



Submission to the Review of the Disability Standards for Education

September 2020



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Introduction

A good education is key to lifelong physical and mental health and wellbeing, social inclusion, employment prospects and economic security. As such, it is a fundamental human right for all children to access and participate in education that respects their dignity and develops their individual personality and talents to the full.

Education is not only a human right in itself, it is a fundamental means of realising other human rights, making inclusive and fair societies and supporting the social and emotional development of active and informed young citizens.

All children with disability have the right to access and participate in education without discrimination and on the same basis as students without disability. These rights are enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Convention on the Rights of Persons with Disability (UNCRPD). They are also protected in key pieces of Commonwealth legislation in Australia, including the *Disability Discrimination Act 1992 (Cth)* and the associated Disability Standards for Education 2005 (the Standards).

Despite the decades-long existence of these Standards and its goals, Australia has one of the lowest educational attainment rates of people with disability and one of the lowest employment rates of people with disability when compared to other OECD countries. It is of great concern that access and participation in education remains one of the most significant challenges facing students with disability and their families despite these standards being around for 15 years.

The benefits of greater inclusion for individuals and society includes a greater sense of belonging and self-worth, greater social cohesion, positive relationships, positive learning experiences and higher levels of educational engagement and attainment. The following quotes from students at an inclusive school in South Australia demonstrate the lived experience of these benefits:

“You’re less defined by a certain trait and more by yourself and who you are. I can talk to teacher like an adult. Students collaborate.”

“One on one teaching. Receive support from teachers. Teachers know your learning and how each child learns best. Teachers modify learning for children who struggle with their learning. Mental health support, academic support.”

These benefits far outweigh the significant emotional and financial costs to individuals and communities of failing to provide timely support in line with the Standards. Where a student’s education does not prepare them to participate and contribute to society later in life, students themselves pay in poorer health outcomes, social isolation, and under- or unemployment. Families pay financially if parents have to give up paid work to care for or try to educate children as well as emotionally in stress on relationships in trying to get a level of education that most families take for granted.

Society pays through increased costs in healthcare, social services and income support. It also results in increased expenditure in the costly child protection and youth justice

systems, where young people with disability are over-represented and disability-related needs are often unidentified.

It has been 15 years since the Standards came into effect and 10 years since the first Review. It is time to move beyond raising awareness to commit to real actions and partnerships that will strengthen accountability and proactive compliance with the Standards.

This will by default also increase understanding of the Standards, which the Government has acknowledged remains “patchy”, particularly among people living in regional areas, Aboriginal and Torres Strait Islander people, and people from culturally and linguistically diverse backgrounds.

Background and summary of recommendations

As South Australia’s Commissioner for Children and Young People, it is my mandate to promote and advocate for the rights, interests and wellbeing of all children and young people in the state, particularly those whose voices are not usually heard.

Since becoming Commissioner in 2017, children and young people have consistently raised their concerns about who is being excluded from school and the kind of support that is available to keep students engaged in education. Consequently, one of the top five priorities for my work is “to help everyone get an education”.

My investigation into school suspensions, exclusions and expulsions has highlighted that school exclusions disproportionately impact children with disability from a very young age. This restricts their access and participation in learning, social development and physical activity inside and outside of the classroom.

Children and young people have told us that being excluded makes them not want to return to school, affects their wellbeing and how they see themselves and isolates them from their education, from their peers, friends, family and wider community. Further, recent Australian and international research has shown that exclusionary forms of ‘behaviour management’ not only fail to reduce problem behaviour, but may actually exacerbate existing challenges and create the conditions for further behavioural issues. Evidence also shows that excluded and marginalised young people are at a higher risk of exposure to and involvement in the youth justice system.¹

This is one of many systemic concerns that my office has heard from children and young people with disability, their families and carers and other stakeholders in the disability and education sectors. Other systemic concerns include:

- **“Gatekeeping” practices that restrict and discourage the enrolment of students with disability at school;**
- **A culture of low expectations for students with disability,** which leads to a failure to take their educational needs and future aspirations of students with disability seriously, including their career and employment prospects;
- A concerning use of **restrictive practices, including restraint, isolation and seclusion** against students with disability;

- **A lack of training and inadequate resources for teachers** to identify and understand disability-related needs;
- **A lack of reasonable adjustments being made** despite the obligation under the Standards to make such reasonable adjustments;
- **A lack of consultation between education providers and students and families** about potential support and adjustments to support the learning and participation of students with disability;
- **Inaccessible and time-consuming complaints processes** that place the onus on students and their families to highlight non-compliance rather than on the system to show compliance.

