



Submission

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

PLAIN ENGLISH

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By email: crpd@ohchr.org

All Means All – The Australian Alliance for Inclusive Education

Email: hello@allmeansall.org.au

Web: www.allmeansall.org.au

Endorsed by Disabled People's Organisations Australia (DPOA), Children and Young People With Disability Australia (CYDA) and Inclusion International.



INTRODUCTION

1. [All Means All](#) is the Australian Alliance for Inclusive Education. It is made up of different people and organisations working together. Our goals are:
 - an inclusive education system, where schools welcome all children and they learn and take part as equals;
 - removing the barriers that limit the rights of some students to a full inclusive education. The barriers include:
 - Legal - laws that don't support inclusion;
 - Structural – the way education systems and schools are set up; and
 - Attitudinal – people's beliefs that children with disabilities should go to separate schools and be in separate places.
2. The Board of All Means All guides its work. The Board is mostly made up of people with disabilities or family members of people with disabilities. All Means All is a full member of [Inclusion International](#). This is a network of people with intellectual disabilities and their families who do advocacy work to speak out for the human rights of people with intellectual disabilities worldwide.
3. All Means All thanks the Committee on the Rights of Persons with Disabilities (**Committee**) for the opportunity to make this submission about the **Australia Report**. The Australia Report is what we call the Combined Second and Third Periodic Report of Australia about the United Nations Convention on the Rights of Persons with Disabilities (**CRPD**).
4. The Australia report includes the 35 issues that the Committee thinks are important and included in its List of Issues Prior to reporting (**LOIPR**). However, this All Means All submission just covers what the Australia Report says about the education of students with disabilities. This relates to issues 24 to 26, in paragraphs 260 to 276 of the Australia Report.

EXECUTIVE SUMMARY

5. Australian education systems show that they fail students with disabilities and do not comply with Article 24 of the UNCRPD. Australia does not have a strategy to reform education systems at state and national levels, to ensure they are inclusive and meet Australia's obligations under Article 24.
6. Because there is no strategy, since the last reporting period there has been:
 - a significant increase in the number of students with disabilities in both primary and secondary schools being in segregated school settings – separated from other students;
 - continued use of restrictive practices on students with disabilities;

- no improvement in students with disabilities having reasonable accommodations – getting the supports they need;
- no significant improvement in the numbers of students with disabilities participating in or completing their education;
- no improvement in the collection of detailed data about students with disabilities and their education; and
- Australia’s laws, which are mainly the *Disability Discrimination Act 1992* (Cth) (**Disability Discrimination Act**) and the *Disability Standards for Education* (2005) (**Disability Standards for Education**), have not been reformed.

RECOMMENDATIONS

7. Because Australia is a country made of up States and Territories with their own governments as well as the Australian Government, all these Governments that are involved in education of students with disabilities, needs to work together to have a strategy that they all agree on, that will make sure there is an inclusive education system at all levels across Australia. A strategy would help to make sure that all Australian laws and policies about education will be in line with Article 24 and General Comment No.4 of the CRPD. This includes that the words in Australian laws and policies have the same meanings as in the CRPD and support the human rights to education of people with disabilities.
8. The Australian Government needs to work with State and Territory Governments to stop students with disabilities in primary and secondary education from being segregated into separate school settings from other students. One way they can help students to be included in schools is to move resources from segregated school settings into inclusive school settings.
9. The Australian Senate Education and Employment References Committee wrote a report in 2016 called “*Access to real learning: the impacts of policy, funding and culture on students with disability*”. The Australian Government should take action to put in place the recommendations in this report.
10. The Australian Government should take action to put in place the *recommendations* in a 2015 review of the Disability Standards for Education (2005). The government should also make sure they provide enough resources to do a proper review of the Standards in 2020.
11. The Australian Government should look at its laws and rules to make sure they follow the CRPD. This includes the Disability Discrimination Act and the Disability Standards for Education.
12. The Melbourne Declaration is a document that sets out the vision for education in Australia, but there is a gap in the Declaration when it comes to students with disabilities. The Education Council should change the Declaration so that it includes students with disabilities as a priority. The Declaration needs to be in line with the CRPD, and say that all students should be in inclusive school settings.
13. The Australian Government should work to improve education for Indigenous students with disabilities. It needs to work with Indigenous people and their organisations to set

up, own and run programs and initiatives that will increase the numbers of Indigenous students with disabilities staying in school.

14. The Australian Government should put Article 24 into action. This includes setting up a system to collect and publish information about the education of students with disabilities. This information needs to be broken down into detail and cover students with disabilities in all education settings, including their ages, gender, location, ethnic background and type of disability.
15. The information also needs to be about how many students go to different kinds of schools and where, what they achieve, and details about where and how they are suspended or excluded.
16. The information also needs to include details about when, where and how schools use restrictive practices on students with disabilities. This includes all kinds of restrictive practices, including seclusion, such as 'time out' or other ways of separating students from their classmates.

