments refer to programs that provide additional support to students with disability but are not intended to replace education in a mainstream classroom. Professor Byrnes' advice on *General comment no. 4* is that article 24 does not allow special/segregated units or classes within mainstream schools that are designed or intended to respond to students with particular impairment or various impairments, away from students without disability.

As Professor Carrington explained, the goal of inclusive education is to have all students in the same classroom where possible. However, the use of different teaching spaces is a complex issue. She said that what matters is that the learning and support needs of every individual child are met.⁹³ She explained:

[There] may be times when all children in the classroom might need to have time out to go and learn quietly under the tree or work in the library, for example. So it's not necessarily about having to be in the same place doing the same thing all of the time.⁹⁴

Dr Kate de Bruin of Monash University, who gave evidence in Public hearing 7, also discussed the application of multi-tiered systems of supports. She recognised the need for 'a continuum of evidence-based practices along a sliding scale of intensity and individualisation'. Such an approach ensures every student receives high-quality, universally-accessible instruction in inclusive classrooms. It also allows for appropriate time-limited and specific interventions that may sometimes be delivered outside of the regular classroom. A targeted literacy intervention program based on need rather than disability is an example of the latter.⁹⁵

Proponents of keeping segregated education say that social, sporting and recreational 'interchanges' between students with disability in special/segregated schools or units and students without disability in mainstream schools is sufficient to achieve inclusion. They say that schools or units that facilitate such integration should not be labelled 'segregated'.

We are of the view that such 'interchanges' are tokenistic at best. They do not enable meaningful participation and authentic inclusion in education, but rather reinforce the 'otherness' of students with disability. Many special/segregated settings already provide for such 'interactions', and we are not convinced there is evidence they achieve the aims of inclusive education.

We are also concerned these practices reinforce the devaluing of people with disability. Research suggests that children in special/segregated settings are more likely to experience bullying by children from other mainstream schools, and peers and outsiders in their neighbourhood than students with disability in mainstream schools.⁹⁶

Parent choice

Professor Byrnes advised that a proper and contemporary interpretation of *ICESCR* concludes that States Parties are not obliged to ensure parents have the right to choose segregated education. He considered that *General comment no. 4* clearly states that education is the right of the individual learner, whereas parental responsibilities are subordinate to the rights of the child.⁹⁷

Focusing on the concept of choice, Kayess and Sands also hold that article 24 'does not guarantee a right to choose based on impairment as such a guarantee is not supported by international law'.⁹⁸ Just like parents cannot choose separate education based on race, they cannot choose segregated education based on disability type.

Commissioners Bennett, Galbally and McEwin consider the right to inclusive education is held by the child or young person with disability.

We understand that parents want the best for their child with disability and we want all children with disability to have the best lives an inclusive society can provide. However, the structure of education systems influences the choices families make about where to enrol their children. The Royal Commission received evidence and information that parental choice to enrol a child in a special/segregated school or unit is often not a ‘free choice’. Rather, it is a choice based on exclusion from mainstream education, where safe, quality and inclusive education with the right supports has not been provided.⁹⁹ This has been described as ‘coercive choice’.¹⁰⁰

Many people told us that enrolment in special/segregated settings occurs following a poor experience in the mainstream education settings. At Public hearing 24, ‘Isabella’ told us she supported special/segregated settings for her son, ‘Emerson’ but her decision to enrol her child in these settings was preceded by poor experiences in mainstream schools.¹⁰¹ Isabella said:

I felt that, with sufficient support, Emerson could have continued learning at that second mainstream school, but we were – and it was presented to us as our choice at that stage, but the way the choice was presented, I almost felt like we didn’t have a choice.¹⁰²

Similarly, Britt, a young advocate, pointed to mainstream schools becoming ‘so inaccessible and so wrought with bullying that it doesn’t feel like a choice anymore’.¹⁰³

Evidence from advocates was that parents are not making a choice between ‘two equal things’. Rather, it is ‘a choice between a mainstream school that really doesn’t want you there or puts a whole lot of barriers in the way, or a special/segregated school that makes you feel welcome’.¹⁰⁴ For example, at Public hearing 7, ‘Sharon’ gave evidence that, when trying to enrol her son, local schools told her they ‘just don’t take children like Jack’.¹⁰⁵

The challenge for parents is having to choose between a segregated education setting and poor educational support in mainstream schools. This challenge disappears when we make mainstream schools inclusive. Further, inclusive education is more than a means of ending ‘segregation’. It is the right of all children to participate fully in education on an equal basis with others.¹⁰⁶

Commissioners Bennett, Galbally and McEwin consider that it is the responsibility of governments to uphold and protect children’s human rights and to offer education that aligns with these rights. We consider that governments play a primary role in supporting parents in the fulfilment of their child’s rights to education, including their right to inclusive education.

Rights of First Nations students with disability

Commissioners Bennett, Galbally and McEwin also recognise that First Nations students with disability have a specific right to access inclusive education in culturally appropriate ways, including schools established on the basis of cultural or linguistic identity. This is consistent

with article 14 of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* and the *Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities* (United Nations 1992). We do not view the education of students with disability in special/segregated settings on the basis of disability as being equivalent to the delivery of education in schools established for the transmission and promotion of religious, ethnic, cultural or linguistic identity.

The intersecting human rights of First Nations students with disability include the right to receive accommodations and supports and not be segregated on the basis of disability, as well as the right to attend schools that cater for their linguistic and cultural rights alongside other First Nations peers. This is consistent with the First Peoples Disability Network's position as set out in the 'Segregation is Discrimination' paper it co-authored.

The First Peoples Disability Network provided the book *Culture Is Inclusion* to the Royal Commission as a submission.¹⁰⁷ It identifies the practice of separating people by disability as a product of the Western model of disability. It is a practice that worsens the experience of intersectional inequality for First Nations people. The submission says segregation is not consistent with the First Nations philosophy of 'culture of inclusion'. It highlights the problem with a 'compartmentalised approach to education' where supports for children with disability are delivered separately from programs for First Nations people, 'as opposed to flexible, coordinated programs which are both culturally inclusive and disability inclusive'.¹⁰⁸ This forces First Nations children to be disconnected from culture to access disability supports.

The submission recorded the following account by the mother of an autistic First Nations child:

I made the decision that I would prioritise [my son's] Autism and – do you know what I mean? Like, that was a really hard decision for me. Because, I've always identified [as being Aboriginal] and, you know, that's our heritage.

I had to pick a I ... I just felt if I focus on this they're going to focus on that and then he's going to become a statistic and at the exclusion of the other. So, if I pick this box and not that box they'll focus on the autism and not the other part. And, if I did it the other way that's all they would focus on.

So, I made that choice. And, it was probably the wrong choice at the time. But, you know, I was so scared for him to go into school in general and my experience with the education system down the track is that Aboriginal students are, you know, sort of, put into a group and, sort of, excluded and, you know, the way they manage it is they might not even have an achievement. But, every week they go to the principal with some sort of work that they've done and they're removed from the class and put in a special group and that's how they're treated.

And, the question came up with Aboriginality again when [my daughter] enrolled. Because, of course I ticked the box for her. I'm, like, yes, that's who we are. Tick the box. Don't even think twice about it.¹⁰⁹

We consider that segregation on the basis of disability is not only discriminatory in accordance with international human rights norms, but also denies the intersection of identity for First Nations students with disability. It undermines their right to meaningful access to culture alongside their First Nations peers without disability, which does not occur within special/segregated schools. Cultural empowerment is as important to First Nations people with disability than it is to First Nations people without disability.

Understanding and achieving inclusive education

Research: Its limitations and the consequences for human rights

Commissioners Bennett, Galbally and McEwin wish to make a general observation on the use of research. While research and evidence are important to guide the development and implementation of public policy, the appropriate parameters for its use, as well as its limitations, must also be considered.

There are serious questions in seeking to make human rights conditional on positive research outcomes. Persistent demands on people with disability to either demonstrate that segregation is harmful or that inclusion produces better outcomes are particularly problematic, even setting aside the fact that the evidence for segregation on the basis of disability is seldom challenged or scrutinised. In the case of segregation, history has shown us the worst consequences, such as practices of mass institutionalisation grounded in eugenics.¹¹⁰ Equality norms under international human rights law have been developed in light of that history and have been formally endorsed by governments when ratifying international treaties like the *CRPD*.

Continual demands for research-based evidence should not be used to sustain systemic marginalisation and exclusion in cases where human rights and equality norms require action. The Commissioners consider that research about people with disability, including in education, should be authentically inclusive of them. It should be an enabler of, and not a barrier to, their human rights.

Positive outcomes for people with disability throughout life

The Royal Commission gathered evidence and information, along with leading domestic and international research, that show inclusive education leads to positive outcomes for people with disability throughout life.

At Public hearing 24, Bas' mother Julie said that research shows all children have better outcomes when they learn together. She said:

That's where we should be headed so that everybody is welcome and all needs are met, all children always at mainstream schools. And then we won't have to say 'mainstream' anymore; it will just be school.¹¹¹

Gi spoke about the benefits of their brother visiting a mainstream school. Gi told us that when their brother started a program to spend time at a mainstream school once a week, 'he started meeting milestones and flourishing'. They said he found 'a sense of self in a much wider world than the segregated system could have ever shown him'. Gi said that learning alongside his peers and playing during lunch was 'one of the most important things that has ever happened in his schooling'.¹¹²

A school principal at Public hearing 2 indicated that academic and social outcomes for students with disability, and across the school community, improved where inclusive education was implemented.¹¹³ Other school representatives said that students with disability who might otherwise attend special/segregated education settings could be and were catered for in a mainstream setting as part of an inclusive approach.¹¹⁴ These school representatives all gave examples to illustrate how their schools practically enable students with complex needs to participate and learn alongside their peers.¹¹⁵

Ms Loren Swancutt, Head of Special Education Services in Queensland, recalled one student with complex needs:

the students in Year 10 are learning to balance chemical equations ... he still was very much a participant in those lessons by ... using visuals to answer to yes and no questions of things that he would have observed during that chemical equation ... we're just talking about the same content at different levels of complexity ... we can provide different access points for students to enter and participate in that same content together ...¹¹⁶

One parent told us:

there is safety in community and the safest place for a child with a disability to be in education is to be with their same-aged peers – that is where they are best protected from violence, abuse, neglect and exploitation. People with disability being visibly and actively involved, and participating in that ordinary community life, is what keeps them safe – with their typical peers looking out for them.¹¹⁷

Other organisations shared similar views. Speech Pathology Australia highlighted research from the American Speech-Language-Hearing Association 'that suggests individuals with typical speech and language development can serve as good language models, therefore assisting individuals with severe communication disabilities to communicate more effectively'.¹¹⁸ The University of the Sunshine Coast told us that inclusive education supports students with disability to establish self-confidence, resilience and increased self-advocacy.¹¹⁹

Lifestart Cooperative Ltd told us about the impact of inclusive approaches on life outcomes:

[i]nclusion in education settings has a profound impact on the life trajectory of children and young people with disabilities, setting the foundation for what future participation and inclusion may look like.¹²⁰

A deputy principal told us that mainstream settings provide:

ample opportunities for verbal conversation with appropriate role models, lead to academic success and increased self-esteem. Inclusion assists academic improvement and social connections and better prepares students for future employment.¹²¹

The Royal Commission also heard inclusive education helps prevent violence, abuse and neglect of students with disability.¹²²

Some past reports support the proposition that inclusive education leads to the best outcomes and achievement for students with disability and best supports high-performing school systems.¹²³ A 2016 Senate inquiry considered ‘the question of which sort of education produces the best outcomes for students: inclusion in “mainstream” schools or classes or via special-purposes schools’. It reported that ‘the majority of research and evidence presented to this inquiry supports the proposition that mainstream-based inclusive education leads to the best outcomes for students’.¹²⁴ Similarly, submissions and evidence from academic experts¹²⁵ provided to the Royal Commission highlighted that there are many decades of robust scholarly evidence that consistently support inclusive education as an effective model of schooling for all students – with and without disability.¹²⁶

Negative outcomes for people with disability from segregated education

In contrast, information, research and evidence considered by us show that placing students with disability in special/segregated education settings, and denying them an inclusive education, leads to negative outcomes throughout life. For example, in Public hearing 33, ‘Violence, abuse, neglect and deprivation of human rights (a case study)’, we heard about the extreme neglect and low expectations of two students with disability by a special school.¹²⁷

Statistical modelling by the Royal Commission to evaluate the impact of segregated settings and demographic factors on employment and decision-making outcomes for NDIS participants found that:

- those who studied in special/segregated education were more likely to transition into employment in ADEs than those who studied in mainstream education
- those who studied in special/segregated education or were employed in ADEs, were less likely to report making most of the decisions in their life compared to those who studied in mainstream education.¹²⁸

Notably, no evidence or information received from submissions, public hearings or research presented strong and consistent data showing segregated education improved long-term outcomes for students with disability.

We note that efforts were made through the Royal Commission’s commissioned research to consider the evidence of outcomes for students with disability in different types of education

settings, which resulted in the research report *Outcomes associated with 'inclusive', 'segregated' and 'integrated' settings for people with disability*.¹²⁹ This report did not demonstrate evidence in support of the practice of segregating students with disability.