These systemic concerns directly contravene the Standards and highlight significant gaps between the Standards and current practice. While these issues have been raised consistently throughout past reviews of the Standards, it appears no successful actions have been taken to address them. Until there is commitment to implement more proactive compliance mechanisms and oversight to ensure the Standards are taken seriously, it is likely that the same systemic issues will remain unaddressed.

A 2016 Senate Inquiry into the experiences of students with disability in education found that a key determinant of the quality of education for students with disability is the culture of the individual school. Based on what this Office has heard, positive reports of students with disability and their families and carers being consulted and provided with appropriate support are the exception rather than the norm. Positive practice is often the result of leadership at individual schools rather than the result of a system-wide approach.

All children have the right to access and participate in education no matter which school they attend and their abilities. Where the system is unable or unwilling to meet the needs of all children, it is the system, not the child that needs to change.

This office makes the following recommendations to strengthen the Standards and ensure that state authorities and education providers fulfil their legal obligations to provide all children and young people with an education that sets them up for the best possible life:

1. **That the Australian Government adequately resource an independent oversight body to ensure proactive rather than reactive compliance with the Standards. This oversight body should inquire into systemic issues and its information-gathering and reporting functions should complement the existing complaints handling functions of the Australian Human Rights Commission and state and territory anti-discrimination bodies.**
2. **That the Australian Government consider reframing key concepts of the Standards to encourage positive practices rather than discourage negative practices, with a focus on practical inclusion and participation outcomes and indicators.**
3. **That the Australian Government work with state and territory governments and the National Disability Insurance Agency (NDIA) to provide clear guidance about the intersection between the responsibilities of education providers**

under the Standards and the responsibilities of the NDIA under the National Disability Insurance Scheme (NDIS) in relation to support and service provision (including funding) for students with disability.

4. That the Australian Government improve the existing Nationally Consistent Collection of Data on School Students with Disability (NCCD) and develop new models for regular data collection and analysis that are nationally consistent, reported publicly and cover levels of educational access and attainment as well as feedback and complaints.

If you have any questions or if you would like to discuss anything further, please do not hesitate to contact me.

Yours sincerely,



Helen Connolly

Commissioner for Children and Young People
Adelaide, South Australia

- 1. That the Australian Government adequately resource an independent oversight body to ensure proactive rather than reactive compliance with the Standards. This oversight body should inquire into systemic issues and its information-gathering and reporting functions should complement the existing complaints handling functions of the Australian Human Rights Commission and state and territory anti-discrimination bodies.**

The 2010 and 2015 Reviews of the Standards identified accountability and compliance with the Standards as key issues. The 2020 Discussion Paper emphasises that the current “reliance on complaints mechanisms to drive compliance with the Standards is ineffective and could be complemented with more proactive mechanisms”.

Students with disability and their families can make a complaint to the Australian Human Rights Commission (AHRC) if they believe an education provider is not complying with the Standards. The AHRC will attempt to resolve the complaint through conciliation. However, as the Australian Government recognised in its response to the 2015 Review, “there are difficulties in enforcing the Standards unless a complaint of unlawful disability discrimination has been lodged with the AHRC”.

It is concerning that the current complaints-based model places the onus on students with disability and their families to demonstrate non-compliance with the Standards rather than the onus being on education providers and authorities to demonstrate proactive compliance with the Standards.

The effectiveness of the Standards currently depends largely on the capacity and information that families have to be able to advocate for their child. Furthermore, the Standards do not recognise the needs of specific groups, including Aboriginal and Torres Strait Islander children, children from culturally and linguistically diverse backgrounds and children living in regional and remote areas. The complaints-based model further disadvantages those who may already be less able to initiate a complaint.

A lack of communication and consultation remains a critical issue across the board for students and families facing the often inaccessible and time-consuming process of making a complaint, whether to a school or education authority, to an anti-discrimination body or to the AHRC. It is common for families to report that their only contact with the school is once a situation has escalated. This is despite the obligations of education providers and authorities under the Standards and the UNCRC to consult with students and families and to listen to children and take their views seriously.

Without independent and proactive oversight and monitoring at a systemic level, compliance is currently enforced in a reactive way and in response to individual cases. Effectively, there is very little stopping education providers from excluding, restraining or declining to provide support to students with disability.

This office is of the view that strengthening independent oversight is the best way to ensure proactive rather than reactive compliance with the Standards, ensure greater enforceability of the Standards and ultimately ensure that the Standards achieve what they were designed to achieve.

