

24 September 2020

Our ref: VK-HDL&DAN

Disability Standards for Education Review Team  
Disability Strategy Taskforce  
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Dear Disability Standards for Education Review Team

### 2020 Review of the Disability Standards for Education 2005

Thank you for the opportunity to provide feedback on the review of the Disability Standards for Education 2005 (the **Standards**). The Queensland Law Society (**QLS**) appreciates the opportunity to assist this important review.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of the QLS Health & Disability Law Committee, and members of the QLS Diverse Abilities Network who have lived experience with the issues considered by the review.

We note that previous reviews of the Standards undertaken in 2010 and 2015 identified that further effort and support tools were urgently required to ensure effective operation and delivery of the Standards.

Our members note with disappointment that several key areas identified as requiring improvement in previous reviews have not been appropriately addressed. These include the complaints mechanism for the Standards, and the efficacy of accountability and compliance instruments.

1. *Are the **rights, obligations, and measures of compliance** set out in the Standards (and its Guidance Notes) **clear and appropriate**?*

On balance, QLS considers the rights and obligations set out in the Standards to be clear and appropriate. However, our members report a disconnect in practice which is, in part, due to insufficient measures of compliance underpinned by insufficient funding, resources and training.

QLS has provided examples of some of the gaps in the provision of equal access to education for persons with disability in our response to the Education and Learning Issues Paper published by the



## 2020 Review of the Disability Standards for Education 2005

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the **Disability Royal Commission**). A copy of this submission is **enclosed**, and we refer in particular to 'Attachment A' of the same which illustrates a variety of practical and operational issues experienced by QLS members in the course of educational engagement.

2. *Do students, families and carers, educators, education providers and policy makers **know about, understand, apply and comply with the rights, obligations and measures of compliance in the Standards?***

QLS members with lived and practical experience in this area overwhelming reported that they were not aware of the existence of the Standards. This feedback was collected from members affected by disability and associated with the education system in varying capacities: as the parent or carer of a child with disability who required adjustments in the provision of education at a primary, secondary and/or tertiary level, as a former student with disability, or as an educator.

This demonstrates a systemic failing on the part of government to adequately equip education providers with the resources to develop strategies that effectively communicate information relating to the existence and operation of the Standards to persons directly affected, and to the wider community.

Legal practitioners are adept at collating and reviewing relevant and associated documentation relating to a particular issue. It follows that, if legal practitioners who are directly impacted by the Standards have not been made aware of its existence or application, it is likely that many other affected persons also do not know about the Standards and as a result, cannot assess if the Standards have been properly applied to their individual circumstances. They will also be unaware of any complaint or monitoring mechanisms and assistance which may be required to remedy issues encountered.

This failing must be addressed.

3. *In the 15 years since the Standards were developed, **have the Standards contributed towards students with disability being able to access education and training opportunities on the same basis as students without disabilities?***

QLS understands that previous reviews, such as those undertaken as required in 2010 and 2015, have identified several areas which require improvement.

The feedback from our members to this and to various other submissions including those made to the Disability Royal Commission, lend significant weight to the view that the identified advancement of several key elements of the Standards has not been sufficiently progressed. This includes in areas of enrolment, participation, student support services, and the elimination of harassment and victimisation.

The Society has recently considered some of these issues in submissions made to the Disability Royal Commission (again addressed in the enclosed QLS response to the Education and Learning Issues Paper). Issues of inclusion, participation, and protection from discrimination for students with 'invisible' forms of disability, were considered in the QLS response to the Senate Inquiry into services, support and life outcomes for autistic people in Australia and need for a National Autism Strategy (the **Inquiry**). Please find a copy of the QLS correspondence in relation to the Inquiry **enclosed**. We draw your attention particularly to our response to item f (ii), which deals with the improvements which are urgently required to positively impact upon the education targets for students with autism spectrum disorder (see pages 5 – 8).