ANALYSIS

Issue 24

17. Australia does not currently have ways of collecting the detailed information needed about students with disabilities in education settings, including how many students are enrolled and what kinds of schools they are enrolled in, schools using restrictive practices and when and why students with disabilities are kept away from school because they are suspended or expelled.
18. There is some alarming information and evidence that students with disabilities are often suspended from school, excluded, bullied and experience restrictive practices.
19. Restrictive practices happen a lot in schools. Children with disabilities are put in cages or other inappropriate places. This is sometimes called "withdrawal", "time out" or "calm" rooms. Children are locked in cupboards, tied to chairs with belts, denied water for long period and degraded in front of their classmates. These kinds of abuses were included in a formal complaint to the United Nations Special Rapporteur on the Rights of Persons with Disabilities in 2016.
20. In Australia, there are different rules in each State about the use of restrictive practices. These state-based rules are not in line with the CRPD or the United Nations Convention on the Rights of the Child, which Australia has also signed. These rules do not protect the human rights of children with disabilities, but in fact allow their rights to be violated.
21. There is also a lot of evidence that many schools use "gatekeeping". These are formal or informal ways of discouraging or preventing students with disabilities from going to mainstream schools. The Australian Senate Education and Employment References Committee 2016 report, *"Access to real learning: The impacts of policy, funding and culture on students with disability"*, said that "gatekeeping" had a major impact on students with disabilities and their families. "Gatekeeping" has led to more children being in segregated school settings and more children are being home-schooled across Australia because they are being stopped from going to mainstream schools.
22. There have been recent changes relating to suspensions and exclusions, and Australian schools are increasingly using ways of dealing with "challenging behaviour" that include

exclusion and a “zero-tolerance” approach. There are concerns that this approach has a much higher negative impact on children with disabilities (as well as indigenous children and children in out-of-home care).

23. A system called the “Nationally Consistent Collection of Data on School Students with Disability” (**NCCD**) was set up in 2013. This system collects information about students with disabilities and provides that information to Australian Government. While this information is important, the NCCD does not collect all the information about students with disabilities that is important to know about. Also the way the NCCD works may affect the information it provides so that it does not give a true impression of what is happening.
24. In particular, the NCCD collects information about students getting adjustments – this means getting support to access the curriculum and to take part in learning. This includes the types of adjustments and how much adjustments students receive – how much adjustments are given is called the “level” of adjustments. This information about adjustments is used to decide what resources schools should receive to support their students with disabilities. This is an important and positive change to previous ways of deciding how schools would be given resources, which were based on “medical model” diagnosis and labelling. The new way of gathering information is also good because it can show what good practice is and use this to improve how things are done elsewhere. However, the NCCD needs to be improved by making sure the information is well explained, well understood and used in the right way.
25. The way the NCCD works to provide resources leaves it open to schools “gaming” the system. This means that schools can learn ways to use the rules to get more resources that they should need. Some students may only need teachers to provide “quality differentiated teaching practice”, which is called “level 0” and is the ordinary practice that all teachers are expected to do when they are teaching a classroom of students who need to be taught in a range of ways but who do not need more support. However, this “level 0” does not attract any additional funding. Some schools may claim their students need higher levels of adjustment than they actually do in order to get more resource funding. The NCCD system is not set up to make sure schools are accountable for these claims.
26. The NCCD is not clear about how inclusive education should happen in Australia. More students with disabilities are now being segregated, so there is an urgent need for the NCCD to expand what it does and to collect data to show how the Australian Government is meeting its obligations under 24. This would also help to meet Article 31 of CRPD about “Statistics and Data Collection”.

Issue 25

27. We do not agree with the Australian Government that they have put in place significant reforms to improve the educational outcomes of students with disabilities over the past decade.
28. Australia has no national legislative or policy framework for inclusive education that meets its obligations under Article 24. There is nothing that fully complies or even complies in a large way with Article 24 and General Comment No.4. The Australian Government has continued to avoid its responsibility to lead changes across education systems that would support the rights of all Australian students with disabilities, including changes in culture and practices. This is despite the findings and recommendations of the 2015 review of the Disability Standards for Education and the 2016 Senate Report.

Senate Education and Employment References Committee's 2016 Report

29. The Australian Government said they would make some positive steps to support students with disabilities, when they responded to the 2016 Senate Report, but their responses were still not satisfactory in some important ways.
30. The Australian Government did not commit to making policy to promote inclusive education as a priority. They did not mention Australia's obligations under Article 24 at all, which seems to show they are not committed to inclusive education. There is also a paragraph in the Australia Report which asks the Committee to clarify General Comment No.4. But because General Comment No.4 is already clear, this seems to be a way of pushing against what General Comment No.4 says, and rejecting Australia's human rights obligations. This shows that the Australian Government is not committed to inclusive education and the human rights of students with disabilities.
31. Recommendation 9 of the 2016 Senate Report says that the Australian Government should work with State governments to develop a strategy about the education of students with disabilities. This is similar to what the Committee has asked all State Parties to do in paragraph 40 of General Comment No. 4. However, the Australian Government has not agreed to do this, despite General Comment No.4, the Senate Report, community support and even the main political parties agreeing that there should be a national strategy for inclusive education.
32. The Australian Government only made limited commitments to the 2016 Senate Report, and even then, it has not done a good job of making them happen.