While we agree with the authors that inclusion is a multidimensional concept, a foundation element is the 'physical' dimension of inclusion (i.e. locating students with and without disability in common classrooms). However, in respect to the report's conclusions, we note that these are at odds with decades of research in support of inclusive education for students with disability, as summarised by leading academics who gave evidence before the Royal Commission.¹³⁰ The recent statistical modelling of the impact of segregated settings referred to above adds to, and confirms, this research.

The research report *Outcomes associated with 'inclusive', 'segregated' and 'integrated' settings for people with disability* has the following limitations:

- inappropriate search strategies: the literature search only retrieved and inspected records published after 2006, thereby disregarding the significant evidence of prior decades.¹³¹ Also, the decision to 'focus on profound/severe disability'¹³² resulted in the exclusion of high-quality, gold-standard studies
- a lack of critical appraisal of the studies: no critical appraisal approaches or tools were reported as used. There appears to be a lack of reliance on robust studies capable of answering the questions asked¹³³
- inappropriate methods used to combine studies: the research combined studies using different methodology and research design, for example, primary and secondary studies, which may have led to duplication.

Inclusive education promotes an inclusive society

Our compulsory education system enables near universal reach to children in their formative years to influence belief creation and societal norms.¹³⁴ Australia, as a State party to the *CRPD*, has an obligation to promote an understanding of, and respect for, the rights of persons with disability by '[f]ostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities'.¹³⁵ The UN Sustainable Development Goals, which Australia is also committed to, recognise the centrality of inclusive education to the development of inclusive, peaceful and fair societies.¹³⁶

Inclusive education requires the recognition of the rights of people with disability, and of their value, strengths and contributions to Australian society. When inclusive education is done well, it recognises that inclusion is 'everyone's business',¹³⁷ and that the onus should not only be on the person with disability to integrate.¹³⁸

The Australian Human Rights Commission (AHRC) told the Royal Commission that 'placing diversity and inclusion at the heart of education systems can have a significant impact on community perceptions of disability'.¹³⁹ Other stakeholders have told us that inclusive education is 'essential for creating the inclusive society we all want'.¹⁴⁰ It is an important step in creating

sustainable, long-term change in community attitudes,¹⁴¹ and can enhance compassion, acceptance of disability, appreciation of individual differences, values and ethics.¹⁴²

A key element of inclusive education that can influence attitudes is the visibility and meaningful inclusion of children and young people with all types of disability in their daily lives.¹⁴³ We note that:

[by having] more opportunities for people without a disability to interact with people with disability, inclusive education allows children to form their own assumptions and ideas, rather than simply subscribing to those put forward by society.¹⁴⁴

Inclusive education can help children to experience and accept difference as normal, 'lessons which they can then take to the outside world'.¹⁴⁵

The informal learning gained through social connection with children and young people with disability can equip people without disability to interact with a diverse world around them into adulthood.¹⁴⁶

The Royal Commission has seen the positive impacts of inclusive education on attitudes. This could be seen in the case study of inclusive education in Queensland state schools at Public hearing 2. Witnesses observed inclusive education facilitated a change in community beliefs and improved understanding and appreciation of disability and diversity.¹⁴⁷ Evidence showed that 'education is the key' to transforming society's attitude and behaviour towards children with disability.¹⁴⁸

Research commissioned by the Royal Commission also found that most evidence-based interventions aimed at changing attitudes focused on knowledge of disability, as well as information and opportunities for participants to meaningfully interact with people with disability.¹⁴⁹ It argued that generating community-wide recognition that disability exists in the community in many diverse ways can be facilitated by contact, exposure and connection between people with and without disability.¹⁵⁰

Other research consistently indicates that discomfort associated with people with disability, or 'otherness', and their perceived lack of competence, can be overcome through personal contact. Thus, meaningful connections and authentic relationships based on equality and respect promote inclusion. Research also suggests that children who learn in an inclusive environment have more positive attitudes towards disabilities and a better understanding of the needs of an individual with disabilities than children in a less inclusive environment.¹⁵¹

Inclusive education is practicable, achievable and is already being done

Evidence and information gathered by the Royal Commission highlighted examples where inclusive education is already effectively progressing in Australia and overseas.

The Queensland Department of Education implemented its Inclusive Education Policy in May 2018 in response to the *Review of education for students with disability in Queensland state schools*.¹⁵² The review found:

there was a high level of commitment from staff to inclusion and supporting students with disability, and evidence of good practice in schools. However, it was also found that good practice was not consistent across the state and change was needed at every level within the Department.¹⁵³

Ms Dunstone, representing Education Queensland, gave evidence that the principles that underpin Queensland's Inclusive Education Policy are drawn from the CRPD Committee's *General comment no. 4*.¹⁵⁴ The policy sets out that inclusive education means:

students can access and fully participate in learning, alongside their similar-aged peers, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs. Inclusion is embedded in all aspects of school life, and is supported by culture, policies and every day practices.¹⁵⁵

Ms Dunstone also described how the policy takes an intersectional approach, in that it recognises the needs of students from different backgrounds, such as First Nations students with disability.¹⁵⁶

The Royal Commission heard evidence about the shift in practice and attitudes in public schools facilitated by the introduction of the Inclusive Education Policy. Mr Kevin Bates, from the Queensland Teachers Union, gave evidence that the implementation of the policy was 'a watershed moment in crystallising the myriad approaches to inclusion across the system into a cohesive purpose. ... Educators have a clear understanding of what is required of them to deliver an inclusive education system.'¹⁵⁷

Dr Lisa Bridle, Senior consultant at Community Resource Unit Ltd, told us that Queensland's Inclusive Education Policy clarified that 'every student has the right to enrol in their local schools, and it set some very helpful measures of success'. She said the work done to promote the policy supported an increased 'understanding of the legal obligations to support and include students with disability'.¹⁵⁸ It enabled families 'more effectively to make a case for attending their local school' by being armed with the policy.¹⁵⁹ It also 'raised expectations' about the access and participation of students with disability in the classroom and some 'greater consciousness' that this encompasses activities outside of the classroom.¹⁶⁰

Other witnesses agreed that the introduction of the policy led to change.¹⁶¹ People are 'beginning to understand that inclusion is not integration'.¹⁶²

Representatives of all three schools in Public hearing 2 were positive about progress on the implementation of inclusive education practices in their respective schools, noting high levels of satisfaction among staff.¹⁶³

The Inclusive Education Policy includes a caveat that:

[The] department will continue to offer parents the choice of enrolling their child, who meets set criteria in highly individualised programs, including through special/ segregated schools and academies.¹⁶⁴

However, evidence from school principals was that many of their students who met the requirements for enrolment in a special/segregated school were being educated within a mainstream education setting through the use of holistic, needs-focused approaches.¹⁶⁵ Ms Kaupilla, Head of Department, Inclusive Practices at Ingham State High School, agreed with this statement and noted that there is no special/segregated school in her district.¹⁶⁶

Drawing on international promising practice

Commissioners Bennett, Galbally and McEwin consider there is much to be learnt from international experiences in transitioning from segregated education systems to fully inclusive education systems.

For example, the inclusive education reforms in the province of New Brunswick in Canada have been highly successful in reducing rates of student segregation.¹⁶⁷ By the same measure, Australia has done poorly given evidence of the growth of segregation.¹⁶⁸ However, as already stated, inclusion is understood as more than a means to ending segregation, so this measure alone is a critical and necessary one, but is not sufficient to achieve inclusive education.

In Portugal, where there has been a commitment to the development of inclusive education and to ending segregation through the enactment of new reforms, there have been significant successes as well as continuing challenges.¹⁶⁹ A 2022 review by the OECD of Portugal's 2018 reforms for inclusive education recognised there has been important progress on the path to inclusive education across a range of measures, that should be instructive to other countries.¹⁷⁰ It does not suggest that Portugal should divert from, or abandon, this trajectory, on the contrary, it makes recommendations to strengthen policy implementation.

Other relevant measures for the implementation of inclusive reforms may include the:

- impact on student attainment, such as curriculum progress, graduation rates and post-secondary education enrolment
- effectiveness of inclusive practices and accommodations provided to students with disability
- availability and quality of assistive technology and support services
- change in attitudes and perceptions of students, families, educators and community members towards inclusion and disability rights.

The Commissioners consider that the experiences of other countries, and their successes based on various measures, offer important lessons for Australia about the implementation of specific policies or practices for inclusive education.

Rather than focusing on the shortcomings of other systems, we suggest a more useful approach is to identify successful inclusive education policies and practices and to consider how they may be scaled up and applied contextually in our own systems, which, in many cases, are more resourced.

For example, inclusive education has progressed at very different rates globally.¹⁷¹ In Italy and New Brunswick in Canada, there are no special/segregated schools and very few segregated classes in mainstream schools.¹⁷² Similarly, there are very few or no special/segregated schools in Portugal.¹⁷³ There are measures of progress in these countries towards achieving inclusive education and phasing out segregation on the basis of disability in education systems.

Italy has valuable lessons for Australia.¹⁷⁴ The long experience of inclusive education (which began in the 1960s) now appears institutionally and culturally entrenched. Italy closed segregated schools in 1977. All-day nurseries, schools, universities and any other education provider, including private institutions, have an obligation to accept pupils with disability.¹⁷⁵

In Italian schools, all students with disability receive an Individualised Education Plan, which contains educational and instructional goals. Students with more extensive support needs receive Personalised Instructional Plans, containing support and learning strategies.¹⁷⁶ Autonomy and communication facilitators act as additional aides for students who require extensive adjustments and supports. The revised Individualised Educational Plan framework from 2020 seeks to further implement the principles of inclusive education in Italian schools. This new framework emphasises strengthening social connections and improving transitions to work.¹⁷⁷

More recently, in 2018, Portugal adopted a comprehensive statutory framework for the implementation of inclusive education. This framework built on Portugal's earlier efforts to improve education for students with disability, following its ratification of the *CRPD*. The 2022 OECD review of Portugal's reforms noted:

Portugal has made important progress in establishing a strong framework for inclusive education that is focused on responding to the needs of all students. In 2018, Decree Law 54/2018 on Inclusive Education was enacted, accompanied by Decree Law 55/2018 on Autonomy and Curriculum Flexibility as well as a series of guiding documents. This new framework sees inclusive education as a process under which the education system must be reformed and continually challenged so that it can adapt to the needs of all students. This process is ongoing in Portugal, although inevitably it has been slowed down by the COVID-19 pandemic.¹⁷⁸

The closure of all special/segregated schools is a key element of Portugal's reforms. These began over a decade ago under its Decree-Law 3/2008, which coincided with the adoption of the *CRPD* and the achievement of almost 100 per cent of students with disabilities in mainstream schools.¹⁷⁹ In many cases, special/segregated school buildings were repurposed to become 'Resource Centres for Inclusion' and tasked with supporting students placed in mainstream schools.

The new reforms change the way students with disability are supported in mainstream schools by embedding principles of universal design for learning and a multi-level approach to curriculum access, recognising that earlier efforts to ensure 'inclusion' too often produced 'integration' instead.¹⁸⁰ The OECD report identified Portugal's overall success in education reforms, noting it is 'one of the few countries with a positive trajectory of improvement in all subjects' in the last two decades.¹⁸¹

The experiences of other countries offer important lessons about the practical implementation of specific policies and practices for inclusive education.

A ‘no-disadvantage’ approach to phasing out segregated education

The Australian Government suggested that:

[U]niversal reforms such as those under the National School Reform Agreement establish the conditions for an education system that is inclusive and adaptable to the needs of students with disability, and support the progressive realisation of the Commonwealth’s commitment to inclusive education consistent with its interpretation of the *CRPD*.¹⁸²

However, Commissioners Bennett, Galbally and McEwin consider that evidence on the nature and extent of violence against, and abuse and neglect of students with disability, and the ongoing existence of special/segregated education, demonstrate that an explicit commitment and timeframe to phasing out special/segregated education settings is required to progress inclusive education.

General comment no. 4 clarifies that ‘States Parties must adopt and implement a national educational strategy which includes provision of education at all levels for all learners, on the basis of inclusion and equal opportunity’.¹⁸³ The educational objectives elaborated in paragraph 1 of article 24 state that Parties must ensure an inclusive education system at all levels.¹⁸⁴ They must therefore be regarded on a comparable basis of immediacy.¹⁸⁵ The UNHCR illustrative indicators on education, released in 2020, also recommend a national strategy/plan led by the Ministry of Education to transition to an inclusive education system.¹⁸⁶

The Australian Government also previously acknowledged that while it ‘does not have direct responsibility for school education, it plays a critical role in providing national policy leadership, helping to set national priorities and identifying gaps where national action is required’.¹⁸⁷ It suggested that a ‘national strategy may be but one of many appropriate means to progressively realise the right to education’.¹⁸⁸ However, there are still no deliberate, concrete and targeted national measures to implement inclusive education.

