

Australian Council of Human Rights Authorities



**Submission to the Senate Standing Committee on
Education and Employment**

**Inquiry into current levels of access and attainment
for students with disability in the school system**

28 August 2015

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Introduction

The Australian Council of Human Rights Authorities (ACHRA) welcomes the opportunity to make this submission to the current inquiry of the Senate Standing Committee on Education and Employment into current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support. This submission has been prepared by members of the ACHRA, which comprises the federal, state and territory discrimination, equal opportunity and human rights authorities.

This submission focuses on three of the Inquiry's ten terms of reference, namely:

- a) current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support
- b) the social, economic and personal benefits of improving outcomes for students with disability at school and in further education and employment
- h) what should be done to better support students with disability in our schools.

Set in the context of the framework of relevant disability discrimination laws, this submission is based on observed patterns in complaints and other research and data available to ACHRA members.

Of particular relevance are the findings from the Victorian Equal Opportunity and Human Rights Commission's (VEOHRC) 2012 research report *Held Back: the experiences of students with disabilities in Victorian schools*.¹ *Held Back* represented the experiences and contributions of more than 1,800 students, parents/carers and educators in Victoria.

¹ ACHRA acknowledges the limitations associated with representing findings from a report only examining experiences for students with disabilities in Victoria. However, it is hoped that the information is still relevant and useful for the Committee as a snapshot of experiences offering general principles to assist with improving experiences for students with disabilities nationally. ACHRA also notes that a number of issues represented in *Held Back* were confirmed through data and trends submitted by ACHRA members.

Summary

- Students have legal rights to educational access and attainment under both domestic and international human right laws
- These rights protect students with disability from discrimination and include specific provisions on providing reasonable accommodation or adjustments to support participation
- Failing to comply with discrimination and human rights laws affects participation and can cause students with disability to perform well below their potential
- Education is a means of overcoming social and economic marginalisation and is therefore an essential foundation for realising other human rights
- While there have been improvements and a range of positive policies and programs exist, students with disability still experience discrimination and barriers to participation. These barriers relate to key areas outlined in this submission including enrolment, participation, transition points in education, workforce capacity and skills, curriculum adjustment and personalised learning and support
- Accordingly, this submission makes a number of recommendations to remove these barriers and improve experiences for students with disability.

1. Disability discrimination in education – the legal and policy framework

1.1 International human rights

The right to equally accessible education for all was promoted as far back as the *Universal Declaration of Human Rights*.² This right was further developed in the *International Covenant on Economic, Social and Cultural Rights*³ and elaborated in the *Convention on the Rights of the Child* (CRC), which expresses that all children have a right to access primary, secondary, vocational and higher education (Article 28).⁴ Two of the four guiding principles of the CRC relate to the obligation of the state to take whatever measures are in the best interests of the child and a prohibition against discrimination of any kind, including towards children with disability.⁵ Further, Article 23 of the CRC explicitly obliges states parties to ensure children with disability enjoy a full and decent life, including access to education.⁶

1.1.1 Convention on the Rights of Persons with Disabilities

As a State Party to the *Convention on the Rights of Persons with Disabilities* (the Convention), Australia has an obligation to ensure that persons with disability, including children and their families, enjoy all of their human rights without discrimination of any kind on the basis of disability.⁷ Specifically, the Convention requires that Australia recognise the right of children with disability to an education, including within the general education system.⁸ Linked with this is Australia's obligation to provide the necessary supports to facilitate a child's effective

² *Universal Declaration of Human Rights*, GA Res 217A, 3rd Sess, 183rd plen mtg, UN Doc A/810 at 71 (10 December 1948) ('*Universal Declaration of Human Rights*') art 26 <<http://www.un.org/en/documents/udhr/>> at 23 July 2015.

³ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3, (entered into force 3 January 1976, ratified by Australia 10 December 1975, entered into force for Australia 10 March 1976) ('*International Covenant on Economic, Social and Cultural Rights*') art 14 <<http://www.austlii.edu.au/au/other/dfat/treaties/1976/5.html>> at 3 August 2015.

⁴ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, (entered into force 2 September 1990, ratified by Australia 17 December 1990, entered into force for Australia 16 January 1991) ('*Convention on the Rights of the Child*') arts 28, 29 <<http://www.austlii.edu.au/au/other/dfat/treaties/1991/4.html>> at 23 July 2015.

⁵ *Convention on the Rights of the Child*, art 2 <<http://www.austlii.edu.au/au/other/dfat/treaties/1991/4.html>> at 23 July 2015.

⁶ *Convention on the Rights of the Child*, art 23 <<http://www.austlii.edu.au/au/other/dfat/treaties/1991/4.html>> at 23 July 2015.

⁷ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, UN Doc A/61/611 (entered into force 3 May 2008, ratified by Australia 17 July 2008, entered into force for Australia 18 August 2008) ('*Convention on the Rights of Persons with Disabilities*') arts 4(1), 5(1),5(2) <<http://www.un.org/disabilities/convention/conventionfull.html>> at 21 July 2015.

⁸ *Convention on the Rights of Persons with Disabilities*, art 24(2)(a) <<http://www.un.org/disabilities/convention/conventionfull.html>> at 21 July 2015.

education.⁹ These could be as basic as altering the layout of the room, to accommodating a student who is a wheelchair user, to the provision of a support worker or computer technology to assist the learning process for a student with intellectual or mental disability.

The General Principles of the Convention also require Australia to have respect for the evolving capacities of children with disability and respect for the right of children with disability to preserve their identities.¹⁰ This is particularly relevant given this Inquiry relates to adequate levels of support, and noting that a child's needs will change over time, including as they age, requiring continual review of appropriate levels of support.

1.1.2 Committee on the Rights of Persons with Disabilities

In 2012, the Committee on the Rights of Persons with Disabilities (the Committee) reviewed Australia's progression on the implementation of the Convention. The Committee noted that despite the presence of the *Disability Standards for Education*, children with disability were still being placed in special schools rather than mainstream schools, or for those in mainstream education, were confined to special classes or units. The Committee was also concerned about the lack of reasonable accommodation being provided to students with disability, and their subsequent substandard education. Secondary school completion rates for students with disability (about half of those for people without disability) were also noted.

The Committee's recommendations included that Australia should increase efforts on reasonable accommodation, research the effectiveness of the *Disability Standards in Education* at the state and territory level, and set targets to increase participation and completion rates by students with disability in all levels of education and training.¹¹

1.2 Federal law

1.2.1 Disability Discrimination Act

The *Disability Discrimination Act 1992* (Cth) (DDA) generally aims to protect everyone in Australia from discrimination based on disability, including in education.¹² Disability discrimination in education is prohibited under the DDA.¹³ The DDA makes discrimination against someone with a disability unlawful, including discrimination by public and private education institutions, schools and universities.¹⁴ Specifically, the DDA protects people with

⁹ *Convention on the Rights of Persons with Disabilities*, art 24(2)(d) <<http://www.un.org/disabilities/convention/conventionfull.html>> at 21 July 2015.

¹⁰ *Convention on the Rights of Persons with Disabilities*, art 3 <<http://www.un.org/disabilities/convention/conventionfull.html>> at 21 July 2015.