Disability Standards for Education

33. The Disability Discrimination Act and the Disability Standards for Education provide the laws that should make major improvements to education systems for students with disabilities. But this has not happened. Instead, there is even more segregation in education during the time since Australia ratified the CRPD. This means that segregation has actually increased since the time the laws were made and it shows that they are not working.
34. The UN Committee on Economic, Social and Cultural Rights (ICESCR Committee) looked at how Australia has been meeting the International Covenant on Economic, Social and Cultural Rights (ICESCR) and was concerned that more Australian students with disabilities are being segregated. The ICESCR Committee asked the Australian Government to take action about this problem.
35. There was a study in 2019 that looked into how much difference the Disability Discrimination Act and Disability Standards for Education have made. The study found that the Disability Discrimination Act and Disability Standards for Education support the general aims of inclusive education but have not made any important changes to help students with disabilities to access regular schools and classes. Instead, despite changes to the law, more students with disabilities are being placed in special schools, special units and special classrooms which are all segregated places where students with disabilities are separated from students without disabilities. The study also found that not as many students with disabilities are excluded, but the numbers are still very high, so changes to the law have not been successful.
36. The same study found that from 2009 to 2015, Australian students with Autism included in mainstream schools went down from 18.8% to 3.3%. Numbers of students with Autism in special schools went up from 37% to 52%. This means that many more students with

Autism are being segregated. The writer of the study also compared Australia with the U.S and said that students with Autism in the U.S. are 13 times more likely to be in regular classrooms than students with Autism in Australia.

37. The Australia report includes information about reviews of Australian education systems in paragraph 270. Over the past 20 years, the Australian Government and most state and territory governments have reviewed their education systems regarding students with disabilities. The reviews have not resulted in changes to increase inclusive education. Sometimes reviews have even led to less inclusion. This means that when the Australian Government says that reviews are being made, this does not mean that improvements will be made to meet Article 24.
38. One example is the Government of New South Wales, which runs Australia's largest state education system. The Government of New South Wales recently had a review of education for students with disabilities but in 2018 they decided to make changes to their policies to actually increase segregated classrooms that separate students with disabilities from students without disabilities. This is not in line with Article 24. It is also a deliberate backwards change that is not allowed under the CRPD and that the Australian Government has to address immediately.
39. Unfortunately, Australia's disability discrimination laws do not see segregation as a form of discrimination. The laws don't protect children from segregation, despite the Committee making strong statements about this.
40. The Committee has told Australia it is concerned that the Disability Discrimination Act and the Disability Standards for Education are not working. They communicated this in Australia's last review by the Committee in 2013. The Disability Standards for Education were reviewed in 2015, as required by the Disability Discrimination Act. Even though it was a short consultation period, many people took part. The final report made 14 recommendations to improve how the Standards operate. So far, nothing has been done regarding most of these recommendations and the Disability Standards for Education have not been changed. The Disability Standards for Education is due to be reviewed again in 2020. The review should include how the Disability Standards for Education can be made stronger. This should include monitoring and making sure systems follow the Disability Standards for Education.
41. We believe the Disability Standards for Education need to be updated to say that the Standards support inclusive education. This should include being in line with Article 24 and General Comment No.4. The definitions of 'reasonable adjustment' in the Disability Discrimination Act and Disability Standards for Education would need to be changed. At the moment, these are not defined in the same way. They are also not in line with the equivalent idea of reasonable accommodation in Articles 5 and 24 of the CRPD.

Melbourne Declaration

42. The Melbourne Declaration on Education Goals for Young Australians (Melbourne Declaration) is currently being reviewed in Australia. The Melbourne Declaration includes the national vision for education in Australia. It has two broad goals. These are that:
 - Australian schooling promotes equity and excellence; and
 - All young Australians become successful learners, confident and creative individuals, and active and informed citizens.

43. The current Melbourne Declaration was published in the same year as the CRPD. It does not mention students with disabilities or inclusive education. Because these are not mentioned, many schools still see students with disabilities as a burden and a problem they do not want, and the barriers these students experience in education are not addressed.
44. The current review of the Melbourne Declaration must include changes so that students with disabilities are identified as a priority equity group regarding non-discrimination. This would be in line with the National School Reform agreement. The Declaration must be amended to make a commitment to inclusive education at all levels of education. It must have principles and definitions that are in line with the CRPD and General Comment No.4.