4. ***Whether, and to what extent, the Standards are making a positive difference towards students with disability being able to access education and training opportunities on the same basis as students without disability.***

## 2020 Review of the Disability Standards for Education 2005

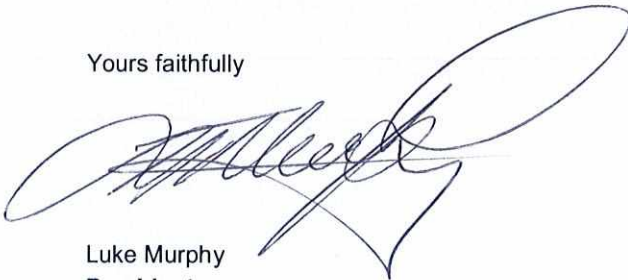
QLS considers the existence of the Standards to be a critical aspect of delivering equitable access to education and comparable learning outcomes for persons with disability. However, the extent to which the Standards are making a positive difference to students with disability is questionable particularly the apparent lack of community knowledge that the Standards even exist.

QLS would welcome the opportunity to discuss required improvements to the Standards with the review team, including with respect to development and implementation of improved communication, monitoring of the Standards, complaints and monitoring mechanisms.

Finally, as education system experiences will likely inform many of the submission to the Royal Commission, QLS recommends that a further review be conducted once the findings of the Royal Commission are delivered.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Luke Murphy', with a large, sweeping flourish extending to the right.

Luke Murphy  
**President**



28 August 2020

Our ref: HD-VK/KS

Royal Commission into Violence, Abuse,  
Neglect and Exploitation of People with Disability  
GPO Box 1422  
Brisbane, QLD, 4001

By email: [DRCAnquiries@royalcommission.gov.au](mailto:DRCAnquiries@royalcommission.gov.au)

Dear Sir/Madam

**Education Issues Paper**

Thank you for the opportunity to provide feedback on the Education Issues Paper. The Queensland Law Society (QLS) appreciates being consulted on this important Issues Paper.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Health and Disability Law, and Human Rights and Public Law Committees and the QLS Diverse Abilities Network, whose members have substantial technical expertise and lived experiences in this area.

QLS acknowledges that this Royal Commission was established in April of 2019 due to increasing concerns regarding abuse, neglect and other broader issues faced by persons with disability. We also note the impact that COVID-19 has had on persons with disability and the limitations faced by this Commission to address these issues at public hearings throughout the pandemic.

In particular, we acknowledge the advocacy the Commission was to engage in at a public hearing scheduled for March, but which was postponed due to COVID-19, was to examine the experiences of students, parents and teachers. Areas of concern for both the QLS and the Commission with regard to education include restrictive practices, entry into education, and experiences of inclusion and exclusion, particularly with regard to extra-curricular activities.



### Right to Education

QLS has concerns about the adequacy of the current legal framework and its ability to promote and support inclusiveness of these communities. The Queensland *Human Rights Act 2019* (the **Human Rights Act**) protects for the right to education in section 36 (1) and (2). The wording in sub-section 2, 'based on the person's abilities' raises concerns for children with disabilities. The Department of Justice and Attorney General has confirmed that this is to be read in-line with section 15 which provides that all rights set out in the Human Rights Act are intended to be enjoyed by all 'without discrimination'.<sup>1</sup>

It remains unclear, however, whether this new Act has had an impact on inclusivity in practice. In schools, the main concerns relating to inclusivity relate to exclusion practices, and the feedback from QLS members is that teachers are not equipped with the necessary support, resources and training to assist children with disability to feel included in the classroom and to be compliant with section 36 of the Human Rights Act. Without the necessary inclusion and support in classrooms, teachers are left to grapple with students who become disengaged and disinterested in their education.

It is also important that inclusiveness and the right to education, without discrimination, is equally accessible for marginalised groups such as students who identify as being part of the LGBTQIA+ communities. These marginalised communities, which also includes Aboriginal and Torres Strait Islander and migrant children, may experience discrimination as a result of school policies. This is particularly demonstrated for LGBTQIA+ students who face higher rates of violence, abuse and exclusion in schools where religious conflicts disallow the acceptance of students who identify as part of this community.<sup>2</sup> As mentioned above, it is yet to be seen whether the new Human Rights Act will in fact operate to limit this kind of discrimination. A proactive approach to providing tangible support for these students, including departmental funding for programs which promote an inclusive and diverse culture within schools, is required to address some of these issues.

