

# Inquiry into Free and equal: An Australian conversation on human rights

## Joint Submission

**Children and Young People with Disability Australia  
and**

**All Means All – The Australian Alliance for Inclusive Education,  
November 2019**



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## Introduction

Children and Young People with Disability Australia (**CYDA**) is the national representative organisation for children and young people with disability aged 0 to 25 years. CYDA has an extensive national membership of over 5,000 young people with disability, families and caregivers of children with disability with the majority of our members being families.

CYDA's purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia and it undertakes the following to achieve its purpose:

- Listening and responding to the voices and experiences of children and young people with disability.
- Advocating for children and young people with disability for equal opportunities, participation and inclusion in the Australian community.
- Educating national public policy-makers and the broader community about the experiences of children and young people with disability.
- Informing children and young people with disability, their families and care givers about their citizenship rights and entitlements.
- Celebrating the successes and achievements of children and young people with disability.

All Means All - The Australian Alliance for Inclusive Education (**All Means All**), is a nationwide multi-stakeholder organisations working for the implementation of an inclusive education system and the removal of the legal, structural and attitudinal barriers that limit the rights of some students to access genuinely inclusive education. We bring together people with disability and their families, academic experts, teachers, education assistants, school

principals and other members of the community interested in supporting the right of every Australian student to access an inclusive education and the aims and objectives of All Means All.

CYDA and All Means All are also co-Convenors and Members of the [Australian Coalition for Inclusive Education \(ACIE\)](#), an initiative comprising organisations that share a commitment to advance inclusive education in Australia and across state and territory education systems.

CYDA and All Means All thank the Australian Human Rights Commission (**AHRC**) for the opportunity to provide this submission to *Free and equal: An Australian conversation on human rights* (this **Submission**).

This submission is intended to raise high level issues as they particularly relate to children and young people with disability and their families, with a focus on the right to education. In this regard, our respective organisations have had limited capacity to engage in this process more comprehensively due to timing and resourcing issues, but we value this opportunity and would be pleased to be contacted for further information or discussion in relation to any of the matters that we have raised in this Submission.

## Background

Australia has ratified international treaties, including the United Nations Convention on the Rights of Persons with Disabilities (**CRPD**) and the United Nations Convention on the Rights of the Child (**CRC**), that recognise the human rights of children and young people with disability and impose on Australia as a State Party, certain legal obligations, including in respect of the right to inclusive education and employment, the right to home and family, the right to freedom of expression, the right to a decent standard of living and the right to live in the community, the right to access to services and the right to equality and non-discrimination, among others.

However, Australia is failing to uphold many of these rights in significant ways. In September of this year, the UN Committee on the Rights of Persons With Disabilities (**CRPD Committee**) released its Concluding Observations following its review of Australia's compliance with the CRPD<sup>1</sup>. Notably, the CRPD Committee expressed serious concerns about a range of issues and strongly criticised, among other things, current legal and policy frameworks and the general failure of Australia to harmonise domestic legislation with the CRPD. CYDA and All Means All made submissions to this process and agree with the CRPD Committee's Concluding Observations.

In the same month, the United Nations Committee on the Rights of the Child (**CRC Committee**) also published its Concluding Observations following its review of Australia's compliance with the CRC<sup>2</sup>, with many specific concerns in relation to the rights of children with disability. Again, CYDA and All Means All participated in these processes and agree with the CRC Committee's Concluding Observations.

On the whole, it can be concluded that successive Australian governments have failed to take effective steps to ensure appropriate national or state/territory legislative protections, accessible processes for making complaints and monitoring bodies and mechanisms to

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<sup>1</sup> CRPD/C/AUS/CO/2-3

<sup>2</sup> CRC/C/AUS/CO/5-6

conduct systemic inquiries and report on how or whether these rights are being upheld. This includes the failure to establish effective processes involving people with disability through their representative organisations in monitoring the implementation of the CRPD, as required under it and more recently explained in the CRPD Committee's General Comment No.7 issued in 2018<sup>3</sup>.

## Right to Inclusive Education

Notwithstanding Australia's ratification of the CRPD in 2008 and the provisions of the *Disability Discrimination Act 1992 (DDA)* in relation to education, the fundamental human right of children and young people with disability to inclusive education continues to be contested in this country.