¹¹ Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2–13 September 2013)*, UN Doc CRPD/C/AUS/CO/1 (2013) paras 45–46.

¹² *Disability Discrimination Act 1992* (Cth) s 3.

¹³ *Disability Discrimination Act 1992* (Cth) s 22.

¹⁴ *Disability Discrimination Act 1992* (Cth) s 22.

regard to admission, accessibility and harassment. The DDA also creates a duty to make reasonable adjustments for people with disability.¹⁵

The DDA protects against disability discrimination with regard to development or accreditation of curricula or training courses with content that will exclude a person with a disability from participation or subject the person to other detriment.¹⁶

The DDA also requires an education institution to make their courses and premises accessible. It is not permitted under the DDA to expel a person because of a disability or to subject a person with a disability to any other detriment. This extends to harassment by a member of staff of an education institution relating to a person's disability.¹⁷

Under the DDA, an education institution must make reasonable adjustments for a person with a disability. For example, this may include changing desk heights to enable a wheelchair user to participate in activities. While not specified in the legislation, other examples of reasonable adjustments may also include:

- Structural changes to the built environment, such as providing ramps, modifying toilets and ensuring classrooms are accessible;
- providing or modifying equipment used for learning and studying, eg, by providing specific computer software;
- modifying assessment procedures, eg, by providing more time or allowing exams to be done orally instead of in a written format; and
- changing course delivery, eg, delivering lessons in Auslan.

There is an exception provided in the DDA in relation to discrimination in the area of education. This exception states that it will not be unlawful to discriminate on the ground of disability if avoiding the discrimination would impose unjustifiable hardship on the discriminator.¹⁸

1.2.2 Disability Standards for Education

Formulated under the DDA, the *Disability Standards for Education 2005* (Cth) (the Standards) came into force in August 2005, are reviewed every 5 years, and elaborate on the obligations under the DDA regarding access to education for people with disability.

The Standards cover enrolment, participation, curriculum development, accreditation and delivery, student support services and the elimination of harassment and victimisation of students with disability. They apply to education providers including preschools, primary and secondary schools, universities and other institutions where education or training is provided.¹⁹ They also apply to organisations that develop and accredit education and training.²⁰

¹⁵ *Disability Discrimination Act 1992* (Cth) ss 5(2), 6(2). See Australian Human Rights Commission, *Federal Discrimination Law* (2011) 54.

¹⁶ *Disability Discrimination Act 1992* (Cth) s 22(2A).

¹⁷ *Disability Discrimination Act 1992* (Cth) s 37. This section only applies to harassment by a member of staff against a student or potential student.

¹⁸ *Disability Discrimination Act 1992* (Cth) s 21B.

¹⁹ *Disability Standards for Education 2005* (Cth) pt 1.5.

The fundamental principle underlying the Standards is that people with disability should have the same opportunities and choices in applying for enrolment, participating in lessons and courses and accessing facilities provided by educational institutions as people without a disability.²¹

Review of the Standards

The consultation process for the 5-year review conducted in 2015 has recently concluded and a report will be released this year.

The previous review in 2010 found that although the Standards provide a good general framework for students' rights to access education, there were a number of issues relating to awareness of the Standards and compliance. The Review found that there was general confusion and lack of clarity about some of the terms used by the Standards, including "disability", "reasonable adjustment", "unjustifiable hardship" and "on the same basis".²²

The VEOHRC *Held Back* report also identified concerns about awareness and understanding of the Standards. Almost 40% of educators participating in the research reported having no knowledge of the existence of the Standards.²³

The Standards require education providers to take all relevant circumstances into account when assessing the reasonableness of an adjustment, to consult with students before making the adjustment and to ensure that the necessary adjustments are made within a reasonable time. However, the 2010 Review found that the Standards needed to be clearer in setting out what a reasonable adjustment is and the timeline for making an adjustment.

It was also suggested that the Standards include some examples and guidelines about the types of reasonable adjustments that have been made in relation to a range of different disabilities. For example, one advocacy organisation suggested that "it would be useful to have a consistent set of criteria for determining what is reasonable in terms of assistive technology, for inclusion of deaf students in the classroom".²⁴

Another strong focus of the Review was the effectiveness of the standards in addressing bullying and harassment of students with disability. The Review found:

In spite of the intent of the Standards, some submissions reported that ongoing discrimination and a lack of awareness across all areas in education continues to be an extremely significant area of concern for students with disability and their families. Many families reported that, through their education experiences, their children are subjected

²⁰ *Disability Standards for Education 2005* (Cth) pt 1.5(g).

²¹ *Disability Standards for Education 2005* (Cth) pt 2.2.

²² Australian Government, Department of Education, Employment and Workplace Relations (Cth), *Report on the review of the Disability Standards for Education 2005* (2012) 10 & 14.

²³ Victorian Equal Opportunity and Human Rights Commission, *Held Back: The experiences of students with disabilities in Victorian Schools* (2012) 172.

²⁴ Australian Government, Department of Education, Employment and Workplace Relations, above n 22 15.

to: limited opportunities; low expectations; exclusion; bullying; discrimination; assault and violation of human rights.²⁵

Finally, the overall effectiveness of the Standards was seen to be undermined by a failure to establish adequate accountability frameworks and complaint mechanisms, resulting in relatively few consequences for education providers that fail to meet their obligations.²⁶ The Review produced 14 recommendations, which included reviewing the Standards to improve the clarity of terms used and to include stronger compliance mechanisms.

In their response to the Review, the Federal Government stated that they were in the process of consolidating all Commonwealth anti-discrimination legislation and would defer any decision about the revision of the Standards until the outcome of that project was clearer. The Standards have not been revised, however the Discussion Paper for the 2015 Review cited a number of government initiatives that have been undertaken since the last review. These include the Nationally Consistent Collection of Data on School Students with Disability and the production of information resources to promote awareness of the Standards.

1.2.3 Australian Education Act

While the *Australian Education Act 2013* (Cth) does not address matters related to discrimination against students with disability, it does aim to ensure the Australian school system provides high quality and equitable education for all students.²⁷ It specifically addresses quality teaching and learning, accountability through data collection and meeting students' needs, which are relevant for the successful educational outcomes of children with disability.²⁸

1.3 State and territory laws

There are differences in the coverage of the state and territory discrimination and education laws in relation to students with disability, as well as variation in the terms used in each of the Acts.

1.3.1 Australian Capital Territory

The *Discrimination Act 1991* (ACT) makes it unlawful for educational authorities to discriminate against a person on the grounds of their disability, in addition to any other attributes such as sex, age and race.²⁹ There are exceptions from this requirement in circumstances where the student with disability would require services or facilities that would impose an "unjustifiable hardship" on the educational authority.³⁰ This exception only extends to failure to admit a student and does not apply to unfavourable treatment in the course of providing education.

²⁵ Ibid 30.

²⁶ Ibid vi.

²⁷ *Australian Education Act 2013* (Cth) s 3.

²⁸ *Australian Education Act 2013* (Cth) s 3.

²⁹ *Discrimination Act 1991* (ACT) ss 7(1), 18.

