

Committee on the Rights of Persons with Disabilities

Day of General Discussion on the right to education for persons with disabilities

CDA Submission - March 2015

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SUMMARY

This submission discusses the educational experiences of children and young people with disability in Australia. It is the view of Children with Disability Australia (CDA) that the current education system does not adequately meet the needs of students with disability. The legal and policy framework that supports the system is outlined. Key areas of concern are then discussed.

INTRODUCTION

CDA welcomes the opportunity to contribute to the Day of General Discussion on the right to education for persons with disabilities. It is the view of CDA that the current education system in Australia does not adequately meet the needs of students with disability.

CDA is the national representative organisation for children and young people with disability, aged 0-25 years. CDA presently has a national membership of 5000 and a social media following of over 10,000 across the major platforms. CDA is primarily funded through the Department of Social Services. The organisation also presently receives project funding from the Australian Government Department of Education.

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. Further information about CDA is available at www.cda.org.au.

This submission has a key focus on school education. Further information on the early childhood or tertiary experience can be provided if required.

THE DIRECT EXPERIENCE

At CDA we hear daily of shameful education experiences of students with disability. It is extremely hard to convey the breadth of disadvantage students with disability must contend with in the current education system in Australia. A typical education experience for students with disability involves limited choice of school, discrimination, bullying, limited or no funding for support and resources, inadequately trained staff and a culture of low expectations. We are increasingly being informed of incidents of abuse which are too often seen as acceptable under the guise of necessary restrictive practices.

Despite Australia being a party to international human rights treaties, and the existence of state/territory and Commonwealth discrimination legislation, education remains one of the most significant issues of concern for children with disability and their families. At best students with disability typically experience limited opportunities to be enriched and extended through education with the present system being awash with low expectations and standards for students. At worst, students with disability experience treatment that could arguably breach the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984. Reports of children being locked in 'time out' rooms come uncomfortably close to false imprisonment. Reports of physical restraint and manhandling approach assault, and do not seem to be supported by departmental policy.

Available statistics and research demonstrate stark gaps in educational attainment, performance, access and outcomes.

- 543 000 children and young people aged 0-24 years (6.8% of all children and young people aged 0-24 years) in Australia have disability.¹
- 312 500 people with disability were reported as having a schooling or employment restriction.²
- 5.3% of Australian students are ‘funded’ students with disability.³ This means there is an additional funding allocation for these students.
- 65.9% of students with disability attend regular classes in mainstream schools.⁴
- 24.3% of students with disability attend special classes within mainstream schools.⁵
- 9.9% of students with disability attend special schools.⁶
- 26% of people with a disability do not go beyond Year 10, compared to 18% of people without a disability.⁷
- 36% of people aged 15-64 years with reported disability had completed year 12 compared to 60% of people without a disability.⁸
- 38% of young people aged 15–24 years with disability either work, study, or do a combination of both on a full time basis compared to 56% of young people without disability.⁹
- 42% of young people with disability neither work nor study¹⁰. (No comparative data available for young people without disability).
- 20% of young people with disability either work or study on a part time basis.¹¹ (No comparative data available for young people without disability).
- 15% of people aged 15-64 with disability had completed a bachelor degree or higher compared to 26% of people without disability.¹²
- The current employment rate of people with disability in Australia is low against the OECD average. People with disability in Australia are only half (50%) as likely to be employed as people without disability.¹³
- 45% of people with disability in Australia live in or near poverty, more than double the OECD average of 22%.¹⁴

¹ Australian Bureau of Statistics 2012, ‘Disability, Ageing and Carers, Australia: Summary of Findings, 2012’, Commonwealth of Australia, Canberra.

² Ibid.

³ Productivity Commission 2015, ‘Report on Government Services: Volume B: Childcare, education and training’, Commonwealth of Australia, viewed 16 March 2015, <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/childcare-education-and-training/download-the-volume/rogs-2015-volumeb-child-care-education-and-training.pdf>.

⁴ ABS 2012, ‘Children with Disability at School,’ Profiles of Disability 2009, Commonwealth of Australia, Canberra, viewed 18 March 2015, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4429.0main+features100302009>.

⁵ Ibid.

⁶ Ibid.

⁷ ABS 2009, ‘Persons Aged 15-64 years, selected characteristics – by level of highest educational attainment’, *Survey of education training and experience 2009: State and Territory Australian tables*, Commonwealth of Australia, Canberra.

⁸ Australian Bureau of Statistics 2012, *Disability, Ageing and Carers, Australia: Summary of Findings*, ‘Disability - Education and Employment,’ Commonwealth of Australia, Canberra, viewed 13 March 2015, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument>.

