



# Children and young people with disability in New South Wales educational settings

Report 52

August 2024

3



Portfolio Committee No. 3 - Education

# Children and young people with disability in New South Wales educational settings

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## *Errata*

[Errata](#) were tabled on 4 September 2024 to amend errors in paragraph 3.6 on page 34, paragraph 3.96 on page 52, a subheading on page 53, paragraph 3.100 on page 53, paragraph 3.109 on page 55, paragraph 3.109 on page 55, Finding 6 on page 55 and xi, and paragraph 5.40 on page 87.

**New South Wales. Parliament. Legislative Council. Portfolio Committee No. 3 - Education.  
Report no. 52.**

Children and young people with disability in New South Wales educational settings

"August 2024"

Chair: Ms Abigail Boyd MLC



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## Terms of reference

1. That Portfolio Committee No. 3 – Education inquire into and report on current levels of access and attainment for children and young people with disability in New South Wales educational settings, and in particular:
  - (a) the experiences of children and young people within educational settings and measures to better support students with disability
  - (b) the barriers to safe, quality and inclusive education for children with disability in schools, early childhood education services and other educational settings
  - (c) the specific needs of children and young people with disability in regional, rural and remote schools, early childhood education services and other educational settings
  - (d) the impact on children and young people with disability and their families associated with inadequate levels of support
  - (e) the benefits for all children and young people if students with disability are provided with adequate levels of support
  - (f) the social, economic and personal benefits of improving outcomes for students with disability at school and in further education and employment
  - (g) the experiences of teachers, early childhood educators, learning support staff and others with a role in educating children with disability and measures to adequately resource and empower those educators
  - (h) the resourcing available to educational settings and educators, including infrastructure, to support the needs of children and young people with disability in New South Wales
  - (i) the measures necessary to ensure the learning environment is safe and inclusive for all students, teachers and school support staff
  - (j) the impact of policies regarding suspensions and expulsions
  - (k) the impact of policies regarding the use of restrictive practices
  - (l) the effectiveness and availability of early intervention programs
  - (m) whether existing regulatory and oversight mechanisms are sufficient to protect and promote the rights of children and young people with disability, and protect those children and young people from abuse, neglect and exploitation
  - (n) whether children and young people with disability should be included under the remit of the Ageing and Disability Commissioner

- (o) developments since the 2017 Upper House inquiry into education of students with disability or special needs in New South Wales
  - (p) measures to implement the Disability Royal Commission's recommendations in relation to inclusive education
  - (q) any other related matters.
2. That the committee report by 22 August 2024.<sup>1</sup>

The terms of reference for the inquiry were self-referred by the committee on 6 December 2023.<sup>2</sup>

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<sup>1</sup> The original reporting date was 30 May 2024 (*Minutes*, NSW Legislative Council, 6 February 2024, pp 859-860). The reporting date was later extended to 17 June 2024 (*Minutes*, NSW Legislative Council, 7 May 2024, p 1077), then to 8 August 2024 (*Minutes*, NSW Legislative Council, 15 May 2024, p 1143), then to 21 August 2024 (*Minutes*, Legislative Council, 6 August 2024, p 1352), and then to 22 August 2024.

<sup>2</sup> *Minutes*, NSW Legislative Council, 6 February 2024, pp 859-860.



## Committee details

### Committee members

<b>Ms Abigail Boyd MLC</b>	The Greens	<i>Chair</i>
<b>Hon Mark Buttigieg MLC</b>	Australian Labor Party	
<b>Hon Anthony D'Adam MLC</b>	Australian Labor Party	
<b>Hon Natasha Maclaren-Jones MLC*</b>	Liberal Party	
<b>Hon Tania Mihailuk MLC</b>	Pauline Hanson's One Nation	
<b>Hon Sarah Mitchell MLC</b>	The Nationals	
<b>Hon Emily Suvaal MLC</b>	Australian Labor Party	

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\* The Hon Natasha Maclaren-Jones MLC substituted for the Hon Rachel Merton MLC from 6 December 2023 for the duration of the inquiry.

### Secretariat

Sarah Newlands, Principal Council Officer

Margaret Pollard, Senior Council Officer

Glenn Hill, Council Officer

Marina Yuan, Graduate Officer

Emma Rogerson, Director

## Chair's foreword

I am pleased to deliver the report of the inquiry into children and young people with disability in New South Wales educational settings.

This inquiry gave us the opportunity to hear directly from children and young people with disability and their families, educators and representatives about how we can make NSW's education system safe, inclusive and accessible for all students. Following the landmark Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, which focused considerably on inclusive education as the nucleus of an inclusive society, the committee examined the state of NSW's education system including public and private mainstream and special educational settings, from early childhood education through to vocational education and university settings.

The committee found that a lack of inclusion experienced by children and young people with disability across various educational settings has profound impacts and lifelong consequences on various aspects of their lives, including in employment, social life, accessing essential services and more. The inappropriate use of exclusionary discipline such as suspension and expulsion of students with disability can be particularly devastating.

Beyond the impact on students and their families, it was clear from our inquiry that a lack of inclusion in New South Wales educational settings reinforces prejudice, discrimination and ableism in society which, in turn, perpetuates non-inclusive practices in the education system.

The report makes targeted recommendations for change that seek to address gaps in NSW's education system through legislative and policy changes, greater investment in mainstream schools and highly qualified educators, and a fundamental shift in the culture within schools.

Education systems rely on the quality of training and support of the teachers and support staff who assist and teach children in the classrooms each day. We note the strong policy framework in New South Wales, where all teaching degrees and continuing professional development for teachers must include content on teaching students with disability. However, the inquiry identified that gaps remain in meeting the needs of students with disability, hence recommendations focussing on up to date professional practice, upskilling of teachers, and providing incentives for teachers to gain specialist qualifications.

One area that drew the committee's particular attention was whether schools are meeting their statutory obligations to provide reasonable adjustments for students with disability to participate and access schooling alongside their peers. Many families felt they had little recourse for appeals or independent oversight of decisions, particularly with respect to exclusionary practices like suspensions, expulsions and restrictive practices and the implementation of individualised adjustments. Accordingly, we have recommended that the NSW Government establish independent oversight of educational institutions to provide support, advocacy and adjudication on behalf of students with disability in public and private educational settings.

The committee was keen to hear the views of families and stakeholders about the recommendations from the Disability Royal Commission to phase out special education settings. Understandably the evidence from families, children, educators and stakeholders was heartfelt, and strongly expressed.

The committee heard arguments for special schools which revolved around the principle of choice, and parents who felt very strongly that a special education setting is the best fit for their child.

On the other hand, supporters of inclusive school settings described how it is a 'false choice' because special settings were usually chosen on the basis that families had no other choice: that the necessary support and resources for their child with disability were not available to them in a mainstream setting.

In light of this, the committee was unanimous in recommending that the NSW Government move towards a school system which enables more students with disability to be enrolled in mainstream, inclusive school settings, with a focus on the rights of the child with disability, rather than the interests of the school.

I would like to thank my fellow committee members for their collegiality and engagement with this inquiry. I would also like to extend my thanks to the committee secretariat, who worked with myself and the committee to establish a ground-breakingly inclusive committee process, including Auslan interpretation and the provision of Easy Read documentation. I hope that this will be the beginning of a more disability-friendly committee process becoming standard practice in the NSW parliament.

Ms Abigail Boyd MLC  
**Committee Chair**

# Findings

- Finding 1** **30**  
 That a lack of inclusion faced by children and young people with disability in New South Wales educational settings has profound impacts on various aspects of their lives, including in employment, social life, accessing housing and health services, and more. These impacts have potential lifelong consequences.
- Finding 2** **31**  
 That children with disability in out of home care face additional barriers to inclusion and their disengagement with education contributes to the over-representation of young people with disability in youth justice systems and adult prisons.
- Finding 3** **31**  
 That a lack of inclusion faced by children and young people with disability in New South Wales educational settings also impacts siblings, families and carers; and the use of suspension and expulsion practices in particular affects parents' and carers' ability to work, creating financial stress for the family.
- Finding 4** **31**  
 That the inappropriate use of exclusionary discipline such as suspension and expulsion of students with disability can have long term impacts, including on their engagement with school and post school pathways.
- Finding 5** **32**  
 That beyond the impact on students, siblings and families, a lack of inclusion in New South Wales educational settings reinforces prejudice, discrimination and ableism in society which, in turn, perpetuates non-inclusive practices in the education system.
- Finding 6** **55**  
 The Department of Education's definition of inclusive education, as outlined in the Inclusive Education Statement for students with disability, is not consistent with inclusive education as described in the United Nations Convention on the Rights of Persons with Disabilities.<sup>3</sup>
- Finding 7** **95**  
 That, in some instances, a school's failure to effectively implement an individual learning plan or behaviour management plan was linked to negative outcomes for children's behaviour and consequently their education.
- Finding 8** **96**  
 That suspension and expulsion policies:
- impact disproportionately on students with disability and their families
  - are not always effective when based on a positive behaviour approach
  - do not overall strike the right balance between students' need for inclusive education with the safety of teachers.

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<sup>3</sup> Please also see [Errata](#) tabled 4 September 2024.

- Finding 9** 97  
That there is an unquantified number of school-aged children with disability who are disengaged from the school system, often due to one or more factors, including gatekeeping, exclusion or suspension, bullying, or not having their educational and wellbeing needs met. This can impact on other family members, including parents and carers having to give up employment in order to supervise their child, and also disproportionately impacts parents and carers with disability who face added barriers.
- Finding 10** 99  
That children and young people with disability in some special school settings are not always being provided with environments and learning experiences which are designed to improve their educational outcomes or meet their social and wellbeing needs.
- Finding 11** 99  
Consideration of what is in the best interests of the child in their particular circumstances may require them to have access to specialist settings which meet their needs.
- Finding 12** 131  
That the minimum requirements for initial teacher education for accredited teaching degrees are no longer sufficient for classroom teachers to meet the need of a growing cohort of students with disability, especially in mainstream classrooms.
- Finding 13** 132  
That there are insufficient numbers of teachers who have the appropriate qualification for special educator roles in schools.
- Finding 14** 132  
That there are insufficient incentives for teachers to acquire additional qualifications to become special educators.
- Finding 15** 133  
That the current funding allocation model for mainstream public schools does not provide certainty for ongoing employment of learning and support teachers or encourage consistency in classroom support for students with disability. In many cases funding fluctuates year to year depending on the needs of the student population, making it difficult for schools to retain additional staff.
- Finding 16** 135  
That the representation of teachers with disability in the teacher workforce is below that of the general population and is not meeting NSW Government targets.
- Finding 17** 137  
That there is great benefit for children with disability when they access early intervention. A delay or absence of early intervention has a detrimental effect on a child's educational outcomes, social wellbeing and employment opportunities.

**Finding 18**

**137**

That the infrastructure in New South Wales public schools is in some cases outdated, inappropriate and inaccessible for students with disability.

**Finding 19**

**138**

That the development, implementation and review of adjustments included in a student's individual learning plan is often inconsistent between and within schools, and parents/carers and students have few avenues to seek an independent review of school decisions and actions.

**Finding 20**

**139**

That the requirements to access Disability Provisions for the Higher School Certificate examinations can be onerous and excessively focused on students having to re-prove their need for adjustments which they are already accessing in the classroom. In some instances, students and their families are required to provide extensive evidence of the need for adjustments, which can be costly, time consuming and stressful.

## Recommendations

- Recommendation 1** **31**  
That the NSW Government provide increased funding for organisations that provide distance education for out of home care students with disability.
- Recommendation 2** **94**  
That the NSW Government make it a requirement that schools ensure best practice in creating and maintaining communication between the school and the student, their parents and siblings, in line with Recommendation 7.6 (a) of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- Recommendation 3** **95**  
That the NSW Government continue to monitor the use of restrictive practices in educational settings in New South Wales with a view to reducing their application over time in line with recommendations 6.35 and 6.36 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- Recommendation 4** **96**  
That the NSW Government ensure that schools:
- manage behaviours of students with disability using a trauma informed approach, in the place of positive behaviour learning
  - provide better professional development and support for teachers to help them avoid using suspension and expulsion to manage student behaviour.
- Recommendation 5** **98**  
That the NSW Government provide enhanced/additional support for the transition back into school for children with disability and their families where they are at risk of being disengaged or have been regularly excluded from the school system. This support could incorporate features such as:
- ensuring Home School Liaison Officers are trained in trauma informed practice and working with both students and their families with disability.
  - ensuring NESA staff are trained in trauma informed practice for enhancing engagement with home schooled students and their families.
  - establishment of transition support units specifically for students with disability who have been regularly excluded from school and are at risk of disengagement. These support units should focus on helping students transition back to schooling in a mainstream classroom.
  - expanding the number of places in schools for specific purposes (emotional and behavioural disturbance) consistent with the transitional model operating at the Ajuga School
  - greater access to distance education, and part time school attendance as a transition to mainstream school settings.
  - targeted funding for Careers NSW to specifically engage with young people with disability in the 'Get Back in the Game' program, including training for staff in trauma-informed practice.

- Recommendation 6** **99**  
 That the NSW Government and the NSW Education Standards Authority work towards a school system – government, independent and Catholic – which enables more students with disability to transition to mainstream, inclusive school settings in circumstances where the child and their parents or carers are of the view that it would be to the benefit of that child. The school system must focus on the rights of the child with disability, not the interests of the school.
- Recommendation 7** **131**  
 That the NSW Government increase the requirements for accreditation of initial teacher education courses to ensure teachers are better equipped to meet the learning needs of students with disability, and to consider options for requiring content to specifically address the needs of students with Autism Spectrum Disorder.
- Recommendation 8** **132**  
 That the NSW Government expand the length, reoccurrence and content of mandatory continuous professional development courses relating to students with disability.
- Recommendation 9** **133**  
 That the NSW Government investigate options to increase and enhance incentives for qualified teachers to acquire post graduate qualifications to become special educators for students with disability. This could include:
- more scholarships for teachers to undertake post-graduate qualifications in inclusive/special education.
  - relief time from their employment to undertake this study.
  - incentives, including pay structures, for those teachers who hold specialist post-graduate qualifications in special/inclusive education, for example paying such teachers at the same rate of pay as that of Highly Accomplished and Leader teachers (HALTs).
- Recommendation 10** **133**  
 That the NSW Government investigate means such as adjusting the resource allocation model to ensure there is targeted funding to employ learning and support teachers (LASTs) on a permanent full-time basis in mainstream public school settings to provide consistency and certainty for both teachers and the students with disability they support.
- Recommendation 11** **134**  
 That the NSW Government increase the number of appropriately qualified Deaf teachers, and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of Deaf children.
- Recommendation 12** **134**  
 That the NSW Government increase the number of qualified specialist vision teachers for blind and low vision students, to be engaged for all students who are blind/ low vision, to provide them with:
- Braille literacy
  - adaptive technology training
  - orientation/ mobility
  - compensatory skills and independent living skills



- social skills
- career counselling.

- Recommendation 13** **135**  
That the NSW Government continue to improve the proportion of teachers and support staff with disability in the school sector and consider how more students with disability can be supported and encouraged to gain a teaching degree.
- Recommendation 14** **135**  
That the NSW Government establish culturally safe policies and procedures for First Nations students with disability, in consultation with First Nations peoples and their representatives.
- Recommendation 15** **136**  
That the NSW Government provide incentives to existing school learning support officers to acquire a Certificate III or Certificate IV in School Based Education Support, to allow them to commence and complete this training while in employment as a school learning support officer (SLSO).
- Recommendation 16** **136**  
That the NSW Government invest in specialist and allied health workforces to support children and young people with disability.
- Recommendation 17** **137**  
That the Department of Education transition to the eligibility criteria for Integration Funding Support relying on functional assessments of students' needs, rather than medical diagnoses.
- Recommendation 18** **137**  
That the NSW Government consider using principles of inclusive and adaptive design in school buildings to improve accessibility for all students. Accessibility considerations for students should be prioritised above heritage requirements.
- Recommendation 19** **138**  
That the NSW Government commit to a sustainable long-term investment in quality and appropriate capital and infrastructure for educational settings.
- Recommendation 20** **138**  
That the NSW Government create clear and direct guidelines for schools to enable compliance with statutory obligations to provide reasonable adjustments for students with disability.
- Recommendation 21** **139**  
That the NSW Government consider a streamlined process, including a line of communication between the relevant agencies, for granting disability provisions for the Higher School Certificate. The process should incorporate recognition of pre-existing conditions and adjustments already provided in the classroom.
- Recommendation 22** **140**  
That the NSW Government provide support to the Department of Education and schools to ensure they work with parents and NDIS providers to enhance and facilitate student access to NDIS-funded support in the school setting in order to achieve maximum benefits for the student and enhance teacher capability to address student needs.

**Recommendation 23****141**

That the NSW Government investigate and review options for an independent oversight function or body to support, advocate and investigate on behalf of children and young people with disability and their families. The independent body could include the following features:

- Jurisdiction over the education of school-aged children in government and non-government schools, TAFE, vocational education providers, universities, early childhood education settings, home education or not in any educational setting in New South Wales.
- The ability to review and adjudicate on decisions to suspend or expel students with disability.
- The ability to review and adjudicate on decisions by schools about adjustments, and decisions by NESA about Disability Provisions.
- The ability to investigate and respond to allegations of discrimination, abuse, neglect and exploitation of a child with disability in a registered school.
- The ability to review and investigate issues of systemic disability discrimination and ableism.
- The ability to collect and report on data relating to suspension, expulsion and restrictive practices.
- The ability to advise on a transition to a more inclusive education school system.
- A clear and accessible dispute resolution mechanism for parents and carers to make complaints or raise concerns, and procedures to collect, analyse and report on these complaints.

**Recommendation 24****142**

That the NSW Government refer the issue of the removal of exemptions which allow private educational institutions to discriminate against a person on the basis of disability to the NSW Law Reform Commission for consideration as part of its review into the *Anti-Discrimination Act 1977*.

**Recommendation 25****142**

That the NSW Government seek to amend the *Anti-Discrimination Act 1977* to include a positive duty on educational institutions to provide reasonable adjustments for a person with disability.

**Recommendation 26****143**

That the NSW Government improve its data collection and reporting on students with disability who are school-aged/in school settings, including collecting data on the following:

- collect and report on data relating to suspension, expulsion and restrictive practices in government and non-government schools
- collect and report data on students refused enrolment in their school of choice due to disability
- collect data on students with disability who are homeschooled in the Nationally Consistent Collection of Data on students with disability
- collect data on outcomes of requests for reasonable adjustments and HSC Disability Provisions
- where relevant, this data should be disaggregated to report on children who are in out of home care.

**Recommendation 27**

**144**

That the NSW Government increase support for young people with disability transitioning from school to study at TAFE, vocational education and training and higher education, for example through funding transition pilot programs and introducing in-school supports and learning for students with disability.

**Recommendation 28**

**144**

That the NSW Government, in cooperation with the Australian Government, seek to review the governance of NSW public universities, particularly with respect to their policies and processes for meeting the educational needs of students with disabilities and their complaints handling processes.

## Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 6 December 2023.

The committee received 91 submissions and three supplementary submissions.

The committee held four public hearings at Parliament House in Sydney. The committee also held a roundtable discussion with children and young people with disability at McDonald Jones Stadium, Newcastle.

The committee received 190 responses from individual participants to an online questionnaire.

The committee also conducted site visits to schools in North Sydney, Central Coast and South-Western Sydney. See Appendix One.

Inquiry-related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents, correspondence, an online questionnaire report, answers to questions on notice and answers to supplementary questions.

## Commonly used terms throughout the report

'Parents', 'carers' and 'caregivers' may be used alone, together or interchangeably in this report, while acknowledging that parents are not necessarily carers and vice versa. In the context of this report, the use of any of these terms refers to someone who has responsibility for the child or young person and is making decisions about their education or care.

Special schools – in this report will include any schools that exclusively enrol students with disability.

Government school and public school are used interchangeably.

Independent school and private school are used interchangeably.

Non-government school generally refers to any private, Catholic or independent school.

Catholic school generally refers to both systemic and independent Catholic schools, unless specified otherwise.

References to disability includes physical, intellectual and psycho-social disability. A person can have more than one disability and/or type of disability.

This report uses both person-centred and identity-centred language regarding disability in recognition that different people use different language to refer to themselves.



## Chapter 1 In their own words

This chapter provides a range of accounts of the experiences of children and young people with disability, and their families, as they access the education system across a variety of settings. Further case studies are included throughout the report.

### Early Childhood

#### Case study – A two-year-old boy with autism excluded from private daycare<sup>4</sup>

The submission author has an autistic son who at two years of age had his education access restricted for throwing toys.

Despite no prior warning and having an inclusive support person in place, funded by the NDIS, the parents were told he had to be picked up at 2:30 pm each day with no compensation and no indication of how long this exclusion would last.

When the parent raised concerns with the Department of Education she was advised that she didn't have sufficient evidence of discrimination.

The parent was passionate about the need to support other parents by educating daycare centres and their educators to become a more inclusive environment for children of all needs and be held accountable for any type of discrimination.

They have now found an alternative long daycare which is meeting his needs, and he is now having a positive experience. The owner and operator of the new long daycare has their own child with additional needs.

### Challenges in mainstream educational settings

#### 1.1 In her submission, 'Jessica's' mum described the impact of low expectations on her daughter:

Jessica's support situation and learning have been impacted greatly since the external school support specialists were ousted: and has had grave ramifications for the rest of the family – siblings and parents and relationships within the family, as a result of the additional stress involved as I try to keep her education up at home outside school hours and try desperately to get the support people that are in place.

When the Principal spoke with me directly on the subject, she went on to trying to persuade me to send Jessica to special school rather than continue in the local mainstream public school where her brothers go. The school she suggested was the local very high needs / high-dependency special school - one I had visited and totally inappropriate for my child and the nature of her disability. She also referred to autism - a disability my daughter doesn't have and in fact couldn't be more different. Demonstrating an unwillingness to understand disability and an adversity to inclusion.<sup>5</sup>

<sup>4</sup> Submission 22, Name suppressed. This case study is based on the written submission and audio attachment.

<sup>5</sup> Submission 64, Name suppressed, p 7.

**1.2** The parent to a nine year-old boy with Down Syndrome, told of her struggle to keep her child in a mainstream setting supported by agreed adjustments:

Child B has heaps of funding and the school is very happy to tell us how much funding he has, and all the funding in the world is not going to help child B to be successful if the school does not want him to be successful. From our school, they believe that kids with disabilities are better off somewhere else, and they make that so in how they treat them. They have a culture of moving kids on to special schools and support units. They made it pretty clear to us. We were optimistic and idealistic probably in sending him to the school, but they did make it pretty clear from the start that 'We're not going to change anything structurally for Child B. He'll cope up to a point and at some point you'll probably find that he doesn't cope anymore and you'll need to move somewhere else'.<sup>6</sup>

**1.3** The following is a quote from a parent who was pressured into enrolling their child in a special setting:

She put so much pressure on me. It was horrible. And in the end I really - I could not – I was so guilt ridden I ended up putting him into special school because I could not find any more arguments in my head, and I still regret it deeply. I still hate the thought of it you know but I was so pressured. It was horrible. It was horrible. I was made to feel like I was nearly an abusive parent to keep him at the school. It was so bad.<sup>7</sup>

**Case study – Grievance handling within a local public school<sup>8</sup>**

Child X is a bright, social and academically high-achieving student with complex needs, which include eating support. He is enrolled at his local public school however, he has had several episodes of non-attendance in the last two years due to his not feeling safe at school.

Recently Child X relayed to his parents an incident of concern that has left him reluctant to return to school. He had left his classroom to walk to the office, something he had received prior permission to do when feeling dysregulated. On reaching the office, a teacher there proceeded to pull him by his arms 'back to class'. Child X knows that being handled in this way by a teacher is not appropriate and he challenged the teacher, but she persisted. Child X noted there were no cameras in that area. The experience has left him feeling vulnerable and unsafe.

His parents are keen for this incident to be investigated and addressed as soon as possible so that their son can return to school. Based on previous experience of raising issues within his school, his parents have chosen instead to escalate their concerns to regional level.

The parents have previously experienced repercussions for raising a complaint about a teacher denying their son access to a sensory space. In response, a teacher made vexatious complaints against the parents which saw Police called and involvement with the Department of Communities and Justice. While these previous complaints against the parents were found to be groundless, the behaviour of the teaching staff towards the family caused immense anxiety and led to the family reporting the matter to the Professional and Ethical Standards (PES) unit within the Department of Education. PES dismissed the parents' complaint on the basis that the teacher had not technically breached procedure.

<sup>6</sup> *In camera* evidence, Gemma, 22 April 2024, p 5, published by resolution of the committee.

<sup>7</sup> Answers to supplementary questions, Australian Alliance for Inclusive Education (All Means All), 17 May 2024, p 13.

<sup>8</sup> Submission 88a, Name suppressed, pp 2-3. This case study is based on the content of the submission.

The family then made a vicarious complaint to the Australian Human Rights Commission on the basis of disability discrimination under s.58 of the *Disability Discrimination Act*. That complaint was upheld by the Commission and was before them for conciliation.

### **Case study – Challenges encountered in a local primary school's learning support unit<sup>9</sup>**

Last year, Child K commenced his kindergarten year in a learning support unit at his local primary school, the only kindergarten child to do so that year.

His parents believed they had done all they could to smooth his way. This included:

- attending information sessions in the lead-up
- buying a second-hand uniform for him to practise wearing well before the school year commenced
- creating social stories
- reaching out to the school and arranging to meet with the assistant principal and his teacher to discuss his strengths and challenges
- supplying the school with therapist reports and expert guidance about him
- letting the school know that he was likely to seem settled at the start but once he felt comfortable his behaviours might become challenging.

The parents had hoped to discuss his progress but waited five weeks for an opportunity to do so. As Child K became dysregulated and non-compliant, his parents tried liaising with the school. The principal responded that the child had been made to pick up rubbish in the playground 'because he needs to know who's in charge'.

Child K was suspended twice that year for behaviour that was unsafe and aggressive. The first time was for two days and his parents were given a suspension letter. No re-entry meeting was offered to the parents, nor an action plan developed.

The second was for five days and this time he wasn't aware that he had been suspended until he'd arrived home.

His parents feel that, since his first day at the learning support unit, there have been ways in which his experience of school has segregated him from his peers. He was not offered a pass at lunch time to go to the library for quiet time; nor any small group tutoring to help him with the curriculum. No information was provided to his parents regarding other groups in the school like choir, so that they could support him to participate if he wanted to. And he was not allowed the stuffed animal that he uses for regulation due to advice from the department's behaviour therapist that all outside belongings including regulation tools should be banned. Instead, the school offered him their own tools for regulation.

Communication with the school has been a challenge and his school report showed a deficiency-based mindset, outlining expectations he would never meet and continual comparison to a neurotypical child. While the parents have sympathy for the teachers who they believe are not able to support his needs, they also feel they have little option other than to send their child to this school.

<sup>9</sup> Submission 52, Mrs Ciara and Mr Tim McKillop, pp 1-4 and 8; Submission 52a, Mrs Ciara and Mr Tim McKillop, p 2. This case study is based on the content of the submissions.



**Case study – An account by a girl with autism, written with the assistance of her siblings<sup>10</sup>**

Girl P has provided an account in her own words of her experiences in her local public school and how she wasn't supported.

'I am Autistic and girls often mask so their disability is hidden as they just want to fit in ...'

'At school I would mask and the Principal kept telling my mum and my therapists that I didn't need any help at school despite all the medical information and recommendations ... relating to simple reasonable adjustments ...'

'I would come home from school and have a mega meltdown as home was my safe place. My parents spoke with the school begging for learning support for me and the Principal told them at school they didn't see these meltdowns that we saw at home'.

'At the time my older sibling was in Yr 12 and they had to leave home to study'.

'There was a very scary incident at school where the Principal pulled me in front of other students. It was mean I cried and it hurt and I went home and told my parents and that's why I home school now as my school didn't keep me safe'.

'I hope this inquiry and its recommendations made will be taken up on full by the NSW Government so that kids like me living with a disability never have to suffer the trauma and not be kept safe at school'.

**Case study – Challenges in transitioning to mainstream schooling<sup>11</sup>**

I have been too busy to make a submission because my daughter is currently not attending school. We had intended to transition her to the local mainstream school this year but they have not put adequate supports in place and I am not comfortable in sending her. Currently, I cannot see the issues being resolved and we are in a very difficult position. My daughter has a very rare genetic condition that is degenerative. It is a childhood dementia with blindness and intellectual disability. It is life limiting. We don't fit in the boxes. With a lot of effort and time we made things work at the local primary school. She had friends that have gone on to the high school. It is a shame the school leadership are not willing to work with us and make things work. We are willing to offer a lot of support but they are not listening.

<sup>10</sup> Submission 77, Name suppressed, pp 1-2. This case study is based on the content of the submission.

<sup>11</sup> Submission 50, Name suppressed, p 1. This case study is based on the content of the submission.

## Differing experiences with requests for adjustments

### Case study: Leo's experiences with inconsistent and inappropriate application of adjustments in school<sup>12</sup>

Marika of Square Peg Round Whole recounted her son's journey through the education system and how 'policy to practice' gaps affected the quality of his education, his inclusion in the school and even his safety.

Leo is 'autistic, with ADHD, generalised anxiety disorder, hypertonia, sensory processing disorder and learning difficulties. He has an individualised education plan, receives funding through the integration funding scheme and has been receiving support for literacy, numeracy and social skills since kindergarten. He is now 15 and in year 9, and on a partial attendance plan, and has not attended a full day of school in over 2½ years'.

Marika recounted one incident where she was called at work and told the school could not find her son, and would she like the police to be called? Her son was eventually found hiding in a storeroom, stressed and trying to calm down. She attributed this incident in part to his regular teacher being on scheduled leave, and a lack of communication between teachers at the school, including omitting to share a one-page information sheet. As a result, the replacement teacher did not follow Leo's medication, nor support him to eat.

The current goal for Leo in his individualised education plan concerns safety and belonging. Now in Year 9, Leo is on a partial attendance plan because his needs are not being met.

Leo's mother said: 'The behaviourist approaches, including suspension, have been incredibly ineffective and detrimental. We are advocating for a relational approach—a trauma-informed practice—which would be far more beneficial and attentive to our child's needs'.

In conclusion she noted 'Support for children is too often linked to parents' capacity and privilege for a diagnosis and to advocate, navigate and fill the gaps. There's a lack of transparency in what support is available and what is considered a reasonable adjustment, and I would really like to table that issue and have better transparency and understanding around reasonable adjustments'.

### Case study – Lapses in a culture of inclusion<sup>13</sup>

#### *Example 1*

A parent was told by her son's school that he couldn't use technology to complete his Year 3 NAPLAN tests. This student had used an iPad in class for answering questions rather than writing the answers by hand, as it was faster and less tiring for him. The school had informed the parent that adjustments were available for her son and that the school could apply for a scribe for him. This, however, required him to do the tests in a separate room so as not to disturb the other students. His parent did not wish him to be excluded from his peers and was keen for a technology option.

<sup>12</sup> Evidence, Ms Marika Franklin, Member Advocate, Square Peg Round Whole, 22 April 2024, p 8. This case study is based on evidence received at a hearing.

<sup>13</sup> Evidence, Ms Charlotte Sangster, Chief Executive Officer, Muscular Dystrophy NSW, 22 April 2024, p 26. This case study is based on evidence received at a hearing.

After contacting the Department of Education to express her concerns, the parent was told that the school's advice was incorrect, and that her son could have used an online or PDF format, but that the school had missed the deadline to apply for the adjustment.

#### *Example 2*

On the morning of a child's first athletics carnival his parents were telephoned by a 'panicked' deputy principal asking them how their child was going to get to the track. The child's parents had completed all the necessary paperwork provided by the school, checking the box that their child will catch the bus with all the other students. However, the school failed to consider the fact the child was a powerchair user and did not organise suitable transport for him. The parents felt the deputy principal expected them to return to the school and drive their child to the track in their accessible car. The parents responded that they had filled out the form like all the other students, so it was up to the school to organise suitable transportation for all students.

#### **Case study – Advocating for adjustments<sup>14</sup>**

Liam is 18 years old. He finished year 12 at the end of 2023, having attended both public and private schools. He has had a brain injury from birth, and had numerous brain and spine surgeries and long hospitalisations. 'Liam's disability affects both his intellectual and physical function and he requires assistance in most aspects of his daily life'.

Despite his parents' best efforts to secure an education for their son, they feel that they have failed him. Deeming the adjustments he required as superficial, they fought for Liam to be included in mainstream education for 10 years. In year 11, he was finally given an aide and admitted to mainstream full-time, where he 'thrived and achieved way beyond what his teachers ever thought possible, given his level of disability'. His parents noted that 'this was the first year Liam was given age- and curriculum-specific work. Prior to this, in the support unit, Liam completed work equivalent to a third and fourth grader, because the class work was tailored to the child with least ability'.

#### **Case study: Child B – Evidence provided in camera<sup>15</sup>**

Child B is a nine year-old boy who is adventurous, thoughtful and creative. He's a great friend, and loves to be helpful. He also has Down Syndrome. His parents want the same educational opportunities for him as they do for his brother.

Child B's experience in kindergarten was very positive, with his classroom teacher and School Learning Support Officer working with his parents to help him make the most of his potential. They got to know him and he trusted them.

<sup>14</sup> Evidence, Ms Nadine Moore, Advisory and Committee member, Disability Advocacy NSW, 26 March 2024, pp 31-32. This case study is based on evidence received at a hearing.

<sup>15</sup> *In camera* evidence, Gemma, 22 April 2024, pp 3, 5 and 7, published by resolution of the committee. This case study is based on evidence received at a hearing.

In the last two years, his experience has been quite different. Making even small adjustments for Child B such as providing consistency, structure, even visuals, are resisted, which the parents attribute to a lack of wanting to create an inclusive culture, led by the deputy principal.

The parents' efforts to achieve the kind of adjustments Child B needs have not been successful, resulting in Child B throwing things in response to growing anxiety, and leading to a number of suspensions. While the parents recognise throwing behaviour as a safety risk, they have been unable to get traction on strategies to mitigate it, stating:

We had so many meetings. We're a very engaged family. We've been very proactive; we've tried to be. He has a whole team of NDIS therapists who support him and who are ready and willing to provide strategies to the school. We've provided a list of strategies to the school to address the behaviour, and the school has consistently done the opposite of what everyone has recommended and done the things that have made things worse instead of the things that would have made things better.

The school's response has been to impose discipline, remove privileges, not permit Child B to do the things he likes to do, send him to the office, give him a lecture by the assistant principal and suspend him. His parents see this as a failure to understand that Child B was reacting in a way he couldn't control, and a failure to de-escalate the situation with alternative strategies. Child B has now become extremely anxious and scared of doing the wrong thing, which has further escalated the incidence of behaviour, leading to further suspensions. Such is his level of anxiety, he is at present not attending school.

**1.4** The following story, shared by a parent with Family Advocacy, illustrated the significant 'ripple effect' that exclusionary practices can have on a parent's earning ability:

I am a single parent and lost my job after my child (in primary school) had three suspensions for extended periods of time. This caused a significant loss of income for me with the flow on affect providing quite detrimental for the whole family unit. Frustratingly, I offered many of the strategies that I knew would supports my child which were not undertaken consistently, and then forgotten. Meetings to resolve this so my child could return to school were not followed through with. This could all have been avoided with good communication, collaboration and a willingness to fail forward, meaning giving things a go and learning from them if they don't work. Like every child, my child deserved the opportunity to reach their full potential, to be able to learn and play with his neighbourhood peers. Sadly, he was denied this opportunity.<sup>16</sup>

**Case study – Examples of adjustments that have benefited many<sup>17</sup>**

*Story 1*

A 14 year-old student who attends a mainstream school near Tweed Heads was supported to attend an overnight camp. After some initial reluctance, the school had put adjustments in place so that he could attend and, while on that camp, he really bonded with a particular teacher. Fast-forward a few weeks and he was at school and his year 7 class were participating in PE. They were doing soccer but he couldn't participate in that. The teacher who he had bonded with was leading a year 9 group in African dance. Seeing this teacher who he had connected with, he went over and said, 'Can I join in? I love dancing'. He started dancing, and suddenly the whole year-9 cohort joined in, and it became this

<sup>16</sup> Submission 62, Family Advocacy, p 12.

<sup>17</sup> Evidence, Ms Rebecca Belzer, Solicitor, Australian Centre for Disability Law, 26 March 2024, pp 3-4. This case study is based on evidence received at a hearing.

incredibly joyful, free-flowing example of how including people with disabilities in life can make a real difference.

### *Story 2*

The private school of a primary school student in inner Sydney had taken great lengths to ensure that she could participate in the swimming carnival. Watching the whole cohort, particularly her daughter's year group, cheering so loudly for her daughter to swim, brought tears to her mother's eyes. But even more than that, she had parents coming up to her afterwards saying, 'For my child, a child without a disability, watching your daughter participate has encouraged them to participate, even though they equally don't like swimming (and) equally find it scary to participate in a race.'

### *Story 3*

A child in senior school who experiences regular seizures had a seizure in the classroom in view of everyone. Following that episode, parents reached out to her mother to say that their children had come home and said to them, 'This happened at school today. I didn't feel equipped to know what to do. Can you register me in first-aid training?' I think she said five or six students had gone and done first-aid training because they wanted to be able to support their friends better, and that those parents had also gone to do first-aid training. I think that's another example of how it benefits our whole community.

### *Story 4*

A parent of a child moving into high school was struggling to get adjustments in place and the Centre is helping the negotiations with the school. The parent spoke about the experience she'd had throughout a different primary school—a public primary school—and the fact that at the end of almost every year, the teachers had come to her and said something along the lines of, 'I haven't taught your child. She has taught me'.

## Experience of siblings

- 1.5** Siblings of children with disability also have their educational experience impacted, including through expectations that would support their sibling, or guilt that they would not be there for their sibling when they moved to secondary school:

We've had instances where families have come to us and said, 'I really wanted my kids to go to the same school for a whole host of reasons. We wanted them to be doing recesses and lunches together, and we wanted them to be able to look out for each other, and we wanted to do one school drop-off. But we've actually now moved the children into different schools because the sibling child was being so disrupted—they were being called out of class so often to come and help with the behaviours or modifications or what have you for their brother or sister—that it just was having such negative impacts that we couldn't keep doing it'. A lot of those sibling children are really quite distressed when they are being called out of the classroom.

I had a mum in my office not that long ago crying, talking about how her son and daughter were at the same school. Her daughter was moving into a high school

environment and her daughter was really distressed because she was saying, "The teachers don't know how to look after him. Once I'm gone, what happens with him?".<sup>18</sup>

## Committee comment

- 1.6** The committee appreciates the courage of inquiry participants in sharing their stories and experiences, in relation to children and young people with disability in New South Wales educational settings. The above case studies and first-hand accounts seek to highlight the varying experiences, challenges and impacts on children and young people with disability as well as their families across all educational settings, from early childhood education through to high school and beyond.
- 1.7** The committee recognises that for many children and young people with disability (and their families), a common experience endured when accessing mainstream educational settings is resistance, a lack of willingness and openness to support the student or provide the adjustments required to foster inclusion.
- 1.8** However, we note that for some children and young people with disability this is not the case, and that with the correct supports and a nurturing educational environment, these students are provided with every opportunity to achieve and grow personally as well as contribute to the wider community, along with their peers. Both experiences will be explored in more detail throughout this report.

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<sup>18</sup> Evidence, Dr Shannon Schedlich, Chief Executive, Siblings Australia, 23 April 2024, p 18.



## Chapter 2 Impacts of a lack of inclusion in education on students and their families

This chapter examines the various ways in which a lack of inclusion creates barriers and challenges in accessing education for children and young people with disability; and the effects on them and their families, as well as the broader community. It also outlines the profound and lasting impacts these barriers and challenges can have on their lives, their families' lives, and society as a whole.

### Effects on children and young people

**2.1** A lack of inclusion in education creates significant barriers that impact various aspects of a child's life. Inquiry participants spoke about reduced access to education, poor educational outcomes, behaviour changes, school refusal, and mental distress as negative consequences of these barriers. Many stakeholders highlighted the interconnectedness of these effects, often mentioning the ripple effect on employment, and long-term life, social and economic outcomes.<sup>19</sup>

#### Access to education

**2.2** A major theme that emerged during this inquiry is the importance of access to education. Many inquiry participants emphasised access to education as a basic right for all children.<sup>20</sup> However, the committee heard multiple examples of this right not being fulfilled. For instance, when asked about the implications of children not being supported, a psychologist who responded to the online questionnaire commented: "The child would not maintain access to education which is a fundamental right of all children".<sup>21</sup>

**2.3** Ms Carey Evelyn Pearson, Acting Solicitor, Newcastle, Legal Aid NSW, spoke about the absence of adjustments in schools preventing students from accessing education. Ms Pearson noted that the 'inconsistency in terms of the school's willingness to implement ... low-level reasonable adjustments' presents a 'pretty huge barrier' and 'significant anxiety' for young people who have not been at school for years. She added:

The children and young people are often acutely aware of the pressure on their families and most often are saying to us, 'We want to get back to school. We want to be at school. But these are the reasons why we really can't'.<sup>22</sup>

<sup>19</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online Questionnaire Summary Report (2024)*, p 8.

<sup>20</sup> See for example, Submission 15, The Isolated Children's Parents' Association of New South Wales, p 2; Evidence, Ms Zoë Robinson, Advocate for Children and Young People, 23 April 2024, p 27; Answers to supplementary questions, All Means All, 14 May 2024, p 10.

<sup>21</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online Questionnaire Summary Report (2024)*, p 9.

<sup>22</sup> Evidence, Ms Carey Evelyn Pearson, Acting Solicitor in Charge, Newcastle, Legal Aid NSW, 26 March 2024, p 8.



- 2.4 On a similar note, Ms Sarah Langston, Policy Co-Lead, Australian Neurodivergent Parents Association, pointed out the cycle of inaccessibility perpetuated by the education system's insufficient efforts to accommodate neurodivergent needs:

... what we see is there is really significant problem with families withdrawing children from the public education system. That is a problem on many levels, the biggest and most systemic of which is it furthers the cycle of inaccessibility ... when disabled people experience access barriers, they very often end up withdrawing from that system, which means they're not in the system. Therefore, the system says, 'We don't have any disabled people in our system, so we don't need to provide for them'.<sup>23</sup>

### **Learning outcomes**

- 2.5 Many inquiry participants identified learning outcomes as another area of concern stemming from educational barriers and challenges. As one parent remarked in the online questionnaire to this inquiry: 'They will fall through the cracks and become a burden on society. Unable to read or do simple maths. No future prospects'.<sup>24</sup>
- 2.6 Advocacy group, Youth Action raised concerns over learning outcomes, noting that social and learning environments in mainstream settings were often not inclusive for young people with disability. Students were left feeling like they have to constantly advocate for themselves and their needs, and that the responsibility was placed on them to try to keep up with the unaccommodating environment. Students told Youth Action that the 'lack of appropriate support structures impacted their academic achievement and accentuated their feelings of difference from their non-disabled peers'.<sup>25</sup>
- 2.7 In their submission, Youth Action also shed light on the impact of teacher shortages on learning outcomes. Other than uncovered classes, disrupted learning, and increased disengagement from learning, students with disability reported particular impacts on their completion of the Higher School Certificate (HSC). The lack of teachers meant that students either had substitute teachers 'who had not read [their Individual Education Plan] IEP and did not adapt lesson plans to accommodate these student needs', or it meant that students had to complete self-directed learning, which can be 'extremely difficult' for students with a learning disability.<sup>26</sup>
- 2.8 As will be discussed in Chapter 6, there is little publicly reported data on the learning and wellbeing outcomes of students with disability and this issue is the subject of a number of recommendations of the Disability Royal Commission.

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<sup>23</sup> Evidence, Ms Sarah Langston, Policy Co-Lead, Australian Neurodivergent Parents Association, 22 April 2024, pp 20-21.

<sup>24</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online Questionnaire Summary Report (2024)*, p 9.

<sup>25</sup> Submission 61, Youth Action, p 10.

<sup>26</sup> Submission 61, Youth Action, p 21.

### **Inclusivity of educational settings**

- 2.9** The committee heard multiple examples of how inaccessible facilities and arrangements impede inclusion, preventing students with disability from fully participating in activities, accessing services, and engaging in social interactions.
- 2.10** In her evidence to the committee, Ms Charlotte Sangster, Chief Executive Officer, Muscular Dystrophy NSW, spoke about camps as a great opportunity for students with disability to 'gain independent living skills and have experiences in a connected, safe and supportive environment'. However, she pointed out the reality of children being excluded from participating in school camps due to inaccessibility:

Unfortunately, mainstream school camps remain inaccessible to many children due to their specialised support needs, leaving them out of these activities or completely forcing them to sit on the sideline and watch their classmates as they participate.<sup>27</sup>

- 2.11** Echoing the point made by Ms Sangster, Ms Ellen Armfield, person with lived experience, shared the story of her client, a girl living with Rett Syndrome, who was 'basically ... just taken to the playground for an activity' and left to watch others play afterwards. While there has been increasing emphasis on learning outside the classroom, Ms Armfield highlighted that, at least in her client's experience, these opportunities have not been adapted to be more inclusive for students with specific needs.<sup>28</sup>

### **Behaviour**

- 2.12** Inquiry participants told the committee that a failure to provide adjustments and support may also serve as a precursor to behavioural issues. This can, in turn, prompt the use of exclusionary practices by schools, particularly exclusionary discipline like suspensions and expulsions as well as restrictive practices and gatekeeping. Exclusionary practices often exacerbate the problem because they do not address the underlying cause of behavioural issues, leading to a vicious cycle where lack of support and punitive measures continually worsen student behaviour.<sup>29</sup>
- 2.13** Ms Meredith Hagger, Principal Solicitor of General Practice, Youth Law Australia stressed that exclusionary practices not only fail to change a student's behaviour but also have a counterproductive effect:

Students with disability are significantly over-represented in the use of exclusionary discipline. We have seen the use of exclusionary discipline against students with disability who are very young, sometimes as young as five years old. Exclusionary discipline can have serious impacts on students with disability. Decades of empirical evidence has found that, among other things, it doesn't provide students with the support needed to achieve behavioural change. It reinforces behaviours that it's meant

<sup>27</sup> Evidence, Ms Charlotte Sangster, Chief Executive Officer, Muscular Dystrophy NSW, 22 April 2024, p 24.

<sup>28</sup> Evidence, Ms Ellen Armfield, Person with lived experience, 23 April 2024, p 31.

<sup>29</sup> See for example, Submission 75, Australian Centre for Disability Law (ACDL), p15; Evidence, Ms Rebecca Belzer, Solicitor, Australian Centre for Disability Law, 26 March 2024, p 7; Evidence, Mr Paul Miller, NSW Ombudsman, 23 April 2024, p 32; Answers to questions on notice, Ms Pearson, Legal Aid NSW, 22 April 2024, pp 5-6.

to extinguish, it doesn't improve safety, and it actively contributes to disengagement with the education system.<sup>30</sup>

**2.14** In reference to a case study in their submission, Ms Sarah Abdou, Solicitor from Australian Centre for Disability Law, underscored an example where failure to implement an adjustment resulted in aggressive behaviour that warranted suspension:

In relation to Tyrone's case ... it was a nine-year-old child who has autism and ADHD, and there was a behaviour management plan ... [and] an independent learning plan in place. One of the adjustments that was really clearly spelled out in those plans was to have noise-cancelling headphones, as noise was a trigger for this child. During a fire drill that wasn't implemented, and then Tyrone had a meltdown. He ended up getting a little bit aggressive and then was pinned down by four or five schoolteachers and then secluded for about 20 minutes... it is the failure to implement the adjustment that ultimately ... led to the suspension.<sup>31</sup>

### School refusal

**2.15** Legal Aid NSW referred to recent statistics which reveal a decline in national school attendance rates.<sup>32</sup> Many stakeholders identified school refusal as a common behaviour that occurs when children:

- do not receive adjustments
- do not receive adequate support
- feel unsafe
- lack enjoyment at school.<sup>33</sup>

**2.16** Indeed, school refusal has become prevalent. In the 2024 National Education and Autism Parent Survey by Autism Awareness Australia, '[p]arents reported that 43% of children refused to go to school on a weekly basis and another 27% experience school refusal more than once a term'.<sup>34</sup> During a hearing, Ms Carey Evelyn Pearson, Legal Aid NSW also remarked that 'anecdotally ... at least within my practice, it's two thirds of the children that we are seeing who are experiencing school refusal'.<sup>35</sup>

**2.17** Legal Aid NSW highlighted the lack of adjustments as a significant contributor to school refusal. It referred to the Senate Education and Employment Committee's report on the national trend of school refusal which found that the education sector's lack of understanding of school refusal,

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<sup>30</sup> Evidence, Ms Meredith Hagger, Principal Solicitor of General Practice, Youth Law Australia, 26 March 2024, p 2.

<sup>31</sup> Evidence, Ms Sarah Abdou, Solicitor, Australian Centre for Disability Law, 26 March 2024, p 10.

<sup>32</sup> Submission 28, Legal Aid NSW, p 21, quoting Shannon Clark, *School Refusal*, Research Paper, Parliamentary Library, 19 April 2023, p 7.

<sup>33</sup> See for example, Evidence, Ms Pearson, 26 March 2024, p 5; Submission 87, Dr Rebecca English, p 6; *In camera* evidence, Andrew, 22 April 2024, p 14, published by resolution of the committee.

<sup>34</sup> Submission 49, Autism Awareness Australia, p 2.

<sup>35</sup> Evidence, Ms Pearson, 26 March 2024, p 12.

along with the resulting misconceptions and actions, hinder support and intervention. Legal Aid NSW suggested that:

School refusal can have consequences for a child's physical and mental health, as well as negative impacts on their social connections, educational attainment, and future employment prospects.<sup>36</sup>

**2.18** Along similar lines, Ms Nicole Rogerson, Director of Autism Awareness Australia, highlighted school refusal as a symptom of schools' unwelcoming attitudes and their lack of readiness to support students with disability. She explained in her evidence that when families are met with resistance and suggestions to find another school, it creates an environment where the child feels unwelcome, leading to increased instances of school refusal.<sup>37</sup>

**2.19** Other inquiry participants spoke about school refusal as a product of exclusionary practices. For example, Family Advocacy referred to a quote from a parent stating that:

My child with disability was suspended more than 10 times in 3 school terms. It was over the same issue which was a direct result of their disability. Communication was poor and the complaints system was unhelpful. Nothing changed after each suspension and so the cycle continued. This crushed any of sense of self confidence, desire to learn and any trust in the school. I would now place him in the school refusal or school can't category. Without proper communication between home and school, or a genuine attempt to make reasonable adjustment, they didn't stand a chance!<sup>38</sup>

**2.20** Likewise, another parent remarked in their submission that suspensions not only fail to teach a lesson but reinforce a negative cycle of school refusal which is difficult to recover from:

Suspending a child with disability teaches them nothing & for my son it only reinforces the behaviours so he can go home early which then leads to school refusal & it's very hard to come back from that.<sup>39</sup>

## **Mental health**

**2.21** As alluded to in the sections above, the inquiry also drew attention to the effects of a lack of inclusion on mental wellbeing.<sup>40</sup> These obstacles can lead children and young people with disability to experience:

- frustration
- distress
- loneliness
- low self-esteem
- isolation

<sup>36</sup> Submission 28, Legal Aid NSW, pp 21-22.

<sup>37</sup> Evidence, Ms Nicole Rogerson, Director, Autism Awareness Australia, 22 April 2024, p 13.

<sup>38</sup> Submission 62, Family Advocacy, p 23.

<sup>39</sup> Submission 45, Name suppressed, p 1.

<sup>40</sup> See for example, Submission 49, Autism Awareness Australia, p 3.

- anxiety
- depression
- suicidal ideation.<sup>41</sup>

**2.22** Ms Marika Franklin, Member Advocate of Square Peg Round Whole, provided the committee with insight into how a 'lack of support within the education system' can have serious and far-reaching effects on a child's life:

... Leo at times has not felt safe. He feels he doesn't belong in school. A sign of him not belonging, externalising behaviour, is refusing to wear the school uniform, which in some schools results in disciplinary behaviour. But he is saying, 'I don't belong. Why should I wear it?' This is a sign, through his behaviour, which is often met with – he has been suspended – punitive disciplinary behaviour, rather than addressing the underlying issues. He's experienced bullying; he's felt lonely; he's been let down. His mental health has suffered terribly, as have his education and social connections. The behaviourist approaches, including suspension, have been incredibly ineffective and detrimental.<sup>42</sup>

**2.23** Mental health issues can lead to serious longer-term consequences, such as withdrawal from the education system.<sup>43</sup> Participants discussed various barriers as causes of mental health issues. Examples included bullying<sup>44</sup>, exclusion from certain activities due to inaccessible facilities<sup>45</sup>, mistreatment by staff members<sup>46</sup>, lack of collaboration between allied health supports and school leading to inconsistent support<sup>47</sup>, as well as '[n]egative attitudes, stigma and discrimination from educators, peers and the community ...'.<sup>48</sup>

**2.24** Numerous stakeholders voiced concerns about the harm and potential long-term effects of exclusionary measures and restrictive practices on students' mental well-being.<sup>49</sup> Restrictive practices for these purposes include seclusion as well as physical, chemical, mechanical and environmental restraints which are used in response to a behaviour perceived as difficult.<sup>50</sup> For example, the submission from the Australian Association of Psychologists shed light on the

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<sup>41</sup> See for example, Submission 27, The Australian Association of Psychologists Incorporated (AAPi), p 3; Submission 11, Name suppressed, p 4; Submission 45, Name suppressed, p 1; Submission 60, Office of the Advocate for Children and Young People (ACYP), p 13; Submission 75, Australian Centre for Disability Law, p 14.

<sup>42</sup> Evidence, Ms Marika Franklin, Member Advocate, Square Peg Round Whole, 22 April 2024, p 8.

<sup>43</sup> See for example, Evidence, Ms Langston, 22 April 2024, p 21; Evidence, Ms Keira Ademovic, Student Advisor, National Union of Students, 12 June 2024, p 2.

<sup>44</sup> Submission 60, Office of the Advocate for Children and Young People (ACYP), p 10.

<sup>45</sup> Evidence, Ms Sangster, 22 April 2024, p 24.

<sup>46</sup> Submission 25, Name suppressed, p 6.

<sup>47</sup> Submission 46, Early Ed, p 2.

<sup>48</sup> See for example, Submission 27, The Australian Association of Psychologists Incorporated (AAPi), p 2.

<sup>49</sup> See for example, Answers to questions on notice – question 5, Square Peg Round Whole, 17 May 2024, p 11; Submission 25, Name suppressed, p 6.

<sup>50</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive Summary, Our vision for an inclusive Australia and Recommendations*, 2023, p 81.