This office therefore recommends that the Australian Government adequately resource an independent body to exercise the following information-gathering functions and reporting functions independently and publicly. Whether this be through the establishment of a new body or extending the powers of the AHRC, the functions of an independent oversight body should include:

- Inquire into systemic issues affecting students with disability in education, particularly the use of restraint and restrictive practices;
- The collection and analysis of nationally consistent data about educational access and attainment for students with disability as well as nationally consistent reporting on complaints data (See Recommendation 3);
- Mediate disputes and provide individual advocacy services; and
- Undertake inspections and visits to education settings to monitor and report publicly on progress against positive practical inclusion indicators (see Recommendation 2).

This office also notes that existing practical guidance materials are insufficient. For example, those that simply advise that “if a participant is not happy with the outcome of a meeting, it is a good idea to call another meeting to try to resolve the issue”.ⁱⁱ Further, despite the government’s 2015 commitment to exploring “self-audit” tools as a tool for greater compliance with and enforceability of the Standards, there appears to be no self-audit tools available.

CCYP is aware that the Government rejected a recommendation from the 2015 Review to establish a nationally consistent monitoring and accreditation model that would strengthen proactive compliance with the Standards because it was unclear that “the benefits would outweigh the cost of such additional reporting mechanism”. It appears that at that time the costs that were considered were short-term in nature and did not look at the long-term advantages to society and the economy as a whole.

This office encourages the government to reconsider supporting the establishment of an independent oversight mechanism in light of the clear evidence highlighted in the introduction of this submission that the long-term economic and social benefits would outweigh any initial set-up costs.

2. That the Australian Government consider reframing key concepts of the Standards to encourage positive practices rather than discourage negative practices, with a focus on practical inclusion and participation outcomes and indicators.

The Standards, particularly those related to bullying and harassment, are currently framed to discourage negative behaviour rather than to encourage positive practice.

Inclusion is influenced by physical and social environments, opportunities and staff behaviours, attitudes and expectations. For children and young people to feel safe and included, the Standards have to be more than just physical safety – it is about feeling valued, accepted, listened to and taken seriously. When one student is excluded or made

to feel unsafe, nobody feels safe. In contrast when everyone feels safe and is included, everyone benefits.

The Standards should emphasise the wider benefits of an inclusive school culture, which are often missed. For example, certain modifications to teaching can make learning engaging for all students, with or without disability. Ramps can make it easier for all people, not just students who use wheelchairs, to access the school.

Reframing the Standards to focus on positive and practical inclusion and participation outcomes and indicators is likely to address a culture of low expectations for students with disability at both the classroom level and the whole school level. This is particularly crucial in light of evidence from a 2016 Senate Inquiry, which found that the “biggest predictor of success of a child ... is that people around them have expectations of them”.ⁱⁱⁱ

CCYP understands that the Standards are not prescriptive and the flexibility of the Standards is desirable to the extent that adjustments need to be made in response to the individual needs of students.

Nevertheless, evidence suggests that teachers need to be better equipped to identify and understand disability-related need and respond safely and appropriately with reasonable adjustments and support strategies, including evidence-based positive behavioural support approaches. Teachers also need to be better equipped to engage with parents.

UNESCO and the International Bureau of Education have summarised the following eight indicators that are associated with greater inclusion:

- 1. Everyone is made to feel welcome**
- 2. Students are equally valued**
- 3. There are high expectations for all students**
- 4. Staff and students treat one another with respect**
- 5. There is a partnership between staff and families**
- 6. The school is accessible to all students**
- 7. Senior staff support teachers in making sure that all students participate and learn**
- 8. The school monitors the presence, participation and achievement of all students.^{iv}**

These indicators could be used to inform any reframing of the Standards and guidance for teacher education and training. Ultimately however, any changes to the Standards themselves are of limited use without proactive and independent oversight mechanisms to ensure compliance with and the enforceability of the Standards (See Recommendation 1). An adequately resourced oversight body would be able to monitor progress nationally against these key inclusion indicators.

3. That the Australian Government work with state and territory governments and the National Disability Insurance Agency (NDIA) to provide clear guidance about the intersection between the responsibilities of education providers under the Standards and the responsibilities of the NDIA under the National Disability Insurance Scheme (NDIS) in relation to support and service provision (including funding) for students with disability.

This Office acknowledges that the NDIS was not designed to improve education access and outcomes for people with disability. Nevertheless, there is an obvious overlap as children and young people with disability spend a significant amount of time in the school system. School should be helping children and young people, including those living with a disability, to set up them up for their future. It is there where they make friends, connect with others, learn and play. At the same time, for students with disability, accessing services outside of school can impact school attendance and participation.