Families are severely impacted by issues of discrimination, particularly if this discrimination is aimed at children with disability in the family. Principals are required to consider other disciplinary options before a decision is made to suspend or expel a student, based on the Principal's Guidelines.<sup>3</sup> However, our members advise that it is common for students to be suspended or expelled from a school due to behaviour associated with their disability. Families and students often find it difficult to understand the reasons for the student's expulsion or suspension, which is often a result of inadequate communication between the

<sup>1</sup> Queensland Human Rights Commission, Right to Education Fact Sheet, [https://www.qhrc.qld.gov.au/data/assets/pdf\\_file/0006/19905/QHRC\\_factsheet\\_HRA\\_s36.pdf](https://www.qhrc.qld.gov.au/data/assets/pdf_file/0006/19905/QHRC_factsheet_HRA_s36.pdf).

<sup>2</sup> Edward McCann, Regina Lee and Michael Brown, 2016, 'The experiences and support needs of people with intellectual disabilities who identify as LGBT: A review of the literature' *Research in Developmental Disabilities* 57, pages 39-53; The Guardian, Paul Karp 2018, Gay students could be rejected by religious schools under new laws, <https://www.theguardian.com/world/2018/oct/10/gay-students-could-be-rejected-by-religious-schools-under-new-laws-report-claims>.

<sup>3</sup> Principal Guidelines, Department of Education Queensland, <https://ppr.qed.qld.gov.au/education/learning/Procedure%20Attachments/Student-discipline/Principal-guidelines-student-discipline.pdf>.



school and the parents or caregivers. This is particularly the case in relation to prior information from the school about what behaviours would or do result in these precautions being taken. Practitioners in the area have found that incident reports typically do not sufficiently detail the reasons for suspension/expulsion, and parents often feel like these decisions are not fair and are discriminatory and exclusionary in nature. QLS considers that a review of the intended purpose and operation of suspension and expulsion actions is required, including the impacts of these actions for students with disability.

It is reported that by the time a family decides to take action against the discrimination experienced by their child, a breakdown of the relationship between the schools and family has occurred. This breakdown is often irretrievable, and usually motivate a family to move the child to a different school. This is often made more difficult due to catchment policies, and with focused disability support programs in practice at specific schools. Students who have faced issues with sexual and physical violence are often unable to get into specialised schools because of these limitations.

These issues and the discrimination encountered by students with disability is not isolated to primary and secondary school environments. Some of the inherent issues experienced by persons with disability in the course of undertaking tertiary and other types of further education are discussed below (see pages 9-11).

### *Dispute Resolution and Disability Education*

Alternative Dispute Resolution (ADR) may be a beneficial alternative to a formal court hearing and provides an opportunity for the school and family to engage in helpful negotiation regarding the next steps for the child. The vast majority of discrimination claims in Australia are resolved through ADR and very few proceed to the courts.<sup>4</sup> The main benefits of using ADR include reduced expenses, more efficient timelines and the informal nature of the process lowers the levels of stress involved for all parties. Particularly for discrimination claims, the benefit of confidentiality allows parties to negotiate freely knowing what is said cannot be used against them or brought up in court.<sup>5</sup>

QLS believes that when a discrimination issue arises for a student in an educational context, the families and schools should consider engaging in the ADR process to ensure the negotiations are mediated by an experienced professional. This will enable both parties to negotiate with an equal bargaining power, the support of their mediators and allow the parties to work towards a solution rather than the dispute resulting in a breakdown of relationships. The focus should be on working towards a solution whereby the teachers and school staff are better equipped to support students with disability and for these students to have access to their right to education. Specialist mediators must be engaged who are cognisant of the sensitive nature of these matters, and appropriately qualified in dealing with matters involving

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<sup>4</sup> Alysia Blackham and Dominique Allen, 2019, 'Resolving Discrimination Claims outside the Courts: Alternative Dispute Resolution in Australia and the United Kingdom' *Australian Journal of Labour Law* 253-278, [https://minerva-access.unimelb.edu.au/bitstream/handle/11343/233958/Blackham%20Allen%20AJLL%202019\\_for%20distribution.pdf?sequence=1&isAllowed=y](https://minerva-access.unimelb.edu.au/bitstream/handle/11343/233958/Blackham%20Allen%20AJLL%202019_for%20distribution.pdf?sequence=1&isAllowed=y).