Funding for Reasonable Accommodations

45. The way that funding is given in Australia to provide reasonable accommodations and support to students with disabilities is not simple. The Disability Discrimination Act and Disability Standards for Education say that education providers must provide 'reasonable adjustments'. The Australian Government provides some funding under the Australian Education Amendment Act 2017. They use the NCCD to decide how much funding each student receives. But it is State governments that provide most funding for education, including for reasonable adjustments.
46. At the moment, most States provide some 'traditional' (medical model) funding based on impairment categories to decide if a student can get funding. Each State has its own categories, ways of making a diagnosis, and levels of disability. So students with similar needs get different levels of funding depending on which State they live in. There may also be other funding available in different States. This is usually based on school/system census data and there can be different rules about how schools use the funding.
47. Many reports and reviews across Australia have said that lack of enough funding creates barriers that stop students with disabilities having equal access to education. It also stops inclusive education from being put in place. The Senate Report said that while Australian schools had the responsibility to provide reasonable accommodations, people said that their experiences were that this often did not happen. The 2015 review of the Disability Standards for Education also found there was a lot of different understandings of responsibilities about reasonable adjustments.
48. We are very concerned about these funding issues in Australia, as Article 24 says that reasonable accommodations is a minimum requirement that must be provided straight away and not just in the long term. General Comment No.4 also says that countries need to set up ways of providing funds for inclusive education that make sure students with disabilities get the support they need. We do not believe that the current ways State Governments and the Australia Government organise funding meet the requirements of Article 24.

Accessibility of tertiary education

49. Australia does not have a plan that focuses on making sure tertiary education facilities and courses are made more accessible for students with disabilities, in line with Article 24.
50. The Australian Human Rights Commission found that tertiary education and life-long learning systems in Australia do not provide many of the things people with disabilities

need to gain tertiary qualifications. These include flexibility, reasonable adjustments and support. They found that people with intellectual disabilities, people with psychosocial disabilities and deaf people could not get what they need. In 2012, 15% of people with disabilities aged 15 to 64 had finished a bachelor's degree or higher. The rate in people without disabilities was 26%.

51. Some important parts of post-compulsory education including practical experience and course materials are provided by 'third party providers' (such as private education organisations, industry and businesses). The 2015 review of the Disability Standards for Education said that the Standards do not cover these kinds of settings are often unsure about reasonable adjustments in work experience placements, and accessible information, such as course materials.
52. The 2015 review also said that people had told them that the way universities set the requirements to do their courses excluded people with disabilities. The review said that the Australian Government and State governments need to work together to make sure there was funding to make sure people get the supports they need for equal access to post-compulsory education. Nothing has been done about this.
53. The Disability Support Program provides funding for universities so they can remove barriers to access and participation for students with disabilities. There is nothing similar to the Disability Support Program in Australian technical and vocational education systems.
54. The Disability Support Program was reviewed and evaluated in 2014 – 15. They found that the program was supporting higher education providers to meet the needs of students with disabilities. But they also said that the program could improve the efficiency of its administration. They also said the Disability Support Program should think about whether it should continue to focus on individual students, or to focus on the universal design of curriculum to benefit more students.
55. This shows that there needs to be a broad strategy across organisations and systems to tackle the issues that make university education inaccessible for students with disabilities. The strategy also needs to include other kinds of tertiary education, including technical and vocational education. So far, the Australian Government has not responded to the 2014-15 review.

Issue 26

56. In paragraph 275 of the Australia Report, the Australian Government has asked the Committee to make it clear whether countries may 'offer education through specialist classes or schools consistently with Article 24'. By asking this, the Australian Government wants the Committee to agree to the segregation of students with disabilities (in segregated special settings that separate students with disabilities from non disabled students) as a legitimate option in inclusive education. This is despite the Committee having already given clear guidance many times, that segregated settings are not inclusive. Another way of saying this is that the Australian Government wants the Committee to go against what it has already said to State Parties, and now say that Australia can keep putting students with disabilities in segregated "special" schools or classes and still comply with Article 24.
57. In paragraph 275 (a) of the Australia report, the government repeats what it wrote to the Committee about Draft General Comment No.4. In summary, at that time Australia said that it believes that it can provide education to students with disabilities in a wide range

of schools and classes, including segregated classes, and still comply with Article 24. They also said that they believe that this approach is best for students.