Also, a range of stakeholders and organisations told the Royal Commission that a nationally consistent approach and actions are required to clarify and better implement inclusive education. The AHRC told us that in light of *General comment no. 4*, States Parties, including Australia, must take measures to ensure a ‘comprehensive and intersectoral commitment to inclusive education’. This includes:¹⁸⁹

- adopting legislation based on the human rights model of disability that fully complies with article 24
- allocating sufficient resources to inclusive education, including transferring resources from segregated to inclusive environments
- providing training for inclusive education.

Multiple organisations told the Royal Commission that funding and leadership are needed from the Australian Government to facilitate inclusive education.¹⁹⁰ Witnesses at Public hearing 7 emphasised a need to clarify or codify legislation or policy¹⁹¹ around inclusive education, including a clear timeline for implementation.¹⁹² The Australian Coalition for Inclusive Education recommended the establishment of a National Inclusive Education Act.¹⁹³ CYDA recommended a National Action Plan to ensure a successful transition from parallel systems of education to one inclusive education system.¹⁹⁴

Equally, past reports recommended that an explicit, clear vision for, or presumption of, inclusive education, with strong leadership, will encourage the positive change required to prevent violence against, and abuse and neglect of students with disability in education settings.¹⁹⁵ In the past, it has been recommended that inclusive education involves outlining clear and measurable expectations or indicators¹⁹⁶ and establishing an obligation that no student with disability of compulsory school age will be excluded from supported education in mainstream settings.¹⁹⁷

In particular, in 2016 the Senate Education and Employment References Committee recommended the Australian Government work with states, territories, experts, stakeholders, school systems, parents and students to establish a national strategy to improve the education of students with disability. This was in response to many of the barriers to inclusion already raised with the Royal Commission.¹⁹⁸ The Australian Government response to the 2016 Senate report supported this recommendation in principle.¹⁹⁹

We consider these themes to be consistent with the evidence of Mr Quinn at Public hearing 31. He stated:

there must be a deeper level of intentionality, a stock-taking of where things are at, a clear statement of the end-goals and an understanding of the means, tools, timelines and resources needed to move the dial and an institutional architecture designed to oversee the change.²⁰⁰

Phased approach to ceasing special/segregated education

Commissioners Bennett, Galbally and McEwin propose timeframes and milestones for the phasing out of special/segregated education settings over a period of 28 years.

We acknowledge and accept that transition will take time. Making mainstream education inclusive is an essential criterion for phasing out special/segregated school, units and classes.

While this timeframe may seem too long to some, it was developed on the basis that children currently attending a special school are likely to have had no experience in inclusive schools and it could therefore be disruptive to move them during their current education journey. The critical event of this reform starts in 2036 when mainstream schools will have transformed to welcome all children with disability.

Grandfathering arrangements²⁰¹

Phasing out special/segregated education settings will allow for preparation and change of education systems to undertake this complex task. This approach also allows for grandfathering arrangements for students with disability who are currently enrolled in special/segregated schools and who choose to remain in these settings. This means that no student in that time will be forced to leave a special/segregated school. However, they will be assisted in their transition if they choose to leave the special/segregated school.

Proposed milestones for ceasing special/segregated schools and units

The proposed milestones for ceasing special/segregated schools and units are set out over six phases.

Phase 1: 2024-2025: Agreement to a national inclusive education roadmap

In phase 1, the Australian Government and state and territory governments would agree to:

- a national inclusive education roadmap that captures the Royal Commission's recommendations relating to mainstream schools (see Recommendation 7.13)
- the phased approach to ceasing special/segregated education
- no new special/segregated schools being built, or new special/segregated classes or units being included within schools replacing education in a mainstream classroom from 2025.

Giving governments time to consider and respond to the Royal Commission's *Final report*, the focus of this phase would largely be Recommendations 7.1 to 7.13. A process to resolve actions necessary to achieve milestones for phasing out special/segregated education should be embedded in the National Schools Reform Agreement 2025 as a placeholder for future work.

Phase 2: 2026-2027: Preparation for implementation

Phase 2 allows for the tools to be developed for the transition to inclusive mainstream education. It should include:

- implementation of reform to the *Disability Discrimination Act 1992* (Cth) (*DDA*) and consequential amendments to the *Education Standards*
- development of:
 - legislative reform, policies, resources and materials
 - teaching pedagogy, pre- and in-service teacher training, professional development and capability frameworks
 - new research programs
 - governance mechanisms

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- data systems
 - a refined evidence base for the Nationally Consistent Collection of Data on School Students with Disability (NCCD)
 - complaints mechanisms
 - oversight and monitoring mechanisms as required
 - identification of areas of work required within each jurisdiction and education system to give effect to the required transformation of the structure of Australia's education system. This would occur as part of bilateral funding agreements under the National Schools Reform Agreement.

Phase 3: 2027-2035: Transformation of mainstream education

Phase 3 will be focused on implementing all relevant recommendations for making mainstream settings inclusive.

Phase 4: 2032: No new enrolments of children with disability in special/ segregated schools

In phase 4, all funding sources should begin to transition from special/segregated schools to mainstream schools, where this has not already occurred via system reform.

Phase 5: 2041: No new placements of children with disability in special/ segregated units or classes

In phase 5, education departments will not place any new students in special/segregated units or classes.

Phase 6: 2051: By the end of 2051, all students previously in special/segregated schools have finished their education

These milestones would result in a reduction in students with disability in special/segregated education settings over time. The percentage of students with disability in special/segregated schools would reach zero by 2052.

Recognise milestones for ceasing special/ segregated education settings in the National Schools Reform Agreement

We propose that these milestones should be embedded in the National Schools Reform Agreement, with risks to Australian Government education funding if milestones are not met. This is a useful mechanism, as it requires all jurisdictions to prepare a plan for implementation that is developed with the Australian Government as part of their bilateral funding agreement.

We understand the National Schools Reform Agreement is due for renewal by December 2024. Our proposed timelines assume the next National Schools Reform Agreement to be a five-year agreement beginning in 2025 and ending in 2029.

The Education Ministers Meeting will make recommendations to the Council of Federal Financial Relations on the 2025–2029 National Schools Reform Agreement, which in turn will recommend that National Cabinet endorses national priorities and conditions on Australian Government school funding.

We recommend the 2025–2029 National Schools Reform Agreement include, at a minimum:

- agreement to the phasing out of special/segregated education
- a commitment to no new special/segregated schools being built or new special/segregated classes or units being included within schools from 2025
- a placeholder for future work on milestones and activities related to ceasing special/segregated schools by all jurisdictions.

The development and negotiation process for the subsequent National Schools Reform Agreement would allow for states and territories to adequately plan their transition approach and for clear actions to be embedded into the next National Schools Reform Agreement (which we assume would be a five-year agreement beginning in 2030). The National Roadmap for Inclusive Education and Australia's Disability Strategy 2021–2031 (ADS) should then be updated to reflect these commitments.

Governments should be on notice that they need to show progress against key measures, such as the proportion of students with disability attending mainstream schools increasing over time. The National Schools Reform Agreement should identify financial penalties for non-compliance.

Looking ahead, the renewal process for the National Schools Reform Agreement could also be an opportunity to review progress. It could also be used to consider areas that need more attention or the milestones of the 'National Roadmap to Inclusive Education' that need prioritising. There should be a continuous improvement approach to the process. Such an approach should include a commitment to the intensification of supports for students with disability in mainstream schools and classrooms, and investment in system capacity for their effective delivery. Ensuring resources for professional development for teachers and quality instructional materials is essential to this process. Commitment to ongoing research into, and evaluation of, best practice inclusive education for all students with disability, including students with high or complex support needs, is also critical.

This governance approach leverages existing mechanisms, provides a national lever for compliance and allows for a level of flexibility. It acknowledges the differing levels of maturity across education systems in Australia may require a different pace of change.

Also, we recommend that the Australian Government design a 'Transition Fund' under the National Schools Reform Agreement from 2028 to provide discrete funding to schools that require additional support in their transition journey. The Australian Government should oversee

any funding provided through this mechanism. The Transition Fund should consider the existing over-representation of students with disability in low socioeconomic schools. This over-representation could be exacerbated with the phasing out and ending of special/segregated schools if these students disproportionately transition to low socioeconomic mainstream schools. The Transition Fund could consider funding incentives for higher socioeconomic schools to become more inclusive and support more students with disability.

Transforming the role of special/segregated classes/units

We consider this process will lead to inclusive education and transformational change that is critical to our vision for a more inclusive society.

We consider that special/segregated units/classes in mainstream schools should cease, in line with the milestones set above. However, we recognise that there will remain a need for separate classes, programs or spaces within mainstream schools that provide additional learning support to students from time to time. In effect, this would transform existing special/segregated classes/units to programs where students with disability can access additional support for discrete time-limited purposes for their individual needs. This would be the same as when a student who is identified as needing additional support to address difficulties in literacy may receive individualised instruction in this area outside the mainstream classroom. This approach acknowledges and allows the expertise and good practice that may exist in some special/segregated schools and units to be leveraged in general education.

These types of classes, programs or spaces should be open to all students who may need additional support for a range of reasons. Progressing inclusive education will change how children with disability who attend these programs view the provision of additional support and interact with their peers, who may not be receiving the same additional support, in mainstream classes. It will be important to ensure that these types of programs are monitored and evaluated on a regular basis to ensure that segregation on the basis of disability is not taking place formally or informally.²⁰²

Implications for some of the Royal Commission's recommendations for mainstream schools

We recognise that inclusive education has implications for some of the Royal Commission's recommendations for mainstream schools.

First, as we consider no new special schools or segregated education settings should be built beyond 2025, we propose two areas for sunseting recommendations:

- measures to prevent gatekeeping (see Recommendation 7.1)
- provisions to facilitate the engagement of students with disability enrolled in special/segregated schools with students in, and activities of, mainstream schools (see Recommendation 7.4).

To prevent stigmatisation and segregation of students with disability, we also recommend that careers guidance and transition support programs for students with disability (see Recommendation 7.5):

- is delivered alongside careers guidance for students without disability
- have clear rules that no student with disability can be referred to work experience or employment through ADEs.

Conclusion

Commissioners Bennett, Galbally and McEwin have formed the view that Australia will not achieve an inclusive society, where people with disability live free from violence, abuse, neglect and exploitation, unless governments commit to ensuring the access, full participation and inclusion of all students with disability in education. This must include transitioning away from segregated education settings on the basis of disability. We consider that every person with disability can flourish and participate in genuinely inclusive education.

We consider this will be an important part of setting in motion the social transformation that is needed to ensure that future generations of people with disability can claim their rightful place, not as 'others', but as equal members of our communities.

To achieve the transformational change needed to develop an inclusive society, we believe we must begin with children with disability and realise their right to an inclusive education.

Recommendation 7.14 Phasing out and ending special/segregated education

Commissioners Bennett, Galbally and McEwin recommend:

- a. The Australian Government and state and territory governments should recognise that inclusive education as required by article 24 of the *Convention on the Rights of Persons with Disabilities* is not compatible with sustaining special/segregated education as a long-term feature of education systems in Australia.
- b. As part of the National School Reform Agreement 2025–2029, the Education Ministers Meeting should agree to:
 - the phasing out of special/segregated education
 - no new special/segregated schools being built or new special/segregated classes or units being included within schools from 2025
 - a process for work on milestones and activities related to ceasing special/segregated education by all jurisdictions.

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- c. As part of the National School Reform Agreement 2030–2034, the Education Ministers Meeting should agree to milestones for phasing out and ending special/ segregated education settings and financial penalties for failing to meet these milestones, including:
- no new enrolments of students with disability in special/segregated schools from 2032
 - no new placements of students with disability in special/segregated units or classes from 2041
 - no students remaining in special/segregated schools by the end of 2051.
- d. The Education Ministers Meeting should update the Roadmap to Inclusive Education and Australia’s Disability Strategy to incorporate the milestones and actions to phase out and end special/segregated education settings included in the National School Reform Agreement 2030–2034.
- e. The Australian Government should consider the design of a ‘Transition Fund’ under the National School Reform Agreement from 2028 to provide discrete funding to schools that require additional support as part of their transition journey, with clear performance and reporting requirements.
- f. Consistent with phasing out and ending special/segregated education, states and territories should implement the following recommendations:
- when no students are in special/segregated schools, the sunsetting of:
 - measures to prevent gatekeeping (see Recommendation 7.1)
 - provisions to facilitate the engagement of students with disability enrolled in special/segregated schools with students and activities of mainstream schools (see Recommendation 7.4)
 - to prevent stigmatisation and segregation of students with disability, ensure the careers guidance and transition support program for students with disability (see Recommendation 7.5):
 - is delivered alongside careers guidance for students without disability
 - has clear rules that no student with disability can be referred to work experience or employment through Australian Disability Enterprises.

5.2. Achieving inclusion and retaining choice

The Chair and Commissioners Mason and Ryan have already explained briefly in section 1.2 why we do not share the view that it is necessary or appropriate to phase out non-mainstream schools in order to support inclusive education. We consider there are policy alternatives available to protect children and young people with complex support needs from violence, abuse, neglect and exploitation in all educational settings.