<sup>5</sup> Ibid.



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children. Informal ADR options should be considered in an early intervention context, before the relationship between the school and the family breaks down irretrievably.

### *Navigating Discrimination in the Legal System*

Disability discrimination and discrimination laws in Australia are broad and it is often unclear to a complainant whether it would be more beneficial to pursue a state or federal route to resolution. QLS considers that a comprehensive review of the laws be undertaken, as a priority, with the view that these laws should be consolidated and simplified to assist families and children who struggle with disability discrimination. This will assist in developing best practices which do not limit rights and expedite the process in providing compensation for discrimination, abuse, neglect and violence against persons with disability.

QLS members have highlighted experiences where students and families have struggled with expulsion, threats of expulsion or suspension based on behaviour related to the students' disabilities. Threats of exclusion or expulsion can at times be validated by the school, and may be appropriate in some circumstances, but we are informed that in many instances these courses of action only serve to further the exclusionary approach to the education of affected students. Our members report an increase in disappointment from parents in the legal system in its ability to appropriately address discrimination and the stressors for parents and students who engage the legal process. The legal system's inefficiencies makes it very difficult, if not impossible, for the child to continue to go to school whilst the legal process is ongoing.<sup>6</sup> Improvements to the system's efficiencies will ensure that these children and their parents can address the discrimination whilst ensuring the child is not further disadvantaged via exclusion or removal from their education in the process. Families are not typically focused on obtaining financial compensation, but rather on achieving the systemic changes needed in the legal system for efficient resolution of their matters and the education system to allow their children to obtain an equal level of education to their peers.

### **Accurate and Accessible Diagnosis**

Accurate diagnosis is critical as it determines the approach and identifies the necessary resources to ensure their education, health care and personal requirements are met and work to support their right to accessible and equal education. Current practice places the onus on parents to navigate the (usually complex and unclear) process of integrating a program to support the child's changed learning requirements in the time following diagnosis. This usually includes attempting to self-determine, or sometimes in conjunction with clinicians and allied health professionals, when and what additional support they might seek. The parents carry the onus to seek change when certain needs are not being met for their child. In many cases, parents do not have the capacity or financial capital to identify or seek out additional assistance required, such as the development of educational plans. The parents' education can also hinder whether their child, or they themselves, are diagnosed in the first instance.

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<sup>6</sup> Of 2,046 complaints received by the Australian Human Rights Commission, 42% were lodged under the *Disability Discrimination Act*. Finalisation of these complaints took on average 4.6 months. Australian Human Rights Commission 2017-2018 Complaint Statistics, [https://humanrights.gov.au/sites/default/files/AHRC Complaints AR Stats Tables 2017-18.pdf](https://humanrights.gov.au/sites/default/files/AHRC_Complaints_AR_Stats_Tables_2017-18.pdf).



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Financial constraints are a common concern for many parents who have a child or children with disability and who cannot afford the best or highest level of support to ensure their child is obtaining the best education possible. The identification, development and implementation of the correct education adaptation based on diagnoses can be complicated and cause further stress for parents and schools. Educational plans are set up for students based on their disabilities and the kinds of approaches that are best suited to them. It is for this reason that schools and teachers should be equipped with the necessary skills and resources to ensure these plans are implemented comprehensively for each student with such a plan.

### Increased Resources and Training

#### *Invisible Disabilities*

The presence of certain conditions, such as autism and epilepsy are sometimes referred to as 'invisible disabilities' and can substantially affect a child's ability to fully engage with the education system, as a consequence of late diagnosis and insufficient resources to meet the learning requirements of the child once diagnosed.