58. What this means is that the Australian Government wants to reject the universal right of *all* people with disabilities to inclusive education. This is not compatible with Article 24 which says that all CRPD parties have a duty of non-discrimination in education to *all* people with disabilities. We do not agree that some people with disabilities should not have the same right to inclusive education as other people with disabilities and we do not think the CRPD and international human rights laws allow this.
59. Equally, Australia's view is not compatible with an important part of Article 24 that says that all parties must work progressively to achieve the right to inclusive education. The Committee explained this in General Comment No.4 (para 40). They said that Article 4.2 means that all State Parties must act as quickly and effectively to achieve Article 24. This includes parties using all the resources they have available to achieve economic, social and cultural rights. State Parties should also cooperate internationally to work towards achieving full rights.
60. The Committee clearly said in General Comment No.4 that Article 24 is not compatible with supporting two systems of education, both mainstream and segregated. Article 24 does not support parties continuing to keep and put money into segregated education.
61. Maria Soledad Cisternas Reyes, Special Envoy of the United Nations Secretary General on Disability and Accessibility, recently explained how moving to an inclusive paradigm will achieve the CRPD goal of inclusive education. She said that the distinction between mainstream and segregated education will disappear and there will be just one system that is inclusive for all, instead of 2 parallel systems of mainstream and segregation for people with disabilities.
62. The Committee has spoken specifically about segregation. They said that:
 - segregation happens when students with disabilities receive their education in separate settings, when they are separated due to a student's impairments, and are kept apart from students without disabilities;
 - the right to non-discrimination includes the right not to be segregated and to be provided with reasonable accommodation, and
 - segregated ways of providing education, that exclude students from mainstream and inclusive education based on disability, are against articles 5(2) and 24(1)(a).
63. General Comment No.4 (paragraph 12) also speaks of within educational settings by ensuring inclusive classroom teaching in accessible learning environments with appropriate supports". It also says that inclusive education should be "monitored and evaluated on a regular basis to ensure that segregation or integration is not happening either formally or informally".
64. Together, General Comments No.4 and No.6 clearly reject paragraph 275 of the Australia Report. These General Comment were issued by the Committee after the Australian Government had already tried to make the same argument that education systems should be able to keep segregating students with disabilities and still say that they are inclusive and meet Article 24. The Committee already knew about the Australia Government's argument but it never agreed with it.

65. The Australian Government's further request does not respect the Committee's earlier advice regarding General Comments No.4 and No.6.
66. We thank the Committee for its jurisprudence about Article 24 and for providing clear guidance to State Parties on inclusive education, through General Comments No.4 and No.6. The Committee's work has already guided the Queensland Government about its new Inclusive Education Policy 2018. The Queensland Government's new policy uses General Comment No.4's definition of "segregation" as well as other key definitions and concepts and it refers to General Comment No.4. This is welcome progress, but it is too early to see how well the Queensland Government will resource it and put its new policy into action.
67. It is important to know that there are examples of schools in Australia that provide quality inclusive education at the whole school level. They have also shown how a "dual" or "parallel" model can be made into a single inclusive education model for everyone. This can be done despite the larger system being deficient. One example is Thuringowa State High School in Queensland. They transformed the school by closing their segregated unit for students with disabilities in a gradual roll out between 2015 and 2017, and successfully put inclusive education in place for all the school's students, guided by Article 24 and General Comment No.4.
68. One of the students who used to be in the school's segregated unit talked about his experience, saying 'I never enjoyed school until I was given the opportunity to be myself alongside everyone else'. Yes, I know I am different, but I am not so different that I need to be kept separate or hidden. Inclusion at Thuringowa makes me beyond happy – I am equal, I am smart and now I have options' (Will, aged 17).

Parental right to choose – Article 13 of ICESCR

69. General Comment No.4 says that inclusive education needs to be seen as: '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'.
70. However, in the Australia Report, paragraph 275(b), the Australian Government says it wants to use the protections in articles 13(3) and (4) of ICESCR of the right of parents to make certain moral and religious choices for their children's education, to justify keeping segregated schools or classes for students with disabilities.
71. But segregation is not a moral or religious right of parents, and "parental choice" to segregate children with disabilities is not supported by Article 13 of ICESCR or by international human rights law or its related jurisprudence.
72. It is important to know that segregation of students with disabilities is not the kind of thing that Article 13 tries to protect. For example, Article 13 protects the freedom of parents to choose education settings that fit with their Catholic or Jewish beliefs because it protects a moral and religious right. Disability segregation is different and it is not a moral or religious belief. It is just a discriminatory practice that reflects historical institutional practices that have contributed to the marginalisation of people with disabilities as a group.
73. Rosemary Kayess is a human rights legal academic and Australian member of the Committee. She explains Article 13 of ICESCR this way: 'ICESCR Article 13 is perfectly specific in recognising a limited right of parents to choose alternative schools, where those schools are private and where the objective of the parents is to enable education

to be provided in conformity with their religious and moral convictions'. She said that 'there is no comparable parental right in relation to disability, nor would such a right (if it existed) be consistent with the international human rights law standards of equality and non-discrimination, directed as Article 13(3) is towards the preservation of difference'. This means that Article 13 is very clear in what it is about and it is not about segregation of students with disabilities – Article 13 protects the right of parents to choose alternative schools based on religious and moral beliefs but does not give parents a right to choose alternative schools for segregating children with disabilities. This is because disability segregation is not protected by international human rights law standards of equality and non-discrimination.