Article 24 of the CRPD provides for the right to education. This provision has been characterised as containing a "hybrid right to inclusive education, with dimensions that are immediately realisable - being (a) non-discrimination and non-exclusion in all aspects of education, (b) the provision of reasonable accommodation and (c) compulsory, quality, free and accessible primary education for all - and others that are progressively realisable<sup>4</sup>.

A notable rise in educational segregation of Australian students with disability in concurrence with this period, the continued use of restrictive practices in schools, a lack of improvement in the provision of reasonable accommodations to students with disability, no significant improvement in the participation or completion rates of students with disability and a failure to improve the collection of disaggregated data corroborates the conclusion that Australia's regulatory and policy framework is failing to support the realisation of the requirements of Article 24 within the education systems of Australia's states and territories and will not achieve the objectives of the CRPD in respect to education<sup>5</sup>.

In our view, the obligations of the Australian governments to children and young people with disability in respect of their right to inclusive education also involve supporting families seeking inclusive education for their children and ensuring that all families have access to quality information about legal rights and the importance and benefits of inclusive education as well as parent training and advocacy services.

Finally, the right to inclusive education must be recognised as including the right to participate in early childhood education, the right to access post-school transition support by schools, and rights to vocational and higher education.<sup>6</sup>

## Segregation

In particular, the current regulatory framework for the education of students with disability has failed to arrest the continued investment in the "parallel system" of segregated "special"

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<sup>3</sup> CRPD/C/GC/7

<sup>4</sup> Emily Cukalevski and Cátia Malaquias (2019) 'A CRPD analysis of NSW's policy on the education of students with disabilities – a retrogressive measure that must be halted' Australian Journal of Human Rights. DOI: 10.1080/1323238X.2019.1609720

<sup>5</sup> Kate de Bruin (2019). 'The impact of inclusive education reforms on students with disability: an international comparison'. International Journal of Inclusive Education, 23:7-8,811-826; Shiralee Poed (2019) 'Legislation, Litigation and Implications for Inclusion' Chapter 5 in Linda Graham (Ed). Inclusive Education in the 21st Century: Theory, Policy and Practice. Sydney: Allen and Unwin

<sup>6</sup> See a) Children and Young People with Disability Australia (2018) Submission to the Department of Jobs and Small Business, Future Employment Services, Discussion Paper <https://www.cyda.org.au/cdasubmissions>  
b) Children and Young People with Disability (2015) Post School Transition, The Experiences of Student's with Disability <https://www.cyda.org.au/post-school-transition>

education in Australia, comprising separate segregated settings for students with disability - in “special” schools and education support units and separate classrooms in general education schools. We believe this is a form of “educational apartheid” and that, as recognised in the 1954 US case of *Brown v Board of Education* in relation to racial segregation, “the doctrine of separate but equal has no place [in education]” and that “separate educational facilities are inherently unequal”.

Further, the maintenance of “parallelism” in Australian education systems, comprising general and disability segregated education<sup>7</sup> violates international human rights law standards of equality and non-discrimination, which are one of the core pillars of international human rights law more broadly.<sup>8</sup> Importantly, there is no parental right to choose nor demand state-funded separate education for children and young people with disability<sup>9</sup>.

As noted in the Opening Statement<sup>10</sup> made by the AHRC Disability Discrimination Commissioner Dr Ben Gauntlett during the Constructive Dialogues held on 12 and 13 September 2019 in Geneva during the CRPD review of Australia:

*“Australia has a segregated education system, where schools have turned away students because of their disability, and the rate and extent of segregation is growing, which is contrary to Article 24 and General Comment No.4.”*

As explained in the CRPD Committee’s Article 24 guidance instrument, General Comment No.4 (Right to Inclusive Education)<sup>11</sup>, “[s]egregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities”.