³⁰ *Discrimination Act 1991* (ACT) s 51(2).

The *Education Act 2004* (ACT) states that school education must recognise the individual needs of children with disability and should make appropriate provisions for those needs.³¹

The *Human Rights Act 2004* (ACT) also provides for the right to equal and effective protection from discrimination and a right to education.³² Both the *Education Act 2004* (ACT) and the *Discrimination Act 1991* (ACT) must be interpreted in accordance with the rights contained in the *Human Rights Act 2004* (ACT).³³

1.3.2 New South Wales

The *Anti-Discrimination Act 1977* (NSW) states it is unlawful for an educational authority to discriminate against a person based on their disability.³⁴ The Act also provides an exemption from this requirement in circumstances where the student with disability would require services or facilities that would impose an “unjustifiable hardship” on the educational authority.³⁵

The *Education Act 1990* (NSW) states one of its purposes is to ensure that special educational assistance is provided to children with disability in schools.³⁶

1.3.3 Northern Territory

The *Anti-Discrimination Act* (NT) prohibits discrimination by educational authorities on the grounds of “impairment”, which includes disability.³⁷ The Act also places a positive obligation on educational authorities to reasonably accommodate a special need that a student with a disability may have.³⁸ Factors to assess whether an educational provider has unreasonably failed to provide for the special need are set out in the Act and include the nature of the special need, the cost of accommodating the special need, financial circumstances and the nature of the benefit or detriment to all persons concerned.³⁹ There is an exemption in circumstances where a person with a “special need” would require “special services and facilities” and “it is unreasonable to require the person to supply the special services or facilities”.⁴⁰

The *Education Act* (NT) is currently under review. Part 5 of the current Act sets out a formal process for children with special needs. The Act also states that it is a registration requirement for non-government schools to have ‘adequate provisions’ for meeting the needs of students with disability.⁴¹

³¹ *Education Act 2004* (ACT) s 7(3).

³² *Human Rights Act 2004* (ACT) ss 8, 27A.

³³ *Human Rights Act 2004* (ACT) s 30.

³⁴ *Anti-Discrimination Act* (NSW) s 49L.

³⁵ *Anti-Discrimination Act* (NSW) s 49L(4).

³⁶ *Education Act 1990* (NSW) s 6(1)(k).

³⁷ *Anti-Discrimination Act 1992* (NT) ss 19(1)(j), 29.

³⁸ *Anti-Discrimination Act* (NT) s 24.

³⁹ *Anti-Discrimination Act* (NT) s 24(3).

⁴⁰ *Anti-Discrimination Act* (NT) s 58(1).

⁴¹ *Education Act* (NT) s 61A.

1.3.4 Queensland

The *Anti-Discrimination Act 1991* (Qld) prohibits discrimination by educational authorities based on an “impairment”.⁴² There is an exemption from this requirement in circumstances where the student would require “special services or facilities” that would impose an unjustifiable hardship on the educational authority.⁴³ However, the Act also states that this exemption is subject to the *Education (General Provisions) Act 2006* (Qld). The Act refers to “special education” for students with disability and provides that principals are required to enrol any prospective student, except where there is reasonable evidence that a child would pose an unacceptable risk to the safety or wellbeing of members of the school community.⁴⁴

1.3.5 South Australia

Section 74 of the *Equal Opportunity Act 1984* (SA) makes it unlawful for an educational authority to discriminate on the grounds of disability. There is an exemption from this requirement in circumstances where the person with disability would require access to or use of a place or facilities in circumstances where the provision of that access would impose an unjustifiable hardship.⁴⁵

The South Australian *Education Act 1972* makes no reference to students with disability, but does refer to enrolment of students at a “special school” if it is in the best interests of the child.⁴⁶

1.3.6 Tasmania

Under the Tasmanian *Anti-Discrimination Act 1998* (Tas), it is unlawful to discriminate against a person because of disability in education.⁴⁷ The Act provides this protection against discrimination in all forms of education and all sectors of the education system: government and non-government.

The Act provides an exception (defence) in relation to the provision of access to public places generally if the provision of access would cause unjustifiable hardship. It also provides the same exception in relation to the provision of goods and services.⁴⁸ In addition to general exceptions (defences) enabling the implementation of schemes for the benefit of people with disability or the adoption of programs, plans or other arrangements designed to promote equal opportunity,⁴⁹ the Tasmanian *Anti-Discrimination Act 1998* also provides a specific exception to enable discrimination on the grounds of disability in relation to the provision of special education.⁵⁰ The Act does not permit or provide a defence to discrimination in education on the basis of disability in any other circumstance.

⁴² *Anti-Discrimination Act 1991* (Qld) s 37.

⁴³ *Anti-Discrimination Act 1991* (Qld) s 44(1).

⁴⁴ *Education (General Provisions) Act 2006* (Qld) s 156.

⁴⁵ *Equal Opportunity Act 1984* (SA) s 84.

⁴⁶ *Education Act 1972* (SA) s 75(3).

⁴⁷ *Anti-Discrimination Act 1998* (Tas) ss 16(k), 22(1)(b).

⁴⁸ *Anti-Discrimination Act 1998* (Tas) s 48.

⁴⁹ *Anti-Discrimination Act 1998* (Tas) ss 25, 26.

⁵⁰ *Anti-Discrimination Act 1998* (Tas) s 46.

The Tasmanian *Education Act 1994* (Tas) makes provision for the enrolment of a child in a ‘special’ school and enables distance education in situations where a child is housebound due to a physical impairment or other illness.⁵¹

1.3.7 Victoria

The *Equal Opportunity Act 2010* (Vic) makes it unlawful for an educational authority to discriminate against a person on the grounds of their disability.⁵² The Act also requires educational authorities to make reasonable adjustments to accommodate students with disability,⁵³ unless the adjustments are not reasonable or the person could not derive any substantial benefit after the adjustments are made.⁵⁴

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) provides for the right to equal and effective protection from discrimination.⁵⁵ The Charter also provides that measures taken for the purpose of assisting or advancing persons because of discrimination does not constitute discrimination.⁵⁶

The *Education and Training Reform Act 2006* (Vic) states that parents of students with disability are not required to contribute to the cost of the additional support for education provided to that student (in government schools).⁵⁷

1.3.8 Western Australia

Under the *Equal Opportunity Act 1984* (WA), it is unlawful to discriminate against a person on the ground of “impairment” in education.⁵⁸ This does not apply in relation to a refusal or failure to accept a person’s application for enrolment where the person would require an adjustment that would impose an unjustifiable hardship on the educational authority.⁵⁹ The *School Education Act 1999* (WA) sets out some requirements for schools in relation to children with disability: the principal is required to consult with the child, their parents and their teachers in relation to any specific requirements of the child and their educational program.⁶⁰

1.4 National Disability Strategy

While the Convention sets the international legal framework to promote the protection and fulfilment of human rights for people with disability, it also guides state parties in the implementation of inclusive laws and policies. Australia’s National Disability Strategy (NDS) is

⁵¹ *Education Act 1994* (Tas) ss 21, 24(4).

⁵² *Equal Opportunity Act 2010* (Vic) ss 6(e), 38.

