

Office of the United Nations High Commissioner for Human Rights
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To whom it may concern,

I write to provide a response to correspondence which came to the attention of Children with Disability Australia (CDA) regarding Human Rights Council resolution 22/3 – “The work and education of persons with disabilities”.

CDA is a national peak disability body which represents children and young people with disability, aged 0- 25 years. The organisation is primarily funded through the Department of Social Services and is a not for profit organisation. Additional funding is also received by the Department of Education, Employment and Workplace Relations (DEEWR). CDA has a national membership of 5000.

CDA’s vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

CDA undertakes the following to achieve its purpose:

- 1. Education** of national public policy-makers and the broader community about the needs of children and young people with disability.
- 2. Advocacy** on behalf of children and young people with disability to ensure the best possible support and services are available from government and the community.
- 3. Inform** children and young people with disability, families and care givers about their rights and entitlements to services and support.
- 4. Celebrate** the successes and achievements of children and young people with disability.

The following are the guiding principles which inform the work of CDA:

Children the Priority: The rights and interests of children and young people with disability are CDA’s highest priority consistent with Australia’s obligations under the UN Conventions, Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

Right to Childhood: Children and young people with disability are children first and foremost and have a right to all aspects of childhood that children without disability are afforded.

Right to Participation: Children and young people with disability have the right to participate, in whatever capacity, in the decisions that impact on their lives.

Inclusion: Children and young people with all types of disability, from all cultural and religious backgrounds and all geographic locations are supported by the work of CDA.

Recognition: For the contributions made by families and care givers to support the rights and interests of children and young people with disability.

Partnerships: CDA works collaboratively with relevant government, non-government and private sector agencies to promote the rights and interests of children and young people with disability.

Transparency: CDA is accountable, effective and ethical as the national peak body charged with the mandate of advocating for children and young people with disability.

This correspondence received encourages organisations to contribute information on any issue you consider relevant to the study concerning this resolution. In particular, views and information pertaining to the following questions:

- 1. Are you aware of any restrictions for persons with disabilities to attend regular schools? Please detail whether they exist in laws or policy, or if they exist only as a result of social barriers?**

Families inform CDA regularly that they are directly told that their child is unable to attend a school because of the child's disability or they are left with a feeling that their child would be such an inordinate burden on a particular school that they seek other options. Another common occurrence is that funding only allows a student to attend part-time. This is the clearest example of discrimination against students with disability.

The reality for many students with disability is that they cannot go to their local school because the school cannot meet their needs or they don't want them. Parents often feel they have no option but to send their child to a specialist disability school. It needs to be recognised that the difficulty of obtaining adequate funding to support children with disability plays a big part in this scenario.

Many children experience discrimination on a daily basis because there is a lack of understanding, knowledge and expertise regarding the impact of disability. Many educational programs and routines are therefore not adapted to "accommodate disability and the individual learning styles of children with disability". As a result children with disability are excluded. So for example, curriculum is not modified, interpreters are not available so children with disability may be physically present but cannot participate in the educational program being offered.

In addition, many behaviours demonstrated by children with disability are often viewed as disciplinary issues rather than taking into account a child's disability. As a consequence challenging behaviour is often interpreted and dealt with inappropriately. This often results in an exacerbation of challenging behaviours and leads to children being suspended or expelled. There seems to be a lack of knowledge of best practice in these areas held within the departments of education, in addition to the lack of resources to put them into place.

Overall there is no legal or official restriction on students with disability to attend regular schools. However all education systems in Australia lack a coherent culture and policy framework that promotes inclusive education. Special (segregated) schools form a significant part of Australia’s education system.

In 2010, the Australian Government commissioned an independent Review of Funding for Schooling, to assess the ways in which funding arrangements were impacting on student performance. The final report for this review was released in December 2011. The Review of Funding for Schooling identified that around 9 per cent of students with disability aged 5 to 14 years attend special schools. At that time there were 416 special schools, 332 of which are government schools.