A range of international human rights instruments expressly characterise segregation of students with disability as a form of unlawful discrimination against them, which is not compatible with the right to inclusive education<sup>12</sup>:

- General Comment No.6 (Equality and Non-Discrimination)<sup>13</sup> states at paragraph 64 that “*segregated models of education, which exclude students with disabilities from mainstream and inclusive education on the basis of disability, contravene articles 5(2) and 24(1)(a)*”
- Paragraph 12 of General Comment No.4 (Right to Inclusive Education) speaks of “*ending segregation within educational settings by ensuring inclusive classroom teaching in accessible learning environments with appropriate supports*” and calls for inclusive education to be “*monitored and evaluated on a regular basis to ensure that segregation or integration is not happening either formally or informally*”
- Paragraph 13 of General Comment No.4 states that “*the right to non-discrimination includes the right not to be segregated and to be provided with reasonable accommodation*”

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<sup>7</sup> Maria Soledad Cisternas Reyes(2019). Perspectives from the UN Committee on the Rights of Persons with Disabilities. In *The right to inclusive education under international human rights law*, ed. G. De Beco, S. Quinlivan, and J. Lord, 15–57. Cambridge, UK: Cambridge University Press, 421-422

<sup>8</sup> Rosemary Kayess(2019) ‘Drafting Article 24 of the Convention on the Rights of Persons with Disabilities’. In *The right to inclusive education under international human rights law*, G. De Beco, S. Quinlivan, and J. Lord (eds), 15–57. Cambridge, UK: Cambridge University Press, 122-140

<sup>9</sup> Kayess (n 6)

<sup>10</sup> See <https://www.humanrights.gov.au/about/news/speeches/22nd-session-committee-rights-persons-disabilities>

<sup>11</sup> CRPD/C/GC/4

<sup>12</sup> Cukalevski and Malaquias (n 4)

<sup>13</sup> CRPD/C/GC/6

- Paragraph 39 of General Comment No.4 makes it clear that the full realization of Article 24 *“is not compatible with sustaining two systems of education: mainstream and special/segregated education systems”* and consistently with this, paragraph 68 calls for *“a transfer of resources from segregated to inclusive environments”*

Further, the practice of segregating students with disability is not based on evidence; rather it is a habitual and legacy-based practice based on cultural attitudes to disability that are at the core of discrimination against people with disability. In this regard, there is no credible body of evidence to support the notion that segregated education is beneficial for students with disability, whether in terms of social and academic outcomes<sup>14</sup> or safety and well-being<sup>15</sup>. In addition, the adverse impacts of segregation have been found to apply beyond schooling as well, being correlated with poor academic and vocational qualifications, employment in sheltered workshops, financial dependence, fewer opportunities to live independently, and poor social networks after graduation<sup>16</sup>.

## The Disability Discrimination Act 1992

Australian education is fragmented across states and territories, each operating their own systems with different policies, practices and legislation.

While the DDA operates across Australia and is applicable in all states and territories, ostensibly deriving constitutional validity through Australia’s ratification of the CRPD, in material respects it has failed to implement Australia’s obligations under that treaty comprehensively. In relation to education, neither the DDA nor its subordinate legislation, the Disability Standards for Education (**the Standards**) expressly mention a right to inclusive education as recognised under the CRPD or seek to provide for positive steps to implement inclusive education at a systemic level as required by Article 24 of the CRPD, beyond the limited prohibition of specific forms of discrimination and the provision of individual rather than systemic remedies.

It is worth noting that the CRPD Committee has on various occasions, including in the above-mentioned Concluding Observations, raised concern about the effectiveness of the Standards, and the most recent formal review of the Standards in 2015 has not resulted in any updates despite the recommendation report.

For example, Section 3.4 of the Standards on the rights to “reasonable adjustments” for students with disability makes such adjustments conditional on a range of factors including the impact on other students, staff or the education provider and the costs and benefits of adjustments.

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<sup>14</sup> See Cologon, K. (2019) Towards inclusive education: A necessary process of transformation. Report written by Dr Kathy Cologon for Children and Young People with Disability Australia (CYDA); ‘The Segregation of Students with Disabilities’, National Council on Disability (USA, independent federal agency) (2018); ‘A Summary of the Research Evidence on Inclusive Education’, Todd Grindal, Thomas Hehir, Brian Freeman, Renee Lamoreau, Yolanda Borquaye, Samantha Burke (2016); ‘Inclusion or Segregation for children with an Intellectual Impairment: What does the evidence say?’ (2008) Dr Robert Jackson, Associate Professor at Edith Cowan University.