74. Ms Kayess also explained why Article 24 of the CRPD does not include a right to choose between the general education system and the segregated education system, saying: 'Perhaps most fundamentally, to have enshrined choice would have been to work against the standard of discrimination, which is set out in Article 5 of the CRPD and is one of the core pillars of international human rights law more broadly'. This means that to allow segregation as a choice of parents would actually mean working against non-discrimination as one of the most important ideas in international human rights law.
75. Further, the right under Article 13(3) of ICESCR is about parents being able to set up and run their own schools to conform with their religious and moral beliefs. It is about governments not stopping parents from doing this but it does not give parents the right to demand government to fund separate education for their children.
76. In other words, Article 13(3) of ICESCR does not support the Australia Government's argument that parents have a right to demand that governments provide segregated education for children with disabilities. This means that the Australia Government is not able to use Article 13(3) of ICESCR to justify segregated education in Australia.
77. The Australian Government's refusal to change the way it funds education systems, continuing to fund segregated education, means that general education systems don't receive the funds they need to fully implement inclusive education.
78. It is important to know that the ICESCR Committee asked Australia to explain the rise in segregated education, and said that Australia should take effective steps to ensure children with disabilities can access inclusive education.
79. Finally, the Australian Government's statement that parents are "choosing" segregated education is wrong in many ways. We are an organisation of persons with disabilities and their families advocating for human rights, and many parents have advocated strongly for their child to have an inclusive education. So we find the government's proposition to be superficial at best.
80. Students with disabilities and their families experience widespread discrimination and gatekeeping when it comes to trying to access inclusive education and get appropriate support. As we have already said in this submission, there has been a Senate Report, many reviews, inquiries, and much research across Australia that confirm this. Gatekeeping stops parents from having free and informed choice of schooling. Students and their families may agree to segregation so that they can access accommodation and supports which should have been provided in the regular system at their local school. This is systemic coercion, not "choice" – it means that the way the education system is set up and run is actually pushing people into segregation and this is not a real choice.
81. These concerns were recognised when the CRPD and Article 24 were being negotiated. Delegates to the Ad Hoc Committee rejected "parallel" models of education in Article 24.

They said that “choice” of segregated education “is in fact a false choice enforced by lack of resources and access to support”. It means that it is not a real choice when going into segregated places is the only way to get the resources and support - because resources and support are not being given to students in mainstream places.

82. It is important to know that Australia led the charge during the drafting of the CRPD, calling for inclusive education and saying that Article 24 should reflect the standard of non-discrimination in human rights law. In the final negotiations, Australia said there was no need for exceptions but there should be a clear statement that persons with disabilities must “receive the support required to facilitate their education within the general education system and communities in which they live”.
83. The current “dual” system in Australia, for the most part, only offers a choice between “integration” in general education and segregation in “special schools”, “special units” and “special classrooms”. Integration is defined in General Comment No.4. In Australia it is often known as “maindumping”. The Australian Government’s failure to progress inclusive education and to adequately support students with disabilities is to blame for the continued movement of students with disabilities from the general education system to the segregated “special” system, or to home schooling.
84. The Australian Government says there is parent driven demand for segregated schooling. But it is actually the limits of the current system, and government’s failure to address them and continued commitment to maintaining and growing the parallel segregated system that leads to increased segregation.

Best interests of the student

85. The Australia report also says in paragraph 275(a) that the “best interests” of students are a reason that governments should continue to provide segregated education.
86. Many people still believe the statement in the Australia Report and will say it often. But it is not abased on fact, it is based on wrong assumptions about disability. There is no credible evidence to support the idea that segregated education is beneficial for students with disabilities.
87. Indeed, segregation in education is a factor that increases the risk of abuse of children with disabilities. This has been recognised in the national Royal Commission into Institutional responses to Child Sexual Abuse, which began in 2013 and issued its final report in 2017. A research project by that Royal Commission looking into the risk faced by children with disabilities said that: ‘Segregation and exclusion in closed institutional contexts away from public scrutiny leaves children (and adults) with disability at heightened risk of violence and harm including sexual abuse. Further, when children with disability are stereotyped as dependent and passive and unable to ‘speak up’, they are at heightened vulnerability to being segregated, abused, overlooked and not heard. The Royal Commission into Institutional Responses to Child Sexual Abuse recognised early on the likely particular vulnerabilities of children with disability and the institutional contexts which they encounter.’
88. The research found that disability segregation was a ‘setting-based risk factor’. It said that a series of key reports in the 1970s in Australia had found ‘profound detrimental effects in segregating people with disability from the wider community.
89. Research into social and academic outcomes for students with disabilities has also found no benefit from segregated education. In 2008, there was a study of all relevant research over the previous 40 years which said that: ‘No review could be found comparing

segregation and inclusion that came out in favour of segregation in over forty years of research'. This means that segregated education has not been proven to be a good way to educate students with disabilities.