We have also explained that policy makers do not face a choice between retaining non-mainstream schools whose students are educated in complete isolation from their peers and providing a fully inclusive education in mainstream schools in which all students, regardless of the nature of their disability, are taught together. The policy choices are more nuanced and can involve a variety of interactions between students with complex support needs and their peers. All students with disability should receive the best education possible in an environment that fully meets their support needs and encourages their aspirations. That environment should reflect, so far as practicable, free and informed choices made by the students and their families.

Non-mainstream schools (as we prefer to describe them) primarily enrolling students with complex support needs should not and need not operate in a manner which isolates those students from their peers. These schools should ensure regular interaction takes place between their students and students enrolled in mainstream schools and other educational settings. The interaction should include educational, social, sporting, recreational and celebratory activities. We make recommendations to this effect.

Context

As we have recorded in section 1.3, the Royal Commission has received at least 1,919 submissions and held at least 457 private sessions raising themes relating to the education of children and young people with disability. Three Public hearings received extensive evidence relating to these themes.

The future of non-mainstream schools attracted considerable attention in submissions and was also addressed in evidence at Public hearings. The debate about the value and future of these schools did enliven heart-felt discourse with many who engaged with the Royal Commission, as it did prior to 2008 when the *CRPD* was being drafted. People with disability and their advocates expressed different views. Some wished to see special/segregated schools abolished; others wanted them retained.

The number of students with disability enrolled in non-mainstream schools constitutes a relatively small proportion of students with disability. Data containing special/segregated school enrolments obtained by the Royal Commission indicates that in 2021 of about 878,000 NCCD students with disability, 46,689, or 5.3 percent, were enrolled in non-mainstream schools.²⁰³ Of the 46,689 students, 68 per cent were enrolled in non-mainstream schools conducted by educational authorities of the States or Territories, while the remainder were educated in independent schools or in the Catholic school system.²⁰⁴

The funds allocated to non-mainstream schools by the Australian Government and state and territory governments are substantial, but also constitute a relatively small proportion of total government funding of school education. As we have explained, in 2021 so called ‘special/ segregated schools’ received \$2.3 billion, or roughly 3.7 per cent of total government school funding of \$60.6 billion. Governments provided a further \$1.3 billion for special/segregated settings located in mainstream schools.²⁰⁵

We do not underestimate the importance of ensuring that all children and young people with disability, including those with complex support needs, have a safe, quality and inclusive education. Even so, the attention devoted to this one issue seems to have been disproportionate to its overall significance in ensuring that all students with disability are protected from violence, abuse, neglect and exploitation in educational settings. The vast majority of students with disability, including a significant proportion of students with complex support needs, attend mainstream schools.²⁰⁶ That is one important reason we consider that governments and educational authorities should give the highest priority to addressing and overcoming the barriers to inclusive education in mainstream schools.

The differing views among Commissioners must be considered in the light of all the evidence received by the Royal Commission.

A definitive interpretation on article 24 is neither feasible nor required

Most submissions to the Royal Commission arguing for the phasing out of non-mainstream schools (as currently conducted) base their argument on the interpretation attributed to article 24 of the *CRPD* by *General comment no. 4* of the *CRPD* Committee. The relevant paragraph has been quoted earlier, but we repeat it here:

Article 4(2) requires that States parties take measures to the maximum of their available resources regarding economic, social and cultural rights and, where needed, within a framework of international cooperation, with a view to achieving progressively the full realization of those rights. Progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 24. **This is not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system.** Progressive realization must be read in conjunction with the overall objective of the Convention to establish clear obligations for States parties in respect of the full realization of the rights in question. Similarly, States parties are encouraged to redefine budgetary allocations for education, including by transferring part of their budgets to the development of inclusive education.²⁰⁷

Some requirements imposed on States Parties by article 24 of the *CRPD* are clear enough and are therefore not usually contested. But it is not at all surprising that the meaning of article 24 in relation to the future of non-mainstream schools is vigorously disputed. As Counsel Assisting’s submissions following Public hearing 18 explained:

Treaties are often expressed in aspirational and open-textured terms, particularly when compared to domestic laws. It has been said that '[h]uman rights protected in international treaties are invariably vague and ambiguous [which] is most acute with respect to economic, social, and cultural rights'.²⁰⁸ The aspirational and open-textured nature of treaties reflects several matters, including the fact that their text is often the result of long negotiation and compromise and must be capable of being expressed in multiple languages.²⁰⁹

Justices of the High Court have pointed out in relation to treaties generally that:

The text of the international instrument may lack precision and clarity and may have been expressed in attractive but loose terms with a view to attracting the maximum number of ratifications. The terms of the criteria therein ... may be difficult of comprehension and application in domestic law...²¹⁰

Article 24 of the *CRPD* refers to 'inclusive education' in aspirational and open-textured terms. Its language lacks precision and clarity, not least because it simply makes no reference at all to non-mainstream schools. For that reason, it is susceptible to different interpretations.

Counsel Assisting's submissions for Public hearing 24 contended that the Terms of Reference do not require Commissioners:

to resolve which of the different and contested views about the interpretation of article 24 of the *CRPD* is correct, in particular whether the *CRPD* requires States parties, including Australia to end segregated education settings.²¹¹

We agree with that submission, although we would qualify the reference to 'segregated education settings' consistently with our approach, as we explain below. The focus of the Terms of Reference is on preventing and protecting people with disability from experiencing violence, abuse, neglect or exploitation. We are not required to consider every measure that might promote a more inclusive society for people with disability, regardless of whether the measures are relevant to preventing violence, abuse, neglect or exploitation. Nor do the Terms of Reference direct us to resolve contested issues of interpretation of the *CRPD*. We are required to consider:

what should be done to promote a more inclusive society that supports the independence of people with disability **and their right to live free from violence, abuse, neglect and exploitation**.²¹²

There is another cogent reason for Commissioners declining to endorse one of the competing interpretations of article 24 relating to the future of special/segregated schools. The interpretation of a treaty such as the *CRPD*, requires the application of principles of international law, notably those set down in the *Vienna Convention on the Law of Treaties*.²¹³ Some of these are closely tied to principles of statutory construction used in Australian domestic law, developed with the authority of the High Court. It is necessary to say only that the constitution of this Royal Commission is not well suited to offering a definitive opinion on a contested interpretation of an international treaty to which Australia is a party.

Any opinion Commissioners offer on the interpretation of article 24 will not be definitive and is unlikely to sway those who hold a different opinion. The Australian Government and all states and territory governments have made it clear they do not accept that article 24 requires States Parties to phase out non-mainstream schools.

Preliminary observations

We make six preliminary observations.²¹⁴

First, neither in the enormous academic literature or international practice has agreement been reached about the meaning of inclusive education for children and young people with disability.²¹⁵ Despite lengthy debates in the literature and statements such as those in *General comment no. 4*, inclusion and segregation remain contested concepts.

The concept of 'inclusion' can refer to:²¹⁶

- A place-based definition, corresponding to the interpretation often given to Article 24 of the *CRPD* by reference to General comment no. 4.
- A definition still connected to place but also encompassing special schools.
- A definition locating inclusion, not in a place but as participation in learning.
- A realistic process of navigating values in tension and finding feasible ways forward.
- A lived experience definition locating inclusion in the actual experience of being accepted in an educational context and socially participating in the group and school.
- A definition linking inclusion to broader schooling reform and an ideologically pure stance.

For the first and last definitions, mainstream location is a pre-requisite to inclusion. In this approach, any definitions lacking this element are simply wrong. However, many proponents of inclusive education see a need for a range of options to meet the various individual educational, social and safety needs of students with disability.

Second, markedly different proportions of the school age population are identified in different countries as having disabilities and requiring educational support. This is largely due to the:

different ways categories of non-normative and high-incidence educational needs are identified for support provision needs.²¹⁷

One consequence of this is that considerable caution needs to be exercised in drawing conclusions from the international experience when proposing reforms to Australian educational systems.

Third, theories of inclusion tend to generalise and treat different educational systems of different countries as more or less the same. There is also:

an overall issue of research being too decontextualised, of the construction of inclusive practices becoming a theoretical pursuit, and of 'solving problems in theory while leaving practice untouched'.²¹⁸

Fourth, the complexity of inclusion 'suggests multi-dimensionality and the need for progressive realisation'.²¹⁹ Since inclusion requires the curriculum to be adaptable to provide tailored learning experiences for inclusion of students with disability:

Tensions exist around the degree of commonality and differentiation to support. Within distinctive curriculum provision for students with profound/severe learning disability, there are tensions between functional skills-based curricula and opportunities for breadth and balance, between entitlement and individual needs, and between individual choice and organisational constraints.²²⁰

Fifth, inclusion requires consideration to be given to 'different places of learning for ... different aspects of inclusion':

Mainstream schooling speaks to the right of all children to learn together and to access and benefit from the same facilities and opportunities. Specialist schooling speaks to the right of children with disability to placement where their learning needs are best met and to access the environment best suited to them so they can benefit optimally from the educational experience.²²¹

Sixth, and most important:

There is a need to move beyond simplistic notions of physical location or dichotomies of inclusion vs segregation. Multi-dimensional typologies provide more useful frameworks. The policy and practice agenda needs to encompass consideration of initiatives to address physical access and presence in the community, social connectedness, and the deeper experience of psychological inclusion ...²²²

Accordingly:

Inclusion and segregation might more usefully be conceived, at minimum, as a continuum of experience. Ideally, concepts of inclusion and segregation might more usefully be conceived as multi-dimensional constructs which encompasses physical location and the organisation of activities, social connectivity and accompanying psychological experiences. Policy and practice need to be more nuanced and sophisticated and to authentically incorporate the lived expertise of people with disability, as does the research base informing such policy and practice.²²³

Transforming mainstream schools

From our perspective, the more important medium- to long-term challenge facing governments and educational authorities is addressing and overcoming the numerous barriers to ensuring that as many students with disability as practicable can receive an inclusive education in mainstream schools.

Ensuring that students with disability have access to an inclusive education within mainstream schools advances the goal of providing a safe, quality and inclusive education to all students with disability and preventing children and young people with disability experiencing violence, abuse, neglect or exploitation. But these goals can be advanced consistently with maintaining alternatives to mainstream schools that may be better suited to providing the supports required, for example, by students with very complex support needs. The alternatives to mainstream schools may also be better suited, depending on the circumstances, in enabling certain students with disability to attain their educational, social and personal goals. Most importantly, given our Terms of Reference, the goal of ensuring that as many students with disability as possible have access to an inclusive education in mainstream schools, is consistent with the goal of preventing and protecting all children and young people from experiencing violence, abuse, neglect or exploitation in educational settings.

This in no way implies that alternatives to mainstream schools should be conducted on the basis that enrolled students with disability should be isolated from their peers in mainstream schools and other educational institutions. On the contrary, we propose that any non-mainstream schools that adopt a policy or practice of isolating or secluding their students should transition to a more inclusive model. We emphasise again that policy makers do not face a choice between a wholly inclusive education in mainstream schools and a completely segregated and isolated education in a 'special' school. There are more nuanced alternatives available, some of which are already practised in Australia.

On any view, transforming mainstream schools in all Australian jurisdictions so that they provide inclusive education for as many students with disability as possible is a long-term project. It will face many obstacles and require a substantial investment of public funds. The evidence indicates that although many parents of children and young people with complex needs freely choose non-mainstream schools, many feel they have no choice because of the failure of mainstream schools to accommodate the needs of their children or to provide appropriate supports. As more mainstream schools provide an inclusive education for students with disability, fewer students (and their parents or guardians) will feel they have little choice but to enrol in a non-mainstream school.

Article 24 of the *CRPD*

General comment no. 4

As we explained, many submissions arguing for the phasing out of special/segregated (or non-mainstream) schools rely heavily on the views of the *CRPD* Committee expressed in *General comment no. 4*, particularly the paragraph extracted above.

This paragraph in *General comment no. 4* is not free from ambiguity. The definition of 'segregation' in an earlier paragraph of *General comment no. 4*²²⁴ indicates the Committee considers educating students with disabilities in separate environments **in isolation from students without disabilities** is incompatible with article 24 of the *CRPD*. On this basis, it may well be consistent with the language of *General comment no. 4* that students with complex support needs should generally be educated in a physically separate environment from other students, provided they experience regular educational, social, sporting, recreational

and celebratory interchanges with students in mainstream schools and other educational institutions. Depending on the extent of the interchanges, students in non-mainstream schools will not be educated ‘in isolation from students without disabilities’. *General comment no. 4* can be read as having nothing to say about a non-mainstream school that ensures students with disability regularly experience interchanges with students without disability in mainstream schools.