<sup>15</sup> See Royal Commission into Institutional Responses to Child Sexual Abuse (2017) ‘A brief guide to the Final Report: Disability’ which recognised that segregation, including in education, is a factor that heightens risk of abuse of children with disabilities. See also Wayland, Sarah & Llewellyn, Gwynnyth & Hindmarsh, Gabrielle (2016). [‘Disability and child sexual abuse in institutional contexts, Royal Commission into Institutional Responses to Child Sexual Abuse’](#).

<sup>16</sup> ‘Evidence of the Link Between Inclusive Education and Social Inclusion’, European Agency for Special Needs and Inclusive Education (2018),

In our view, the key concept of “reasonable adjustment” in the Standards does not seem to align with the defined term in the DDA or the equivalent concept under Articles 2, 5 and 24 of the CRPD, as explained in General Comment No. 4 and General Comment No.6.<sup>17</sup> It is also a limited enactment of Article 24 obligations that tends to encourage individualised, case-based and deficit “retrofit thinking” only and overlooks broader systemic architecture and design issues in the delivery of education services, including the implementation of Universal Design for Learning as expressly mentioned in paragraph 25 of General Comment No.4.

Similarly, the “unjustifiable hardship” exception permitted under the DDA does not seem to align with the equivalent concept under Article 24, as explained in General Comment No. 4 and General Comment No.6.

In this regard, General Comment No.6 states as follows:

- *“[T]he reasonableness of an accommodation is a reference to its relevance, appropriateness and effectiveness for the person with a disability. An accommodation is reasonable, therefore, if it achieves the purpose (or purposes) for which it is being made, and is tailored to meet the requirements of the person with a disability” [paragraph 25(a)]*
- *“Key elements that guide the implementation of the duty to provide reasonable accommodation include:*
  - (a) Identifying and removing barriers that have an impact on the enjoyment of human rights for persons with disabilities, in dialogue with the person with a disability concerned;*
  - (b) Assessing whether an accommodation is feasible (legally or in practice) — an accommodation that is legally or materially impossible is unfeasible;*
  - (c) Assessing whether the accommodation is relevant (i.e., necessary and appropriate) or effective in ensuring the realization of the right in question;*
  - (d) Assessing whether the modification imposes a disproportionate or undue burden on the duty bearer; the determination of whether a reasonable accommodation is disproportionate or unduly burdensome requires an assessment of the proportional relationship between the means employed and its aim, which is the enjoyment of the right concerned” [paragraph 26)]*

Further, the DDA provides no guidance in respect of segregation of children and young people with disability and would seem to expressly exempt as permissible, the segregated delivery of services to persons with disability as “special measures<sup>18</sup>. It is worth noting that while the CRPD recognises the role of “specific measures” in Article 5(4) in achieving equality and non-discrimination, it provides the following guidance in General Comment No.6 as to the meaning and application of the concept:

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<sup>17</sup> For more information see All Means All (2019) [Empowering children with disabilities for the enjoyment of their human rights, including through inclusive education](#), Submission to UN Human Rights Council

<sup>18</sup> Section 45(b) of the DDA exempts the provision of facilities or services, including in relation to, education to meet “special needs”, although it also seeks to limit this where discrimination “is not necessary for implementing the measure”. However, we are not aware of any circumstances where the segregation delivery of education with students with disabilities has been challenged and defended on the basis of “necessity”,

- “28. Specific measures not to be regarded as discrimination are positive or affirmative measures that aim to accelerate or achieve de facto equality of persons with disabilities. Such measures are mentioned in other international human rights treaties, such as article 4 of the Convention on the Elimination of All Forms of Discrimination against Women or article 1 (4) of the International Convention on the Elimination of All Forms of Racial Discrimination, and entail adopting or maintaining certain advantages in favour of an underrepresented or marginalized group. They are usually temporary in nature, although in some instances permanent specific measures are required, depending on context and circumstances, including by virtue of a particular impairment or the structural barriers of society. Examples of specific measures include outreach and support programmes, allocation and/or reallocation of resources, targeted recruitment, hiring and promotion, quota systems, advancement and empowerment measures, as well as respite care and technological aids.”
- “29. Specific measures adopted by States parties under article 5 (4) of the Convention must be consistent with all its principles and provisions. In particular, they must not result in perpetuation of isolation, segregation, stereotyping, stigmatization or otherwise discrimination against persons with disabilities. Thus, States parties must consult closely with and actively involve representative organizations of persons with disabilities when they adopt specific measures.”