Neurocognitive testing is rarely undertaken to determine whether and to what extent these disabilities are effecting a student's ability to learn, and is even less likely to be facilitated and paid for by the school for those identified students. Intelligence/cognitive testing provides a comprehensive baseline of the learning challenges that a child may be experiencing, and is an important step in developing the appropriate education plan and support system. These tests, however, can cost up to \$2,500.<sup>7</sup> As a result they are often out of reach for parents or caregivers to commission privately.

#### *Assessment tools and Individual Education Plans*

The Wechsler Intelligence Scale for Children Australian and New Zealand Standardised, Fifth Edition (WISC-VA&NZ) is an individual administered comprehensive clinical instrument for assessing the cognitive ability/intelligence of children between the ages of 6 years, 0 months and 16 years, 11 months.<sup>8</sup> The Fifth Edition, WISC-V, is highly regarded by academics and paediatric specialists as a tool to see how education and learning practices can best be adapted to suit an individual's needs.

QLS recommends that this test, or other assessment mechanisms as advised by appropriately qualified paediatric specialists, be made easily accessible to schools through discrete funding which will enable schools in consultation with parents and/or caregivers to engage a paediatric psychologist to conduct assessments for students who they consider would benefit. These students may be identified by the parents or caregivers, by a paediatric specialist engaged

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<sup>7</sup> Advanced Neuropsychological Treatment Services, 'Neuropsychological Services', <https://neurotreatment.com.au/services/ANTS-neuropsychological-assessment-and-treatment-service-costs.pdf>

<sup>8</sup> Child and Educational Psychologist, Psych Support Assessment Services: Wechsler Intelligence Scale for Children (WISC V) <https://www.child-psychologist.com.au/wechsler-intelligence-scale-for-children.html>.



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either privately or through the NDIS, or by the school staff in conjunction with an appropriately qualified guidance counsellor, (the staff having identified an undiagnosed student requiring additional learning support). Adequate funding and resourcing for specialist staff including guidance counsellors to work with students and their families and support staff to assist students inside and outside the classroom, is crucial. Funding and resourcing of schools is discussed in detail from page 7.

This will result in lessening the burden on parents and caregivers to identify appropriate learning supports for their child, and will allow the family and school to ensure that the child's right to education is met. These tests should be implemented in schools by appropriately qualified guidance counsellors or child psychologists where possible, in conjunction with increased training for educators and funding to assist positive learning outcomes for students. Some State jurisdictions and schools have already started implementing this test (or other tests as recommended by appropriately qualified paediatric healthcare professionals, such as paediatric psychologists), however QLS believes that there should be a nation-wide approach to the accessibility of these tests in public schools.

A further matter requiring urgent attention is the need for adequate funding to research and develop culturally appropriate cognitive and other testing for Aboriginal and Torres Strait Islander children and young people. For example, experts have identified cultural bias in Wechsler testing scales.<sup>9</sup> Researchers on this issue have called for the development of more appropriate assessments 'based on the skills and abilities taught and valued'<sup>10</sup> in Aboriginal and Torres Strait Islander cultures. Adjunct Professor Tracy Westerman is a leading researcher in this area and has identified for example, the limitations in '[a]ssessing Indigenous people outside of cultural context'<sup>11</sup>. Dr Westerman says "practitioners need to ensure that the assessments they have conducted 'match' how Indigenous people are viewed within their culture. This has two elements. First, whether the symptoms are evident across both mainstream and cultural contexts, and second, whether these symptoms impair the individual within both of these environments"<sup>12</sup>. Adequate funding and engagement of Aboriginal and Torres Strait Islander experts and communities is essential to ensure that initial teaching and ongoing professional development is available to health practitioners so that services, assessments and therapeutic approaches are culturally appropriate and accessible. We also support additional funding and programs directed towards increasing the number of Aboriginal and Torres Strait Islander Peoples in these professions.