90. In 2016 there was a comprehensive review of over 250 research studies from 25 countries that had used the concept of inclusive education as defined in General Comment No.4. The review found that children with disabilities in fully inclusive settings always have better academic and social outcomes than children in segregated or partly segregated environments (e.g. "special classrooms" or "special units").
91. The impacts of segregation or inclusion in education apply during and beyond schooling. In 2018 the European Agency for Special Needs and Inclusive Education did a comprehensive review of over 200 papers from a range of countries into the relationship between inclusive education and social inclusion. The review included papers from the United Kingdom, USA, Australia and continental Europe. It found that being in a segregated setting reduces opportunities for social inclusion both in the short term, while children are at school, and the long term, after they have left secondary education. The review also found that attending a special setting is linked to poor academic and vocational qualifications, employment in sheltered workshops, financial dependence, fewer opportunities to live independently, and poor social networks after graduation.
92. In our view, there is no legitimate basis for the Australian Government to say that segregating students with disabilities either complies with Article 24, or is in the best interests of those students.

References from Submission document:

Ministerial Council on Education, Employment, Training and Youth Affairs (December 2008) *Melbourne Declaration on Educational Goals for Young Australians*
http://www.curriculum.edu.au/verve/_resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf

[National School Reform Agreement](#) in which children with disabilities are identified as a priority equity group for whom educational targets for improvement have been set.

2018 survey by Children and Young People With Disability Australia reported in: 'Action must be taken to stop bullying of children with disability', 21 May 2018, Probono News; see also Children and Young People with Disability Australia Media Release: [Bullying and abuse of school students with disability at alarming levels](#), Media Release 9 August 2016.

[2017 Survey by Children and Young People with Disability Australia](#).

Senate Community Affairs References Committee (November 2015) '[Final Report: Violence, abuse and neglect against people with disability in institutional and residential settings](#)'; Senate Education and Employment References Committee (2016) '[Final Report: Access to real learning: the impact of policy, funding and culture on students with disability](#)'.

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.

McCarthy, Tony (2019) '[Regulating Restraint and Seclusion in Australian Government Schools: A Comparative Human Rights Analysis](#)' QUT Law Review, 18, 194.

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.

The Conversation (15 April 2019) [Homeschooling is on the rise in Australia. Who is doing it and why?](#).

A new longitudinal study from the USA examining the role of school suspensions in the school-to-prison pipeline, found that every suspension weakens the connection of students to school and increases their odds of committing theft, assault, and other crimes: Thomas J. Mowen, John J. Brent, John H. Boman IV (2019) [The Effect of School Discipline on Offending across Time](#), Justice Quarterly

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

Kate de Bruin, Linda Graham, Jeanine Gallagher (2019, in press) ‘The Nationally Consistent Collection of Data on School Students with a Disability (NCCD): Implications for Practice’ Chapter 6 in Linda Graham (Ed). *Inclusive Education in the 21st Century: Theory, Policy and Practice*. Sydney: Allen and Unwin.

Urbis Australia (17 July 2015). [Final Report: 2015 Review of the Disability Standards for Education 2005](#).

Australian Government (March 2017) [‘Australian Government Response to the Senate Education and Employment References Committee Report: Access to real learning: the impacts of policy, funding and culture on students with disability’](#).

[Speech](#) delivered by Andrew Giles MP, Shadow Assistant Minister for Schools, in Tasmania on 8 May 2019.

As to poor implementation of the Senate Report, see the Leading Learning 4 All online resource which was funded by the Australian Government and aimed at school principals. This resource which was developed by the Australian Special Education Principals Association (ASEPA) without consultation with disability groups, was the subject of a widely endorsed [Open Letter](#) dated 12 October 2017 and signed by all the peak national disabled persons organisations, and [questions](#) in the Australian Parliament by the Australian Senate Education and Employment Legislation Committee in October 2017.

On whether the funding provided to students with disabilities is adequate see Australian Education Union: Media Release (19 February 2019) [‘Morrison Government funding cuts hit Students with Disability’](#); ABC News (20 May 2017) [‘Students with disability lack government funding to excel at school, statistics show’](#).

Australian Bureau of Statistics (2013) [‘Schools Australia’](#), showing that between 1999-2013, there was an increase in special schools in proportion to overall growth of schools.

Committee on Economic, Social and Cultural Rights (31 May 2017) [Committee on Economic, Social and Cultural Rights reviews the report of Australia](#).

The ICESCR Committee asked Australia on 31 May of 2017, 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’. In the Concluding Observations, the ICESCR Committee recommended as follows:

‘Inclusive education

55. While noting with appreciation that all state and territory jurisdictions have developed policies that support inclusive education practices, the Committee is concerned that many children with disabilities are in reality placed in special schools (arts. 2, 13 and 14).

56. The Committee recommends that the State party take effective steps to ensure that children with disabilities, including those with cognitive impairments, can access inclusive education. In that regard, the State party is encouraged to implement the 2016 report of the Senate Education and Employment References Committee “Access to real learning: the impacts of policy, funding and culture on students with disability”.