More broadly, the application of the DDA continues to be affected by a lack of theoretical consistency and conceptual coherence in discrimination law jurisprudence, as well as judicial preferencing of limited notions of “equality” that seldom go beyond “liberty” and “formal equality” approaches, especially in context of the duty to provide reasonable accommodation<sup>19</sup>. This was evident in the recent decision of *Sklavos v Australasian College of Dermatologists*<sup>20</sup>.

In this regard, the CRPD is understood as introducing “innovations” into international public law that include a new definition of discrimination, categorised “as transformative equality with both individual and group oriented components”<sup>21</sup>.

General Comment No.6, on equality and non-discrimination in Article 5 of the CRPD,<sup>22</sup> explains the CRPD’s model of equality as follows:

*“Inclusive equality is a new model of equality developed throughout the Convention. It embraces a substantive model of equality and extends and elaborates on the content of equality in: (a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity. The Convention is based on inclusive equality.” [paragraph 11]*

<sup>19</sup> Alice Taylor, “The Conflicting Purposes Of Australian Anti-Discrimination Law” [2019] UNSWLAWJL 8; (2019) 42(1) UNSW Law Journal 188

<sup>20</sup> (2017) 256 FCR 247

<sup>21</sup> CRPD/C/GC/6, Part III

<sup>22</sup> Theresia Degener (2016). Disability in a Human Rights Context. Laws. 5. 35. 10.3390/laws5030035.

Finally, the DDA has been largely ineffective to prevent widespread “gatekeeping” in Australian education systems, being the formal or informal denial of access to, or discouragement of, students with disability attending mainstream schools. The significance of the issue of “gatekeeping” and its impact on students with disability and their families, was recognised in the 2016 report of the Australian Senate Education and Employment References Committee *Access to real learning: the impacts of policy, funding and culture on students with disability (2016 Senate Report)* and confirmed by academic research<sup>23</sup>.

Further, the emergence of exclusionary discipline and “zero-tolerance” approaches to student “behaviour” in schools and a range of recent reforms in relation to suspensions and exclusions, have given rise to new concerns, with evidence that such policies and approaches disproportionately impact children and young people with disability (as well as Indigenous children and children in out-of-home care).<sup>24</sup>

In the absence of strong “non-rejection” provisions in the DDA to prevent students being denied enrolment, discouraged from or coerced not to attend school or “off-rolled”, these issues can only be expected to continue.

Both the Standards and the DDA need to be reviewed, replaced or supplemented with new laws, to ensure that Australia’s regulatory framework for education of students with disability fully aligns with the rights and concepts in the CRPD, including the approach to equality and non-discrimination applicable pursuant to the CRPD.

## Restrictive Practices

CYDA members through an education survey completed in 2019 have reported a range of abusive practices in school including restraint and seclusion which are a breach of the human rights of students with disability and are known to inflict significant trauma and other harm<sup>25</sup>

Australian students with disability are being placed in cages or isolated in other inappropriate structures sometimes referred to as “withdrawal”, “time out” or “calm” rooms, locked in cupboards, tied to chairs with belts, deprived of water for long periods and degraded in front of classmates. These practices were brought to the attention of the CRPD Committee at the 2019 review of Australia<sup>26</sup> and were also the subject of a formal complaint to the United Nations Special Rapporteur on the Rights of Persons with Disabilities in 2016<sup>27</sup>.