### *Support for Teachers, Schools and Families*

Significant challenges are reported in relation to inadequate communication between parents, external practitioners, experts, schools and school-based practitioners. There is no

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<sup>9</sup> Kylie M. Dingwall, Jennifer Pinkerton and Melissa A. Lindeman, "'People like numbers": a descriptive study of cognitive assessment methods in clinical practice for Aboriginal Australians in the Northern Territory' *BMC Psychiatry* 13(42) =, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3598474/pdf/1471-244X-13-42.pdf>.

<sup>10</sup> Ibid, page 2.

<sup>11</sup> Tracy Westerman, 'Engagement of Indigenous clients in mental health services: What role do cultural differences play?' *Australian e-Journal for the Advancement of Mental Health* 3(3) 88-94, page 2.

<sup>12</sup> Ibid, page 4.



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communication protocol for those who play a role in assisting students with disability, leaving many schools, practitioners and parents without the necessary support or guidance to assist these children in obtaining optimal learning outcomes in an inclusive manner.

QLS considers the removal of restrictive practices and replacement with evidence-based behaviour management strategies, behaviour support-plans, functional behaviour assessments and safeguards will have far-reaching positive impacts on access to proper education for children with disability, and implementing this should be a key reform priority.

There has been some positive action implemented to improve consistent funding for schools to assist students with disability.<sup>13</sup> Resoundingly however, stakeholders, parents and teachers with lived experience report that significant increases in funding are urgently required to support teachers and schools if appropriate and equally accessible learning outcomes for children with disability are to be achieved. This should include expanded tertiary education for teachers to provide comprehensive training for children with special needs and inclusive education, including in relation to developing appropriately tailored lessons and programs for an individual child. Schools must be appropriately resourced to increase the number of special education, academic support, counselling and guidance staff. Education policies should be urgently reviewed to ensure that policies support inclusion and diversity, including neurodiversity. Policies must provide metrics for clarity and accountability, to facilitate the intended outcomes of these policies and ensure that students with disability are not unfairly disadvantaged. Some analysis of the outcomes of current policies in relation to tertiary and further education is discussed below.

### *Increased funding and integration with dedicated disability and inclusion support staff*

QLS considers that significant improvement, including a review of appropriate funding and training resources is required to appropriately accommodate and include students with disability at each stage of their education. We are concerned by reports from our members that schools and staff, students, families and caregivers cannot access necessary resources (such as guidance counsellors) and therefore cannot meet required learning and inclusion requirements. In Queensland, the Department of Education sets out its commitment to inclusive education in its 'Inclusive education policy' – which applies department wide to all state schools and educational settings.

The policy requires a system-wide approach, including the development and implementation of, "*policies, programs and practices to remove barriers and promote inclusive education across the department and within local school communities.*"<sup>14</sup>

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<sup>13</sup> Department of Education, Skills and Employment, What is the Australian Government doing to support students with disability in schools?, <https://www.education.gov.au/what-australian-government-doing-support-students-disability-schools>.

<sup>14</sup> Department of Education, 1 April 2020, *Inclusive education policy*, Version 1.2 available at <https://ppr.qed.qld.gov.au/pif/policies/Documents/Inclusive-education-policy.pdf>.



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The policy also sets out standards for the supporting workforce, making reference to the importance of professional development for school leaders, teachers, department staff, support staff and volunteers.<sup>15</sup>

The policy also notes that the department and all state schools are required to comply with the *Education (General Provisions) Act 2006* (Qld) and state and commonwealth discrimination laws. QLS notes that in addition to the 'Inclusive education policy', the department has developed a supporting framework which includes the Disability Service Plan 2017-2020, and the 'Every student with disability succeeding' plan.

QLS is concerned that the statutory obligations set out pursuant to the legislation and the intended outcomes described in these policies are regularly not met. In addition to the shortcomings associated with the provision of funding and resources for schools, our members report that considerable cultural change is urgently required to prioritise and equalise the importance of providing equal learning opportunities for students with disability, at each school and in every educational setting.

Review of the existing framework must urgently consider the numbers of dedicated disability and inclusion staff, including the number of appropriately qualified guidance counsellors that are available to each school, and how much time these dedicated staff have to allocate their services to a particular school. Each school must be provided access to these staff as required to meet the learning, inclusion and support requirements of their students. Appropriate communication, accountability and oversight channels must be established to ensure that the disability and inclusions service team and the school can form effective partnerships.