The Standards mention specialised services, including personal care, therapy and healthcare as well as services provided by speech therapists, physiotherapists and occupational therapists. However, the rights, obligations and measures of compliance under the Standards are unclear. There is currently a lack of integration and information-sharing between mainstream education services and NDIS services. This limits the capacity of education providers to provide the right support at the right time.

There needs to be clearer guidance about the intersection between the NDIA and mainstream service providers, including education providers, in terms of facilitating and funding support services. Although NDIS planners are obliged to follow recommendations made by allied health providers when it comes to the planning and provision of support and services in other settings, it is unclear from the Standards whether the same obligation applies to education providers.

Clearer guidance would create consistency across classroom settings and formal assessment situations, and particularly help those who do not meet the “threshold” of a particular funding model and are falling through the gaps between mainstream and specialised support services.

This would enable the timely transfer of information about past assessments or past adjustments made to support a student with disability. It would also address a key problem that previous Reviews of the Standards have consistently identified: significant gaps in planning and supporting transitions into the education system, between education institutions and out of the education system and into the workforce.

Minimal support is available for those with unverified or undiagnosed disability. In order to access Education support, students often require a disability diagnosis. This process can take a long time and without support, families must increasingly pay for services.

Given that appropriate funding and appropriate service planning and service delivery is dependent on adequate data, it is also concerning that funding is based on inadequate data (See Recommendation 4). This office notes that the Australian Government emphasised in response to the 2015 Review of the Standards that consistency in funding is “not achievable”.

Even if “consistency is not achievable”, clearer guidance about the responsibilities of education providers under the Standards to make reasonable adjustments and support and the responsibilities of the NDIA under the NDIS is achievable.

4. That the Australian Government improve the existing Nationally Consistent Collection of Data on School Students with Disability (NCCD) and develop new models for regular data collection and analysis that are nationally consistent, reported publicly and cover levels of educational access and attainment as well as feedback and complaints.

Nationally consistent and publicly reported data collection and analysis is central to supporting accountability and proactive compliance with the Standards. It is the basis of appropriate service funding, planning and provision and central to a complete understanding of the effectiveness of the Standards.

New models of regular data collection and analysis should use consistent definitions of disability and monitor the following:

- The prevalence of disability according to consistent definitions;
- Levels of educational access and attainment;
- Rates of exclusions, suspensions and expulsion for students with disability; and
- Feedback and complaints from students with disability, their families and carers, and from education providers.

There is currently no systematic collection and reporting of complaints data. Although the Government agreed to explore the feasibility of coordinated collection and analysis of relevant complaints data at the national level in its response to the 2015 Review of the Standards, no action appears to have been taken in this regard.

The introduction of the Nationally Consistent Collection of Data on School Students with Disability (NCCD) has been welcomed as a significant first step. According to the NCCD, nearly one in five school students across Australia received some form of adjustment due to disability in 2019. While the NCCD records the number of students with disability in schools and the adjustments they receive, it does not capture levels of education access and attainment.

Further, the NCCD data relies on education providers to report data and is therefore likely to underrepresent the prevalence of disability-related need. Students and parents are not given any opportunity to report their support needs and inform the NCCD.

This Office supports the recommendation made by the National Children’s Commissioner in the 2019 Children’s Rights Report that the NCCD should include children that do not qualify for support or do not have access to mainstream schools.^v

ⁱ Hemphill, S., Broderick, D. and Heerde, J. 2017, "Positive associations between school suspension and student problem behaviour: Recent Australian findings," *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice*, p. 9.

ⁱⁱ Nationally Consistent Collection of Data on School Students with Disability, Australian Government, "Disability Standards for Education: A practical guide for individuals, families and communities", Wider Support Materials: Was the meeting successful? Available at <https://www.nccd.edu.au/wider-support-materials/was-meeting-successful>.

ⁱⁱⁱ Senate Standing Committee on Education and Employment, "Access to real learning: the impact of policy, funding and culture on students with disability", 2016, p. 24. Available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report.

^{iv} UNESCO and the International Bureau of Education 2016, "Reaching out to all learners: A resource pack for supporting inclusive education", p. 47. Available at <http://unesdoc.unesco.org/images/0024/002432/243279e.pdf>.

^v National Children's Commissioner, Australian Human Rights Commission, 2019. In Their Own Right – Children's Rights Report 2019, p. 18. Available at <https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>.