'profound' and 'detrimental' psychological impacts restrictive practices can have on individuals with disability:

The implementation of restrictive practices, such as seclusion or physical restraints can lead to increased stress, anxiety, and a sense of powerlessness among those subjected to them ... These practices not only infringe upon an individual's autonomy but can also result in long-lasting psychological trauma.<sup>51</sup>

- 2.25** Another common sentiment expressed by inquiry participants was that navigating the education system is already challenging for young people with disability. Having to repeatedly justify or prove a disability just to receive adjustments adds an extra burden, severely impacting their mental health. Professor Iona Novak, Chair of Cerebral Palsy Alliance, saw this process as 'insulting' and 'disrespectful' to people with lifelong disabilities,<sup>52</sup> while Ms Sophie Geeves, CPActive Champion and Lived Experience Representative from Cerebral Palsy Alliance described the process as 'soul destroying'. She shared with the committee:

The HSC is stressful enough for any person going through the HSC and, on top of that, my HSC year was filled with getting doctors' reports, different allied health professional reports and things like that ... it was incredibly stressful ... I think one doctor's report from a specialist that's been seeing you for the last 18 years ... should be enough. I don't believe that you should have to go and get hundreds of doctors' reports and spend hours in therapy appointments or proving otherwise.<sup>53</sup>

- 2.26** In a university context, the challenge of navigating inflexible course structures, as identified by Ms Mairead Foley, National Disability Officer, National Union of Students, can be particularly stressful for people with disability. Ms Foley pointed out that degrees such as social work or nursing often require completion of a full-time placement, which students with disability may find difficult getting through without support or flexible arrangements. She contended that: 'Forcing them to do a five-day week, nine to five, where there is no flexibility – you're asking someone to put themselves in physical and mental stress. Ultimately that will cause dropouts'.<sup>54</sup>

- 2.27** Ms Shirley Liu, Acting Chief Executive Officer of Deaf Australia commented on mental wellbeing from the perspective of the deaf community<sup>55</sup>. She stated that language deprivation due to a lack of bilingual opportunities in mainstream schools prevents deaf students from feeling safe and from learning on par with their peers:

Those that come from a hearing family, when they leave high school, we see that they have limited opportunities with their life and employment. They struggle to find work. They also start disconnecting with their family. They start experiencing mental health issues, and it can impact the rest of their life. Compared to someone who has been nurtured within a deaf school, evidence shows that they thrive after education, and the

<sup>51</sup> Submission 27, The Australian Association of Psychologists Incorporated (AAPi), pp 5-6.

<sup>52</sup> Evidence, Professor Iona Novak, Chair of Allied Health, Cerebral Palsy Alliance, 23 April 2024, p 16.

<sup>53</sup> Evidence, Ms Sophie Geeves, CPActive Champion and Lived Experience Representative, Cerebral Palsy Alliance, 23 April 2024, pp 16-17.

<sup>54</sup> Evidence, Ms Mairead Foley, National Disability Officer, National Union of Students, 12 June 2024, p 3.

<sup>55</sup> Note: 'Deaf' refers to the Deaf community or a person's cultural identity, whereas 'deaf' is an adjective describing hearing loss, from total deafness to lower than normal hearing ability. Source: Submission 83, Parents of Deaf Children, p 4.

key difference is language, having access to the Deaf community, having deaf role models, having other members of the community around you where you can learn and take in the culture and the experience.<sup>56</sup>

### Students in out of home care

- 2.28** Children in out of home care (OOHC) face 'significant educational disadvantages'.<sup>57</sup> The inquiry heard that the effects of educational barriers and challenges are felt just as acutely, if not more so, by children and young people in OOHC.
- 2.29** Some members of this committee visited Passfield Park School, which has students with a diagnosis of autism or an intellectual disability, or both. The school also provides extra support to vulnerable students, who are sometimes in OOHC, which includes meals and safe spaces to rest or sleep during school hours.<sup>58</sup>
- 2.30** Legal Aid NSW referred to several studies that show that, in comparison to their non-care peers, children in OOHC:
- are more likely to experience mental health conditions and disabilities<sup>59</sup>
  - have significantly poorer educational outcomes<sup>60</sup>
  - are four times more prone to primary school suspensions.<sup>61</sup>
- 2.31** Educational disengagement is a major concern for children and young people in residential OOHC.<sup>62</sup> The Official Community Visitor (OCV) scheme under NSW Ageing and Disability Commission raised issues about 'young people not being supported or encouraged to participate in appropriate educational or vocational activities'.<sup>63</sup> In particular, many concerns pertained to young people not attending school. Reasons for non-attendance primarily related to:

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<sup>56</sup> Evidence, Ms Shirley Liu, Acting Chief Executive Officer, Deaf Australia, 22 April 2024, p 35.

<sup>57</sup> Submission 68, Dr Karleen Gribble, p 1.

<sup>58</sup> School site visit summary report, Appendix One of this report, pp 155-156.

<sup>59</sup> Submission 28, Legal Aid NSW, p 17, quoting Emma Colvin, Alison Gerard, Andrew McGrath, *Children in out-of-home care and the criminal justice system: A mixed-method study: Report to the Criminology Research Advisory Council Grant*, Report, September 2020, viii; and Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Violence and Abuse of People with Disability at Home*, Issue Paper, 2 December 2020, p 5.

<sup>60</sup> See for example, Submission 28, Legal Aid NSW, p 17, quoting Toni Beauchamp, *Education matters – improving the educational outcomes of children and young people in care*, Centre for Research, Innovation and Advocacy UnitingCare Children Policy Report, October 2015, p 2.

<sup>61</sup> See for example, Answers to questions on notice, Legal Aid NSW, 22 April 2024, p 3, quoting NSW Department of Communities and Justices, *Are Children Who are Known to Child Protection Services More Likely to Be Suspended from Schools? Findings from the NSW Child Development Study*, Evidence to Action Note, November 2022, p 2; Submission 28, Legal Aid NSW, p 17, quoting Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Criminalisation of Children with Disability in Child Protection Systems*, Research Report, May 2023, p 61.

<sup>62</sup> See for example, Submission 54, NSW Ageing and Disability Commission, p 1; Submission 28, Legal Aid NSW, p 5.

<sup>63</sup> Submission 54, NSW Ageing and Disability Commission, p 2.

- mental health complications
- negative experiences at school
- inability to function at school
- refusal to attend.<sup>64</sup>

**2.32** Not accessing education has further impacts on young people in OOHC, including those who:

- are illiterate
- have not been accepted into their desired school
- find it difficult to socialise with peers
- have health issues
- are allegedly engaged in criminal behaviour.<sup>65</sup>

**2.33** Mr Brett Smith, Executive Officer of Operations, AllambiCare described how his organisation has started offering 'Learning without Walls' to those children in out of home care who are not ready for a structured school system. The goal is to help them return to a structured school setting, however, they find that distance education for these students helps build a pathway which otherwise does not exist.<sup>66</sup>

**2.34** In addition, Dr Karleen Gribble, Adjunct Associate Professor, School of Nursing and Midwifery at Western Sydney University stated in her submission that children in OOHC often suffer trauma due to significant maltreatment. This trauma can result in difficulties in stress management, emotional and social development, and forming a relationship. As a result, they are prone to bullying, ostracism, and are more likely to exhibit disruptive behaviours.<sup>67</sup>

**2.35** Dr Gribble stressed the importance of children in OOHC healing from trauma to prevent long-term negative impacts such as mental illness, violence, and poor parenting, which impose significant social and economic burdens. She suggested that home schooling, as provided by their foster or kinship carer, could be a suitable alternative to schooling, as it offers a flexible, individualised approach that can meet the diverse needs of children in OOHC. However, she also highlighted that home schooling is often not accessible for these children,

It is my opinion that those who hold parental responsibility for children in OOHC rarely provide consent for them to be home educated due to: a poor understanding of home education, a lack of support for case workers and managers on home education and a focus on risk and reluctance to try the unusual or to trust foster and kinship carers.<sup>68</sup>

<sup>64</sup> Submission 54, NSW Ageing and Disability Commission, pp 2-3, quoting *Official Community Visitors Annual Report, 2022 -2023*, p 39.

<sup>65</sup> Submission 54, NSW Ageing and Disability Commission, p 3.

<sup>66</sup> *In camera* evidence, Mr Brett Smith, Executive Officer of Operations, AllambiCare, 12 June 2024, p 8, published by resolution of the committee.

<sup>67</sup> Submission 68, Dr Karleen Gribble, pp 2-3.

<sup>68</sup> Submission 68, Dr Karleen Gribble, pp 4-7.



### Students' interaction with the criminal justice system

- 2.36** The committee received evidence highlighting the disproportionate representation of young people with disability in youth justice and adult prisons.<sup>69</sup>
- 2.37** Stakeholders informed the committee of the strong correlation between disengagement with education, particularly due to exclusionary discipline,<sup>70</sup> and youth involvement in the criminal justice system.<sup>71</sup> A 2015 survey conducted by Justice Health & Forensic Mental Health Network and Juvenile Justice NSW showed an overwhelming majority of the juvenile custodial population experienced suspension from school on at least one occasion.<sup>72</sup> Children and young people in the New South Wales juvenile justice system also identified long and multiple suspensions as a reason for their conflict with the law.<sup>73</sup>
- 2.38** This trend was also observed among Aboriginal and Torres Strait Islander students with disability, who, as Mr Damian Griffis, Chief Executive Officer, First Peoples Disability Network pointed out, often face a similar trajectory from school suspension to juvenile detention and adult prison.<sup>74</sup>
- 2.39** Following on from this, Legal Aid NSW highlighted the high prevalence of children with undiagnosed disabilities being criminalised. Often, a diagnosis is only made when Legal Aid NSW funds a medical report for court proceeding. Without a diagnosis, children miss out on necessary adjustment and support services, leading to continued disengagement and punitive responses to disability-related behaviour.<sup>75</sup>
- 2.40** The NSW Police Force provided a submission on the Youth Action Meetings initiative. The YAMS initiative uses a 'coordinated service'<sup>76</sup> approach for young people at risk of '(re)offending or (re)victimisation, to lessen their contact with the criminal justice system and improve their safety, welfare and wellbeing'.<sup>77</sup>

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<sup>69</sup> See for example, Submission 14, Disability Council of NSW, p 3.

<sup>70</sup> Submission 32, Youth Law Australia, p 4.

<sup>71</sup> See for example, Answers to questions on notice, Legal Aid NSW, 22 April 2024, p 7; Answers to questions on notice, Square Peg Round Whole, 17 May 2024, pp 8-9; Submission 28, Legal Aid NSW, p 5.

<sup>72</sup> Answers to questions on notice, Legal Aid NSW, 22 April 2024, p 7, quoting Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, November 2017, p 15.

<sup>73</sup> Answers to questions on notice, Legal Aid NSW, 22 April 2024, p 7, quoting Advocate for Children and Young People (NSW), *What Children and Young People in Juvenile Justice Centres Have to Say*, Report, 2019, p 6.

<sup>74</sup> Evidence, Mr Damian Griffins, Chief Executive Officer, First Peoples Disability Network, 23 April 2024, p 23.

<sup>75</sup> Submission 28, Legal Aid NSW, p 18.

<sup>76</sup> Note: 'Youth Action Meetings involve local key government and non-government agencies. Coming together monthly, in a structured forum, they share information, develop multi-agency action plans, and implement tangible strategies to achieve improved outcomes for the young person, their families and communities. This coordinated approach allows for better allocation of resources, tangible and measurable outcomes, and reduced duplication in responding to the needs of the young person'. Submission 89, NSW Police Force, p 2.

<sup>77</sup> Submission 89, NSW Police Force, p 2.

- 2.41** Data about young people who have been referred to, or identified for YAMS from November 2023 to May 2024 found the following:
- 25 per cent had a known disability
  - 71 per cent of those with a disability and in a regional location were also known to have disengagement from education or training, absenteeism, poor attendance or truancy
  - 69 per cent of those with disability in a regional location were also identified to have poor education or skills training fit, adjustment and transition challenges.<sup>78</sup>
- 2.42** The following case study, taken directly from Legal Aid NSW, demonstrates the school-to-prison pipeline that arises from exclusionary discipline, leading to educational disengagement, and eventually, contact with the criminal justice system.

#### Case study – Brian

Legal Aid NSW represented Brian, a 13-year-old Aboriginal child who is under the parental responsibility of the Minister for Families and Communities. He usually resides in residential out of home care.

Brian had a diagnosis of Foetal Alcohol Spectrum Disorder.

Brian had been disengaged from school for some time and last attended school in year 5. Before disengaging from school Brian had been suspended for behavioural issues.

Brian began to get in trouble with police shortly after he stopped attending school.

Brian is currently bail refused at a youth detention centre.

Since being taken into custody, Brian has been attending the school at the centre, where he has extra supports, and he is doing well. He recently received a 'student of the month award'.<sup>79</sup>

## Impact on families

- 2.43** Parents and caregivers of children with disability often described experiencing high stress related to parenting, increased levels of depression and anxiety, reduced relationship satisfaction, and greater reliance on dysfunctional parenting practices.<sup>80</sup> Indeed, families are not immune to the

<sup>78</sup> Submission 89, NSW Police Force, pp 3 and 4.

<sup>79</sup> Answers to questions on notice, Legal Aid NSW, 22 April 2024, p 8. This case study was taken directly from Legal Aid NSW's answers to questions on notice for a public hearing.

<sup>80</sup> Submission 51, Triple P Positive Parenting Program, p 2, citing Patton, K. A., Ware, R., McPherson, L., Emerson, E., & Lennox, N, 'Parent-related stress of male and female carers of adolescents with intellectual disabilities and carers of children within the general population: A cross-sectional comparison' (2018) *Journal of Applied Research in Intellectual Disabilities*, pp 51-61; Lanyi, J., Mannion, A., Chen, J. L., & Leader, G, 'Relationship between comorbid psychopathology in children and adolescents with Autism Spectrum Disorder and parental well-being' (2022). *Developmental Neurorehabilitation*, pp 151-161; Sim, A., Cordier, R., Vaz, S., & Falkmer, T, 'Relationship satisfaction in couples raising a child with autism spectrum disorder: A systematic review of the literature' (2016) *Research in Autism Spectrum Disorders*, pp 30-52; Hutchison, L., Feder, M., Abar, B., & Winsler, A, 'Relations between parenting stress, parenting style, and child executive functioning for children with ADHD or Autism' (2016) *Journal of Child and Family Studies*, p 3644-3656.

implications discussed above. Like their child with disability and their siblings, they too, are impacted by the various barriers and challenges in the education system.

**2.44** For example, Ms Charlotte Sangster, Muscular Dystrophy NSW, emphasised the considerable effort parents invest in collaborating with schools just to achieve necessary adjustments for their children, stating 'working with the schools has become almost a second job' for many parents.<sup>81</sup> Other inquiry participants mentioned having to resort to homeschooling, or quitting their jobs to care for their children, which often led to financial strain and increased mental stress on the family.<sup>82</sup> The following quotes from parents and carers provide a glimpse into the various ways families are impacted:

- 'As a single mum I will have to fund more private speech sessions than I already [am] and pay out of pocket for an OT ...'
- 'I now have to home school [my] child, at the same time that I have to care for my terminally ill mother and my mentally ill daughter'.
- 'I am currently moving my youngest to another school. If this doesn't work she will have to homeschool. I know this is more than I can cope with and will be a massive mental strain on me. I will have to stop working. Our children are our lives and I advocate for them at every turn. They have every therapy and specialist I can provide but I shouldn't have to sacrifice my life, my sanity, my mental & emotional health because school will not or cannot support them!'<sup>83</sup>

### **Impact of homeschooling on families**

**2.45** The committee heard multiple accounts of parents resorting to homeschooling, not by preference but because schools are failing to meet their child's needs, described further below. Ms Janelle Barnes, President, Home Education Association, reported to the committee a 37 per cent increase in the number of students being home-educated in New South Wales compared to 2023.<sup>84</sup> As previously described, home schooling as a last resort can have a profound impact on families. It often requires parents to sacrifice their own jobs to teach their children. This frequently translated into a financial burden on the family.<sup>85</sup>

**2.46** For example, during a hearing, Ms Sarah Langston, Australian Neurodivergent Parents Association commented on the effect home schooling has had on her colleague's ability to work, remarking, 'Emily is a very skilled child protection worker so she was a very valuable addition to our community but can no longer work now because of having to homeschool'.<sup>86</sup> Ms Emily McCann herself, Board Member, Executive Committee, Australian Neurodivergent Parents Association, also spoke about feeling like she had no choice but to home school her children and the resulting financial impact it created. She told the committee:

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<sup>81</sup> Evidence, Ms Sangster, 22 April 2024, p 31.

<sup>82</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online Questionnaire Summary Report* (2024), p 9.

<sup>83</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online Questionnaire Summary Report* (2024), pp 9-10.

<sup>84</sup> Evidence, Ms Janelle Barnes, President, Home Education Association, 22 April 2024, p 44.

<sup>85</sup> Submission 45, Name suppressed, p 1.

<sup>86</sup> Evidence, Ms Langston, 22 April 2024, p 21.

My child is now eight, but from kindergarten he was getting suspensions, and we've ended up in a second school. We've chosen—I say 'chosen', but I don't really feel like it is a choice—to homeschool. It feels like the only safe option for my son. Homeschooling in itself is a great thing that a lot of families choose to do, and that's wonderful, but when you've got multiple children with extra needs, I would like to make that as a choice rather something that I feel like is my only alternative. It impacts on whether I can earn money and have a job outside of parenting as well. It isn't good for intergenerational vulnerability, when it comes to poverty, to not even know when you might be able to go back to a schooling system.<sup>87</sup>

- 2.47 A similar view was shared by Ms Janelle Barnes, Home Education Association who expressed concerns about reduced family income being a barrier to accessing mental health services:

When families choose to home-educate, that usually means that one of the parents becomes the educator and they're living off one income. Therefore, accessing private mental health services is an expense that is often difficult for them to achieve.<sup>88</sup>

### **Impact of suspension and expulsion on families**

- 2.48 Adding to this financial burden is the practice of suspension and expulsion by schools as a disciplinary means in response to a students' behaviour.
- 2.49 Under the Department of Education's Suspension and Expulsion of School Students – Procedure, parents are responsible for the care and safety of the child or young person during their suspension.<sup>89</sup>
- 2.50 The Australian Association of Special Education cited data published by the NSW Department of Education on suspension of students in government schools, which showed that students with disability are over-represented. In semester 1 of 2022, students with disability contributed to 50 per cent of suspensions, while only making up 18 per cent of enrolments.<sup>90</sup>
- 2.51 According to Ms Meredith Hagger, Youth Law Australia, the exclusionary system is 'in many respects reactive, and puts a significant burden on students with disability and their parents and carers'.<sup>91</sup> She recounted an example of a mother who experienced substantial disruptions to her usual work schedule due to her son's suspension, which in turn, caused financial stress for the family:

... we had a primary school student with disability who'd been consistently suspended from a New South Wales school. The mother told me that she'd had to take so much time off work to pick her child and to keep him home while he was suspended that she

<sup>87</sup> Evidence, Ms Emily McCann, Board Member, Executive Committee, Australian Neurodivergent Parents Association, 22 April 2024, p 21.

<sup>88</sup> Evidence, Ms Barnes, 22 April 2024, p 46.

<sup>89</sup> Answers to questions on notice, Legal Aid NSW, 22 April 2024, p 4, quoting NSW Department of Education, *What do I need to know if my child is suspended?*, 29 February 2024.

<sup>90</sup> Submission 35, Australian Association of Special Education, p 4, citing NSW Department of Education, *Suspensions and Expulsions, Semester 1, 2018-2022*.

<sup>91</sup> Evidence, Ms Hagger, 26 March 2024, p 2.

almost couldn't pay her rent, so the use of exclusionary discipline can have serious impact on the families as well.<sup>92</sup>

- 2.52** Family Advocacy held a similar view highlighting in their submission how a 'heavy onus is placed on the parent to ... advocate for their child on a regular basis which is all encompassing and time consuming'.<sup>93</sup> It is common for parents to sacrifice job opportunities, reduce their working hours, or even lose their job entirely because they have to take time off to advocate for their child.<sup>94</sup>

### ***Emotional toll***

- 2.53** In addition to financial burden, stakeholders also pointed out the emotional impact caused by barriers such as inadequate support, unwelcoming school environments, and the use of restrictive practices.
- 2.54** For instance, The Australian Association of Psychologists Incorporated indicated that 'the psychological strain on parents and families is significant as they grapple with the emotional toll of witnessing their child's struggles and the frustration of navigating a system that falls short of meeting their child's requirements'.<sup>95</sup> Not only is the wellbeing of the children compromised, but so is the parents', potentially leading to long-term effects on mental health.<sup>96</sup>

### **Impact on siblings**

- 2.55** This inquiry heard about the impact that inadequate levels of support for children and young people with disability can have on siblings.<sup>97</sup> Siblings Australia told the committee that 'siblings experience myriad issues with education directly related to being siblings'. This included:
- being unable to participate in extracurricular activities
  - finding it hard to have time to study at home
  - being interrupted during class
  - having disrupted sleep from their brother or sister's night-time activities
  - their needs being neglected due to family focusing on their brother or sister's needs.<sup>98</sup>
- 2.56** As a result of these challenges, siblings, in comparison with their peers:
- experience higher rates of school absenteeism
  - have fewer opportunities for social engagement

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<sup>92</sup> Evidence, Ms Hagger, 26 March 2024, p 6.

<sup>93</sup> Submission 62, Family Advocacy, p 11.

<sup>94</sup> Submission 62, Family Advocacy, p 12.

<sup>95</sup> Submission 27, The Australian Association of Psychologists Incorporated (AAPi), p 3.

<sup>96</sup> Submission 27, The Australian Association of Psychologists Incorporated (AAPi), p 3

<sup>97</sup> See for example, Submission 64, Name suppressed, p 12.

<sup>98</sup> Evidence, Dr Shannon Schedlich, Chief Executive, Siblings Australia (SibPlan), 23 April 2023, p 12.

- are more likely to experience mental health issues.<sup>99</sup>

**2.57** Some parents prefer to send all their children to the same school in hope of them all receiving the same opportunities. However, in some instances, teachers lack adequate skills to handle disabilities in the classroom, leading to reliance on siblings to help manage challenging behaviour.<sup>100</sup>

**2.58** A 2008 report also found that siblings have a significantly increased risk of suffering from mental health conditions. Siblings may experience significant stress, confusion and emotions like grief, guilt and anger. They may also feel pressured to be perfect and not add additional stress for their parents, leading them to suppress their struggles and rarely seek help. Such behaviour increases the risk of mental and physical issues for siblings.<sup>101</sup> If left unaddressed, these challenges can result in a heightened risk of long-term mental health issues and pose great costs to government and communities.<sup>102</sup>

**2.59** When asked about support or programs for siblings caring for a person with disability, Dr Schedlich and Ms Deborah Summerhayes, Deputy Secretary of Public Schools at NSW Department of Education, both noted the absence of a system-wide approach.<sup>103</sup> However, Ms Summerhayes stated that 'schools are very conscientious about understanding the needs of their students' and individual schools 'will respond to particular family needs or particular student needs when identified'.<sup>104</sup>

**2.60** As for the Department of Communities and Justice, it assumes a role in supporting young carers through:

- comprehensive case planning for children with disabilities in OOHC, thereby relieving siblings of care-giving responsibilities
- case planning for siblings with assessments of the impacts on siblings
- employing caseworkers from the Department of Communities and Justice to provide a holistic child support network
- providing a fortnightly allowance to young carers
- funding Carers NSW to offer specialised information, training and services for young carers under the age of 25.<sup>105</sup>

<sup>99</sup> Evidence, Dr Schedlich, 23 April 2023, p 12.

<sup>100</sup> Submission 59, Carers NSW, p 2.

<sup>101</sup> Submission 57, Siblings Australia, p 1, quoting Hogan, D., Park, J., & Goldscheider, F, 'Using Survey Data to Study Disability: Results From the National Health Interview Survey on Disability' (2003), 3 *Research in Social Science and Disability*, pp 185-205.

<sup>102</sup> Submission 57, Siblings Australia, p 2.

<sup>103</sup> Evidence, Dr Schedlich, 23 April 2024, p 15; Evidence, Ms Deborah Summerhayes, Deputy Secretary, Public Schools, NSW Department of Education, 23 April 2024, p 51.

<sup>104</sup> Evidence, Ms Summerhayes, 23 April 2024, p 51.

<sup>105</sup> Answers to questions on notice, Mr Matthew Barden, A/Executive Director, Homelessness, Disability and Seniors, Department of Community Justice, 9 May 2024, pp 3-4.

- 2.61** In their submission, Siblings Australia noted that the needs of siblings are often overlooked 'as family attention focuses on the needs of the person with the disability'. They argued that 'siblings do not often have the emotional and cognitive maturity' to fully grasp the complexities surrounding a brother or sister with disability. Siblings Australia advocated for greater recognition and inclusion of siblings in discussions on inclusive education policies. Better support for siblings not only benefits them but also enhances outcomes for their brother or sister with disabilities.<sup>106</sup>

## **Impact on broader society and ongoing discrimination against people with disability**

- 2.62** Beyond the impact on students, siblings and families, barriers and challenges caused by a lack of inclusion in the education setting also pose broader issues for society. Inquiry participants impressed upon the committee that separating children with disability from their peers during childhood reinforces ideas of discrimination and ableism in society.<sup>107</sup> This negative attitude toward people with disability perpetuates non-inclusive environments in school systems, creating a cycle that hinders progress toward more inclusive practices. The evidence below highlights stakeholders' views of how a lack of inclusion in schools translates into broader barriers in society and shared their experience with prejudice, discrimination, and ableism.

### **Barriers of discrimination and ableism**

- 2.63** As People with Disability Australia contended in their defence of inclusive education environments: 'Segregation is more than just a physical reality. It is an attitude. It is a way a system thinks, relates, and organises'.<sup>108</sup>
- 2.64** Ms Ellen Armfield, person with lived experience, discussed negative attitudes towards people with disability in schools as contributing to broader negative perceptions of disability. She stated:

I think the way we talk about disability, just like the way we talk about anything, impacts the way society thinks about it. If we are constantly framing autism as a negative thing, even in the way that people—I see it in the schoolyard—call others autistic as an insult. That, in itself, is framing autism as something that is negative and as something that should be punished. Yes, I think the understanding of it definitely impacts it. And because, also, as you said, it is based off a deficit—it is like a list of all these things that are wrong with someone—it is very easy to then use those things as a source of something to be bullied about.<sup>109</sup>

- 2.65** During a hearing, Brian, a parent of a child with disability, shared with the committee the discrimination and negative attitudes his family has experienced outside of the classroom due to society's lack of understanding for people with disability:

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<sup>106</sup> Submission 57, Siblings Australia, pp 1-3.

<sup>107</sup> Ableism is 'discrimination in favour of able-bodied people'. *Macquarie Dictionary Ninth Edition 2023*, Macquarie Dictionary Publishers, an imprint of Pan Macmillan Australia Pty Ltd.

<sup>108</sup> Answers to supplementary questions, People with Disability Australia, 7 May 2024, p 2.

<sup>109</sup> Evidence, Ms Armfield, 23 April 2024, p 30.

We've experienced all of the discrimination and attitudes towards people with disability – all of the dirty looks and things that we would get when Child A was having a meltdown in the middle of the shopping centre that most of us have experienced. They're clearly not understanding.<sup>110</sup>

- 2.66** Similarly, Mr Brent Phillips, Deaf Connect shared a personal story with the committee that alluded to the ableist attitude towards people who are deaf:

My wife is also deaf and we have two children, who can both hear. When our first daughter was born, the first or second day they did the newborn hearing screening, as they do. The nurse straightaway fitted the technology, tested my daughter, put her hand out and said, 'Congratulations'. My wife and I looked at each other and said, 'Are you congratulating us? Why?' She said, 'Your daughter can hear'. So what would the nurse say to parents whose babies are diagnosed as deaf? It's a pass or fail mentality from the day your child's born, and that struck me a lot when my daughter was born.<sup>111</sup>

- 2.67** In response to the stigma around disability, Mr Andrew Wilson, Chair of Australian Alliance for Inclusive Education (All Means All) called for a shift in perception to view disability as something that adds 'difference, nourishment, and diversity' to society. He stated:

We need to change the world view that the education system and our society has that kids with disability are sick and need a medical model so that we can help fix them. We need to change that to a view of diversity ... we have kids of different mental and physical ability, and they form a wonderful spectrum that gives our society difference, nourishment and diversity.<sup>112</sup>

### **A cycle of non-inclusivity**

- 2.68** In addition, stakeholders discussed how discrimination and ableism in turn perpetuate non-inclusive practices in the education setting.
- 2.69** For example, Family Advocacy used the term 'polished pathway' to describe how a person with disability can too easily move from one segregated setting to the next 'from early intervention to special school ... to a sheltered workshop to a group home'.<sup>113</sup>
- 2.70** Ms Joanne Yates, Acting Chief Executive Officer of People with Disability Australia, explained how the exclusion of children from mainstream schools leads to segregation, which further 'impedes the transition to inclusive education':

Being excised from the main school body or from the community itself leads to students and their parents unsupported and without collegiate connection. Neither the disabled nor the abled community experience each other. Segregation becomes a self-fulfilling need, and because fully inclusive, unsegregated schools do not exist, it is incredibly hard to imagine their reality. Segregation itself stifles and impedes the transition to inclusive

<sup>110</sup> *In camera* evidence, Brian, 22 April 2024, p 10, published by resolution of the committee.

<sup>111</sup> Evidence, Mr Phillips, 22 April 2024, p 41.

<sup>112</sup> Evidence, Mr Andrew Wilson, Chair, Australian Alliance for Inclusive Education (All Means All), 22 April 2024, pp 4-5.

<sup>113</sup> Submission 62, Family Advocacy, p 26.



education. It negates any opportunity for parents and students to envisage a fully integrated learning environment.<sup>114</sup>

**2.71** Ms Yates further emphasised the 'critical' role education plays in 'shaping attitudes towards people with disability'. She referred to the Disability Royal Commission, which found segregation reinforces persistent negative perceptions that predispose people with disability to 'lifelong disadvantage', while ableist attitudes perpetuate low expectations regarding the learning abilities and interest of students with disability, further entrenching segregation.<sup>115</sup>

**2.72** Expanding on the theme of ableist attitudes, Mr Julian Laurens, Senior Policy Officer of People with Disability Australia, commented on the different 'structural' and 'systemic' ways ableism can 'creep into' the education setting:

An example is the assumptions about what somebody can and cannot do, what they will or will not like and expectations as well about what they can and cannot achieve ... Ableism can creep into—in both those dimensions—so many aspects of an education system: from the assessments we set, from the playgrounds we design, from the seats we have, from the size of the doorways, from the writing—it literally can creep in anywhere.<sup>116</sup>

**2.73** Similarly, on the way in which ableism plays out in the school context, Ms Laura Howard, Senior Community Support Specialist, Muscular Dystrophy NSW, highlighted that ableism instils in kids the 'mindset that they're an inconvenience or they're an added burden on the school'.<sup>117</sup>

**2.74** Ms Libby Gunn of Square Peg Round Whole noted that 'if our mainstream schools were truly inclusive, there would be no need for a choice or segregated settings to be available'.<sup>118</sup> This was echoed by Family Advocacy, who said:

Neither mainstream nor special schools offer a genuine choice for parents. Parents of children with disability shared that they do not have viable schooling options to choose from, and that they decide on special school to escape the rejection, stress and academic neglect that is possible in the mainstream schools that are not prepared for children with disability. But we also heard special schools also fall short of providing academic achievements, friendship and the normative preparation for life that families want and expect.<sup>119</sup>

**2.75** Another concern identified by All Means All is the 'deep-seeded stigma and discrimination around disability and special needs that is being played out both openly and subtly'. According to All Means All, there is 'a real cultural problem within the education system around disability'

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<sup>114</sup> Evidence, Ms Joanne Yates, Acting Deputy Chief Executive Officer, People with Disability Australia, 22 April 2024, p 25.

<sup>115</sup> Evidence, Ms Yates, 22 April 2024, p 25.

<sup>116</sup> Evidence, Mr Julian Laurens, Senior Policy Officer, People with Disability Australia, 22 April 2024, p 29.

<sup>117</sup> Evidence, Ms Laura Howard, Senior Community Support Specialist, Muscular Dystrophy NSW, 22 April 2024, p 29.

<sup>118</sup> Evidence, Ms Libby Gunn, National and NSW Coordinator, Square Peg Round Whole, 22 April 2024, p 3.

<sup>119</sup> Submission 62, Family Advocacy, p 9.

and that this culture is based on perceptions and assumptions that people with disability are "subhuman", incapable of learning, and burdensome'.<sup>120</sup>

### **What inclusion looks like**

**2.76** Stakeholders also told the committee about the benefits of inclusion on society and shared examples where it was implemented successfully.

**2.77** Some stakeholders highlighted that adequate resources are vital for inclusive education;<sup>121</sup> this includes additional funding for additional support staff, incentives for teachers to gain additional specialist qualification and assistive technology.<sup>122</sup>

**2.78** As described in the examples in Chapter 1, inclusive education benefits more than just the child with disability. This was emphasised by the Australian Centre for Disability Law in their submission:

Providing students with disability adequate support within educational settings facilitates an inclusive environment that enriches the educational experience for all students, preparing them for a society that values diversity and embraces the unique contributions of every individual. The benefits of providing this support are not limited to only students with disability. It will also foster empathy, understanding, and acceptance within the schooling community and society at large.<sup>123</sup>

**2.79** Similarly, the Australian Association of Psychologists noted that 'fostering an inclusive educational environment promotes diversity, empathy, and understanding, contributing to a more compassionate and accepting society'.<sup>124</sup>

**2.80** Adjunct Professor Tamara Smith MP, Member for Ballina, suggested that providing adequate support for students with disability 'sets up disabled people for employment and reduces ableism and discrimination in wider society'.<sup>125</sup>

**2.81** During a hearing Gemma, a parent of a young boy with disability, informed the committee that the key to reducing ableism in society is allowing students with disability to interact with those without disability, as children learn to respect and value each other's differences:

As parents, Jeff and I ... are from a generation where we didn't go to school with people with disabilities, or I didn't. But Child D is at school with his brother, who has a disability, and so are Child B's peers. Watching how they naturally interact with Child B gives me hope that having kids with disabilities in mainstream schools with everybody else could actually get rid of the ableism in society, because it changes the way they interact with each other as well. They learn how to make a place for someone who's different, and they learn how to value differences and learn that everyone's different,

<sup>120</sup> Answers to supplementary questions, All Means All, 17 May 2024, p 16.

<sup>121</sup> Submission 38, Federation of Parents and Citizens Associations of NSW, p 1; Submission 49, Autism Awareness Australia, p 3.

<sup>122</sup> Submission 37, The NSW Special Education Principals and Leaders Association, p 10.

<sup>123</sup> Submission 75, Australian Centre for Disability Law, p 6.

<sup>124</sup> Submission 27, The Australian Association of Psychologists Incorporated, p 4.

<sup>125</sup> Submission 53, Adjunct Professor Tamara Smith MP, Member for Ballina, p 4.

everyone has struggles, everyone has strengths and everyone has something to contribute.<sup>126</sup>

- 2.82** The committee subsequently heard from Ms Loren Swancutt, Chairperson, Inclusive Educators Australia, about the importance of including students with disability in mainstream settings. She stated:

'You don't transition from being in a segregated school with limited opportunities, with limited interaction with communities and then go on to have a flourishing inclusive life beyond school. We know and all the research shows that when students are included in schools, their school outcomes improve considerably and so do their post-school outcomes'.<sup>127</sup>

- 2.83** This sentiment was reinforced by young people with disability. Students told Youth Action the benefits of inclusion in mainstream environments:

It would also benefit people in mainstream environments who don't have disabilities to see people with disabilities, to learn to integrate and try to be kinder and more understanding of the fact that disability is a spectrum and that everyone with a disability is going to look different. People with disabilities shouldn't be invisible. Often in mainstream environments they are.

I think that having people with disabilities at regular public schools helps normalise disability. Kids can actually grow up alongside people that have different needs and society will function better.<sup>128</sup>

## Committee comment

- 2.84** The committee acknowledges with concern the significant impact that a lack of inclusion in education and consequential barriers and challenges faced by children and young people can have on them, their siblings, and their families. It is clear from the evidence that these impacts are wide-ranging and can have potential lifelong consequences. It saddens the committee to learn that many children and young people, along with their families, are burdened with such experiences.
- 2.85** These barriers and challenges caused by a lack of inclusion, such as access to education, learning outcomes, inclusivity, and behaviour, have profound impacts on various aspects of the lives of children and young people with disability.

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### Finding 1

That a lack of inclusion faced by children and young people with disability in New South Wales educational settings has profound impacts on various aspects of their lives, including in employment, social life, accessing housing and health services, and more. These impacts have potential lifelong consequences.

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<sup>126</sup> *In camera* evidence, Gemma, 22 April 2024, p 11, published by resolution of the committee.

<sup>127</sup> Evidence, Ms Loren Swancutt, Chairperson, Inclusive Educators Australia, 23 April 2024, p 9.

<sup>128</sup> Submission 61, Youth Action, p 12.

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- 2.86** The committee also heard about the additional barriers to inclusion faced by children with disability in out of home care, as well as the disproportionate number of young people with disability in the youth justice system due to disengagement with education.
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**Finding 2**

That children with disability in out of home care face additional barriers to inclusion and their disengagement with education contributes to the over-representation of young people with disability in youth justice systems and adult prisons.

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- 2.87** The committee learned that distance education can provide a transition pathway for students back to a school classroom setting, and that this transition pathway can particularly suit vulnerable students such as those in out of home care. However, funding for organisations that provide distance education is generally lower than that available to schools with in-person attendance. To meet the needs of students in out of home care, and particularly those with disability, the committee recommends that the NSW Government provide increased funding for organisations that provide distance education for out of home care students with disability.
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**Recommendation 1**

That the NSW Government provide increased funding for organisations that provide distance education for out of home care students with disability.

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- 2.88** We note that there were a substantial number of concerns regarding the use of exclusionary discipline like expulsion and suspension by schools. These practices not only profoundly affect student learning outcomes, behaviour, and mental wellbeing; they can also impact parental ability to work and lead to financial stress for families. The committee also finds that the suspension and expulsion of students with disability can have long-term impacts, including their engagement with school and post-school pathways.
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**Finding 3**

That a lack of inclusion faced by children and young people with disability in New South Wales educational settings also impacts siblings, families and carers; and the use of suspension and expulsion practices in particular affects parents' and carers' ability to work, creating financial stress for the family.

**Finding 4**

That the inappropriate use of exclusionary discipline such as suspension and expulsion of students with disability can have long term impacts, including on their engagement with school and post school pathways.

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- 2.89** The committee is also troubled by the fact that, on a broader scale, these barriers and challenges caused by a lack of inclusion reinforce prejudice, discrimination and ableism in society which, in turn, perpetuate non-inclusive practices in the education system. However, it should be
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acknowledged that stakeholders also spoke about examples of excellence. Good inclusion is possible and has far reaching positive impact on society.

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**Finding 5**

That beyond the impact on students, siblings and families, a lack of inclusion in New South Wales educational settings reinforces prejudice, discrimination and ableism in society which, in turn, perpetuates non-inclusive practices in the education system.

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## Chapter 3 Background

This chapter provides an overview of other relevant reports and their recommendations regarding support of students with disability. It then identifies key policies of the NSW Department of Education (the department) and the NSW Education Standards Authority that aim to support children and young people with a disability. The chapter concludes by reviewing the legal framework for school education in New South Wales.

### Relevant reports regarding support of students with disability

- 3.1** A number of reports of various independent public inquiries and government bodies have considered the support for students with disability. This section provides an overview of these reports in relation to their recommendations and findings.

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

- 3.2** The Royal Commission was established in 2019 to inquire into actions governments, institutions and the community should take to ensure a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.<sup>129</sup>
- 3.3** The inquiry investigated education, employment and housing for people with disability, making 222 recommendations in the final report,<sup>130</sup> of which 15 relate to inclusive education and are discussed further below.
- 3.4** The Royal Commission highlighted the increasing number of students with disability in Australian schools, emphasising the growing need for a more inclusive school system. It recommended a rights-based approach, and called for a safe, quality, and inclusive school system that provides effective supports to meet the diverse needs of students. The report also found that the current state of Australian schools falls short in delivering consistent inclusive education, with students with disabilities facing multiple barriers, exclusion, and misuse of disciplinary measures.<sup>131</sup>

#### ***Recommendations of the Royal Commission***

- 3.5** The report made the following recommendations (7.1 – 7.13) addressing inclusive education:

<sup>129</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, September 2023, Executive Summary, p 40.

<sup>130</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, September 2023, Executive Summary, p xi.

<sup>131</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, September 2023, vol 7, p 10.

**Overcoming barriers to safe, quality and inclusive education**

- providing equal access to mainstream education and enrolment
- preventing the inappropriate use of exclusionary discipline against students with disability
- improving policies and procedures on the provision of reasonable adjustments to students with disability
- encouraging participation in school communities by students in non-mainstream schools and mainstream schools
- implementing careers guidance and transition support services
- supporting communication and relationships with students and parents.<sup>132</sup>

**Embedding inclusive education**

- establishing inclusive education units which incorporate First Nation expertise
- enhancing capabilities, expertise and development of teachers within the inclusive education sector
- strengthening the data and evidence base to build best practice
- strengthening complaint management processes
- ensuring stronger oversight of inclusive education practices
- improving funding
- releasing a 'National Roadmap to Inclusive Education'.<sup>133</sup>

**3.6** All Commissioners agreed that mainstream systems must be significantly reformed to remove barriers to access and enable meaningful inclusion, safety and belonging for people with disability in these settings. The Commissioners had two differing views on phasing out special education settings:

- Three Commissioners recommended phasing out and ending special/segregated education by the end of 2051 (Recommendation 7.14)<sup>134</sup>
- Two Commissioners recommended retaining special education settings while facilitating smoother transitions and interactions between non-mainstream and mainstream schools (Recommendation 7.15).<sup>135</sup>

<sup>132</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, September 2023, vol 7, pp 13-17.

<sup>133</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, September 2023, vol 7, pp 18-23.

<sup>134</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, September 2023, vol 7, pp 24-25. *Please also see [Errata](#) tabled 4 September 2024.*

<sup>135</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, September 2023, vol 7, pp 25-26.

**3.7** The joint Australian, State and Territory response to the Disability Royal Commission was released on 31 July 2024, with 13 of 15 recommendations relating to education accepted in principle:

- to work in partnership with people with disability to achieve the DRC 'vision for more accessible and inclusive education for school students with disability' (Recommendations 7.2, 7.3, 7.6 and 7.13)
- to build 'workforce capability and expertise and strengthen complaints management practices'. (Recommendations 7.8 and 7.10)
- to improve 'data and evidence on the experience and outcomes ... and improving funding for students with disability.' (Recommendations 7.9 and 7.12).<sup>136</sup>

**3.8** The joint response to Recommendations 7.14 and 7.15 was to 'note' the recommendations, with state and territory governments 'responsible for making decisions about registration of schools in their jurisdiction'.<sup>137</sup> In their additional comment, the NSW Government indicated:

The NSW Government recognises the varied perspectives on specialist settings within the educational landscape, as evidenced by differing views among stakeholders and commissioners. The Government is committed to supporting educational environments that cater effectively to all students, fostering inclusive practices while recognising the importance of choice and diversity in educational provision. We acknowledge that specialist settings play a crucial role in meeting the diverse needs of students and offer choice to families in selecting the most suitable educational environment.<sup>138</sup>

### **Independent Review into the National Disability Insurance Scheme**

**3.9** The National Disability Insurance Scheme (NDIS) is a national scheme funded by the Australian Government to provide funding and support for eligible people with disability. The primary focus is on providing functional supports for daily living; education and training support does not fall under its remit.<sup>139</sup> The National Disability Insurance Scheme (Support for Participants) Rules 2013 (Cth) explicitly exclude supports that relate to participation in education and learning such as teaching and learning assistance, educational aids, and building modifications.<sup>140</sup>

<sup>136</sup> Australian Government, Department of Social Services, Joint Australian, State and Territory Response to the Disability Royal Commission <https://www.dss.gov.au/disability-and-carers-disability-royal-commission-support-services/joint-government-response-0>, pp 32, 34 and 38.

<sup>137</sup> Australian Government, Department of Social Services, Joint Australian, State and Territory Response to the Disability Royal Commission <https://www.dss.gov.au/disability-and-carers-disability-royal-commission-support-services/joint-government-response-0>, p 41.

<sup>138</sup> NSW Government, *Appendix A: NSW Government response to Disability Royal Commission recommendations*, 31 July 2024, <https://dcj.nsw.gov.au/documents/community-inclusion/disability-inclusion/royal-commission-into-violence-abuse-neglect-and-exploitation-of-people-with-disability/nsw-government-response-to-the-disability-royal-commission-recommendations-appendix-a.pdf>, p 73.

<sup>139</sup> National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth), June 2013.

<sup>140</sup> National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth), ss 7.10, 7.14 and 7.15.



**3.10** An independent review into the NDIS (NDIS Review), launched in 2022, sought to examine its design, operations and sustainability. The review identified significant issues concerning the interaction between NDIS and school education, including that the NDIS can exacerbate exclusion in schools:

Its individualised approach often fails to integrate with the classroom experience, and can undermine inclusion for children with disability. This approach also creates perverse incentives whereby some students only receive supports in class if they are a participant, even though schools are provided funding (through disability loadings) for meeting the disability needs of their students.<sup>141</sup>

**3.11** The final report made 26 recommendations and outlined 139 subsequent action items. A subset pertained to education, falling under the broad category of 'unified support'. This included:

- Recommendation 1: Invest in foundational supports for fairness, balance and sustainability in the disability ecosystem.
  - National Cabinet to invest in a capacity building program
  - National Cabinet to jointly invest in early supports for children with emerging development concerns and disability
  - National Cabinet to invest in programs and initiatives to support adolescents and young adults with disability aged 9 to 21 to prepare for and manage key life transition points.<sup>142</sup>
- Recommendation 2: Increase the scale and pace of change in mainstream and community inclusion and accessibility and improve the connection between mainstream services and the NDIS.
  - All Australian governments should take steps to protect the right to inclusive education for children with disability and developmental concerns in early childhood education and care and schools.
  - The National Disability Insurance Agency and the Department of Education, with state and territory education and disability agencies, should develop a plan to better connect the NDIS and school education systems and improve educational outcomes for children with disability.<sup>143</sup>

### **The 2017 inquiry into students with a disability or special needs in New South Wales schools**

**3.12** In 2017, the Legislative Council's Portfolio Committee No. 3 - Education tabled its report into the provision of education to students with a disability or special needs in government and non-government schools in New South Wales.

**3.13** The report highlighted a disparity between the inclusive education provisions promoted in legislation and policy and the actual experiences of many students with disability in New South

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<sup>141</sup> National Disability Insurance Scheme Working together to deliver the NDIS, Final Report, December 2023, p 69.

<sup>142</sup> National Disability Insurance Scheme Working together to deliver the NDIS, Final Report, December 2023, p 4.

<sup>143</sup> National Disability Insurance Scheme Working together to deliver the NDIS, Final Report, December 2023, p 5.

Wales schools. There was an unacceptable level of alleged ill-treatment and reportable incidents involving children with disability. Furthermore, it found that New South Wales schools will not receive the full allocation of funding as originally agreed under the National Education Reform Agreement due to the adoption of Gonski 2.0 policy. This policy shift was suggested to have impacts on students with a disability.<sup>144</sup>

**3.14** The committee made 39 recommendations, promoting inclusion of all children in mainstream settings, with exceptions only for compelling individual reasons. The recommendations included that the NSW Government:

- enhance transparency on how the needs of students with disability are being met
- strengthen complaints processes and data collection
- implement a funding model to better reflect the needs of students with disability
- provide greater support through training in legal requirements and ease of access
- adopt evidence-based programs
- provide formal best practice guidelines to assist Schools for Specific Purposes work with mainstream schools to deliver a full curriculum to their students
- mandate the individualised education plans for all students with disability.<sup>145</sup>

**3.15** The report also supported a cultural, legislative and policy shift from segregating students with disability to including them in mainstream schooling, where practical. The committee believed this reflected a broader societal move towards disability inclusion and recognised that decisions about enrolment should primarily be about parental choice.<sup>146</sup>

***The NSW Government response to 2017 report***

**3.16** The government response, provided in March 2018, to the 2017 Legislative Council report supported all 39 recommendations, the vast majority in full.<sup>147</sup>

**3.17** The government acknowledged areas of concern raised by the committee and committed to addressing many of the committee's recommendations. Actions that were already underway at the time included:

- investigating sustainable, evidence-based options for improving education provision
- reviewing and improving professional learning for principals and teachers
- improving access to specialist allied health and therapy services

<sup>144</sup> Portfolio Committee No. 3 - Education, NSW Legislative Council, *Education of students with a disability or special needs in New South Wales schools* (2017), pp xi and xv.

<sup>145</sup> Portfolio Committee No. 3 - Education, NSW Legislative Council, *Education of students with a disability or special needs in New South Wales schools* (2017), pp xi-xv.

<sup>146</sup> Portfolio Committee No. 3 - Education, NSW Legislative Council, *Education of students with a disability or special needs in New South Wales schools* (2017), p xi.

<sup>147</sup> Correspondence from Minister for Education Robert Gordon Stokes to the Clerk of the Parliaments, providing government response to the inquiry into students with a disability or special needs in New South Wales Schools, 21 March 2018.

- improving the process for students to access specialist education services in NSW public schools.<sup>148</sup>

**3.18** In regard to the specific recommendations of the committee, the NSW Government outlined a set of actions, including:

- reporting annually under the *Disability Inclusion Act 2014*
- appropriately and adequately funding students with disability
- enhancing data collection and management
- increasing support classes in mainstream schools.<sup>149</sup>

**3.19** The recommendation to include children in mainstream settings was supported in principle. While the department stated it was committed to further building the capacity of its public schools to support and meet the needs of their local students, it acknowledged that the *Education Act 1990* only provides for all students to seek enrolment at their local public school. It does not give the NSW Government power to require non-government schools to enrol particular students.<sup>150</sup>

**3.20** The department recently advised that 38 of the 39 recommendations have now been implemented. The department further advised that it is continuing to work on implementing Recommendation 4: 'That the NSW Government works with the Commonwealth Government to increase the overall funding available to ensure that adequate funding is provided to government schools to meet the needs of students with disabilities and special needs'.<sup>151</sup>

## Key government policies

**3.21** The NSW Department of Education and the NSW Education Standards Authority (NESA) have implemented a number of policies and reforms over the last decade aimed at improving support for students with disability. This section outlines the various relevant policies enacted by the department and NESA.

### NSW Department of Education

**3.22** A number of strategies and policies support the commitment of the NSW Department of Education to build more inclusive public education.

#### *Plan for NSW Public Education*

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<sup>148</sup> Government response to the inquiry into students with a disability or special needs in New South Wales schools, 21 March 2018, Introduction.

<sup>149</sup> Government response to the inquiry into students with a disability or special needs in New South Wales schools, 21 March 2018, pp 1 and 3.

<sup>150</sup> Government response to the inquiry into students with a disability or special needs in New South Wales schools, 21 March 2018, p 1.

<sup>151</sup> Answers to supplementary questions, NSW Department of Education, 10 May 2024, p 1.

- 3.23** In 2023, the Department of Education released a new plan for public education that focuses on 'driving equitable outcomes, opportunities and experiences through the provision of high-quality education'.<sup>152</sup> This plan was shaped by insights from the department's 2019 Disability Strategy discussed below.
- 3.24** The plan outlines the department's strategic direction and priorities to deliver safe and inclusive education to all students in New South Wales by 'reducing gaps in student outcomes due to structural inequalities'. This includes Aboriginal students, students experiencing socioeconomic disadvantage, students in rural, regional and remote New South Wales, students from culturally and linguistically diverse backgrounds and community, and students with disability.<sup>153</sup>
- 3.25** Key areas of focus of the plan are:
- Advance equitable outcomes, opportunities and experiences.
  - Strengthen trust and respect for the teaching profession and school support staff.
  - Give children the best start in learning.
  - Deliver outstanding leadership, teaching and learning.
  - Strengthen student wellbeing and development.
  - Provide meaningful post-school pathways.<sup>154</sup>
- 3.26** The Plan has no explicit reference to students with disability although its development included consultation with the Disability Strategy Reference Group and the Special Education Principals' and Leaders' Association of NSW.<sup>155</sup>

### ***Disability Strategy***

- 3.27** In 2019, the department released the Disability Strategy which outlined the vision for building a better education system for students with disability in New South Wales public schools by focusing on the concept of inclusion.<sup>156</sup>
- 3.28** Under the Disability Strategy, inclusive education in New South Wales is defined as:
- ... all students regardless of disability, ethnicity, socioeconomic 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

<sup>152</sup> Evidence, Mr Martin Graham, Deputy Secretary, Teaching, Learning and Student Wellbeing, NSW Department of Education, 23 April 2024, p 41.

<sup>153</sup> Submission 29, NSW Government, p 3.

<sup>154</sup> Submission 29, NSW Government, p 2.

<sup>155</sup> NSW Government, NSW Department of Education, *Our Plan for NSW Public Education: Transforming lives through learning, 2024-27*, <https://education.nsw.gov.au/about-us/strategies-and-reports/plan-for-nsw-public-education#Our2>, p 15.

<sup>156</sup> NSW Department of Education, *Disability Strategy: A living document*, [education.nsw.gov.au/content/dam/main-education/teaching-and-learning/disability-learning-and-support/media/documents/disability-strategy-2019-online.pdf](https://education.nsw.gov.au/content/dam/main-education/teaching-and-learning/disability-learning-and-support/media/documents/disability-strategy-2019-online.pdf), p 1.

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.<sup>157</sup>

**3.29** The strategy identified four areas crucial to reform:

- strengthen support by investing in teachers and support staff
- increase resources and flexibility for schools to meet students' needs
- improve the family experience by improving access to information and support, and improving the complaints process
- track learning outcomes, wellbeing and independence of students with disability.<sup>158</sup>

**3.30** Recognising that many children and young people with disability from rural, regional and remote communities lack access to allied health services that can provide diagnostic assessments and/or support, the department is shifting towards recognising the functional needs of a student rather than relying on a disability diagnosis.<sup>159</sup>

**3.31** The Disability Strategy also led to the development of the Inclusive Education Statement for students with disability, which further defined what inclusive education means for school communities including 'education environments that adapt design and physical structures, teaching methods and curriculum, as well as the culture, policy and practice of education environments so that they are accessible to all students without discrimination'.<sup>160</sup> This is discussed further below.

### ***Inclusive Education Statement for students with disability***

**3.32** The department has developed a statement and policy to support inclusive practice which extends to all staff, including contractors, consultants, volunteers and committee members working with the department.

**3.33** The Inclusive education for students with disability policy reflects the requirements of the *Education Act 1990*, the *Disability Discrimination Act 1992 (Cth)* and the Disability Standards for Education 2005 (Cth). It also includes information from the United Nations Convention on the Rights of Persons with Disabilities, in particular, Article 24 on Education, and the department's Inclusive Education Statement for students with disability.<sup>161</sup>

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<sup>157</sup> Submission 29, NSW Government, p 2.

<sup>158</sup> Department of Education, *Disability Strategy* (3 May 2022), <https://education.nsw.gov.au/schooling/school-community/our-disability-strategy/disability-strategy#Our5>.

<sup>159</sup> Submission 29, NSW Government, p 3.

<sup>160</sup> Submission 29, NSW Government, p 2-3.

<sup>161</sup> Department of Education, *Inclusive Education for students with disability* (14 March 2024), <https://education.nsw.gov.au/policy-library/policies/pd-2005-0243>, section 2.1.

**3.34** The Inclusive Education Statement for Students with disability outlines six key 'Principles of Inclusive Practice for Students with Disability':

- student agency and self-determination, which includes recognition of student voices and the need for students to be involved in all decisions that affect them
- parent and carer inclusion, which outlines the need for teachers and schools to work in partnership with parents and carers
- social and cultural inclusion, which recognises the need to ensure that students are welcomed and supported to create relationships with other students
- curriculum inclusion, which outlines how students with disability are to be 'supported to access the same curriculum and syllabus outcomes as their peers'
- workforce capability inclusion, which describes how students with disability will have 'equitable access to quality teaching' and how teachers are supported to improve their practice to meet student needs.
- system inclusion where inclusion is 'embedded in all aspects of school life, and is supported by culture, policies and everyday practices in NSW public schools. Inclusive practice is evident in classrooms, schools, school leadership, and across all staff who support schools'.<sup>162</sup>

***Student Behaviour Policy and Suspension and Expulsion***

**3.35** The Department of Education's suspension and expulsion policy, implemented in 2007, and updated in 2023, was operational from the start of Term 1, 2024.<sup>163</sup>

**3.36** The policy outlines the use of suspension and expulsion practices concerning various degrees and seriousness of unacceptable student behaviour. It applies to all New South Wales public schools, with the exception of preschools.<sup>164</sup>

**3.37** According to the policy, a formal caution of suspension is initially issued to parents or carers when an individual student's behaviour persists and raises concern.<sup>165</sup>

**3.38** If a formal caution proves insufficient, principals can resort to suspension as a behaviour management intervention when behaviours of concern pose an unacceptable risk to others or to teaching and learning. Grounds for suspension include but are not limited to:

- continued/persistent disobedience and/or disruptive behaviour
- malicious damage to or theft of property

<sup>162</sup> NSW Department of Education, *Inclusive Education Statement for students with disability*, <https://education.nsw.gov.au/content/dam/main-education/teaching-and-learning/disability-learning-and-support/our-disability-strategy/inclusive-education/Inclusive-Education-Statement.pdf>, pp 2-3.