Professor Byrnes’ opinion

The interpretation of article 24 of the *CRPD* advanced in submissions, although not necessarily the reasoning, is supported by the opinion of Professor Andrew Byrnes, to which Commissioners Bennett, Galbally and McEwin refer. Professor Byrnes expresses his conclusion as follows:²²⁵

While there is some ambiguity in the final wording of the *CRPD* and there is no explicit prohibition on maintenance of special schools, taking into account the drafting history²²⁶ and the object and purpose of the treaty the better view is the *CRPD* does not see the maintenance of special schools as an option that is consistent with States parties’ obligations under the Convention generally or article 24 in particular.²²⁷

It can be seen that Professor Byrnes does not claim that his preferred interpretation is the only way in which article 24 can be read. He accepts that the language of article 24 is ambiguous. Indeed, he also accepts that at the end of the drafting process ‘no explicit reference to special schools appeared in the text of article 24’.²²⁸ However, on the basis of an analysis of the drafting history and ‘the object and purpose of the treaty’, Professor Byrnes expresses what he considers to be the ‘better view’.²²⁹

Professor Byrnes’ contention that the drafting history supports his interpretation of article 24 is by no means self-evident. He argues that article 24 omitted an explicit exception for the use of special schools in exceptional circumstances:

presumably because it was felt that the inclusion of an exception would undermine the affirmation of the goal of inclusive education and its achievement in practice.²³⁰

An equally plausible explanation is that negotiating States could not reach agreement on the issue and settled for what can be described as ‘calculated ambiguity’.

Some submissions expressly characterise *General comment no. 4* as ‘authoritative’ for the purpose of giving article 24 its proper meaning. As Professor Byrnes explains, referring specifically to the detailed submission of All Means All is not correct.²³¹ The accepted position under international law is that the interpretation of article 24 of the *CRPD* advanced in *General comment no. 4* is not binding on States Parties, including Australia. The general principle is that General comments made by UN Committees deserve to be given considerable weight in determining the meaning of a relevant provision of a treaty.²³² However, the weight that an international court gives to a General comment ‘is likely to reflect the status of the particular body and the cogency of [its] reasoning ...’.²³³

A striking feature of *General comment no. 4* is the lack of a clear reasoning process analysing the language and drafting history of article 24 to support the Committee's interpretation. Professor Byrnes recognised in his oral evidence that sometimes UN Committees 'may be pushing the envelope'.²³⁴ Some would argue that *General comment no. 4* fits into that category of General comments.

An alternative interpretation

As Professor Byrnes acknowledged in his oral evidence at Public hearing 18, the meaning of article 24 is contested.²³⁵ The interpretation he considers to be the 'better view' is not accepted by many commentators and governments, including the Australian Government.

In a background paper on article 24 prepared for this Royal Commission, the Australian Government argues that:

[16] ... [T]he CRPD Committee stated in General Comment 4 that the progressive realisation of article 24 "is not compatible with sustaining two systems of education: a mainstream education system and special/segregated education".²³⁶ This suggests that specialist schools and specialist classes within mainstream schools are not an acceptable means for States Parties to fulfil their obligations under article 24, or, at a minimum, that States Parties should be working towards the goal of eradicating specialist education completely over time. However, this interpretation is not consistent with the international law principles on the interpretation of treaty obligations ... That is, this interpretation is not consistent with the plain and ordinary meaning of article 24 in light of its object and purpose, nor is it supported by the preparatory work of the CRPD.

...

[18] The ordinary meaning of the terms of article 24 does not support a view that specialist schools are prohibited under article 24. Rather, the drafters appear to have deliberately not defined the term 'inclusive' ... The absence of a definition of 'inclusive education' suggests that this obligation can be fulfilled in a range of ways. That is, it is likely that under article 24 of the Convention, inclusion within the general education system and specialist services are not mutually exclusive options. For example, there may be times when specialist classes are more effective in fulfilling States Parties obligations under the Convention than the general education system ...

[19] This interpretation is also consistent with the terms of article 24 in their context, which includes, but is not limited to, the text, its preamble and annexes ... [T]he context suggests that the concept of inclusive education should be understood as a process, consistent with the principle of progressive realisation, which eliminates the barriers persons with disabilities face in accessing education broadly and as an idea applying to the education system as a whole (no matter what form the education is being provided).

...

[23] ... The idea that persons with disabilities should still be able to access special education, if they so choose, was controversial during the negotiations of the treaty, particularly amongst the NGO community. Many NGOs took the view that proposed references in the draft article allowing access to alternative means of learning should be deleted so as to ensure that article 24 could not justify segregation. However, this does not appear to have been the views of States. The final text adopted does not explicitly address the issue. Rather, it preferences the removal of barriers and discriminatory practices broadly, with a focus on ensuring that persons with disabilities can access education, including mainstream education. The final text does not explicitly preclude the notion of special education – rather, article 24(3)(c) implies that specialist schools may be appropriate in certain circumstances.²³⁷

[24] Australia's view is that a State Party will meet its obligations under article 24 through an education system that allows for funding of different education modalities so students with disability are able to participate in a range of education options, including: enrolment in mainstream classes in mainstream schools with additional support; specialist classes or units in mainstream schools; and specialist schools as is appropriate. A range of education options ensure that the best interests of the student are a primary consideration.²³⁸

The Australian Government also supports its interpretation by referring to article 13(3) of the *ICESCR*.²³⁹ In the Australian Government's view:

an interpretation of article 24 which allows the use of both mainstream education and specialist schools for persons with disability, and consequently, respects the rights of parents of children with disabilities to choose whether to put their children in mainstream or specialist education, is consistent with article 13(3) of the *ICESCR*.²⁴⁰

The Australian Government's interpretation of article 24 of the *CRPD* is supported by all Australian states and territories, either explicitly or implicitly.²⁴¹

A human rights approach

We are taking a human rights approach to our task. However, it is not necessarily easy to reconcile all rights recognised under international law. An example is the difficulty of reconciling article 13(3) of the *ICESCR* (dealing with the rights of parents) with an interpretation of article 24 of the *CRPD* requiring States Parties to phase out non-mainstream schools.

We consider that a human rights approach can be taken in relation to inclusive education without having to select one of the conflicting interpretations of article 24 as the definitive meaning of the provision.

All Australian jurisdictions appear to accept that the Australian Government is obliged by article 24 to take the necessary measures to progressively realise the right of all students with disability

to enrol in mainstream schools. Similarly, all Australian jurisdictions appear to accept that students with disability enrolled in non-mainstream schools, including students with complex support needs, have a right to enjoy as inclusive environment as possible and to be protected from all forms of violence, abuse, neglect and exploitation. As Counsel Assisting submitted, the practical application of a progressive realisation of these rights means embedding inclusive practices in all educational settings, including non-mainstream schools.²⁴²

The measure we propose can be summarised as follows:

- (in common with all Commissioners) all Australian governments and educational authorities should address and progressively overcome the barriers to inclusive education in mainstream schools; and
- all Australian Governments and educational authorities should ensure non-mainstream schools enrolling students with disability, including students with complex support needs, interact regularly in a variety of contexts with students in mainstream schools and other educational institutions and upon completion of their studies are encouraged to seek and obtain employment in the open labour market.

The latter proposal is consistent with practices that have been adopted or proposed in some Australian jurisdictions. We referred to programs in a number of states and territories that encourage regular interchanges between students with disability enrolled in non-mainstream schools and their peers enrolled in mainstream schools.

New South Wales' submissions for Public hearing 24 on inclusive education state:

Importantly, specialist settings do not operate in isolation from each other or from mainstream school settings. Many specialist settings are intended to be accessed by students for a specific purpose and limited period of time. Further, students can be supported to transition between settings, where this is appropriate, to best support their individual educational outcomes.²⁴³

The Australian Capital Territory Education Directorate published a discussion paper in 2022 addressing inclusive practices:

Based on the feedback so far, and the evidence underpinning successful inclusive practices, the intent of the Strategy is not to reduce education options, but to strengthen inclusive practice across all schools in our system in order to provide real choice for students and families. Real choice involves making quality education available for all learners in every school. It is important to acknowledge that strengthening inclusive practice will take time and sustained commitment.

As we further strengthen inclusive practices across our ACT Public Schools this may involve strengthening partnerships between specialist schools and local schools to create more opportunities for students to be included in activities and classes with same aged peers and to share expertise.

It may also involve strengthening inclusive practices within disability programs in local schools so that students spend more time in classes with same aged peers and can participate fully in school activities. Many schools already have great inclusive practices in place. For those schools this may mean sharing their inclusive practices with other schools to help build a more inclusive system for all children and young people.²⁴⁴

Queensland's Special Education Program (SEP) was the subject of evidence at Public hearing 2. A SEP is:²⁴⁵

a grouping of specialist teachers with experience and/or qualifications in dedicated areas of specialisation to support the education program for students with disability. SEPs support students with disability in state primary and secondary schools and assist classroom teachers to develop and deliver the student's education program. They are in addition to other supports available through schools such as guidance officers, coaches, therapists and nurses.²⁴⁶

In Queensland, students enrol in a school, not a SEP.²⁴⁷ The Queensland Department of Education's *New and Changed Special Education Programs process guide* dated January 2019 provides 'SEPs can support a single site or multiple sites as a "cluster special education program"'.²⁴⁸ In the latter case, one school is identified as having the lead SEP.²⁴⁹ According to the Queensland Government's guide, SEPs do not necessarily require a standalone building or dedicated rooms.²⁵⁰ Principals make decisions concerning the use of facilities.²⁵¹

Queensland continues to operate 'special schools' but, as at 2019, no government special schools had been opened (or decommissioned) since 2010. The SEP may well have curtailed the need for new non-mainstream schools in Queensland.

The Director of Disability Inclusion for the Department of Education in Western Australia, Mr Stuart Percival, gave evidence that the state supports a 'continuum of provision for students with disabilities' and that no 'standalone segregated facilities' had been built in the state for some time.²⁵²

Mr Percival explained that Western Australia has a number of 'special/segregated schools' and other programs for students with disability.²⁵³ These include 47 Education Support Centres co-located on mainstream sites, each with its own principal.²⁵⁴ The Department of Education has 16 Specialist Learning Programs for students with autism spectrum disorder integrated into eight primary and eight secondary schools under the management of the mainstream principal.²⁵⁵ Western Australia also has seven engagement centres co-located in mainstream school sites under the management of the mainstream principal and another eight not co-located.²⁵⁶ Students participating in the engagement centres remain enrolled in their school but undertake:

an individually tailored social and emotional program of attendance ... with the focus on provision of skills; strategies and learning opportunities to assist the student to work towards moderating their own behaviour in order to return to mainstream schooling.²⁵⁷

Gi Brown offered what they described as ‘two perspectives of young disabled people in education: namely Gi’s own experiences in a mainstream school and their younger sibling’s experiences in a special school.’²⁵⁸ Gi’s insights are very helpful in the present context.

Gi described being bullied, taunted and harassed at a mainstream school. Throughout school Gi found that although she progressed academically with little support, she could not connect with peers very well or make friends.

Gi’s sibling had only ever been educated in ‘special schools’. Gi thought the special school was ‘great’ for their sibling because he would not have received the support he needed in the mainstream school system.²⁵⁹ As their sibling grew older, however, ‘it became ‘more obvious just how limiting the special school system can be’, largely because of under-resourcing.’²⁶⁰

Gi said that their sibling had a life-changing experience when he entered a program conducted as a partnership between the sibling’s special school and a mainstream school.²⁶¹ The program involved their sibling attending the mainstream school one day a week.²⁶² Gi remarked:

He started meeting milestones and flourishing like I have never seen before. And I watched him be able to start finding a sense of self in a much wider world than the segregated system could have ever shown him. And being able to learn alongside new peers and go outside during lunch and play footy with a wide range of people was one of the most and is still one of the most important things that has ever happened in his schooling and his understanding and perception of the world.

...

... it was the first time that I had ever experienced and observed non-disabled people interacting and hanging out with myself and my sibling and other young disabled people in a way that was equal and mutual respect, mutually respectful.²⁶³

Gi commented on their sibling’s program:

even if it is just a program where disabled students get to go into a mainstream school or mainstream students get to go into a special school and have their normal school day but be able to mingle among our peers that we are separated from, that it would completely change, over time, the potential that young disabled people could – we would have a better capacity to reach our potential and it would set the foundation for non-disabled people to finally give disabled people their rightful place in society as equals and as people who have as much to give as anyone else.²⁶⁴

We do not pretend to possess the expertise required to provide detailed guidance to educational authorities seeking to implement the approach we suggest. We are confident that state and territory educational authorities have the necessary competence and expertise to ensure regular interchanges take place between students in non-mainstream and mainstream schools. Indeed, some have already embarked on this path.

We have already proposed a number of the measures we have in mind. The following are the more significant measures we suggest. In some cases, such as Recommendation 7.5 dealing with careers guidance and transition support services, more detail is provided elsewhere in this Part:

- wherever practicable, locating new non-mainstream schools and, over time, relocating existing non-mainstream schools within or in close proximity to mainstream schools
- creating partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between groups of students enrolled in the schools
- facilitating, to the maximum extent feasible, participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers in partner mainstream schools and other educational institutions
- arranging for students in non-mainstream schools, where practicable, to participate in classes and educational activities with their peers in mainstream schools
- establishing programs for students enrolled in mainstream schools to participate in activities with their peers in non-mainstream schools
- providing where appropriate for concurrent enrolment for individual students in both mainstream and non-mainstream schools
- non-mainstream schools facilitating, where appropriate, the transition of students with disability, particularly those with complex support needs, to mainstream schools whether on a full-time or part-time basis
- providing assistance to schools in understanding the strengths and skills of students with disability for post-school transition, including assistance in planning and preparing for further study and training
- ensuring non-mainstream schools encourage and support students with disability completing their education to seek and obtain employment in the open labour market, rather than in ADEs or similar environments.