Existing national guidelines and frameworks do not directly address the use of restraint and seclusion in schools, and state and territory frameworks in respect of these matters are

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<sup>23</sup> ["Gatekeeping and restrictive practices with students with disability: results of an Australian survey"](#), delivered at the Inclusive Education Summit, Adelaide (2017), Shiralee Poed, Kathy Cologon and Robert Jackson; ["Improving Educational Outcomes for Children with Disability in Victoria"](#) (June 2018), Eleanor Jenkin, Claire Spivakovsky, Sarah Joseph and Marius Smith

<sup>24</sup> Linda J Graham (2018) Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms: A Queensland case study. *International Journal of Inclusive Education* 1–21

<sup>25</sup> Children and Young People with Disability (2019) [Time for change: The state of play for inclusion of students with disability](#), results from the 2019 CYDA National Education Survey

<sup>26</sup> See All Means All Submission - Combined Second and Third Periodic Report of Australia – United Nations Convention on the Rights of Persons with Disabilities <http://allmeansall.org.au/wp-content/uploads/2019/08/Final-Endorsed-All-Means-All-Submission-Combined-Second-and-Third-CRPD-Periodic-Report-26-July-Web.pdf>

<sup>27</sup> Sydney Morning Herald (11 August 2016) ‘Autism cage details emerge as United Nations investigates abuse of children’; Communication letter dated 22 March 2017, sent by the Special Procedures to the Australian Government by José Guevara, Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention, Catalina Devandas -Aguilar, Special Rapporteur on the rights of persons with disabilities, Maud de Boer-Buquicchio, Special Rapporteur on the sale of children, child prostitution and child pornography, Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Boly Barry Koumbou Special Rapporteur on the right to education

generally not aligned with the CRPD or the CRC; they not only fail to protect the human rights of children and young people with disability, but in fact permit violations of those rights,<sup>28</sup> often causing long term trauma and harm. CYDA's 2019 education survey suggests that in some cases parents have opted for home schooling to avoid further trauma being inflicted on their child by their school.

We note that the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**DRC**) has signalled it is prioritising of education and learning as a key area for investigation with its first hearing in November 2019 on Inclusive Education in Townsville, Queensland. (See CYDA's first submission to the DRC <https://www.cyda.org.au/cdasubmissions>). However, the Townsville hearing in effect provided evidence of what we already know from our engagement with children and young people with disability and their families; that they are not treated equally, fairly or with respect and dignity in schools, and many of them experience violence, abuse and neglect from other students and education staff, including bullying<sup>29</sup>.

## Data, monitoring and implementation

CYDA and All Means All agree that a key issue that must be addressed in ensuring monitoring and protection of the human rights of students with disability within Australia's education systems is the lack of public data in relation to complaints, investigations and outcomes regarding incidents of a child protection nature or involving restraint and seclusion.

In early 2019 CYDA wrote to every state and territory education department, requesting under the applicable freedom of information laws, the provision of these type of reports. However, CYDA met with significant difficulty in obtaining data, with limited information being provided or outright denial, despite multiple applications being made in some instances<sup>30</sup>

To measure progress in this area, appropriate data collection and system oversight by an independent body is needed, along with information on how to report on violence, abuse and neglect of students with disability and breaches of rights to an inclusive education, that is easily accessed (including by children), free and without discrimination. The current option of complaints to the AHRC should remain as an avenue but other options that are more expedient and accessible should also be provided. Further, reforms should be implemented to permit representative disabled persons and family organisations to make complaints and take legal action to address systemic discrimination.

Additionally data is also critical to measure efforts to implement Australia's obligations under Article 24 of the CRPD, including progressive realisation of system-wide inclusive education.

We would like to see a national framework to collect and publish disaggregated data on:

- (a) the enrolment, completion, attainment, suspension and exclusion (including the prevalence of 'gatekeeping'); and

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<sup>28</sup> Tony McCarthy (2018) Regulating restraint and seclusion in Australian Government Schools, A Comparative Human Rights Analysis, QUT Law Review Volume 18, General Issue 2 pp. 194–228 ISSN: Online–2201-7275

<sup>29</sup> See <https://acie.org.au/2019/11/08/its-a-wrap-first-hearing-of-the-disability-royal-commission-on-inclusive-education/>

<sup>30</sup> For more information see Children and Young People with Disability (2019) Submission to the Disability Royal Commission <https://www.cyda.org.au/cdasubmissions>

- (b) the use of restrictive practices, including seclusion, in respect of students with disability in all education settings, which is also disaggregated by age, gender, location, ethnicity and disability type.