<sup>163</sup> Submission 29, NSW Government, p 36.

<sup>164</sup> Department of Education, *Suspension and expulsion procedures* (30 January 2024), <https://education.nsw.gov.au/policy-library/policyprocedures/pd-2006-0316/pd-2006-0316-06>.

<sup>165</sup> Department of Education, *Suspension and expulsion procedures* (30 January 2024), <https://education.nsw.gov.au/policy-library/policies/pd-2006-0316-06>.

- verbal abuse
- bullying and cyberbullying
- misuse of technology
- discrimination, including that based on sex, race, religion, disability, sexual orientation or gender identity.<sup>166</sup>

**3.39** In more severe cases, where behaviour interventions, including suspensions and risk management strategies are unsuccessful, principals may consider the expulsion of a student from school. Grounds for an expulsion include the following:

- serious behaviour or behaviours of concern where behaviour interventions and risk management strategies, including suspensions, have not been successful
- unsatisfactory participation in learning for students aged 17 years and over.<sup>167</sup>

**3.40** Appeals against suspension and expulsion decisions can be made where a student or their carer believe departmental policy and procedures have not been followed correctly and /or an unfair decision has been made.<sup>168</sup>

### ***Restrictive Practices Policy and Framework***

**3.41** The Department of Education released the Restrictive Practices Policy and Framework in in order to provide clear guidance on the use of restrictive practices in schools. The policy seeks to meet the national goal of reducing and eliminating the use of restrictive practices, and to ensure students are safe, respected and protected.<sup>169</sup>

**3.42** A restrictive practice is defined as 'any action that has the effect of restricting the rights or freedom of movement of a person, with the primary purpose of protecting the person or others from harm'.<sup>170</sup>

**3.43** However, the policy is not currently in force, as its implementation was paused in response to feedback from stakeholders that more time was needed to engage with and understand the policy. The policy's implementation will recommence in 2024 and will become fully operational from day one, Term One, 2025.<sup>171</sup>

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<sup>166</sup> Department of Education, *Suspension and expulsion procedures* (30 January 2024), <https://education.nsw.gov.au/policy-library/policyprocedures/pd-2006-0316/pd-2006-0316-06>.

<sup>167</sup> Department of Education, *Suspension and expulsion procedures* (30 January 2024), <https://education.nsw.gov.au/policy-library/policyprocedures/pd-2006-0316/pd-2006-0316-06>.

<sup>168</sup> Department of Education, *Suspension and expulsion procedures* (30 January 2024), <https://education.nsw.gov.au/policy-library/policyprocedures/pd-2006-0316/pd-2006-0316-06>.

<sup>169</sup> Department of Education, *Restrictive Practices*, (25 August 2023), <https://education.nsw.gov.au/schooling/school-community/restrictive-practices>.

<sup>170</sup> Department of Education, *Restrictive practices*, NSW Government, <https://education.nsw.gov.au/schooling/school-community/restrictive-practices#Policy1>.

<sup>171</sup> Department of Education, *Restrictive Practices*, (25 August 2023), <https://education.nsw.gov.au/schooling/school-community/restrictive-practices>.

**3.44** In the interim, the Department of Education advised that New South Wales public schools and government preschools must continue to be guided by the following six principles in their use of restrictive practices:

- student centred
- least restrictive
- for the shortest time
- helping to reduce and eliminate restrictive practices
- monitored and
- reviewed regularly.<sup>172</sup>

### **NSW Education Standards Authority (NESA)**

**3.45** NESA is responsible for accreditation of Initial Teacher Education Courses, developing criteria for the design of ongoing professional learning of teachers, registration of government and non-government schools and the Higher School Certificate Disability Provisions for eligible students. These programs and policies are discussed in further detail below.

#### ***Disability provisions in the Higher School Certificate***

**3.46** The Higher School Certificate (HSC) disability provisions provide students with practical support to access, read and respond to the HSC exams. This ensures there are reasonable adjustments available to students with disability so they can access and participate in the HSC on the same basis as students without disability.<sup>173</sup>

**3.47** The provisions address students' exam needs related to learning, medical, vision or hearing disabilities and are approved on the basis that the disability prevents a student from either reading exam questions or communicating responses. For example, students doing their HSC may need disability provision for:

- a permanent condition, such as cerebral palsy or vision impairment
- a temporary condition, such as broken arm, or
- an intermittent condition, such as back pain when sitting for long periods.<sup>174</sup>

**3.48** These provisions include, but are not limited to, readers, extra time, rest breaks, braille papers, enlarged papers, and modified exam papers.<sup>175</sup>

<sup>172</sup> Submission 29, NSW Government, p 38.

<sup>173</sup> NSW Education Standards Authority, HSC disability provisions guide for teachers and parents, <https://www.nsw.gov.au/education-and-training/nesa/hsc/disability-provisions/guide/what-are-hsc-disability-provisions>

<sup>174</sup> NSW Education Standards Authority, Disability provisions, <https://www.nsw.gov.au/education-and-training/nesa/hsc/disability-provisions>

<sup>175</sup> Submission 29, NSW Government, p 31.



**3.49** Applying for disability provision begins with a student, parent or school identifying a need for it. Next, discussion of eligibility requirements and the application process occur with school staff, such as the principal or the disability provisions coordinator. The application, along with relevant documentation such as evidence of diagnosis, functional evidence, and teacher comments, is then submitted to NESA for review. Following this, the decision letter is sent to the principal and relayed to the student. Appeals can also be made with the submission of new or additional evidence.<sup>176</sup>

### *Teacher accreditation and support*

**3.50** According to NESA, teaching students with disability is a priority area for the professional learning of teachers in New South Wales. For example:

- all New South Wales teaching degrees include mandatory studies in disability education, so that graduates possess a foundational understanding of addressing the learning needs of students with disability.
- NESA further supports teachers, learning support staff and others by providing a range of materials, including teaching advice, sample teaching programs, case studies, and examples of reasonable adjustments to support them in assisting students with disability.
- NESA also provides criteria for providers designing and delivering professional learning for teachers in New South Wales, including making a panel of experts available to provide advice where required. Teaching students with a disability is a priority area for professional learning.<sup>177</sup>

### *School registration requirements*

**3.51** All schools in New South Wales must be registered with NESA to operate, and optionally be accredited for the Record of School Achievement (RoSA) and HSC. Registration ensures that a school meets the minimum requirement of the *Education Act 1990* (NSW).<sup>178</sup>

**3.52** NESA provides advice on the requirements of all New South Wales schools in relation to the Australian Disability Standards for Education 2005 (Cth) to support teachers to provide reasonable adjustments for students with disability in school settings, and requires schools to

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<sup>176</sup> NESA, Applying for HSC disability provision, NSW Government, <https://www.nsw.gov.au/education-and-training/nesa/hsc/disability-provisions/guide/applying-for-hsc-disability-provisions>.

<sup>177</sup> Submission 29, NSW Government, p 26.

<sup>178</sup> See, NESA, *School registration and accreditation manuals*, <https://www.nsw.gov.au/education-and-training/nesa/registration-and-compliance/non-government-schools/registration-accreditation-manuals>; NESA, *NSW Registration Process for the Government Schooling System Manual*, September 2023, <https://www.nsw.gov.au/sites/default/files/2023-08/nsw-registration-process-for-the-government-schooling-system-manual.pdf>, p 2.

have policies in place to ensure that students with disability are appropriately supported. NESA monitors compliance with this requirement through the registration process.<sup>179</sup>

- 3.53** For non government schools, successful registration and accreditation are contingent on meeting the legal requirements and the range of criteria detailed in *The Registration and Accreditation of Individual Non-government Schools Manual* and *Registration Systems and Member Non-government Schools Manual*.
- 3.54** Likewise, the *NSW Registration Process for the Government Schooling System Manual* outlines the process for NESA to monitor and provide advice on the compliance by the NSW government schooling system which has 'similar requirements to those required for the registration of non-government schools'.<sup>180</sup>
- 3.55** The manuals stipulate, under Curriculum, that a school's inclusive curriculum planning and teaching practice should promote and support access to educational programs that cater to diverse student needs. This includes culturally responsive teaching and learning for Aboriginal and Torres Strait Islander students, and appropriate adjustments, support and accessible learning opportunities for students with disability and for students with identified learning needs.<sup>181</sup>
- 3.56** In ensuring a safe and supportive environment for students, schools must, as evidence of compliance, demonstrate that they implement policies and procedures for:
- identifying students with disability and learning needs
  - providing support for students with disability and learning needs.<sup>182</sup>
- 3.57** To meet the criteria for registration, all government and non-government schools in New South Wales are required to, implement policies and procedures regarding raising and responding to complaints or grievances identified by students and/or parents and carers.<sup>183</sup>
- 3.58** In addition to registration, non-government schools may apply to be recognised as a Special School or Special Assistance School. Approval is contingent on schools demonstrating they:

<sup>179</sup> Submission 29, NSW Government, pp 18-19.

<sup>180</sup> NESA, *NSW Registration Process for the Government Schooling System Manual*, September 2023, <https://www.nsw.gov.au/sites/default/files/2023-08/nsw-registration-process-for-the-government-schooling-system-manual.pdf>, pp 2-3.

<sup>181</sup> See, NESA, *NSW Registered and Accredited Individual Non-government Schools Manual*, September 2023, <https://www.nsw.gov.au/sites/default/files/2023-08/nsw-registered-and-accredited-individual-non-government-schools-manual.pdf>, p 42-48; NESA, *NSW Registration Process for the Government Schooling System Manual*, September 2023, NSW Government, <https://www.nsw.gov.au/sites/default/files/2023-08/nsw-registration-process-for-the-government-schooling-system-manual.pdf>, pp 10-12.

<sup>182</sup> See, NESA, *NSW Registered and Accredited Individual Non-government Schools Manual*, September 2023, <https://www.nsw.gov.au/sites/default/files/2023-08/nsw-registered-and-accredited-individual-non-government-schools-manual.pdf>, p 58; NESA, *NSW Registration Process for the Government Schooling System Manual*, September 2023, , <https://www.nsw.gov.au/sites/default/files/2023-08/nsw-registration-process-for-the-government-schooling-system-manual.pdf>, pp 16-17.

<sup>183</sup> Submission 29, NSW Government, pp 32-33.

- enrol students using the disability criteria prescribed by the NSW Department of Education
- employ teachers with appropriate qualifications and experience to teach the students enrolled.<sup>184</sup>

## Legal framework for school education in New South Wales

- 3.59** The rights of children and young people with a disability to equitably access and participate in education are protected through various state and national laws. In New South Wales, the *Education Act 1990* sets out the legislative requirements for school education in the state. In addition, the *Anti-Discrimination Act 1977* contains provisions prohibiting disability discrimination in education settings. A complaint under this Act can be made to the President of Anti-Discrimination NSW and can ultimately be heard by the NSW Civil and Administrative Tribunal (NCAT).
- 3.60** At the Commonwealth level, the main legislation regarding disability discrimination is the *Disability Discrimination Act 1997* and the Disability Standards for Education 2005. The *Australian Human Rights Commission Act 1986* sets up the administrative framework for the making of complaints to the Australian Human Rights Commission.
- 3.61** The *Disability Discrimination Act 1997 (Cth)* through the associated Disability Standards for Education 2005 puts in place the requirement for educational institutions to provide 'reasonable adjustments' for students with disability to allow them to participate in education and training on the same basis as students without a disability. This is discussed further below.

### *Education Act 1990*

- 3.62** The *Education Act 1990* (Education Act) sets out the compulsory schooling requirements for enrolment and attendance of students at school in New South Wales. The Act provides that school attendance is compulsory for children between the ages of 6 and 17.<sup>185</sup> It is the duty of a parent to cause a child of compulsory school age to be: enrolled at, and to attend, school; or be registered for home schooling and receive instruction in accordance with the conditions of registration.<sup>186</sup>
- 3.63** School-aged children are entitled to enrol at their local public school.<sup>187</sup> Parents may apply to enrol their child in their local school of choice. However, acceptance is subject to the child being eligible to attend the school and the school being able to accommodate the child.<sup>188</sup>

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<sup>184</sup> NESA, *NSW Registered and Accredited Individual Non-government Schools Manual*, September 2023, p 81, <https://www.nsw.gov.au/sites/default/files/2023-08/nsw-registered-and-accredited-individual-non-government-schools-manual.pdf>.

<sup>185</sup> *Education Act 1990*, s 21B, Note: this section also outlines that students may leave school at the end of Year 10 if they are participating in approved education or training or in paid work; Submission 29, NSW Government, p 17.

<sup>186</sup> *Education Act 1990*, s 22(1).

<sup>187</sup> *Education Act 1990*, s 34.

<sup>188</sup> *Education Act 1990*, s 34(1).

**3.64** Factors which are taken into consideration to determine whether a child is eligible and whether the government school can accommodate the child include:

- the type of school, for example, infants, primary, secondary, composite or schools for children with disability<sup>189</sup>
- the child's age
- the child's sex, for example single sex school
- the resources of the school
- the existing number of permanent classrooms and other facilities at that school.<sup>190</sup>

***Provisions for children with disability under the Act***

**3.65** Under section 20 of the Education Act, the Minister for Education may provide or arrange special or additional assistance for government school children with special needs, such children with disability or children with significant learning difficulties.<sup>191</sup> Special or additional assistance may include the provision of financial assistance, facilities, courses of study, staff, staff training or distance education.<sup>192</sup>

***Anti-Discrimination Act 1977***

**3.66** The *Anti-Discrimination Act 1977* (ADA) makes it unlawful to discriminate in specified areas of public life against a person on grounds which include their sex, race, age, disability, and other types of discrimination in certain circumstances. The Act seeks to promote the equality of opportunity between all people.<sup>193</sup>

**3.67** Under the ADA, disability is defined as:

- (a) total or partial loss of a person's bodily or mental functions or of a part of a person's body, or
- (b) the presence in a person's body of organisms causing or capable of causing disease or illness, or
- (c) the malfunction, malformation or disfigurement of a part of a person's body, or
- (d) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or

<sup>189</sup> See *Education Act 1990*, s 29, for the kinds of school that may be established by the Minister.

<sup>190</sup> *Education Act 1990*, s 34(6).

<sup>191</sup> *Education Act 1990*, s 20.

<sup>192</sup> Under the *Education Act 1990*, s 3, distance education means 'a form of education in which students and teachers are not regularly in the presence of each other but communicate with each other in writing, by print or by electronic or like means'. Home schooling, in comparison, means 'schooling in the child's home, other than distance education provided by a government or registered non-government school in which the child is enrolled'.

<sup>193</sup> *Anti-Discrimination Act 1977*, Long title.

(e) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.<sup>194</sup>

**3.68** Part 4A of the ADA sets out what is unlawful discrimination on the grounds of disability. As provided by section 49A, a reference to a person's disability under the ADA, is a reference to a past, future or presumed disability.<sup>195</sup>

**3.69** Disability discrimination in education is protected in section 49L of the ADA. This provision states that it is unlawful for an educational authority to discriminate against a person on the ground of disability:

- by refusing or failing to accept the person's application for admission as a student, or
- in the terms on which it is prepared to admit the person as a student.<sup>196</sup>

**3.70** In addition, it is unlawful for an educational authority to discriminate against a student on the ground of disability:

- by denying the student access, or limiting the student's access, to any benefit provided by the educational authority,
- by expelling the student, or
- by subjecting the student to any other detriment.<sup>197</sup>

**3.71** Section 49L(4) and (5) provide exceptions to educational authorities to discriminate against a person with a disability in circumstances where the person's admission, continued attendance or access to any benefit by the authority would cause 'unjustifiable hardship' on the authority.<sup>198</sup>

**3.72** Section 49C of the ADA provides that 'unjustifiable hardship' includes:

- the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned
- the effect of the disability on a person concerned
- the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.<sup>199</sup>

**3.73** In comparison, the Victorian *Equal Opportunity Act 2010*<sup>200</sup> makes it unlawful to discriminate against a person on the basis of disability. The Victorian legislation includes:

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<sup>194</sup> *Anti-Discrimination Act 1977*, s 4, Definitions, *disability*.

<sup>195</sup> *Anti-Discrimination Act 1977*, s 49A.

<sup>196</sup> *Anti-Discrimination Act 1977*, s 49L(1).

<sup>197</sup> *Anti-Discrimination Act 1977*, s 49L(2).

<sup>198</sup> *Anti-Discrimination Act 1977*, ss 49L(4) and (5).

<sup>199</sup> *Anti-Discrimination Act 1977*, s 49C.

<sup>200</sup> Submission 32, Youth Law Australia, pp 2 and 5; Submission 36, Anti-Discrimination NSW, p 3.

- a positive duty to eliminate discrimination<sup>201</sup>
- the requirement that an educational authority make reasonable adjustments for a person with a disability.<sup>202</sup>

### ***Exceptions for 'private educational authorities'***

- 3.74** Private schools are excluded from the scope of application of the ADA under section 4 of the Act. The exceptions for private educational institutions were introduced into the ADA in 1981 when the ground of 'physical impairment' became a protected ground under that Act.<sup>203</sup>
- 3.75** This exception for private educational authorities does not extend to legislation in other jurisdictions; New South Wales is the only jurisdiction in Australia that provides exceptions to allow private education providers to discriminate against a person on the basis of disability. This exception applies to staff as well as students with disability.<sup>204</sup>

### ***Disability Discrimination Act 1992 (Commonwealth)***

- 3.76** The *Disability Discrimination Act 1992 (Cth)* (DDA) makes it unlawful to discriminate against a person in many areas of public life because of a person's disability. While the definition of disability, subsections (a)–(g), in the DDA mirrors that of the ADA,<sup>205</sup> the DDA clarifies that 'a disability that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability'.<sup>206</sup> The DDA covers disabilities that people have now, have had in the past, may have in the future or which they are believed to have.<sup>207</sup>
- 3.77** The DDA protects people with a disability against discrimination in the education context, including when enrolling or studying in a course at a government or non-government school, or a public or private college, or registered training provider.<sup>208</sup> Under the DDA, it is unlawful for an education 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
  - in the terms or conditions on which it is prepared to admit the person as a student.<sup>209</sup>
- 3.78** Direct discrimination can occur where the education authority refuses to make reasonable adjustments for the person with disability.<sup>210</sup> An adjustment under the DDA is a 'reasonable

<sup>201</sup> Evidence, Ms Meredith Hagger, Principal Solicitor, General Practice, Youth Law Australia, 26 March 2024, p 2.

<sup>202</sup> *Equal Opportunity Act 2010 (Vic)*, section 40.

<sup>203</sup> *Anti-Discrimination Amendment Act 1981*; Submission 36, Anti-Discrimination Australia NSW, p 4.

<sup>204</sup> Submission 36, Anti-Discrimination NSW, p 4.

<sup>205</sup> *Disability Discrimination Act 1992 (Cth)*, s 4.

<sup>206</sup> See *Education Act 1990*, s 29, for the kinds of school that may be established by the Minister.

<sup>207</sup> *Disability Discrimination Act 1992 Cth*, s 4, Definitions, *disability*, ss (a)-(k).

<sup>208</sup> *Disability Discrimination Act 1992 Cth*, s 22.

<sup>209</sup> *Disability Discrimination Act 1992*, s 22(1).

<sup>210</sup> *Disability Discrimination Act 1992*, s 5 (1).

adjustment' unless making the adjustment would impose unjustifiable hardship on the person.<sup>211</sup> The Disability Standards for Education 2005 (Cth) provide further information on reasonable adjustments, which are discussed further in the following section.

- 3.79** It is unlawful for an educational authority to discriminate against a student on the ground of the student's disability by denying or limiting the student access, to any benefit provided by the educational authority, or expelling the student.<sup>212</sup>
- 3.80** Under the DDA, it is not unlawful for a person to discriminate against another person on the ground of a disability of the other person if avoiding the discrimination would impose an 'unjustifiable hardship' on the discriminator.
- 3.81** The considerations for an unjustifiable hardship are the same as those in the ADA. However, the DDA lists two additional considerations, namely the availability of financial and other assistance to the person claiming unjustifiable hardship, and any relevant disability action plans given to the Australian Human Rights Commission under section 64.<sup>213</sup>

#### ***Disability Standards for Education 2005***

- 3.82** The Disability Standards for Education 2005 clarify obligations under the DDA in relation to education and training. The Disability Standards cover:
- the rights or entitlements of students in relation to education and training
  - the obligations and responsibilities of educational authorities, institutions and other education providers, including the obligation to provide reasonable adjustments
  - measures which if implemented will be evidence by of compliance and provide a defence against litigation.
- 3.83** The Disability Standard employs the same definitions as the DDA for the terms 'disability', 'educational authority' and 'discriminate'.<sup>214</sup> Education providers are bound by the Disability Standards, including preschools, government and non-government schools, post-compulsory education and training authorities, and higher education providers.
- 3.84** The Disability Standards detail the obligations on education providers to make reasonable adjustments to assist a student with a disability to participate in education and training on the same basis as students without a disability.<sup>215</sup> Education providers must consult with students and their family members or carers about reasonable adjustments.<sup>216</sup>
- 3.85** The Disability Standards also clarify circumstances where an education provider is exempted from making a reasonable adjustment where it would impose an unjustifiable hardship on them. The exemption does not apply to addressing harassment and victimisation.<sup>217</sup>

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<sup>211</sup> *Disability Discrimination Act 1992*, s 4, Definitions, *reasonable adjustment*.

<sup>212</sup> *Disability Discrimination Act 1992*, s 22(2).

<sup>213</sup> *Disability Discrimination Act 1992*, s 11.

<sup>214</sup> Disability Standards for Education 2005, s 1.4.

<sup>215</sup> Disability Standards for Education 2005, s 3.4, note.

<sup>216</sup> Disability Standards for Education 2005, s 3.5.

<sup>217</sup> Disability Standards for Education 2005, s 8.

### Complaints process

- 3.86** In New South Wales, a complainant can choose to pursue a disability complaint regarding:
- public schools, under the ADA with ADNSW
  - either a public school or a private school, under the DDA with the AHRC
  - a university, under the ADA or DDA.
- 3.87** The NSW Ombudsman also has power to investigate complaints regarding disability discrimination in New South Wales public agencies. The process to make a complaint to these various authorities is detailed below.

### *Complaints handling process by Anti-Discrimination NSW*

- 3.88** Anti-Discrimination NSW administers the *Anti-Discrimination Act 1977*, and has the power to investigate complaints of unlawful discrimination against students with disability in public schools. However, as the ADA has exceptions for private educational authorities, Anti-Discrimination NSW cannot investigate complaints of discrimination against non-government schools and other private educational institutions.<sup>218</sup>
- 3.89** Under section 87A of the ADA, complaints of unlawful discrimination can be lodged with the President of the Board of Anti-Discrimination NSW. In accepting a complaint, the President must investigate,<sup>219</sup> and may endeavour to resolve the complaint by conciliation.<sup>220</sup> The President may decline a complaint during an investigation if satisfied that the complaint is being or should be dealt with by another person or body.<sup>221</sup>
- 3.90** The President may also refer the complaint to the NSW Civil and Administrative Tribunal (the Tribunal), if, for example, the President considered that a complaint cannot be resolved by conciliation.<sup>222</sup> The Minister for Education may also refer any matter to the Tribunal as a complaint.<sup>223</sup> The Anti-Discrimination Board of NSW also has powers to carry out investigations and inquiries relating to disability discrimination, in respect of New South Wales government schools.<sup>224</sup>

### *Complaints handling process by Australian Human Rights Commission*

- 3.91** One of the functions of the Australian Human Rights Commission (AHRC) is to inquire into, and attempt to conciliate, complaints of unlawful discrimination.<sup>225</sup> This can include both public and private educational institutions.

<sup>218</sup> Submission 36, Anti-Discrimination NSW, pp 1 and 3.

<sup>219</sup> *Anti-Discrimination Act 1977*, s 89B(1) and 90.

<sup>220</sup> *Anti-Discrimination Act 1977*, s 91A.

<sup>221</sup> *Anti-Discrimination Act 1977*, s 92.

<sup>222</sup> *Anti-Discrimination Act 1977*, s 93C; See also section 94 which provides that a complaint may also be referred to the Tribunal by the Present under the *Anti-Discrimination Act 1977*, ss 90B, 93A, and 93B.

<sup>223</sup> *Anti-Discrimination Act 1977*, s 93C(2).

<sup>224</sup> *Anti-Discrimination Act 1977*, s 119.

<sup>225</sup> *Australian Human Rights Commission Act 1986*. s 46P.



- 3.92** Under section 46PF of the AHRC Act, once a complaint is lodged, the President is required to make inquiries into and attempt to conciliate such complaints. The President has powers to obtain information relevant to the inquiry and can direct parties to attend a compulsory conference.<sup>226</sup>
- 3.93** The President may terminate an inquiry for several reasons, including whether the complaint has already been dealt with by the Commission or by another statutory authority. Hence, a complainant who has lodged a complaint with the Anti-Discrimination NSW may be limited in their recourse under the AHRC Act.<sup>227</sup>
- 3.94** If a complaint under the AHRC has been terminated the complainant may make an application within 60 days to the courts alleging unlawful discrimination. Courts will not grant remedies for unlawful discrimination unless the complainant has first made a complaint to the AHRC and that complaint has been terminated.<sup>228</sup>

### ***NSW Ombudsman***

- 3.95** The NSW Ombudsman can receive complaints and, where appropriate, make investigations into the administrative conduct of the Department of Education, NSW Education Standards Authority, public schools and NSW public universities.<sup>229</sup> Complaints can be received from parents, carers, students, teachers, other employees, and the general public, as well as Members of Parliament on behalf of their constituents.
- 3.96** Should the complaints not settle at conciliation, caregivers and parents of children and young people with disabilities are required to make an application either to the Federal Circuit and Family Court of Australia<sup>230</sup> or the NSW Civil and Administrative Tribunal.<sup>231</sup>

### **Ageing and Disability Commission**

- 3.97** The NSW Ageing and Disability Commission is an independent agency of the NSW Government, established on 1 July 2019.<sup>232</sup> The objective of the agency is 'protecting adults with disability and older people from abuse, neglect and exploitation, and protecting and promoting their rights'.<sup>233</sup> Under the *Ageing and Disability Commissioner Act 2019*, the Commissioner has several functions, including:

<sup>226</sup> *Australian Human Rights Commission Act 1986*, section 46PJ.

<sup>227</sup> Submission 36, Anti-Discrimination NSW, p 4.

<sup>228</sup> *Australian Human Rights Commission Act 1986*, section 46PO.

<sup>229</sup> Ombudsman NSW, *Complaints we handle*, <https://www.ombo.nsw.gov.au/Making-a-complaint/complaints-we-handle>.

<sup>230</sup> The Federal Circuit and Family Court of Australia has jurisdiction over civil matters arising under Part IIB or IIC of the *Australian Human Rights Commission Act 1986*. Those parts deal with complaints regarding unlawful discrimination, including on the basis of disability under *Disability Discrimination Act 1992*.

<sup>231</sup> Submission 75, Australian Centre for Disability Law, p 21. Please also see [Errata](#) tabled 4 September 2024.

<sup>232</sup> Submission 54, Ageing and Disability Commission, p 1.

<sup>233</sup> Submission 54, Ageing and Disability Commission, p 1.

- dealing with allegations of abuse, neglect and exploitation of adults with disability and older adults, including by referring matters to appropriate persons or bodies and by conducting investigations, and
- to monitor, assess and report on the New South Wales implementation of *Australia's Disability Strategy 2021-2031*.<sup>234</sup>

**3.98** The Official Community Visitor (OCV) scheme is part of the Ageing and Disability Commission.<sup>235</sup> OCVs are appointed by the Minister for Families, Communities and Disability Services under the *Ageing and Disability Commissioner Act 2019*, and the *Children's Guardian Act 2019*.<sup>236</sup> OCVs conduct visits to 'visitable services' and engage directly with residents and staff.<sup>237</sup>

**3.99** The Commission's function to report on the *Australia's Disability Strategy 2021-2031* encompasses children and young people with disability but the Commission advises that it currently does not have capacity to carry out this function.<sup>238</sup>

### United Nations Convention on the Rights of Persons with Disabilities<sup>239</sup>

**3.100** The United Nations Convention<sup>240</sup> on the Rights of Persons with Disabilities defines inclusive education as follows:

Inclusive education is where students of all abilities learn together in the same classroom environment. This means students with and without disabilities. It involves creating an education system where everyone can learn together and have their individual needs met. The focus is on quality education for all, ensuring that education providers, such as schools, colleges and universities, can support all students to achieve the best outcomes and participate fully. Inclusive education is about making system-wide changes so that all students can receive this standard of education. This means the education system must adapt to the needs of individuals, not the other way round.<sup>241</sup>

**3.101** Inclusive education is markedly different from exclusion, segregation and integration, where students with disability might be denied their right to education altogether, have to learn in

<sup>234</sup> *Ageing and Disability Commissioner Act 2019*, s 12.

<sup>235</sup> *Ageing and Disability Commissioner Act 2019*, Part 4.

<sup>236</sup> While the scheme is administered under both acts, the Ageing and Disability Commission manages the full scheme on behalf of both agencies, under a memorandum of understanding with the Office of the Children's Guardian.

<sup>237</sup> *Ageing and Disability Commissioner Act 2019*, s 20.

<sup>238</sup> Submission 54, Ageing and Disability Commission, p 4.

<sup>239</sup> Please also see [Errata](#) tabled 4 September 2024.

<sup>240</sup> Please also see [Errata](#) tabled 4 September 2024.

<sup>241</sup> United Nations, General comment No. 4 on Article 24 - the right to inclusive education, 25 November 2016, [https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FHRBodies%2FCRPD%2FGC%2FPlainEnglish\\_GC\\_No.4\\_TheRight\\_Inclusive\\_Education.docx&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FHRBodies%2FCRPD%2FGC%2FPlainEnglish_GC_No.4_TheRight_Inclusive_Education.docx&wdOrigin=BROWSELINK)

separate schools or classrooms, or be placed in mainstream classrooms without the right support.<sup>242</sup>

## Committee comment

- 3.102** The committee notes the reports and recommendations by other various independent public inquiries and government bodies in the space of education and disability. In particular, we recognise that the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in relation to education and, specifically, phasing out special education settings, is divisive. The array of views regarding the recommendations of the Royal Commission will be explored in more detail throughout this report.
- 3.103** We also note the findings of the review into the National Disability Insurance Scheme, in particular that supports funded by the scheme often fail to integrate with the supports in the classroom, and a potential misunderstanding of the requirements of schools to meet the learning support needs of students regardless of their access to NDIS support.
- 3.104** We acknowledge the NSW Government has implemented 38 of the 39 recommendations of the 2017 report on students with a disability or special needs in New South Wales schools. This is a significant step towards promoting inclusion of all children in mainstream settings, with exceptions only for compelling individual reasons. However, the committee is aware substantial work is still needed in this space, hence this inquiry.
- 3.105** The legal framework for protecting students with disability from discrimination in educational settings is complicated, and potentially difficult for families and students to navigate. The committee is concerned about the different pathways and legal protections that depend on whether a student is attending a public or a private educational institution. In particular, the committee is dismayed that private education institutions continue to be exempt from anti-discrimination requirements of the *Anti-Discrimination Act 1977*. This issue will be addressed further in Chapter 6, with recommendations for legislative change.
- 3.106** The committee also notes that the Anti-Discrimination Act does not impose a requirement on education providers to consult with children and their families to ensure they are accessing education on an equitable basis, leaving the onus on the children and families to advocate for necessary adjustments and support in an education setting. We note that the ADA does not have a positive duty for educational institutions to make reasonable adjustments, which increases the burden on children and families. This will also be addressed further in Chapter 6.
- 3.107** Similarly, the committee notes the complaints process for resolving allegations of discrimination is complicated and potentially confusing for students and families and will be addressed further in Chapter 6.

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<sup>242</sup> United Nations, General comment No. 4 on Article 24 - the right to inclusive education, 25 November 2016, [https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FHRBodies%2FCRPD%2FGC%2FPlainEnglish\\_GC\\_No.4\\_TheRight\\_Inclusive\\_Education.docx&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FDocuments%2FHRBodies%2FCRPD%2FGC%2FPlainEnglish_GC_No.4_TheRight_Inclusive_Education.docx&wdOrigin=BROWSELINK)

- 3.108** The committee observes that the Ageing and Disability Commission has a potential role with regards to the rights of children and young people with disability, but notes that it currently does not appear to extend to investigating issues in educational settings. The committee notes that the Ageing and Disability Commission also made it clear that it is currently under-resourced significantly, so much so that it is struggling to even fulfill its basic statutory functions.
- 3.109** In terms of inclusive education and what this means, the committee finds there is a discrepancy in definitions between the Department of Education's Inclusive Education Statement for students with disability and the United Nations Convention on the Rights of Persons with Disabilities (CRPD).<sup>243</sup> In particular, the United Nations definition explicitly states that inclusive education means students are educated 'in the same classroom' and 'learn together'. In contrast, the Department of Education refers to 'system inclusion' with no explicit reference to children with and without disability learning together. This is of concern to the committee as the department should be making genuine efforts to provide for inclusive education and the integration of children and young people with disability in mainstream educational settings, via a clear and prescriptive definition in accordance with our obligations under the CRPD. The committee notes that Australia was one of the first countries to sign the CRPD on 30 March 2007, and ratify the CRPD on 17 July 2008.<sup>244</sup>

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### **Finding 6**

The Department of Education's definition of inclusive education, as outlined in the Inclusive Education Statement for students with disability, is not consistent with inclusive education as described in the United Nations Convention on the Rights of Persons with Disabilities.<sup>245</sup>

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<sup>243</sup> Please also see [Errata](#) tabled 4 September 2024.

<sup>244</sup> Please also see [Errata](#) tabled 4 September 2024.

<sup>245</sup> Please also see [Errata](#) tabled 4 September 2024.



## Chapter 4 Educational settings for children and young people with disability

This chapter describes the various educational settings for children and young people with disability, and funding arrangements. It then discusses the provision of teachers and support staff, including initial teacher education, training, and professional development opportunities.

### Children and young people with a disability in educational settings

- 4.1** This section discusses students with disability in educational settings as they progress through prior to school settings, to schooling, and transition to post school settings. Educational settings include early childhood education and care, school, vocational education and training (including TAFE) and university. Where available, evidence is provided on student numbers, government funding, and targeted programs and resources for students with disability.
- 4.2** This report does not prescribe a specific definition for disability. The objective of the report is to offer a more comprehensive insight into the issue at hand, rather than to preclude any group from contributing to the inquiry. For reference, a set of definitions can be found in the 2017 report on *Education of students with a disability or special needs in New South Wales* and the *Disability Discrimination Act 1992 (Cth)*.

#### Definitions of disability in educational contexts

- 4.3** As described in Chapter 3, the *Disability Discrimination Act 1992 (Cth)* (the DDA) and the subordinate instrument, the *Disability Standards for Education 2005*<sup>246</sup> (disability education standards), provide the definitions of disability used in educational settings.
- 4.4** In particular, since 2015, the DDA definitions have been used to collect and report national data on students with disability in schools.<sup>247</sup> This dataset, the Nationally Consistent Collection of Data on School Students with Disability (the NCCD) is used to determine levels of targeted government funding for students with disability enrolled in schools.<sup>248</sup>
- 4.5** The NCCD reports on the number of students with disability across four broad categories which align with the definitions in the DDA:
- physical
  - cognitive

<sup>246</sup> Disability Standards for Education 2005 (Cth), Part 1.5. Note, the Disability Standards for Education apply to all education providers, including pre-schools, public and private schools, post compulsory education and training providers, and universities.

<sup>247</sup> Australian Curriculum, Assessment and Reporting Authority, Reporting – National Report on Schools in Australia – School students with disability, <https://www.acara.edu.au/reporting/national-report-on-schooling-in-australia/school-students-with-disability>.

<sup>248</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, pp 10-11.

- sensory
- social/emotional.<sup>249</sup>

**4.6** It is important to note that students with disability are only counted in the NCCD where the student has been provided with an educational adjustment to 'address the functional impact of a disability'.<sup>250</sup> The four levels of adjustment are:

- 'Support provided within quality differentiated teaching practice', where students do not require additional resources beyond the classroom teacher providing differentiated instruction.
- 'Supplementary' adjustments for particular activities, which may require adjustments and specialised support including specialised technology, support to enable participation in school activities, or building and facility modification.
- 'Substantial' adjustments which occur for most of the time on most days and require considerable adult support.
- 'Extensive' adjustments, where students have very high support needs and are provided with targeted and sustained levels of support at all times.<sup>251</sup>

**4.7** Additional government funding is provided for students who receive the three highest levels of educational adjustment – supplementary, substantial and extensive. This is discussed further in this chapter.

**4.8** The submission from the NSW Government indicates that its criteria for including students in its count for the NCCD does not require a formal medical diagnosis. Disability can be imputed where the school believes there is an undiagnosed disability having an impact on the student's ability to access and participate in education.<sup>252</sup>

**4.9** The 2017 Legislative Council inquiry Recommendation 7 recommended 'that the NSW Government review the NSW Department of Education Disability Criteria to ensure it is in keeping with contemporary understandings of disability'.<sup>253</sup>

**4.10** The department advised that diagnoses are required for Integration Funding Support (for students with high needs), which has a narrower disability criteria than in legislation, as the program targets students with high level needs. The department is looking to move this to a

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<sup>249</sup> Department of Parliamentary Services, Research Paper, *Children and Young People with disability in NSW educational settings*, 29 January 2024, p 5, citing Education Ministers Meeting, *Nationally Consistent Collection of Data on School students with Disability: 2023 Guidelines*, <https://www.nccd.edu.au/sites/default/files/2024-06/2023%20NCCD%20Guidelines.pdf>.

<sup>250</sup> Education Ministers Meeting, *Nationally Consistent Collection of Data on School students with Disability: 2023 Guidelines*, <https://www.nccd.edu.au/sites/default/files/2024-06/2023%20NCCD%20Guidelines.pdf>, p 13.

<sup>251</sup> Education Ministers Meeting, *Nationally Consistent Collection of Data on School students with Disability: 2023 Guidelines*, <https://www.nccd.edu.au/sites/default/files/2024-06/2023%20NCCD%20Guidelines.pdf>, p 33.

<sup>252</sup> Submission 29, NSW Government, p 19.

<sup>253</sup> Portfolio Committee No. 3 - Education, NSW Legislative Council, *Education of students with a disability or special needs in New South Wales schools* (2017), p xii.

functional assessment to determine student need, rather than requiring continuous diagnoses, as is currently the case.<sup>254</sup> It is understood that the disability criteria referred to in the department's evidence to this inquiry are the Disability Criteria referenced in the 2017 inquiry.

### **Early childhood education and care**

- 4.11** Early childhood education and care (ECEC) is provided in a range of settings by a variety of providers and is often funded based on the mode of delivery.<sup>255</sup> There was no evidence put before the committee concerning the number of children with disability in these settings.
- 4.12** The Australian Government delivers means tested Child Care Subsidies to users of Long Day Care, Outside School Hours Care and Family Day Care. The Australian Government also provides funds to state and territory governments to provide 600 hours of pre-school education to children in the year prior to schooling. In addition, the NSW Department of Education operates 101 public pre-schools.<sup>256</sup>
- 4.13** All of these settings are accessed by young children, a number of which will have additional needs due to disability.

### ***Early intervention programs***

- 4.14** There are a number of programs which support children with disability in early childhood settings and the early years of school including:
- The NSW Government-funded Disability and Inclusion Program for children with additional needs in not-for profit community preschools which also receive Start Strong funding.<sup>257</sup>
  - The Identify and Include Children with Additional Needs program, targeted at early childhood educators to support and identify children who may need additional support.<sup>258</sup>
  - Integration Funding Support for eligible children<sup>259</sup> to help fund additional teachers and learning support staff.<sup>260</sup>
- 4.15** New South Wales public schools also employ Early Intervention Teachers to support the transition to school for children with disability.<sup>261</sup>

<sup>254</sup> Evidence, Mr Martin Graham, Deputy Secretary, Teaching, Learning and Student Wellbeing, NSW Department of Education, 23 April 2024, p 43.

<sup>255</sup> Submission 29, NSW Government, p 5.

<sup>256</sup> Submission 29, NSW Government, p 5.

<sup>257</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, p 9.

<sup>258</sup> Submission 29, NSW Government, p 7.

<sup>259</sup> These children must meet the definitions of the NCCD and require learning and support adjustments to access learning which requires additional resources to those available through the school.

<sup>260</sup> Submission 29, NSW Government, pp 10-11.

<sup>261</sup> Submission 29, NSW Government, p 9.



- 4.16** Another NSW Government early intervention program is Brighter Beginnings, a collaboration between eight government agencies, with the aim of increasing access to education, health, community and government services, targeted at families at risk of disadvantage, including those with children with disability.<sup>262</sup>
- 4.17** In addition, the Australian Government provides funding to children with disability in the ECEC sector through the Inclusion Support Program and the Inclusion Development Fund. These programs provide support to children with additional needs to participate in early childhood settings alongside their typically developing peers. Support can include:
- access to specialist equipment such as ramps, hoists and seating aids
  - additional educators employed in the service
  - other solutions tailored to the needs of the children participating in the ECEC service.<sup>263</sup>
- 4.18** The In Home Care (IHC) Program is also provided by the Australian Government for care in the child's home for families who cannot access other types of approved care, including those families with 'complex and challenging needs'.<sup>264</sup>

### **School-aged children**

- 4.19** The *Education Act 1990* provides for education for school-aged children in New South Wales in government or non-government schools or in registered home schooling. The Act provides the right for children with a disability to enrol in their local school.<sup>265</sup>
- 4.20** As mentioned in Chapter 3, all schools must meet registration requirements outlined in the Act, with registration requirements overseen by the NSW Education Standards Authority (NESA).
- 4.21** Students with disability broadly have three options for education in a school setting:
- Schooling in a mainstream classroom with appropriate support and adjustments to meet their learning needs.
  - Schooling in a support class for students with a disability, within a mainstream school. Some schooling may occur outside the support unit.
  - Special schools which only enrol students with disability. Special schools will variously focus on meeting differing sets of needs of students with disability.
- 4.22** Alternatively, students with disability can be homeschooled, or access the curriculum through distance education.

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<sup>262</sup> Submission 29, NSW Government, p 12.

<sup>263</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, pp 7-8.

<sup>264</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, pp 8-9.

<sup>265</sup> Submission 29, NSW Government, p 17.

4.23 The following sections provide information on these different settings for students with disability, including in public, Catholic and independent schools, home schooling and distance education.

***Inclusive curriculum***

4.24 NESA is responsible for developing curriculum and regulates the delivery of NESA syllabuses in all New South Wales schools.<sup>266</sup>

4.25 For students with an intellectual disability, or imputed intellectual disability, there are appropriate courses for the stages of schooling, including the Years 7 – 10 Life Skills outcome and content, the Years 11-12 Life Skills courses and K- Year 6 access content.<sup>267</sup>

4.26 NESA also provides advice on curriculum pathways and options for students with disability, helping teachers plan a suitable curriculum that includes parents and carers in determining options and adjustments.<sup>268</sup>

4.27 NESA requires schools to 'maintain and implement policies and procedures for identifying and providing support for students with disability and learning needs'.<sup>269</sup>

***Funding for students with disability***

4.28 The NSW Government and the Australian Government fund government and non-government schools, with funding levels based on the Schooling Resource Standard (the SRS). The SRS is an estimate of 'how much total public funding a school needs to meet its students' educational needs'.<sup>270</sup> It is made up of a base amount and up to six needs-based loading.<sup>271</sup>

4.29 The SRS provided to each school includes a base amount, calculated based on the number of students multiplied by the SRS funding amount, and a loading amount. For 2024 the SRS funding amount is \$13,557 per primary student and \$17,036 per secondary student. Many non-government schools have their base amount discounted by their 'Capacity to Contribute', which is a measure of parents' ability to contribute to the operating costs of the school.<sup>272</sup>

<sup>266</sup> Submission 29, NSW Government, pp 31-32.

<sup>267</sup> Submission 29, NSW Government, p 31.

<sup>268</sup> Submission 29, NSW Government, p 31.

<sup>269</sup> Submission 29, NSW Government, p 19.

<sup>270</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, p 10, quoting Australian Government Department of Education, *Schooling Resource Standard* (15 May 2024), <https://www.education.gov.au/recurrent-funding-schools/schooling-resource-standard>.

<sup>271</sup> Australian Government Department of Education, *Schooling Resource Standard* (15 May 2024), <https://www.education.gov.au/recurrent-funding-schools/schooling-resource-standard>. Note, the SRS loadings can include up to 4 student-based and 2 school-based loading. The student-based loadings are the student with disability loading, the Aboriginal and Torres Islander loading, the socio-educational disadvantage loading, and the low-English proficiency loading. The school-based loadings are for school size and school loadings.

<sup>272</sup> Australian Government Department of Education, *Schooling Resource Standard* (15 May 2024), <https://www.education.gov.au/recurrent-funding-schools/schooling-resource-standard>

- 4.30** Students with disability identified as requiring the three highest levels of support in the NCCD (Supplementary, Substantial and Extensive) attract a disability loading under the SRS in addition to the base amount. This loading ranges from nearly \$6,000 (from combined federal and state sources) per primary student requiring supplementary support, up to over \$42,000 extra per primary and secondary student requiring extensive support.<sup>273</sup>

### ***Government schools***

- 4.31** In 2023 there were approximately 206,000 students with disability enrolled in NSW Government schools, or approximately 1 in 4 students.<sup>274</sup> The NSW Government advised that in January 2024:

- approximately 24,750 students, or 11 per cent of students with disability, were enrolled in 3,445 support classes in mainstream schools<sup>275</sup>
- approximately 6,050 students, or 3 per cent of student with disability, were enrolled in 1,075 support classes in 117 schools for specific purposes (SSPs)<sup>276</sup>
- the remainder of these students (86 per cent) were enrolled in mainstream classes.<sup>277</sup>

- 4.32** The NSW Government advised that it is moving away from providing services based on a medical assessment and towards providing support and funding based on a functional assessment. For example, low level adjustments for disability identified in the NCCD do not require a medical diagnosis.<sup>278</sup>

- 4.33** In terms of funding, the NSW Government distributes funds to government schools using the Resource Allocation Model (RAM). This model provides base funds to all schools plus loadings based on the 'unique context of each school and levels of student need'.<sup>279</sup> The RAM includes a Low Level Adjustment for Disability Loading (LLAD) for schools with students with disability in mainstream classes:

- The LLAD is based on 'needs of students with disability and school efforts to meet those needs, using data from the NCCD, the Student Learning Needs Index and school enrolments'.<sup>280</sup>

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<sup>273</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, pp 10-11, citing Australian Government Department of Education, *Schooling Resource Standard* (15 May 2024), <https://www.education.gov.au/recurrent-funding-schools/schooling-resource-standard>.

<sup>274</sup> Submission 29, NSW Government, p 19.

<sup>275</sup> Submission 29, NSW Government, pp 19-22.

<sup>276</sup> Submission 29, NSW Government, pp 19-22.

<sup>277</sup> Submission 29, NSW Government, p 19.

<sup>278</sup> Evidence, Mr Graham, 23 April 2024, p 43.

<sup>279</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, p 10, quoting NSW Government, Education, *Resource Allocation Model* (27 May 2024), <https://education.nsw.gov.au/about-us/strategies-and-reports/schools-funding/resource-allocation-model>.

<sup>280</sup> Submission 29, NSW Government, pp 19-20.

- In 2024, this program provided \$357 million to schools for over 1,975 learning and support teachers.<sup>281</sup>
- 4.34** Likewise, the Integration Funding Support (IFS) Program is also available via an Access Request<sup>282</sup> in mainstream schools for students with moderate to high support needs:
- Currently, there are approximately 17,800 students receiving funding of \$410 million via this program.<sup>283</sup>
  - Students must be diagnosed with a disability recognised by the department's criteria.<sup>284</sup>
  - The department is considering moving criteria for this program towards a needs' based rather than diagnostic approach.<sup>285</sup>
- 4.35** With respect to both these funding sources the school principal decides how the resources are used to meet students' additional learning needs. This can include additional teacher time, professional learning for teachers, and school learning support officer time.<sup>286</sup>
- 4.36** The department uses Access Requests to help determine appropriate supports for students with disability. Access Requests are considered by a panel of experts and school principals, and are used to determine eligibility for distance education, support class placement, integration funding, or itinerant support teacher assistance.<sup>287</sup>
- 4.37** In addition to support in mainstream classrooms, students with disability can access specialist settings, either within support classes in mainstream schools or in schools for specific purposes (SSPs):
- Support classes in mainstream schools can allow students with disability to participate in mainstream classes and engage with mainstream peers.
  - SSPs are designed for students with complex needs requiring intensive support.<sup>288</sup>
- 4.38** Furthermore, specialist support staff are available in government schools, including:
- School learning and support teams and school counsellors who assist teachers to 'identify, assess and respond to the individual needs of students'.
  - School based specialist staff who work across a number of schools with children with disability.<sup>289</sup>
- 4.39** Government schools can also use their budget to access the Specialist Allied Health and Behaviour Support team. Services available from prequalified providers include occupational

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<sup>281</sup> Submission 29, NSW Government, p 20.

<sup>282</sup> Submission 29, NSW Government, p 23.

<sup>283</sup> Submission 29, NSW Government, p 20.

<sup>284</sup> Evidence, Mr Graham, 23 April 2024, p 43.

<sup>285</sup> Submission 29, NSW Government, p 20.

<sup>286</sup> Submission 29, NSW Government, p 20.

<sup>287</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, p 5.

<sup>288</sup> Submission 29, NSW Government, p 21.

<sup>289</sup> Submission 29, NSW Government, p 27.

therapy, speech pathology, physiotherapy, exercise physiology and specialist behaviour support.<sup>290</sup>

- 4.40** The department has also developed the Inclusive Assessment Program to create tools to help teachers assess and understand the skills of students with disability with complex learning needs (including students with cognitive disability and those who are non-verbal). This recognises that mainstream assessments for literacy and numeracy, including NAPLAN and the National Literacy and Numeracy Learning Progressions, are generally not suitable for these students.<sup>291</sup>
- 4.41** In addition, the department's 28 'Team Around a School' groups of school and non-school based staff each support three to five principal networks. These teams have the skills and expertise to help staff working directly with students with additional support needs, including students with disability.<sup>292</sup>
- 4.42** The department also supports teachers to ensure that students with disability access 'the same curriculum and syllabus outcomes as their peers in developmentally appropriate ways'.<sup>293</sup> The support includes a range of professional learning opportunities for teachers.<sup>294</sup>
- 4.43** For example, the professional learning 'Curriculum planning for every student in every classroom' includes modules for students with disability, and helps teachers and school learning and support teams utilise Universal Design for Learning principles for their students.<sup>295</sup>

#### ***Non-government schools***

- 4.44** As discussed in Chapter 3, non-government schools must be registered and accredited with NESA and meet requirements for students with disability enrolled in their schools. They are funded by the state and Australian governments in accordance with the Schools Resourcing Standard, as previously described. Catholic schools and other non-government schools (independent schools) are discussed separately below.

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<sup>290</sup> Submission 29, NSW Government, p 27.

<sup>291</sup> Submission 29, NSW Government, p 24.

<sup>292</sup> Submission 29, NSW Government, p 27.

<sup>293</sup> Submission 29, NSW Government, p 30.

<sup>294</sup> Submission 29, NSW Government, pp 30-31.

<sup>295</sup> Submission 29, NSW Government, p 30.

### *Catholic schools*

- 4.45** Catholic schools are either operated by a diocese (systemic Catholic schools) or are independent.<sup>296</sup> In New South Wales, there are 592 Catholic schools<sup>297</sup> of which fourteen are special schools.<sup>298</sup> Four are systemic Catholic schools.<sup>299</sup>
- 4.46** Catholic Schools NSW advised that there were 56,366 students with disability enrolled in Catholic schools in New South Wales in 2023, as per the definitions in the NCCD. This comprises 21.1 per cent of all students enrolled in Catholic schools in New South Wales.<sup>300</sup> Ninety-eight per cent of students with disability were in 'mainstream settings'.<sup>301</sup>
- 4.47** In addition to the support provided via the mechanism of the SRS, the NSW Government provides support to Catholic schools through the Special Needs Support funding program, the School Drive Subsidy and the Assisted School Travel Program.<sup>302</sup>
- 4.48** Catholic Schools NSW advised that the Catholic sector incorporates a number of different programs to support students with disabilities in Catholic schools, including:
- Personalised Planning Tool which is a collaborative planning process to address the needs of each student and help them reach their full potential.
  - The OLT Australia Online Training professional learning courses to support teachers of students with disability.
  - Specialist support classes with smaller student–teacher ratios and purpose built facilities.<sup>303</sup>

<sup>296</sup> Submission 72, Catholic Schools NSW, p 2.

<sup>297</sup> Submission 72, Catholic Schools NSW, p 2.

<sup>298</sup> Australian Bureau of Statistics, *Schools 2023, Data cube, Table 35b, Number of all schools by States and Territories, Affiliation and School type*, <https://www.abs.gov.au/statistics/people/education/schools/2023#data-downloads>. Note: the ABS does not disaggregate Catholic schools based on whether they are independent or systemic Catholic schools. This information is available from the registration authority, the NSW Education Standard Authority (NESA). See footnote below.

<sup>299</sup> NESA, *List of registered non-government schools*, <https://www.nsw.gov.au/education-and-training/nesa/registration-and-compliance/non-government-schools/registered-schools>. Note: These schools have been identified based on the downloaded list of registered non-government schools, which identifies schools as 'special schools' (primarily catering for students with disability) and 'special assistance schools' (primarily catering for students with social, emotional or behavioural difficulties). Catholic systemic schools are denoted as part of the NSW Catholic Schools registration system on this list.

<sup>300</sup> Submission 72, Catholic Schools NSW, p 3.

<sup>301</sup> Submission 72, Catholic Schools NSW, p 3.

<sup>302</sup> Submission 72, Catholic Schools NSW, p 10.

<sup>303</sup> Submission 72, Catholic Schools NSW, p 7.

***Independent schools***

- 4.49** Independent schools are non-government schools registered in accordance with the requirements of the *Education Act 1990*, monitored by NESA. Most of the schools are independently established and governed; some schools may operate across multiple campuses.<sup>304</sup>
- 4.50** In 2023 there were approximately 46,900 students with disability enrolled in independent schools, or approximately 22 per cent of independent school students. Ninety per cent of these students attended a mainstream school.<sup>305</sup>
- 4.51** There are 426 independent schools in New South Wales,<sup>306</sup> of which 63 are 'special' and 'special assistance' schools.<sup>307</sup>
- 4.52** In New South Wales, the Association of Independent Schools NSW (AISNSW) is the peak body representing this sector. The AISNSW supports schools who enrol disabled students through providing professional learning courses and 'tailored consultancy support'.<sup>308</sup>
- 4.53** The AISNSW has also established networks for teachers in independent schools, focusing on specific interests. With regards to students with disability, the AISNSW has established teacher networks for learning support teachers, wellbeing support, and counsellors, with each group having membership in excess of 100 teachers.<sup>309</sup>
- 4.54** The case study below outlines the approach taken in the independent Aspect schools, which are designed to support students with autism.

**Case study: Aspect schools<sup>310</sup>**

Aspect schools are independent schools in the non-government sector; there are nine schools in New South Wales operated by Autism Spectrum Australia, as well as 113 Aspect 'satellite' classes which are

<sup>304</sup> NESA, *List of registered non-government schools*, <https://www.nsw.gov.au/education-and-training/nesa/registration-and-compliance/non-government-schools/registered-schools>.