In our view these measures, if implemented, will achieve in due course the objective stated in the Terms of Reference: preventing and protecting children and young people with disability, in particular those with complex support needs, from violence, abuse, neglect and exploitation.

We add two further important points.

First, the National Disability Commission (proposed in Volume 5, *Governing for inclusion*) should, no later than five years from presentation of this final report, conduct or arrange a comprehensive review of progress towards providing inclusive education for children and young people with complex support needs. The review should assess:

-
- progress in dismantling barriers to inclusive education in mainstream schools, including arrangements for facilitating the transition of students from non-mainstream schools to mainstream schools
 - any new or improving existing measures to ensure progress continues to be made in dismantling the barriers, including examples of best practice worthy of emulation
 - progress in eliminating or reducing the incidence of violence, abuse and neglect experienced by children and young people with complex support needs in all educational environments
 - progress in encouraging and supporting students with complex needs to gain employment in the open labour market
 - the extent to which children and young people with disability are receiving the supports to which they are entitled to enable them to realise their full potential in educational settings
 - steps taken by the Australian Government and state and territory educational authorities to improve the collection of data relating to violence against, and abuse, neglect and exploitation of students with disability, especially children and young people with complex support needs
 - progress in providing inclusive education in mainstream schools for First Nations and culturally and linguistically diverse students with disability in the areas indicated above.

Second, we note Western Australia has not established any new government non-mainstream schools for some years.²⁶⁵ In some other jurisdictions the increase in the number of government non-mainstream schools has been relatively modest, more or less in line with increases in the population of children and young people with complex support needs. It may be that the phenomenon owes something to a commitment by educational authorities in states to adopt more inclusive approaches and innovative practices to educating children and young people with disability, especially those with complex support needs.

It is difficult to be definitive on this point, not least because in some jurisdictions the number of independent non-mainstream schools has increased sharply over a period of twelve years. For example, in Victoria, there were 27 independent non-mainstream schools in 2022, compared with 13 in 2010. In Queensland, the number increased from seven to 32 over the same period.²⁶⁶

Major changes in educational policy and practice are not easy to achieve. Dismantling most of the barriers to inclusive education in mainstream schools is likely to take a very long time.

Ideally, as the barriers to inclusive education in mainstream schools are dismantled or at least reduced, there should be less need to establish new government non-mainstream schools in any Australian state or territory. We do not have sufficient information to determine whether this is an immediately realisable objective in all jurisdictions. We also accept, as we have made clear, there will always be some children and young people with complex support needs whose safety, wellbeing and educational aspirations are best served by a non-mainstream school (but not a school completely isolating its students from their peers). Nonetheless, all

Australian jurisdictions should carefully consider whether the establishment of new government non-mainstream schools will have the effect of discouraging or impeding measures designed to dismantle barriers to inclusive education in mainstream schools.

Choice

The approach we propose has the advantage of respecting the role of parents and guardians of children and young people with complex support needs. It is fundamental in a free society that parents and guardians should be entitled to make decisions in good faith about the education setting that best suits the interests and needs of their children. This does not necessarily mean that parents or guardians are entitled to dictate where and how their children should be educated or to receive financial support from public sources to give effect to their choice. But it does mean we should respect freely made educational choices by parents, based on the particular needs of their children, especially children with complex support needs.

We acknowledge that people who support phasing out of non-mainstream schools have genuine concerns about the failure of educational systems in Australia to provide greater opportunities for inclusive education for children and young people with disability. Their concerns include parental choices often being constrained by practices such as gatekeeping and punitive approaches in mainstream schools to perceived behaviours of concern.

While recognising these concerns, we think it would be rather odd if only one group of parents and guardians in Australia is denied the opportunity to choose the kind of government-supported educational institution they believe in good faith is best placed to meet the educational, social and personal needs of their children. This is particularly the case if the only group effectively denied this choice were to comprise parents and guardians of children and young people with disability, specifically children and young people with complex support needs.

One thing is very clear from evidence given at public hearings of the Royal Commission. Parents and guardians of children with disability, regardless of the nature of their impairment, love their children deeply. This is true of all parents and guardians from whom we heard, regardless of their views on the future of non-mainstream schools. They typically display great determination and persistence, often in the face of extreme adversity, to ensure their children have access to the educational institutions that best serve the children's needs and offer the maximum opportunities for them to realise their full potential. The idea that other people, whether people with or without disability, should be able to deny a free and informed choice of this kind, regardless of the circumstances of the children, is troubling.

We referred previously to the apparent conflict between the rights recognised in article 13(3) of the *ICESCR* and article 24 of the *CRPD* and the controversy over resolving the conflict. Independently of this contested question, we consider that parents and guardians of children and young people with complex support needs should be able, as far as possible, to exercise free and informed choice of the educational settings best suited to meeting their children's needs.

This is consistent with article 19 of the *UNDRIP*, which requires states to consult in good faith with First Nations peoples through their representative organisations to obtain their free, prior and informed consent to legislative or administrative measures affecting them.

Non-mainstream settings

Unsurprisingly, the words ‘segregated’ and ‘segregation’ have negative connotations. Historically, in Australia, as in other countries, people with disability, predominantly (but by no means exclusively) people with intellectual disability or cognitive impairment, were subject to enforced separation and isolation from the broader community. They were congregated in closed settings, often in complete isolation from the outside world. This form of forced segregation was in certain respects even more extreme than systemic ‘Jim Crow’ racial segregation practised in the United States in the first half of the twentieth century.

Enforced segregation denied people with disability basic human rights, subjected them to oppression and exposed them to institutional violence, abuse, neglect and exploitation. The practice also denied the basic human rights of parents and guardians of people with disability who did not wish to relinquish their children (including adult children) and have them subjected to enforced segregation.

Enforced segregation reflected acceptance by authorities of the medical model of disability, which saw impairment as a deviation from the norm, a deviation requiring ‘correction’ if the person was to have a ‘normal’ life.²⁶⁷ If the deviation could not be corrected, the person with disability was perceived incapable of being a member – let alone an equal member – of the wider community.

Enforced segregation and isolation of people on the basis of their impairment is plainly unacceptable and should not be countenanced.

The word ‘segregation’ when applied to people with disability, is frequently used to describe something other than forced separation and isolation. Specifically, it may be used as the antithesis of ‘full inclusion’. The latter term is often taken to require full participation by all people with disability in educational, economic and social activities on an equal basis with their non-disabled peers, with the support of the adjustments required to facilitate equal participation. In this sense, full inclusion implies that people with disability must always be in the same physical environment as their non-disabled peers, regardless of the nature of their impairment.

‘Full inclusion’ can therefore be interpreted as necessarily inconsistent with any form of separation of people on the basis of their impairment, no matter how limited the separation and no matter that opportunities are available for the people to interact with non-disabled peers and the general community. The underlying assumption on the approach is that full inclusion in all settings is feasible and anything less than that must carry the stigma associated with the word ‘segregation’.

The difficulty we see with the concept of defining inclusive education based on place is that it constrains policy makers to the choice we outlined earlier: either aspire to full inclusion for all people with disability or tolerate ‘segregation’ on the basis of disability. As we noted, the choices open to policy makers are considerably more nuanced.

It is true that, in many settings, full inclusion of the vast majority of people with disability is feasible. But despite claims to the contrary, there appears to be no country or jurisdiction comparable to Australia in which this kind of full inclusion has been achieved for all people with disability.

There are many reasons why this is the case. People with disability are not a homogenous group. They have very different impairments (or multiple forms of impairment). They have very different support needs, ranging from extremely complex to relatively modest, as the NDIS recognises participants who have satisfied the eligibility criteria. They have different life experiences, support systems, aspirations and desires.

Some form of separation on the basis of disability may be best suited to ensuring that specific groups of people with disability are safe and secure and have the best chance of receiving the individual attention that maximises the opportunity to realise their full potential in all facets of life.

None of this implies separation should ever entail isolation of any person with disability from their peers or the general community. On the contrary, people with disability should never be isolated from their non-disabled peers or from the general community. Separation for specific purposes **not involving isolation from peers and the general community** is very different from enforced segregation. Language often fails to reflect that difference.

In modern times, the medical model of disability has largely been supplanted by the social model and, more recently, a human rights model. Within this framework, it is important to appreciate that many people with disability accept quite readily that in certain circumstances it is appropriate for them to learn, meet, work or socialise separately from people without disability.

A number of witnesses at Public hearing 29, ‘The experience of violence against, abuse, neglect and exploitation of people with disability from culturally and linguistically diverse communities’, explained the benefits of Deaf schools, where all teachers are fluent in Auslan and all students are Deaf or hard of hearing. For example, Brett Casey, a Deaf person and CEO of Deaf Connect, said a Deaf school that accepts only Deaf and hearing impaired students actually creates ‘an inclusive environment’:

[F]or socialisation and language opportunities to develop knowledge and access education, it is actually inclusion. It’s all there for you in one space.²⁶⁸

At Public hearing 31 we heard evidence from the CEO and students of Bus Stop Films. Counsel Assisting explained that Bus Stop Films is:

an award winning disability-led not for profit operation [in existence since] 2009. The primary focus of Bus Stop Films is supporting people with disability and others from marginalised communities through film making and the film industry.²⁶⁹

Bus Stop Films had considerable success in making and distributing films, many with themes related to disability. Among its many activities is an Accessible Film Studies Program for adults with mild to moderate intellectual disability or autism.²⁷⁰ Students work with industry professionals to learn about film making and gain ‘transformational skills’.²⁷¹ The students are supported to ‘make, screen and promote high quality entertaining professional films’.²⁷²

Breanna Rae, a participant and student ambassador for Bus Stop Films, explained how the program provided her with the supportive and inclusive environment she needed to learn:

I’m 25 and I was terrified to step into an education environment because of how bad my experience was through primary. So, it was like the first environment where it went at my pace, and I was repeatedly reassured that, yeah, you can have a say and you can step out the classroom and no one was – no question was considered stupid. It was like every question was important. That’s how you learn.²⁷³

Some people with disability also value belonging to peer support and advocacy organisations where members are exclusively people with disability. Cindy and Ash gave evidence at Public hearing 29 about MYAN YCDC: the Multicultural Youth Advocacy Network’s Youth CaLD Disability Collective. Cindy spoke of the benefit of having a space where culturally and linguistically diverse young people with disability could meet and share their experiences with their peers:

we really discussed our own lived experience growing up and our current experiences as young people. We found that there was a huge gap in kind of connecting and creating community. We found much benefit in just us connecting with each other and discussing, yes, our lived experience. So, from that ... we sought out to create a group where we could create community connection, and we put out an EOI just to see what was out there and got great response from a lot of young people with similar lived experience ...²⁷⁴

The value of peer networks for children and young people with disability was also apparent in the case of Yellow Ladybugs, an organisation for girls and young women with autism. ‘Alexa’ gave evidence about how her daughter ‘Bridget’ built confidence and strong friendships out of school through Yellow Ladybugs:²⁷⁵

Currently, there are limited options to socialise outside of class with peers ... Engaging with Yellow Ladybugs has helped to fill this need.

Building ongoing confidence, support and positive friendships regardless of school changes, Yellow Ladybugs has helped always be a supportive environment that welcomes differences, and helps to build a positive autistic identity. This is literally the only group or activity that has helped our child build and maintain peer connections and a sense of value in the community setting throughout the turmoil of school changes.²⁷⁶

Similarly, we also heard evidence about the sense of community and support provided by groups established by and for LGBTQIA+ people with disability. Ms Sherrie Beaver told us of her work organising events through the Rainbow Project:

These events have provided opportunities for peer support, and the development of friendships and mentorships within the community. That is because the events have provided connections with like-minded Deaf LGBTQIA+ people; opportunities to meet new people; development of Queer-related signs in Auslan; and opportunities for information sharing.

These opportunities are important to empower Deaf LGBTQIA+ people through social connections, information sharing and partnership with mainstream LGBTQIA+ organisations, and help recognise intersectionality in the Deaf community.²⁷⁷

Importantly, Ms Beaver rejected the suggestion that events and programs organised by and for people with disability, and attended solely by people with disability, are a form of segregation.²⁷⁸ She explained that:

It's about creating a safe space, and it's imperative that there are safe spaces for Deaf queer people to feel safe, first and foremost, to be comfortable, to feel authentic, and also to be able to engage with like-minded people.²⁷⁹

Those who argue for the abolition of 'segregation' on the basis of disability argue that the practices to which we have referred are not true examples of segregation. They argue that people with disability who choose to separate themselves for certain activities or purposes are doing so freely for cultural, social, educational or vocational reasons.

Not all forms of separation on the basis of disability should be regarded as segregation by reason of disability. Factors other than physical separation need to be considered in determining whether or not a practice should be regarded as harmful to people with disability. For example, when people with disability elect freely to separate themselves from non-disabled people for certain specific purposes, it is difficult to describe the separation as 'segregation'. Similarly, children and young people with complex support needs may be separated from their non-disabled peers for particular educational, support and safety purposes with the informed consent of their parents or guardians, but have regular interactions with their non-disabled peers. It is difficult to describe that form of separation as 'segregation', so as to attract the pejorative overtones of the word.