⁹ Australian Bureau of Statistics 2012, *Australian Social Trends*, Commonwealth of Australia, Canberra, viewed 17 March 2015, [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/LookupAttach/4102.0Publication04.04.121/\\$File/41020_ASTMar2012.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/LookupAttach/4102.0Publication04.04.121/$File/41020_ASTMar2012.pdf).

¹⁰ Ibid.

¹¹ Ibid.

¹² Australian Bureau of Statistics 2012, *Disability, Ageing and Carers, Australia: Summary of Findings*, ‘Disability - Education and Employment,’ Commonwealth of Australia, Canberra, viewed 13 March 2015, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument>.

¹³ PricewaterhouseCoopers 2012, *Disability expectations: Investing in a better life, a stronger Australia*, PwC, Australia, viewed 18 March 2015, <http://www.pwc.com.au/industry/government/assets/disability-in-australia.pdf>.

¹⁴ Ibid.

- Australia has a relative poverty risk (i.e. people with disability compared to people without a disability) of 2.7, against the OECD average of 1.6.¹⁵

No national data is available regarding students with disability in relation to rates of: suspension; expulsions; part time attendance; home schooling or enrolment in distance education.

The significant inadequacies of the education system for students with disability and the need for reform have been documented over a number of years. Various reports and inquiries commissioned by the Australian Government highlight the issue. These include but are not limited to the following:

- *Education of students with disabilities* (2002) Commonwealth of Australia, Senate Inquiry¹⁶
- *Investigating the Feasibility of Portable Funding for Students with Disabilities* (2007) Monash University¹⁷
- *Making Progress* (2008) Australian Institute of Health and Welfare¹⁸
- *Shut Out* (2009) National People with Disabilities and Carers Council¹⁹
- *Review of Funding for Schooling* (2011) Commonwealth of Australia²⁰
- *Review of the Disability Standards for Education 2005* (2011) Commonwealth of Australia²¹
- *Disability expectations: Investing in a better life, a stronger Australia* (2011) PricewaterhouseCoopers²²
- *Held back: The experiences of students with disabilities in Victorian schools* (2012) Victorian Equal Opportunity and Human Rights Commission²³
- *Trial of the Nationally Consistent Collection of Data on School Students with Disability* (2013) PricewaterhouseCoopers²⁴
- *Senate Select Committee on School Funding* (2014) Commonwealth of Australia, Senate²⁵

CDA is frequently aware of families pursuing legal action against state or territory education departments to have the educational needs of their children recognised and met. In some instances families are taking their cases to the Australian Human Rights Commission to pursue legal action for breaches of human rights against their children. The present complaints process however fails to deliver a timely remedy for most students. Legal action takes many years and in the interim, and often in the long term, the students concerned are simply not afforded the education opportunities and rights crucial to their development and further life opportunities.

¹⁵ Ibid.

¹⁶ Australian Senate Employment, Workplace Relations and Education References Committee 2002, *Education of students with disabilities*, Commonwealth of Australia, Canberra, viewed 18 March 2015, http://www.aph.gov.au/binaries/senate/committee/eet_ctte/completed_inquiries/2002-04/ed_students_withdisabilities/report/report.pdf.

¹⁷ Frances Ferrier, Michael Long, Dennis Moore, Chris Sharpley, Jeff Sigafos, *Investigating the feasibility of portable funding for students with disabilities*, Centre for the economics of education and training, Monash University, Melbourne, viewed 18 March 2015, <http://arrow.monash.edu.au/vital/access/manager/Repository/monash:38357>.

¹⁸ Australian Institute of Health and Welfare (AIHW) 2008, *Making progress: The health, development and wellbeing Australia's children and young people*, Commonwealth of Australia, Canberra.

¹⁹ National People with Disabilities and Carers Council 2009, *Shut out: The experience of people with disabilities and their families in Australia*, Commonwealth of Australia, Canberra.

²⁰ David Gonski, Ken Boston, Kathryn Greiner, Carmen Lawrence, Bill Scales, Peter Tannock 2011, *Review of Funding for Schooling*, Commonwealth of Australia, Canberra.

²¹ Department of Education, Employment and Workplace Relations 2012, *Report on the review of the Disability Standards for Education 2005*, Commonwealth of Australia, Canberra.

²² PricewaterhouseCoopers 2012, *Disability expectations: Investing in a better life, a stronger Australia*, PwC, Australia, viewed 18 March 2015, <http://www.pwc.com.au/industry/government/assets/disability-in-australia.pdf>.