<sup>305</sup> Evidence, Ms Lisa Ridings, Associate Chief Executive of Student Services, Association of Independent Schools NSW, 12 June 2024, p 23. Note that the AISNSW does not advise if these figures are from the NCCD dataset, and whether independent Catholic schools are included in this figure.

<sup>306</sup> Evidence, Ms Ridings, 12 June 2024, p 23. Note that the AISNSW does not advise if these figures are from the NCCD dataset; and whether independent Catholic schools are included in this figure.

<sup>307</sup> NESA, *List of registered non-government schools*, <https://www.nsw.gov.au/education-and-training/nesa/registration-and-compliance/non-government-schools/registered-schools>. Note: These schools have been identified based on the downloaded list of registered non-government schools, which identifies schools as 'special schools' and 'special assistance schools'. Schools that are identified as being part of the NSW Catholic Schools registration system are excluded from this count of schools.

<sup>308</sup> Submission 30, Association of Independent Schools NSW, p 5.

<sup>309</sup> Evidence, Ms Ridings, 12 June 2024, p 26.

<sup>310</sup> Submission 31, Autism Spectrum Australia (Aspect), p 16; School site visit summary report, Appendix One of this report of this report, p 151. This case study is based on the content of the submission and the site visit report.

hosted 'on site' by government, Catholic and independent schools, and university campuses. Aspect schools and classes are designed to assist students to transition to mainstream school settings.

There are over 1,000 students enrolled in Aspect schools, with enrolments evenly split between Aspect schools and satellite classes.

The majority of students have been diagnosed with the highest level autism (level 3). With over 800 teaching staff employed, there are high ratios of staff to students.

'Aspect's education settings are underpinned by the Aspect Comprehensive Approach (ACA) – an evidence-based approach for autism-inclusion in education. The goal is to equip students with the skills that enable them to become as independent as possible and to prepare them to succeed in the wider community'.

Aspect schools and classes are characterised by:

- staff trained in the Aspect Comprehensive Approach
- purpose-built classroom environments
- enabling transitions to, and integration with, mainstream educational settings
- teaching tailored to individual student needs.

Aspect described below how their satellite class model helps students to transition to mainstream settings, and supports their mainstream teacher colleagues to develop the skills needed to assist the student in the mainstream setting. This approach by Aspect is a defining feature of their educational model:

'Teachers from Aspect's satellite classes offer co-teaching opportunities with mainstream teacher-colleagues to support the integration of Autistic students into mainstream classes. Prior to integration, there is a focus on building skills of Aspect students to navigate the mainstream context, class routines and lesson approaches, backed by individualised strategies for preparing students for their new classroom experiences'.

'In the mainstream class, the Aspect teacher is initially focused on supporting their transitioning students individually. Following that, they step into a co-teaching role that supports the whole class and models quality classroom practice for diversity and inclusion and robust autism strategies for the 'receiving' teacher and the rest of the class'.

The committee was privileged to personally visit an Aspect campus in Terrigal where they met with some of the students. The committee heard firsthand from teachers and school executive about Aspect's approach to supporting students, in particular the transition journey from the Aspect school, to a satellite class in a mainstream school and in many cases to a mainstream school.

### ***Home schooling and distance education***

- 4.55** The *Education Act 1990* also allows for school-aged children to be educated at home by their carers in registered home schooling.<sup>311</sup> Parents are responsible for sourcing and accessing relevant support services for their child.<sup>312</sup> The only government funding available for home schooling is the Australian Government Assistance for Isolated Children grant.<sup>313</sup>

<sup>311</sup> *Education Act 1990*, Subdivision 5; s 20.

<sup>312</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, p 11.

<sup>313</sup> Submission 63, Home Education Association, Inc, p 6.



- 4.56 NESAs reports that there were 12,114 children registered for home schooling in 2023, with 20.4 per cent of applications listing 'special learning needs' as a reason for home schooling.<sup>314</sup>
- 4.57 The Home Education Association notes that NCCD data is not collected for students with disability in home education.<sup>315</sup>
- 4.58 The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability recommended that state and territory registration authorities collect standardised information on children with disability registered for homeschooling.<sup>316</sup>
- 4.59 Students with medical conditions and additional learning and support needs are eligible for enrolment in Department of Education distance education provisions.<sup>317</sup> Eligibility for enrolment in the department's distance education program for students is determined through an Access Request process.<sup>318</sup>
- 4.60 Non-government schools are able to register with NESAs to provide distance education.<sup>319</sup>

***Children not engaged in compulsory education***

- 4.61 The Department of Education advised that the Home School Liaison program has a role in identifying children who are not enrolled in a school or registered for home schooling. The department also advised that a student who moves from public schooling to home schooling will be tracked until they are registered with NESAs as being homeschooled. The department also relies on notifications from agencies such as the Department of Communities and Justice concerning children who may not be enrolled in a school.<sup>320</sup>
- 4.62 At present there is no system in place that would enable government departments to identify children who are not enrolled in any form of schooling, including home schooling. However, the Department of Education is working with the Australian Government to enable use of the Unique Student Identifier to address this issue.<sup>321</sup>

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<sup>314</sup> NSW Education Standards Authority, *Home Schooling Data Reports relating to 2023*, July 2024, <https://www.nsw.gov.au/sites/default/files/noindex/2024-07/home-schooling-data-reports-relating-to-2023.pdf>, pp 4 and 13.

<sup>315</sup> Submission 63, Home Education Association Inc, p 5.

<sup>316</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, p 28.

<sup>317</sup> NSW Government, Education, *Distance education, Guidance on the distance education provision in NSW schools* (4 June 2024), <https://education.nsw.gov.au/teaching-and-learning/curriculum/rural-and-distance-education/distance-education>.

<sup>318</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, p 5.

<sup>319</sup> NSW Government, NSW Education Standards Authority, *NSW Registered and Accredited Individual Non-government Schools Manual*, September 2023, <https://www.nsw.gov.au/sites/default/files/2023-08/nsw-registered-and-accredited-individual-non-government-schools-manual.pdf>, p 65; NSW Government, NSW Education Standards Authority, *NSW Registration Systems and Member Non-government Schools Manual*, September 2023, <https://www.nsw.gov.au/sites/default/files/2023-09/nsw-registration-systems-and-member-non-government-schools-manual.pdf>, p 66.

<sup>320</sup> Evidence, Mr Graham, 23 April 2024, p 51.

<sup>321</sup> Answers to supplementary questions, NSW Department of Education, 10 May 2024, p 1.

### **Vocational education and training, TAFE and university**

**4.63** In New South Wales, schooling is compulsory for children until the age of 17 years, unless they are in full-time education or training or, if above the age of 15 years, they are in paid work or a combination of work and education or training.<sup>322</sup>

#### ***Transitions from school***

**4.64** The Department of Education provides training to careers advisers, transitions advisers and learning support teams to help them support students with disability as they move from schooling.<sup>323</sup>

**4.65** For the post-compulsory sector, the NSW Government reports that:

- There were 252,100 students with a disability enrolled in the vocational education and training sector in New South Wales in 2022.
- TAFE NSW enrolls over 400,000 students per year with around 12 per cent having a disability.
- Adult and Community Education (ACE) providers funded by the NSW Government enrol more than 33,000 students, with approximately 20 per cent of students having a disability.<sup>324</sup>

**4.66** Students can also study vocational education and training as part of their HSC.<sup>325</sup> Online training on disability awareness and inclusion is offered to all TAFE NSW staff.<sup>326</sup>

**4.67** Other support offered by the NSW Government targeted at young people with disability to help them transition to further education or work include:

- A target of 5 per cent of NSW Public Sector Apprenticeship and Traineeship Program roles being filled by people with disability
- Careers NSW, which provides support for those wishing to enter the workforce, change careers or develop new skills. Support is provided through individual career guidance and information. People with disability are one of the key equity groups which are targeted by this service, with approximately 2 per cent of users indicating they have a disability.

#### ***Vocational education and training and TAFE NSW***

**4.68** In accordance with the National Skills Agreement, students with disability are able to access fee-free TAFE places.<sup>327</sup>

<sup>322</sup> *Education Act 1990*, s 21B.

<sup>323</sup> Submission 29, NSW Government, pp 40-41.

<sup>324</sup> Submission 29, NSW Government, p 39.

<sup>325</sup> Submission 29, NSW Government, p 40.

<sup>326</sup> Submission 29, NSW Government, p 43.

<sup>327</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, p 16.

- 4.69** TAFE NSW employs Disability Teacher Consultants who are responsible for establishing and coordinating specialist teaching and non-teaching support services for students with disability. Their tasks include:
- coordinating the appropriate design and modification of teaching programs, including provision of assistive teaching technologies and specialised equipment
  - supporting TAFE NSW teachers of students with disability with their teaching methodologies and appropriate modifications to meet student needs
  - liaising with Disability Employment Services for students with disability as they finish their studies and transition to employment.<sup>328</sup>
- 4.70** Under its Disability and Access Services program, TAFE NSW also provides students with disability with a range of services such as:
- assistive technology and equipment
  - negotiation, review and implementation of reasonable adjustment plans.<sup>329</sup>
- 4.71** Students with disability training through the Smart and Skilled program will also attract funding for their training providers to ensure there are reasonable adjustments and support in place. There were 13,620 students with disability participating in the Smart and Skilled program in 2022–23.<sup>330</sup>
- 4.72** Young people can commence an apprenticeship or traineeship with an employer or while they are still at school. The Department of Education indicates that as of January 2024 there were 3,374 apprentices and trainees with a disability in New South Wales. Training Services NSW offers support to them and their employers, including alerting employers to the Disabled Australian Apprentice Wage Support programs provided by the Australian Government.<sup>331</sup>

### ***University education***

- 4.73** Both the *Disability Discrimination Act 1992 (Cth)* and the *Anti-Discrimination Act 1977* apply to all educational settings, including universities.
- 4.74** The ten New South Wales public universities and their governing bodies are established by New South Wales legislation.<sup>332</sup> However, funding, regulation and quality assurance is a function of the Australian Government Tertiary Education Quality and Standards Agency.<sup>333</sup>

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<sup>328</sup> Submission 29, NSW Government, pp 42-43.

<sup>329</sup> Submission 29, NSW Government, p 43.

<sup>330</sup> Submission 29, NSW Government, p 45.

<sup>331</sup> Submission 29, NSW Government, pp 46-47.

<sup>332</sup> NSW Government, Education, *Higher education and tertiary policy*, <https://education.nsw.gov.au/about-us/our-people-and-structure/higher-education-and-tertiary-policy#University2>.

<sup>333</sup> Australian Government Tertiary Education Quality and Standards Agency, *Our role* (21 October 2020), <https://www.teqsa.gov.au/about-us/teqsa-overview/our-role>.

- 4.75 The Higher Education Disability Support Program 'provides funding to eligible higher education providers, to assist with supporting students with disability to access, participate and succeed in higher education'.<sup>334</sup>
- 4.76 The Program includes the following features:
- funding is allocated based on the number of students enrolled
  - funding is also available for students where equipment and educational supports are required for those students with 'high cost needs'
  - funding can be used for staff training, student support, and to modify course content.<sup>335</sup>

## Teachers and support staff

- 4.77 This section sets out the training requirements to teach or work with children with disability in educational settings. It also outlines the options for professional development available to teachers in the public and non-government schools sector, and those seeking to study through the vocational education and training sector, such as School Learning Support Officers.
- 4.78 All teachers must have active accreditation with NESAs to teach in any educational setting. This requires completing a NESAs-accredited teaching degree, applying for accreditation, and engaging in ongoing professional development to maintain their accreditation. These procedures ensure that all teachers stay up-to-date with the latest knowledge, skills, and teaching methods.<sup>336</sup> NESAs mandate that all New South Wales schools maintain records of all teaching staff involved in delivering NESAs curriculum, including their accreditation details.<sup>337</sup>
- 4.79 Training is available (and in many instances mandatory) for those working with students with disability from early education to school to tertiary education. The following provides an overview of key areas of training available in each sector.

### Early childhood education and care

- 4.80 Early childhood teachers work with children aged two to five years, helping them to develop the skills for future learning.<sup>338</sup> At a minimum, early childhood teachers must have four years of tertiary study with an accredited teacher education program, such as a Bachelor of Education (Primary) or a Bachelor of Teaching (Early Childhood and Primary). Alternatively, they could

<sup>334</sup> Australian Government, Department of Education, Higher Education Disability Support Program, <https://www.education.gov.au/higher-education-disability-support-program>, 13 June 2024.

<sup>335</sup> Australian Government, Department of Education, *Higher Education Disability Support Program*, <https://www.education.gov.au/higher-education-disability-support-program>, 13 June 2024.

<sup>336</sup> NSW Education Standards Authority, *Teacher accreditation*, NSW Government, <https://www.nsw.gov.au/education-and-training/nesa/teacher-accreditation>.

<sup>337</sup> Submission 29, NSW Government, p 26.

<sup>338</sup> NSW Department of Education, *Early childhood teachers*, *Education*, <https://education.nsw.gov.au/teach-nsw/explore-teaching/types-of-teachers/early-childhood-teachers#Qualifications2>.

hold an undergraduate degree with an accredited graduate entry teaching degree such as a Master of Teaching (Primary).<sup>339</sup>

**4.81** The minimum requirement to work in the Early Childhood Education Care sector is a Certificate III, or recognised equivalent, for work as an early childhood educator or kindergarten assistant. A Diploma in Early Childhood Education and Care may be required to work in higher level positions such as childcare centre manager.<sup>340</sup>

**4.82** The department has provided a range of programs 'to support educators and teachers to include children with disability in quality early childhood education'.<sup>341</sup> These include:

- A pilot scholarship program in 2022-2023 for those undertaking a Master of Special and Inclusive Education (specialising in early childhood) or the Graduate Certificate in Early Childhood Disability Childhood Support.<sup>342</sup>
- Up to \$29 million for the 2023-24 ECEC scholarship program for both current and aspiring teachers and educators seeking to obtain qualifications, including early childhood teaching degrees.<sup>343</sup>
- The NSW Identify and Include Children with Additional Needs (IICAN) Program, delivered through TAFE, to help early childhood educators identify children who may need additional support, understand early childhood development and disability, work in a family-centred team approach and consider children when applying universal design principles.<sup>344</sup>
- The NSW Disability and Inclusion Program Sector Capacity Building program, which provides free training and support in implementing early intervention practices to all community preschools receiving Start Strong for Community Preschools funding.<sup>345</sup>
- The NSW Safety and Quality Practice Program, where interactive webinars focused on inclusion and the delivery of quality educational programs for children with disability and developmental delays 'within ECEC settings, including Out of School Hours Care and Family Day Care'.<sup>346</sup>
- The Children's Perspectives in Early Childhood Pedagogy, Policy, and Practice Project, where the department is partnering with early childhood teachers to develop a suite of data-gathering tools that are accessible for all children, including those with disability.<sup>347</sup>

<sup>339</sup> NSW Department of Education, *Early childhood teachers, Education*, <https://education.nsw.gov.au/teach-nsw/explore-teaching/types-of-teachers/early-childhood-teachers#Qualifications2>.

<sup>340</sup> ACECQA, *Qualifications for centre-based services with children pre-school age or under*, <https://www.acecqa.gov.au/qualifications/requirements/children-preschool-age-or-under>.

<sup>341</sup> Submission 29, NSW Government, p 6.

<sup>342</sup> Submission 29, NSW Government, pp 6-7.

<sup>343</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, p 2.

<sup>344</sup> Submission 29, NSW Government, p 7.

<sup>345</sup> Submission 29, NSW Government, p 6.

<sup>346</sup> Submission 29, NSW Government, p 7.

<sup>347</sup> Submission 29, NSW Government, p 7.

## Schools

### *Initial Teacher Education and postgraduate study*

- 4.83** School teacher degrees are offered through undergraduate and postgraduate courses at university. NESA requires all New South Wales teaching degrees to include mandatory studies in disability education to equip graduates with 'a foundational understanding' of how to address the learning needs of students with disability.<sup>348</sup>
- 4.84** Qualified teachers wishing to retrain in inclusive or special education can access scholarships through the Department of Education.<sup>349</sup> There are three possible pathways to retrain - through a masters degree; a masters with a specialisation in the area of deaf and hard of hearing or blind and low vision; and a graduate diploma.<sup>350</sup> The package includes funding of up to \$23,000 towards course fees, as well as up to eight days study leave, and for casual and temporary teachers, appointment to a permanent special education teaching position on completion of their studies.<sup>351</sup> The department advised that to date, 467 teachers have been awarded an Inclusive Practice in Education Scholarship.<sup>352</sup>
- 4.85** The Premier's Inclusive Education Scholarship is also available to support the study of innovative, evidence-based practices around teaching students with disability and well-being needs. The Scholarship, which has now closed, was offered to teachers currently teaching in New South Wales schools or early childhood services. Successful applicants received \$15,000 to travel to undertake a formal study or a program of visits to schools and institutions in 2025.<sup>353</sup>
- 4.86** During evidence, Mr Martin Graham, Deputy Secretary, Teaching Learning and Student Wellbeing, NSW Department of Education, told the committee that teachers must meet the department's criteria for approval to teach special education, by either having a qualification that accords with the department's guidelines or having recognised and verified experience. The latter consists of a minimum two years' full-time teaching in the previous five years, verified by the principal of a school who could confirm that an applicant's teaching experience was relevant to the job skills required.<sup>354</sup>
- 4.87** While keeping up-to-date on evidence-based practices is not mandatory for staff working in special education, Mr Paul Martin, Chief Executive Officer, with NESA explained that the

<sup>348</sup> Submission 29, NSW Government, p 26.

<sup>349</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, p 1.

<sup>350</sup> NSW Government - Education, *Inclusive Practice in Education Scholarship*, Education, <https://education.nsw.gov.au/teach-nsw/enhance-your-career/inclusive-practice-in-education-scholarship>.

<sup>351</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, p 1.

<sup>352</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, p 1.

<sup>353</sup> NSW Government – Education, Premier's Inclusive Education Scholarship, Education, <https://education.nsw.gov.au/teach-nsw/enhance-your-career/nsw-premier-s-teacher-scholarships/premier-s-inclusive-education-scholarship>.

<sup>354</sup> Evidence, Mr Graham, 23 April 2024, p 46.

department does mandate training on developments it deems critical to teaching practices, such as the requirements under the *Disability Discrimination Act 1992 (Cth)*.<sup>355</sup>

- 4.88** The Institute of Special Educators noted that the Australian Institute of School Leaders (AITSL), have no standards explicitly setting out the desired competencies of specialist teachers as there are for regular classroom teachers and executives.<sup>356</sup>
- 4.89** In evidence to the committee, Dr Jennifer Stephenson, Director, Institute of Special Educators, advised that the Institute had developed 'evidence-based competencies required for teachers to be qualified special educators, and evidence-based content standards for postgraduate university programs that prepare special educators'.<sup>357</sup> At present, the Institute believed approximately one-third of those employed in special education were qualified.<sup>358</sup>
- 4.90** School and early childhood teachers can apply for accreditation as a Highly Accomplished and Lead Teacher (HALT) in the area of students with disability. The certification is voluntary and a rigorous assessment process applies to demonstrate how a teacher meets the criteria, including the completion of modules, referee feedback and observation of the teacher through a site visit.<sup>359</sup> NESAs oversees the system of accreditation in New South Wales and has advised that currently there are '15 teachers accredited at HALT who have identified students with disability as an area of expertise'.<sup>360</sup>

### *Continuing professional development*

- 4.91** Ongoing professional development training and support is available to teachers and support staff in public schools, Catholic schools and independent schools. Regular professional development is mandated for all accredited teachers in New South Wales schools.
- 4.92** Teachers are required to complete 100 hours of professional learning over a five-year period, half of which must be endorsed by NESAs's panel of experts or provided through the sector.<sup>361</sup> Teachers are free to select which courses they do, though a minimum fifty hours must be chosen from the mandatory priority areas which include student mental health and students with disability.<sup>362</sup>

<sup>355</sup> Evidence, Mr Paul Martin, Chief Executive Officer, NSW Education Standards Authority, 12 June 2024, p 14.

<sup>356</sup> Submission 17, Institute of Special Educators, p 7.

<sup>357</sup> Evidence, Dr Jennifer Stephenson, Director, Institute of Special Educators, 23 April 2024, p 2.

<sup>358</sup> Evidence, Dr Stephenson, 23 April 2024, p 3.

<sup>359</sup> NSW Government, *Applying for Highly Accomplished or Leader Teacher Accreditation Procedure*, NSW Education Standards Authority, <https://www.nsw.gov.au/sites/default/files/2022-11/applying-for-halt-accreditation-procedure.pdf>, pp 1-20.

<sup>360</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, p 10.

<sup>361</sup> Evidence, Mr Martin, 12 June 2024, p 14.

<sup>362</sup> NSW Education Standards Authority, *Professional Development Requirements*, NSW Government, <https://www.nsw.gov.au/education-and-training/nesa/teacher-accreditation/maintain-accreditation/professional-development-requirements>.

**4.93** Approximately 530 professional development courses for teachers in the priority area of students with disability have been accredited by authorised providers or NESA since mid-2021.<sup>363</sup>

**4.94** The Certificate IV in Training and Assessment, which is a requirement of all VET teachers in NSW, 'includes content that equips teachers to make learning and assessment adjustments for students with a disability'.<sup>364</sup>

***Government schools***

**4.95** The Department of Education offers teachers 13 e-learning courses of accredited professional learning within NESA's priority area of students/children with disability, ranging from 15-minute online modules to longer blended learning courses.<sup>365</sup>

**4.96** The Department of Education advised that members of a school's senior leadership team must complete 4.5 hours training related to disability:

The Disability Standards for Education Leaders is mandatory training for staff who are substantive, active or relieving as a Director, Educational Leadership, Principal, Deputy Principal or Assistant Principal or Head Teacher. This training must be completed on commencement and revisited every three years.<sup>366</sup>

**4.97** Professional learning is also available on inclusive curriculum planning from K–12, which considers the diverse needs of students including those with disability. The training provides evidence-based practices that classroom teachers can use with students with disability.<sup>367</sup> Additional resources which have been co-designed with 'critical stakeholders such as students with disability, their parents and carers, disability and education experts, NSW public school staff and allied health professionals' are available to teaching staff on the department's Inclusive Practice Hub.<sup>368</sup>

**4.98** As at June 2024, 35,709 teachers had undertaken at least one accredited professional development course in the students with disability prior area since July 2021.<sup>369</sup>

**4.99** In its submission, the NSW Government stated that the Department of Education also provides training and inclusive pathways resources and strategies to teachers and school support staff (including careers advisers, transition advisers, and learning and support teams), to equip them to provide transition support to students with disability.<sup>370</sup>

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<sup>363</sup> Answers to questions on notice, NSW Department of Education and NSW Education Standards Authority, 25 June 2024, p 2.

<sup>364</sup> Submission 29, NSW Government, p 40.

<sup>365</sup> Answers to supplementary questions, NSW Department of Education, 10 May 2024, p 3.

<sup>366</sup> Answers to supplementary questions, NSW Department of Education, 10 May 2024, pp 2-3.

<sup>367</sup> Submission 29, NSW Government, p 30.

<sup>368</sup> Submission 29, NSW Government, p 22.

<sup>369</sup> Answers to questions on notice, NSW Department of Education and NSW Education Standards Authority, 25 June 2024, p 2.

<sup>370</sup> Submission 29, NSW Government, p 41.



### *Catholic schools*

- 4.100** As mentioned previously, the Catholic school system offers its educators professional learning such as the OLT Australia Online training courses, designed to support educators to better meet the additional needs of students with disability:

Each course provides an understanding of a specific disability, includes case studies, a range of practical assessment approaches and intervention strategies and adjustments which can be put into practice immediately. The course content is written, and updated regularly, by specialists and educational psychologists.<sup>371</sup>

- 4.101** Catholic Schools NSW stated it favours a trauma-informed approach to teaching de-escalation skills, and restrictive and non-restrictive interventions.<sup>372</sup> However, it also acknowledged that the cost of specialist courses, and releasing teachers from class, meant that not all schools had funding to provide specialised training for staff.<sup>373</sup>

### *Independent Schools*

- 4.102** The Association of Independent Schools of New South Wales (AISNSW) explained that as independent schools operate autonomously, support for professional learning may vary. However, it noted that professional learning could include financial support or study time, and apply to classroom teachers pursuing a postgraduate qualification in special education, or to teachers' aides who have been encouraged to undertake undergraduate teaching qualifications in special education. In the latter instances, special education teaching is seen as a 'natural career progression option that values the experience of those working with students with disability'.<sup>374</sup>

- 4.103** Within the independent school sector, the provision of professional learning to support students with disability may be provided cyclically, or in response to a class demographic.<sup>375</sup>

- 4.104** The AISNSW advised the committee that it provides tailored professional learning and online modules to independent schools, with topics such as supporting 'students with disabilities and diverse needs, disability legislation, anti-discrimination laws, Disability Standards for Education, effective teaching and learning, as well as strategies for managing challenging student behaviour'.<sup>376</sup> The AISNSW also facilitates network groups for school counsellors and teachers that hold roles around wellbeing, with a new group formed this year for learning support teachers.<sup>377</sup>

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<sup>371</sup> Submission 72, Catholic Schools NSW, p 7.

<sup>372</sup> Submission 72, Catholic Schools NSW, p 11.

<sup>373</sup> Submission 72, Catholic Schools NSW, p 10.

<sup>374</sup> Answers to question on notice, The Association of Independent Schools of New South Wales, 25 June 2024, p 1.

<sup>375</sup> Evidence, Ms Ridings, 12 June 2024, p 25.

<sup>376</sup> Submission 30, The Association of Independent Schools of New South Wales, pp 4-5.

<sup>377</sup> Evidence, Ms Ridings, 12 June 2024, p 26.

### Non-teaching roles

- 4.105** Aside from classroom teachers, there are a range of supports available within schools to assist students with disability, and the teachers who work with these students. In public schools they range from school learning support officers (SLSOs) and school learning support officers student health supports (SLSO SHSS) to various allied health services that may provide specialist expertise to students within the school setting.
- 4.106** TAFE offers a Certificate III and IV in School Based Education Support and a Certificate III and IV in Allied Health Assistance, as well as a Certificate II and Certificate III in Auslan. The courses are delivered in various modes.<sup>378</sup>

### *School Learning Support Officers (SLSOs)*

- 4.107** According to the Department of Education website, SLSOs 'provide support for students with identified diverse learning needs including disability in classrooms and other learning environments under the direction and supervision of a teacher'.<sup>379</sup>
- 4.108** SLSOs may be employed by schools and pre-schools, subject to a successful application to the department's Integration Funding Support scheme.
- 4.109** In a special education setting, SLSO tasks can range from administrative duties and assisting with classroom equipment and playground resources, to helping to implement individual education, health care or behaviour plans, to attending to the personal care needs of students. SLSOs may also be employed to provide vision or hearing support (such as braille transcription or sign language interpreting) or, in the case of SLSO Student Health Supports, provide specific medical assistance such as enteral feeding, tracheostomy suctioning, seizure management and ostomy care.<sup>380</sup>
- 4.110** SLSOs can elect to complete a TAFE Certificate course in School Based Education Support or a Certificate III and IV in Allied Health Assistance. The courses are delivered in various modes, including self-paced learning through TAFE Digital.<sup>381</sup>
- 4.111** While holding a Certificate I, II or III in Education Support is desirable in a SLSO, it is not mandatory. The department provides training for SLSOs, including those employed as Student Health Support Officers, such as in the administration of medication and provision of health support.<sup>382</sup>

<sup>378</sup> Answers to questions on notice, TAFE NSW, 13 May 2024, pp 3-4.

<sup>379</sup> NSW Department of Education, *Statement of Duties – School Learning Support Officer*, 10 October 2022, Education NSW, [https://education.nsw.gov.au/content/dam/main-education/industrial-relations/media/documents/sass-pay-equity-2019/SLSO\\_statement\\_of\\_duties.pdf](https://education.nsw.gov.au/content/dam/main-education/industrial-relations/media/documents/sass-pay-equity-2019/SLSO_statement_of_duties.pdf), p 1.

<sup>380</sup> NSW Department of Education, *Statement of Duties – School Learning Support Officer*, 10 October 2022, Education NSW, [https://education.nsw.gov.au/content/dam/main-education/industrial-relations/media/documents/sass-pay-equity-2019/SLSO\\_statement\\_of\\_duties.pdf](https://education.nsw.gov.au/content/dam/main-education/industrial-relations/media/documents/sass-pay-equity-2019/SLSO_statement_of_duties.pdf), pp 2-3.

<sup>381</sup> Answers to questions on notice, TAFE NSW, 9 May 2024, p 3.

<sup>382</sup> NSW Department of Education, *Statement of Duties – School Learning Support Officer*, 10 October 2022, Education NSW, [https://education.nsw.gov.au/content/dam/main-education/industrial-relations/media/documents/sass-pay-equity-2019/SLSO\\_statement\\_of\\_duties.pdf](https://education.nsw.gov.au/content/dam/main-education/industrial-relations/media/documents/sass-pay-equity-2019/SLSO_statement_of_duties.pdf), pp 4-8 and *Statement of Duties – School Learning Support Officer, Student Health Support*, 2 September 2019,

***Health and allied health services***

- 4.112** Under the Specialist Allied Health and Behaviour Support Provider Scheme, New South Wales public schools can use their budget to access a range of services including 'occupational therapy, speech pathology, physiotherapy, exercise physiology and specialist behaviour support'.<sup>383</sup> To be on the scheme providers must demonstrate they are appropriately qualified and meet specific criteria. Schools are not restricted to engaging only these providers but the scheme helps reduce the administrative burden on schools of finding an appropriate service.<sup>384</sup>
- 4.113** The Department of Education advised that, as at May 2024, there are 87 providers on the Specialist Allied Health and Behaviour Support Provider Scheme, 31 of whom offer specialist behaviour support.<sup>385</sup> The department noted that '[s]ince 2020, 106 unique NSW Public schools have engaged providers under the scheme and 5,390 NSW public school students were supported under the scheme'.<sup>386</sup>
- 4.114** In its submission, the NSW Government stated that public schools also receive an allocation of counselling services, including telepsychology services for rural and remote schools.<sup>387</sup> The counsellors also work with school learning and support teams to 'help teachers identify, assess and respond to the individual needs of students and coordinate a whole school approach to improving the learning outcomes' for students.<sup>388</sup>
- 4.115** A Professional Practice Framework sets out the required capabilities and expectations of the various tiers of school counselling staff. At a minimum, school counsellors must have provisional registration with the Psychology Board of Australia, with the understanding that they are working towards general registration as a psychologist.<sup>389</sup> Counsellors are required to maintain their registration with the Psychology Board of Australia, but are not required to maintain their teacher accreditation with NESA unless seeking an advanced certification.<sup>390</sup>
- 4.116** The committee heard that independent schools, by contrast, do not have the same funded access to school counsellors as other sectors. Ms Lisa Ridings, Association of Independent Schools of New South Wales explained that these schools may instead commit to paying for counselling services for students, or enter into arrangements with private practices.<sup>391</sup>

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<https://education.nsw.gov.au/content/dam/main-education/industrial-relations/media/documents/sass-pay-equity-2019/slos-shs-sod.pdf>, p 3.

<sup>383</sup> Submission 29, NSW Government, p 27.

<sup>384</sup> Submission 29, NSW Government, p 27.

<sup>385</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, pp 18 and 16.

<sup>386</sup> Answers to questions on notice, NSW Department of Education, 10 May 2024, p 17.

<sup>387</sup> Submission 29, NSW Government, p 35.

<sup>388</sup> Submission 29, NSW Government, p 27.

<sup>389</sup> NSW Department of Education, *School counselling service professional practice framework*, 10 February 2022, <https://education.nsw.gov.au/policy-library/policies/pd-2020-0473>, p 8.

<sup>390</sup> NSW Department of Education, *NSW Counselling Service Professional Practice Framework*, 2022, <https://education.nsw.gov.au/content/dam/main-education/policy-library/public/implementation-documents/pd-2020-0473-01.pdf>, p 11.

<sup>391</sup> Evidence, Ms Ridings, 12 June 2024, p 25.

## Chapter 5 School culture and access to education

This chapter explores how the culture in educational settings can influence approaches to communication between schools and families, the use of restrictive practices, enrolment of children and young people with disability, and instances of bullying, discrimination and exclusion. It then outlines some of the arguments for and against the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability regarding inclusive education.

### Culture in educational settings

**5.1** This section discusses how school culture can significantly influence access to education for children and young people with disability. Culture within and between schools is the focus of this chapter given the majority of evidence received by the inquiry related to this type of educational setting.

#### Communication between family and school

**5.2** A theme that emerged during the inquiry was the difficulty experienced by families in communicating with schools about adjustments. People with Disability Australia reported that one of their main areas of advocacy was around schools that did not, or at times refused to, 'communicate well with parents when they raise concerns about their child's experience of either not receiving an adjustment or receiving an inappropriate response'.<sup>392</sup>

**5.3** While People with Disability Australia acknowledged that there were many schools who did communicate well, and genuinely wanted to assist families, they also noted that:

The general view for many of our clients is that they are not listened to, there's a poor understanding, and there's not clarity around who is to do what, what the roles are and what the approaches involved are.<sup>393</sup>

**5.4** Given the challenges around communicating and understanding specific and complex needs, People with Disability Australia recommended more support for schools to develop effective channels of communication.<sup>394</sup>

**5.5** Muscular Dystrophy Australia similarly reported that it seems to require a family's substantial effort just to get a meeting with a school to discuss adjustments. Some of their community had encountered instances of schools who did not welcome input from families, due to a mindset that the school are the experts, while other schools lacked the resources or funding to meet a particular need.<sup>395</sup>

<sup>392</sup> Evidence, Ms Joanne Yates, Acting Deputy Chief Executive Officer, People with Disability Australia, 22 April 2024, p 28.

<sup>393</sup> Evidence, Mr Julian Laurens, Senior Policy Officer, People with Disability Australia, 22 April 2024, p 28.

<sup>394</sup> Submission 73, People with Disability Australia (PWDA), p 8.

<sup>395</sup> Evidence, Ms Laura Howard, Senior Community Support Specialist, Muscular Dystrophy NSW, 22 April 2024, p 28.

- 5.6 The following case study illustrates the complexities involved in one family's advocacy for their children with disability to receive adjustments, the potential for misunderstanding, and the challenges around effective communication.

**Case study – Challenges with effective communication with school staff<sup>396</sup>**

Family A's three children require a range of adjustments and considerations, due to one child being deaf, another prone to joint dislocation and another being on the autism spectrum. The parents have built relationships with the school senior executive and have been tireless advocates for their children in regard to planning for and providing supports. This has included:

- liaising with school management to ensure the appropriate applications for supports at high school are lodged within deadline
- seeking information on how entrance tests would be conducted for children with additional needs and achieving adjustments to complete the tests
- alerting the school to the children's grief and difficulty understanding the loss of their grandmother
- promoting small modifications to allow one child to participate in school sport
- advising what is required to safely manage their child's new hearing aid
- taking advocacy support to meetings with senior staff
- meeting with the assigned home school liaison officer.

The family cited many instances of the school welcoming advice and adjustments to support the children's participation, but also several occasions when a lack of understanding from a staff member risked the children's health. The family assert that their children have suffered avoidable injuries at school due to staff failure to have regard to learning plans or the medical advice from their allied health team.

In order to streamline communication between the parents and the school the school instituted a new communication protocol. This requires the family to refrain from any direct communication with individual staff, and for all communication from the family to be via email to a generic school address, except in the case of an emergency. The school has advised this will help streamline communications and ensure that issues are expressed clearly, concisely, fairly and appropriately. The school also provided an email address for the Department of Education so that the family could provide feedback or lodge a complaint about the protocol.

However, as a result of this new protocol, one parent is experiencing a high level of anxiety around communications, and is unclear what the criteria for an emergency are. They feel anxious about raising concerns such as departures from learning plans, and were unable to even introduce themselves to a new School Learning Support Officer during Education Week. Such is the family's concern that they can no longer ensure the safety of their children due to the restriction on communications; they have refrained from sending their children to school until the protocol is lifted.

- 5.7 In contrast, Catholic Schools NSW remarked on the increase in unreasonable expectations by parents regarding adjustments for their child, coupled with a rise in disrespectful interactions

<sup>396</sup> Submission 11, Name suppressed. This case study is based on the contents of the submission.

with school personnel. They highlighted the importance of establishing 'robust and respectful partnerships' amongst all stakeholders in order to achieve their mutual aims.<sup>397</sup>

### Implementation of policies around exclusion and restrictive practices

- 5.8** The committee heard that students with disability are over-represented in suspensions and expulsions. The use of exclusionary practices and enforced part-time attendance, and the absence of effective adjustments, are not consistent with meaningful classroom participation.<sup>398</sup>
- 5.9** Concerns were raised that the failure to effectively implement an individual learning plan, or a behaviour management plan, can give rise to 'exclusionary discipline',<sup>399</sup> with some students with disability being suspended for 'exhibiting behaviours that are directly connected with a disability'.<sup>400</sup>
- 5.10** As noted in Chapter 3, the two key Department of Education policies relevant to exclusion and restrictive practices are the:
- Student Behaviour Policy and Suspension and Expulsion Procedures, updated in 2023 after extensive consultation with critical stakeholders, and operational from the start of Term 1, 2024<sup>401</sup>
  - Restrictive Practices Policy and Framework, which will not be operational until the start of Term 1, 2025. Under this new policy, a restrictive practice is defined as 'any action that has the effect of restricting the rights or freedom of movement of a person, with the primary purpose of protecting the person or others from harm'.<sup>402</sup>
- 5.11** The NSW Government submission highlighted that the updated Student Behaviour Policy and Suspension and Expulsion Procedures emphasise 'inclusive and positive student behaviour support. This approach ensures early access to support, addresses diverse student needs including disabilities, trauma, and cultural considerations in the management of behaviour'.<sup>403</sup>
- 5.12** Aspect, which operates classes and schools for students with autism, recommended that in order to improve the capacity and capability of mainstream schools to improve inclusion, there should be investment in 'building system-wide capability in positive behaviour support. This will help to reduce the use of disciplinary exclusions and restrictive practices'. In particular, they recommend that there needs to be development of autism-specific positive behaviour support.<sup>404</sup>

<sup>397</sup> Submission 72, Catholic Schools NSW, p 9.

<sup>398</sup> Evidence, Dr Cherry Baylosis, Policy and Communications Lead, Disability Advocacy NSW, 26 March 2024, p 31.

<sup>399</sup> Evidence, Ms Rebecca Belzer, Solicitor, Australian Centre for Disability Law, 26 March 2024, p 7.

<sup>400</sup> Submission 32, Youth Law Australia, p 7.

<sup>401</sup> Submission 29, NSW Government, p 36.

<sup>402</sup> Department of Education, *Restrictive practices*, NSW Government, <https://education.nsw.gov.au/schooling/school-community/restrictive-practices>.

<sup>403</sup> Submission 29, NSW Government, p 36.

<sup>404</sup> Submission 31, Autism Spectrum Australia (Aspect), pp 4 and 16.

- 5.13** A number of stakeholders were critical of the 'positive behaviour support approach' to managing behaviour of students with disability:
- there are structural barriers, including 'Hostile and controlling attitudes toward Neurodivergent Children and their families ... shaped by a heavy emphasis over time on behaviourist ideology, including "Positive Behaviour Support"<sup>405</sup>.
  - 'the current system of behaviourism-based approaches to behaviour management should be replaced with neuro-affirming, trauma-sensitive, culturally responsive and neuroscience-informed approaches'<sup>406</sup>
  - for a child with autism 'trauma informed practice far outweighs any positive behaviour plan'.<sup>407</sup>
- 5.14** Several inquiry participants called for all teachers to be trained in trauma-informed practices to assist with managing student behaviour. This included being armed with the skills required to de-escalate the behaviour and knowledge of non-restrictive practices.<sup>408</sup>
- 5.15** The University of Newcastle provided information on its post-graduate courses which incorporate trauma-informed practice. These include their Master of Special and Inclusive Education and associated post-graduate qualifications of Graduate Certificate in Special and Inclusive Support; Graduate Certificate in Early Childhood and Disability Support; and Graduate Certificate in Emotional and Behaviour Support in Education. The University advised that over half of the New South Wales scholarships for teachers to undertake a Masters in special education are held by individuals enrolled in their courses.<sup>409</sup>
- 5.16** In order to make the department's exclusion policy framework more inclusive, Youth Law Australia recommended:
- more guidance on when suspensions are appropriate for students with disability
  - more effective and inclusive alternatives to suspensions for students with disability
  - greater guidance on resolving suspensions including when professional or expert advice should be sought
  - provisions for automatic departmental oversight when the number or duration of suspensions reaches a certain threshold.<sup>410</sup>

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<sup>405</sup> Submission 88, ANPA, page 2.

<sup>406</sup> Evidence, Ms Libby Gunn, National and New South Wales Coordinator, Square Peg Round Whole, 22 April 2024, p 3.

<sup>407</sup> Submission 52a, Mrs Ciara and Mr Tim McKillop, p 2.

<sup>408</sup> See for example, Evidence, Dr Baylous, 26 March 2024, p 34; Evidence, Ms Gunn, Square Peg Round Whole, 22 April 2024, p 3; Evidence, Mr Jonathan Harms, Chief Executive Officer, Mental Health Carers NSW, 22 April 2024, p 46; Submission 14, Disability Council of NSW, p 5; Submission 37, The NSW Special Education Principals and Leaders Association, p 25; Submission 72, Catholic Schools NSW, p 11.

<sup>409</sup> Correspondence, Professor Susan Ledger, Head of School – Dean of Education, University of Newcastle, 2 August 2024, p 1.

<sup>410</sup> Submission 32, Youth Law Australia, p 7.

- 5.17** The NSW Teachers Federation linked the use of restrictive practices, suspension and expulsion to the complexities of providing adjustments and proactive support. A student whose need is being unmet in a system that is under-resourced, may exhibit behaviour that poses safety concerns for those around them.<sup>411</sup> The impact of inadequate resourcing in mainstream schools will be discussed elsewhere in this report.
- 5.18** Recommendations 6.35 and 6.36 and of the Disability Royal Commission recommended stronger legal frameworks for authorisation, review and oversight of restrictive practices, and immediate action to ensure that certain practices are not used, respectively. In particular, the Commission recommended that the following practices are not to be used in education settings, including the following:
- the use of restrictive practices as a form of discipline, in response to property destruction, or for convenience
  - clinical holding as a behaviour support strategy or to punish.<sup>412</sup>
- 5.19** People with Disability Australia considered restrictive practices to be 'a substitute for proper early intervention and individual class support' and called for them to be ended.<sup>413</sup> Dr David Roy, of Newcastle University, questioned the need for physical restraint in particular.<sup>414</sup>
- 5.20** Adjunct Professor Tamara Smith, MP, recommended that restrictive practices in New South Wales public schools be eliminated as soon as possible, in consultation with teachers and unions during the transition period.<sup>415</sup> Family Advocacy advocated for teachers and school staff to be trained in alternatives to physical restraint and seclusion.<sup>416</sup> The NSW Teachers Federation has said that 'every attempt must be made to reduce and eliminate the use of restrictive practices in schools and [is committed] to that goal'.<sup>417</sup>
- 5.21** More specifically, Legal Aid NSW recommended that New South Wales provide legislation to ensure:
- The restraint and seclusion of children in school settings is used as a last resort, and in response to a serious risk of harm to the person with disability or others
  - That restrictive practices are not used as a behaviour support strategy.<sup>418</sup>

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<sup>411</sup> Evidence, Ms Emma Bruce, Organiser, NSW Teachers Federation, 26 March 2024, p 17.

<sup>412</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive Summary, Our vision for an inclusive Australia and Recommendations*, September 2023, p 235.

<sup>413</sup> Evidence, Ms Yates, 22 April 2024, p 25.

<sup>414</sup> Evidence, Dr David Roy, Lecturer in Education, University of Newcastle, 12 June 2024, p 6.

<sup>415</sup> Submission 53, Adjunct Professor Tamara Smith MP, Member for Ballina, p 6.

<sup>416</sup> Submission 62, Family Advocacy, p 25.

<sup>417</sup> Submission 74, AEU NSW Teachers Federation, pp 23-24.

<sup>418</sup> Submission 28, Legal Aid NSW, p 7.



### Schools refusing enrolment or telling parents to send their child elsewhere

- 5.22** The committee received evidence that in early childhood, primary and secondary school settings, parents encountered resistance to enrolling their children.<sup>419</sup>
- 5.23** In his submission to the inquiry, Dr David Roy cited a 2022 survey of gatekeeping and restrictive practices by Australian mainstream schools. Of 745 families with children with disability, 70 per cent 'had experienced gatekeeping measures including refusal to enrol, encouragement to enrol at an alternative school, frequent suspensions and frequent requests for the early pick-up of a child'.<sup>420</sup>
- 5.24** The Federation of Parents and Citizen's Associations of New South Wales told the committee:
- Most of the parents that we speak to that want SSPs right now for their kids with disability also would much prefer their kids to be in a mainstream school. But, given the experiences they've had through gatekeeping through numerous schools and maybe even landing in a school where they weren't gatekept, their experience ended up being less than desirable. So they've had to drop the dream of their kid attending and getting educated in a mainstream school.<sup>421</sup>
- 5.25** One parent remarked that, while not being told their child could not attend the school 'there are many ways in which principals actively discourage your enrolment at their school [and] keep encouraging you to leave, even after you have started at the school'.<sup>422</sup> She also cited indirect ways of gatekeeping, such as not making an allowance for parking near the school for her child who could only walk short distances with a walking frame, and declining permission for teachers who had built a rapport with her child to teach her in her next year of schooling.<sup>423</sup>
- 5.26** Adjunct Professor Tamara Smith, MP, noted in her submission to the inquiry that the 'Australian Coalition for Inclusive Education Roadmap recommends a zero tolerance approach' with consequences for gatekeeping practices, and that 'families and schools be assisted to have a better understanding of what this is and when it occurs'.<sup>424</sup>
- 5.27** Legal Aid NSW, who assist clients in proceedings for non-compliance with the *Disability Discrimination Act 1992 (Cth)* and the Disability Standards for Education, supported the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability recommendations to help 'end gatekeeping in mainstream schools, and require a central record of enrolment refusal/cancellation' decisions and make them subject to independent review.<sup>425</sup>

<sup>419</sup> See for example, Submission 33, Early Childhood Intervention Network, p 4; Submission 31, Autism Spectrum Australia (Aspect), p 14.

<sup>420</sup> Submission 43, Dr David Roy, p 46, citing Poed, S., Cologon, K., and Jackson, R. 'Gatekeeping and restrictive practices by Australian mainstream schools: results of a national survey' (2022) 26(8) *International journal of inclusive education*, pp 766-779.  
<https://doi.org/10.1080/13603116.2020.1726512>

<sup>421</sup> Evidence, Mr Jason Wong, Executive Director, North Sydney, and Board Secretary, Federation of Parents and Citizens Associations of New South Wales, 22 April 2024, p 45.

<sup>422</sup> Submission 64, Name suppressed, p 4.

<sup>423</sup> Submission 64, Name suppressed, pp 5-6.

<sup>424</sup> Submission 53, Adjunct Professor Tamara Smith MP, Member for Ballina, p 3.

<sup>425</sup> Submission 28, Legal Aid NSW, pp 9 and 11.

## Bullying, discrimination and exclusion

- 5.28** The Disability Council of NSW noted that 'bullying, discrimination, exclusion, and systemic ableism continue to be unfortunate features of education systems'.<sup>426</sup> They cited three recent surveys by Children and Young People with Disability Australia of families and students that offered a concerning picture of the experience of young people with disability in educational settings:

**Table 1 Incidence of exclusion, bullying and enrolment refusal**

<p><b>1 . Early childhood settings</b></p> <p>29% of families reported exclusion from excursions, events, or activities</p> <p>28% reported bullying from other children or staff</p> <p>One in five reported that their child had been refused enrolment</p> <p>Nearly a quarter said their child had been limited in the number of hours they were allowed to attend.</p> <p><b>2. School education settings</b></p> <p>Only half (54%) of students reported feeling welcome and included</p> <p>70% of students reported being excluded from events or activities at school</p> <p>65% of students reported experiencing bullying, and 13% preferred not to answer</p> <p>Only 27% reported feeling supported to learn at school</p> <p>Only 35% of families felt teachers and support staff have adequate training and knowledge to support the student.<sup>427</sup></p>
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- 5.29** The Council recommended that the department 'annually publish de-identified data' on the number of complaints made by parents regarding students with disability, the subject of those complaints (bullying, exclusion, discrimination) and the percentage that were satisfactorily resolved.<sup>428</sup>
- 5.30** The Home Education Association advised the committee that while there is limited data available through NESAs on the reasons for homeschooling, feedback from their telephone helpline indicates students with disability make up a sizeable proportion of homeschooled students, and that school trauma has led some families of students with disability to lose faith in the education system.<sup>429</sup>
- 5.31** Due to sensitivities around gathering this data (such as distrust for how it might be used), the Association recommended that NESAs proactively engage with families who are home schooling 'to determine the optimal way to obtain accurate data' on the number of children with disability who are being homeschooled. Importantly, the Home Education Association advocated for

<sup>426</sup> Submission 14, Disability Council of NSW, p 1.

<sup>427</sup> Submission 14, Disability Council of NSW, pp 1-2, quoting *Disappointment and discrimination: CYDA's surveys of the learning experiences of children and young people with disability in 2022 and 2023*.

<sup>428</sup> Submission 14, Disability Council of NSW, p 6.

<sup>429</sup> Evidence, Ms Janelle Barnes, President, Home Education Association, 22 April 2024, p 44.

staff to be trained in trauma-informed practices when working with the families of children and young people with disability who are being home schooled.<sup>430</sup>

**5.32** Evidence was also provided to the inquiry about pathways back into mainstream schooling or other education for students with disability who are at risk of disengagement, or have disengaged, from schooling, such as:

- distance education<sup>431</sup>
- transition, or 'satellite' classes co-located with mainstream schools<sup>432</sup>
- Careers NSW, which supports young people aged 15-19 years to re-engage with education, employment or training through the 'Get Back in the Game' program. Twenty nine per cent of those using this program have indicated they have a disability.<sup>433</sup>

**5.33** Another advocacy group, Youth Action, reported a mindset of ableism that perpetuated the discrimination and abuse encountered by students with disability.<sup>434</sup> In order to share with the committee the voices of young people with lived experience, prior to developing its submission Youth Action sought feedback through an online survey, and face-to-face consultations with students with disability at Five Islands Secondary College in Port Kembla and Verona School in Fairfield.<sup>435</sup> Fifty-seven young people from regional and rural, Sydney metro and Western Sydney told Youth Action 'students with disability were frequently subject to bullying and discrimination from their peers, both at school and online'. This was particularly the case for students with disability in mainstream settings.<sup>436</sup>

**5.34** Youth Action reported that:

- Several young people felt their schools did not address incidents of bullying due to their teachers not being equipped to do so, and because many incidents go unseen or unreported due to staff shortages.<sup>437</sup>
- Teachers and staff could also be bullying or dismissive, especially to students with an 'invisible' disability. One young person was told that they were not 'special needs enough' to access the support they were asking for.<sup>438</sup>
- The anonymous reporting system, Stymie, which is used by some schools, was well received and made it safe to report a wide range of concerns including bullying and discrimination.<sup>439</sup>

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<sup>430</sup> Submission 63, Home Education Association, pp 5 and 7.

<sup>431</sup> *In camera* evidence, Mr Brett Smith, Executive Officer of Operations, AllambiCare, 12 June 2024, page 8, published by resolution of the committee.

<sup>432</sup> Submission 31, Autism Spectrum Australia (Aspect), p 2.

<sup>433</sup> Submission 29, NSW Government, p 50.

<sup>434</sup> Submission 61, Youth Action, p 18.

<sup>435</sup> Submission 61, Youth Action, p 5.

<sup>436</sup> Submission 61, Youth Action, pp 5 and 17.

<sup>437</sup> Submission 61, Youth Action, p 17.

<sup>438</sup> Submission 61, Youth Action, p 18.

<sup>439</sup> Submission 61, Youth Action, pp 18-19.

- 5.35** Youth Action recommended the department consider how anonymous reporting systems could benefit students with disability, and how students might report teachers for bullying.<sup>440</sup>
- 5.36** Students in rural areas experienced a particular set of issues in trying to seek a remedy for bullying. The Isolated Children's Parents' Association of New South Wales (ICPA-NSW) alerted the committee to the impacts of the department's out-of-zone policy, which prevents students from enrolling outside their designated area.<sup>441</sup>
- 5.37** In smaller rural schools, it can be difficult to resolve student bullying.<sup>442</sup> The out-of-zone policy prevents students from seeking an alternative public school education outside their zone, leading some parents to home school or to move towns:
- In an example from our branch, a child had been bullied to the point where she no longer felt she could attend her zoned school. Despite the efforts of the parents to have the issue addressed at their current school they felt that the only alternative for their child to access education was to move to another school which was accessible from their home but out of their zone. The student was not only denied enrolment to the out-of-zone school but also to School of the Air with the out-of-zone policy used to prevent enrolment. The parents have had to rent a house in the new school zone for their child to be able to attend.<sup>443</sup>
- 5.38** ICPA-NSW recommended that the application of the out-of-zone policy to students who are victims of bullying at rural schools be reviewed.<sup>444</sup>

### **Choosing the right educational setting for children and young people with disability**

- 5.39** As indicated earlier in this report, the terms of reference for this inquiry sought comment on the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's recommendations around inclusive education. In recommendation 7.14, three of the commissioners recommended phasing out and ending special or segregated education by 2051. This included no new special schools or classes in support units being built from 2025, and no new enrolments of students with disability in these schools or units from 2032.<sup>445</sup>
- 5.40** In recommendation 7.15, two of the commissioners made alternative recommendations seeking to close the gap between mainstream and non-mainstream schools.<sup>446</sup>

<sup>440</sup> Submission 61, Youth Action, p 19.

<sup>441</sup> Submission 15, Isolated Children's Parents' Association of New South Wales Inc. p 10

<sup>442</sup> Submission 15, Isolated Children's Parents' Association of New South Wales Inc. p 10

<sup>443</sup> Submission 15, Isolated Children's Parents' Association of New South Wales Inc. p 10.

<sup>444</sup> Submission 15, Isolated Children's Parents' Association of New South Wales Inc. p 10.

<sup>445</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report – Volume 7, Inclusive education, employment and housing, Summary and Recommendations*, <https://disability.royalcommission.gov.au>, p 24.

<sup>446</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report – Volume 7, Inclusive education, employment and housing, Summary and Recommendations*, <https://disability.royalcommission.gov.au>, p 25. Please also see [Errata](#) tabled 4 September 2024.

- 5.41 The committee received numerous submissions and much testimony for and against the above recommendations. This section reflects some of the views put forward for each.

### *Special schools*

- 5.42 One argument put to the committee to retain schools for students with disability, Schools for Specific Purposes and support classes in mainstream schools, revolved around the principle of choice.
- 5.43 Proponents of special education argued that families should be as free to choose a special education environment for their child with disability as other families are to choose for their children to attend religious, performing arts, sports, selective and STEM schools, or Montessori and Steiner schools.<sup>447</sup>
- 5.44 Several witnesses also contended that inclusion is a not a physical location, but a type of service provision.<sup>448</sup> Others made opposing claims regarding the evidence for and against special education settings.<sup>449</sup>
- 5.45 Still others maintained that a truly inclusive and supportive education system requires a range of educational settings.<sup>450</sup>
- 5.46 However, the committee heard from many parents who felt very strongly that a special education setting had proven to be the best fit for their child – their child felt supported and was being enabled to realise their potential. Small class sizes, high staff-to-student ratios, qualified and experienced staff and appropriate resourcing all contributed to this, along with the commitment of school leadership to support children to reach their goals.<sup>451</sup> The following three case studies relay how special schools were deemed the best fit for these children with disability.

