



Submission

**Draft Combined Second and Third Periodic Report – United Nations Convention
on the Rights of Persons with Disabilities**

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INTRODUCTION

1. All Means All is the Australian Alliance for Inclusive Education, a nationwide multi-stakeholder alliance working together 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 full inclusive education.
2. All Means All thanks the Australian Government for the opportunity to make a submission on the Draft General Combined Second and Third Periodic Report – United Nations Convention on the Rights of Persons with Disabilities (**Draft Report**).
3. We note that the Draft Report has been prepared in response to 35 key issues identified by the Committee on the Rights of Persons With Disabilities (**CRPD Committee**) in its List of Issues Prior to Reporting (**LOIPR**). However, this submission addresses statements in the Draft Report in relation to the education of students with disability and the implementation of Article 24 of the United Nations Convention on the Rights of Persons with Disabilities (**CRPD**).
4. Depending on the final Combined Second and Third Periodic Report – United Nations Convention on the Rights of Persons with Disabilities, All Means All may make further submissions to the CRPD Committee.

RECOMMENDED CHANGES TO REPORT

1. We recommend that paragraph 278 of the Draft Report (Issue 26) be deleted in its entirety and replaced with an unqualified commitment from the Australian Government, to the full implementation of Article 24 including immediate actions to ensure progressive realisation.
2. We also recommend a review of the portions of the Draft Report related to:
 - a. Issue 18, in relation to implying progress by reference to State and Territory reviews; and
 - b. Issue 25, in relation to the Disability Standards for Education 2005 (**DSEs**), in light of the reasons and concerns that we have outlined in our Analysis below.

ANALYSIS

State and Territory Education Reviews

1. Paragraph 200 (Issue 18) of the Draft Report cites the fact that some States and Territories have recently conducted their own reviews relating to schooling for students with disability and would seem to imply that these reviews necessarily mean progress in terms of the capacity of teachers to meet the learning needs of all students, including those with disability. In fact, as the outcomes of the NSW review for example suggests, such reviews do not necessarily mean progress or compliance with obligations under the CRPD. In that case, the NSW Government has adopted a recommendation from the review, to increase the segregation of students with

disability in "special classrooms" (Recommendation 10)¹. This would represent an impermissible retrogressive measure in light of Australia's obligations to ensure progressive realisation of Article 24 of the CRPD and which Australia will be immediately required to remedy as a State Party to the CRPD.

2. We also note that we have expressed concern in relation to other State and Territory reviews and the policy positions adopted in light of them that would seem to be inconsistent with Article 24 (and the guidance in General Comment No.4), as well as Article 5 (and the guidance in General Comment No.6).

Disability Standards for Education

3. Paragraph 266 (Issue 25) states that "the Australian Government has implemented significant systemic reforms to improve the educational outcomes of students with disability over the past decade, but acknowledges there is considerable work ahead to ensure students with disability are able to achieve optimal educational outcomes".
4. Specific mention is then made in paragraph 271 of the role of the DSEs.
5. While we appreciate the Australian Government's recognition that it needs to do more to improve education of students with disability, we do not agree that substantive systemic improvements have in fact been achieved, including through the DSEs.
6. In this regard, it is especially concerning that for the last decade or longer, a period that also coincided with Australia's ratification of the CRPD and the introduction of the DSEs, it appears that there has been significant growth in the segregated education of students with disability². This concern was also expressed by the UN Committee on Economic, Social and Cultural Rights (**ICESCR Committee**) on 31 May of 2017 in consideration of the fifth periodic report of Australia on its implementation of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), when it asked Australia to explain the "evidence of a rise in segregated education" and to show the measures it was taking "to ensure inclusive education across the country".
7. The CRPD Committee's concern about the effectiveness of the DSEs has been communicated to Australia on several occasions including through the LOIPR and its request for an update in relation to the implementation of the DSEs, a matter that also arose in Australia's last periodic report review by the CRPD Committee in 2013.
8. It is disappointing in light of this, that the formal review of the DSEs in 2015 has not yet resulted in an update and, in particular, the introduction of explicit support for inclusive education as well as broader stronger alignment of the DSEs with Article 24 and General Comment No.4. In our view this should also include amendment of the

¹ The NSW Government's response to Recommendation 10 is that "support class establishments" will increase in 2018 at "a greater rate than general enrolment growth". Without a corresponding commitment to decreasing other forms of segregated education such as special schools, this will inevitably result in an increase in the percentage of students with disability enrolled in segregated settings.

² Australian Bureau of Statistics. 2013. Schools Australia. View at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4221.02013>, showing that between 1999-2013, there was an increase in special schools in proportion to overall growth of schools.

definition of "reasonable adjustment" which is inconsistent with the equivalent concept in Article 24 of the CRPD, as clarified in General Comment No. 4.