²³ Victorian Equal Opportunity & Human Rights Commission (VEOHRC) 2012, *Held back: The experiences of students with disabilities in Victorian schools*, VEOHRC, Melbourne.

²⁴ PricewaterhouseCoopers 2013, *2012 trial of the Nationally Consistent Collection of Data on School Students with Disability*.

²⁵ Australian Senate Select Committee on School Funding 2014, *Inquiry and report on the development and implementation of national school funding arrangements and school reform*, Commonwealth of Australia, Canberra.

Many education providers are also concerned that they are unable to meet the needs of children with disability due to the lack of funding, lack of trained teachers and support provided by education authorities. An example of this significant concern is reflected in the extensive and multi-faceted campaign of the key teacher union, the Australian Education Union (AEU). The unprecedented 'I give a Gonksi campaign' aims to gain funding for all students but has a major focus on funding for students with disability. Further information regarding the campaign can be obtained at www.igiveagonski.com.au.

Education has been a key focus of the work of CDA. The direct experience of children and young people with disability reflects appalling experiences of discrimination, inadequate and inflexible funding and a system that is failing to recognise the educational rights of far too many children and young people with disability.

These quotes from students with disability and families aptly reflect an inadequate education system.

COMMENTS FROM STUDENTS

I constantly felt left out and isolated in all the schools I attended — special, primary and high schools. Each had its own problems.

I'm not allowed to attend my local secondary college full time like my 3 brothers before me (who don't have a disability).

At the school I attend, I'm treated like an idiot, like I can't do what other kids can do. Their expectations of me are very low. They don't treat me like an individual.

I spoke at assembly and said it felt terrible to be called a retard and everyone needed to stop presuming disability is a bad thing.

School would be a much better place for kids with disability if everyone thought about their attitude to disability. Disability doesn't mean 'not normal' and it does not mean less ability. It's just a different ability. We are all different so it shouldn't be such a big deal.

COMMENTS FROM FAMILY

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

My son was never given the opportunity to reach his full potential.

My child is clearly not quite as entitled to education as the kid next door.

Sometimes the hardest thing about disability is expecting support but ending up with yet another time consuming fight.

I don't have anything good to say about our son's education except it gave the family free child care.

I home school my child because the school cannot provide the care and education my child needs.

CURRENT LEGISLATIVE & POLICY FRAMEWORK

The legislative and policy context relevant to the education of students with disability is extremely comprehensive. It clearly articulates and promotes Australia's commitment to the rights of children with disability to receive a quality, free and inclusive education in a manner conducive to a child achieving the fullest possible social inclusion and individual development.

Australia has signed and ratified both the United Nations *Convention on the Rights of Persons with Disability 2006* and the *Convention on the Rights of the Child 1989* which clearly establish the right of children with disability to receive a quality, free and inclusive education. Their ratification demonstrates Australia's commitment to protect and respect the rights, standards and obligations contained within these treaties.

The primary legislative means which promotes the rights and entitlements of people with disability in Australia is the *Disability Discrimination Act 1992*. It has the related aim of eliminating discrimination. Further state and territory legislation exists with similar objectives.

In accordance with the *Disability Discrimination Act (DDA)*, the Australian Government formulated the Disability Standards for Education (DSE) in 2005. These Education Standards provide a framework to ensure students with disability are able to access and participate in education on the same basis as other students. The DDA makes it unlawful to contravene a disability standard, and compliance with a disability standard is taken to be compliance with the DDA. The first five year review of the Standards was in 2011, with another due in 2015. The 2011 review found that the Standards' effectiveness was undermined by problems concerning how the Standards have been applied in practice; the clarity of some key terms such as 'consultation' and 'reasonable adjustment'; interpretation of the Standards and adherence to requirements.²⁶ In addition, there was a general lack of awareness of the Standards among students and families, schools, professionals working in the education sector and the general community.²⁷

A key government action as a consequence of the review was a range of activities to raise awareness and knowledge of the Standards. It is the view of CDA however that although awareness and compliance with the Standards is important, it is imperative not to assume that this automatically results in inclusive and quality education. CDA is concerned that the Standards, which are essentially a marker of discrimination, are now being considered by some as the benchmark for best practice for students with disability.

In February 2011, the Council of Australian Governments (COAG) endorsed Australia's first National Disability Strategy to show their commitment to providing a unified, national approach to improving the lives of Australians with disability, their families and carers. Six outcome areas were identified as requiring policy action due to evidence of inadequacies or inequalities for people with disability.

Significantly, one of these six outcome areas relates to "Learning and Skills" for people with disability clearly demonstrating that current policies are not adequately addressing this issue. Overall the policy directions identified in the National Disability Strategy under this section focus on a commitment by the Australian Government to improve educational programs and outcomes for children and young people with disability.