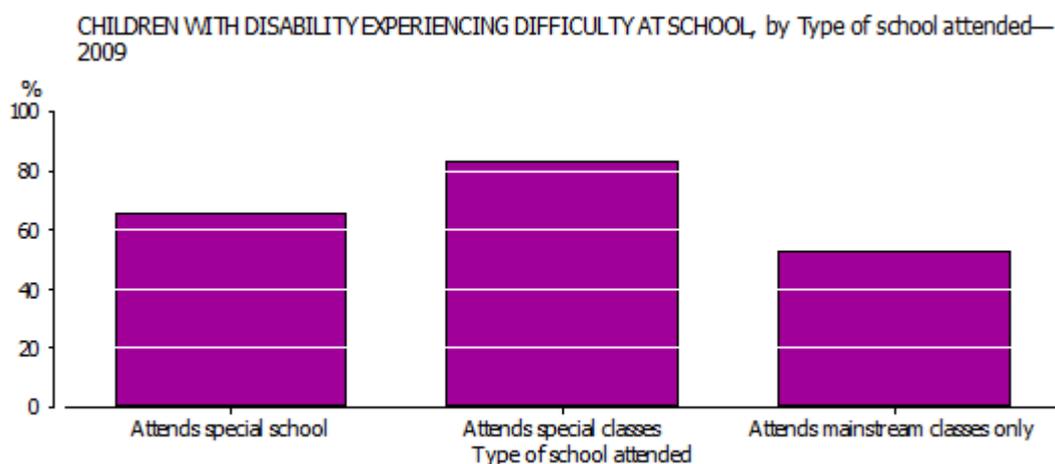
According to the Australian Bureau of statistics, in 2009, most children with disability who attended school, attended regular classes in mainstream schools (65.9%). The remainder attended special classes within mainstream schools (24.3%) or special schools (9.9%).

Support programs for students with disability exist in all government education systems however they are heavily rationed and most use strict diagnostic eligibility criteria to govern access to this support funding. The non-government education systems in Australia do not yet have equivalent disability support funding programs. In 2011, 4.3% of students in mainstream schools were students with a disability receiving support funding¹.

Another form of segregated education is the presence of special classes in a mainstream setting

Children attending special classes in mainstream schools were more likely to report experiencing difficulty (83.7%) than children attending special schools (65.4%) or those attending mainstream classes only (52.5%) (Figure 1).

FIGURE 1



Source: ABS Survey of Disability, Ageing and Carers, 2009

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The Australian Government has passed legislation (The Australian Education Act 2013), for a new funding system to begin in 2014. This includes a specific disability loading. The formula and funding

¹ SCRGSP (Steering Committee for the Review of Government Service Provision) 2013, *Report on Government Services 2013*, Productivity Commission, Canberra.

² Australian Bureau of Statistics, 2009, *4429.0 Profiles of Disability*, 'Children at School with Disability,' viewed 20 September 2013, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4429.0main+features100302009>>

rules for the loading for students with disability is yet to be developed and is due to be introduced in 2015. This timing gap carries significant risks, given the lack of clarity around definitions of disability and inclusion.

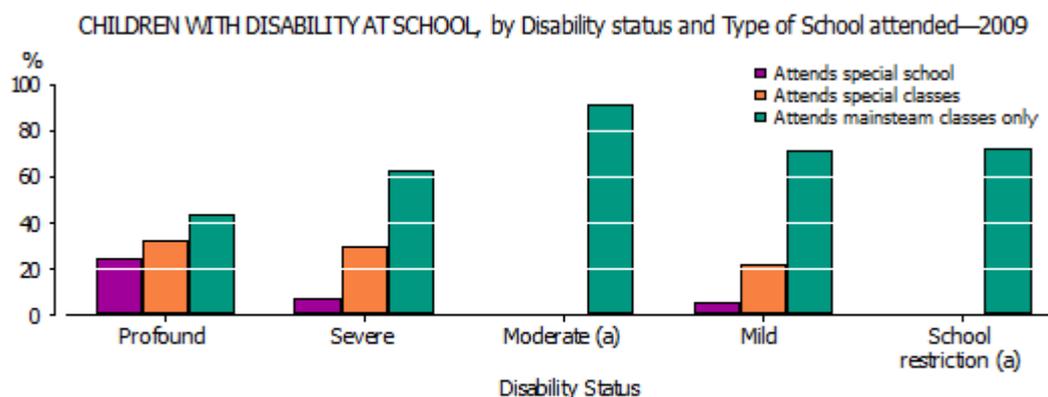
Students who attend special schools will receive a disability loading which is 20% higher than if attending a regular school. CDA is concerned that this creates an unacceptable incentive for students with disability to be enrolled in special settings.