⁵³ *Equal Opportunity Act 2010* (Vic) s 40.

⁵⁴ *Equal Opportunity Act 2010* (Vic) s 41.

⁵⁵ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 8(3).

⁵⁶ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 8(4).

⁵⁷ *Education and Training Reform Act 2006* (Vic) s 2.2.6.

⁵⁸ *Equal Opportunity Act 1984* (WA) ss 66A, 66.

⁵⁹ *Equal Opportunity Act 1984* (WA) s 66(4).

⁶⁰ *School Education Act 1999* (WA) s 73.

the overarching national policy aimed at implementing Australia's obligations set out in the Convention.

The NDS, developed and agreed to by Commonwealth, State and Territory Governments, sets out a 10-year plan for disability inclusion. One of the six policy priorities for the NDS relates to Learning and Skills for both children and adults with disability.⁶¹ In 2012, the first report on the implementation of the NDS recognised that 'a good quality inclusive education is important for all students to enable them to be successful learners, confident and creative individuals, and active and informed citizens'.⁶² It also noted areas for future action in relation to the Learning and Skills policy priority, including:⁶³

- reducing barriers and simplifying access to the education system for people with disability
- developing innovative learning strategies and supports for students with disability to enable them to reach their full potential
- investigating options for reporting on educational outcomes of students with disability
- identifying and establishing best practice for transition planning and support through education and into employment
- responding to recommendations of the review of the *Disability Standards for Education*
- ensuring the Early Years Learning Framework and other framework curriculum processes are inclusive
- promoting leadership development of people with disability.

The next progress report on the NDS is due to be released in August 2015 and progress on the above recommendations can be reviewed.

⁶¹ Council of Australian Governments, *National Disability Strategy 2010–2020*, 53.

⁶² Department of Families, Housing, Community Services and Indigenous Affairs (Cth), *National Disability Strategy 2010-2020 Report to the Council of Australian Governments 2012* (2012) [120] at 18 August 2015.

⁶³ *Ibid* 119.

2. The social, economic and personal benefits of improving outcomes for students with disability at school and in further education and employment

Education has the potential to bring significant benefits to individuals and society that go well beyond its contribution to individuals' employability or income. Research from the OECD has found that educational participation and achievement is positively associated with increased life expectancy, civic participation and life satisfaction and happiness.⁶⁴ For students with a disability in particular, participation in education can also result in a number of personal benefits including the development of friendships and important social skills.

From a human rights perspective, education is also a means of overcoming social and economic marginalisation and is therefore an essential foundation for realising a range of human rights at all life stages.

⁶⁴ OECD, *2013 Education Indicators in Focus – 2013/01* (2013).

3. Current levels of access and attainment for students with disability in the school system

A good education provides the foundation that supports children and young people to be active participants in their communities, find fulfilling work and live a decent life. When students with disability are unable to enjoy a good education, their future is seriously compromised.

Barriers in education are a key reason why the economic and social participation rate of Australians with disability is so low. People with disability are less likely to have completed Year 12 and are less likely to hold a post-school qualification.⁶⁵ They are also more likely to be unemployed and have significantly less income than others in the community.⁶⁶

This section provides information on current levels of access and attainment and associated barriers for students with disability based on trends, data and other information submitted by ACHRA members. These themes are also examined further in the context of key findings of VEOHRC's *Held Back* report.

3.1 Disability discrimination in education – trends observed by ACHRA members

ACHRA members submitted available data on complaints of disability discrimination in education for reporting years 2013–14 and 2014–15. ACHRA notes this information does not necessarily reflect the full extent of discrimination against students with disability. Individuals may complain to other bodies and commissioners, or not complain at all due to lack of knowledge, fear of repercussions, or a perception that complaining will not make a difference.⁶⁷ ACHRA members also provided significant anecdotal evidence of discrimination, separate to complaints data.

While there were variations in complaints and trends submitted by ACHRA members, a number of key issues were identified. These included the following:

- The highest number of complaints appeared to relate to alleged failure to provide reasonable accommodation or adjustments to support students with disability⁶⁸

⁶⁵ Australian Bureau of Statistics, 'Education' Disability Australia, 2009, cat. no. 4446.0 <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4446.0>>.

⁶⁶ Ibid 'Labour force'.

⁶⁷ Thirty-five per cent of parents participating in *Held Back* said they did not complain because they did not think anything would happen. Twenty-one per cent did not complain because they thought there would be repercussions: Victorian Equal Opportunity and Human Rights Commission, *Held Back: The experiences of students with disabilities in Victorian Schools* (2012) 146.

⁶⁸ For example, the sample of complaints reviewed by the Australian Human Rights Commission indicated that the majority (58%) were about alleged lack of reasonable accommodation. The Tasmanian Anti-Discrimination Commissioner indicated the majority of complaints were about the nature and level of adjustment/assistance provided. The Victorian Equal Opportunity and Human Rights Commission data confirmed allegations are centred on non-provision of reasonable adjustments including exclusion from extra-curricular activities such as school camps and excursions.

- A large number of complaints as well as anecdotal information appeared to relate to exclusion, reduced attendance patterns and suspension and expulsion⁶⁹
- A significant number of complaints relate to students with intellectual, learning and behavioural disabilities
- A large number of complaints were about the tertiary sector. These appeared to centre on adjustments/reasonable accommodation for exams and coursework.

Data on key indicators is provided below. The data reflects direct, independent input from ACHRA members based on locally available information and data systems used. Therefore, some of the information is presented differently for each state or territory authority against each indicator. Information is gathered in a single, consistent category wherever possible (eg, total number of complaints at 3.1.1).

ACHRA members submitted data on complaints of disability discrimination in all sectors, including the tertiary sector. While complaints relating to the tertiary sector are not directly relevant to the scope of this Inquiry, these figures may still be of general interest and have been kept to provide a broader indication of disability discrimination complaints in all education sectors.

3.1.1 Total number of complaints of disability discrimination in education

Jurisdiction	2013–14	2014–15	Total
Commonwealth	57	59	116
NSW	15**	(not provided)	15
ACT	3	3	6
WA	2	6	8
Qld	16 (13)*	21(12)*	37(25)*
NT	2	3	5
Tas	6	5	11
Vic	42	40	82
SA	9	11	20
Total	171	152	323

* represents the total number of accepted complaints

** data provided for financial rather than reporting year

⁶⁹ Exclusion/suspension/expulsion was the second highest issue raised in the complaint sample reviewed by the Australian Human Rights Commission (21%); non-admission and suspension and expulsion were the second highest areas of complaint to the Tasmanian Anti-Discrimination Commissioner; data from the Victorian Equal Opportunity and Human Rights Commission confirmed reduced hours of school attendance as a key area of complaint.

3.1.2 Education sector

Commonwealth (Australian Human Rights Commission)

In relation to the 116 complaints to the Australian Human Rights Commission in 2013–14 and 2014–15, where data on education sector was available, complaints related to the following sectors:

Public schools: 57%

Private schools: 34%

School examinations: 5%

Pre-school and out of school care: 4%

NSW

Out of 15 complaints to the Anti-Discrimination Board for the 2013–14 financial year, complaints related to the following sectors:

Public schools: 13

Private schools: 2

ACT

Complaints to the ACT Human Rights Commission all related to the tertiary sector, with one complaint relating to childcare.