²⁶ Department of Education, Employment and Workplace Relations 2012, *Report on the Review of the Disability Standards for Education 2005*, Commonwealth of Australia, Canberra, viewed 18 March 2015, <https://docs.education.gov.au/node/21146>.

²⁷ Ibid.

The *Australian Education Act 2013* details a new education funding model, which centres on a national per student funding amount with additional funding loadings for students with identified areas of disadvantage, including students with disability. There is a temporary loading in place which is based on existing funding levels. Initially, the revised loading was to commence in 2015 but it has now been stated that it will not be implemented until at least 2016.

There is a great deal yet to be finalised and negotiated before the planned introduction of the loading, but what is of central concern is the lack of clarity about the process that will be undertaken to deliver a coherent and effective funding model. There has never been a clear program of work to develop the loading, and there has only been minimal meaningful consultation and involvement of groups outside of government in this work. Similarly, the legislation contains no specific provisions governing accountability for any of the loadings to be introduced.

Furthermore, within the new funding model special schools attract a higher loading than mainstream schools. There has never been an articulation of what their provision needs to include and deliver, or on what evidence this decision regarding a higher loading was based. The present system creates a perverse incentive for students with disability to attend segregated rather than mainstream settings. A detailed analysis of the provision and funding arrangements for special schools needs to be a key component of the work to design the disability funding model.

KEY CONSIDERATIONS

DISCRIMINATION

Students with disability are frequently the victims of discrimination in the educational arena. It is currently the sad reality that more often than not, families must fiercely advocate or 'fight' to ensure basic education opportunities for their child can be accessed in Australia. It is the experience of CDA that it is rare for students to be provided with equal education opportunities or a truly inclusive education experience.

Families are often 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 do not 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 disability and inclusive education. Many educational programs and routines are therefore not inclusive of students with disability and the individual learning styles of specific students. As a result children with disability are often excluded. For example, curriculum is not modified or interpreters are not available. Children with disability may be physically present at an education setting 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 behaviour is often interpreted and dealt with inappropriately. This often results in an exacerbation of specific

behaviours which leads to children being suspended or expelled. There seems to be a lack of knowledge of best practice in these areas, including positive behavioural supports, within education systems. In addition there is also a lack of resources to put them into place.

INCLUSIVE EDUCATION

Inclusive education is a process which should ensure high quality education for every student, including students with disability. However inclusive education is a contested term and there is a considerable lack of understanding regarding inclusion and inclusive practices. There is often a mistaken perception that a student with disability's enrolment in a mainstream setting automatically means they are receiving an inclusive education. CDA members frequently report examples of students with disability who attend school in 'specialist units', a clear example of segregated education that is occurring within mainstream settings.

An inclusive education responds to the individual needs of students and recognises the right of every student to be included. This means adapting the teaching and educational setting to ensure that students with disability can participate, rather than requiring the student to change to fit the environment.

The quality of inclusive education across Australia is variable and patchy and it is not yet a systemic expectation of every school. Further information is available in CDA's issues paper *Inclusion in Education: towards equality for students with disability*.²⁸

ACCOUNTABILITY

Responsibility for the education system is divided between the Commonwealth and states/territories. According to Australia's Constitution, the states and territories are responsible for education and are the main providers of funding for public schools. The Commonwealth has the main responsibility for funding national education programs and policies as well as independent schools.

A consequence of this division of responsibility is a lack of accountability when students with disability and families have complaints regarding the education system and their experiences. There is no timely complaints mechanism available and students and families have no clear state or national process to pursue a complaint. Families seeking resolution to significant concerns regarding their child's ability to access an education typically follow a pathway which escalates from the school, to the education authority, to the state or territory government representative and then to the Commonwealth equivalent. Repeatedly this process occurs with no acceptable outcome being achieved for the child concerned. In addition, undertaking costly and lengthy legal remedies in the courts is understandably not an option for many families. Given this lack of clear process and timely resolutions to complaints, it is not uncommon for students with disability to miss years of education and immeasurable opportunities.

Furthermore, the present education system provides limited accountability mechanisms for students with disability in relation to academic and other learning outcomes or in relation to expenditure of specific funding for student with disability. No consistent means of measuring the academic progress of students with disability who require modified curriculums exists. Some students have individual education programs but these contain goals that are established, implemented and evaluated by schools. There is a prevailing concern that there is no objective input into this process.

²⁸ Available at: <http://www.cda.org.au/cda-issue-papers>.