Educational experiences

We appreciate that the argument supporting the phasing out of non-mainstream schools does not rely entirely on article 24 of the *CRPD*. It is often said that such schools do not provide satisfactory educational experiences for children with complex support needs and that segregated environments necessarily expose them to a heightened risk of experiencing violence, abuse, neglect or exploitation.

We do not agree the evidence supports that assessment. We have certainly heard evidence of negative experiences in non-mainstream settings. Equally, we have heard accounts of students with complex support needs having positive experiences in non-mainstream schools and negative experiences in mainstream schools.

Many submissions, and responses to the issues paper on *Education and learning*, particularly from disability representative organisations, argued that non-mainstream schools necessarily produce adverse outcomes for students with complex support needs. Yet, we also received many submissions and responses to the issues paper expressing a very different view.

Mr Edward Croft spoke about his son Ryan's experiences in different schools in Western Australia. Mr Croft described Ryan's placement in a mainstream class as part of his school's inclusion policy as an 'unmitigated disaster', saying Ryan 'floundered'.²⁸⁰ Ryan was enrolled in a special needs school from years 5 to 13 and Mr Croft said he never regretted sending Ryan to this school as it was 'a place designed to deal with his educational needs'.²⁸¹ Mr Croft recommended there be 'more specialist schools and more Education Support Centres within schools'.²⁸²

Isabella's son 'Emerson' attended four mainstream schools, some of which had special options classes. Isabella considered the special options classes were too stressful for Emerson and requested a special school placement for him. Isabella said:

Well, he's been there as – for quite a while now, and there's been ups and downs. But when he started, the transformation in him was – was really quite amazing. There was no more of that violent behaviour.²⁸³

In her written statement Isabelle said:

It's hard for me to imagine Emerson coping in a mainstream school. I think he would be very much isolated from his peers because they would be so different. Emerson bonds with children without a lot of language. I recall a time when he connected with a little girl at his current school who was non-verbal. She had a school jacket and he wouldn't give up until I got him the same one. He was so excited when he wore it. I saw them approach each other and gently tug each other's jackets. It was their way of interacting. Emerson really loves his school friends.

It is much quieter in the special school for Emerson and there is a lot less pressure and stimulation. Emerson was not able to function in mainstream classes. Sensory issues play a large role. Children with autism get stressed by noise and crowds. They can get very stressed in a noisy mainstream environment which makes it hard for them to learn. Children like Emerson cannot learn to get out of their comfort zone if they are stressed.

I think perhaps special schools may foster more independence in the long run for certain children.²⁸⁴

Alexa explained the importance of a specialist school for her daughter Bridget, who had 'invisible obsessive compulsive urges, sometimes to run'.²⁸⁵ She said:

I would say she would not have access to an education at all without this type of placement. Putting aside debates about segregated schools, if a child is going to miss out on education altogether, then there is a need for specialist schools, in my opinion. Knowing that the staff could help work through behaviours with her rather than sending her home built trust that the school and the staff would not give up on her.

This was her school, and they would not ask her to leave. She found this incredible. She really did. This was the first time that she spoke positively about her learning experience. And it seemed to ignite a fire in her that she realised she was actually able to learn at that point, albeit at that stage she had missed out on years of learning.²⁸⁶

Submissions and responses to the *Education and learning* issues paper expressed a variety of views about the concept of inclusive education and whether special schools have a role to play in a system supporting inclusive education. The views expressed were far from uniform.

For example, we heard from parents whose son's education at a special school had 'been outstanding'.²⁸⁷ The parents never had concerns about their son being exposed to violence, abuse, neglect or exploitation.²⁸⁸ In their view, a curriculum suitable for their son would not be available in a mainstream school and he 'would be at risk of neglect to his educational development, and at further risk of expressing challenging behaviour in response to frustration' were he to attend a mainstream school.²⁸⁹

A mother of a student with disability who attends a special school said she is grateful her child can receive an education suitable to her needs.²⁹⁰ The child is part of a community that understands her and is in a safe learning environment that responds to her learning requirements. This parent compared her child's experience with that of a friend's daughter with disability who attends a mainstream school. Her friend's daughter has not developed literacy or other skills and has a severe aversion to school. The parent said some children with disability will be left behind in mainstream education settings. Another told us their child 'blossomed [and] improved greatly academically and socially' after enrolling in a local special school.²⁹¹

One man with disability told us that his mainstream school did not accommodate his needs in year 7 and that he was bullied and beaten up. As a result, he transferred to a special education setting in year 8. He 'loved' his new school and said it 'is where [he's] meant to be'. He stated that special schools, special units and Schools for Specific Purposes are needed because they have dedicated professional staff and the right resources for the students.²⁹²

Unsurprisingly, special education teachers and organisations representing such teachers and non-mainstream schools expressed similar views about the value of these settings.²⁹³ For example, the Australian Special Education Principals Association said:

parents want a supported environment where they and their child can enjoy coming to school and learning and they feel part of a school community that understands and values their child for who they are. This is one of the many highly valued attributes a specialist school provides.²⁹⁴

Mr Kevin Bates of the Queensland Teachers' Union said that non-mainstream schools provide a crucial context where specialist facilities and services, including teachers specifically trained in special education, can generate the greatest positive impact for students with the most complex disability and health issues.²⁹⁵ He explained the Union's position is that it is entirely appropriate for parents to have the option to send their children to special schools or another education setting that meets their child's needs.²⁹⁶

Survey data available to the Royal Commission suggests a high level of satisfaction among parents and supporters of students in non-mainstream schools. The Australian Special Education Principals' Association reported that of 390 respondents in a survey of parents and carers of students enrolled in non-mainstream schools, 91 per cent were satisfied with the educational support their children received in those settings and 78 per cent were extremely satisfied.²⁹⁷

The Victorian Government reported the Department of Education and Training's annual *Parent Opinion Survey* showed parent satisfaction rates with non-mainstream schools consistently ranged from 80 to 85 per cent over a period of eight years from 2010 to 2018.²⁹⁸ By contrast, parents of children enrolled in secondary mainstream schools reported satisfaction rates of 'around 70 per cent in 2010 to just below 80 per cent in 2018'.²⁹⁹ Following Public hearing 24, the New South Wales Government submitted it 'heard through [its] work with parents and Tell Them From Me surveys that parents and carers value the important work of [its] staff in specialist settings to ensure students with disability are learning to their fullest potential'.³⁰⁰

Our purpose in referring to these reports is not to canvass or express a view on the merits of non-mainstream schools compared with mainstream schools. It is only to demonstrate that parents and supporters of children and young people with complex support needs have very different views on the merits of non-mainstream schools.

Some submissions claimed that rates of violence and abuse directed at students with disability are higher in non-mainstream schools.³⁰¹ These claims appear to be based on anecdotal accounts, rather than on rigorous studies comparing the experiences of students with similar support needs or impairments in different educational environments. We are unaware of any rigorous peer-reviewed studies demonstrating that rates of violence and abuse, such as bullying, experienced by students with disability are higher in non-mainstream schools than in mainstream schools where students with similar support needs or disabilities are enrolled.

For these reasons, we cannot agree that non-mainstream settings, insofar as they involve the separation of students with complex needs, cause students to experience greater levels of violence, abuse, neglect and exploitation than students with similar complex support needs educated in mainstream schools.

First Nations students with disability

First Nations people are no strangers to the experience of forced segregation and the impact of that segregation. First Nations people have engaged with the Royal Commission in relation to education, including First Nations students with complex needs. Their contributions, although not in great numbers, have been important, not least because they reinforced the lack of inclusion in educational settings. Aboriginal-controlled schools are an example of cultural, linguistic and educational inclusion of First Nations students, including students with disability, for those students who have the opportunity to enrol in an Aboriginal-controlled school. However, many First Nations students with disability may not have the option to attend an Aboriginal-controlled school. Aboriginal-controlled schools are a positive response to the history of colonisation and discrimination experienced by First Nations people. It is self-determination in action. However, it is important to note that the majority of First Nations students with disability attend mainstream or non-mainstream schools. These educational settings should also offer First Nations people with disability an opportunity to apply the principle of self-determination as their brothers and sisters are doing in Aboriginal-controlled schools.

As we explained, the evidence before the Royal Commission demonstrates that students with disability experience violence, abuse and neglect in all educational settings, that is, in both mainstream and non-mainstream schools. The material provided by First Nations people and organisations to the Royal Commission indicates that the main conversation in First Nations communities is whether non-mainstream schools should be regarded as examples of segregation, inclusion or both.

Our engagement with First Nations people and organisations revealed a broad range of experiences and perspectives. With one exception, no one advocated or supported the phasing out of non-mainstream schools because this question was never put to them.

The exception is First Peoples Disability Network Australia (FPDN), which co-authored the ‘Segregation of people with disability is discrimination and must end’ paper.³⁰² The FPDN co-signed it on 8 December 2020 with 41 other disability rights and advocacy organisations with a call for an end to the segregation of disabled people in Australia, including in education.³⁰³

The position of FPDN is important as it is the national peak body for First Nations people with disability. But for First Nations people with disability, and the First Nations community as a whole and who may not be engaged with FPDN and their work on this issue, what is important is that any phasing out of non-mainstream schools only takes place with their free, prior and informed consent, in accordance with the principle stated in article 19 of the *UNDRIP*. This is something that has not occurred and would involve a great deal of work, careful thinking and consultation. There are mechanisms that could conduct this consultation, such as through the First Nations Disability Forum proposed in Volume 9, *First Nations people with disability*. This forum could consider the cultural, linguistic and educational supports and outcomes for First Nations students with disability in mainstream and non-mainstream schools in metropolitan, regional and remote schools.

In *Culture is Inclusion* by Scott Avery, the specific issue of segregation is not addressed in any of the settings examined.³⁰⁴ The issues raised concerning First Nations students with disability in education relate to ensuring the dual identity of culture and disability is recognised and supported in their school experience, as well as addressing undiagnosed and unsupported disability during the course of students' school years.³⁰⁵ In particular, Deaf and hard of hearing First Nations students and families detailed their experiences in school.³⁰⁶ The lack of access to Auslan interpreters, the need for families to relocate because of a lack of resources to support deaf First Nations students, and inconsistency with Deaf pedagogy between schools were some of the issues raised.³⁰⁷ For parents, the better way for disability and First Nations identity to be seen is as a synergistic relationship; however, this was not their experience in school.³⁰⁸ In identifying support areas, parents were asked to choose to identify their child as having disability or First Nations.³⁰⁹

Due to the significant number of First Nations students with disability enrolled in mainstream and special/segregated schools, inclusive education is an important issue that needs to be explored further. As of 31 March 2022, of the 193,898 NDIS participants who were attending school, 14,427 were First Nations NDIS participants.³¹⁰ As at their latest review:

- 9,234 were attending mainstream classes in mainstream schools, representing 7 per cent of all participants studying in this setting
- 915 were attending special/segregated classes in mainstream schools, representing 7 per cent of all participants studying in this setting
- 4,278 were attending special/segregated schools, representing 9 per cent of all participants studying in this setting.³¹¹

Volume 9 explores education regarding First Nations peoples.

The question of discrimination

It is sometimes said that maintaining non-mainstream schools for children and young people with complex support needs is a form of discrimination against them. 'Discrimination' is not a simple concept, but it is helpful to start with the definition in the *Disability Discrimination Act 1992* (Cth) (*DDA*). As explained in Volume 4, *Realising the human rights of people with disability*, the *DDA* provides for the purposes of the legislation:

a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if, because of the disability, the discriminator treats ... the aggrieved person less favourably than a person without the disability would be treated in circumstances that are not materially different ...³¹²

While statutory definitions of 'discrimination', at least in Australia, tend to follow a similar pattern, there is no universally accepted definition of the term. It is fair to say, however, that the key element in discrimination is treating someone less favourably than others because of a characteristic of the first person (such as disability), where the existence of the characteristic cannot rationally or reasonably justify the less favourable treatment.

Anti-discrimination legislation recognises that special treatment for people with a particular characteristic is justifiable where it is intended to address particular needs associated with that characteristic. The *DDA*, for example, provides that it is not unlawful to do an act reasonably intended to afford people with a particular disability access to facilities, services or opportunities to meet their special needs in relation to education.³¹³

In our view, continuing non-mainstream schools for children and young people with complex support needs cannot properly be characterised as ‘discriminatory’, whether in a legal or general linguistic sense. The purpose of non-mainstream schools is to provide students with an education that accommodates their complex support needs and offers the best opportunity to learn and develop the skills needed in post-school life. The fact that the purpose may not always be achieved does not demonstrate that continuing non-mainstream schools discriminates against students enrolled in these schools.

The position would be different if students with complex support needs were required by law to attend separate schools, but denied the supports, resources and staff necessary to protect them from violence, abuse or exploitation and to a decent education. This was more or less the position in parts of the United States during the Jim Crow era of school segregation enforced by law.