A 3 year national data collection about adjustments provided for students with disability is commencing in October 2013. Significantly this is collecting data on levels of individual adjustment, not diagnosis, which signals an intention to move away from diagnostic eligibility for support.

CDA regularly receives feedback from students and parents about discrimination, unaddressed bullying and poor provision by schools that make it difficult for them to remain at a regular school for their entire school career. Many people report they move into segregated settings because they think their school life will be easier. This is often not the case.

In 2009, most children with disability who attended school, attended regular classes in mainstream schools (65.9%). The remainder attended special classes within mainstream schools (24.3%) or special schools (9.9%). This pattern was consistent regardless of the severity of the disability (Figure 2).

FIGURE 2



(a) Some data on attendance at special schools and in special classes has been excluded from this graph as it is not able to be published

Source: ABS Survey of Disability, Ageing and Carers, 2009

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2. Does your country have or is currently developing a program or plan to promote inclusion of children with disabilities in regular schools and discourage education in special schools or social institutions? If so, were persons with disabilities and their representative organizations, and other disability related organizations directly involved in the design and application of said program or plan?

No program exists in Australia to specifically promote inclusion of students with disability in regular schools. In fact a government advisory committee has majority endorsed a paper on inclusive education that defines segregated schooling as inclusive practice. In recent years

³ Australian Bureau of Statistics, 2009, 4429.0 Profiles of Disability, 'Children at School with Disability,' viewed 20 September 2013, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4429.0main+features100302009>>

there has been a growth in the numbers of special schools in some States. These have tended to be 'autism only' schools that have been established following intense lobbying from parent groups.

Significantly, Australia's National Disability Strategy refers to increasing the capacity of all education providers in Australia to meet the needs of people with disability: unlike Article 24 of the UNCRPD it does not contain a policy direction promoting participation in regular schools (or the general education system).

The National Disability Strategy is a ten year national policy framework for improving life for Australians with disability, their families and carers. It represents a commitment by all levels of government, industry and the community to a unified, national approach to policy and program development.

The Australian Government has introduced a number of initiatives to improve the capacity of all education systems in Australia for students with disability, but these apply to all school systems, including segregated schools. This included the funding in 2012 of a \$200 million national partnership program called More Support for Students with Disabilities. In addition, a national data collection initiative is beginning in 2013 that will collect data on students in all school systems. Significantly this data is being collected on functional adjustments provided by schools rather than the diagnostic profiles of students (current educational funding support programs for students with disability have diagnostic/deficit based eligibility criteria) (including segregated schools).

In July 2013, the last Australian Government announced a \$76 million funding package for segregated special schools. No equivalent funding was made available to the regular school sector. These decisions were not linked to any policy framework and it was unclear what was the purpose or rationale for this targeted funding.

3. Is the Ministry of Education the only ministry in charge of education or other ministries (eg. Health and Social Affairs) are involved when it comes to persons with disabilities? Please describe how other ministries get involved and specify if their involvement results on the denial of access to mainstream schools.

In Australia school education is governed largely by state and territory governments, with the Australian Government providing funding through a mix of general and specific purpose funding arrangements.

Disability advocacy for students with disability which can assist students with disability and their families in cases of school failure or refusal by regular school is funded by disability services funding programs at both state and national government levels funding. Disability advocacy is delivered by non-government organisations.

Disability advocacy organisations assist can assist people take discrimination complaints to the relevant state or national anti-discrimination tribunal. No other government ministry is involved in these cases other than health services providing assessments.

4. Does your country have effective mechanisms to successfully claim in case of rejection of students with disabilities from mainstream schools? If so, do those mechanisms guarantee for reasonable accommodation when services or support needed are not in place? Please provide information on good practices.

Australia's Disability Discrimination Act (DDA) 1992 is the main instrument for seeking redress for discrimination in education. State anti-discrimination legislation also applies. The DDA contain the Disability Standards for Education (the Standards) that require schools and education systems to make reasonable adjustments for students with disability. Successful discrimination cases need to demonstrate that the standards have been breached and that discrimination has occurred. The Standards are included in the DDA to set benchmarks for accessibility to goods and services for people with disability on the same basis as other citizens. Complaints under the DDA are contestable – so taking a complaint is not a guarantee of achieving redress or remediation in a school setting.