Western Australia

All complaints to the Equal Opportunity Commission Western Australia related to primary school.

Victoria

Out of a total of 82 complaints for 2013–14 and 2014–15, complaints to the Victorian Equal Opportunity and Human Rights Commission related to the following education sectors:

Public schools: 35

Catholic schools: 6

Private schools: 11

Tertiary institutions: 30

Queensland

The thirteen (13) Complaints received by the Anti-Discrimination Queensland for the year 2013–14 related to the following education sectors:

Public schools: 6 (46%)

Private schools: 7 (54%)

The twelve (12) complaints received for the year 2014–15 related to the following education sectors:

Public schools: 5 (42%) of complaints

Private schools: 7 (54%) of complaints

Northern Territory

The Northern Territory Anti-Discrimination Commission noted that the majority of complaints were against public education providers.

South Australia

The nine (9) complaints received by the Equal Opportunity Commission South Australia for the year 2013–14 related to the following education sectors:

Public schools: 2

Private schools: 2

Other (including tertiary and RTOs): 5

The eleven (11) complaints received for 2014–15 related to the following education sectors:

Public schools: 2

Private schools: 1

Other (including tertiary and RTOs): 8

Tasmania

The six (6) education and training complaints received by the Tasmanian Anti-Discrimination Commission for 2013–14 related to the following education sectors:

Public schools: 2

Private schools: 0

Post secondary: 1

Other: 3

The five (5) education and training complaints received for 2014–15 related to the following education sectors:

Public schools: 2

Private schools: 3

3.1.3 Level of schooling

Jurisdiction	2013–14 (total complaints)	Level of schooling	2014–15 (total complaints)	Level of schooling
Commonwealth	57		59	(provided total figure for both years) Primary (50%) Secondary (42%) Preschool (8%) ⁷⁰
NSW	(data not provided)			
Australian Capital Territory	3	University (all)	3	University (2) Childcare (1)
Western Australia	2	Primary (all)	6	Primary (3) Secondary (3)
Queensland	16 (13)*	Primary (5) Secondary (2) Tertiary (2) Other (4)	21(12)*	Primary (3) Secondary (3) Tertiary (3) Other (3)
Northern Territory	2		3	Majority of complaints for both periods were in the tertiary and primary school sectors
Tasmania	6	Primary (1) Secondary (1) Post-secondary (1) Other (3)	5	Primary school (all)

⁷⁰ This is the percentage of matters where data on school level was available from the complaint summary.

Jurisdiction	2013–14 (total complaints)	Level of schooling	2014–15 (total complaints)	Level of schooling
Commonwealth	57		59	(provided total figure for both years) Primary (50%) Secondary (42%) Preschool (8%) ⁷⁰
Victoria	42		40	(provided total figure for both years) Primary (26) Secondary (23) Tertiary (30) Specialist (3)
South Australia	9	Primary (3) Secondary (1) Other (including tertiary and RTOs) (5)	11	Primary (2) Secondary (2) Other (including tertiary and RTOs) (7)

* represents the total number of accepted complaints

3.1.4 Type of disability

Data from ACHRA members on disability discrimination complaints matched to disability type indicated consistently higher numbers of complaints regarding students with intellectual, behavioural and learning disabilities. Where this was not explicitly confirmed in available data, members also indicated there is significant anecdotal evidence of discrimination and lack of support for students with intellectual, behavioural and learning disabilities. Key figures from the data for the selected period included the following:

- The Australian Human Rights Commission reported the highest percentage of complaints related to a learning disability (27%) followed by mental health or psychosocial disability (25%) and intellectual disability (13%)
- Intellectual, learning and behavioural disabilities represented 61% of complaints to the Queensland Anti-Discrimination Commission in 2013–14 and 42% in 2014–15
- Data from the Victorian Equal Opportunity and Human Rights Commission confirmed that the highest number of disability discrimination complaints are about autism, followed by depression, anxiety and post-traumatic stress disorder.

The remaining data also confirmed discrimination against students with a range of physical, sensory and other disabilities.

3.2 *Held Back: the experiences of students with disability in Victorian schools and other ACHRA research*

Current levels of access attainment and barriers for students with disability were explored in detail in VEOHRC's *Held Back* report. Contextualised within a human rights framework—and in particular, aligned to experiences under key areas in the *Disability Standards for Education* (the Standards)—*Held Back* identified a range of barriers and areas for improvement in relation to enrolment, participation, support services, curriculum development and delivery, and harassment and victimisation. Other issues explored in the report included the effect of transition points in education, school culture, workforce capacity and professional development, the availability of supports, funding, and reduced attendance patterns.

3.2.1 Enrolment

The ability to successfully enrol in a chosen school is an essential first step to educational access. *Held Back* found most experiences of enrolment were positive, with 85 per cent of surveyed parents indicating they were able to enrol their child at the first school they applied to. However, other participants in the research had to apply to many schools before their child was accepted. Some parents said they were refused enrolment with no reasons given, while others said they were told the school was inappropriate or did not have enough resources to cater for their child.

ACHRA members provided examples of discrimination at enrolment based on complaints data and other observations. Data from the Australian Human Rights Commission confirmed some discrimination complaints for 2013–14 and 2014–15 related to alleged refusal of enrolment, limited enrolment or limited participation (14% of complaints).

The Anti-Discrimination Commission Queensland suggested there are anecdotal reports of discrimination and unfair treatment at enrolment. This included reports that some private schools are reluctant to take students with disability and actively discourage their enrolment on the basis that the school will not be able to provide the support their child needs. There were also reports of schools making 'full and frank disclosure' a condition of ongoing enrolment. For those parents who did not disclose their child's disability under such conditions and where a disability was raised later, schools may cancel the child's enrolment on the basis of 'dishonesty' rather than because of their disability, even if the disability has no effect on their learning needs.

Trend information provided by the Tasmanian Anti-Discrimination Commissioner also confirmed significant anecdotal evidence of parents being actively discouraged from enrolling their child on the basis that the school is not sufficiently funded to support them.

This suggests a need to raise awareness of rights and responsibilities at enrolment for parents and education providers to avoid experiences of exclusion and discrimination at enrolment.

To address this, *Held Back* recommended that education authorities develop plain language guidance for parents and schools setting out enrolment rights of students with disability. To this end, ACHRA welcomes the new national resource *Disability Standards for Education: A*

*practical guide for individuals, families and communities.*⁷¹ The resource is a significant positive step in raising awareness of rights under disability discrimination laws and the Standards. It should be evaluated on an ongoing basis to ensure the information is effective and accessible for a wide target audience and is widely used and promoted.

3.2.2 Transition points

Changes and transition points in education can also significantly affect students with disability. In particular, *Held Back* identified that poor planning and inadequate sharing of information between schools may compromise the quality of transition between school stages. This is particularly crucial in the transition from primary school to secondary school. The report also found that parents and students may find they have to ‘educate’ each new teacher or staff member about disability and associated support needs due to these gaps in support at transition points.

In this regard, building workforce capacity to understand and respond to a range of different disabilities can assist with facilitating smoother transition for students with disability.