#### **Case study – Student at St Lucy's and St Edmund's, Wahroonga<sup>452</sup>**

Child A has moderate to severe autism. She started at St Lucy's in Wahroonga when she was six years old. 'Despite every effort and therapy, she was non-verbal and not toilet trained, and she spent most of her initial time at school distressed and frustrated, frequently lashing out'. However, her progress at St Lucy's was such that her parents started to hope that she would one day be accepted into the senior school.

<sup>447</sup> Submission 31, Autism Spectrum Australia (Aspect), p 11.

<sup>448</sup> Evidence, Dr Sally Howell, President, New South Wales Chapter, Australian Association of Special Education, 23 April 2024, p 2; Submission 31, Autism Spectrum Australia (Aspect), p 3.

<sup>449</sup> Submission 31, Autism Spectrum Australia (Aspect), p 12; Evidence, Dr Marika Franklin, Member Advocate, Square Peg Round Whole, 22 April 2024, p 10; Correspondence from Dr Coral Kemp, Institute of Special Educators, to committee, 24 April 2024.

<sup>450</sup> Submission 31, Autism Spectrum Australia (Aspect), p 3.

<sup>451</sup> See for example: *In camera* evidence, Brian, 22 April 2024, pp 3-13, published by resolution of the committee; Submission 47, Name suppressed, p 1; Submission 44, Name suppressed, p 1; Evidence, Mrs Lyn Caton, Assistant Secretary, Independent Education Union of Australia NSW/ACT Branch, 26 March 2024, p 21; Evidence, Dr Sally Howell, President, New South Wales Chapter, Australian Association of Special Education, 23 April 2024, p 8.

<sup>452</sup> *In camera* evidence, Brian and Fiona 22 April 2024, pp 3-14, published by resolution of the committee.

Fast forward to today and Child A is now in Year 8, and she loves her high school, St Edmund's. She attends different classes in English, maths, science, history, French, wood tech and food technology though her level of learning is probably closer to Year 3. She moves around the school with safety and respect, enjoying friendships with her peers.

Her parents cannot speak highly enough of both schools (and note that a number of students from St Edmunds have come from mainstream schools having had poor experiences). At both St Lucy's and St Edmund's, the understanding and culture of support is so pervasive that 'we can turn up at the front door on a bad day and say "We are really sorry. We're having a meltdown today because we didn't have any gold coins; we've only got five dollar notes." We don't have to explain that to anybody. Everybody just says, "Okay. No problem. We've got this".' In addition, a sense of possibility is conveyed to the students by the principal, despite many of the students requiring extensive adjustments: 'He actually talks about setting expectations on the children who go ... [and] on what they're going to achieve'.

Setting expectations for the students, enabling those who can to transition into mainstream schools, and providing vocational training programs are a focus for both schools—St Lucy's has a Coles mini-supermarket and St Edmund's a Woolworths. Students can be taught skills to equip them for a service-type industry. Other types of occupational training are also available for which students can receive a TAFE qualification.

#### **Case study – Student at Warrah Special School<sup>453</sup>**

Child D is a happy, healthy 8 year-old girl. She also has autism, is non-verbal and requires constant supervision. She is easily distressed when her needs aren't being met.

Finding a school that could meet her needs and where she felt comfortable seemed quite elusive, until her parents discovered Warrah Special School. It not only meets all her needs, she thrives there and really enjoys going.

Her family acknowledged that not all children have the same level of needs but options like Warrah need to be available for those children who need these and 'I can't see how any other option would be better for Child D than the one she is currently at'.

#### **Case study – Student at Warrah Special School<sup>454</sup>**

Child E is a non-verbal 7 year old with global developmental delay and autism. In 2022 he attended Kenthurst Preschool. His parents describe this mainstream preschool as having amazing facilities and staff. Child E had a one-to-one support person the whole time he was there, who deeply cared about him and would spend half an hour each day discussing how he was going and how to help him get the best out of the pre-school.

However, the mainstream pre-school was noisy and, despite the intensive support he received, he found it overwhelming and never entirely felt comfortable. He would not participate in activities with the entire class, preferring to be on his own or in small groups.

In 2023 he enrolled in Warrah Special School and his parents believe this is the best place for him. He is in a class with five other children with whom he is learning to work and play. He is learning and developing interests in things his parents couldn't have imagined, like hammering, painting and even numbers.

<sup>453</sup> Submission 9, Mrs Eliza McGillivray, p 1.

<sup>454</sup> Submission 44, Name suppressed, p 1.

Regardless of the funding or support, his parents do not believe that a mainstream school could offer him a comparable environment and he would struggle in the same way that he struggled in preschool.

- 5.47** The committee heard that the recommendation to close special schools had caused great anxiety in many parents. Some parents (and organisations) took exception, even offence, to the use of the term 'segregation'<sup>455</sup> and its evocation of the civil rights struggles and racism in the United States<sup>456</sup>. 'This is not racism. This is providing special support for the most vulnerable people in the community'.<sup>457</sup>
- 5.48** Some inquiry participants firmly rejected the claim of the Disability Royal Commissioner who reputedly remarked they were yet to meet a parent who had chosen a special school.<sup>458</sup>
- 5.49** Those who championed special education told the committee the focus should be on ensuring that children are given the best environment to help them grow and learn. For some children with disability this will be a well-run and funded mainstream school, for others, a well-run and funded specialist school.<sup>459</sup>

### *Mainstream settings*

- 5.50** As noted above, numerous witnesses endorsed the recommendation from the Royal Commission to close special education settings and transition students into an inclusive education in mainstream settings. Advocates cited the United Nations Convention on the Rights of Persons with Disabilities, requirements under anti-discrimination legislation and Australia's Disability Strategy 2021 – 2031, and duties under the Disability Standards for Education 2005 as informing their position.<sup>460</sup>
- 5.51** Mrs Morgan Fitzpatrick, Chief Executive Officer of Koorana Child and Family Services and National Disability Service divisional committee member, testified to the positive experiences she had witnessed from operating two inclusive preschools. Children with special needs were previously located in a separate room within a larger preschool. With the support of allied health professionals, all children are now in the mainstream classroom:

What has been so beautiful to see is the friendships between the students and the confidence between the students in supporting one another with their needs and

<sup>455</sup> Evidence, Dr Howell, 23 April 2024, p 7; Submission 72, Catholic Schools NSW, p 5.

<sup>456</sup> Submission 44, Name suppressed, p 1.

<sup>457</sup> *In camera* evidence, Brian, 22 April 2024, p 9, published by resolution of the committee.

<sup>458</sup> Submission 37, The NSW Special Education Principals and Leaders Association, p 5; Submission 44, Name suppressed, p 1.

<sup>459</sup> Submission 44, Name suppressed, p 1.

<sup>460</sup> See for example Submission 62, Family Advocacy, p 7; Answers to supplementary questions, Children and Young People with Disability Australia, 6 May 2024, pp 2-3, and p 11; Answers to questions on notice, All Means All – the Australian Alliance for Inclusive Education, 17 May 2024, pp 1 and 19-20; Evidence, Ms Loren Swancutt, Chairperson, Inclusive Educators Australia, 23 April 2024, p 2; Answers to supplementary questions, Inclusive Educators Australia, 17 May 2024, p 2.

understanding each other's needs ... If we want an inclusive society of the future, we have to build that now in schools.<sup>461</sup>

- 5.52** Advocacy organisation Square Peg Round Whole declared their support for a 'fully inclusive education where disabled children learn alongside their non-disabled peers in the same schools and the same classrooms following the same curriculum with appropriate accommodations and supports for those who need them'.<sup>462</sup> Square Peg Round Whole also said:

The mainstream system needs to be – and can be – inclusive enough to accommodate and welcome ALL children without exception. We cannot imagine a circumstance in which any child cannot attend mainstream schools if we implement the right reforms to the environment, training of all staff, behaviour support approaches, and education of and collaboration with the whole school community.<sup>463</sup>

- 5.53** The Office of the Advocate for Children and Young People shared the voices of young people about mainstream settings from their extensive consultation with young people with disability:

A number of young people said they enjoyed being offered the same opportunities to access mainstream school and classes as their peers. A student told us: 'I was able to go to a normal school which was able to give me the other side and I was able to learn about people who did not have a disability and mix. I felt like I wasn't disabled as I was the same as another person'.<sup>464</sup>

- 5.54** The following three case studies highlight how children and young people with disability can successfully participate in mainstream settings.

**Case study – Setting high expectations for scholastic achievement<sup>465</sup>**

A parent of a child with a severe neurological condition described her child's first support teacher at preschool as an 'amazing, driven human being, who has set the bar for her future educational life'. From attending a local, community pre-school to joining a mainstream school, her child has 'way surpassed all the expectations and limitations put upon her by many of the allied health and medical experts that we came into contact with during the first 5-7 years of her life'.

**Case study – Transitioning back to mainstream school after significant trauma<sup>466</sup>**

'Amy' recounted how her autistic son suffered bullying and abuse at her local public school, and school refusal, but then successfully transitioned back to mainstream schooling with the support of a 'caring and nurturing environment' and his new school:

<sup>461</sup> Evidence, Mrs Morgan Fitzpatrick, Chief Executive Officer, Koorana Child and Family Services, and NSW Divisional Committee Member, National Disability Services, 23 April 2024, p 17.

<sup>462</sup> Evidence, Ms Libby Gunn, National and New South Wales Coordinator, Square Peg Round Whole, 22 April 2024, p 3.

<sup>463</sup> Answers to supplementary questions, Square Peg Round Whole, Answers to supplementary questions 1-4, 17 May 2024, p 1.

<sup>464</sup> Submission 60, Office of the Advocate for Children and Young People, p 7.

<sup>465</sup> Submission 64, Name suppressed, pp1 and 3.

<sup>466</sup> Submission 13, Name suppressed, p 1. This case study is based on the content of the submission.



... he is thriving in a mainstream independent school with no 1:1 support but a caring and nurturing environment with people who understand disability and are happy to make modifications. I think it's a credit to his new school that he has come so far, they have supported him through his trauma, school refusal, nausea at the sight of kids in uniform, and allowed him to be his unique self and transition to what has been 3 successful years of schooling after transitioning from home schooling.

### **Case study – Opportunities and success at mainstream school as a student with disability<sup>467</sup>**

Grace is 19 years old and lives in Sydney. She has an intellectual disability and attended local primary and secondary schools. She was the only child with disability among 25 in her class at a public school with a fantastic principal until Year 4. Grace has had many terrific opportunities such as being a member of the school choir and performing at venues like the Sydney Opera House and Sydney Town Hall. She's also been one of 10,000 students on a stage, an experience that set a new Guinness Book of Records record. Her parents believe it's the mainstream setting that has given Grace so many amazing experiences, along with what the students have brought to her. They invited her to join the local soccer team and a dance group. Because of this, by the time she went to high school she already had four friends there. And her parents think it will be her friends who also help her find a job, because 'everyone in the local community works for either the Chemist Warehouse or Harris Farm or the IGA. It's friends working along(side) friends'.

- 5.55** Others claimed their experience in special education settings reflected research findings that special education results in limited and poor educational outcomes, and increases the likelihood of bullying, violence, neglect and exploitation.<sup>468</sup>
- 5.56** Inclusive Educators Australia rejected claims that inclusive education means a one size fits all approach, saying instead it involves the delivery of education to diverse cohorts of students who share common environments for learning and flexible ways of teaching.<sup>469</sup> They were critical of arguments against inclusive education that cite sensational examples and 'focus on poor practices or conditions in mainstream schools that are not inclusive'.<sup>470</sup> They also pointed to what they deemed fallacious claims around the efficacy of specialised settings:

We're led to believe that segregated education settings provide practices that are unattainable and untenable by regular schools and classroom teachers.

We're also lead to believe that 'special' practices delivered by 'special' teachers, in 'special' settings results in increased engagement, wellbeing and outcomes ... Despite the increased level of resourcing, including smaller teacher to student ratios and access to more teaching assistants and specialised facilities, segregated education settings continue to experience significant difficulty with supporting and addressing complex and challenging behaviours.<sup>471</sup>

<sup>467</sup> Evidence, Mr Andrew Wilson, Chair, Australian Alliance for Inclusive Education (All Means All), 22 April 2024, pp 11-12. This case study is based on evidence received at a hearing.

<sup>468</sup> Answers to supplementary questions, Inclusive Educators Australia, 17 May 2024, pp 5-6.

<sup>469</sup> Answers to supplementary questions, Inclusive Educators Australia, 17 May 2024, p 6.

<sup>470</sup> Answers to supplementary questions, Inclusive Educators Australia, 17 May 2024, p 5.

<sup>471</sup> Answers to supplementary questions, Inclusive Educators Australia, 17 May 2024, p 5.

**5.57** The Australian Association of Special Educators agreed that there is much more to be done to make all schools more inclusive and to effectively cater to the diversity of disability. However, they cautioned against an approach that required all students with disability to attend an inclusive regular classroom, where the ratio of teachers to students is lower.<sup>472</sup> This would, in effect, be:

... deciding that some children will be denied the education that is going to be more supportive of their educational needs. There are children for whom being placed in that sort of environment is really not going to provide them with an opportunity to maximise their learning and their development towards a more independent life.<sup>473</sup>

**5.58** People with Disability Australia said that:

Our members tell us that choosing an education setting is not a real choice when there are no other options. Parents and carers have indicated a preference to have their child learn in a mainstream classroom in a NSW public school, but are concerned about the lack of school resources to support their child, and persistent ableist attitudes.<sup>474</sup>

**5.59** This view was also reported by Children and Young People with Disability Australia, who noted that if the local mainstream school is not 'prepared' or sufficiently resourced to support a child with disability, this choice has been removed from the parents.<sup>475</sup>

**5.60** Family Advocacy noted that arguments against inclusive education which focus on potential cost tend to 'overlook the fact that segregation itself is extremely resource intensive'.<sup>476</sup>

**5.61** Square Peg Round Whole was adamant that segregated settings are not the best for any child with disability, even where they are happy in that setting:

Some of our members find that their children are happy in segregated settings. And that is to be celebrated, of course, for those individuals at that time. However, those experiences do not negate the fact that is not the best outcome for those children that we could offer as a society. We could offer an education with their peers which results in better academic and better social outcomes. We don't offer that at the moment, and so it makes sense to find the next best option available. But even in the absolute best case scenario, in terms of individual children having a good experience at their segregated school, it is not as good an outcome as it could be and should be.

...

... those decisions are not real 'choices' because the mainstream options are inadequate and often outright abusive towards our neurodivergent children.<sup>477</sup>

<sup>472</sup> Dr Howell, 23 April 2024, p 7.

<sup>473</sup> Dr Howell, 23 April 2024, p 7.

<sup>474</sup> Answers to supplementary questions, People with Disability Australia, 7 May 2024, p 3.

<sup>475</sup> Answers to supplementary questions, Children and Young People with Disability Australia, 6 May 2024, p 2.

<sup>476</sup> Answers to supplementary questions, Family Advocacy, 7 May 2024, p 2.

<sup>477</sup> Answers to supplementary questions 1 - 4, Square Peg Round Whole, 17 May 2024, pp 2 and 5.

- 5.62** Mr Andrew Wilson, Chair of Australian Alliance for Inclusive Education (All Means All), quoted the three commissioners from the Disability Royal Commission who had a lived experience of disability and who recommended phasing out segregated settings:

... 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' ... This has been described as 'coercive choice'.<sup>478</sup>

## Committee comment

- 5.63** Based on the evidence, the committee understands that school culture greatly influences the approaches taken to children and young people with disability within a school setting. A key example of where this plays out is communication between schools and families regarding adjustments for children and young people with disability.
- 5.64** Recommendation 7.6 (a) of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability recommended that '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'. This would be of benefit to many students and families when seeking adjustments and supports, as well as being able to respectfully question the decisions of a school in relation to adjustments and other matters relating to the wellbeing of the student.
- 5.65** The committee also acknowledges that many education stakeholders, including parents of children with disability, called out the distinct challenges and limitations on the ability of educational settings to achieve effective communication between families and schools, citing capacity issues, teacher and resource shortages, unrealistic expectations, training deficits, and funding, among others.
- 5.66** Whilst we recognise these current limitations on educational settings to achieve this goal, the committee is of the view that communication is critical for facilitating an inclusive environment for students. Therefore, the committee recommends that the NSW Government make it a requirement that schools ensure best practice in creating and maintaining communication between the school and the student, their parents and siblings, in line with Recommendation 7.6 (a) of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

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### Recommendation 2

That the NSW Government make it a requirement that schools ensure best practice in creating and maintaining communication between the school and the student, their parents and siblings, in line with Recommendation 7.6 (a) of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

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<sup>478</sup> Evidence, Mr Wilson, 22 April 2024, p 5.

- 5.67** The committee was concerned to hear of cases of unnecessary and inappropriate use of restrictive practices in educational settings in New South Wales. The committee notes the findings and recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. In particular, the committee recommends that the NSW Government continue to monitor the use of restrictive practices in educational settings in New South Wales with a view to reducing their application over time in line with recommendations 6.35 and 6.36 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

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**Recommendation 3**

That the NSW Government continue to monitor the use of restrictive practices in educational settings in New South Wales with a view to reducing their application over time in line with recommendations 6.35 and 6.36 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

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- 5.68** It is concerning to hear that many children and young people with disability are over-represented in suspensions and expulsions due to a lack of understanding and that their behaviours may be linked to their disability or a display of frustration due to inappropriate or non-existent adjustments and supports.
- 5.69** The committee was also concerned about evidence that showed, at times, a school's failure to effectively implement an individual learning plan or behaviour management plan was linked to a negative outcome for children's behaviour and consequently their education.

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**Finding 7**

That, in some instances, a school's failure to effectively implement an individual learning plan or behaviour management plan was linked to negative outcomes for children's behaviour and consequently their education.

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- 5.70** As a result of the evidence received by the committee, we find that the suspension and expulsion policies of the department impact disproportionately on students with disability and their families, are not always effective when based on a positive behaviour approach, and do not overall strike the right balance between students' need for inclusive education with the safety of teachers.

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**Finding 8**

That suspension and expulsion policies:

- impact disproportionately on students with disability and their families
  - are not always effective when based on a positive behaviour approach
  - do not overall strike the right balance between students' need for inclusive education with the safety of teachers.
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- 5.71** In light of this, the committee considers that more needs to be done to ensure children and young people with disability are not unduly suspended or expelled from educational settings for behaviours that can be managed. We are of the view this can be achieved by ensuring all schools use a collaborative, culturally safe and trauma-informed approach to manage the behaviour of students with disability, as well as provide better education on disability and behaviour management for teachers.
- 5.72** The committee commends the incorporation of trauma informed practice in the post-graduate courses in special education offered for teachers by the University of Newcastle and notes that there is already a level of collaboration and expertise sharing between the university and the department.
- 5.73** Therefore, the committee recommends that the NSW Government ensure that schools manage behaviours of students with disability using a trauma informed approach, in the place of positive behaviour learning and that they provide better professional development and support for teachers to help them avoid using suspension and expulsion to manage student behaviour.
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**Recommendation 4**

That the NSW Government ensure that schools:

- manage behaviours of students with disability using a trauma informed approach, in the place of positive behaviour learning
  - provide better professional development and support for teachers to help them avoid using suspension and expulsion to manage student behaviour.
- 

- 5.74** The committee is surprised to learn that many families encounter resistance to enrolling their children in a mainstream school setting, including refusal to enrol, or suggestions that the child be enrolled at a different school. Such resistance is also felt by families who may be already enrolled at a school but who then face active discouragement to leave.
- 5.75** Likewise, instances of bullying, discrimination and exclusion of children and young people with disability, if not adequately addressed, can lead to home schooling as both students and families can be left feeling despondent, traumatised and having lost faith in the education system. We find this to be unacceptable.
- 5.76** In addition, the committee recognises that experiences of bullying, discrimination and exclusion can be even more challenging for those in rural areas.
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- 5.77 The committee understands that there are school-aged children with disability who are disengaged from the school system, often due to one or more factors, including exclusion or suspension, bullying, or not having their educational and wellbeing needs met. This can impact on other family members, including parents and carers having to give up employment in order to supervise their child, and also disproportionately impacts parents and carers with disability who face added barriers.

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**Finding 9**

That there is an unquantified number of school-aged children with disability who are disengaged from the school system, often due to one or more factors, including gatekeeping, exclusion or suspension, bullying, or not having their educational and wellbeing needs met. This can impact on other family members, including parents and carers having to give up employment in order to supervise their child, and also disproportionately impacts parents and carers with disability who face added barriers.

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- 5.78 The committee has observed the work of schools such as Ajuga School and the use of support units by Aspect as means of transitioning students with disability back into mainstream schooling.
- 5.79 We were disappointed to hear, however, from families and organisations, that families often feel unsupported when their child with disability is excluded from schooling, especially as this can also lead to future disengagement with the educational system, leading to students with disability in homeschooling, or not being educated at all.
- 5.80 The committee felt that there was a lack of targeted support to assist families, particularly those where parents also have a disability, to re-enter the school environment. The committee is concerned that exclusions can lead to an irreversible journey away from the school system.
- 5.81 As a result, the committee recommends that the NSW Government provide enhanced/additional support for the transition back into school for children with disability and their families where they are at risk of being disengaged or have been regularly excluded from the school system. This support could incorporate features such as:
- ensuring Home School Liaison Officers are trained in trauma informed practice and working with both students and their families with disability.
  - ensuring NESAs staff are trained in trauma informed practice for enhancing engagement with home schooled students and their families.
  - establishment of transition support units specifically for students with disability who have been regularly excluded from school and are at risk of disengagement. These support units should focus on helping students transition back to schooling in a mainstream classroom.
  - expanding the number of places in schools for specific purposes (emotional and behavioural disturbance) consistent with the transitional model operating at the Ajuga School.
  - greater access to distance education, and part time school attendance, as a transition to mainstream school settings.

- targeted funding for Careers NSW to specifically engage with young people with disability in the 'Get Back in the Game' program, including training for staff in trauma-informed practice.

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**Recommendation 5**

That the NSW Government provide enhanced/additional support for the transition back into school for children with disability and their families where they are at risk of being disengaged or have been regularly excluded from the school system. This support could incorporate features such as:

- ensuring Home School Liaison Officers are trained in trauma informed practice and working with both students and their families with disability.
- ensuring NESA staff are trained in trauma informed practice for enhancing engagement with home schooled students and their families.
- establishment of transition support units specifically for students with disability who have been regularly excluded from school and are at risk of disengagement. These support units should focus on helping students transition back to schooling in a mainstream classroom.
- expanding the number of places in schools for specific purposes (emotional and behavioural disturbance) consistent with the transitional model operating at the Ajuga School
- greater access to distance education, and part time school attendance as a transition to mainstream school settings.
- targeted funding for Careers NSW to specifically engage with young people with disability in the 'Get Back in the Game' program, including training for staff in trauma-informed practice.

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**5.82** The committee acknowledges that a key question relating to this inquiry's subject matter is whether children and young people with disability should be placed in mainstream educational settings or in special education settings, and the level of choice that families and schools have in this decision.

**5.83** The committee acknowledges the array of responses to this inquiry that either supported or opposed the two key recommendations (7.14 and 7.15) of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability around inclusive education. We heard that special education settings offer choice to families similar to that of choosing to send a child to a religious, selective or performing arts school, and that special education settings offer a particular type of service provision. However, we also heard that this 'choice' is not a real one for many, for example when the only 'choice' is between an inaccessible and non-inclusive mainstream setting and a segregated setting.

**5.84** We understand that the recommendation to close special schools has caused great anxiety for many parents and that many families felt special education settings had proven to be the best fit for their child. However, we also note that there are many circumstances in which children could be accommodated within a more inclusive school setting if an appropriate one was available and accessible for families.

- 5.85** The committee is of the view that children and young people with disability in some special school settings are not always being provided with environments and learning experiences which are designed to improve their educational outcomes or meet their social and wellbeing needs. However, the committee acknowledges that in many cases special school settings are providing the best possible educational and wellbeing outcomes for children with disability in their particular circumstances.

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**Finding 10**

That children and young people with disability in some special school settings are not always being provided with environments and learning experiences which are designed to improve their educational outcomes or meet their social and wellbeing needs.

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- 5.86** The school system must focus on the rights of the child with disability, not the interests of the school. The committee recognises that for mainstream settings to be at this point where they can be truly inclusive, they must be properly resourced and supported to do so, and there must be a fundamental paradigm shift in the way we view and treat people with disability.
- 5.87** Educational settings should be child-centred and this may require some children to have access to specialist settings which meet their needs.

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**Finding 11**

Consideration of what is in the best interests of the child in their particular circumstances may require them to have access to specialist settings which meet their needs.

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- 5.88** Therefore, the committee recommends that the NSW Government and the NSW Education Standards Authority work towards a school system – government, independent and Catholic – which enables more students with disability to transition to mainstream, inclusive school settings in circumstances where the child and their parents or carers are of the view that it would be to the benefit of that child. The school system must focus on the rights of the child with disability, not the interests of the school.

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**Recommendation 6**

That the NSW Government and the NSW Education Standards Authority work towards a school system – government, independent and Catholic – which enables more students with disability to transition to mainstream, inclusive school settings in circumstances where the child and their parents or carers are of the view that it would be to the benefit of that child. The school system must focus on the rights of the child with disability, not the interests of the school.



## Chapter 6 Adequacy and appropriateness of resources for students with disability

This chapter discusses the adequacy and appropriateness of resources available to students as they move through the education system.<sup>479</sup> Resources include the teachers and other staff who assist the student with their education and other support needs while in school, the equipment provided, and the built environment. It then outlines issues and barriers for children and young people with disability that have arisen due to structural and regulatory frameworks. This is followed by an examination of the complaints process for families when they wish to raise concerns about the treatment of children and young people with disability. The chapter concludes by discussing the experiences of young people with disability in post-secondary settings.

### Adequacy and appropriateness of resources

6.1 In response to the online questionnaire conducted by the committee as part of this inquiry, a number of teachers and other allied health staff were of the view that there is inadequate support for children with disability at school to get a good education. For example:

- '... working in schools, I have noticed that teachers, SLSOs, and principals are extremely overloaded and most do not have the capacity to learn, reflect and change. So many disabled children and teenagers are not receiving the support they deserve in schools... Many highly masked children slip through the cracks, do not get access to ANY services, and given extremely harmful labels from as young as 5. It is so unfair and heartbreaking to watch'. (Speech pathologist)
- 'No ... there is not enough capacity/ resources/ time to adequately support all children in the classroom, let alone meet the specific and complex needs of children with disabilities ... There is also a significant under diagnosis of children with DLD [Developmental Language Disorder], and inadequate awareness amongst teachers about DLD ...' (Teacher and speech pathologist)
- '... there is lack of attention on the impact of the environment for learning. Classrooms are often very busy spaces, in terms of visual, auditory distractions. Noisy, busy classroom can be a real impediment to learning for many students... support for students with ADHD requires particular attention'.<sup>480</sup> (Parent and occupational therapist).

### Classroom teachers' knowledge and expertise

6.2 Students with disability in a mainstream classroom rely on the ability of the classroom teacher to understand their needs and support them appropriately to learn and interact with their peers. This section explores stakeholders' views on whether classroom teachers are adequately prepared for this task, if initial teacher education courses are sufficient to prepare teachers for

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<sup>479</sup> The majority of the evidence provided to the committee relates to schooling, and generally public schooling provision. Where evidence is provided concerning a setting other than public schooling it will be clearly identified.

<sup>480</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online questionnaire summary report* (2024), pp 5-6.

supporting students with disability in their classrooms, and whether ongoing professional learning is adequate and up to date.

**6.3** A sample of responses from the online questionnaire indicate there is a need for better training for teachers to support and accommodate students with disability in schools. For example:

- 'They need training in trauma informed practice, UDL [Universal Design for Learning], CPS [Creative problem solving] and neuro affirming training'. (Parent/carer with disability)
- 'There are members of staff who seem to be well trained, informed and switched on. But it is inconsistent and seems to be self-driven knowledge and understanding. Older staff members are often the biggest problem, with little to no understanding of behaviours that relate to autism ...' (Parent/carer)
- 'The teachers we have worked with were very well meaning but clearly had only a vague idea about neurodivergence, and little understanding of how it varies from individual to individual. There was often a one-size-fits-all approach, as though an adjustment that worked for one student in the past should be expected to work for all autistic students' (Parent/carer)
- 'There is no special training for staff, other than basic literacy and numeracy training. There is training on catering for diverse needs and specific training may be given on areas such as working with children with ASD, blindness and deafness. There is no intensive training for teachers who need to address significant emotional trauma, ODD [oppositional defiant disorder], moderate to severe intellectual disabilities etc ... or how to actually teach children within a whole cohort of other children while giving the attention needed to kids with special needs'. (Teacher)<sup>481</sup>

**6.4** Conversely, one response to the online questionnaire spoke positively of the level of training for teachers:

My school has a learning hub where students with disability can access one-to-one intervention and support. We have rigorous systems in place for identifying and supporting disability in students and communicate reasonably well with families. Training is frequently offered to teachers and there are specialist staff who can support teachers to differentiate for students with a disability. (Teacher)<sup>482</sup>

**6.5** As described in Chapter 4, the NSW Education Standards Authority (NESA) requires all teaching graduates in New South Wales schools to 'possess a foundational understanding of addressing the learning needs of students with disability'. NESA also provides materials for teachers, learning support staff and others to help them meet the needs of their students with disability. This is also a priority area for teacher professional learning in New South Wales.<sup>483</sup>

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<sup>481</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online questionnaire summary report* (2024), p 16.

<sup>482</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online questionnaire summary report* (2024), p 13.

<sup>483</sup> Submission 29, NSW Government, p 26.

- 6.6** A number of stakeholders were concerned about the level of knowledge and expertise held by classroom teachers. While NESAs has mandated that all courses must contain one unit of special education, according to stakeholders this was seen as not sufficient.<sup>484</sup>
- 6.7** For example, the NSW Special Education Principals and Leaders Association advocated for initial teacher education to include coursework and practical experience in special education, including practicums in specialist schools and classes. Similar views advocating for improved teacher training were expressed by other stakeholders.<sup>485</sup>
- 6.8** The Isolated Children's Parents' Association of New South Wales NSW was of the view that initial teacher training should include a mandatory unit on Autism Spectrum Disorder (ASD). They suggested that the high likelihood of a teacher having a student with ASD in their class made it more cost effective than relying on teachers obtaining these skills via further professional learning.<sup>486</sup>
- 6.9** Likewise, Autism Spectrum Australia (Aspect) highlighted the need for teachers to be supported to have better teaching practices, curriculum and assessment methods for students with autism.<sup>487</sup> They went on to propose, similar to processes in Queensland, Victoria and South Australia, that there should be autism specialists or coaches to build the capacity of mainstream schools, education leaders and teachers to deliver differentiated teaching practices and curriculum and assessment adaptations.<sup>488</sup>
- 6.10** Ms Jennifer Stephenson, Director, Institute of Special Educators, also drew the committee's attention to the potential detriment in mainstream schools where lack of special education expertise can result in 'limited and light-touch adjustments which often do not meet student needs. It can also result in inappropriate use of school learning support officers'.<sup>489</sup>
- 6.11** Youth Action, representing the voice of young people with disability, relayed the concerns of young people about the need for teachers to be better equipped to support them:
- 'Teachers need better education. Ongoing education. They need to understand that some disabilities affect every part of their student's life and that by trivialising the disability you are rejecting that student'.
  - 'I was in a learning support unit and some of my teachers didn't even know where it was which says a lot about the separation and isolation'.<sup>490</sup>

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<sup>484</sup> Evidence, Dr Cathy Little, Associate Professor Special Education and Chair, Initial Teacher Education, New South Wales Chapter, Australian Association of Special Education, 23 April 2024, p 5.

<sup>485</sup> See for example, Submission 37, The NSW Special Education Principals and Leaders Association, p 3; Submission 35, Australian Association of Special Education, pp 4 and 7; Submission 43, Dr David Roy, p 68; Submission 49, Autism Awareness Australia, p 3, Submission 30, The Association of Independent Schools NSW, p 6; Submission 17, The Institute of Special Educators (InSped), p 1.

<sup>486</sup> Submission 15, The Isolated Children's Parents' Association of New South Wales Inc. p 3.

<sup>487</sup> Submission 31, Autism Spectrum Australia (Aspect), p 3.

<sup>488</sup> Submission 31, Autism Spectrum Australia (Aspect) pp 13 and 15.

<sup>489</sup> Evidence, Dr Jennifer Stephenson, Director, Institute of Special Educators, 23 April 2024, p 3.

<sup>490</sup> Submission 61, Youth Action, pp 21-22.

**6.12** The Department of Education advised it has developed resources to help fill this knowledge gap, in particular the Inclusive Practice Hub which was launched in 2021, and provides resources for staff for evidence-based inclusive education.<sup>491</sup>

### **Teacher capacity**

**6.13** The committee heard extensive evidence about the growing demands on teachers to support the diverse learning needs of students in the classroom and the possibility that student needs are not being met. Stakeholders attributed this to a variety of factors including insufficient in-class and specialist support; a growth in the proportion of students with disability, particularly in mainstream classes; and time spent developing individual learning plans and collecting data on students with disability for the NCCD. These are discussed in more detail below.

**6.14** The Advocate for Children and Young People highlighted the experiences of young people with disability and their need for increased access to specialist support, particularly in mainstream schools:

- Many children and young people reported that there was just one School Learning Support Officer (SLSO) in a class where several students needed intensive support.<sup>492</sup>
- Others felt overlooked: 'teachers never really understood me, so they ignored me'.<sup>493</sup>
- Students reported there was a need for 'increasing the presence' of teachers and support staff with qualifications and experience working with young people with disability.<sup>494</sup>

**6.15** The NSW Teachers Federation gave evidence that, while the ideal is for every student with disability to have an individual learning plan and agreed adjustments (as relevant), the reality is that developing plans and implementing adjustments pose resourcing challenges.<sup>495</sup>

**6.16** In their submission, the NSW Teachers Federation outlined some of the demands on the skills and responsibilities of teachers and principals:

- There has been an increase of 30 per cent between 2020 and 2022 in the number of students with mental health issues requiring targeted support in mainstream classes.<sup>496</sup>
- There are not enough school counsellors to counsel and assess the needs of students with disabilities.<sup>497</sup>
- There is no reduction in face-to-face teaching time for teachers to compensate for the additional workload for teachers in collecting NCCD data and creating individual learning plans.<sup>498</sup>

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<sup>491</sup> Submission 29, NSW Government, p 22.

<sup>492</sup> Submission 60, Office of the Advocate for Children and Young People (ACYP), p 11.

<sup>493</sup> Submission 60, Office of the Advocate for Children and Young People (ACYP), p 12.

<sup>494</sup> Submission 60, Office of the Advocate for Children and Young People (ACYP), p 13.

<sup>495</sup> Evidence, Ms Natasha Watt, Senior Vice-President, and Ms Emma Bruce, Organiser, NSW Teachers Federation, 26 March 2024, pp 15-17.

<sup>496</sup> Submission 74, AEU NSW Teachers Federation, p 7.

<sup>497</sup> Submission 74, AEU NSW Teachers Federation, p 8.

<sup>498</sup> Evidence, Ms Watt, 26 March 2024, p 18; Submission 74, AEU NSW Teachers Federation, pp 9-10.

- The need to create individualised learning plans 'to justify the adjustments' leaves specialist learning support teachers with less time to teach students with disabilities, with some teachers advising there is no support for implementation of the adjustments.<sup>499</sup>
- 6.17** Conversely, Catholic Schools NSW were concerned about potentially misleading narratives around the effect of the NCCD data collection process on teachers' workload. They emphasised 'the importance of the NCCD and personalised planning for supporting students with disability as a core part of a teacher's work and essential for meeting responsibilities under the AEA, Disability Discrimination Act (DDA) and Disability Standards for Education (DSE)'.<sup>500</sup>
- 6.18** Mrs Lyn Caton, Assistant Secretary of the Independent Education Union, noted there were shortages of special education teachers, and 'those we have are exhausted'.<sup>501</sup> She noted that some individual learning plans were up to 19 pages 'on average'. The workload to create this and other documentation was 'exacerbated by inadequate staffing and release time'. This was in part due to duplication in data requirements.<sup>502</sup>
- 6.19** The NSW Teachers Federation described some examples of adjustments made for students with disability in the classroom, which are not funded but potentially add to the teachers' workload:
- a student with vision impairment whose needs are accommodated by being seated at the front of the classroom with printed resources provided at a larger magnification<sup>503</sup>
  - adjusting communication approaches for a child with trauma<sup>504</sup>
  - a student who requires the use of an augmented communication systems – such as an iPad, or Picture Exchange Communications System – needing support to use it.<sup>505</sup>
- 6.20** In addition, Ms Watt noted that 'the NCCD data collection tells us that about 30 per cent ... of students last year are having an adjustment that attracts no funding'.<sup>506</sup>
- 6.21** In the early childhood sector, the Early Childhood Intervention Best Practice Network indicated that programs such as High Learning Support Needs only go so far, and limits opportunity for 'input into curriculum to assist with inclusion [and] capacity building'.<sup>507</sup>

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<sup>499</sup> Submission 74, AEU NSW Teachers Federation, p 10.

<sup>500</sup> Submission 72, Catholic Schools NSW, p 9.

<sup>501</sup> Evidence, Mrs Lyn Caton, Assistant Secretary, Independent Education Union, 26 March 2024, p 21. Note: the IEU represents teachers in non-government schools in both the Catholic and independent sector.

<sup>502</sup> Evidence, Mrs Caton, 26 March 2024, pp 20-21.

<sup>503</sup> Evidence, Ms Watt, 26 March 2024, p 15.

<sup>504</sup> Evidence, Ms Watt, 26 March 2024, p 15.

<sup>505</sup> Evidence, Ms Emma Bruce, Organiser, NSW Teachers Federation, 26 March 2024, p 16.

<sup>506</sup> Evidence, Ms Watt, 26 March 2024, p 15.

<sup>507</sup> Submission 33, Early Childhood Intervention Best Practice Network, p 3.

### Continuing professional development

- 6.22** As described previously, accredited teachers must undertake 100 hours of continuing professional development over a 5 year period in order to be accredited to teach in any school in New South Wales. However, there is no requirement for classroom teachers to undertake professional learning relating to students with a specific disability.<sup>508</sup>
- 6.23** NESA has advised, however, between July 2021 and June 2024, a total of 35,709 teachers have undertaken at least one accredited professional development course in the students with disability priority area, and that there are 538 accredited professional development courses available for this priority area.<sup>509</sup>
- 6.24** In their submission, Autism Spectrum Australia (Aspect) advised that it supports a system wide approach, 'beyond web-based resources or a one-off professional development session' that gives teachers practical help to adapt their teaching practises to the needs of students with disability. This could include 'working with staff teams to design and implement effective strategies; coaching and consultancy regarding curriculum, assessment and teaching adaptations'.<sup>510</sup>
- 6.25** The NSW Special Education Principals and Leaders Association advocated for specialised training and ongoing professional development for teachers and support staff. They proposed this could include inclusion specialists to provide in-classroom support and guidance to teachers, and collaborative teams which include psychologists, speech and occupational therapists and support teachers.<sup>511</sup>
- 6.26** Vision Australia also supported the proposal to increase workforce capability as expressed in Recommendation 7.8 of the Royal Commission, in particular they noted that it is:
- ... vital for educators to be armed with the requisite knowledge needed to support children with disability in the education sector. We would urge that part of this should include the development of on-demand training programmes with respect to lower incidence disability types such as blindness and low vision.<sup>512</sup>

### Specialist teachers for students with disability

- 6.27** This section discusses the evidence received by the committee about issues associated with specialist teachers for students with disability, also known as special education teachers, or learning and support teachers (LASTs) in the public school system. Concerns raised by stakeholders ranged from the level of direct teaching provided by these specialist teachers; shortages of specialist teachers; and the qualifications and experience of those in these roles.

<sup>508</sup> Evidence, Mr Paul Martin, Chief Executive Officer, NSW Education Standards Authority, 12 June 2024, p 14.

<sup>509</sup> Answers to questions on notice, NSW Department of Education and NSW Education Standards Authority, 25 June 2024, p 2.

<sup>510</sup> Submission 31, Autism Spectrum Australia (Aspect), p 15.

<sup>511</sup> Submission 37, The NSW Special Education Principals and Leaders Association, p 10.

<sup>512</sup> Submission 24, Vision Australia, p 8.

- 6.28** The Institute of Special Educators highlighted the shortage of qualified special educators, estimating that only one-third of those in special education positions are qualified. They were concerned that this lack of expertise in mainstream schools can mean that students' needs are not being met. This view was echoed by other stakeholders.<sup>513</sup>
- 6.29** Dr Coral Kemp, Chair of the Institute of Special Educators, was concerned that there is not a requirement to hold a special education qualification to be a special education teacher. She noted that departmental advertisements for special education teachers had a requirement for 'approval' to be a special educator. This concern was echoed by other stakeholders.<sup>514</sup>
- 6.30** Dr Kemp also relayed evidence that those with additional qualifications such as a masters in special education are not getting additional pay for becoming a specialised teacher.<sup>515</sup> This was echoed by Dr Jennifer Stephenson, Director, Institute of Special Educators: 'Qualified special educators need to be recognised by pay and status as specialist teachers'.<sup>516</sup>
- 6.31** Mr Martin Graham, Deputy Secretary, Teaching, Learning and Student Wellbeing, Department of Education, advised that approval to teach special education is gained either through holding the appropriate qualification or through 'recognised and verified experience' which includes endorsement by a school principal stating a teacher has the relevant teaching experience and skill set.<sup>517</sup>
- 6.32** The NSW Teachers Federation was concerned that the majority of students with disability in public schools (86 per cent) are in mainstream classes and are not getting the level of specialised teaching support they would in a specialist support unit.<sup>518</sup> They went on to say that in some schools the learning and support teacher may have all their time taken up in developing individual learning plans for students with disability and 'the actual teaching work that kids in the mainstream are getting at that school is with the support of the SLSOs'.<sup>519</sup>
- 6.33** The Teachers Federation also noted that reforms to special education staffing policies has lead to potential uncertainty in allocation of specialist teachers to individual schools:
- Learning and support teacher allocations are revised every three years based on school enrolments and a measure of student learning needs.
  - While many schools receive a specialist teacher allocation, for some schools this can be as little as 0.1 full-time equivalent.<sup>520</sup>

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<sup>513</sup> Evidence, Dr Stephenson, 23 April 2024, p 3; Submission 35, Australian Association of Special Education, p 8.

<sup>514</sup> Evidence, Dr Coral Kemp, Chair, Institute of Special Educators, 23 April 2024, p 3; Evidence, Ms Sally Howell, President, New South Wales Chapter, Australian Association of Special Education, 23 April 2024, p 4; Evidence, Ms Loren Swancutt, Chairperson, Inclusive Educators Australia, 23 April 2024, p 5.

<sup>515</sup> Evidence, Dr Kemp, 23 April 2024, p 3.

<sup>516</sup> Evidence, Dr Stephenson, 23 April 2024, p 3.

<sup>517</sup> Evidence, Mr Martin Graham, Deputy Secretary, Teaching, Learning and Student Wellbeing, NSW Department of Education, 23 April 2024, p 46.

<sup>518</sup> Evidence, Ms Watt, 26 March 2024, p 16.

<sup>519</sup> Evidence, Ms Watt, 26 March 2024, p 17.

<sup>520</sup> Submission 74, AEU NSW Teachers Federation, p 16.

- 6.34** The NSW Teachers Federation cited data which indicated that there were nearly 500 vacancies for specialist teachers to support students with 'physical and intellectual disabilities, autism, ADHD and other complex needs'.<sup>521</sup>
- 6.35** More specifically, the committee heard of examples of shortages of teachers specialising in support for specific disabilities. For example, in their submission, Parents of Deaf Children indicated their concerns with the shortage of qualified teachers of the deaf, as they are necessary to provide education 'tailored to the unique needs' of deaf children.<sup>522</sup>
- 6.36** In response to questions about an Auslan syllabus for K-10, which schools can elect to teach from 2026,<sup>523</sup> Deaf Connect noted that there is a shortage of appropriately skilled teachers to deliver the Auslan syllabus.<sup>524</sup> Deaf Australia noted that a teacher of the deaf and a teacher of Auslan are two very different things; to teach Auslan requires a separate degree.<sup>525</sup>
- 6.37** Deaf Connect noted that the level of Auslan language qualification required to teach this course and a strategy to address a 'national Auslan skills workforce shortage – including Auslan teachers' have not yet been indicated.<sup>526</sup>
- 6.38** Deaf witnesses reported the value of a bilingual education to inclusive education practice, and to building a vital sense of identity amongst deaf students.<sup>527</sup> This extended beyond teaching Auslan in schools, to being truly bilingual by offering entire educational programs in both Auslan and English.<sup>528</sup> An example of such a bilingual school with programs for children with significant hearing loss and/or vision impairment is the NextSense School at Macquarie Park.<sup>529</sup>
- 6.39** Mr Martin Graham, NSW Department of Education, noted that there are no government schools for specific purposes solely for students with hearing loss. Students can receive hearing supports and attend 'hearing classes' in some mainstream settings.<sup>530</sup>
- 6.40** Vision Australia emphasised the importance of specialist vision teachers for students who are blind or have low vision. Specialist teachers are necessary for these students so they may acquire braille literacy, learn how to use adaptive technology, enhance their orientation and mobility, are

<sup>521</sup> Submission 74, AEU NSW Teachers Federation, p 20, citing Lucy Carroll and Nigel Gladstone 'Perfect storm of teacher shortages hits English, maths and special needs, *Sydney Morning Herald*, 28 January 2024, <https://www.smh.com.au/national/nsw/perfect-storm-of-teacher-shortages-hits-english-maths-special-needs-20240124-p5ezp5.html>.

<sup>522</sup> Submission 83, Parents of Deaf Children, p 2.

<sup>523</sup> Evidence, Ms Deborah Summerhayes, Deputy Secretary, Public Schools, NSW Department of Education, 23 April 2024, pp 45; NSW Education Standards Authority NSW Curriculum, *K-10, Auslan K-10 Syllabus*, <https://curriculum.nsw.edu.au/learning-areas/languages/auslan-k-10-2023/overview>.

<sup>524</sup> Answers to questions on notice, Deaf Connect, 6 May 2024, p 2.

<sup>525</sup> Evidence, Ms Catherine Miller, Policy Officer, Deaf Australia, 22 April 2024, p 36.

<sup>526</sup> Answers to questions on notice, Deaf Connect, 6 May 2024, p 2.

<sup>527</sup> Answers to questions on notice, Deaf Connect, 6 May 2024, pp 3-5

<sup>528</sup> Answers to questions on notice, Deaf Australia, 7 May 2024, p 2.

<sup>529</sup> Answers to questions on notice, Deaf Australia, 7 May 2024, p 2.

<sup>530</sup> Evidence, Mr Graham and Ms Summerhayes, 23 April 2024, pp 45-46.



trained in compensatory skills, have independent living skills, acquire social skills, and obtain career counselling.<sup>531</sup>

- 6.41** With regard to students with autism, Ms Natasha Watt, NSW Teachers Federation, noted the large proportion of students in mainstream classes with autism who are not getting proper support, particularly for behavioural issues which can lead to exclusion. She advocated for itinerant support teachers for students with autism, to support students in mainstream classes. She contended that this would also reduce the incidence of suspensions and expulsions in the cohort at the same time as meeting the educational needs of these students.<sup>532</sup> The need for mobile behaviour specialists to support children with autism was also advocated by Autism Awareness Australia.<sup>533</sup>

### Teachers with lived experience of disability

- 6.42** The importance of having teachers with lived experience of disability and/or a relevant cultural background was highlighted by several witnesses, including the First Peoples Disability Network, Deaf Australia and the Cerebral Palsy Alliance.<sup>534</sup> The Disability Council NSW, a statutory body that advises the Minister for Disability Inclusion, noted that only 2.7 per cent of the New South Wales public sector teaching service had disability, which is significantly lower than the government target of 5.6 per cent.<sup>535</sup>
- 6.43** The First Peoples Disability Network advised that there is a demand for the kind of expertise the Network offers in training teachers about the issues that impact Aboriginal children with disability.<sup>536</sup> Mr Damian Griffis, Chief Executive Officer, First Peoples Disability Network advised that there is not the workforce to implement the recommendation of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability to place First Nations expertise within inclusive education units, and would require significant investment to implement.<sup>537</sup>
- 6.44** In the course of their visit to Aspect Central Coast School, the committee learned that the schools provide ongoing training to support staff in their work with students with autism. The committee heard that professional learning programs are co-designed with people with autism, and are often delivered by staff with autism.<sup>538</sup>
- 6.45** Ms Shirley Liu, Acting Chief Executive Officer, Deaf Australia, advised that there are barriers for deaf teachers 'registering' with the Department of Education. Unlike the other states and territories, some deaf teachers are being required to pass hearing tests, and there are no deaf

<sup>531</sup> Submission 24, Vision Australia, p 10.

<sup>532</sup> Evidence, Ms Watt, 26 March 2024, pp 16-17.

<sup>533</sup> Submission 49, Autism Awareness Australia, p 6.

<sup>534</sup> Evidence, Mr Damian Griffis, Chief Executive Officer, First Peoples Disability Network, 23 April 2024, p 19; Evidence, Ms Shirley Liu, Acting Chief Executive Officer, Deaf Australia, 22 April 2024, p 35; Submission 39, Cerebral Palsy Alliance, p 5.

<sup>535</sup> Submission 14, Disability Council NSW, p 4.

<sup>536</sup> Evidence, Mr Griffis, 23 April 2024, p 19.

<sup>537</sup> Evidence, Mr Griffis, First Peoples Disability Network, 23 April 2024, p 21.

<sup>538</sup> School site visit summary report, Appendix One of this report p 151.

teachers who use Auslan working in New South Wales public schools.<sup>539</sup> She emphasised the importance of a deaf teacher for deaf children in providing role models and access to the Deaf community, particularly with respect to those children from hearing families.<sup>540</sup>

- 6.46** In response to the evidence from Deaf Australia, Mr Martin Graham, NSW Department of Education, advised such claims are incorrect: 'We have many who hold approval to teach who are hard of hearing or deaf, and the department supports them, including in the interview and being able to provide interpreters for the interview as well'.<sup>541</sup>
- 6.47** The department also advised it does not collect statistics on types of disability amongst its staff, however, staff completing the department's voluntary Equal Employment Opportunity can report if they have a disability and whether it requires an adjustment.<sup>542</sup>

### **Non-teaching support staff**

- 6.48** This section discusses non-teaching support staff who assist teachers in educating students with disability. This may include those who assist students with learning in the classroom but are not teachers, those who provide medical assistance, school counsellors, translators, and behaviour support staff. Issues identified by stakeholders included insufficient numbers of support staff, whether they be in classroom support (generally called School Learning Support Officers – SLSOs in public schools) or access to specialised support. Other concerns included support staff who were not appropriately trained to meet student needs, or who were left to perform a teacher's role in the classroom.

### ***School Learning Support Officers (SLSOs)***

- 6.49** Evidence was provided about the important role of School Learning Support Officers (SLSOs) in the public education system and the pressures they are under. SLSOs are 'directly responsible for the integration or the supervision of children with a disability', however, as expressed by Mr Troy Wright, Acting General Secretary of the Public Service Association, they are 'overwhelmed'.<sup>543</sup> He highlighted the current absence of policy guidance for SLSOs in managing student behaviour. He said SLSOs are

... concerned that this leaves both them, as individuals and workers, and the department in a potential black hole of liability where they're unsure of their roles and responsibilities and unsure of what they're supposed to practice in the event of a difficult behavioural episode by a student.<sup>544</sup>

- 6.50** In addition, Mr Wright noted that SLSOs need more training and professional development. He raised the issue that there are growing numbers of children with complex medical and health

<sup>539</sup> Answers to questions on notice, Deaf Australia, 7 May 2024, p 1; Evidence, Ms Liu, 22 April 2024, p 35.

<sup>540</sup> Evidence, Ms Liu, 22 April 2024, p 35.

<sup>541</sup> Evidence, Mr Graham, 23 April 2024, p 45.

<sup>542</sup> Answers to supplementary questions, NSW Department of Education, 10 May 2024, p 2.

<sup>543</sup> Evidence, Mr Troy Wright, Acting General Secretary, Public Service Association, 26 March 2024, p 26.

<sup>544</sup> Evidence, Mr Wright, 26 March 2024, p 26.

needs that require treatment at school and that SLSOs are performing tasks that they do not feel 'comfortable, trained or qualified' to carry out. He was of the view that these tasks should be carried out by a SLSO - Student Health Support, which are more specialised roles.<sup>545</sup>

- 6.51** The Australian Association of Special Education advised that SLSOs, while vital, need to be used appropriately in the classroom, and cannot replace the role and expertise of the classroom teacher.<sup>546</sup> Family Advocacy went on to highlight the benefits and limitations of teacher assistants:

They can act as interpreters or mediators, discouraging harassment or belittling, but can limit opportunities for peers to speak to each other freely. There is the concern that the student[s] with the greatest need end up receiving instruction from a teaching assistant (who is the less educated on how to teach), and spending less time with their teacher.<sup>547</sup>

- 6.52** The Disability Council NSW reported on a survey of families and students with disability conducted by Children and Young People with Disability Australia (CYDA) in 2022 and 2023 which found that approximately only a third of respondents considered that teachers and support staff had adequate training and knowledge to support the student.<sup>548</sup>

#### ***Other specialist support staff***

- 6.53** In another example, Mr Brent Phillips, Chief Impact Officer, Deaf Connect noted there is a shortage of skilled Auslan interpreters in the classroom. He said it is a 'serious concern' that many Deaf children are accessing interpreters with only 6 months experience in the classroom, whereas 'it should be the most professional and the most skilled interpreters, with 20 or 30 years of experience, entering the classroom and interpreting for our children'.<sup>549</sup> This concern was also reflected in advice from the Disability Council NSW.<sup>550</sup>

#### **Allied health professionals**

- 6.54** Allied health professionals include psychologists, occupational therapists and speech pathologists. Access to these professionals is vital for children and young people with disability as they are relied on for diagnosis, support and ongoing treatment. These experts can help inform student learning plans, and have the potential to work with teachers and early educators. As described by UTS Childcare Inc, guidance from health experts helps educators understand the child's 'development in relation to their disabilities' and access additional support for them,<sup>551</sup> a view shared by many stakeholders.<sup>552</sup> However, there was extensive evidence that the absence of this support can be detrimental to the student's achievement and wellbeing, as illustrated in some examples below.

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<sup>545</sup> Evidence, Mr Wright, 26 March 2024, p 28.

<sup>546</sup> Submission 35, Australian Association of Special Education, p 9.

<sup>547</sup> Submission 62, Family Advocacy, p 18.

<sup>548</sup> Submission 14, Disability Council NSW, pp 1-2.

<sup>549</sup> Evidence, Mr Brent Phillips, Chief Impact Officer, Deaf Connect, 22 April 2024, p 37.

<sup>550</sup> Submission 14, Disability Council NSW, p 5.

<sup>551</sup> Submission 34, UTS Child Care Inc, p 2.

<sup>552</sup> Submission 72, Catholic Schools NSW, p 14; Submission 64, Name suppressed, p 17; Submission 14, Disability Council NSW, p 7; Submission 23, Occupational Therapy Australia, p 4.