9. More broadly, increases in segregated education and home-schooling across the Australian education landscape are an indictment on the adequacy of Australia's policy frameworks for the education of students with disability and evidence, at least, an impermissible retrogression of Australia's obligations to ensure progressive realisation of Article 24 of the CRPD. These factors speak to a national failure in education of students with disability and the protection of their fundamental human rights.

Australian Government's request for clarity – Paragraph 278 of the Draft Report

10. We are especially concerned by the Australian Government's statements in paragraph 278 in relation to Issue 26, which suggest a fundamental lack of commitment to fully implement Article 24 and reflect its continued recalcitrance to ensure "progressive realisation" of the obligation to ensure an inclusive education system across Australia's jurisdictions.
11. In this regard, paragraph 278(a) repeats the Australia Government's 2016 submission to the CRPD Committee on the then draft General Comment No. 4, to the effect that Article 24 is compatible with segregated delivery of education to students with disability, as a legitimate "education modality" among "a range of education options" within an inclusive education system. Paragraph 278(b) further requests the CRPD Committee "clarify that States Parties may offer education through specialist classes or schools consistently with Article 24".
12. In our view, the CRPD Committee has already clarified the matter through General Comment No.4 and its construction of Article 24 as well as General Comment No.6 and its construction of Article 5 on equality and non-discrimination, which was issued on 26 April 2018. Together, these General Comments represent a clear and emphatic rejection of the position sought to be advanced by the Australian Government in paragraph 278.
13. In this regard, it is clear from General Comment No.4 that "specialist schools" and "specialist classes" are regarded as "segregation" and are distinct from inclusive education. Relevantly, paragraph 11 of General Comment No.4 provides that "Segregation 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." It is worth noting in this context that this definition of "segregation" as well as other key definitions and concepts outlined in General Comment No.4 are now part of the Queensland Government's newly released "Inclusive Education Policy"³.
14. General Comment No.6 in relation to Article 5 of the CRPD further states in its 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)".
15. It is also clear from the language of paragraph 11 of General Comment No.4 that the "transition from segregation to inclusion" is envisaged through compliance with

³ <http://ppr.det.qld.gov.au/pif/policies/Documents/Inclusive-education-policy.pdf>

Article 24. This is again reflected in paragraph 12 which 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".

16. Importantly, when explaining in paragraph 39 of General Comment No.4 the obligation to ensure progressive realization of Article 24, the CRPD Committee 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, it then calls in paragraph 68 for "a transfer of resources from segregated to inclusive environments".
17. Notably, "segregation" of students with disability is characterised in General Comment No.4 and in General Comment No.6 as a form of discrimination. 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".
18. As such, the CRPD Committee has made it clear that the segregation of students with disability in "specialist classes or units in mainstream schools and specialist schools" are not legitimate education options within the terms of Article 24 and that progressive realisation of that Article does not support the preservation of and continued investment in segregated education models.
19. We also query the basis for the statement in Draft Report Paragraph 278(a) in defence of segregated education, that "a range of education options ensure that the best interests of the student are a primary consideration", given broad consensus that there is no evidence to support the belief that segregated education is beneficial for students with disability. In this regard, we refer you to several comprehensive reviews including the recent "*A summary of the Evidence in Inclusive Education*" (2016), by Dr Thomas Hehir, Silvana and Christopher Pascucci Professor of Practice in Learning Differences at the Harvard Graduate School of Education and Abt Associates. A 2008 comprehensive analysis of the available research by Dr Robert Jackson, then Associate Professor at Edith Cowan University, "*Inclusion or Segregation for children with an Intellectual Impairment: What does the evidence say?*" in fact found that "no review could be found comparing segregation and inclusion that came out in favour of segregation in over forty years of research".
20. Further, a 2018 comprehensive review by the European Agency for Special Needs and Inclusive Education of over 200 papers from a range of countries (including the United Kingdom, USA, Australia and continental Europe) into the relationship between inclusive education and social inclusion, titled "*Evidence of the Link Between Inclusive Education and Social Inclusion*" concluded that:

"The research evidence presented in this review suggests that attending segregated settings minimises the opportunities for social inclusion both in the short term (while children with disabilities are at school) and the long term (after graduation from secondary education). Attending a special setting is correlated with poor academic and vocational qualifications, employment in sheltered workshops, financial dependence, fewer opportunities to live independently, and poor social networks after graduation." [p14]
21. In our view, there is no legitimate basis for the assertion by the Australian Government that segregation of students with disability is either in compliance with Article 24 or in the best interests of those students. Rather, the segregation of

students with disability, similarly to the segregation of people with disability in other areas, is a historical practice that has never been supported by evidence. It is in effect a beliefs-driven service delivery model that is inherently discriminatory, not evidence based and in violation of the fundamental human rights of students with disability to equality and non-discrimination.