3.2.3 Participation, attendance patterns and suspensions and expulsions

The data compiled by ACHRA members confirmed that complaints of discrimination largely centred on non-provision of reasonable accommodation or adjustments, affecting participation. In some instances, it appears this is leading to reduced attendance for students with disability. This was reflected both in the findings from *Held Back* and ACHRA complaints data.⁷²

Held Back showed varying experiences relating to participation and providing reasonable adjustments. Seventy-two per cent of educators participating in the research indicated students with disability could fully participate. Parents gave mixed responses, indicating that requested adjustments were made in full (32 per cent), partially made (58 per cent) or not made at all (10 per cent).

The research also suggested patterns of attendance for students with disability may be affected by a range of factors including lack of available support—such as funded integration aides—and adjustments. In some instances, this may lead to part-time attendance for students enrolled full-time.

This also links to concerns regarding suspensions and expulsions. The Australian Human Rights Commission’s data shows a significant observable trend relating to complaints identifying autism, ADHD and Asperger syndrome and alleged failure to accommodate the behavioural manifestations of these disabilities, leading to suspension or expulsion.

⁷¹ University of Canberra, *Disability Standards for Education: A Practical Guide for Individuals, Families and Communities* (2014) <<http://resource.dse.theeducationinstitute.edu.au>> at 24 August 2015.

⁷² Australian Human Rights Commission complaints data confirmed that 58 per cent of complaints in the reviewed sample related to non-provision of reasonable accommodation followed by 21 percent relating to exclusion, suspension or expulsion.

The Anti-Discrimination Commission Queensland also expressed concerns regarding recent policy changes at the Department of Education and Training in Queensland, which have increased periods for short expulsions and expanded 'reasons for action', which may disproportionately affect students with disability.

The Equal Opportunity Commission Western Australia also observed that suspension of students with disability has been raised with the Commission as an issue of concern.

Held Back also examined the issue of suspensions and expulsions, which was linked to breakdowns in schooling; for example, where behavioural or other issues, which themselves may result from not making adequate adjustments to accommodate the student's disability, lead to suspension or expulsion.

3.2.4 Funding

Held Back identified funding as a barrier to participation. In the Victorian context, these concerns were linked to the Department of Education and Training's Program for Students with Disabilities (PSD) funding model and suggestions that the criteria for funding eligibility aligned to types of disability – particularly students with autism and Dyslexia - were too restrictive.

This submission does not consider the issue of funding or funding models in any specific detail. However, there is an obvious link between funding barriers and the ability for education providers to comply with anti-discrimination laws by providing reasonable accommodation and adjustments. As a general principle, any funding model should also be needs based to ensure students with disability can participate in school on an equal basis with others. It is important for governments to have the necessary data to develop such a model. In this regard, finalising the Nationally Consistent Collection of Data is crucial to the development of appropriate needs based funding models.

The principles and outcomes from the current Victorian PSD review may also assist with similar considerations about funding eligibility and associated criteria for students with disability nationally.

3.2.5 Curriculum development and assessment

Held Back confirmed that students with disability enjoy better outcomes where teaching methods and learning materials are adapted to the individual needs of students with disability. While there were some positive findings about adjustments to teaching methods and curriculum delivery, the research found these were not always used consistently. In particular, participants stressed the need for adjustments to be made for the whole curriculum, including for activities outside the classroom such as camps and excursions.

Adjustments to exams was another area of concern. In particular, participants outlined the importance of adjustments for in-school testing, Year 12 exams and for National Assessment Program Literacy and Numeracy (NAPLAN) testing. Specific concerns regarding NAPLAN also included that students with disability may be discouraged from taking part in NAPLAN through automatic exclusion without consent and alternative strategies for assessment not being explored for either NAPLAN or standard testing.

The Victorian Curriculum and Assessment Authority (VCAA) is currently reviewing its Special Provision Policy for Victorian Certificate of Education (VCE) exams. The outcomes of this review may also assist with similar considerations regarding special provision policies and adjustments for year 12 examinations nationally.

3.2.6 Support services

Held Back found that, despite considerable investment, there is still unmet need for support services in schools including integration aides, occupational therapists, speech therapists, other specialist staff and assistive technology. Students in regional areas encounter particular difficulties gaining access to these services.

Specialist supports such as occupational and speech therapists were the most frequently requested adjustments reported by parents participating in the research.

The report also found that integration aides are a primary means of making adjustments for students with disability and are a crucial source of support. However, others outlined the limitations of this role, suggesting there is an overreliance on aides over other forms of support, or that students can become isolated and dependent on aides leading to isolation from classmates and limited access to the same instructions and activities as other students.

A small number of parents indicated they had to pay for supports themselves, often at considerable expense, in order to address gaps in the system. These included critical services such as occupational therapists, speech therapists, sensory assessments, physiotherapy, counselling or engaging consultants for organisational and goal setting purposes relating to their child's disability.

An additional finding was that some schools may not be making use of available resources including available assistive technology. This could be addressed through training and awareness raising for teaching staff and through more effective communication between school management and education authorities about available supports and technology.

3.2.7 Planning for personalised learning and support

Held Back also examined the effectiveness of mechanisms for supporting individual students, including the use of Student Support Groups and Individual Learning Plans. These mechanisms are crucial in any school to enable effective consultation for making appropriate adjustments under the Standards.

Held Back found that experiences of consultation can vary between schools and regions and that the quality and consistency of consultation can depend on the knowledge, attitudes, efforts and resources of school staff.

ACHRA welcomes the national guidance *Planning for Personalised Learning and Support: A National Resource*.⁷³ The resource provides important guiding principles and practical tips to support individual learning, which will complement and enhance consultation requirements for making reasonable adjustments for students under the Standards. The resource provides a strong overarching framework for supporting individual learning. However, its success and uptake may depend on the extent to which education authorities across the country utilise the framework to develop more specific, detailed guidance for school staff.

⁷³ Australian Government, Department of Education and Training, *Planning for Personalised Learning and Support: A National Resource* (2015) <<http://docs.education.gov.au/documents/planning-personalised-learning-and-support-national-resource-0>>.

The resource should be evaluated as appropriate to ensure it remains effective. This should include feedback about how teaching staff have used it in practice and, in particular, how it has been adapted to support individual learning in schools.

Specific consideration should also be given to how similar information can reach a wider audience. Providing parents as well as educators with clear information about planning for personalised learning support, which links to crucial consultation requirements for making adjustments under the Standards, will ensure they can be more meaningfully engaged in consultations and decisions about their child's learning.

3.2.8 Elimination of harassment and victimisation

Students with disability continue to experience discrimination at school. Half of the parents and students who participated in the *Held Back* research reported discrimination and one in four educators reported they had witnessed discrimination. The research found that students with particular disabilities, in particular students with autism spectrum disorder or other disabilities affecting emotions and behaviour, may be more vulnerable to bullying. Data from the Australian Human Rights Commission also confirmed that 7% of complaints for 2013–14 and 2014–15 alleged harassment, bullying and victimisation.