Further, we would like to see a national set of indicators and milestones to measure efforts towards the goal of ensuring a single, universally accessible and fully inclusive education system, with clear targets and timetables including for the migration of resources from segregated to general education settings, as well as a national framework for eliminating restrictive practice in schools.

## Other matters

CYDA and All Means All believe that the realisation of the right of inclusive education for children and young people with disability needs to be addressed systemically and will require collaboration and commitment, not only from the government and education sectors, but also at a broader cultural level, of individuals, organisations and the community in general to embrace the change that is required.

We also believe that human rights protections for children and young people with disability are needed in many other areas, including the justice system, out-of-home care and the National Disability Insurance Scheme (**NDIS**).

Across the states and territories, children and young people with disability in out-of-home care or involved with the child protection systems are at particular risk. A recent Victorian review by the Commission for Children and Young People provided a damning report on the state's child protection system and found children and young people with disability are at particular risk in out-of-home care, and are often in residential care as opposed to home-based care<sup>31</sup>. The outcomes for children and young people with disability in the child protection are not reported in the child protection reports coordinated by the Australian Institute of Health and Welfare.<sup>32</sup> The experiences of children and young people with disability in child protection systems across Australia requires urgent attention.

We note that in addition to the DRC there are currently a number of reviews or processes across Australia, requiring analysis of various laws and bodies relevant to the protection of children and young people. We intend to consider in more detail the effectiveness of these laws and bodies, including powers of systemic inquiry and complaints mechanisms for children and young people with disability, which will assist to inform submissions and recommendations to the DRC. We will then be in a position to make firmer recommendations in respect of those matters and broader law and policy issues.

Finally, we note that there are few advocacy organisations in Australia that focus predominantly on the rights of children and young people with disability and support for them and their families. For example, only Victoria, Tasmania and New South Wales have funded "individual" disability advocacy focusing primarily on children and young people with disability, but even these organisations face uncertain times with the transition to the NDIS and do not have guaranteed ongoing funding, unless they are funded by the Commonwealth

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<sup>31</sup> Commission for Children and Young People, 'In our own words': Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system (Melbourne: Commission for Children and Young People, 2019)

<sup>32</sup> AIHW (2019) Child Protection in Australia 2017-2018 <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2017-18/>

National Disability Advocacy Program. As it is, all advocacy organisations are under significant pressure especially given considerable issues arising from the NDIS, and many have long waiting lists.

A major funding boost is required for individual advocacy for children and young people with disability, given especially that they are at increased risk to violence, abuse and neglect.

Unless these issues are addressed, the implementation of Articles 4(3) and 33(3) of the CRPD especially for children and young people with disability also remains significantly compromised as explained in General Comment No.7<sup>33</sup> in relation to the participation of people with disability, including children and young people with disability, through their representative organizations, in the implementation and monitoring of the CRPD.

## Recommendations

- Review, supplement or replace the DDA to ensure compliance with all aspects of the CRPD and the strengthening of protections for children and young people with disability.
- The adoption by the Australian government of a National Human Rights Act that reflects the human rights of children and young people with disability under the CRPD and CRC.
- The development of harmonised legislation and protections across Australia for children and young people with disability.
- The development of a national framework for reducing and eliminating restrictive practices across all settings for all people with disability including children and young people with disability, and ongoing monitoring and accountability.
- The development a National Inclusive Education Strategy developed by the Australian and State and Territory governments, for a legislative and policy framework that fully complies with Article 24 and General Comment No.4 (including adoption of the clear definitions of “inclusive education”, “segregation”, “integration” and “exclusion” in General Comment No.4), including ongoing monitoring and accountability, and clear targets and timetables, including for the migration of resources from segregated to general education settings.
- The expansion and improvement of the current data collection practices across Australia into a national framework to collect and publish disaggregated data on all elements of the CRPD, including on:
  - the enrolment, completion, attainment, suspension and exclusion (including the prevalence of 'gatekeeping'); and
  - the use of restrictive practices, including seclusion, in respect of students with disability in all education settings, which is also disaggregated by age, gender, location, ethnicity and disability type.
- Increased funding and removal of gaps in funding for disability advocacy organisations across Australia, including for children and young people with disability and their families.

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<sup>33</sup> CRPD/C/GC/7

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