Under the pernicious and hypocritical ‘separate but equal’ doctrine sanctified by the Supreme Court in 1896,³¹⁴ schools were segregated on the basis of race. Schools for African-American students were supposedly equal to schools for white students. In fact, they were separate but certainly not equal. In any event, as the Supreme Court recognised in *Brown v Board of Education* in 1954,³¹⁵ there can never be a rational basis for allocating students to different schools against their or their parents’ will simply on the basis of race.

A government policy of supporting non-mainstream schools that are intended and designed to meet the educational needs and aspirations of children and young people with complex support needs cannot legitimately be compared to a legal system under which schools are segregated by race. Labelling non-mainstream schools as ‘segregated’, does not establish that they, or the system that supports them, should be characterised as discriminatory.

Additional observations

We make the following additional observations.

First, as with most issues relating to inclusive education, different views are held as to whether educating children and young people with complex needs in a separate environment necessarily leads to broader stigmatisation of people with disability in the community. This is certainly not the view of many people and organisations from whom we have heard.

We accept the importance of respecting the views of people with disability and, in the present context, the views of parents and supporters of children and young people with complex support needs. The fact is that people within these groups hold divergent opinions as to the merits or otherwise of non-mainstream schools. Just as some passionately call for the phasing out

of non-mainstream schools, others express equally passionate support for the continuation of non-mainstream schools. People with disability do not have a uniform position on non-mainstream schools.

Moreover, the assertion that non-mainstream schools stigmatise children and young people with disability assumes non-mainstream schools must completely isolate their students from their peers. As we explained, this assumption is not correct. There is no reason in principle, or as a practical matter, why students with disability enrolled in non-mainstream schools should be isolated from their peers. Interchanges between the two groups will increase the ‘visibility’ of children with complex support needs and shape the attitudes of their non-disabled peers towards people with disability.

Second, there is no doubt that the barriers to inclusive education in mainstream schools forced some parents to enrol children with complex support needs in non-mainstream schools. The appropriate response to the lack of choice is that the barriers to children with disability, including those with complex support needs, participating in education in mainstream schools should be dismantled so far as practicable.

Third, we are not aware of evidence demonstrating that the resources directed to educating children and young people with complex support needs in non-mainstream schools are materially greater than the resources directed to educating children and young people with identical or very similar complex support needs in mainstream schools. It is not uncommon in this area of discourse for comparisons to be made between settings that are not truly comparable. For example, the average cost of educating a student with disability in a mainstream school will always be lower than the average cost of educating students with disability in a non-mainstream school, because students in the latter group will have substantially more complex support needs.

Whatever the current principles governing the allocation of public resources, there is no reason why resources allocated to educating students with identical support needs should be different according to whether the student is enrolled in a mainstream or non-mainstream school.

Fourth, it is frequently said that inclusive education is already practised in other countries. If ‘inclusive education’ means **all** students with disability fully participate in learning alongside similarly aged peers, the claim is dubious at best.

Portugal is one country often cited as an example of inclusive education in this sense being practised. In 2019, the Portuguese Secretary of State for Education conceded at an international conference that Portugal had not yet implemented the ‘single educational environment’ for which legislation had been passed.³¹⁶ On the contrary, most students with disabilities were educated in special classes within mainstream schools.³¹⁷ A 2021 review of Portugal’s education system confirmed that its model of inclusive education faced serious challenges.³¹⁸

Italy is also frequently cited as a jurisdiction that has achieved inclusive education in the ‘pure’ sense. It is true that Italy has a law dating from 1977 providing that all children, regardless of physical or intellectual impairment, should attend general education schools in their

neighbourhoods.³¹⁹ Subsequent laws, decrees and circulars have sought to advance the objective of full inclusion.³²⁰

The literature indicates that Italy has not achieved the objective. In practice, teachers often delegate all the needs of students with disabilities to support teachers, as in other countries. Research shows that the quality of implementation of the legislation is 'highly fragmented and patchy'.³²¹

A recent assessment of Italy's system of inclusive education is as follows:

Recent findings have raised fundamental issues about the contradictions within a nearly inclusive system or how inclusive a classroom can be in practice.

...

the most striking finding in [a cited] survey was that some schools created as opposed to the law, *informal special units* outside the general class to provide specialised individualised educational services.

... The great distance between ideology and empirical evidence seems to characterise the attempt to implement full inclusion in Italy.³²²

Fifth, private sessions have been an extremely important part of the Royal Commission's work, not least because they provided the opportunity for so many people with disability to tell their stories confidentially and safely. However, the *Royal Commissions Act 1902* (Cth) imposes limits on the use of experiences conveyed to individual Commissioners in private sessions. The *Royal Commissions Act* expressly provides that a person who appears at a private session is not a witness before the Royal Commission and does not give evidence.³²³ The legislation also provides that a private session is not a hearing of the Royal Commission.³²⁴ Therefore, information conveyed at a private session cannot lawfully be used by the Royal Commission as evidence supporting a particular factual finding or conclusion.

Furthermore, reaching conclusions on the basis of subjective impressions derived from conducting private sessions runs the risk of relying on an unrepresentative sample of participants. Participants in private sessions expressed a variety of views and recounted a variety of experiences about schooling in both mainstream and non-mainstream settings.

Sixth, there is evidence that a large majority of children and young people with complex support needs do not obtain employment of any kind in the years immediately after leaving school, regardless of where they are educated.³²⁵ Those who do gain employment are either employed in ADEs or in the open labour market. In either case, the employment may be on a full-time or part-time basis.

The available evidence and data do not unequivocally establish whether students with disability attending non-mainstream schools who gain employment are more likely than their counterparts attending mainstream schools (that is, students with similar support needs) to be employed by ADEs and less likely to secure jobs in the open labour market.

However, an analysis conducted by the Royal Commission of survey data collected by the National Disability Insurance Agency of approximately 13,000 NDIS participants, analysed the relationship between educational settings and employment outcomes. The analysis found, after controlling for some variables, that NDIS participants who studied in non-mainstream schools (special/segregated schools or special/segregated classes in mainstream schools) were significantly more likely to work in an ADE than those who studied in mainstream classes. They were also significantly less likely to work in open employment. The survey found that overall employment outcomes for young NDIS participants transitioning from school were very poor: 82 per cent of the 13,000 former students surveyed did not achieve employment at all, regardless of their education setting.³²⁶

The survey was subject to certain limitations identified in the report and in a peer review. Nonetheless, we are prepared to accept the conclusions reached in the study, although it is not possible to quantify with any precision the extent to which the non-mainstream school environment is the cause of the different outcomes.

Accepting these propositions does not, however, lead to, or justify, the conclusion that all non-mainstream schools educating children with complex support needs should be phased out. For example, there is ample evidence that some non-mainstream schools (and some mainstream schools) encouraged students to seek or gain employment in ADEs, rather than in the open labour market.³²⁷ This practice limits employment opportunities for students with complex support needs who completed their school education.

It is also the case that relatively few employers in the open labour market have been prepared to offer employment to people with intellectual disability, particularly those who have complex support needs. Unless employers' practices change – as they should – people with complex support needs will find it difficult to gain employment in the open labour market. The most effective approach to this obstacle to employment opportunities for people with disability is to encourage or require more employers to change their hiring practices.

It is very likely that the changing role of ADEs, a process to which we refer in Chapter 7 of this volume, will substantially reduce, if not eliminate altogether, the practice of non-mainstream schools referring students with complex support needs to ADEs. In any event, the practice cannot be justified and should end. All schools educating students with complex support needs should concentrate on maximising the opportunities for these students to enter the open labour market. This change will be made easier for non-mainstream schools once their students are afforded greater opportunities to interact with their counterparts in mainstream schools on a regular basis. Implementing this approach can contribute to severing the link between non-mainstream schools and ADEs.

Recommendation 7.15 An alternative approach

The Chair and Commissioners Mason and Ryan recommend:

- a. State and territory educational authorities should implement the following measures:
 - wherever practicable locate new non-mainstream schools (that is, schools that enrol exclusively or primarily children and young people with complex support needs) and relocate existing non-mainstream schools within or in close proximity to mainstream schools
 - create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between groups of students enrolled in the schools
 - facilitate to the maximum extent feasible participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers in partnership with mainstream schools and other educational institutions
 - arrange for students in non-mainstream schools, where practicable, to participate in classes and educational activities with their peers in mainstream schools
 - establish programs for students enrolled in mainstream schools to participate in activities with their peers in non-mainstream schools
 - provide, where appropriate, for concurrent enrolment for individual students in both mainstream and non-mainstream schools
 - assist non-mainstream schools to facilitate where appropriate, the transition of students with disability, particularly those with complex support needs, to mainstream schools, whether on a full-time or part-time basis
 - provide assistance to mainstream and non-mainstream schools in understanding the strengths and skills of students with disability for post-school transition, including assistance in planning and preparing for further study and training
 - ensure non-mainstream schools encourage and support students with disability completing their education to seek and obtain employment in the open labour market, rather than in Australian Disability Enterprises or similar environments.
- b. The National Disability Commission (see Recommendation 5.5) should conduct or arrange for a comprehensive review of progress towards providing inclusive education for children and young people with complex support needs. The review's assessment should include the matters we have identified.

Endnotes

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- 5 Family Advocacy, Submission No 2 in response to *Education and learning issues paper*, 2 January 2020, ISS.001.00052, p 3; Children and Young People with Disability Australia, *Education of children and young people with disability: Submission No 1*, Submission, 28 October 2019, SUB.100.00115; Australian Human Rights Commission, Submission in response to *Education and learning issues paper*, 20 December 2019, ISS.001.00022, p 8; Catia Malaquias, All Means All – The Australian Alliance for Inclusive Education, Submission in response to *Education and learning issues paper*, 17 March 2020, ISS.001.00061, pp 89–90.
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126 See Kate De Bruin, ‘Does inclusion work?’ in Linda Graham (ed), *Inclusive education in the 21st Century: Theory, policy and practice*, Routledge 2019, ch 3 pp 55–76; Conrad Oh-Young & John Filler, ‘A meta-analysis of the effects of placement on academic and social skill outcome measures of students with disabilities’, (2015), vol 47, *Research in developmental disabilities*, pp 80–92.

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131 See Conrad Oh-Young & John Filler, ‘A meta-analysis of the effects of placement on academic and social skill outcome measures of students with disabilities’, (2015), vol 47, *Research in developmental disabilities*. Oh-Young, Conrad & Filler, John noted in their meta-analysis that their own findings concurred with two previous meta-analyses, that of Carlberg and Kavale (1980) and Wang and Baker (1985–1986), and that 80 years of evidence show that ‘overall, students who received instruction in more integrated settings outperformed students who received instruction in less integrated settings on assessments that measured academic and social outcomes’, p. 90.

132 As this term was not defined or operationalised, we could not determine what exactly this was and whether the research team for that area of the report applied it in terms of deciding what

- to include and exclude in the review.
- 133 For example, in answering the question “What are the educational quality and safety outcomes of being educated in mainstream and special schools”, the reviewers referred to 193 outcome-related articles and 80 investigating the school community, meaning that almost a third of the articles were not outcome-related.
- 134 Our Watch, ‘Respectful relationships education in schools’, Evidence paper, 2021, p 9.
- 135 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 8(2)b; Children and Young People with Disability Australia, Submission in response to *Rights and attitudes issues paper*, 12 October 2020, ISS.001.00487, p 10.
- 136 Australian Human Rights Commission, Submission in response to *Education and learning issues paper*, 20 December 2019, ISS.001.00022, pp 6–7 [25].
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- 148 Transcript, Pamela Prichard, Public hearing 2, 6 November 2019, P-240 [26–27].
- 149 Karen Fisher, Sally Robinson, Christiane Purcal, Gianfranco Giuntoli, Jan Idle, Rosemary Kayess, BJ Newton, Christy Newman, Qian Fang, Mitchell Beadman, Yasmin Edwards, Kathleen Reedy & Rosie Pether, *Changing community attitudes to improve inclusion of people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, April 2022, p 14.
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- 153 Exhibit 2-001, ‘Statement of Deborah Dunstone’, 14 October 2019, at [63].
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- 156 Transcript, Deborah Dunstone, Public hearing 2, 7 November 2019, P-284 [18–36].
- 157 Transcript, Kevin Bates, Public hearing 2, 5 November 2019, P-112 [34–35; 41–43].
- 158 Transcript, Lisa Bridle, Public hearing 2, 4 November 2019, P-60 [19–32].
- 159 Transcript, Lisa Bridle, Public hearing 2, 4 November 2019, P-43 [8–12].
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 We do not accept the criticisms made by our colleagues of the Outcomes Report on the issues
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- 226 This is permitted under article 32(a) of the VCLT in order to resolve ambiguity – as cited by Andrew Byrnes, *Analysis of Article 24 of the convention on the rights of persons with disabilities and its relation to other international instruments*, November 2020, p 22 [50].
- 227 In this regard, the analysis offered by Kayess, who acted as facilitator in the latter stages of the negotiations on the Convention for what became Article 24, has a stronger foundation in the drafting history and purposes of the Convention: Kayess as cited by Andrew Byrnes, *Analysis of Article 24 of the Convention on the Rights of Persons with Disabilities and its relation to other international instruments*, November 2020, p 22 [50].
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