There are a range of policies and programs on addressing bullying in schools. However, education authorities must ensure any new or existing policies and programs about bullying contain specific information about bullying based on disability. Teaching staff should also receive professional development and training on preventing and responding to bullying based on disability. Complaints mechanisms should also ensure harassment and victimisation claims are dealt with.

The ACT Human Rights Commission contributed relevant information to this submission regarding harassment, victimisation and bullying of students with disability. The Commission has worked with the Disability Services Commissioner and Young People Commissioner on a report *Because it's a serious matter: talking with students about bullying and disability*.⁷⁴ The report presents the results of a consultation project with over 150 children and young people about students with disability experiencing bullying in schools. It provides useful information on a range of topics and key strategies to prevent bullying presented by the young people participating in the research.

The Commissioners published two reports. One summarises the results of the consultations and the second forms a workbook for teachers and parents to continue the conversation about bullying with other students and their own children.

3.2.9 Other findings

Held Back also outlined a range of other concerns not directly linked to experiences under the Disability Standards for Education.

⁷⁴ ACT Human Rights Commission, *Because it's a serious matter: talking with students about bullying and disability* (2012) <<http://www.hrc.act.gov.au/content.php/content.view/id/343>> at 24 August 2015.

Transport

Participation of students with disability may be affected by transport accessibility. Specific issues identified in the report included concerns relating to eligibility for specialist school buses, driver behaviour and treatment of students with disability and concerns regarding toileting facilities on long trips.

Complaints

Parents participating in the *Held Back* research reported dissatisfaction with various complaints processes or felt reluctant to complain. Concerns related to a lack of independence, a sense that making a complaint would not make a difference, or that complaining could lead to negative repercussions. The research also identified concerns and made recommendations about collecting and analysing complaints data to improve practice.

Areas for improvement included providing accessible information for parents about complaints processes and their rights and building independence into complaints, specifically those made to schools.

Building workforce capacity

Parents and teachers participating in the *Held Back* research identified a lack of teacher training as a barrier to participation for students with disability. This related to general disability awareness as well as awareness of obligations under the *Disability Standards for Education*.

Information and data from ACHRA members also confirmed a need to improve understanding about the Standards among teaching staff.

In Victoria, a positive development has been the development of an ‘inclusion online’ e-learning module on the Standards. Inclusion Online is designed for teachers, principals and allied health staff. The courses focus on the understanding, assessment and classroom support of students with disability and additional needs. Over 7,400 participants from 960 schools across Victoria have registered in courses since they commenced.

Similar resources for teaching staff should also be developed and adopted nationally.

Restraint and seclusion

ACHRA notes the findings in *Held Back* about the use of restraint and seclusion in schools, which were confirmed through anecdotal reports from AHCRA members. In particular, the Equal Opportunity Commission Western Australia provided information on issues raised formally by People with Disabilities Western Australia (PWDWA). PWDWA gathered information from 18 families, with some raising concerns about the use of restrictive practices. These largely related to students with autism.

Such practices raise serious human rights concerns and should be addressed. Reducing and eliminating the use of restrictive practices across all sectors, including education, is consistent with the United Nations Convention on the Rights of Persons with disabilities and its intent to protect the rights, freedoms and the inherent dignity of people with disability. As a State Party to the Convention, Australia has international obligations to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms for all people with disability, and to promote respect for their inherent dignity.

The *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector*, endorsed by the Council of Australian Governments in March 2014, outlines key principles and strategies for reducing the use of restrictive practices.⁷⁵ It also provides a nationally agreed set of definitions that can help guide legislation and policy development.

ACHRA members have outlined a range of recommendations relating to the use of restraint and seclusion (see recommendations 23-28 on pages 29-30) and note that a comprehensive response to the issue is resource intensive and therefore must be built into education funding.

Aboriginal and Torres Strait Islander students and students from culturally and linguistically diverse (CALD) backgrounds

Held Back found Aboriginal and Torres Strait Islander students with disability and students with disability from culturally and linguistically diverse (CALD) backgrounds may face additional barriers, particularly with regard to communicating with schools and navigating the education system to identify and advocate for necessary supports and adjustments.

The Northern Territory Anti-Discrimination Commission also identified specific barriers for Indigenous communities, in particular with regard to awareness and access to complaints services. An additional observation from the Commission was that Indigenous people may see unfair treatment towards them as being due to their race and not due to another attribute such as disability.

3.2.10 Parent satisfaction survey for Tasmania – 2014 survey results

The Tasmanian Anti-Discrimination Commissioner provided the report of survey results for the Tasmanian Disability Education Reform Lobby's *Parent Satisfaction Survey* for 2014 to inform this submission.⁷⁶ Key findings from the report include that 65% of parents believed the support their child received in Tasmanian schools was inappropriate and a significant number of students (33.6%) identified having received no support or adjustments for their education.

The report made a number of recommendations, some of which align closely to the recommendations from VEOHRC's *Held Back* report and the recommendations provided in this submission. These include that:

- any funding model not negatively impact students with disability
- there should be more effective communication between parents and schools and better use of available personalised learning and support tools to identify and address support needs and adjustments

⁷⁵ Australian Government, Department of Social Services, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector* (2014) <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector>>.

⁷⁶ Tasmanian Disability Education Reform Lobby, *2014 Parent Satisfaction Survey Results* (2014) <<http://www.tasmaniandisabilityeducationreformlobby.com/#!/survey---petition-links/c1>> at 17 August 2015.

- there should be increased training and professional development for teaching staff to understand legal obligations under the *Disability Standards for Education*.

3.2.11 Disability discrimination in education – case studies

The Tasmanian Anti-Discrimination Commissioner and the Equal Opportunity Commission South Australia provided the following de-identified case studies to inform this submission:

Student with autism spectrum disorder: lack of planning and support

Mr and Mrs P alleged discrimination against their son, A, on the basis of disability in the area of education and training.

A was diagnosed with autism spectrum disorder in 2014. Before that, he was diagnosed with oppositional defiance disorder, ADHD, severe anxiety and Asperger syndrome. A commenced at an independent Christian primary school in 2011. At the time of enrolling, the school were made aware of his diagnoses and associated behavioural issues.

In 2012 and 2013, A's classroom teacher was provided with a full-time teacher's aide and no serious issues were raised about his behaviour.

On the first day of school in 2014, Mr and Mrs P said the school told them that A's teacher would not be provided with an aide for that year. This caused A to become anxious and he was regularly sent home from school for behavioural reasons.

Mr and Mrs P claimed that in March 2014, the school notified A's parents that A would only be able to attend school four mornings per week and the provision of aide time was restricted to 4 hours per week. This resulted in A's parents arranging for private assistance to be provided to A while at school. The aide said that while working at the school, they observed situations where A was segregated from his class, left unsupervised and other children told not to interact with him. Mr and Mrs P said no individual education plan was put in place and no strategies for addressing A's needs were evident. Mr and Mrs P suggested that suspension was the main strategy and none of the suggestions provided by the Autism Association were implemented.

Student with autism spectrum disorder: lack of assessment, adjustments and support

Mr W's son, H, was diagnosed with autism spectrum disorder at age 7. Mr W provided the school with a copy of the diagnosis and requested additional assistance for his son. Mr W said he was told repeatedly that H was not entitled to any specialist assistance and that one-on-one assistance was not available due to budget constraints.