22. Finally, as to the Australian Government's efforts to use "parental choice" to justify its failure to move towards an inclusive education and discard segregated models for the delivery of education to students with disability in reliance on Articles 13(3) and (4) of ICESCR, we again note the clear statement in paragraph 10 of General Comment No.4 that inclusive education is to be understood as, amongst other things:

"a fundamental human right of all learners – notably, education is the right of the individual learner and parental responsibilities in regard to the education of a child are subordinate to the rights of the child".

23. It is also worth noting again that it was in the context of the ICESCR Committee's consideration of Australia's report on compliance with ICESCR that Australia specifically was asked to explain evidence of a rise in segregated education and what measures it is taking to ensure inclusive education across the country (see paragraph 6 above).
24. In any event, while it is recognised that it is parents who should determine, in the first instance, what is in their child's best interests, the "parental choice" recognised in Article 13(3) and (4) of the ICESCR does not in our view extend to segregation, a discriminatory mode of delivering education to students with disability, just as the "parental choice" argument could not be relied upon to support the decisions of some parents not to educate girls or to choose that girls should not be taught academic subjects, even though these beliefs by parents were once not uncommon and parents did exercise educational choices between girls and boys in that way. Nowadays, we would see it for what it is – impermissible educational discrimination.
25. Further, the segregation of students with disability is not in the nature of the legitimate religious or moral convictions sought to be protected by Article 13 (see paragraph 28 of ICESCR General Comment No. 13), such as for example the liberty to choose education within the framework of Catholic or Jewish beliefs.
26. Rather, segregated education is at best a model for the delivery of education to students with disability, separately to non-disabled students, whereas the concept of "inclusion" embodies the commitment to address the historical denial to people with disability of access to the general education system and to end educational discrimination against them, including by undertaking the systemic changes that are required to be implemented to remove the barriers that continue to result in the exclusion and segregation of students with disability. Paragraph 6 of ICESCR Committee's General Comment 13 recognises accessibility as a critical element of the right to education without discrimination.
27. It is also worth noting that paragraph 5 makes it clear that the right to education in Article 13 of ICESCR is to be interpreted in light of other international instruments that "further elaborate on the objectives to which education should be directed" including any "elements which are not expressly provided for in article 13 (1)", with gender equality provided as an example.

28. As such, the principle of “parental choice” must be applied within, and not in spite of, the human rights framework including the CRPD – a framework that recognises that it is through an inclusive education that the fundamental right to education is realised by people with disability.
29. We also note that Article 13 of ICESCR is expressly qualified by minimum schooling standards, which themselves must be determined in light of Australia's obligations under Article 24 to provide non-discriminatory and inclusive education. Again, we urge the Australian Government to amend the DSEs promptly to incorporate the requirements of Article 24.
30. As a broader matter, the Australian Senate's review, the various State and Territory reviews as well as research undertaken across Australia and in Victoria, have shown the widespread discrimination and gatekeeping⁴ that students with disability and their families experience in trying to access and receive appropriate support in the general education system. Such "gatekeeping" – the usually informal discouragement by mainstream school administrators of enrolment of students with disability in regular classrooms - is an unconscionable practice and, whether deliberate or not, it compromises a parent's free and informed choice as to educational setting.
31. The continued "leakage" of students with disability from the general education schooling system to the alternate segregated “special” system and home schooling is reflective of the Australian Government's failure to progress inclusive education and to adequately support students with disability in the general education system. It cannot now be characterised as legitimate parent-driven “demand” for segregated schooling, thereby releasing the Australian Government from its obligation to fully implement Article 24 and justifying the continued investment of valuable resources to maintain a parallel segregated system for students with disability.
32. We submit that paragraph 278 of the Draft Report should be deleted in its entirety and replaced with an unqualified commitment to the full implementation of Article 24, including to immediately undertake all necessary actions to ensure its progressive realisation.

⁴ See “Gatekeeping and restrictive practices with students with disability: results of an Australian survey”, by Dr Shiralee Poed, Dr Kathy Cologon and Dr Robert Jackson, and delivered at the Inclusive Education Summit, Adelaide, October 2017 (<http://allmeansall.org.au/wp-content/uploads/2017/10/TIES-4.0-20172.pdf>); see also the Victorian Report "Improving Educational Outcomes for Children with Disability in Victoria" released by June 2018 and authored by Castan Centre Monash University academics Eleanor Jenkin, Claire Spivakovsky, Sarah Joseph and Marius Smith (see https://www.monash.edu/__data/assets/file/0016/1412170/Castan-Centre-Improving-Educational-Outcomes-for-Students-with-Disability.pdf?utm_source=newsletter&utm_medium=email&utm_campaign=read_our_landmark_report_int_o_the_education_of_children_with_disability&utm_term=2018-06-28)