INADEQUATE RESOURCES

Funding is currently one of the most significant barriers to educational achievement for students with disability. In 2011 it was estimated that the total number of students with disability in Australian schools was 296,000.²⁹ A recent report by Australia's Productivity Commission found that 190,887 students with disability received funding.³⁰ This means that over 100,000 students with disability are not receiving funding support. This is confirmed by both families and education providers throughout Australia who report that there is simply not enough funding available to ensure that the educational needs of students with disability are met on an equal basis with other children. This shortfall means that the primary consideration for many states and territories is to manage programs within existing funding constraints. It is crucial to ensure that every school has the capacity to meet the needs of students with disability and to provide an inclusive education.

Adequate funding is also fundamental to ensuring the establishment of the broad range of reforms to address the gross disadvantage being experienced by most students with disability in Australia. For example, there is a critical need for professional development for teachers and other education professionals.

There has been a range of initiatives which have commenced and are aimed at addressing present inadequacies in the education system in Australia. A considerable body of work has been undertaken to establish a national disability loading, which will provide additional funding for students with disability. A number of initiatives are underway. These include the Nationally Consistent Collection of Data (NCCD) and specific research commissioned by the Commonwealth Government which is aimed at obtaining the required information to establish what the process should be for applying the loading and how much it will be. CDA is concerned about the length of time these initiatives are taking and that there are limited opportunities for input from stakeholders other than education providers.

Finally, there is inadequate resourcing and process regarding post school transition. A key focus of education should be about preparing students for the future to become contributing adults in society. At present post school transition is a fraught time for most students with disability and families, who are being let down and are unable to access the life experiences and opportunities typically afforded to young people. Common barriers to post school transition frequently spoken of by CDA members include: scant or no information provision on post school options; systemic low expectations ; lack of knowledge and expertise of school staff ; the denial of work experience opportunities; and the lack of coordination between schools and the post school sector.

WORK FORCE CAPACITY

Teacher training and education is a significant issue in Australia and is currently undergoing reform. Limited teacher education on inclusion has been identified as a fundamental barrier to inclusive education.³¹ This also includes paraprofessional support, often described as teacher's aides or support workers. Paraprofessionals are commonly used to demonstrate and support inclusion within

²⁹ PricewaterhouseCoopers 2011, *Trial of a model for collecting nationally consistent data on school students with disability*, viewed 18 March 2015, https://docs.education.gov.au/system/files/doc/other/attachment_14-2011_trial_of_a_model_for_collecting_nationally_consistent_data_on_school_students_with_disability_-_final_report.pdf.

³⁰ Productivity Commission 2015, *Report on Government Services 2014*, viewed 18 March 2015, <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/childcare-education-and-training/download-the-volume/rogs-2015-volumeb-child-care-education-and-training.pdf>.

³¹ Brown, C. M., Packer, T. L., & Passmore, A. (2013). Adequacy of the regular early education classroom environment for students with visual impairment. *Journal of Special Education*, 46(4), 223–232; Hehir, T. (2002). Eliminating ableism in education. *Harvard Educational Review*, 72(1), 1–32.

the school setting but can often impede the interaction of the student with the teacher and the rest of the class.

It is essential that education in inclusion and disability studies is a core component of teacher education and professional development for teachers and all other professions involved in supporting inclusive education. More information is available in CDA's issues paper *Inclusion in Education: towards equality for students with disability*.³²

ABUSE

CDA members frequently report experiences of abuse in a range of educational settings and circumstances. This can include actions that are often seen as acceptable because the child or young person involved has a disability.³³ Examples reported to CDA include the denial of the opportunity for students to go to the toilet when on excursions or travelling home on school buses; or the placement of a student's desk in the sick bay for when 'individual learning space' was needed. More blatant examples include the use of martial arts instructors for 'behaviour management'; or the use of physical restraint or locking of students in a 'time out room' for extended periods of time. If a child without disability was involved in these same situations these actions would be automatically deemed as unacceptable and there would be a significant community outcry.

CONCLUSION

It is the view of CDA that the current education system is not effectively meeting the needs of children and young people with disability in Australia. CDA is extremely concerned about the inability of students with disability to access a quality education due to ongoing systemic and structural barriers. Significant work needs to occur to ensure that students with disability are afforded their right to an inclusive education in Australia.

³² Available at: <http://www.cda.org.au/cda-issue-papers>.

³³ Sally Robinson 2012, *Enabling and protecting: Proactive approaches to addressing the abuse and neglect of children and young people with disability*, Children with Disability Australia, Melbourne, viewed 12 March 2015, <http://www.cda.org.au/cda-issue-papers>.