Mr W was aware the Department has an autism consultant who he said the school had not consulted. He considered his son had not been appropriately assessed or reasonable adjustments made to assist his educational outcomes.

Student with ADHD: impact on parents of school failures, segregation and view of behaviour as 'choice'

R has ADHD and oppositional defiance disorder. During the school year, R's parents were called on to collect him from school on numerous occasions due to his behaviour. R's parents considered he was being targeted by his teacher, left unsupervised and regularly segregated from other children. R's parents said that the principal and teacher advised them that they

considered his behaviour to be a choice and not a result of any medical issue. R's parents said they were advised to consider other options for schooling.

Student with multiple disabilities: age and disability discrimination

Mrs S's son sought to extend his higher education to Year 13 due to an alleged failure of the school to provide reasonable adjustments and support during Years 11 and 12. Mrs S said the request was refused on the basis of her son's age and purported age-related program restrictions on funding supports.

Student with hearing impairment: lack of adjustments

A's son B has a hearing impairment. A indicated B's teacher refused to wear a FM, which enables B to hear directly through his hearing aid. When B did not respond to questions, he was placed on detention. B's parents indicated they would meet with the school to see if they can resolve the issue directly with them in the first instance.

Student with autism: suspensions and behaviour

J has a son K in primary school who has autism. He has been suspended more than once for being 'violent and aggressive'. He has a Negotiated Education Plan (NEP) in place but J believed the school has not been implementing it. K's previous teacher (currently on maternity leave) and the 'SSO' had managed his behaviour well but now there is a relief teacher. J said the principal referred to K 'being able to control his behaviour' and appears to be blocking implementation of his NEP. K's therapists say that school is the only place where he is having issues.

4. What should be done to better support students with disability in our schools?

In addition to the suggestions and observations made throughout this submission, ACHRA makes the following recommendations:

Admission and enrolment

- 1) Ensure teaching staff, school leaders and parents are aware of rights and obligations under the *Disability Standards for Education*, discrimination and human rights law in relation to admission and enrolment and understand that refusing enrolment for students with disability is unlawful.

Transition points

- 2) Build capacity for schools and teaching staff to support students with disability at key transition points in education.
- 3) Education authorities develop, build on, or further promote existing guidance for teaching staff about supporting students with disability at key transition points in education.

Participation

- 4) Build on existing efforts to educate a range of audiences, particularly teaching staff, school leaders and parents, about rights and responsibilities under the *Disability Standards for Education*, discrimination and human rights law, and requirements to make adjustments.
- 5) Ensure teaching staff, school leaders and parents are aware of rights and obligations under the *Disability Standards for Education*, discrimination and human rights law in relation to participation and consultation.
- 6) Ensure education authorities, school leaders and teaching staff understand and fully implement the obligation to consult with students (including prospective students) with disability and their parents/guardians about educational needs and adjustments needed to ensure those needs are met.
- 7) Improve workforce capacity to support students and make adjustments.

Personalised learning and support

- 8) Build on existing efforts to optimise local level planning in schools – such as the use of formal support group meetings or individual learning plans – to support students and make adjustments.
- 9) Ensure teaching staff, school leaders and parents are aware of rights and obligations under the *Disability Standards for Education*, discrimination and human rights law to make adjustments to ensure non-discriminatory access to education for students with disability.
- 10) Enhance lines of accountability between education authorities and schools to ensure support groups and learning plans are of a high quality and are achieving educational outcomes for students. This could include requirements to submit samples of learning plans for auditing and review.

- 11) Ensure the effective use of resources to target the educational needs of students and give priority to classroom teaching staff being the key educational provider to students with disability with support from relevant experts and aides.

Building workforce capacity

- 12) Incorporate components of general disability awareness and awareness of disability discrimination law and human rights into undergraduate teaching programs.
- 13) Build on existing efforts to raise awareness of obligations under the *Disability Standards for Education*, discrimination and human rights law among teaching staff.
- 14) Ensure teaching staff are provided with training and professional development opportunities about a range of different disabilities.

Curriculum development and assessment – reasonable adjustments

- 15) Ensure teaching staff, school leaders and parents are aware of rights and obligations under the *Disability Standards for Education* in relation to curriculum development and assessment.
- 16) Ensure all aspects of curriculum and assessment are adapted to meet the needs of students with disability.
- 17) Build on existing efforts to improve the breadth and depth of practice materials for students with disability available to teachers.

Elimination of harassment and victimisation

- 18) Incorporate specific content on disability and disability discrimination, including prevention of disability harassment and victimisation (threats and retaliation for asserting rights) into new and existing policies and programs to address bullying in schools.
- 19) Ensure complaints mechanisms include harassment and victimisation claims.

Attendance patterns, suspensions and expulsions

- 20) Ensure policies on suspension and expulsion do not disproportionately affect students with disability.
- 21) Require education authorities to examine and publicly report aggregate data on the number of part-time enrolments, suspensions and expulsions of students with disability from schools.
- 22) Ensure education authorities build on existing efforts to ensure any reduced attendance patterns for students with disability are consistent with human rights and anti-discrimination law, time limited and accompanied by a return-to-school plan.

Use of restraint and seclusion

- 23) Ensure that all education authorities ensure policy guidance makes it clear that the use of seclusion in schools is prohibited.

- 24) Ensure that all education authorities establish or have access to clear policy guidance on the use of restraint as a measure of last resort, incorporating the elements outlined in recommendation 24(d) of page 14 [or 24(b) of page 124] of the *Held Back* report.⁷⁷
- 25) To accompany policy guidance on restraint, ensure education authorities and staff are trained on restrictive practices, including definitions, reporting and legal obligations, and how to minimise and prevent its use.
- 26) Require education authorities to report immediately to a proper independent authority and to parents on any use of restraint.
- 27) Ensure effective oversight of all use of restraint and seclusion. This could include requiring prior consent from a proper independent authority. In Victoria, this has involved a commitment to extend the oversight of the Senior Practitioner, Disability, to schools. A similar oversight model/s should also be adopted nationally.
- 28) That consideration be given to developing a national strategy, similar to the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector*, to address the use and reduction of restrictive practices in the education sector. The introduction of a national strategy should be supported by education and training for teachers, school administrators, students with disability and their families in all jurisdictions. Data collection on the use of restraint and seclusion should also be considered as part of a comprehensive national strategy.

Legislative protection against discrimination

- 29) A review should be conducted to assess the consistency of current disability discrimination law with the *Convention on the Rights of Persons with Disabilities*.

Resourcing and reporting

- 30) Ensure the Nationally Consistent Collection of Data reports are made publicly available in a timely and accessible format to enable all stakeholders to understand and take an active role in the review of progress to full inclusion and in the development of further strategies to achieve full inclusion.
- 31) Ensure the full implementation of the reforms recommended in the *Review of Funding for Schooling Final Report*.⁷⁸

⁷⁷ Victorian Equal Opportunity and Human Rights Commission, above n 23.

⁷⁸ Australian Government, *Review of Funding for Schooling Final Report* (2011).