*In-school services*

- 6.55** These services may be provided by schools. In New South Wales public schools, for example, there is the Specialist Allied Health and Behaviour Support Provider Scheme, whereby schools can use their budget to access services such as occupational therapy, speech pathology, physiotherapy and specialist behaviour support.<sup>553</sup> Since 2020, 5,390 public school students have been supported by this scheme.<sup>554</sup>
- 6.56** Occupational Therapy Australia (OTA) urged the committee to adopt recommendation 7.8 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability specifically to employ occupational therapists and other allied health professionals directly in the department as part of regional teams.<sup>555</sup>
- 6.57** These teams could work with teachers to build staff capacity, an issue canvassed earlier in the report. OTA provided a case study outlining the value of school-based, rather than external, occupational therapists, where the student benefitted far more from occupational therapy within a small class group, rather than by accessing an external service:

The school occupational therapist began taking a small group of students each week to work on barriers for each of them, bringing the students into the fold to problem solve as a group. Through this collaboration the students were able to brainstorm ideas, like where to go that's not as noisy, who's someone that's not scary to ask for help, is there anyone who's nice to meet in the morning before going to class, etc ...<sup>556</sup>

- 6.58** The Australian Psychological Society noted that there is approximately one school psychologist to every 1,500 students, despite a Federal Parliament inquiry recommending one psychologist to every 500 students. Existing vacancies in schools are difficult to fill, with up to 60 per cent of positions in rural and remote areas remaining unfilled.<sup>557</sup>

*Access to external allied health services*

- 6.59** Students with disability also access allied health professionals through external settings, including those funded by the NDIS. However, there were many accounts provided to the inquiry about the cost and difficulty for children and young people and their families being able to access this support, both for initial diagnoses and ongoing therapies and treatment.
- 6.60** The Association of Independent Schools NSW indicated that students and their families can struggle to access support from allied health professionals, particularly in rural and regional areas, and reported wait lists for speech pathology in excess of 12 months.<sup>558</sup> The Isolated Children Parents Association also highlighted the difficulty of those in remote areas accessing allied health professionals, providing an example of parents having to travel over 300 kilometres one way to access a speech or occupational therapist.<sup>559</sup>

<sup>553</sup> Submission 29, NSW Government, p 27.

<sup>554</sup> Answers to questions on notice, Department of Education 10 May 2024, p 17.

<sup>555</sup> Submission 23, Occupational Therapy Australia, p 3.

<sup>556</sup> Submission 23, Occupational Therapy Australia, p 4.

<sup>557</sup> Submission 65, Australian Psychological Society, pp 4-5.

<sup>558</sup> Submission 30, Association of Independent Schools NSW, p 11.

<sup>559</sup> Submission 15, Isolated Children Parents Association of NSW, p 5.

- 6.61** Ms Grace Fava OAM, Founder and Chief Executive Officer, Autism and Advisory Support Services, suggested that school counsellors could be used to assess students, in particular for autism or ADHD, to overcome the issues of long waiting times for families to get their child assessed and diagnosed:

... you've got long waitlists and it's very expensive and out of reach for most of the people who we serve. Having it in the schools, it is on the spot. You can offer ... collaboration with the family ... every school counsellor is now a psychologist. They should be able to do those tests.<sup>560</sup>

- 6.62** In their submission, Legal Aid NSW advocated for 'a holistic approach' where NSW Department of Education, NSW Health and the Department of Communities and Justice work together to provide diagnostic services in schools, in response to the difficulty for many families in getting a formal diagnosis of disability.<sup>561</sup>

- 6.63** The committee sought feedback from the department about the possibility for school counsellors to provide diagnoses for conditions such as ADHD and autism, particularly in rural and remote areas where access to specialists is particularly difficult. Mr Martin Graham, Deputy Secretary, Teaching, Learning and Student Wellbeing, NSW Department of Education, expressed caution about school counsellors making a diagnosis for the purpose of accessing medical services:

One of the issues with our service making a formal diagnosis would be how that connects through to the health services. We provide education, and our supports are very much focused on what support is required to access education on the same basis as other students. That question about what the therapeutic supports might need to be is the basis of that diagnosis. For example, accessing NDIS services and so on, that moves off education and into that other space. We can certainly understand the logistical challenges over all areas, but whether the counselling service can expand to take on a medical as well as that educational purpose, I think, would be a challenge for us.<sup>562</sup>

- 6.64** He emphasised that school counsellors provide functional assessments of student need and that the NCCD also provides the opportunity for students to be provided the necessary adjustments, without the need for a formal diagnosis.<sup>563</sup>

### **Access to early intervention**

- 6.65** Early intervention services for children with disability are vital, they can 'prevent or mitigate the long-term effects of developmental delays and disabilities' and potentially reduce the need for specialised intervention later in the child's life.<sup>564</sup> The following sections outline some of the effects on children and their families where early intervention support is not available.

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<sup>560</sup> Evidence, Ms Grace Fava OAM, Founder and Chief Executive Officer, Autism and Advisory Support Services, 22 April 2024, p 22.

<sup>561</sup> Submission 28, Legal Aid NSW, pp 18- 19.

<sup>562</sup> Evidence, Mr Graham, 23 April 2024, p 42.

<sup>563</sup> Evidence, Mr Graham, 23 April 2024, p 42.

<sup>564</sup> Submission 37, The NSW Special Education Principals and Leaders Association, p 23.

- 6.66** Parents of Deaf Children emphasised the importance of early exposure to both sign and spoken language for deaf and hard of hearing children. If they suffer 'language deprivation' in the early years there can be a significant impact on all aspects of their lives, including academic, social integration and mental health.<sup>565</sup>
- 6.67** Ms Grace Fava, Autism and Advisory Support Services decried the lack of early intervention units for children with autism: 'about half a dozen early intervention units to serve thousands of kids'. She went on to describe how those children were often in preschools, that don't have the resources to support them, resulting in suspensions.<sup>566</sup>
- 6.68** The Australian Psychological Society outlined the impacts on the schooling of children with disability when access to appropriate psychological care is limited:
- There are negative effects on the inclusion and participation in early childhood settings, which can further affect the entire early childhood setting if students with disabilities 'express distress through behaviours that disrupt, or even endanger, children and staff'.
  - There may be poor transitions to formal schooling if young children have missed out on early childhood assessments, which are critical for planning support for the transition to school.<sup>567</sup>
- 6.69** Mrs Nicole Rogerson, Director, Autism Awareness Australia, also described the importance of early diagnosis and intervention for children with autism. She outlined the effect of a lack of diagnosis prior to starting school, and hence no early intervention, which can compound as the child progresses through school, and potentially result in school exclusion.<sup>568</sup>
- 6.70** Many witnesses talked about the role of NDIS funding to support early intervention. A number noted that the recent review would change how early intervention is facilitated and funded, with a greater focus on delivery in early childhood settings and schools (Foundational Support).<sup>569</sup>
- 6.71** For example, Autism Spectrum Australia (Aspect) explained in their submission how important the transition to Foundational Supports (Early Intervention) will be:

Schools and early learning centres are set to become key delivery locations for anticipated Foundation Supports (Early Intervention) that will replace NDIS support for many children. NSW needs to make a coherent and coordinated contribution to the Foundational Support Strategy that is being developed. A new advisory body that includes autism expertise could help build this contribution and inform implementation.<sup>570</sup>

<sup>565</sup> Submission 83, Parents of Deaf Children, p 2.

<sup>566</sup> Evidence, Ms Fava, 22 April 2024, p 22.

<sup>567</sup> Submission 65, Australian Psychological Society, p 2.

<sup>568</sup> Evidence, Ms Nicole Rogerson, Director, Autism Awareness Australia, 22 April 2024, p 17.

<sup>569</sup> Submission 14, Disability Council NSW, p 7; Submission 26, National Disability Service, p 4; Submission 28, Legal Aid NSW, p 19; Submission 72, Catholic Schools NSW, p 6.

<sup>570</sup> Submission 31, Autism Spectrum Australia (Aspect), p 3.

**Other resources to support students with disability**

6.72 In addition to support provided by teachers, support staff, and allied health professionals, students with disability often rely on physical supports and adjustments to help them access education. These may include adaptations to the built environment to meet their mobility, sensory or other physical needs, or special technology to help them access curriculum materials.

***Built environment***

6.73 When asked in the online questionnaire for this inquiry, about the adequacy and adaptability of the built environment in educational settings for students with disability, a range of responses were received. A number of responses indicated that schools were accessible and facilitated student mobility:

- 'Yes. My school had ramps and lifts provided. My school also made special accommodations such as lowering the office window for me personally and creating a personal study schedule to allow me to leave class early in order to ensure my safety'. (Student with disability)
- 'Neither of my children have physical disability, however, all classrooms and facilities are easily accessed and accessible with ramps for those that do'. (Parents/carers)
- 'Yes. They have lifts and painted areas for vision impaired. We have a lot of stairs ...' (Parents/carers)
- 'Yes. We have accessible classroom and are well equipped for physical disability'. (Teacher)
- 'We are a fully accessible school'. (Principal)<sup>571</sup>

6.74 Other responses provided examples where schools were not physically accessible, including for students who were neurodivergent:

- 'Many schools have demountable classrooms, which are inaccessible by design. Older schools also tend to have older buildings, which are not accessible. I have heard teachers complain about having to move their classes from their usual classroom to an accessible one, because a new student has a physical disability or a current student has been injured in a way that affects their mobility'. (Person with disability)
- 'There are ramps but no lifts ...' (Parent/carer)
- 'Ramps in most places, but generally not a good place for anyone on wheels as there are narrow paths and dirt paths throughout the school'. (Parent/carer)
- 'For neurodivergent/sensory overload kid – long noisy corridors and hot assembly halls where they sit on the floor are a major problem that is often overlooked'. (Parent/carer)<sup>572</sup>

6.75 Comments from teachers and educators indicated ongoing difficulties with physical access, including in older schools:

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<sup>571</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online questionnaire summary report* (2024), pp 14-15.

<sup>572</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online questionnaire summary report* (2024), pp 15.

- 'Our school is old, and although it has ramps and lifts, the classrooms are inaccessible, small and crowded'.
- '... a kindergarten peer of my younger child who broke their leg was unable to access school for the 6 weeks he was on crutches because he couldn't safely navigate the stairs to his classroom'.<sup>573</sup>

**6.76** The Advocate for Children and Young (ACYF) told the committee of concerns it had received about the impact of inaccessible school buildings and facilities. For example, students described situations where classrooms and toilets had limited or no wheelchair access, or where their classes were held on the third floor, making it challenging for students with physical disability to access.<sup>574</sup>

**6.77** The Department of Education has infrastructure design, planning and advisory services for inclusive design as part of School Infrastructure, in line with the requirements of the Disability Standards for Education 2005. As outlined in the NSW Government submission:

All new school buildings are designed and built with accessibility in mind and in accordance with the DDA Access to Premises – Building Standards 2010, to ensure equal access. Schools are built to be welcoming and fully accessible. Some examples of accessible features include lifts, ramps and accessible bathrooms. All new buildings meet the Building Code of Australia and DoE's Educational Facilities Standards and Guidelines. Targeted upgrades of existing buildings can include ramps, handrails, tactile ground surface indicators, accessible sanitary facilities and passenger lifts.<sup>575</sup>

**6.78** Despite the above requirements, the NSW Special Education Principals and Leaders Association pointed to inadequate infrastructure in special schools, including special schools that were not purpose-built, lack therapy and break out rooms, and appropriate toilet and change facilities.<sup>576</sup> This view was echoed by the Public Service Association in relation to mainstream classes, where facilities are not adequate for the needs of children with disability.<sup>577</sup>

**6.79** The Public Service Association noted that there are many classrooms with accessibility issues, and expressed concern that few mainstream schools could accommodate children without extensive modifications, such as specialist wheelchair lifts.<sup>578</sup> Similar views were expressed by the NSW Teachers Federation.<sup>579</sup> Ms Natasha Watt from the Federation indicated:

Over the last decade, until about 2021, capital investment in public schools was also half that of the private school counterpart. If we were to talk about that in aggregate figures, in the year of 2021 that was a \$2.7 billion gap between private school kids as an aggregate and public school kids.<sup>580</sup>

<sup>573</sup> Portfolio Committee No. 3 – Education, NSW Legislative Council, *Online questionnaire summary report* (2024), pp 14-15.

<sup>574</sup> Submission 60, Office of the Advocate for Children and Young People, p 12.

<sup>575</sup> Submission 29, NSW Government, pp 23 and 28.

<sup>576</sup> Submission 37, The NSW Special Education Principals and Leaders Association, p 11.

<sup>577</sup> Evidence, Ms Julie-Ann Bond, Industrial Manager, Public Sector Association, 26 March 2024, p 29.

<sup>578</sup> Submission 66, Public Service Association of NSW, p 4.

<sup>579</sup> Submission 74, AEU NSW Teachers Federation, p 12.

<sup>580</sup> Evidence, Ms Watt, 26 March 2024, p 15.



- 6.80** In the course of visiting Ajuga Special School, some committee members heard how the school site's history, in addition to its heritage protections, was challenging for Aboriginal and Torres Strait Islander people.<sup>581</sup>
- 6.81** Ms Tina Kordrostami, Director of Mental Health Architectural Design, advocated for specific school designs to meet the needs of neurodiverse students. She noted that the physical environment can be adapted to meet their needs and avoid environmental 'triggers' which may cause them to 'act out'. She outlined adaptations that could be applied to both indoor and outdoor spaces and could incorporate features such as 'thermal and acoustic comforts', appropriate lighting, sensory spaces, and transition spaces between outside and the classroom. She also noted that schools need to be designed to be adaptable to meet the different needs of children, incorporating features such as moveable walls and partitions.<sup>582</sup>

### *Technology*

- 6.82** Assistive technology is vital for many people with disability to participate in education. Mr Chris Edwards, Vision Australia, described examples of important assistive technology for blind and low vision children. He described the importance of screen reader applications—while noting that students will need support to learn how to use them—and relayed that while schools may be willing to make adjustments, they may not have the capability and competency to do so.<sup>583</sup> This concern about schools being unable to implement assistive technology was similarly reported by Parents of Deaf Children in their submission. They noted that schools require adequate funding and professional development support in implementing these technologies.<sup>584</sup>

### **Funding for students with disability**

- 6.83** As discussed in Chapter 4, all schools receive public funds from the Australian and NSW Government in accordance with the Schooling Resource Standard. The NSW Department of Education allocates funds to specific schools using a base and targeted loading as part of the Resource Allocation Model (RAM), which incorporates data from the NCCD to determine funding levels for individual students.
- 6.84** Many stakeholders were concerned that resourcing levels for schools in the public and private sector are insufficient to meet the needs of the growing numbers of students with disability in schools.<sup>585</sup>
- 6.85** In particular, the NSW Teachers Federation expressed a strong view that funding for students with disability in New South Wales public education has not kept pace with growing student

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<sup>581</sup> School site visit summary report, Appendix One of this report, p 157.

<sup>582</sup> Evidence, Ms Tina Kordrostami, Director, Mental Health Architectural Design, 12 June 2024, pp 10-11.

<sup>583</sup> Evidence, Mr Chris Edwards, Director, Government Relations, Advocacy, NDIS and Aged Care, Vision Australia, 22 April 2024, p 37.

<sup>584</sup> Submission 83, Parents of Deaf Children, pp 2-3.

<sup>585</sup> Evidence, Mrs Lyn Caton, Assistant Secretary, Independent Education Union of Australia NSW/ACT Branch, 26 March 2024, p 22; Evidence, Ms Sarah Langston, Policy Co-Lead, Australian Neurodivergent Parents Association, 22 April 2024, p 22; Evidence, Mr Julian Laurens, Senior Policy Officer, People with Disability Australia, 22 April 2024, p 30.

need. They argued that public education is '\$1.9 billion short this year alone'.<sup>586</sup> Ms Watt, from the Federation, highlighted that schools for specific purposes and support classes have high levels of funding but was of the view that students with disability in mainstream classes are under-resourced.<sup>587</sup>

- 6.86** Family Advocacy supported the need for more funding but noted that funding is not the 'silver bullet'. Entrenched cultural issues were just as important in creating barriers. They noted a '[l]ack of funding can be used as a scapegoat when a principal does not have the "willingness" for this student to come to their school'.<sup>588</sup>

### Advocacy support

- 6.87** Barriers to education for children and young people can arise where parents do not have the resources or knowledge to advocate to educational institutions for a quality education for their child.
- 6.88** Stakeholders argued strongly for better support for the families of students with disability so they know how to advocate for their rights in the education system, and have the necessary advocacy support.<sup>589</sup> Family Advocacy emphasised that families and young people with disability need 'greater access to individual advocacy' to help them address 'inequitable access, unfair decisions...'. Family Advocacy estimates that only 50 per cent of the demand for advocacy is being met.<sup>590</sup>
- 6.89** The Australian Centre for Disability Law noted that parents and education providers are not always aware of their rights and responsibilities under the *Anti-Discrimination Act 1977* and the *Disability Discrimination Act 1992* (Cth) and recommended 'that all parents across public and private schools are provided with knowledge of rights and [are equipped] with appropriate communication tools to advocate on behalf of their child'.<sup>591</sup> Ms Meredith Hagger, Youth Law Australia, proposed that advocacy and legal advocacy services should be funded, and students with disability should be made aware of these services as soon as they enter the education system.<sup>592</sup>

### Systemic and structural framework

- 6.90** This section of the report discusses issues and barriers for children and young people with disability that have arisen due to structural and regulatory frameworks. This can include agency level policies, government programs, or legislative requirements.

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<sup>586</sup> Evidence, Ms Watt, 26 March 2024, p 15.

<sup>587</sup> Evidence, Ms Watt, 26 March 2024, p 16.

<sup>588</sup> Submission 62, Family Advocacy, p 19.

<sup>589</sup> Evidence, Ms Rebecca Belzer, Solicitor, Australian Centre for Disability Law, 26 March 2024, p 3; Evidence, Ms Meredith Hagger, Principal Solicitor, General Practice, Youth Law Australia, 26 March 2024, p 2.

<sup>590</sup> Submission 62, Family Advocacy, pp 29-30.

<sup>591</sup> Submission 75, Australian Centre for Disability Law, p 10.

<sup>592</sup> Evidence, Ms Hagger, 26 March 2024, p 2.

### Implementation of learning plans and adjustments

- 6.91** As outlined in Chapter 3, the Disability Standards for Education 2005 (which apply to all educational institutions) detail the obligations on education providers to make 'reasonable adjustments' to assist a student with a disability to participate in education and training on the same basis as students without a disability.
- 6.92** Likewise, learning plans are developed by schools to outline the education needs and learning goals of a student, and are usually developed with input from parents and relevant professionals. A range of factors will be considered when developing a plan, such as a child's 'reading and numeracy skills, their language and communications skills, social skills ... their health care needs and their personal and cultural background'.<sup>593</sup>
- 6.93** The committee heard many different examples of adjustments that have been provided within educational settings including:
- providing a social story for a student ahead of new activity or change in schedule, accompanied by images. This could help allay anxiety and include where one was going and how they would get there, who they would meet, what the room they would meet in would look like, what would happen at that location, and what might be discussed<sup>594</sup>
  - having a student's occupational therapist or speech pathologist visit the classroom, assess the environment and make recommendations to their teacher. These allied health supports may be privately or NDIS-funded<sup>595</sup>
  - allowing additional time in exams, or movement breaks, or providing quiet spaces so a student can take time out and reduce stress<sup>596</sup>
  - providing assistive technology, such as dictation software or augmented communication systems.<sup>597</sup>
- 6.94** Ms Rebecca Belzer, Solicitor, Australian Centre for Disability Law observed that making adjustments in mainstream settings benefits not just the child but their whole peer group, the school cohort and ultimately the community:

As a community, we have people from all walks of life, backgrounds and abilities in our society, and school should be like that as well. The benefit for my son is he learns to be a confident member of our community in a safe school environment. But the benefits extend to his peers and teachers as well. They develop skills and confidence in building friendships with someone who appears a little different to them, and are also better prepared to succeed in a post-school environment.<sup>598</sup>

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<sup>593</sup> Department of Education, *Personalised learning and support planning*, Education, <https://education.nsw.gov.au/schooling/parents-and-carers/inclusive-learning-support/primary-school/ongoing-support-planning>.

<sup>594</sup> *In camera* evidence, Fiona, 22 April 2024, p 7, published by resolution of the committee.

<sup>595</sup> Evidence, Ms Sarah Abdou, Solicitor, Australian Centre for Disability Law, 26 March 2024, p 8.

<sup>596</sup> Evidence, Ms Belzer, 26 March 2024, pp 7- 8.

<sup>597</sup> Evidence, Ms Abdou, 26 March 2024, p 8.

<sup>598</sup> Evidence, Ms Belzer, 26 March 2024, p 3.

- 6.95** However, the committee heard evidence that even where adjustments may have been made, and outlined in a student's learning plan, they can be unsuitable, ignored, or not updated as the student's need changes. Additionally, implementation of learning plans was inconsistent both within and between schools.
- 6.96** There were many examples provided to the committee where adjustments were made for students which were not suitable.<sup>599</sup>
- 6.97** Ms Sarah Abdou, Australian Centre for Disability Law, spoke of a lack of consistency in the implementation of adjustments, noting the experience of one student who required an occupational therapist to attend the classroom, and the difference in implementation by the teachers:
- One parent ... inform[ed] me that between one teacher and another, the adjustments that were implemented in the classroom were quite different. The particular adjustment that she wanted for her child was an occupational therapist to attend the classroom for a couple of hours a fortnight. One year with one teacher that adjustment was refused, and in the same school, with a different teacher, that adjustment was allowed and greatly benefited the child.<sup>600</sup>
- 6.98** Dr Cherry Baylous of Disability Advocacy NSW said 'students in the education system are often let down ... [sometimes due to] ... a lack of willingness from education staff to provide reasonable adjustments ... We also see a lack of meaningful adjustments ...'.<sup>601</sup>
- 6.99** There were many instances of schools not understanding their obligations towards students with disability, for example providing adjustments for participation in NAPLAN, or parents being required to access NDIS funding to provide support for their son to attend school camp.<sup>602</sup> Vision Australia noted that a survey of students and families in New South Wales found 'a lack of consistency in the educational supports and services being provided to students who are blind or have low vision in NSW schools, including with respect to specialised vision teachers and Braille instruction'.<sup>603</sup>
- 6.100** The Australian Centre for Disability Law told the committee that the Centre's advice is often sought by parents in disputes over delays to the development of learning plans, and where learning plans have not been followed and adjustments implemented:
- ... more often than not we do hear, 'My child has a learning plan in place, they need to be given 10 minutes extra exam time. They weren't given that exam time'. Or, for example, 'It took three months to even get a learning plan in place, even though I've provided the diagnosis to the school right at the beginning of the school term'.<sup>604</sup>

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<sup>599</sup> For example, Evidence, Ms Abdou, 26 March 2024, p 5, Submission 28, Legal Aid NSW, pp 9-10.

<sup>600</sup> For example, Evidence, Ms Abdou, 26 March 2024, p 5; Submission 28, Legal Aid NSW, p 5.

<sup>601</sup> Evidence, Dr Cherry Baylous, Policy and Communications Lead, Disability Advocacy NSW, 26 March 2024, p 31.

<sup>602</sup> Evidence, Ms Charlotte Sangster, Chief Executive Officer, Muscular Dystrophy NSW, 22 April 2024, pp 26 and 30.

<sup>603</sup> Submission 24, Vision Australia, p 4.

<sup>604</sup> Evidence, Ms Abdou, 26 March 2024, p 8.

- 6.101** People with Disability Australia said there was strong feedback from their members and clients that schools were sometimes unable to provide advice on which adjustments were even available, let alone optimal, for their child:

What came through on a number of occasions was that they, the parents, were then having to go away and do their own homework and find out all about these reasonable adjustments and about what would work in that environment et cetera and then go back to the school and then see what the school says. They were really upset about this.<sup>605</sup>

- 6.102** When asked about the issue of consistency in adjustments, the Department of Education noted the development of the inclusive education hub to drive teachers' professional learning and improve consistency in adjustments.<sup>606</sup>

- 6.103** Legal Aid NSW called on the Department of Education to provide guidelines and improve transparency around adjustments for students with disability including:

- Development of guidelines, regulations, rules and policies to ensure adjustments are appropriately used and that schools comply with obligations under the Disability Standards.
- Development of procedures to ensure greater transparency and record keeping around the provisions of adjustments.<sup>607</sup>

### *Higher School Certificate disability provisions*

- 6.104** Another issue faced by students with disability relates to access to adjustments to support them to complete their Higher School Certificate (HSC) exams. Concerns raised by stakeholders included having to re-prove disability.<sup>608</sup> An example of the challenges for students with disability is outlined in the case studies below.

#### **Case study: The experiences of Nicholas in being granted disability provisions for the HSC<sup>609</sup>**

Nicholas has a bilateral hearing impairment and ataxic cerebral palsy. He was supported in the public school system from Kindergarten to Year 12, including support from teachers aides and support teachers for students with hearing impairment.

When it was time for the HSC, Nicholas applied for disability provisions to assist him in completing his exams.

It was, he said, 'daunting and overwhelming at an already ... stressful time for high school students. It required extensive assessments from both occupational and speech therapists which were lengthy, exhausting, and time-consuming. Not to mention the cost to my parents ... I was extremely lucky

<sup>605</sup> Evidence, Mr Julian Laurens, Senior Policy Officer, People with Disability Australia, 22 April 2024, p 31.

<sup>606</sup> Evidence, Mr Martin Graham, Deputy Secretary, Teaching, Learning and Student Wellbeing, NSW Department of Education, 23 April 2024, p 57.

<sup>607</sup> Submission 28, Legal Aid NSW, p 7.

<sup>608</sup> Submission 39, Cerebral Palsy Alliance, p 3.

<sup>609</sup> Submission 18, Mr Nicholas Lapsley. This case study is based on the contents of the submission.

during this time to have a great support team that included my therapists, my schoolteachers and support staff alongside my parents, all of whom consistently advocated for me'.

Nicholas said he had to fill in a lot of paperwork and go through many occupational therapy assessments to show that he needed to be able to use a laptop for his exams, and noted that he has used a laptop since primary school.

His initial application to use a laptop was denied, however, his school requested an appeal, which required the provision of further assessments and specialist appointments. Ultimately his request was granted.

### **Case study – Account from Muscular Dystrophy regarding parent's concern with NESA and HSC disability provisions<sup>610</sup>**

A parent was concerned that NESA did not appreciate their child's need for technology to enable him to complete his HSC.

Their son had used a laptop for his HSC studies but 'had encountered resistance and had to fight for it', using a 'lot of NDIS funding' to prove it was a requirement. Their son received only an extra minute every 30 minutes but, as he can't lift his arms or hands, can't write, and types with two fingers only, he fell short of the required word count in exams.

His parent concluded that NESA 'does not understand disability, and that extra time is not an advantage, but a necessity to ensure fair testing against his peers'.

- 6.105** When asked about the issue of having to provide further information on a lifelong disability to access HSC disability provisions, Mr Paul Martin, Chief Executive Officer of NESA responded that the extra information required relates to 'how the disability manifests in the exam' and should not be about needing to re-prove a disability.<sup>611</sup> Further advice from NESA stated that:

The functional impact of a disability in an exam situation may change over time, so there is a need to obtain updated evidence closer to the HSC exam period to ensure students are appropriately supported. NESA is working with the Department of Education and school systems/sectors to improve the process.<sup>612</sup>

- 6.106** In addition to these challenges, the Disability Council NSW noted the following barriers for students and their families seeking HSC disability provisions:

- Some families cannot afford to pay for the assessments required to prove to NESA the need for provisions.
- Some families find it re-traumatising to be required to advocate for their child for the provision and then for the request to be denied.
- The current HSC process does not allow for students with disability to demonstrate their capacity.<sup>613</sup>

<sup>610</sup> Answers to questions on notice, Muscular Dystrophy NSW, 17 May 2024, p 2.

<sup>611</sup> Evidence, Mr Paul Martin, Chief Executive Officer, NSW Education Standards Authority, 12 June 2024, p 21.

<sup>612</sup> Answers to questions on notice, NSW Department of Education and NSW Education Standards Authority, 25 June 2024, p 8.

<sup>613</sup> Submission 14, Disability Council NSW, p 7.

- 6.107** In response to questions about this issue at the hearing, Mr Paul Martin, Chief Executive Officer, NESA, described some of the nuances of disability provisions processes:
- Provisions for the HSC exam are not teaching and learning provisions or adjustments, and differ from those adjustments a school may make for a student to complete internal assessments.
  - Disability provisions relate to a judgement about the capacity of a student to sit and do a written exam which differs from the 'broader' and 'deeper and richer' expectations of a student's ability to complete their regular classroom work at school.<sup>614</sup>
- 6.108** Mr Martin subsequently noted that 97 per cent of applications are approved. He acknowledged that it is a difficult issue, and that NESA is continuously working to improve understanding of the processes, including ensuring that the application process is outlined in great detail.<sup>615</sup>
- 6.109** In response to questions about the lower rates of provisions granted in the public sector, Mr Martin Graham, NSW Department of Education, provided evidence of the supports now in place to help schools and parents apply to NESA. This has included identifying and supporting schools with low numbers of applications. He acknowledged that barriers remain, such as access to diagnoses from health professionals.<sup>616</sup>
- 6.110** Issues with inconsistent exam adjustments at universities were also raised. The Cerebral Palsy Alliance recounted the experience of one of its members, who was frustrated that the adjustments from their learning plan were not able to be transferred between universities:

... at the first university I studied at I was given the provision of an extra hour per hour for written tests taking into account such things as my slow typing skills. However, when I enrolled in the second degree and met with disability services, they were not even slightly interested in sighting my current EIP meaning that I had to advocate and fight for additional 30 minutes per hour for exams after they wanted to give me only 15 minutes.<sup>617</sup>

### ***Reasonable adjustments and the legal framework***

- 6.111** A number of stakeholders called for changes to the *Anti-Discrimination Act 1977*, including to incorporate a positive obligation to consult with and make reasonable adjustments for a student with disability.<sup>618</sup> Ms Meredith Hagger, Youth Law Australia, indicated that the equivalent legislation in Victoria is stronger compared to the New South Wales legislation. The current New South Wales legal framework requires families to advocate for reasonable adjustments, whereas the Victorian legislation has a 'standalone duty on educational authorities to make reasonable adjustments'.<sup>619</sup> The NSW Ombudsman noted that the *Anti-Discrimination Act 1977*

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<sup>614</sup> Evidence, Mr Martin, 12 June 2024, pp 15-16.

<sup>615</sup> Evidence, Mr Martin, 12 June 2024, p 17.

<sup>616</sup> Evidence, Mr Graham, 12 June 2024, p 18.

<sup>617</sup> Submission 39, Cerebral Palsy Alliance, p 4.

<sup>618</sup> Evidence, Ms Belzer, 26 March 2024, p 3.

<sup>619</sup> Evidence, Ms Hagger, 26 March 2024, p 4.

was currently under review, and 'sees value' in introducing a positive obligation to the legislation.<sup>620</sup>

### **NDIS coordination and funding problems**

- 6.112** The National Disability Insurance Scheme (NDIS) provides funding and support for people with disability. This includes access to allied health support. It is funded by the Australian Government, with individuals accessing support directly from local partner organisations within each state and territory. Broadly, the NDIS funds supports 'that are associated with the functional impact of their disability on activities of daily living, such as personal care and support'. The NDIS does not fund adjustments which assist with educational attainment.<sup>621</sup>
- 6.113** The inquiry heard of issues where NDIS-funded therapies were expected to be delivered at the school in class time. As described below, some schools have been overwhelmed by requests from external practitioners to visit the student during class time, while parents have been concerned that their child was being denied access to therapies that were most effective if they occurred in an educational setting.
- 6.114** In their submission, Early Childhood Intervention Best Practice Network identified the following benefits and concerns:
- It is beneficial for the child when educators are able collaborate with allied health practitioners in the early education or classroom setting. Therapists can observe classroom behaviours, assist with upskilling teachers, identify and help resolve any barriers to accessing the curriculum.
  - On the other hand, there are instances of schools having excessive numbers of providers wishing to access the school (some schools report 180 providers a week needing access to students).
  - This has resulted in some schools restricting access to therapists, for example, no therapies in Terms 1 or 4, and only 5 minute visits.<sup>622</sup>
- 6.115** The Department of Education, when asked about this issue at a hearing, acknowledged the tensions between the requirement for schools to educate children and the need for children to access therapies. They advised that schools strive to achieve a 'balance between educational provision and the appropriate time for therapy' and it is 'student by student, school by school, context by context, family by family, because that is the most appropriate response'. For example, in areas where it is hard for families to access therapy outside of school, schools will be more accommodating.<sup>623</sup>

<sup>620</sup> Evidence, Mr Paul Miller, NSW Ombudsman, 23 April 2024.

<sup>621</sup> Department of Parliamentary Services, Research Paper, *Children and young people with disability in NSW educational settings*, 29 January 2024, p 18.

<sup>622</sup> Submission 33, Early Childhood Intervention Best Practice Network, p 5.

<sup>623</sup> Evidence, Mr Graham, 23 April 2024, pp 43-44; Evidence, Ms Summerhayes, 23 April 2024, p 44.



### **Low expectations for children and young people with disability**

- 6.116** The inquiry heard evidence from stakeholders about the barriers faced by children and young people with disability which relate to low expectations. These may be expectations, or rather a lack of expectations, relating to achievements in schooling, participation in school activities, or transitioning from school to further education or employment.<sup>624</sup> Low expectations can be entrenched as part of the system, by curriculum offerings, or due to the educational setting.
- 6.117** For example, All Means All described how mainstream education is set up in such a way that often students with disability cannot effectively participate, in part due to 'a systemic culture of low expectations'.<sup>625</sup>
- 6.118** While Inclusive Educators Association shared this concern, they were of the view that segregated education is a contributor, due to 'low expectations curriculum that limits students access to a range of knowledge and skills'.<sup>626</sup>
- 6.119** Family Advocacy outlined some of the barriers faced by students as they transition from high school, including students being 'funnelled' into the Life Skills program, which provides limited pathways beyond school. They argued that there is no evidence that Life Skills prepares students for work and adulthood. They recommended that the program, including the outcomes for participants be 'further examined'.<sup>627</sup>
- 6.120** Ms Joanne Yates, Acting Deputy Chief Executive Officer of People with Disability Australia, highlighted the role of ableism in sustaining low expectations, and how low expectations contribute to the 'entrenchment' of segregation.<sup>628</sup>
- 6.121** Ellen Armfield, a person with lived experience and also a carer for a young woman with Rett syndrome, described the woman's experience:

My client and her parents found that her schooling experience was a series of missed opportunities, as many teachers and the system as a whole had low expectations of her, that despite her eagerness and ability to learn, she was constantly aged down because she is non-verbal.<sup>629</sup>

### **Complaints processes**

- 6.122** This section deals with the frameworks and processes in place for families when they wish to raise concerns about the treatment of children and young people with disability. Broadly, there

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<sup>624</sup> See for example, Submission 39, Cerebral Palsy Alliance, p 5; Submission 53, Adjunct Professor Tamara Smith MP, Member for Ballina, p 6.

<sup>625</sup> Answers to supplementary questions, Australian Alliance for Inclusive Education (All Means All), 17 May 2024, p 7.

<sup>626</sup> Answers to supplementary questions, Inclusive Educators Australia, 17 May 2024, p 6.

<sup>627</sup> Submission 62, Family Advocacy, p 12.

<sup>628</sup> Evidence, Ms Joanne Yates, Acting Deputy Chief Executive Officer, People with Disability Australia, 22 April 2024, p 25.

<sup>629</sup> Evidence, Ms Ellen Armfield, person with lived experience, 23 April 2024, p 25.

are two pathways which families may take, depending on the educational institution and the nature of their complaint.

- 6.123** For complaints relating to public schools they may use internal agency processes; pursue their complaint via the Ombudsman; Anti-Discrimination NSW; or the Australian Human Rights Commission (AHRC). The pathway may depend on the nature of the complaint and whether the complainant considers it to be satisfactorily resolved.
- 6.124** Public universities and TAFE NSW also fall within the remit of the NSW Ombudsman.<sup>630</sup>
- 6.125** As noted in Chapter 3, for those attending private education providers families may pursue their concerns with the institution or through the AHRC.

### Complaint process within the school system

- 6.126** The complaints handling process in educational institutions was the subject of many concerns in evidence to the inquiry. This dissatisfaction with the process has led to a number of stakeholders supporting<sup>631</sup> the recommendation 7.10 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability which said:

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.<sup>632</sup>

- 6.127** Many stakeholders raised concerns about the process followed when they wish to make a complaint about adjustments provided in the classroom, or around decisions to suspend a child with disability due to poor behaviour. Often, the complaint was handled at the school level, or escalated to the department (in the case of public schools) to investigate or respond to.<sup>633</sup> Many stakeholders expressed concern at the department investigating itself.<sup>634</sup> Family Advocacy highlighted the power imbalance that occurs between the school or school system and the student and their family, by noting that 'schools can exercise unfettered discretion ... Schools continue to investigate themselves which leads to a potential conflict of interest'.<sup>635</sup>
- 6.128** A Vision Australia survey of families it supports revealed the following:
- approximately a quarter had made a complaint about a school, directly to the school, the department or the Diocesan office

<sup>630</sup> Ombudsman NSW, *Making a complaint*, <https://www.ombo.nsw.gov.au/Making-a-complaint>.

<sup>631</sup> Submission 62, Family Advocacy, p 27; Submission 24, Vision Australia, p 12; Submission 28, Legal Aid NSW, p 7; Submission 38, Federation of Parents and Citizens of NSW, p 7.

<sup>632</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, September 2023, Executive Summary, p 246.

<sup>633</sup> Submission 43, Dr David Roy, p 63; Submission 52, Mrs Ciara and Mr Tim McKillop, p 5.

<sup>634</sup> Submission 62, Family Advocacy, p 4; Evidence, Dr David Roy, Lecturer in Education, University of Newcastle, 12 June 2024, p 7.

<sup>635</sup> Submission 62, Family Advocacy, p 27.

- 80 per cent of those who had made a complaint said it was not resolved to their satisfaction, including some who said they had no response at all to their complaint.<sup>636</sup>

- 6.129** In response to questioning about the potential for an independent decision maker, the Department of Education was of the view that the majority of complaints are best handled at the local level. They advised that the Professional and Ethics Standards unit will be able to offer the option of independent mediation for complaints from parents and students, a relatively new process for complaints handling.<sup>637</sup>
- 6.130** Gemma, a parent of a young boy with disability, provided evidence to the committee that she is currently in mediation with the department as the result of her appeals against his suspensions from school. She noted that it will be a 'whole day process with the deputy principal, but any decisions will not be binding'.<sup>638</sup>
- 6.131** The department also noted that the NSW Ombudsman and the AHRC were appropriate 'escalation pathways' for those unsatisfied with the department's response to concerns.<sup>639</sup>

### **Legal framework and complaints processes**

- 6.132** As outlined in Chapter 3, discrimination in educational settings on the grounds of disability is unlawful under the *Anti-Discrimination Act 1977* (ADA, with exemptions for private educational settings) and the *Disability Discrimination Act 1992* (Cth) (DDA, which applies to both public and private providers).
- 6.133** Anti-Discrimination NSW notes that the 'complex and overlapping legal protections ... can be challenging to navigate' for people with disability experiencing discrimination. For example, they noted that individuals may risk losing their rights by bringing a complaint to Anti-Discrimination NSW that would be 'better dealt with by the AHRC'.<sup>640</sup>
- 6.134** The NSW Ombudsman has power to investigate complaints about 'maladministration' by a New South Wales government agency, which can include complaints about provision of adjustments and support. The Ombudsman, Mr Paul Miller, noted that there is jurisdictional overlap between the Ombudsman, Anti-Discrimination NSW and the AHRC. He advised that his office may decide not to pursue a complaint 'if there is an alternative and satisfactory avenue for redress'.<sup>641</sup>
- 6.135** Evidence to the inquiry was also critical of the comparator test in the ADA, which means that students with disabilities that affect their behaviour find it hard to show that 'exclusionary discipline constitutes discrimination'. Youth Law Australia noted this was also an issue with the DDA, and was subject to recommendations by the DRC.<sup>642</sup>

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<sup>636</sup> Submission 24, Vision Australia, p 11.

<sup>637</sup> Evidence, Mr Graham, 23 April 2024, p 52.

<sup>638</sup> *In camera* evidence, Gemma, 22 April 2024, p 15, published by resolution of the committee.

<sup>639</sup> Evidence, Mr Graham, 23 April 2024, p 52.

<sup>640</sup> Submission 36, Anti-Discrimination NSW, p 4.

<sup>641</sup> Evidence, Mr Miller, 23 April 2024, p 32.

<sup>642</sup> Submission 32, Youth Law Australia, p 5.

- 6.136** Throughout the inquiry, the ADA has been contrasted with the Victorian *Equal Opportunity Act 2010* (Equal Opportunity Act).<sup>643</sup> Under the Act, it is unlawful to discriminate against a person on the basis of disability. In comparison to the ADA, the Equal Opportunity Act:
- does not include the comparator test for direct discrimination<sup>644</sup>
  - includes an explicit requirement that an educational authority make reasonable adjustments for a person with a disability.<sup>645</sup>

### ***Complaints against public educational institutions***

- 6.137** As outlined in Chapter 3, Anti-Discrimination NSW (ADNSW) has the power to investigate and mediate complaints from families about discrimination in public educational institutions.
- 6.138** ADNSW provided the following information and observations on complaints they have received relating to disability discrimination in educational settings:
- complaints 'primarily' concern children with psychosocial disabilities
  - more than half the complaints received between 2018 and 2023 concerned children in rural and remote areas
  - complaints often relate to termination of care without prior notification; reduction of hours of care; refusal of enrolment; and exclusion from excursions unless parents accompany their children.<sup>646</sup>
- 6.139** There were calls for changes in the way ADNSW operates, including a reduction in time to process complaints, and the ability to make binding decisions in cases of discrimination in educational settings.<sup>647</sup> Ms Rebecca Belzer, Australian Centre for Disability Law, advised that ADNSW does not have powers to compel parties to participate in the process.<sup>648</sup>
- 6.140** Ms Meredith Hagger, Youth Law Australia, proposed that the department should have a 'decision maker' that can make binding decisions about resources, which would help families having to make a complaint to ADNSW concerning discrimination on the basis of disability.<sup>649</sup>
- 6.141** With regard to the university sector, the National Union of Students described difficulties in the complaints process. Ms Mairead Foley, National Disability Officer, described how the NSW Ombudsman says that it can address complaints processes for public universities in New South Wales, however, it will usually then refer the matter to a Federal body.<sup>650</sup>

<sup>643</sup> Submission 32, Youth Law Australia, pp 2 and 5; Submission 36, Anti-Discrimination NSW, p 3.

<sup>644</sup> *Equal Opportunity Act 2010 (Vic)*, s 8.

<sup>645</sup> *Equal Opportunity Act 2010 (Vic)*, s 40.

<sup>646</sup> Submission 36, Anti-Discrimination NSW, p 8.

<sup>647</sup> Evidence, Ms Belzer, 26 March 2024, p 3.

<sup>648</sup> Evidence, Ms Belzer, 26 March 2024, p 10.

<sup>649</sup> Evidence, Ms Hagger, 26 March 2024, p 11.

<sup>650</sup> Evidence, Ms Mairead Foley, National Disability Officer, National Union of Students, 12 June 2024, p 5.

### ***Complaints against private institutions***

- 6.142** As noted in Chapter 3, non-government schools in New South Wales are exempt from provisions in the ADA. New South Wales is the only jurisdiction in Australia that provides exceptions to allow private education providers to discriminate against a person on the basis of disability. Families who wish to make a complaint must do so through the AHRC for breach of the DDA.
- 6.143** Ms Sarah Abdou, Australian Centre for Disability Law, was supportive of amending the ADA to include non-government schools, as the process for having a complaint investigated and resolved is faster and less costly.<sup>651</sup>
- 6.144** ADNSW, the body responsible for administering the *Anti-Discrimination Act 1977*, supported a proposal to amend the ADA to remove the exceptions for private educational institutions. They note:

Private schools are the recipients of public funding which should carry a responsibility to provide access to all. Similar exceptions do not exist federally and in other states and territories and NSW is the only jurisdiction in Australia that allows private educational institutions to discriminate based on disability.<sup>652</sup>

### **Data collection and reporting**

- 6.145** Some stakeholders raised that publicly reported data on students with disability was generally limited to data on the NCCD. Ms Sue Tape, Project Coordinator, Inclusive Education, Children and Young People with Disability Australia, outlined the following gaps in information on students with disability identified by her organisation:
- student outcomes
  - student experience and engagement with their education
  - student achievement in NAPLAN<sup>653</sup>
  - expenditure on student adjustments.<sup>654</sup>
- 6.146** The department advised it is currently developing an assessment for students with disability who do not reach the minimum levels of NAPLAN. The new assessment will be available to schools to use on a voluntary basis. The department is also developing a broader skills 'passport' which will provide feedback on students' acquisition of social skills.<sup>655</sup>

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<sup>651</sup> Evidence, Ms Abdou, Solicitor, Australian Centre for Disability Law, 26 March 2024, p 11.

<sup>652</sup> Submission 36, Anti-Discrimination NSW, p 4.

<sup>653</sup> NAPLAN achievement is disaggregated at the state and territory level for a number of groups, including gender, indigeneity and remoteness, but not for students with disability. See ACARA, *NAPLAN national results*, <https://www.acara.edu.au/reporting/national-report-on-schooling-in-australia/naplan-national-results>.

<sup>654</sup> Evidence, Ms Sue Tape, Project Coordinator, Inclusive Education, Children and Young People with Disability Australia, 22 April 2024, p 9.

<sup>655</sup> Evidence, Mr Graham, 23 April 2024, pp 48-49.

- 6.147** The Home Education Association also advocated for collection of data on students with disability who are home schooled. As noted in Chapter 4, these students are not counted in the NCCD, and there is very little other information available on this cohort.
- 6.148** In response to a question from the committee, Mrs Lyn Caton, Independent Education Union of Australia NSW/ACT Branch, advised that there is no sector level collation or reporting of data on suspensions and expulsions in the Catholic sector,<sup>656</sup> unlike the public school system.
- 6.149** The Disability Royal Commission recommended there should be improvements to data collection and reporting on students with disability, including data on student outcomes and wellbeing.<sup>657</sup>

### Students with disability in post- secondary settings

- 6.150** As noted by Ms Mairead Foley, National Union of Students, having post school qualifications such as a bachelor's degree or TAFE qualification increases the likelihood of students with disability being in employment.<sup>658</sup> The following section describes the challenges and issues for students with disability as they move from school into university or study at TAFE. These challenges include the need to be proactive in asking for support, a lack of oversight of universities around providing adjustments for students with disability, and limited access to support. Cultural issues were also raised, particularly in the university sector.
- 6.151** Ms Keira Ademovic, Student Advisor, National Union of Students, described her experiences in TAFE:

I was terrified to reach out for help. If there had been proactive support, if the actual system had been set up better for all students so that I wasn't the one with the burden of having to reach out for support, to have to do the paperwork for support, to call three different agencies and say, 'Hey, I need support for this'—that is a huge burden on people with disabilities. There was a reason why I didn't reach out for that help. I also knew that it didn't exist.<sup>659</sup>

- 6.152** In response to a question about pathways into TAFE for students with disability, Mr Stephen Brady, of TAFE NSW, advised that while there were no courses specifically for students with disability:

We tend to work on an individualised basis, so we've got disability teacher consultants who tend to work with individual students about what their support needs are and then would work with the teachers to help them work out what sort of adjustments might be required, whether there are notetakers or whatever other supports might be required for that student<sup>660</sup>

<sup>656</sup> Evidence, Mrs Lyn Caton, Assistant Secretary, Independent Education Union of Australia NSW/ACT Branch, 26 March 2024, p 23.

<sup>657</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Inclusive education, employment and housing, summary and recommendations, Final Report, Volume 7, September 2024, pp 19-20.

<sup>658</sup> Evidence, Ms Foley, 12 June 2024, p 2.

<sup>659</sup> Evidence, Ms Keira Ademovic, Student Advisor, National Union of Students, 12 June 2024, pp 3-4.

<sup>660</sup> Evidence, Mr Stephen Brady, Managing Director, TAFE NSW, 23 April 2024, p 53.

- 6.153** TAFE NSW advised that there are 400 students with disability enrolled in the Educational Pathways Program.<sup>661</sup> This program is 'designed to improve education and career outcomes for young people by introducing students to a range of vocational training and employment pathways. This program is highly valued by schools and shows excellent benefits, for example improving the numbers of school-based apprenticeships and traineeships (SBATs)'.<sup>662</sup>
- 6.154** Ms Foley relayed some examples of the barriers and challenges for university students:
- There is 'zero oversight' of the provision of academic adjustments across universities, particularly in the Group of Eight universities.
  - The conditions for accessing support via the Disability Support Program can restrict access to other supports for students. Further, universities do not advertise the availability of some supports, such as access to student travel concessions for students with disability working part time.<sup>663</sup>
- 6.155** Ms Foley provided examples of discrimination and failure to make adjustments for students with disability, such as:
- Not allowing a student to use a laptop in a written exam, even though they couldn't hold a pen.
  - The lack of flexibility in the requirement to complete course practicums on a full-time basis.
  - Deaf students being denied access to Bluetooth stethoscopes as the university considered them too expensive.<sup>664</sup>
- 6.156** Evidence from representatives of the Autistic Self Advocacy Network and the Australian Autism Alliance provided support for the development of a national road map for inclusive education for the higher education sector, similar to that proposed for the school sector by the Disability Royal Commission.<sup>665</sup> They focused on the following:
- Ensuring complaints processes are accessible, for example by providing Auslan interpreters for deaf complainants.
  - Better training, knowledge and understanding in the university sector of the rights and educational adjustments required by students with disability
  - Better and more representative governance of universities<sup>666</sup>

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<sup>661</sup> Answers to questions on notice, TAFE NSW, 13 May 2024, p 3.

<sup>662</sup> Submission 29, NSW Government, NSW Government, p 48.

<sup>663</sup> Evidence, Ms Foley, 12 June 2024, p 3.

<sup>664</sup> Evidence, Ms Foley, 12 June 2024, pp 3-4.

<sup>665</sup> *In camera* evidence, Mr B, Autistic Self Advocacy Network, 12 June 2024, p 2, published by resolution of the committee.

<sup>666</sup> *In camera* evidence, Mr B, Autistic Self Advocacy Network, 12 June 2024, pp 2 and 4, published by resolution of the committee.

## Committee comment

- 6.157** The committee heard extensive evidence about deficits in a variety of educational settings for children and young people with disability. Of concern were the variety of issues raised regarding teachers' skills, knowledge and expertise relating to the needs of students with disability.
- 6.158** The committee is concerned that initial teacher education requirements, even in New South Wales, may not be sufficient to prepare teachers for the growing cohort of students with disability in education, particularly in mainstream school classrooms.

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### Finding 12

That the minimum requirements for initial teacher education for accredited teaching degrees are no longer sufficient for classroom teachers to meet the need of a growing cohort of students with disability, especially in mainstream classrooms.

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- 6.159** The committee notes, in particular, the increasing number of students with disability in mainstream classrooms, and the impact on students who are not being accommodated in their learning needs. We also find that many classroom teachers do not have the skills required to teach students with disability. There was evidence which suggested that in particular, that teachers need more knowledge and understanding of the educational and support needs of children with Autism Spectrum Disorder (ASD), particularly given the high probability that they will have at least one child with ASD in any given class.
- 6.160** This leads the committee to recommend that the NSW Government increase the requirements for accreditation of initial teacher education courses to ensure teachers are better equipped to meet the learning needs of students with disability, and to consider options for requiring content to specifically address the needs of students with ASD.

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### Recommendation 7

That the NSW Government increase the requirements for accreditation of initial teacher education courses to ensure teachers are better equipped to meet the learning needs of students with disability, and to consider options for requiring content to specifically address the needs of students with Autism Spectrum Disorder.

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- 6.161** The committee recognises the growing demands on teachers to support the diverse learning needs of students in the classroom and the possibility that student needs are not being met as a result. The committee heard of the growing workload imposed on classroom teachers, due to requirements such as data collection, creating and implementing individual learning plans, and more generally supporting the diverse learning needs of the students in their classroom. The committee notes that approximately a third of adjustments provided to students with disability are not funded, as they are provided with adjustments within teaching practice, the lowest level of adjustment reported for the NCCD. The committee is of the view that this workload could be ameliorated by additional support from specialist teachers, including learning and support teachers.



- 6.162** The committee also notes evidence that it is not mandatory for teachers to undertake ongoing professional learning relating to any specific disability, although they must undertake professional development in the priority area of students with disability. However, it notes advice from NESAs that in a 12 month period, over 35,000 teachers in New South Wales have undertaken accredited professional development in this area, which is encouraging, although it is not clear what proportion of the teacher population this represents, nor the type of skills that might be acquired or updated by these undertakings.
- 6.163** The committee was encouraged by the evidence of mandatory continuing professional development for teachers in the area of students with disability. However, given the plethora of evidence to the inquiry that some classroom teachers are finding it difficult to meet the educational needs of students with disability in the class, the committee recommends that the NSW Government expand the length, reoccurrence and content of mandatory continuous professional development courses relating to students with disability.
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**Recommendation 8**

That the NSW Government expand the length, reoccurrence and content of mandatory continuous professional development courses relating to students with disability.

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- 6.164** We note that there is a current shortage in the number of special educator teachers or learning and support teachers (LASTs) and are alarmed by concerns raised that many individuals who hold these positions are not actually qualified. Based on the evidence received, the committee finds that there are insufficient numbers of teachers who have the appropriate qualification for special educator roles in schools.
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**Finding 13**

That there are insufficient numbers of teachers who have the appropriate qualification for special educator roles in schools.

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- 6.165** The committee heard from a number of experts in special education who advised that teachers with post-graduate qualifications in special education were not being financially rewarded for holding additional qualifications. While we note that the scholarships provided by the department are encouraging the upskilling of teachers, we are concerned that there are still insufficient incentives for teachers to consider specialising in this vital area.
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**Finding 14**

That there are insufficient incentives for teachers to acquire additional qualifications to become special educators.

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- 6.166** Therefore, we recommend that the NSW Government investigate options to increase and enhance incentives for qualified teachers to acquire post graduate qualifications to become special educators for students with disability. This could include:
- More scholarships for teachers to undertake post-graduate qualifications in inclusive/special education.
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- Relief time from their employment to undertake this study.
- incentives, including pay structures, for those teachers who hold specialist post-graduate qualifications in special/inclusive education, for example paying such teachers at the same rate of pay as that of Highly Accomplished and Leader teachers (HALTs).

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### **Recommendation 9**

That the NSW Government investigate options to increase and enhance incentives for qualified teachers to acquire post graduate qualifications to become special educators for students with disability. This could include:

- more scholarships for teachers to undertake post-graduate qualifications in inclusive/special education.
- relief time from their employment to undertake this study.
- incentives, including pay structures, for those teachers who hold specialist post-graduate qualifications in special/inclusive education, for example paying such teachers at the same rate of pay as that of Highly Accomplished and Leader teachers (HALTs).

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- 6.167** The committee heard from many families that consistency and stability is key to ensuring children and young people with disability feel safe, supported and encouraged in educational settings. We are of the view that the current funding allocation model for mainstream public schools does not provide certainty for ongoing employment of learning and support teachers or encourage consistency in classroom support for students with disability. In many cases funding fluctuates year to year depending on the needs of the student population, making it difficult for schools to retain additional staff.

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### **Finding 15**

That the current funding allocation model for mainstream public schools does not provide certainty for ongoing employment of learning and support teachers or encourage consistency in classroom support for students with disability. In many cases funding fluctuates year to year depending on the needs of the student population, making it difficult for schools to retain additional staff.

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- 6.168** In order to provide stability to both students with disability and the learning and support teachers that work with them, the committee recommends that the NSW Government investigate means such as adjusting the resource allocation model to ensure there is targeted funding to employ learning and support teachers (LASTs) on a permanent full-time basis in mainstream public school settings to provide consistency and certainty for both teachers and the students with disability they support.

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### **Recommendation 10**

That the NSW Government investigate means such as adjusting the resource allocation model to ensure there is targeted funding to employ learning and support teachers (LASTs) on a permanent full-time basis in mainstream public school settings to provide consistency and certainty for both teachers and the students with disability they support.