EducationHQ Australia (21 June 2019) [‘Australia now less inclusive of students with a disability than the US, study finds’](#).

Linda Graham (2019, in press) ‘Inclusive Education in the 21st Century’, Chapter 1 in L.J. Graham (Ed). *Inclusive Education in the 21st Century: Theory, Policy and Practice*. Sydney: Allen and Unwin, table reproduced in Appendix 1 to this Report.

NSW Government (2018) [Response to the report of the Legislative Council Portfolio Committee No.3 – Education – Education of students with a disability or special needs in New South Wales](#).

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

Commonwealth of Australia (2018). [National School Reform Agreement](#). Canberra: Department of Education and Training.
Disability Discrimination Act 1992 (Cth) sections 5 and 6; Disability Standards for Education (2005) Part 3.

Australian Human Rights Commission (2016) [Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#),
Australian Bureau of Statistics (2013) [Disability, Ageing and Carers, Australia: Summary of findings, 2012](#), cat.

KPMG (2015) '[Evaluation of the Disability Support Programme Final Report](#)'.

Cisternas Reves, Maria Soledad (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

Queensland Government (25 June 2018). [Inclusive Education Policy](#).

School Inclusion – From Theory to Practice (accessed July 2019). [Case Study: Inclusive School Reform](#).

See [video](#) of Thuringowa State High School discussing school reform and UN guidance.

The Post Newspaper (2 June 2018) These Classes Are Best For All, reproduced in [Inclusive Schools Do Not Separate Students with Disabilities in Order to Support them Properly](#).

Kayess, Rosemary (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.

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

UN General Assembly, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities 2006, [Daily Summary of Discussion at the Seventh Session](#) (24 January 2006) 8(7).

Royal Commission into Institutional Responses to Child Sexual Abuse (2017) '[A brief guide to the Final Report: Disability](#)'.

Wayland, Sarah & Llewellyn, Gwynnyth & Hindmarsh, Gabrielle (2016). '[Disability and child sexual abuse in institutional contexts, Royal Commission into Institutional Responses to Child Sexual Abuse](#)'.

National Council on Disability (USA, independent federal agency) (2018) '[The Segregation of Students with Disabilities](#)' 9.

Robert Jackson (2008) '[Inclusion or Segregation for children with an Intellectual Impairment: What does the evidence say?](#)'

Todd Grindal, Thomas Hehir, Brian Freeman, Renee Lamoreau, Yolanda Borquaye, Samantha Burke (2016) '[A Summary of the Research Evidence on Inclusive Education](#)'.

European Agency for Special Needs and Inclusive Education (2018) '[Evidence of the Link Between Inclusive Education and Social Inclusion: A Review of the Literature](#)' 14.

Appendix 1:

Table 1.2 as shown in Graham, L.J. (2019, in press). Inclusive Education in the 21st Century. Chapter 1 in L.J. Graham (Ed). *Inclusive Education in the 21st Century: Theory, Policy and Practice*. Sydney: Allen and Unwin.

Relevant government reviews and inquiries since 2000

| Year | Review/Inquiry | Level of government |
|------|--|---------------------|
| 2002 | Australian Government Senate Inquiry into the Education of Students with Disabilities (Commonwealth of Australia, 2002) | Federal |
| 2006 | NSW Auditor-General's Report Performance Audit: Educating Primary School Students with Disabilities (New South Wales Audit Office, 2006) | State |
| 2010 | NSW Parliamentary Inquiry into the Provision of Education for Students with Disability or Special Needs (General Purpose Standing Committee No. 2, 2010). | State |
| 2012 | Review of the Disability Standards for Education (Australian Government Department of Education, Employment and Workplace Relations, 2012) | Federal |
| | Review of the Experiences of Students with Disabilities in Victorian schools (Victorian Equal Opportunity and Human Rights Commission, 2012) | State |
| 2015 | Review of the Disability Standards for Education (Urbis, 2015) | Federal |
| | ACT Report of the Expert Panel on Students with Complex Needs and Challenging Behaviour (Shaddock, Packer, & Roy, 2015) | State |
| | Report of the Select Committee on Access to the South Australian Education System for Students with a Disability (Parliament of South Australia, 2015) | State |
| 2016 | Access to Real Learning: Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support (Commonwealth of Australia, 2016) | Federal |
| | Victorian Review of the Program for Students with Disabilities (Victoria Department of Education and Training, 2016) | State |
| | NSW Audit Office Supporting students with disability in NSW public schools (New South Wales Audit Office, 2016) | |
| 2017 | Review of Education for Students with Disability in Queensland state schools (Deloitte Access Economics, 2017) | State |
| | NSW Parliamentary Inquiry into Students with a Disability or Special Needs in New South Wales schools (Portfolio Committee No. 3, 2017) | State |