A common concern regarding students with disability is the lack of a complaints mechanism, legal or otherwise, which allows a timely resolution to complaints regarding education. Even for those who pursue action within the existing legal mechanisms the process usually takes many years, often with a major component of a child's schooling elapsed with no way to seek immediate redress.

5. Are you aware if your country is involved in international cooperation programmes related to the promotion and implementation of inclusive education systems? If so, is your organization involved in any such programme?

CDA is no aware of Australia's involvement in international cooperation programmes related to the promotion and implementation of inclusive education systems.

CDA is a member of the Global Partnership of Education.

6. Is there any additional information you wish to provide?

- a) Despite students with disability being a focus of recent educational reforms in Australia statistics, research and experience provide a consistent message that the present system is not adequately meeting the needs of students with disability and for many they are not afforded the opportunity to access education as their peers without disability.

Presently there is a large gap between educational outcomes of children with disability and those without disability. This reflects the extremely significant concerns expressed regarding the educational experiences of students with disability. CDA is inundated with concerns regarding education and students with disability. Experiences reported include discrimination, inadequate funding and resources, limited training of teachers and other educational staff, a culture of low expectations, exclusion, bullying, abuse and lack of real choice regarding school choice. The experiences of CDA constituents reflect a system that is failing to recognise the educational rights of far too many children and young people with disability.

These quotes from families reflect aptly an inadequate education system for children and young people with disability.

“Every promise of support and modification has yet to be delivered.”

“Parents should be able to make choices about where they send their children and the funding should support these children wherever they go.”

“My son was never given the opportunity to reach his full potential.”
“My child is clearly not quite as entitled to an education as the kid next door.”

- b) CDA believes that a formal definition of inclusion for students with disability should be adopted in Australia that is consistent with Article 24 of the UNCRPD. Segregated schools should not be considered inclusive environments. Further, more recognition needs to be given to the value that students with disability can bring to regular schools, so they are not seen as only participating because of a legal obligation of schools not to discriminate against them.
- c) CDA has provided a yet to be publicly issue paper which it has completed on inclusive education. It discusses the right of all children in Australia to an inclusive education and the barriers to the realisation of this right in the lived experience of children and families.

The paper examines how the current efforts towards upholding the rights of all children are impeded by a lack of understanding of inclusive education and misappropriation of the term. It refers to additional barriers including negative and discriminatory attitudes and practices, lack of support to facilitate inclusive education, and inadequate education and professional development for teachers and other professionals. Critical to addressing all of these barriers is recognising and disestablishing ableism in Australia.

The paper draws from recent research in addressing gaps in current understanding to provide a firm basis from which to inform research based policy development.

Taking a rights-based approach, the paper focuses on developing a clear understanding of inclusive education and identifying strategies to enhance the education of all children in Australia.

- d) CDA is concerned with the incidence of abuse and neglect of students with disabilities in school settings.

A sample of recent reports to CDA of abuse and neglect in schools include:

- Students being physically restrained by school staff
- Students being physically restrained or assaulted by bus drivers
- Students being locked in outside fenced areas
- Students being locked in small rooms as behaviour management

Physical restraint can be defined as a form of abuse, and there are regular reports to CDA from members about instances where physical restraint, seclusion and coercive behaviour management practices are used in special schools.

The report by the Equal Opportunity and Human Rights Commission in Victoria—Held Back: The experiences of students with disabilities in Victorian Schools cites an example where special school staff are trained in martial arts techniques to restrain students. It also reports that 77% of educators at special schools reported they had physically restrained a student with disability. Only 66% of teachers felt they had adequate training, and 34% did not. This is of concern as it shows that much of this practice is done outside a properly constituted and agreed behaviour support plan for particular students.

In conclusion, CDA would like to open a direct channel of communication with your branch about education issues and other related matters for children and young people with disability. CDA was advised late of this opportunity to contribute to your work and we would have liked to have provided a more detailed response but we were constrained by time pressures.

Thank you for the opportunity to contribute to this study.

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