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- 6.169** We were pleased to hear from a number of witnesses from the Deaf community, who were strong advocates for the need for more Deaf teachers and teachers who are qualified teachers of Deaf children. They told of the need for bi-lingual education for Deaf students, but were concerned that there was a shortage of appropriately qualified teachers, particularly those who are also Deaf. Therefore, the committee recommends that the NSW Government increase the number of appropriately qualified Deaf teachers, and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of Deaf children.
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#### **Recommendation 11**

That the NSW Government increase the number of appropriately qualified Deaf teachers, and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of Deaf children.

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- 6.170** Similarly, Vision Australia told the committee there was a lack of teachers with the specialist skillset required to meet the unique needs of students who are blind or vision impaired. The committee recommends that the NSW Government increase the number of qualified specialist vision teachers for blind and low vision students, to be engaged for all students who are blind/ low vision, to provide them with:

- Braille literacy
  - adaptive technology training
  - orientation/ mobility
  - compensatory skills and independent living skills
  - social skills
  - career counselling.
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#### **Recommendation 12**

That the NSW Government increase the number of qualified specialist vision teachers for blind and low vision students, to be engaged for all students who are blind/ low vision, to provide them with:

- Braille literacy
  - adaptive technology training
  - orientation/ mobility
  - compensatory skills and independent living skills
  - social skills
  - career counselling.
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- 6.171** The committee also notes evidence that it is not mandatory for teachers to undertake ongoing professional learning relating to any specific disability, although they must undertake professional development in the priority area of students with disability. However, it notes advice from NESAs that in a 12 month period, over 35,000 teachers in New South Wales have undertaken accredited professional development in this area, which is encouraging, although it
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is not clear what proportion of the teacher population this represents, not the type of skills that might be acquired or updated by these undertakings.

- 6.172** Further, the committee finds that representation of teachers with disability in the teacher workforce is below that of the general population and is not meeting NSW Government targets. This is particularly the case for the number of teachers specialising in support for specific disabilities, for example blind and deaf students.

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#### **Finding 16**

That the representation of teachers with disability in the teacher workforce is below that of the general population and is not meeting NSW Government targets.

- 6.173** The committee notes the department was unable to provide responses to questions relating to statistics on the types of disability amongst its staff. We consider this to be insufficient if we are to address the representation of teachers with disability in the teacher workforce.
- 6.174** To combat this, the committee recommends that the NSW Government continue to improve the proportion of teachers and support staff with disability in the school sector and consider how more students with disability can be supported and encouraged to gain a teaching degree.

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#### **Recommendation 13**

That the NSW Government continue to improve the proportion of teachers and support staff with disability in the school sector and consider how more students with disability can be supported and encouraged to gain a teaching degree.

- 6.175** The committee heard from representatives of First Nations people with disability and the demand for training for teachers about issues that impact Aboriginal children with disability. The committee was concerned to learn that there is currently insufficient workforce capacity to place First Nations expertise within inclusive education settings. As a first step to support the needs of First Nations students with disability the committee recommends that the NSW Government establish culturally safe policies and procedures for First Nations students with disability, in consultation with First Nations peoples and their representatives.

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#### **Recommendation 14**

That the NSW Government establish culturally safe policies and procedures for First Nations students with disability, in consultation with First Nations peoples and their representatives.

- 6.176** It would be remiss of the committee if we did not acknowledge the hard work and dedication of non-teaching support staff in educational settings, such as school learning support officers (SLSOs) or other specialist support staff who assist teachers in educating students with disability. However, we note the concerns of inquiry participants that SLSOs are under pressure, under-resourced and do not always have adequate training or knowledge to support the student. Therefore, the committee recommends that the NSW Government provide incentives to existing school learning support officers to acquire a Certificate III or Certificate IV in School

Based Education Support, to allow them to commence and complete this training while in employment as a school learning support officer (SLSO).

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### **Recommendation 15**

That the NSW Government provide incentives to existing school learning support officers to acquire a Certificate III or Certificate IV in School Based Education Support, to allow them to commence and complete this training while in employment as a school learning support officer (SLSO).

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- 6.177** In a similar vein, the committee recognises that access to allied health professionals such as psychologists, occupational therapists and speech pathologists is vital for children and young people with disability as they are relied on for diagnosis, support and ongoing treatment. However, access is not always guaranteed due to cost, location, and ability to access such services.
- 6.178** In particular, the committee was shocked by the high proportion of young people in out of home care who have a disability. The lack of access to a medical diagnosis exacerbates the challenges these young people face, particularly when it makes it difficult for them to qualify for the specific supports they need to access education.
- 6.179** The committee is concerned that the shortage of appropriate specialist and allied health workers has a knock on effect that leads to restricted access to appropriate educational support. Therefore, the committee recommends that the NSW Government invest in specialist and allied health workforces to support children and young people with disability.
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### **Recommendation 16**

That the NSW Government invest in specialist and allied health workforces to support children and young people with disability.

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- 6.180** Related to this, the committee welcomes the increased use of functional assessment by the department to determine what educational supports may be required for a student with disability. This reduces the need to rely on a medical diagnosis, which cannot always be accessed, particularly by groups already disadvantaged, as described in the paragraph above.
- 6.181** However, the committee understands that the department still relies on medical diagnosis to determine eligibility for the highest levels of support via Integration Funding Support. While the department has advised that it is intending to transition away from requiring a medical diagnosis, and instead rely on a functional assessment, the committee is concerned that some students are missing out on vital support as they are unable to access a medical diagnosis. Therefore, the committee recommends that the Department of Education transition to the eligibility criteria for Integration Funding Support relying on functional assessments of students' needs, rather than medical diagnoses.
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**Recommendation 17**

That the Department of Education transition to the eligibility criteria for Integration Funding Support relying on functional assessments of students' needs, rather than medical diagnoses.

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- 6.182** The committee also heard how access to early intervention is imperative to children and young people with disability as it can prevent or mitigate the long-term effects of developmental delays and disabilities and potentially reduce the need for specialised intervention later in the child's life. Based on the evidence received during this inquiry, the committee finds that there is great benefit for children with disability when they access early intervention. A delay or absence of early intervention has a detrimental effect on a child's educational outcomes, social wellbeing and employment opportunities.
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**Finding 17**

That there is great benefit for children with disability when they access early intervention. A delay or absence of early intervention has a detrimental effect on a child's educational outcomes, social wellbeing and employment opportunities.

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- 6.183** Another key resource used to support students with disability is the built environment, with respondents to the online questionnaire to this inquiry providing mixed responses as to whether schools were accessible. This was illustrated to members of the committee during a site visit to a school in south-western Sydney where infrastructure improvements such as making buildings more accessible were limited by heritage restrictions.
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**Finding 18**

That the infrastructure in New South Wales public schools is in some cases outdated, inappropriate and inaccessible for students with disability.

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- 6.184** We note advice from the department stating that all new school buildings will be designed and built with accessibility in mind, however, this does not address concerns or issues with current public schools where necessary facilities are often non-existent. As a result, the committee recommends that the NSW Government consider using principles of inclusive design in school buildings to improve accessibility for all students. Accessibility considerations for students should be prioritised above heritage requirements.
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**Recommendation 18**

That the NSW Government consider using principles of inclusive and adaptive design in school buildings to improve accessibility for all students. Accessibility considerations for students should be prioritised above heritage requirements.

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- 6.185** In addition, more broadly, the committee was concerned at the potential underinvestment in appropriate building infrastructure for students with disability and recommends that the NSW Government commit to a sustainable long-term investment in quality and appropriate capital and infrastructure for educational settings.
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**Recommendation 19**

That the NSW Government commit to a sustainable long-term investment in quality and appropriate capital and infrastructure for educational settings.

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- 6.186** Throughout this inquiry, the committee heard differing experiences from participants about the implementation of adjustments and learning plans for children and young people with disability. While some students have positive experiences in having their adjustments and learning plans being implemented successfully, others are not so fortunate. Instead, adjustments for these students may be inappropriate, applied inconsistently or in some instances not implemented at all. This has resulted in many students and their families not feeling heard and having few avenues to seek independent review of school decisions and actions.
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**Finding 19**

That the development, implementation and review of adjustments included in a student's individual learning plan is often inconsistent between and within schools, and parents/carers and students have few avenues to seek an independent review of school decisions and actions.

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- 6.187** This leads the committee to recommend that the NSW Government create clear and direct guidelines for schools to enable compliance with statutory obligations to provide reasonable adjustments for students with disability.
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**Recommendation 20**

That the NSW Government create clear and direct guidelines for schools to enable compliance with statutory obligations to provide reasonable adjustments for students with disability.

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- 6.188** Such inconsistencies with adjustments were highlighted by the Higher School Certificate disability provisions. We note that many students need to re-prove their disability in order to seek appropriate adjustments to complete their exams. In addition, we heard that in seeking these adjustments students and their families face further hurdles of having to pay for the required medical assessments, only to have requests for adjustments denied. We concerned to hear that in some cases, this leads to families being re-traumatised. It is also of concern that this is a 'deficit' approach, where students are being required to prove they lack ability, rather than being able to access examinations to show their knowledge and mastery of a subject.
- 6.189** As a result, the committee finds that the requirements to access Disability Provisions for the Higher School Certificate examinations can be onerous and excessively focused on students having to re-prove their need for adjustments which they are already accessing in the classroom. In some instances students and their families are required to provide extensive evidence of the need for adjustments, which can be costly, time-consuming and stressful.
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**Finding 20**

That the requirements to access Disability Provisions for the Higher School Certificate examinations can be onerous and excessively focused on students having to re-prove their need for adjustments which they are already accessing in the classroom. In some instances, students and their families are required to provide extensive evidence of the need for adjustments, which can be costly, time consuming and stressful.

- 6.190** To address this, the committee recommends that NSW Government consider a streamlined process, including a line of communication between the relevant agencies, for granting disability provisions for the Higher School Certificate. The process should incorporate recognition of pre-existing conditions and adjustments already provided in the classroom.

**Recommendation 21**

That the NSW Government consider a streamlined process, including a line of communication between the relevant agencies, for granting disability provisions for the Higher School Certificate. The process should incorporate recognition of pre-existing conditions and adjustments already provided in the classroom.

- 6.191** The committee notes that all schools (government and non-government) must comply with the requirements of the *Disability Discrimination Act 1992* (Cth) and the associated Disability Standards for Education 2005. The Standards oblige education providers to make reasonable adjustments for a student with disability so they can participate in education and training on the same basis as students without a disability.
- 6.192** While we acknowledge that NESAs has embedded these requirements into the regulatory framework for New South Wales schools, the committee is of the view that schools need to be reminded of this obligation. Therefore, the committee recommends that the NSW Government create clear and direct guidelines for schools to enable compliance with statutory obligations to provide reasonable adjustments for students with disability.
- 6.193** In relation to NDIS coordination and funding, the committee recognises the tensions between schools and concerned parents regarding expectations and capacity for NDIS-funded therapies to be delivered at school in class time. As it currently stands, the committee is of the view that more guidance and direction is required for schools to better work with parents and NDIS providers to enhance and facilitate student access to NDIS-funded support in the school setting. This would help to address the overwhelming requests received by schools from external practitioners to visit during class time and allay concerns of parents that their child was being denied access to therapies that were most effective if they occurred in an educational setting.
- 6.194** The committee recommends that the NSW Government provide support to the Department and schools to ensure they work with parents and NDIS providers to enhance and facilitate student access to NDIS-funded support in the school setting in order to achieve maximum benefits for the student and enhance teacher capability to address student needs.



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**Recommendation 22**

That the NSW Government provide support to the Department of Education and schools to ensure they work with parents and NDIS providers to enhance and facilitate student access to NDIS-funded support in the school setting in order to achieve maximum benefits for the student and enhance teacher capability to address student needs.

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- 6.195** Many stakeholders raised the importance of families being able to advocate for their children to ensure they received the assistance they were entitled to, or were able to raise concerns when they felt their child's learning needs were not being met. More importantly, this was a major theme in submissions from individual parents, and the committee heard many distressing stories of parents and children being ignored, or their concerns dismissed, or even being restricted in their access to the school or to staff. This has led the committee to consider how the voices of these children and their families can be supported so that they are heard, and the child's educational needs are met. Of particular concern to us is the handling of complaints by individual schools and school systems.
- 6.196** The complaints handling process in educational institutions was the subject of many concerns in evidence to the inquiry. The committee acknowledges that due to such dissatisfaction with the current complaints process within, and about schools, inquiry participants' supported Recommendation 7.10 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability for complaint management offices with educational authorities be arms' length from schools to help resolve complaints about schools concerning the treatment of students with disability.
- 6.197** We do not agree with the department's position that majority of complaints are best handled at the local level, that is schools, and that the Professional and Ethics Standards unit can act as an unbiased umpire. While the committee noted there is option now offered by the department of independent mediation for complaints from parents and students, these decisions are non-binding, and unlikely to resolve the issues, concerns and hurt experienced by families and children. This is particularly with regards to decisions to suspend students with disability, particularly when their behaviour may be the result of disability, or poorly implemented adjustments to meet their learning needs.
- 6.198** Following from the above, the committee considers the current complaints handling process to be severely inappropriate. As a result, we see merit in the recommendation put forward by the Disability Royal Commission.
- 6.199** In line with the above, the committee recommends that the NSW Government investigate and review options for an independent oversight function or body to support, advocate and investigate on behalf of children and young people with disability and their families. The independent body could include the following features:
- Jurisdiction over the education of school-aged children in government and non-government schools, TAFE, vocational education providers, universities, early childhood education settings, home education or not in any educational setting in New South Wales.
  - The ability to review and adjudicate on decisions to suspend or expel students with disability.

- The ability to review and adjudicate on decisions by schools about adjustments, and decisions by NESAs about Disability Provisions.
- The ability to investigate and respond to allegations of discrimination, abuse, neglect and exploitation of a child with disability in a registered school.
- The ability to review and investigate issues of systemic disability discrimination and ableism.
- The ability to collect and report on data relating to suspension, expulsion and restrictive practices.
- The ability to advise on a transition to a more inclusive education school system.
- A clear and accessible dispute resolution mechanism for parents and carers to make complaints or raise concerns, and procedures to collect, analyse and report on these complaints.

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### Recommendation 23

That the NSW Government investigate and review options for an independent oversight function or body to support, advocate and investigate on behalf of children and young people with disability and their families. The independent body could include the following features:

- Jurisdiction over the education of school-aged children in government and non-government schools, TAFE, vocational education providers, universities, early childhood education settings, home education or not in any educational setting in New South Wales.
- The ability to review and adjudicate on decisions to suspend or expel students with disability.
- The ability to review and adjudicate on decisions by schools about adjustments, and decisions by NESAs about Disability Provisions.
- The ability to investigate and respond to allegations of discrimination, abuse, neglect and exploitation of a child with disability in a registered school.
- The ability to review and investigate issues of systemic disability discrimination and ableism.
- The ability to collect and report on data relating to suspension, expulsion and restrictive practices.
- The ability to advise on a transition to a more inclusive education school system.
- A clear and accessible dispute resolution mechanism for parents and carers to make complaints or raise concerns, and procedures to collect, analyse and report on these complaints.

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**6.200** Notwithstanding the powers and role of the body proposed above, all families should have recourse to the legal system if they consider they have been discriminated against by an education provider.

**6.201** In particular, we note that discrimination in educational settings on the grounds of disability is unlawful under the *Anti-Discrimination Act 1977*, with exemptions for private educational

settings, meaning they can discriminate against a student or prospective student on the basis of disability.

- 6.202** The committee is of the view that private institutions should be accountable in the same way as public institutions under the same legislation. We consider that such a legislative change would make the complaints process faster and less costly for those attending private educational settings. The committee therefore recommends that the NSW Government refer the issue of the removal of exemptions which allow private educational institutions to discriminate against a person on the basis of disability to the NSW Law Reform Commission for consideration as part of its review into the *Anti-Discrimination Act 1977*.
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#### **Recommendation 24**

That the NSW Government refer the issue of the removal of exemptions which allow private educational institutions to discriminate against a person on the basis of disability to the NSW Law Reform Commission for consideration as part of its review into the *Anti-Discrimination Act 1977*.

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- 6.203** Similarly, the committee recommends that the NSW Government seek to amend the *Anti-Discrimination Act 1977* to include a positive duty on educational institutions to provide reasonable adjustments for a person with disability.
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#### **Recommendation 25**

That the NSW Government seek to amend the *Anti-Discrimination Act 1977* to include a positive duty on educational institutions to provide reasonable adjustments for a person with disability.

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- 6.204** The committee learned that there is limited data collected on children and young people with disability that is not linked to the Nationally Consistent Collection of Data on School Students with Disability (NCCD). As a result, there are significant gaps in data relating to student outcomes, student experience and engagement with their education, student achievement in NAPLAN, suspensions and expulsions in the non-government sector as well as data on those who are home schooled. Evidently, considerable improvements are required in data collection and reporting on students with disability, including data relating to suspension, expulsion and restrictive practices in government and non-government schools, students refused enrolment in their school of choice due to disability, and students with disability who are homeschooled.

- 6.205** The committee therefore recommends that the NSW Government improve its data collection and reporting on students with disability who are school-aged and/or in school settings, including collecting data on the following:
- collect and report on data relating to suspension, expulsion and restrictive practices in government and non-government schools
  - collect and report data on students refused enrolment in their school of choice due to disability
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- collect data on students with disability who are homeschooled in the Nationally Consistent Collection of Data on students with disability.
- collect data on outcomes of requests for reasonable adjustments and HSC Disability Provisions
- where relevant, this data should be disaggregated to report on children who are in out of home care.

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### **Recommendation 26**

That the NSW Government improve its data collection and reporting on students with disability who are school-aged/in school settings, including collecting data on the following:

- collect and report on data relating to suspension, expulsion and restrictive practices in government and non-government schools
  - collect and report data on students refused enrolment in their school of choice due to disability
  - collect data on students with disability who are homeschooled in the Nationally Consistent Collection of Data on students with disability
  - collect data on outcomes of requests for reasonable adjustments and HSC Disability Provisions
  - where relevant, this data should be disaggregated to report on children who are in out of home care.
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- 6.206** The committee also heard how the challenges faced by young people with disability can continue as they move from school into further study at university or TAFE. We note that such challenges include lack of oversight of universities in providing adjustments for students with disability, limited access to support, and discrimination.
- 6.207** The committee acknowledges that there was a limited amount of evidence provided to this inquiry regarding the experiences and challenges of students with disability as they move into post-compulsory education, particularly in comparison to the experiences of children in school. The evidence from witnesses about their experiences in the tertiary sector was, however, powerful and moving, and the committee is strongly persuaded that there needs to be a move to an inclusive education model in the tertiary sector.
- 6.208** The committee acknowledges the importance of TAFE as a transition pathway from school to employment or further education for young people with disability. However, it notes the evidence that young people do not feel supported in their transition from school into further education settings such as TAFE, vocational education and training and higher education. The committee recommends that the NSW Government increase support for young people with disability transitioning from school to study at TAFE.

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**Recommendation 27**

That the NSW Government increase support for young people with disability transitioning from school to study at TAFE, vocational education and training and higher education, for example through funding transition pilot programs and introducing in-school supports and learning for students with disability.

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- 6.209** The committee also recommends that the NSW Government, in cooperation with the Australian Government, seek to review the governance of NSW public universities, particularly with respect to their policies and processes for meeting the educational needs of students with disabilities and their complaints handling processes.
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**Recommendation 28**

That the NSW Government, in cooperation with the Australian Government, seek to review the governance of NSW public universities, particularly with respect to their policies and processes for meeting the educational needs of students with disabilities and their complaints handling processes.

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## Appendix 1 School site visit summary report

On Friday 14 June and Thursday 27 June 2024, Portfolio Committee No. 3 visited three schools across the Central Coast and Sydney to learn about each school's offering to its students with disability.

The schools were Terrigal Public School, Aspect Central Coast School, Terrigal, and St Justin's Catholic Primary School, Oran Park. At each school, the committee received a briefing by members of the school leadership team, observed classes in action and toured the school premises and facilities.

Some members of the committee also visited schools in their private capacity as members of Parliament. For example, Mr Anthony D'Adam visited St Lucy's School, Wahroonga on 14 June, and Ms Abigail Boyd and Mr Anthony D'Adam visited Passfield Park Primary School, Minto and Ajuga School for Specific Purposes, Glenfield on 27 June.

### Terrigal Public School and support unit

- On 14 June, Ms Abigail Boyd, Mr Mark Buttigieg, Mr Anthony D'Adam and Mrs Natasha Maclaren-Jones, visited Terrigal Public School and support unit. The committee met with the principal, Mr Michael Burgess, Ms Joanne Wilcher, Director, Educational Leadership, and student leaders Mia and Cameron.
- The 916 students come from a range of language and cultural backgrounds, including 42 from an Aboriginal and/or Torres Strait Islander background and 71 students with English as an additional language or dialect.
- The school has 35 mainstream classes and three support classes (aka the Learning Hub). Twenty-seven students with disability attend the Learning Hub, which is staffed by two teachers, one Assistant Principal/teacher, and three School Learning Support Officers.
- A total of 74.22 full-time equivalent staff are employed at the school.

### Educational approach

- The school prioritises evidence-based practice through the use of data to inform teaching and instructional support for every teacher.
- Each student in the Learning Hub has a support plan and is able to participate in all school activities. Students build on strengths, with complementary activities including learning in the community, cooking and horseriding.
- The Hub has a superheroes theme with classes named the Incredibles, Marvels and Avengers. The superhero theme is used for awards and other aspects of learning.

## Aspect Central Coast School, Terrigal

- On 14 June, Ms Abigail Boyd, Mr Mark Buttigieg and Mrs Natasha Maclaren-Jones visited Aspect Central Coast School, one of Aspect's nine independent special schools. Every student enrolled at an Aspect school has a primary diagnosis of autism. At Central Coast School, approximately 95 per cent of students are categorised as either Level 2 or 3 ASD.
- The Senior campus offers classes for Years 7–12 and each class has six students, one teacher and a teacher's aide.
- The ratio of male to female students is 80:20. Approximately 9 per cent of students identify as Aboriginal or Torres Strait Islander.

### Educational approach

- The school uses autism-specific teaching methods. It is focused on equipping students with the skills to increase their independence and enabling them to transition into more inclusive settings.
- At the centre of Aspect's approach is a Five Point Star tool, which focuses on individual student preferences for learning. Through collaboration, the school develops a profile that sets out the way the students process their thinking, identifies their preferred modes and styles of communication and outlines expectations for their engagement and learning. It also reflects student motivations and enables the school to plan for their sensory needs.
- As a registered independent school, Aspect Central Coast also offers satellite classes in schools at Tuggerah, Gosford, Woy Woy and Toukley. The classes, which are operated by Aspect and supported by Aspect's teachers and teacher's aides, are small and deliver the Australian curriculum in conjunction with supporting each student's autism-related learning needs, strengths, and interests.
- Integration activities are integral to Aspect's offering, with most students having integration goals in their individual plans. Students in satellite classes participate in integrated activities in the host school such as sports, excursion and student clubs, while students from mainstream schools are encouraged to participate in activities like Aspect-run camps and siblings' days.
- Student transitions from Aspect's main schools to satellite settings, or from satellite classes into new settings, are carefully planned and have follow-up support.

### Staff training and development

- All Aspect school staff are provided with induction and ongoing training that builds knowledge, skills and understanding of working with autistic students. Professional learning programs are co-designed with people with autism and, in cases where the programs are face-to-face, are often facilitated by staff with autism.
- Aspect Central Coast School staff have engaged in a range of other training, including mandatory and supportive training for safety intervention, and the Berry Street Educational Model to support their 'trauma informed' planning. Training and development is valued by staff and key to the success of Aspect's education model.

## St Justin's Primary School, Oran Park

- On 27 June, Ms Abigail Boyd, Mr Anthony D'Adam and Ms Rachel Merton visited St Justin's Oran Park. The school is one of the newest Catholic primary schools in the Diocese of Wollongong. It has 826 students and 90 staff members. Ninety-five per cent of students identify as Catholic, 50 per cent of students have a language background other than English, and 11 per cent have English as an additional language.
- The school's students have a diverse range of learning needs, with 19 students currently accessing the school's support classes. The school's Diverse Learning Team is a group of experienced educators who are available to support classroom teachers in catering to the diverse range of learning needs in their classroom.
- St Justin's also offers an alternative flexible education setting for students who have a primary diagnosis of autism or a cognitive disability (intellectual development disorder) and require intensive specialised interventions.

### Access to a support class

- The specialist setting – known as Mackillop – is viewed as an intervention for each student for a particular point in time in their learning.
- For a student to be offered a placement in Mackillop, an appropriate validated diagnosis is required. Placement in this setting is completed in conjunction with the school's enrolment process (which begins up to six months in advance). This involves specialist support from the diocese and regular consultation with a prospective student's family/caregiver.
- The final decision around placement rests with a student's parents.
- In exceptional circumstances, such as a need to support the safety of a student, a placement in a support class may occur (in consultation with the family and external professionals), where a diagnosis of disability does not exist.

### Reasons for placement in a support class

- The primary reasons students may be placed in a support class are to reduce the risk associated with:
  - failure to thrive in a mainstream classroom environment
  - having social and emotional skills that affect regulation, engagement and safety of self and others
  - having sensory challenges that are impacted by the classroom and non-classroom environment
  - the need for intensive individualised teaching and learning aligned to NSW curriculum outcomes, particularly in the areas of English and mathematics.

### Support unit aims



- The goal for each student who accesses Mackillop is to return to the general setting of the school, determined by individual needs, and in consultation with parents and carers.
- Progress towards this is achieved through a gradual release model of support. With a reduced teacher/student ratio in the support class, students learn and practice new skills which are then transferred to classroom and non-class environments.
- The development of student self-advocacy skills is a priority for students accessing a support class.
- As much as possible, students accessing support classes participate in the educational, cultural, sporting, recreational and celebratory activities of the school with their peers (whether with or without disability).

### **Liaison with families**

- The school consults regularly with the families of prospective students to help them determine the appropriateness of placement and transition opportunities.
- As key stakeholders, parents are involved in individual planning for their children.

### **Resourcing**

- Resourcing is determined by the Nationally Consistent Collection of Data Census (NCCD) by way of the government Student With Disability loading. The school is well-supported by NCCD supports.
- The Diocese of Wollongong provides a staffing allocation for the positions of Diverse Learning Coordinator (secondary) and Diverse Learning Teachers (primary).
- Establishment of support classes is financed by the Diocese and not through Student With Disability loading.
- Individual student NDIS funding cannot be used in diocesan schools to support access and participation during school hours.

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## **St Lucy's School, Wahroonga**

- St Lucy's is a K–12 co-educational independent Catholic school, open to students of all denominations across a range of disability. Approximately 85 per cent of students are in the Extensive range and 15 per cent in the Substantial range of Nationally Consistent Collection of Data.
- Students belong to a class of eight or nine students. Each class at the main campus at Wahroonga has a specialist teacher and two teacher's aides.
- St Lucy's also offers satellite classes in mainstream primary schools for students to participate in special education programs within their classroom. Satellite students participate in the NESAs curriculum at their level while working towards transition to their next setting – usually a mainstream school with a support unit or a mainstream class setting.

- St Lucy's classroom staff work in collaboration with a team which includes occupational therapists, speech pathologists, behaviour practitioners and a psychologist. St Lucy's staff also work with each student's external professionals.

### **Facilities – primary school**

- The Dominic Centre for primary students includes 16 state-of-the-art classrooms with complementary learning spaces, kitchen facilities and modern assistive and augmented technology.
- It also includes two 'Changing Places' bathrooms with showering facilities and two fully accessible bathrooms with hoists. There is one lift so that all levels of the building and underground car park are accessible.
- There is an inground pool, gymnasium, and purpose-built playground at the Wahroonga campus.

### **Inside the primary classroom**

- Each student has an Individual Education Program and is supported to participate in their NESA education at their level.
- A one-on-one evidence-based Reading Tutor Program in literacy is offered, working with students and a specialised teacher, supported by trained volunteers.
- The Creative Arts Program is facilitated by a team of professional artists- in-residence. Students spend time each week in the Angelico Centre for Creative Arts, which includes visual arts, music, dance and drama studios.
- Personal development, health and physical education programs are taught by specialised teachers.

### **Beyond the primary classroom**

- St Lucy's students participate in several programs with nearby schools:
  - The **Knox Buddy Program** offers students the chance to broaden their social and play skills, and make new friends from the neighbouring Knox Grammar school.
  - The **PLC Robotics Program** offers students with an interest in coding and engineering the opportunity to work in collaboration with mainstream peers on STEM projects.
  - The **Abbotsleigh Combined Arts Program** provides students with an opportunity to work shoulder-to-shoulder with mainstream peers in artmaking and exhibition programs.

### **Inside the secondary classroom**

- Each student has an Individual Education Program or Individual Transition Program. The curriculum includes the NESA Life Skills curriculum, VET programs and meaningful recreational, independence and work opportunities, in preparation for post-school life.

- VET Programs in Stage 5 and 6 prepare students for the workplace and give them an opportunity to gain or work towards a trade qualification.

### **Beyond the secondary classroom**

- A **Community Participation Program** focuses on building students' work and recreational capacity and opportunities, helping students to pursue authentic involvement in the community including in the arts and social arenas.
- A **Post School Options Coordinator** works with students and families to create meaningful connections with workplaces and services to ensure a successful transition to life beyond school.
- The **Family Support Worker** collaborates with families in accessing skill building, respite and other services in their local area, and NDIS planning and support.

### **Across K-12**

- St Lucy's has a Student Wellbeing Framework and Social and Emotional Learning Program designed by a team of specialised staff for all students to participate. The program aims to strengthen students' sense of self, their mental and emotional health and their relationships with peers and the school community.

## **Passfield Park School, Minto**

- Passfield Park School is a purpose-built K–12 school offering educational programs to support students with disability. Students have a primary diagnosis of autism, or of intellectual disability, and 82 per cent of students have both. Seventy per cent of students are non-verbal. Four students use wheelchairs.
- The school has a capacity of 103 students and a full-time equivalent staff load of 48. Students come from diverse backgrounds—four students identify as Aboriginal and/or Torres Strait Islander and 68 students have English as an additional language or dialect. In the last four years, 37 per cent of students have come from a Nepalese or Bangladeshi background.

### **Educational approach**

- The ethos of the school is 'know your students and how they learn'. Class sizes are determined by the level of disability, with a mix of moderate and severe disability and ages in the same class.
- Every class has a Student Learning Support Officer (SLSO). Basic skills, such as sitting at a desk, may need to be taught.
- Six students are currently being transitioned to other schools. Which school a student is assigned to is a decision of the Department. Each student in year 3 is reviewed to see if they are ready to be in a less restrictive environment.

### **Student and family support**

- The school takes a holistic, pragmatic and flexible approach to student support, providing vulnerable children with meals and spaces to rest or sleep during school hours, as needed.
- An Out of Home Care program supports students where parental, accommodation and/or educational responsibility is held by the Minister for Families, Communities and Disability Services. The school is supported to enhance the learning and wellbeing of students who are in, or entering, statutory Out of Home Care.
- The school also assists families through providing a secure environment for their children and through advocacy.

### **Special programs**

- The school supports students with a range of assistance including a heated hydrotherapy program specifically designed for the use of people with severe and multiple disabilities to assist with massage, exercise, sensory regulation, vestibular movement and increased limb movement and strengthening. All classes use the pool weekly, with identified students receiving additional sessions for wellbeing and/or sensory regulation, to increase their learning potential.
- The school's charity, PPS Kids Inc, supports the employment of a music therapist two days per week, who works with all classes and students across the school. The program is fully interactive, encourages speech through music, and offers calming strategies for students with additional needs.
- An Aboriginal Culture Program operates one day per week with nine different classes. Fully differentiated programs have been designed to enrich student knowledge and understanding of First Nations peoples. The program is led by an SLSO, who is also a local Aboriginal person.
- The school has a Community Liaison Officer (CLO) two days per week who works directly with parents, carers, NDIS and the local community to improve outcomes and the lives of students with significant disability, and their families. The CLO assists families with NDIS services, Centrelink and disability programs, supporting and empowering families to advocate for their child. The school also subsidises community programs to provide food hampers and care packages where needed.

### **Ajuga School for Specific Purposes, Glenfield**

- Ajuga School offers a safe space to students with complex trauma backgrounds. Located in south-west Sydney, the school has 63 students from Kindergarten to Year 12. There are currently nine classes – five primary and four secondary classes.
- Ajuga has a diverse student community drawn from more than 50 schools across south-western Sydney. Thirty-eight per cent of students identify as Aboriginal and/or Torres Strait Islander and 25 per cent have a language background other than English.
- As the school is located in heritage buildings, building modifications are restricted, making accessibility an issue. Further, the site's history also poses a barrier for people from First Nations backgrounds.

- There are 12 teaching staff and 11 non-teaching staff. Each class is supported by a teacher and a School Learning Support Officer.

### **Educational approach**

- Having previously used a Positive Behaviour Learning (PBL) model, Ajuga has now adopted the Berry Street education model, informed by Ross Greene's trauma-informed approach.
- Trauma-informed practice comes from the health sector and is new to education. There has been a reduction in suspensions since its implementation. Student and staff wellbeing and engagement remains a priority.
- During their time at Ajuga, students are supported to work towards transitioning back to a mainstream setting within 18 months.

### **Programmes and partnerships**

- Punchbowl High School helps with ATAR preparation for students who wish to complete high school.
- Some senior students are undertaking TAFE VET courses.
- Students learn gardening skills and grow award-winning pumpkins. There is also a mini-Woolworths on site.
- A weekly sustainability class is held in conjunction with Georges River Environmental Education Centre.

### **Coming up**

- With the renovation of the school kitchen nearly complete, the school expects to soon offer a barista course, and training in catering to students.

## Appendix 2 Submissions

No.	Author
1	Name suppressed
2	Mr Robert Heron
3	Miss Jade Wright
4	Name suppressed
5	Jade Faivakimoana
6	Amy McGillivray
7	Confidential
8	Owen McGillivray
9	Mrs Eliza McGillivray
10	Mr Jared Carr
11	Name suppressed
12	Confidential
13	Name suppressed
14	Disability Council of NSW
15	The Isolated Children's Parents' Association of New South Wales Inc.
16	Name suppressed
17	The Institute of Special Educators (InSpEd)
18	Mr Nicholas Lapsley
19	Name suppressed
20	Name suppressed
21	Developmental Coordination Disorder (DCD) Australia Incorporated
22	Name suppressed
23	Occupational Therapy Australia (OTA)
24	Vision Australia
25	Name suppressed
26	National Disability Services
27	The Australian Association of Psychologists Incorporated (AAPi)
28	Legal Aid NSW
29	NSW Government
30	The Association of Independent Schools of New South Wales (AISNSW)
31	Autism Spectrum Australia (Aspect)
32	Youth Law Australia

<b>No.</b>	<b>Author</b>
33	Early Childhood Intervention Best Practice Network
34	UTS Child Care Inc.
35	Australian Association of Special Education NSW Chapter
36	Anti-Discrimination NSW
37	The NSW Special Education Principals Association
38	Federation of Parents and Citizens Associations of NSW
39	Cerebral Palsy Alliance
40	Ms Fiona Davies and Professor Brian Owler
41	Dr Gemma Ma
42	Disability Advocacy NSW
43	Dr David Roy
44	Name suppressed
45	Name suppressed
46	EarlyEd
47	Name suppressed
48	HeartKids
49	Autism Awareness Australia
50	Name suppressed
51	Triple P Positive Parenting Program
52	Mrs Ciara and Mr Tim McKillop
52a	Mrs Ciara and Mr Tim McKillop
53	Adjunct Professor Tamara Smith MP, Member for Ballina
54	NSW Ageing and Disability Commission
55	NSW Ombudsman
56	Uniting NSW.ACT
57	Siblings Australia
58	Melissa Molloy with Andrew Molloy
59	Carers NSW
60	Office of the Advocate for Children and Young People (ACYCYP)
61	Youth Action
62	Family Advocacy
63	Home Education Association, Inc.
64	Name suppressed
65	Australian Psychological Society (APS)
66	PSA (Public Service Association of NSW)

<b>No.</b>	<b>Author</b>
67	Autism Advisory and Support Service
68	Karleen Gribble
68a	Confidential
69	Name suppressed
70	Name suppressed
71	The Atypical Educator
72	Catholic Schools NSW
73	People with Disability Australia (PWDA)
74	AEU NSW Teachers Federation
75	Australian Centre for Disability Law (ACDL)
76	Confidential
77	Name suppressed
78	Name suppressed
79	Name suppressed
80	Confidential
81	Anna-Marie Harvey
82	Name suppressed
83	Parents of Deaf Children
84	AllambiCare
85	Confidential
86	Brett Smith
87	Dr Rebecca English
88	Australian Neurodivergent Parents Association (The ANPA)
88a	Australian Neurodivergent Parents Association (The ANPA)
89	NSW Police
90	The Autistic Self Advocacy Network ('ASAN') of Australia and New Zealand and Australian Autism Alliance
91	Parents of St Lucys



## Appendix 3 Witnesses at hearings

Date	Name	Position and Organisation
<b>Tuesday 26 March 2024</b> <b>Preston Stanley Room</b> <b>Parliament House, Sydney</b>	Ms Sarah Abdou	Solicitor, Australian Centre for Disability Law
	Ms Rebecca Belzer	Solicitor, Australian Centre for Disability Law
	Ms Meredith Hagger	Principal Solicitor, General Practice, Youth Law Australia
	Ms Carey Evelyn Pearson	Acting Solicitor in Charge, Legal Aid NSW
	Ms Natasha Watt	Senior Vice President, NSW Teachers Federation
	Ms Emma Bruce	Organiser, NSW Teachers Federation
	Mrs Lyn Caton	Assistant Secretary, Independent Education Union of Australia NSW/ACT Branch
	Mr Troy Wright	Assistant General Secretary, Public Service Association
	Ms Julie-Ann Bond	Industrial Manager, Public Service Association
	Dr Cherry Baylous	Policy and Communications Lead, Disability Advocacy NSW
Ms Nadine Moore	Advisory Committee member, Disability Advocacy NSW	
<b>Monday 22 April 2024</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Gemma	Person with lived experience
	Child B	Person with lived experience
	Fiona	Person with lived experience
	Brian	Person with lived experience
	Child A	Person with lived experience
	Andrew	Person with lived experience
	Melissa	Person with lived experience
	Ms Cecile Sullivan Elder	Executive Officer, Family Advocacy
	Ms Libby Gunn	National and NSW Coordinator, Square Peg Round Whole

Date	Name	Position and Organisation
	Dr Marika Franklin	Member Advocate, Square Peg Round Whole
	Mr Andrew Wilson	Chairperson, Australian Alliance for Inclusive Education (All Means All)
	Mrs Sue Tape <i>(via videoconference)</i>	Project Coordinator – Inclusive Education, Children and Young People with Disability Australia
	Ms Nicole Rogerson	Director, Autism Awareness Australia
	Ms Grace Fava OAM	Founder and Chief Executive Officer, Autism and Advisory Support Services
	Ms Sarah Langston <i>(via videoconference)</i>	Policy Co-lead, Australian Neurodivergent Parents Association
	Ms Emily McCann <i>(via videoconference)</i>	Board member, Executive Committee, Australian Neurodivergent Parents Association and Parent to an Autistic Child
	Mr Julian Laurens	Senior Policy Officer, People with Disability Australia
	Ms Joanne Yates	Acting Deputy Chief Executive Officer, People with Disability Australia
	Ms Charlotte Sangster	Chief Executive Officer, Muscular Dystrophy NSW
	Ms Laura Howard	Senior Community Support Specialist, Muscular Dystrophy NSW
	Mr Chris Edwards	Director – Government Relations, Advocacy, NDIS and Aged Care, Vision Australia
	Mr Brent Phillips	Director – Government Relations, Advocacy, NDIS and Aged Care, Vision Australia
	Ms Shirley Liu	Acting Chief Executive Officer, Deaf Australia
	Ms Catherine Miller	Policy Officer, Deaf Australia
	Ms Janelle Barnes <i>(via videoconference)</i>	President, Home Education Association
	Ms Lara Sappl <i>(via videoconference)</i>	National Committee Member, Home education Association

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Jason Wong	Executive Director, North Sydney, and Board Secretary, Federation of Parents and Citizens Associations of NSW
	Mr Liam Bowden	Policy and Advocacy Officer, Federation of Parents and Citizens Associations of NSW
	Ms Gabie Le Lievre <i>(via videoconference)</i>	Special Education Portfolio Leader, Isolated Children's Parents' Association of NSW
	Ms Annabel Strachan <i>(via videoconference)</i>	Rural Schools Portfolio leader, Isolated Children's Parents' Association of NSW
	Mr Jonathan Harms	Chief Executive officer, Mental Health Carers NSW
<b>Tuesday 23 April 2024</b>	Dr Sally Howell	President, Australian Association of Special Education NSW Chapter
<b>Macquarie Room</b>	Dr Cathy Little	Associate Professor Special Education and Chair, Initial Teacher Education, Australian Association of Special Education NSW Chapter
<b>Parliament House, Sydney</b>	Mrs Loren Swancutt <i>(via videoconference)</i>	Chairperson, Inclusive Educators Australia
	Dr Coral Kemp OAM	Chair, Institute of Special Education
	Dr Jennifer Stephenson	Director, Institute of Special Educators
	Mr Phillip Petrie	Chief Executive Officer, Allevia/NSW Divisional Committee Chair, National Disability Services
	Mrs Morgan Fitzpatrick	Chief Executive officer, Koorana Child & Family Services/NSW Divisional Committee, National Disability Services
	Dr Shannon Schedlich	Chief Executive, Siblings Australia (SibPlan)
	Professor Iona Novak AM	Chair of Allied Health, Cerebral Palsy Alliance
	Ms Sophie Geeves	CPActive Champion and lived experience representative, Cerebral Palsy Alliance
	Mr Damien Griffs <i>(via videoconference)</i>	Chief Executive officer, First Peoples Disability Network

Date	Name	Position and Organisation
	Ms Zoë Robinson	Advocate for Children and Young People
	Ms Ellen Armfield	Person with lived experience
	Ms Sonja Vujanic	Person with lived experience
	Mr Paul Miller	NSW Ombudsman
	Ms Jacqueline Fredman	Deputy Ombudsman (Complaints and Resolution)
	Ms Cecelia Cox	A/Director Operations, NSW Ageing and Disability Commission
	Ms Pamela Cuelho	Manager, Official Community Visiting Scheme, NSW Ageing and Disability Commission
	Mr Martin Graham	Deputy Secretary, Teaching, Learning and Student Wellbeing, NSW Department of Education
	Ms Deborah Summerhayes	Deputy Secretary, Public Schools, NSW Department of Education
	Mr Stephen Brady	Managing Director, TAFE NSW
	Mr Matthew Barden	A/Executive Director, Homelessness, Disability and Seniors, Department of Communities and Justice
<b>Wednesday 12 June 2024 Macquarie Room Parliament House, Sydney</b>	Mr B <i>(via videoconference)</i>	Autistic Self Advocacy Network
	Ms C <i>(via videoconference)</i>	Autism Awareness Alliance
	Ms Mairead Foley	National Disability Officer, National Union of Students
	Ms Keira Ademovic	Student Advisor, National Union of Students
	Dr David Roy	Lecturer in Education, University of Newcastle
	Ms Tina Kordrostami	Director, Mental Health Architectural (MHA) Design
	Mr Martin Graham	Deputy Secretary Teaching, Learning and Student Wellbeing, NSW Department of Education
	Mr Paul Martin <i>(via videoconference)</i>	Chief Executive Officer, NSW Education Standards Authority (NESA)

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Ms Lisa Ridings	Associate Chief Executive of Student Services, Association of Independent Schools NSW
	Mr Brett Smith	Executive Officer of Operations, AllambiCare

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## Appendix 4 Minutes

### Minutes no. 5

Wednesday 6 December 2023

Portfolio Committee No. 3 – Education

Room 1136, Parliament House, Sydney, 10.02 am

#### 1. Members present

Ms Boyd, *Chair* (via videoconference)

Ms Merton, *Deputy Chair*

Mr D'Adam (via videoconference)

Mr Buttigieg

Ms Mihailuk

Mrs Mitchell (via videoconference)

Ms Suvaal (via videoconference)

#### 2. Previous minutes

Resolved, on the motion of Ms Mihailuk: That draft minute nos. 3 and 4 be confirmed.

#### 3. Correspondence

The committee noted the following items of correspondence:

##### *Received*

- 31 October 2023 – Email from individual to the committee, regarding concerns about the feral deer population in the Nirimba Education Precinct
- 1 November 2023 – Email from Mr Justin Barrett to Chair, noting the correspondence received and providing additional information for the committee's consideration
- 28 November 2023 – Letter from Hon Sarah Mitchell MLC, Hon Rachel Merton MLC and Ms Abigail Boyd MLC requesting a meeting of Portfolio Committee No. 3 to consider a proposed self-reference into children and young people with disability in New South Wales educational settings.

#### 4. Consideration of terms of reference

The Chair tabled a letter to the Committee Clerk signed by Hon Sarah Mitchell MLC, Hon Rachel Merton MLC and Ms Abigail Boyd MLC requesting a meeting of the committee to consider a proposed terms of reference into children and young people with disability in New South Wales educational settings.

Resolved, on the motion of Mr D'Adam: That the terms of reference be amended by inserting the following new terms of reference after paragraph g):

- h) the resourcing available to educational settings and educators, including infrastructure, to support the needs of children and young people with disability in New South Wales
- i) the measures necessary to ensure the learning environment is safe and inclusive for all students, teachers and school support staff

Resolved, on the motion of Mrs Mitchell: That the committee adopt the terms of reference as amended.

1. That Portfolio Committee No. 3 – Education inquire into and report on current levels of access and attainment for children and young people with disability in New South Wales educational settings, and in particular:
  - (a) the experiences of children and young people within educational settings and measures to better support students with disability
  - (b) the barriers to safe, quality and inclusive education for children with disability in schools, early childhood education services and other educational settings

- (c) the specific needs of children and young people with disability in regional, rural and remote schools, early childhood education services and other educational settings
  - (d) the impact on children and young people with disability and their families associated with inadequate levels of support
  - (e) the benefits for all children and young people if students with disability are provided with adequate levels of support
  - (f) the social, economic and personal benefits of improving outcomes for students with disability at school and in further education and employment
  - (g) the experiences of teachers, early childhood educators, learning support staff and others with a role in educating children with disability and measures to adequately resource and empower those educators
  - (h) the resourcing available to educational settings and educators, including infrastructure, to support the needs of children and young people with disability in New South Wales
  - (i) the measures necessary to ensure the learning environment is safe and inclusive for all students, teachers and school support staff
  - (j) the impact of policies regarding suspensions and expulsions
  - (k) the impact of policies regarding the use of restrictive practices
  - (l) the effectiveness and availability of early intervention programs
  - (m) whether existing regulatory and oversight mechanisms are sufficient to protect and promote the rights of children and young people with disability, and protect those children and young people from abuse, neglect and exploitation
  - (n) whether children and young people with disability should be included under the remit of the Ageing and Disability Commissioner
  - (o) developments since the 2017 Upper House inquiry into education of students with disability or special needs in New South Wales
  - (p) measures to implement the Disability Royal Commission's recommendations in relation to inclusive education
  - (q) any other related matters.
2. That the committee report by 30 May 2024.
- 5. Conduct of the inquiry into children and young people with disability in New South Wales educational settings**

**5.1 Closing date for submissions**

Resolved, on the motion of Mr D'Adam: That the closing date for submissions be Thursday 29 February 2024.

**5.2 Stakeholder list**

Resolved, on the motion of Mr Buttigieg: That:

- the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

**5.3 Online questionnaire**

Resolved, on the motion of Ms Mihailuk: That:

- the committee use an online questionnaire to capture individuals' views, and that the draft questions be circulated to the committee for comment, with a meeting on request from any committee member if there is disagreement on the questions
- the media release announcing the establishment of the inquiry and emails to stakeholders note that there will be an online questionnaire to capture individuals' views
- that the following wording be included on the committee's website:
  - **Submissions**  
Individuals are invited to submit their comments on the terms of reference [here](#) [hyperlink to online questionnaire]. This is a new way for individuals to participate in inquiries.

Resolved, on the motion of Mr D'Adam: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- the committee agree to publication of the report via email, unless a member raises any concerns
- individual responses be kept confidential on tabling.

#### 5.4 Hearing dates

Resolved, on the motion of Ms Suvaal: That the committee hold hearings on 26 March 2024 and the week commencing 22 April 2024, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

## 6. Adjournment

The committee adjourned at 10.31am, *sine die*.

Sarah Newlands  
Committee Clerk

## Minutes no. 6

Monday 12 February 2024  
Portfolio Committee No. 3 – Education  
Room 1254, Parliament House, Sydney, 1.04 pm

### 1. Members present

Ms Boyd, *Chair*  
Mr Buttigieg  
Mr D'Adam (via videoconference)  
Mrs Mitchell (via videoconference)  
Ms Suvaal (via telephone, from 1.05 pm)

### 2. Apologies

Mrs Maclaren-Jones  
Ms Mihalik

### 3. Previous minutes

Resolved, on the motion of Mrs Mitchell: That draft minutes no. 5 be confirmed.

### 4. Correspondence

The committee noted the following items of correspondence:

#### *Received*



- 6 December 2023 – Email from Deyi Wu, Government Whip' Adviser, to the secretariat advising that the Hon. Natasha Maclaren-Jones will substitute for the Hon. Rachel Merton for the duration of the inquiry
- 20 December 2023 – Email from Zoë Robinson, Advocate, Office of the Advocate for Children and Young People to the secretariat providing feedback on the draft questionnaire
- 20 December 2023 – Email from Kerry Watson, Senior Manager, Council for Intellectual Disability to the secretariat:
  - providing feedback on the draft questionnaire
  - attaching an email dated 15 December 2023 from Mr David Briggs, Advocacy and Policy Officer, Council for Intellectual Disability, to the Chair and Mr Angus Hoy with further feedback on the questionnaire
- 16 January 2024 – Email from Zoë Robinson, Advocate, Office of the Advocate for Children and Young People, to the secretariat advising how the Office might assist the inquiry
- 18 January 2024 – Email from Zoë Robinson, Advocate, Office of the Advocate for Children and Young People, to the secretariat, advising potential related costs
- 25 January 2024 – Email from Tracey Lloyd, Inclusion Services Manager, Council for Intellectual Disability, to the secretariat with an outline and quote for developing a targeted questionnaire and providing inclusive practice (disability awareness) training.

## **5. Inquiry into children and young people with disability in New South Wales educational settings**

### **5.1 Disability awareness training**

Resolved, on the motion of Ms Suvaal: That the committee engage the Council for Intellectual Disability to provide disability awareness training on the morning of Tuesday 26 March 2024 prior to the first hearing of the inquiry.

### **5.2 Use of Auslan interpreters at hearings**

Resolved, on the motion of Mrs Mitchell: That the committee engage Auslan interpreters from Deaf Connect for all public hearings/roundtables.

### **5.3 Roundtable hearing**

Resolved, on the motion of Mr Buttigieg: That the committee agree in principle to a roundtable discussion, including a possible meeting with parents, facilitated by the Office for the Advocate for Children and Young People at an offsite location to be determined following the submission deadline.

### **5.4 Additional questionnaire targeted at children and young people**

Resolved, on the motion of Ms Suvaal: That the secretariat contact the Office of the Advocate for Children and Young People regarding the current questionnaire.

## **6. Adjournment**

The committee adjourned at 1.26 pm until 9.00 am, Tuesday 20 February 2024, Macquarie Room, Parliament House (public hearing – Budget Estimates 2023-2024).

Sarah Newlands  
**Committee Clerk**

## **Minutes No. 9**

Tuesday 26 March 2024

Portfolio Committee No.3 - Education

Preston Stanley Room, Parliament House, 9.05 am

## **1. Members present**

Ms Boyd, *Chair*

Mr Buttigieg (from 9.08 am until 11.00 am, then from 2.43 pm)

Mr D'Adam (via videoconference until 3.10 pm)

Mrs Maclaren-Jones (via videoconference until 9.20 am, then in person from 11.30 am)

Ms Mihailuk (until 10.45 am, then from 11.48 am until 1.00 pm, then from 2.35 pm via videoconference)

Mrs Mitchell (via videoconference)

## 2. Apologies

Ms Suvaal

## 3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 6 be confirmed.

## 4. Correspondence

The committee noted the following items of correspondence:

### *Received*

- 8, 9, 10, 11, 15 and 24 January, and 9, 23, 24 and 28 February 2024 – Eighteen emails from (name suppressed) to committee expressing concerns relating to the care and health of a family member who is under a guardianship order
- 14 February 2024 – Email from Ms Tracey Lloyd, Inclusion Services Manager, Council for Intellectual Disability to secretariat with updated proposal for inclusive practice training for committee
- 1 March 2022 – Email from Sarah Langston, President, The Australian Neurodivergent Parents Association, to the secretariat advising of accommodations required for any autistic or neurodivergent witnesses who may appear as witnesses at the inquiry
- 6 March 2024 – Email from Ms Bianca Tini Brunozzi, Policy and Advocacy Officer, Aboriginal Women's Advisory Network, to secretariat, advising that they will not be making a submission to the inquiry
- 19 March 2024 – Email from Georgina Reynhout, CEO, Council for Intellectual Disability, to secretariat, declining an invitation for their organisation to appear at the hearing on 26 March 2024 as they have not completed their consultation with people with intellectual disability and their families
- 22 March 2024 – Email from Ms Anna Dawson, Solicitor in Charge – Children's Civil Law Service, Legal Aid NSW to secretariat, advising that she is no longer able to attend the public hearing on 26 March 2024
- 22 March 2024 – Email from Dr Cherry Baylous, Disability Advocacy NSW, to secretariat, providing a replacement submission for their published submission (no. 42) for the inquiry into children and young people in NSW educational settings.

### *Sent*

11 March 2024 – Email from secretariat to Ms Tracey Lloyd, Inclusion Services Manager, Council for Intellectual Disability, confirming the details for the pre-hearing training session on 26 March 2024.

Resolved, on the motion of Mr D'Adam: That the:

- Committee keep the following correspondence from (name suppressed), regarding concerns relating to the care and health of a family member who is under a guardianship order, dated 8, 9, 10, 11, 15 and 24 January, and 9, 23, 24 and 28 February 2024, confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information and are not related to an inquiry
- Chair write to (name suppressed) acknowledging her correspondence and referring her to Portfolio Committee No. 5 – Justice and Communities due to its remit for guardianship and disability matters; and suggesting she may wish to contact the NSW Ombudsman, as well as the NSW Attorney General and the Minister for Disability Inclusion, with relevant links
- Committee keep confidential (name suppressed) name in the minutes.

## 5. Inquiry into children and young people with disability in New South Wales educational setting

### **5.1 Election of Acting Deputy Chair**

The Chair called for nominations for acting Deputy Chair for the duration of the inquiry.

Mrs Maclaren-Jones moved: That Mrs Mitchell be elected Acting Deputy Chair.

There being no further nominations, the Chair declared Mrs Mitchell elected Acting Deputy Chair for the duration of this inquiry.

### **5.2 Timeframes to answer questions on notice and supplementary questions**

Resolved, on the motion of Ms Mihailuk: That

- members provide any supplementary questions to the secretariat within 24 hours of receiving the transcript of evidence for today's hearing and the April hearings
- witnesses be required to provide answers to questions on notice/supplementary questions within 7 days.

### **5.3 Reporting date**

Resolved, on the motion of Mr D'Adam: That the inquiry reporting date be extended to Monday 17 June 2024.

### **5.4 DPS Briefing paper**

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of the DPS Research Service briefing paper for the inquiry into the children and young people with disability in educational settings in New South Wales.

### **5.5 Roundtable format and potential witnesses**

Resolved, on the motion of Mrs Mitchell:

- That the authors of submissions 18, 40, and 41 be invited to a roundtable at Parliament House, organised by the secretariat
- That the committee hold an in camera roundtable in the Hunter region, with the Office of the Advocate for Children and Young People identifying up to 4 suitable participants
- That the roundtables be held with 3 to 4 committee members present.

### **5.6 Public submissions**

Resolved, on the motion of Mr D'Adam: That the committee authorise the replacement of submission no. 42 with a revised version.

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 2, 3, 5, 6, 8-10, 14, 15, 17, 18, 21, 23, 24, 26-40, 42, 43, 46, 48, 49, 51, 52a, 53-57, 59, 60-63, 65-68, 71 - 75.

### **5.7 Partially confidential submissions**

Resolved, on the motion of Mr D'Adam: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos. 1, 4, 13, 19, 20, 22, 44, 45 and 47, 50, 69, 70.

Resolved, on the motion of Mr D'Adam:

- That the committee authorise the publication of submission no. 11 with the exception of identifying and/or sensitive information and potential adverse mention, which is to remain confidential, as per the recommendation of the secretariat. The author has specified that her children's names and her own surname should be suppressed in the submission.
- That the committee authorise the publication of submissions nos. 16, 25 and 64 with the exception of identifying and/or sensitive information, which is to remain confidential, as per the recommendation of the secretariat. The authors requested their names be suppressed.
- That the committee authorise the publication of submissions nos. 41 and 58 with the exception of children's names and a photograph (No. 41), as per the recommendation of the secretariat.
- That the committee authorise the publication of submission no. 52 with the exception of identifying and/or sensitive information, which is to remain confidential, at the request of the author.

### 5.8 Confidential submissions

Resolved, on the motion of Mr D'Adam: That the committee keep submission nos. 7, 12 and 68a confidential, as per the request of the author.

### 5.9 Inclusive Practice training session

The committee received an inclusive practice training session facilitated by Jonathon Keller and Julian Vaz of the Council for Intellectual Disability. The session included information on:

- Inclusive and accessible communication
- Trauma informed approach
- Accessible and inclusive meeting spaces.

### 5.10 Auslan interpreters at hearings

The committee noted that accredited Auslan interpreters will be present for the duration of the hearing to interpret from English to Auslan for the broadcast and the public gallery.

### 5.11 Public hearing

#### *Sequence of questions*

Resolved, on the motion of Mrs Mitchell: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Sarah Abdou, Solicitor, Australian Centre for Disability Law
- Ms Rebecca Belzer, Solicitor, Australian Centre for Disability Law
- Ms Meredith Hagger, Principal Solicitor, General Practice, Youth Law Australia
- Ms Carey Evelyn Pearson, Acting Solicitor in Charge, Legal Aid NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Natasha Watt, Senior Vice President, NSW Teachers Federation
- Ms Emma Bruce, Organiser, NSW Teachers Federation.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mrs Lyn Caton, Assistant Secretary, Independent Education Union of Australia NSW/ACT Branch.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Troy Wright, Assistant General Secretary, Public Service Association
- Ms Julie-Ann Bond, Industrial Manager, Public Service Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined via videoconference:

- Dr Cherry Baylous, Policy and Communications Lead, Disability Advocacy NSW
- Ms Nadine Moore, Advisory Committee member, Disability Advocacy NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.31 pm. The public and the media withdrew.

## 6. Adjournment

The committee adjourned at 4.34 pm, until Monday 22 April 2024, 9.00 am, Macquarie Room, Parliament House (public hearing).

Sarah Newlands  
**Committee Clerk**

**Minutes no. 10**

Monday 22 April 2024

Portfolio Committee No. 3 - Education

Macquarie Room, Parliament House, Sydney, 9.05 am

**1. Members present**

Ms Boyd, *Chair*

Ms Mitchell, *Acting Deputy Chair*

Mr Buttigieg (until 10.50 am)

Mr D'Adam

Mrs Maclaren-Jones

Ms Mihailuk (until 4.18 pm)

Ms Suvaal (until 10.50 am)

**2. Previous minutes**

Resolved, on the motion of Mrs Mitchell: That draft minutes no. 9 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 25 March 2024 – Letter from Ms Leanne Varga, Systemic Advocate and Campaigns Manager, Family Advocacy, to Chair, advising that their submission to the inquiry has been endorsed by Children and Young People with Disabilities Australia, and Down Syndrome Australia
- 26 March 2024 – Email from Mr Michael Farrell, Edmund Rice Educational Australia (EREA) Flexible Schools to committee, inviting committee to visit their school campuses
- 4 April 2024 – Email from the author of submission no. 69, to secretariat, providing a replacement submission for their published submission for the inquiry into children and young people in NSW educational settings
- 5 April 2024 – Email from Mr Graham Opie, CEO of Motor Neurone Disease NSW, to secretariat, advising they are unavailable for the hearing on 22 April 2024
- 10 April 2024 – Email from Ms Suzie Stollznaw, Spinal Cord Injuries Australia, to secretariat, declining to appear at the hearing on 22 April 2024
- 11 April 2024 – Email from Mr Liam McGovern, Office of the Advocate for Children and Young People, to secretariat, requesting that the Advocate be represented by young people with lived experience at the hearing on 22 April 2024
- 12 April 2024 – Email from Mr Nicholas Lapsley, to secretariat advising he is unavailable for the hearing on 22 April 2024
- 15 April 2024 – Email from Ms Melissa Docker, Carers NSW, to secretariat, advising they are unable to appear at the hearing on 22 April 2024
- 16 April 2024 – Email from Ms Georgina Reynhout, Council for Intellectual Disability, to secretariat, advising they are unable to appear at the hearing on 22 April 2024
- 19 April 2024 – Email from Max Kennedy, Office of Hon Bob Nanva MLC, Government Whip to secretariat, advising Mr Donnelly will be substituting for Mr Buttigieg for the public hearing on Tuesday 23 April 2024.

**Sent**

- 27 March 2024 – Letter from Chair to (name suppressed), acknowledging her previous correspondence and referring her to Portfolio Committee No. 5 – Justice and Communities due to its remit for guardianship and disability matters; and suggesting she may wish to contact the NSW Ombudsman, as well as the NSW Attorney General and the Minister for Disability Inclusion.

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of correspondence from Ms Le Ms Leanne Varga, Systemic Advocate and Campaigns Manager, Family Advocacy regarding endorsement of their submission by Children and Young People with Disabilities Australia, and Down Syndrome Australia, date 25 March 2024.

#### 4. Inquiry into children and young people with disability in NSW educational settings

##### 4.1 Public submissions

Resolved, on the motion of Ms Mihailuk: That the committee authorise publication of submission nos. 81 and 83.

##### 4.2 Partially confidential submissions

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise:

- the publication of submission nos. 77, 78 and 82, with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author.
- the publication of submission no. 79, with the exception of identifying and/or sensitive information and potential adverse mention which is to remain confidential, as per the recommendation of the secretariat.
- a replacement of submission no. 69 with a revised version.

##### 4.3 Confidential submission

Resolved, on the motion of Mr Buttigieg: That the committee keep submission no. 76 confidential, as per the request of the author.

##### 4.4 Committee member participation at *in camera* roundtable in Newcastle

Resolved, on the motion of Ms Suvaal: That the following four committee members attend the *in camera* roundtable in Newcastle on 24 April 2024:

- Ms Abigail Boyd, Chair
- Mrs Sarah Mitchell
- Mr Anthony D'Adam.

##### 4.5 Answers to questions on notice

Resolved, on the motion of Ms Mihaliuk: That the committee authorise publication of answers to questions on notice provided by the following witnesses:

- Australian Centre for Disability Law
- Youth Law Australia.

##### 4.6 Auslan interpreters at hearings

The committee noted that accredited Auslan interpreters will be present for the duration of the public hearing to interpret from English to Auslan for the broadcast and the public gallery.

##### 4.7 Sequence of questions

Resolved, on the motion of Mr D'Adam: That the allocation of questions to be asked at the *in camera* roundtable and hearing be left in the hands of the Chair.

##### 4.8 *In camera* roundtable

Resolved, on the motion of Mr D'Adam: That the committee proceed to take evidence from the following witnesses *in camera*:

- Gemma

- Child B
- Fiona
- Brian
- Child A
- Andrew
- Melissa.

The witnesses were admitted.

The committee proceeded to take *in camera* evidence. Persons present other than the committee: Sarah Newlands, Margaret Pollard, Glenn Hill, Kate Mihaljek, Marina Yuan, Jessica Feenstra and Claire Morgan.

Andrew tendered the following documents:

- An article dated 13 April 2024 from the Catholic Weekly about a new school for children with disability
- A copy of a letter from Andrew to the Premier of New South Wales concerning the demolition of the former Western Sydney University site at Milperra, and proposed uses for the site, dated 24 January 2024.

The evidence concluded and the witness withdrew.

Resolved, on the motion of Mrs Mitchell: That the hearing resume in public.

#### **4.9 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following Auslan interpreters were admitted and sworn:

- Mr Rhonda Ryde
- Ms Nicole Clark
- Ms Kylie Clear

The following witnesses were sworn and examined:

- Ms Cecile Sullivan Elder, Executive Officer, Family Advocacy
- Ms Libby Gunn, National and NSW Coordinator, Square Peg Round Whole
- Dr Marika Franklin, Member Advocate, Square Peg Round Whole
- Mr Andrew Wilson, Chairperson, Australian Alliance for Inclusive Education (All Means All)
- Mrs Sue Tape, Project Coordinator – Inclusive Education, Children and Young People with Disability Australia, *via videoconference*.

Mr Wilson tabled the following document:

- Diagrams for education: inclusion, exclusion, segregation and integration.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Nicole Rogerson, Director, Autism Awareness Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Grace Fava OAM, Founder and Chief Executive Officer, Autism and Advisory Support Services
- Ms Sarah Langston, Policy Co-lead, Australian Neurodivergent Parents Association, *via videoconference*
- Ms Emily McCann, Board member, Executive Committee, Australian Neurodivergent Parents Association and Parent to an Autistic Child, *via videoconference*.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Julian Laurens, Senior Policy Officer, People with Disability Australia
- Ms Joanne Yates, Acting Deputy Chief Executive Officer, People with Disability Australia
- Ms Charlotte Sangster, Chief Executive Officer, Muscular Dystrophy NSW
- Ms Laura Howard, Senior Community Support Specialist, Muscular Dystrophy NSW.

The evidence concluded and the witnesses withdrew.

The following Auslan interpreters were admitted and sworn:

- Ms Melissa Martin.

The following witnesses were sworn and examined:

- Mr Chris Edwards, Director – Government Relations, Advocacy, NDIS and Aged Care, Vision Australia
- Mr Brent Phillips, Chief Impact Officer, Deaf Connect
- Ms Shirley Liu, Acting Chief Executive Officer, Deaf Australia
- Ms Catherine Miller, Policy Officer, Deaf Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Janelle Barnes, President, Home Education Association, via videoconference
- Ms Lara Sappl, National Committee Member, Home education Association, *via videoconference*
- Mr Jason Wong, Executive Director, North Sydney, and Board Secretary, Federation of Parents and Citizens Associations of NSW
- Mr Liam Bowden, Policy and Advocacy Officer, Federation of Parents and Citizens Associations of NSW
- Ms Gabie Le Lievre, Special Education Portfolio Leader, Isolated Children's Parents' Association of NSW, *via videoconference*
- Ms Annabel Strachan, Rural Schools Portfolio leader, Isolated Children's Parents' Association of NSW, *via videoconference*
- Mr Jonathan Harms, Chief Executive officer, Mental Health Carers NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.55 pm. The public and media withdrew.

#### **4.10 Tabled documents**

Resolved, on the motion of Mrs Mitchell: That the committee accept and publish the following documents:

- Diagrams for education: inclusion, exclusion, segregation and integration, tendered by Mr Andrew Wilson, Chairperson, Australian Alliance for Inclusive Education (All Means All).

## **5. Adjournment**

The committee adjourned at 4.47 pm, until Tuesday 23 April 2024, 9.10 am, Macquarie Room, Parliament House (public hearing).

Sarah Newlands  
Committee Clerk



Tuesday 23 April 2024

Portfolio Committee No. 3 – Education

Macquarie Room, Parliament House, Sydney, 9.10 am

**1. Members present**

Ms Boyd, *Chair*

Mrs Mitchell, *Acting Deputy Chair* (from 9.16 am)

Mr D'Adam

Mr Donnelly (until 9.26 am, substituting for Mr Buttigieg)

Mrs Maclaren-Jones

Ms Mihailuk (from 2.50 pm via videoconference)

Ms Suvaal (from 3.57 pm via videoconference)

**2. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 11 April 2024 – Email from Mia Zahra, Executive Manager, Anti-Discrimination NSW, to secretariat, declining invitation to appear at the hearing on 23 April 2024 for the inquiry into children and young people with disability in NSW educational settings
- 23 April 2024 – Email from Brooke Lawson, Executive Assistant to the CEO, NSW Education Standards Authority to secretariat, advising that Mr Paul Martin is unable to attend the hearing on 23 April 2024 due to illness.

Resolved, on the motion of Mrs Maclaren-Jones: That the secretariat write to the NSW Education Standards Authority (NESA) seeking a representative to appear at today's hearing in place of Mr Paul Martin.

**3. Inquiry into children and young people with disability in NSW educational settings**

**3.1 Auslan interpreters at hearings**

The committee noted that accredited Auslan interpreters will be present for the duration of the public hearing to interpret from English to Auslan for the broadcast and the public gallery.

**3.2 Public hearing**

***Sequence of questions***

Resolved, on the motion of Mr D'Adam: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Dr Sally Howell, President, Australian Association of Special Education NSW Chapter
- Dr Cathy Little, Associate Professor Special Education and Chair, Initial Teacher Education, Australian Association of Special Education NSW Chapter
- Mrs Loren Swancutt, Chairperson, Inclusive Educators Australia, *via videoconference*
- Dr Coral Kemp OAM, Chair, Institute of Special Education
- Dr Jennifer Stephenson, Director, Institute of Special Educators.

Dr Coral Kemp tendered the following documents:

- Qualifications required for Australian Special Education Roles – Job advertisements for Special Education Roles in NSW State Schools
- Qualifications Required for Australian Special Education Roles in each state and territory.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Phillip Petrie, Chief Executive Officer, Allevia/NSW Divisional Committee Chair, National Disability Services
- Mrs Morgan Fitzpatrick, Chief Executive officer, Koorana Child & Family Services/NSW Divisional Committee, National Disability Services
- Dr Shannon Schedlich, Chief Executive, Siblings Australia (SibPlan)
- Professor Iona Novak AM, Chair of Allied Health, Cerebral Palsy Alliance
- Ms Sophie Geeves, CPActive Champion and lived experience representative, Cerebral Palsy Alliance.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Damien Griggs, Chief Executive officer, First Peoples Disability Network, *via videoconference*.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Zoë Robinson, Advocate for Children and Young People
- Ms Ellen Armfield, Person with lived experience
- Ms Sonja Vujanic, Person with lived experience.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Paul Miller, NSW Ombudsman
- Ms Jacqueline Fredman, Deputy Ombudsman (Complaints and Resolution)
- Ms Cecelia Cox, A/Director Operations, NSW Ageing and Disability Commission
- Ms Pamela Cuelho, Manager, Official Community Visiting Scheme, NSW Ageing and Disability Commission.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Martin Graham, Deputy Secretary, Teaching, Learning and Student Wellbeing, NSW Department of Education
- Ms Deborah Summerhayes, Deputy Secretary, Public Schools, NSW Department of Education
- Mr Stephen Brady, Managing Director, TAFE NSW
- Mr Matthew Barden, A/Executive Director, Homelessness, Disability and Seniors, Department of Communities and Justice.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.58 pm. The public and media withdrew.

### ***Tabled documents***

Resolved, on the motion of Mrs Mitchell: That the committee accept and publish the following documents:

- Qualifications required for Australian Special Education Roles – Job advertisements for Special Education Roles in NSW State Schools, tendered by Dr Coral Kemp OAM, Chair, Institute of Special Education
- Qualifications Required for Australian Special Education Roles in each state and territory, tendered by Dr Coral Kemp OAM, Chair, Institute of Special Education.

#### 4. **Adjournment**

The committee adjourned at 5.01 pm, until Wednesday 24 April 2024, 8.15 am, Macquarie St entrance, Parliament House (Roundtable in Newcastle).

Sarah Newlands  
**Committee Clerk**

#### **Minutes no. 12**

Wednesday 24 April 2024

Portfolio Committee No. 3 - Education

Waratah Room, McDonald Jones Stadium, Broadmeadow, 11.30 am

#### 1. **Members present**

Ms Boyd, *Chair*

Mrs Mitchell, *Acting Deputy Chair*

Mr D'Adam

#### 2. **Apologies**

Mr Buttigieg

Mrs Maclaren-Jones

Ms Mihailuk

Ms Suvaal

#### 3. **Inquiry into children and young people with disability in NSW educational settings**

##### 3.1 **Roundtable discussion — recording and summary report**

Resolved, on the motion of Mr D'Adam: That the committee:

- agree to conduct the roundtable *in camera*
- agree to the secretariat recording the roundtable discussion for the purposes of assisting the secretariat's note-taking, and that the recording be destroyed once the report is drafted
- authorise the secretariat to draft a summary report of the roundtable discussion for potential use in the final report.

##### 3.2 ***In camera* roundtable discussion**

The committee met with children and young people with lived experience of disability and their parents and carers.

##### 3.3 **Thank you letter to WhatAbility, Deaf Connect and the Advocate for Children and Young People**

Resolved, on the motion of Mr D'Adam: That the Chair write to the Advocate for Children and Young People, WhatAbility and Deaf Connect thanking them for their assistance.

##### 3.4 **Answers to questions on notice**

Resolved, on the motion of Mr D'Adam: That the committee agree to publish the answers to questions on notice received by Legal Aid NSW.

#### 4. **Adjournment**

The committee adjourned at 1.10 pm, until 10am, Wednesday 12 June, Room 1043, (report deliberative).

Sarah Newlands  
**Committee Clerk**

**Minutes no. 13**

Wednesday 8 May 2024

Portfolio Committee No. 3 - Education

Members' Lounge, Parliament House, 12.43 pm

**1. Members present**

Ms Boyd *Chair*

Mrs Mitchell, *Acting Deputy Chair*

Mr Buttigieg

Mr D'Adam

Mrs Maclaren-Jones

Ms Mihailuk

Ms Suvaal

**2. Previous minutes**

Resolved, on the motion of Mr D'Adam: That draft minutes nos. 10, 11 and 12 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 2 March 2024 – Email from Mr Michael Farrell, Edmund Rice Education Australia, to the Chair, inviting the committee to visit their schools
- 22 April 2024 – Email from Ms Bianca Tini Brunozzi, Policy and Advocacy Officer, NSW Aboriginal Women's Advisory Network, to secretariat, advising she is unable to attend the hearing on 23 April 2024
- 23 April 2024 – Email from Ms Brooke Lawson, NSW Education Standards Authority, to secretariat, advising NESAA is unable to send a replacement witness for the hearing on 23 April 2024
- 23 April 2024 - Email from TAFE NSW to secretariat, advising Ms Janet Schorer is unable to attend the hearing on 23 April 2024
- 24 April 2024 – Email from Dr Coral Kemp, Chair, Institute of Special Educators, to committee, providing further information on the recommendations of the Disability Royal Commission
- 25 April 2024 – Email from (Name suppressed), ASAN, Autistic Self Advocacy Network, providing details about their experiences and role at ASAN
- 26 April 2024 – Email from Ms Nicole Rogerson, Director, Autism Awareness Australia, to committee, providing the summary report of the 2024 National Autism Education Survey
- 29 April 2024 – Email from Ms Nicole Clark, Deaf Connect, to secretariat, thanking them for their efforts working with the Auslan interpreters
- 29 April 2024 – Email from Fiona, to secretariat, providing a copy of the social story used to prepare her daughter for the *in camera* hearing
- 1 May 2024 – Letter from Ms Debbie Lee, NSW Policy Manager, First Peoples Disability Network, to committee, endorsing the submission from Family Advocacy
- 3 May 2024 – Email from Mrs Maclaren-Jones to Chair forwarding information provided by Siblings Australia regarding available resources for siblings and families of children and young people with disability.

***Sent***

- 2 May 2024 – Letter from Chair to representatives of Deaf Connect thanking them for their appearance at the hearing and their assistance with providing Auslan interpreters
- 2 May 2024 – Letter from Chair to Ms Zoë Robinson, Advocate for Children and Young People, thanking her and the young people with lived experience for appearing at the hearing and thanking her organisation for their assistance in identifying participants for the Newcastle roundtable

- 2 May 2024 – Letter from Chair to Ms Lucy Garcia, Chief Marketing Officer, What Ability, thanking her for her assistance in identifying participants for the Newcastle roundtable.

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of correspondence from:

- Nicole Rogerson, Director, Autism Awareness Australia, providing the results of the summary report of the 2024 National Autism Education Survey, dated 26 April 2024
- Dr Coral Kemp, Chair, Institute of Special Educators, providing further information on the recommendations of the Disability Royal Commission, dated 24 April 2024.
- Ms Debbie Lee, NSW Policy Manager, First People's Disability Network, endorsing the submission from Family Advocacy, dated 1 May 2024.
- Mrs Maclaren-Jones, member of Portfolio Committee No. 3 – Education, forwarding information from Siblings Australia, dated 3 May 2024.

Resolved, on the motion of Ms Mihailuk: That the committee keep confidential the correspondence from Fiona, providing a copy of the social story used to prepare her daughter for the *in camera* hearing, dated 29 April 2024.

#### **4. Inquiry into children and young people with disability in New South Wales educational settings**

##### **4.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 84 and 86.

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of submission nos. 84 and 86.

##### **4.2 Confidential submissions**

Resolved, on the motion of Ms Mihailuk: That the committee keep submissions no. 80 and 85 confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information.

##### **4.3 Extension of reporting date**

Resolved, on the motion of Mrs Mitchell: That the inquiry reporting date be extended to Thursday 8 August 2024.

##### **4.4 Report deliberative date**

Resolved, on the motion of Mrs Mitchell: That the committee hold a report deliberative on Thursday 1 August 2024.

##### **4.5 Additional public hearing**

With the agreement to extend the reporting date, the committee considered whether to hold a half-day hearing on Wednesday 12 June 2024.

Resolved, on the motion of Mrs Maclaren-Jones: That a half-day hearing be held on the morning of Wednesday 12 June 2024.

Resolved, on the motion of Mrs Maclaren-Jones: That the committee invite the following witnesses to appear at a half day hearing on Wednesday 12 June 2024:

- NSW Education Standards Authority
- NSW Department of Education
- Dr David Roy
- Name suppressed
- Ms Tina Kordrostami, Mental Health Architectural Design
- Catholic Schools NSW
- Association of Independent Schools of NSW

- *In camera*: Allambi Care, and include one or two young people with disability who have also been, or are in, out-of-home care.

#### 4.6 Site visits to schools

The committee considered two days of site visits to schools in the Greater Sydney area.

Committee noted it had received invitations from the following organisations to visit:

- Edmund Rice Education Australia (EREA) Flexible Schools and St Lucy's School, Wahroonga.
- ASPECT schools
- Disability Advocacy NSW.

The committee discussed the types of schools they would like to visit in the Greater Sydney area, and noted that the secretariat would canvass suggestions from the committee.

Resolved, on the motion of Mrs Maclaren-Jones: That:

- site visits to schools in June take place over two days with a minimum of three members, depending on availability
- the committee visit St Lucy's School, Wahroonga, pending its availability to host the committee
- the secretariat canvass members for suggestions on other schools to visit, with a focus on the following school types:
  - Government schools
    - School for specific purposes – for students with behaviour needs
    - School for specific purposes – for students with disability
    - Mainstream school with support units for students with disability
  - Non-government schools
    - ASPECT special school for students with autism
    - Mainstream school with support unit(s) for students with disability .
- that the secretariat seek members availability for site visits on the following dates via email:
  - Friday 14 June (preferred)
  - Monday 24 June
  - Wednesday 26 June
  - Thursday 27 June (preferred).

## 5. Adjournment

The meeting adjourned at 1.04 pm until Tuesday 11 June 2024, 11.00 am, Room 1136 (report deliberative for Budget Estimates).

Sarah Newlands

**Committee Clerk**

**Minutes no. 15**

Wednesday 12 June 2024

Portfolio Committee No.3 - Education

Macquarie Room, Parliament House, Sydney, 8.34 am

### 1. Members present

Ms Boyd, *Chair*

Mrs Mitchell, *Acting Deputy Chair* (from 8.42 am until 12.25 pm)

Mr Buttigieg (via videoconference, until 9.25 am, then from 12.30 pm)

Mr D'Adam

Mrs Maclaren-Jones (via videoconference)

Ms Mihailuk (via videoconference until 9.25 am, in person from 10.00 am until 11.00 am)

Ms Suvaal (from 9.07 am)

## 2. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 13 be confirmed.

## 3. Correspondence

The committee noted the following items of correspondence:

### *Received*

- 3 May 2024 – Email from Dr Coral Kemp, Chair, Institute of Special Educators, to secretariat, commenting on the Teacher Standards Elaborations for implementing the Disability Standards for Education 2005, compiled by the Australian Institute for Teaching and School Leadership
- 7 May 2024 – Email from Ms Rebecca O'Sullivan, Acting General Manager Influence, Cerebral Palsy Association to secretariat providing additional information referred to by Professor Iona Novak in her opening statement at the hearing on 23 April 2024
- 9 May 2024 – Email from Ms Grace Fava, OAM, Founder/CEO of Autism Advisory and Support Service, to secretariat, providing a discussion paper on disability sector issues and recommendations
- 9 May 2024 – Email from (Name suppressed) to committee requesting that Autism Awareness Alliance be invited to provide evidence
- 21 May 2024 – Email from (Name suppressed), Autistic Self Advocacy Network, to secretariat requesting to be heard in camera
- 27 May 2024 – Email from Ms Kerry Barnett, Senior Manager, Diverse Learning, Catholic Schools NSW, to secretariat advising Catholic Schools NSW is unable to attend hearing on 12 June 2024
- 29 May 2024 – Email from Fiona, to secretariat, advising there are no concerns with publication of the proposed redacted *in camera* transcript
- 30 May 2024 – Email from Melissa, to secretariat, advising there are no concerns with publication of the proposed redacted *in camera* transcript
- 1 June 2024 – Email from Gemma, to secretariat, advising there are no concerns with publication of the proposed redacted *in camera* transcript.

Resolved on the motion of Mr D'Adam:

- That the committee authorise the publication of correspondence from:
  - Dr Coral Kemp regarding the Teacher Standards Elaborations for implementing the Disability Standards for Education 2005, dated 3 May 2024.
- That the committee authorise the publication of the documents accompanying the correspondence from:
  - Ms Rebecca O'Sullivan dated 7 May 2024
  - Ms Grace Fava dated 9 May 2024
  - Ms Tina Kordrostami 11 June 2024.
- That the committee keep confidential the following correspondence, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information:
  - (Name suppressed) regarding appearance at a hearing and requesting to be heard *in camera*, dated 9 May and 21 May 2024
  - Fiona regarding the publication of the proposed redacted *in camera* transcript, dated 29 May 2024
  - Melissa regarding the publication of the proposed redacted *in camera* transcript, dated 30 May 2024
  - Gemma regarding the publication of the proposed redacted *in camera* transcript, dated 1 June 2024.
- That the committee redact the names of *in camera* witnesses from the minutes.

## 4. Inquiry into children and young people with disability in New South Wales educational settings

### 4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 87 and 88.

#### 4.2 Partially confidential submissions

Resolved, on the motion of Ms Mihailuk: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submission 88a.

#### 4.3 Questionnaire report

The committee noted that a summary report of the online questionnaire was published on the website under the authorisation of the resolution establishing the inquiry.

#### 4.4 Publication of *in camera* transcript of evidence – 22 April 2024

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the publication of the transcript of *in camera* evidence given on 22 April 2024, with the exception of identifying and/or sensitive information, which is to remain confidential.

#### 4.5 Roundtable with children and young people summary reports - Newcastle

On 24 April 2024 the committee attended a roundtable discussion with children and young people with lived experience of disability in Newcastle.

Resolved, on the motion of Ms Mihailuk:

- That the committee keep the report containing potentially identifying information confidential
- That the committee authorise the publication of the summary report prepared for potential use in the final report.

#### 4.6 Answers to questions on notice and supplementary questions

The committee noted the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to supplementary questions from Skye Kakoschke-Moore, Chief Executive Officer, Children and Young People with Disability Australia, received 7 May 2024
- answers to questions on notice from Ms Catherine Dunn, Senior Advisor – Policy & Government Relations, Deaf Connect, received 6 May 2024
- answers to supplementary questions from Ms Leanne Varga, Systemic Advocacy and Campaigns Manager, Family Advocacy, received 7 May 2024
- answers to supplementary questions from Mr Liam Bowden, Policy & Advocacy, Federation of Parents and Citizens Associations of NSW, received 7 May 2024
- answers to questions on notice and supplementary questions from Mr Julian Laurens, Senior Policy Officer, People with Disability Australia, received 7 May 2024
- answers to questions on notice from Ms Kathryn McKenzie, Acting Ageing and Disability Commissioner, Ageing and Disability Commission, received 7 May 2024
- answers to questions on notice and supplementary questions from Mr Paul Miller, NSW Ombudsman, received 8 May 2024
- answers to questions on notice from Dr Shannon Schedlich, Siblings Australia, received 7 May 2024
- answers to supplementary questions from Mr Paul Daniell, A/CEO, NSW Education Standards Authority, received 7 May 2024
- answers to questions on notice from Ms Shirley Liu and Ms Catherine Miller, Deaf Australia, received 7 May 2024
- answers to questions on notice from Mr John Paul Ramsay, Manager, Ministerial and Parliamentary Services, Department of Communities and Justice received 9 May 2024
- answers to questions on notice and supplementary questions from Mr Stephen Brady, Managing Director, TAFE NSW, received 13 May 2024
- answers to questions on notice and supplementary questions from Ms Alison Cantlon, Manager, Ministerial and Parliamentary Support, NSW Department of Education received 10 May 2024
- answers to supplementary questions from Ms Stephanie Gotlib, Executive Director – Government Relations and Advocacy, Australian Alliance for Inclusive Education (All Means All) received 14 May 2024



- answers to supplementary questions from Ms Libby Gunn, Square Peg Round Whole received 17 May 2024
- answers to supplementary questions from Mrs Loren Swancutt, Chairperson, Inclusive Educators Australia received 17 May 2024
- answers to a question on notice from Ms Charlotte Sangster, Muscular Dystrophy NSW received 17 May 2024.

#### **4.7 Visits to schools**

Resolved, on the motion of Mr D'Adam: That the committee conduct visits to the following schools on 14 June 2024:

- St Lucy's School, Wahroonga
- Terrigal Public School with support unit
- Aspect Central Coast School, Terrigal.

#### **4.8 Summary report of school visits**

Resolved, on the motion of Mrs Maclaren-Jones: That the committee authorise the secretariat to draft a summary report of the school site visits on 14 and 27 June 2024 for potential use in the final report.

#### **4.9 *In camera* hearing – 12 June 2024**

Resolved, on the motion of Ms Mihailuk: That the committee take evidence *in camera* from Autistic Self Advocacy Network and Australian Autism Alliance.

#### **4.10 Timeframes for answers to questions on notice and supplementary questions**

Resolved, on the motion of Ms Mihailuk: That:

- members provide any supplementary questions to the secretariat within 24 hours of receiving the transcript of evidence for today's hearing
- witnesses be required to provide answers to questions on notice/supplementary questions within 7 days.

#### **4.11 *In camera* hearing**

The following witnesses were admitted.

- (Mr B), Autistic Self Advocacy Network, *via videoconference*
- (Ms C), Autism Awareness Alliance, *via videoconference*.

The committee proceeded to take *in camera* evidence. Persons present other than the committee:

Sarah Newlands, Margaret Pollard, Glenn Hill, Laura Ismay, Marina Yuan, Nick Marland, Natalie Tipping, Patrick Vasquez.

The evidence concluded and the witnesses withdrew.

#### **4.12 Public hearing**

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Mairead Foley, National Disability Officer, National Union of Students
- Ms Keira Ademovic, Student Advisor, National Union of Students.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr David Roy, Lecturer in Education, University of Newcastle.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Tina Kordrostami, Director, Mental Health Architectural (MHA) Design.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Martin Graham, Deputy Secretary Teaching, Learning and Student Wellbeing, NSW Department of Education
- Mr Paul Martin, Chief Executive Officer, NSW Education Standards Authority (NESA), *via videoconference*.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Lisa Ridings, Associate Chief Executive of Student Services, Association of Independent Schools NSW.

The evidence concluded and the witness withdrew.

The public hearing concluded at 12.19 pm. The public and media withdrew.

#### **4.13 *In camera* hearing**

Resolved, on the motion of Mrs Mitchell: That the committee proceed to take evidence from the following witness *in camera*: Mr Brett Smith, Executive Officer of Operations, Allambi Care.

The following witness was sworn and examined:

- Mr Brett Smith, Executive Officer of Operations, Allambi Care.

Persons present other than the committee:

Sarah Newlands, Margaret Pollard, Glenn Hill, Emma Rogerson, Marina Yuan, Nick Marland, Natalie Tipping, Patrick Vasquez.

The evidence concluded and the witness withdrew.

#### **4.14 Invitation to make a submission**

Resolved, on the motion of Mr D'Adam: That the committee seek a submission from the NSW Police Force Youth Command on Youth Action Meetings (YAMs).

### **5. Adjournment**

The committee adjourned at 12.58 pm, until Friday 14 June 2024, 9.00 am (site visit to schools in Wahroonga and Central Coast).

Sarah Newlands  
Committee Clerk

### **Minutes no. 16**

Friday 14 June 2024

Portfolio Committee No. 3 – Education

Terrigal Public School, Terrigal, 11.15 am

#### **1. Members present**

Ms Boyd, *Chair*

Mr Buttigieg

Mr D'Adam (until at 12.15 pm)

Mrs Maclaren-Jones

**2. Apologies**

Ms Mihailuk  
Mrs Mitchell, *Acting Deputy Chair*  
Ms Suvaal

**3. Inquiry into children and young people with disability in New South Wales educational settings**

**3.1 Site visit to schools**

The committee visited the following schools:

- Terrigal Public School, a government primary school, with a support unit for students with special needs
- Aspect Central Coast School, Senior Campus, Erina Heights, an independent school for students with Autism.

**4. Other business**

Mr D'Adam advised he visited St Lucy's School, Wahroonga, in his private capacity as a member of Parliament, and met with:

- Mr David Raphael, Principal
- Ms Susan Jones, Deputy Principal
- Ms Ali Picone, Head of Creative Arts.

**5. Adjournment**

The committee adjourned at 2.50 pm, until 8.00 am, Thursday 27 June 2024, Macquarie St entrance (site visit to Western Sydney schools).

Sarah Newlands  
**Committee Clerk**

**Minutes no. 17**

Thursday 27 June 2024

Portfolio Committee No. 3 – Education

3 Hollows Drive, Oran Park, St Justin's Primary School, 9.15 am

**1. Members present**

Ms Boyd, *Chair*  
Mr D'Adam  
Ms Merton (substituting for Mrs Maclaren-Jones)

**2. Apologies**

Mrs Mitchell, *Acting Deputy Chair*  
Mr Buttigieg  
Ms Mihailuk  
Ms Suvaal

**3. Inquiry into children and young people with disability in New South Wales educational settings**

**3.1 Site visit to schools**

The committee visited the following school:

- St Justin's Primary School, a Catholic primary school, with specialist support classes in Oran Park.

**4. Other business**

Mr D'Adam and Ms Boyd visited the following schools in their private capacity as members of Parliament:

- Passfield Park School in Minto
- Ajuga School for Specific Purposes in Glenfield.

## 5. Adjournment

The committee adjourned at 10.25 am, until 10.00 am, Thursday 1 August 2024, Room 1136 (report deliberative).

Margaret Pollard  
Committee Clerk

## Minutes no. 18

Tuesday 16 July 2024

Portfolio Committee No. 3 – Education

Via Videoconference at 4.03 pm

### 1. Members present

Ms Boyd, *Chair*

Ms Merton, *Deputy Chair*

Mr D'Adam

Mr Lawrence (substituting for Mr Buttigieg)

Mrs Mitchell

Ms Suvaal

### 2. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 14 be confirmed.

### 3. Inquiry into Budget Estimates 2024-2025 – procedural resolutions

The committee noted that the Budget Estimates timetable for 2024-2025 was agreed to by the House with hearings generally commencing at 9.15 am and concluding by 5.30 pm. The committee noted the following timetable of Portfolio Committee No. 3 hearings.

Date	Portfolio
Tuesday 27 August 2024	Education and Early Learning, Western Sydney
Wednesday 4 September 2024	Skills, TAFE and Tertiary Education

#### 3.1 Allocation of question time and total hearing time

The committee noted that under the Budget Estimates 2024-2025 resolution:

- each portfolio, except The Legislature is to be examined concurrently by opposition and crossbench members only from 9.15 am to 10.45 am, 11.15 am to 12.45 pm, 2.00 pm to 3.30 pm and 3.45 pm to 5.15 pm, and, if required, by Government members only from 10.45 am to 11.00 am, 12.45 pm to 1.00 pm, and 5.15 pm to 5.30 pm, and
- the portfolio of The Legislature is to be examined by opposition, crossbench and Government

members from 9.15 am to 11.00 am, and from 11.15 am to 1.00 pm.

### 3.2 Sequence of questions

The committee noted that under the Budget Estimates 2024-2025 resolution, unless the committee decides otherwise, the sequence of questions to be asked at the hearings for Education and Early Learning, Western Sydney is to alternate between *opposition and crossbench members, in that order*, with equal time allocated to each.

In addition, unless the committee decides otherwise, the sequence of questions to be asked at the hearings for Skills, TAFE and Tertiary Education is to alternate between *crossbench and opposition members, in that order*, with equal time allocated to each.

### 3.3 Witness requests

The committee noted a list of witnesses who appeared at initial hearings for Budget Estimates 2023-2024 for the portfolios relevant to Portfolio Committee No. 3.

#### Education and Early Learning, Western Sydney

Witness	
Mr Murat Dizdar	Secretary, NSW Department of Education
Ms Cathy Brennan	A/Deputy Secretary, School Performance (North), NSW Department of Education
Ms Deborah Summerhayes	A/Deputy Secretary, School Performance (South), NSW Department of Education
Ms Leanne Nixon	A/Deputy Secretary, Learning Improvement, NSW Department of Education
Mr Mark Barraket	A/Deputy Secretary, Early Childhood Outcomes, NSW Department of Education
Ms Chloe Read	Deputy Secretary, Education and Skills Reform, NSW Department of Education
Mr Shaun Ruming	Chief People Officer, NSW Department of Education
Ms Sally Blackadder	A/Chief Operating Officer, NSW Department of Education
Mr Anthony Manning	Chief Executive, School Infrastructure NSW, NSW Department of Education
Mr Paul Martin	Chief Executive Officer, NSW Education Standards Authority
Mr Joshua Roberts	Chief Information Officer, NSW Department of Education
Ms Sarah Hurcombe	Executive Director, Service Excellence, NSW to 3.00 pm Department of Education

#### Skills, TAFE and Tertiary Education

Witness	
Mr Murat Dizdar	Secretary, NSW Department of Education
Ms Chloe Read	Deputy Secretary, Education and Skills Reform, NSW Department of Education
Ms Sally Blackadder	A/Chief Operating Officer, NSW Department of Education
Mr David Collins	Executive Director, Training Services NSW, NSW Department of Education
Mr Stephen Brady	Managing Director, TAFE NSW
Dr Margot McNeill	Chief Product and Quality Officer, TAFE NSW
Ms Julie Tickle	Chief People and Culture Officer, TAFE NSW
Ms Janet Schorer	Chief Delivery Officer, TAFE NSW
Mr Patrick Woods	Chief Operating Officer, TAFE NSW

Ms Fiona Rankin	Chief Information Officer, TAFE NSW
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Resolved, on the motion of Mrs Mitchell: That:

- members be given 48 hours to consider the list of witnesses who appeared before portfolio committee no. 3 at initial hearings for Budget Estimates 2023-2024 and propose amendments or nominate additional witnesses by email (noting that where a witness no longer occupies a position their proposed inclusion in the witness list is taken to be a reference to their position)
- the committee agree to the witness list by email, unless a meeting of the committee is required to resolve any disagreement
- once the witness list is agreed, the secretariat write to the ministers of portfolios being examined by the committee to communicate the witness list and invite the nomination of any additional witnesses, for the committee's consideration, prior to it settling on a final witness list.

### 3.4 Witness appearance time

The committee noted that, under the Budget Estimates 2024-2025 resolution, Ministers are invited to appear for the morning sessions only, 9.15 am to 1.00 pm, unless requested by the committee to also appear for the afternoon session.

## 4. Other business

### *Inquiry into children and young people with disability in New South Wales educational settings*

The committee considered the inquiry into children and young people with disability in New South Wales educational settings.

Resolved, on the motion of Mr D'Adam: That the tabling date for the inquiry into children and young people with disability in New South Wales educational settings be extended to 21 August 2024.

Resolved, on the motion of Mr D'Adam: That the Chair of Portfolio Committee No. 3 write to the University of Newcastle on behalf of the committee asking for details regarding the university's post graduate courses dealing with trauma-informed practice, including the cost of any such courses and any Commonwealth assistance available to members of the teaching workforce wishing to take these courses.

Resolved, on the motion of Mr D'Adam: That the inquiry secretariat advise the committee as to whether a response has been received to the Chair's correspondence to NSW Police regarding the inquiry into children and young people with disability in New South Wales educational settings and, if not, follow up on a response.

## 5. Adjournment

The committee adjourned at 4.10 pm, until Friday 19 July 2024, Room 1136, Parliament House, inquiry into children and young people with disability in New South Wales educational settings.

Elspeth Dyer  
Committee Clerk

## Minutes no. 19

Thursday 1 August 2024  
Portfolio Committee No. 3 - Education  
Room 1136, Parliament House, 10.03 am

### 1. Members present

Ms Boyd, *Chair*  
Mrs Mitchell, *Acting Deputy Chair* (via videoconference)

Mr Buttigieg (until 11.29 am)  
Mr D'Adam  
Mrs Maclaren-Jones  
Ms Mihailuk (via videoconference)  
Ms Suvaal (until 11.23 am via videoconference)

## 2. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes nos. 15, 16 and 17 be confirmed.

## 3. Correspondence

The committee noted the following items of correspondence:

### *Received*

- 2 July 2024 – Email from Ms Patricia McCarthy, Executive Assistant to Principal and Front Office Manager, St Lucy's School, to secretariat providing correspondence from parents of students at St Lucy's school
- 11 June 2024 – Email from Ms Tina Kordrostami, to secretariat providing information on Mental Health Architectural Design.

### *Sent*

- 19 June 2024 – Email from Chair to Ms Jacqui Borland, Chief Executive Officer, Aspect, thanking Aspect for facilitating the committee's visit on Friday 14 June
- 19 June 2024 – Email from Chair to the Advocate for Children and Young People, thanking them for their participation in and assistance to the inquiry
- 23 July 2024 – Letter from Chair to Dr Susan Ledger, Education Head of School, University of Newcastle, seeking information on post-graduate courses dealing with trauma informed practice in educational settings
- 26 July 2024 – Letter from Chair to Ms Kerryn Barnett, Catholic Schools NSW, thanking her for organising the committee's visits to St Lucy's School and St Justin's Primary School
- 26 July 2024 – Letter from Chair to Ms Claire Todd, Office of the Secretary, Department of Education, thanking her for organising the committee's visit to Passfield Park School and Ajuga School.

Resolved, on the motion of Ms Mihailuk: That the secretariat seek clarification from St Lucy's School regarding publication status of the document, and verification from contributing parents regarding the intent of the document.

Resolved, on the motion of Mr D'Adam: That the committee keep correspondence from Mr B, dated 25 April 2024, (previously noted in Minutes 10) requesting to appear at a hearing of the inquiry, confidential, as per the recommendation of the secretariat, as it contains confidential and/or sensitive information, and he has appeared as an in camera witness; and that any references to Mr B and Ms C also be removed from public versions of committee minutes.

## 4. Inquiry into children and young people with disability in New South Wales educational settings

### 4.1 Public submissions

The committee noted the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission 90.

### 4.2 Confidential submissions

Resolved, on the motion of Mr D'Adam: That the secretariat seek confirmation from the author of submission no. 89 to publish Part 1 of Attachment A, and advise that the remainder of the submission will be kept confidential.

### 4.3 Answers to questions on notice and supplementary questions

The committee noted that following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- final answers to supplementary questions from NSW Ombudsman received 1 July 2024
- answers to questions on notice from NSW Department of Education and NESA received 25 June 2024
- answers to questions on notice from Association of Independent Schools NSW received 25 June 2024
- answers to questions on notice from Dr David Roy received 6 July 2024.

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of the answers to questions on notice and supplementary information from Mr Brett Smith, AllambiCare.

#### **4.4 Publication of *in camera* transcripts of evidence – 12 June 2024**

Resolved, on the motion of Mr Buttigieg: That the committee authorise the publication of the transcript of *in camera* evidence given on 12 June 2024, with the exception of identifying and/or sensitive information, which is to remain confidential.

#### **4.5 School site visits report**

Resolved, on the motion of Mr D'Adam: That the committee approve the draft school site visit report for inclusion in the Chair's draft report.

#### **4.6 Report roundtable**

Resolved, on the motion of Mrs Mitchell: That the committee authorise the secretariat to record the roundtable discussion for the purposes of drafting the report.

The committee discussed findings and recommendations for the Chair's draft report.

Resolved, on the motion of Mr D'Adam: That the committee commend the Chair on the consultative approach to formulate the draft report.

### **5. Adjournment**

The committee adjourned at 11.50 am, until Monday 19 August, 10.00 am, Room 1254 (report deliberative for the inquiry into disability in educational settings).

Sarah Newlands  
Committee Clerk

### **Draft minutes no. 20**

Monday 19 August 2024  
Portfolio Committee No. 3 – Education  
Room 1254, Parliament House, Sydney, 10.02 am

#### **1. Members present**

Ms Boyd, *Chair*  
Mrs Mitchell, *Acting Deputy Chair* (via videoconference)  
Mr Buttigieg  
Mr D'Adam  
Mrs Maclaren-Jones  
Ms Mihailuk (via videoconference)  
Mr Nanva (via videoconference, substituting for Ms Suvaal)

#### **2. Previous minutes**

Resolved, on the motion of Mr D'Adam: That draft minutes no. 18 and 19 be confirmed.



### 3. Correspondence

The committee noted the following items of correspondence:

#### ***Received***

- 2 July, 1 August and 6 August 2024 – Emails between NSW Police and the secretariat providing a submission as per the committee's resolution to seek a submission on the YAMS initiative, and agreeing to publication of Part 1, with author names redacted
- 2 August 2024 – Letter from Professor Susan Ledger, School of Education, Newcastle University, to committee, providing information on trauma-informed practice in post-graduate courses
- 2 August and 12 August 2024 – Email correspondence between the secretariat and St Lucy's school clarifying the publication status of the submission from St Lucy's parents.

Resolved, on the motion of Mr D'Adam: That the committee keep confidential the correspondence from NSW Police regarding the publication status of their submission, dated 2 July, 1 August and 6 August 2024, as it contains identifying information.

Resolved, on the motion of Mr D'Adam: That the committee publish the letter from Professor Susan Ledger, School of Education, Newcastle University, providing information on trauma-informed practice in post-graduate courses for teachers, received 2 August 2024.

### 4. Inquiry into children and young people with disability in New South Wales educational settings

#### **4.1 Partially confidential submissions**

Resolved, on the motion of Ms Mihailuk: That the committee authorise:

- the publication of submission no. 89 with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the authors
- the publication of submission no. 91 with the exception of identifying and/or sensitive information which are to remain confidential as per the recommendation of the secretariat.

#### **4.2 Auslan and Easy Read versions of the committee's report**

Resolved, on the motion of Mr D'Adam: That the committee approve the creation of summaries of the committee's report in Auslan (video) and Easy Read text.

#### **4.3 Extension of tabling date**

Resolved, on the motion of Mr D'Adam: That the tabling date for the inquiry into children and young people with disability in New South Wales educational settings be extended to Thursday 22 August 2024.

#### **4.4 Consideration of Chair's draft report**

The Chair submitted her draft report entitled *Children and young people with disability in New South Wales educational settings*, which, having been previously circulated, was taken as being read.

Mr D'Adam moved: That Recommendation 3 be omitted: 'That the NSW Government phase out the use of restrictive practices in educational settings in New South Wales in line with recommendations 6.35 and 6.36 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', and the following new recommendation be inserted instead:

'That the NSW Government continue to monitor the use of restrictive practices in educational settings in New South Wales with a view to reducing their application over time'.

Mrs Maclaren-Jones moved: That the motion of Mr D'Adam be amended by inserting 'in line with recommendations 6.35 and 6.36 of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability' after 'with a view to reducing their application over time'.

Amendment of Mrs Maclaren-Jones put and passed.

Original question of Mr D'Adam, as amended, put and passed.

Resolved, on the motion of Mr D'Adam: That Finding 9 be amended by omitting 'there is an unidentified number of' and inserting 'there is an unquantified number of'.

Resolved, on the motion of Mr D'Adam: That Recommendation 5 be amended by inserting:

- 'expand the number of places in schools for specific purposes (emotional and behavioural disturbance) consistent with the transitional model operating at the Ajuga School' after
- 'establishment of transition support units specifically for students with disability who have been regularly excluded from school and are at risk of disengagement. These support units should focus on helping students transition back to schooling in a mainstream classroom'

Resolved, on the motion of Mrs Mitchell: That paragraph 5.85 be amended by inserting 'some' after 'people with disability in'.

Resolved, on the motion of Mrs Mitchell: That Finding 10 be amended by inserting 'some' after 'people with disability in'.

Mrs Mitchell moved: That paragraph 5.86 be amended by omitting: 'Rather, the committee considers that children and young people with disability, except the small percentage that have highly complex needs, should be transitioned to mainstream, inclusive school settings' before 'The school system must'.

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mrs Maclaren-Jones, Ms Mihailuk, Mrs Mitchell, Mr Nanva.

Noes: Ms Boyd.

Question resolved in the affirmative.

Mrs Mitchell moved: That paragraph 5.87 be omitted: 'Further, the committee is not convinced that the permanent placement of children and young people with disability in special education settings is appropriate and meets the right of a student with disability to inclusive education. Educational settings should be child-centred and this may require them to have access to specialist settings which meet their needs', and the following new paragraph be inserted instead:

'Educational settings should be child-centred and this may require some children to have access to specialist settings which meet their needs'.

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mrs Maclaren-Jones, Ms Mihailuk, Mrs Mitchell, Mr Nanva.

Noes: Ms Boyd.

Question resolved in the affirmative.

Mrs Mitchell moved: That Finding 11 be omitted: 'That while permanent placement in special education settings is not appropriate to meet the right of a student with disability to inclusive education, a consideration of what is in the best interests of the child in their particular circumstances given other alternatives available may require them to have access to specialist settings which meet their needs', and the following new Finding 11 be inserted instead:

'Consideration of what is in the best interests of the child in their particular circumstances may require them to have access to specialist settings which meet their needs.'

Question put.

The committee divided.

Ayes: Mr Buttigieg, Mr D'Adam, Mrs Maclaren-Jones, Ms Mihailuk, Mrs Mitchell, Mr Nanva.

Noes: Ms Boyd.

Question resolved in the affirmative.

Resolved, on the motion of Mr D'Adam: That paragraph 6.162 be amended by omitting 'not the type of skills' and inserting instead 'nor the type of skills'.

Resolved, on the motion of Mr D'Adam: That paragraph 6.181 be amended by omitting 'rely on a funding assessment' and inserting instead 'rely on a functional assessment'.

Resolved, on the motion of Mr D'Adam: That paragraph 6.181 be amended by omitting 'Therefore, the committee recommends that the Department of Education ensure there is a transition plan in place to lead to the eligibility criteria for Integration Funding Support relying on functional assessments of students' needs, rather than medical diagnoses', and inserting instead 'Therefore, the committee recommends that the Department of Education transition to the eligibility criteria for Integration Funding Support relying on functional assessments of students' needs, rather than medical diagnoses' after 'access a medical diagnosis'.

Resolved, on the motion of Mr D'Adam: That Recommendation 17 be omitted: 'That the Department of Education ensure there is a transition plan in place to lead to the eligibility criteria for Integration Funding Support relying on functional assessments of students' needs, rather than medical diagnoses' and the following new recommendation be inserted instead:

'That the Department of Education transition to the eligibility criteria for Integration Funding Support relying on functional assessments of students' needs, rather than medical diagnoses.'

Resolved, on the motion of Mr D'Adam: That Recommendation 23 be amended by inserting the word 'discrimination' after 'systemic disability'.

Mrs Mitchell moved the following:

- a) That paragraph 6.202 be omitted: 'The committee is of the view that private institutions should be accountable in the same way as public institutions under the same legislation. We consider that such a legislative change would make the complaints process faster and less costly for those attending private educational settings. The committee therefore recommends that the NSW Government should seek to amend the *Anti-Discrimination Act 1977* to remove exemptions which allow private educational institutions to discriminate against a person on the basis of disability'.
- b) That Recommendation 24 be omitted: 'That the NSW Government seek to amend the *Anti-Discrimination Act 1977* to remove exemptions which allow private educational institutions to discriminate against a person on the basis of disability'.
- c) That paragraph 6.203 be omitted: 'Similarly, the committee recommends that the NSW Government

seek to amend the *Anti-Discrimination Act 1977* to include a positive duty on educational institutions to provide reasonable adjustments for a person with disability'.

- d) That Recommendation 25 be omitted: 'That the NSW Government seek to amend the *Anti-Discrimination Act 1977* to include a positive duty on educational institutions to provide reasonable adjustments for a person with disability'.

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Mihailuk, Mrs Mitchell.

Noes: Ms Boyd, Mr Buttigieg, Mr D'Adam, Mr Nanva.

Question resolved in the negative.

Resolved, on the motion of Mr D'Adam: That paragraph 6.202 be amended by omitting 'The committee therefore recommends that the NSW Government should seek to amend the *Anti-Discrimination Act 1977* to remove exemptions which allow private educational institutions to discriminate against a person on the basis of disability' and the following new paragraph be inserted instead:

'The committee therefore recommends that the NSW Government refer the issue of the removal of exemptions which allow private educational institutions to discriminate against a person on the basis of disability to the NSW Law Reform Commission for consideration as part of its review into the *Anti-Discrimination Act 1977*' after 'attending private educational settings'.

Resolved, on the motion of Mr D'Adam: That Recommendation 24 be omitted: 'That the NSW Government seek to amend the *Anti-Discrimination Act 1977* to remove exemptions which allow private educational institutions to discriminate against a person on the basis of disability' and the following new recommendation be inserted instead:

'That the NSW Government refer the issue of the removal of exemptions which allow private educational institutions to discriminate against a person on the basis of disability to the NSW Law Reform Commission for consideration as part of its review into the *Anti-Discrimination Act 1977*.'

Resolved, on the motion of Mrs Maclaren-Jones: That:

- a) The draft report as amended be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, tabled documents, submissions, correspondence, summary report to the online questionnaire, research paper, answers to questions taken on notice and supplementary questions relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions and individual responses to the online questionnaire be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, tabled documents, submissions, correspondence, summary report to the online questionnaire, research paper, answers to questions taken on notice and supplementary questions related to the inquiry be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h) The secretariat is tabling the report at 10.00 am, Thursday 22 August 2024.
- i) The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

Resolved, on the motion of Mrs Mitchell: That the Committee thank the secretariat for their incredible assistance and organisation of the inquiry.

**5. Adjournment**

The committee adjourned at 10.30am, until 8.30 am, Tuesday 27 August, Macquarie Room, Parliament House, Sydney, Budget Estimates 2024-2025 hearing.

Sarah Newlands  
**Committee Clerk**

## Appendix 5 Dissenting statements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And: -

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

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

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

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

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