### Integration with the National Disability Insurance Scheme

Strategies should be implemented in schools and government departments to improve the relationship between the National Disability Insurance Scheme (NDIS) and the state school system. QLS understands that parents are sometimes forced to apply for funding through the NDIS to fill gaps in education services. Professor Helen Dickson has noted an increase in this practice to support remote learning for children with disability during COVID-19 home-schooling periods.<sup>16</sup> Reliance on the NDIS to facilitate access to education should not be required.

QLS believes that clearer pathways and guidelines should be developed to assist schools and NDIS providers in supporting students with disabilities. We believe that the process of communication between schools, NDIS providers and parents should be streamlined. The onus of developing this process and ensuring these relationships develop should be with the schools as they bear the responsibility of supporting and educating the children. The aim of

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<sup>15</sup> Ibid, 2.

<sup>16</sup> <https://theconversation.com/only-one-fifth-of-school-students-with-disability-had-enough-support-during-the-remote-learning-period-143195>



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this process should be to allow schools and NDIS providers to collaborate whenever students should require their NDIS providers to assist them during school hours on school grounds.<sup>17</sup>

By primarily operating in separate environments, NDIS and school-generated support services are unable to collaborate, resulting in disadvantage to the affected student. QLS recommends that in Queensland, a review of the *Education (General Provisions) Act 2006* (the **Education Act**) should be urgently undertaken with a view to making amendments to:

- recognise that schools have a key role in supporting the positive development of children with disability and to work collaboratively with the student, family, caregivers and other appropriately qualified specialists and allied health professionals to facilitate optimal learning opportunities for the child;
- mandate that schools implement approved adjustments recommended by a student's NDIS-funded specialist, or by an appropriately qualified privately engaged paediatric specialist; and
- ensure that the Education Act, Regulations and associated policies operate in compliance with the Human Rights Act.

We further recommend that a comprehensive and independent review of the process for making complaints to the Queensland Department of Education is required. Our members report that the Department's *Customer complaints management framework*, which promotes the early resolution of complaints, rarely delivers this outcome for students with disability.

The urgency for a comprehensive review is supported by feedback received from our members which indicates that for a student with a disability, the opportunity to fully engage in their education and to be provided with the same access to optimal learning opportunities as their peers rests upon the culture of individual schools, which is highly variable. This inconsistent practice is not compliant with the tenets of the Human Rights Act or the Education Act, and without a complaints process which supports early intervention, collaboration and early resolution of disputes, leaves the Department of Education exposed as affected families are forced to pursue legal pathways to resolution.

### **Beyond primary and secondary schooling: inherent problems encountered in tertiary and further education.**

Several of the issues raised which are experienced by students with disability when attempting to access education in the context of primary and secondary schooling continue to pose significant obstacles to students who pursue tertiary and further education.

These issues often manifest into substantial difficulties faced by students with disability to access and complete tertiary studies on an equitable footing with their peers. Whilst tertiary institutions often develop, to varying degrees, policies which are intended to remove these

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<sup>17</sup> NDIS Provider Access to Queensland Schools, Department of Education, <https://ppr.qed.qld.gov.au/education/management/Procedure%20Attachments/NDIS-provider-access-to-state-schools/Provider-fact-sheet.pdf>



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barriers for students with disability, our members report that these policies often are not adhered to, or do not have the intended effect in practice.

### *Accessibility plans*

Tertiary institutions will encourage students with disability to disclose their disability, provide supporting evidence of their disability including arranging medical practitioners to complete requisite forms in conjunction with a medical certificate, and liaise with the institution's accessibility team to create an accessibility plan. The plan will incorporate various accommodations which are intended to provide equitable access and allow students with disability to complete studies without disadvantage.

An accessibility plan may consider aspects including (but not limited to) providing reading materials in different sizes and/or formats as is appropriate for an individual, additional perusal and response time for examinations, use of computers and accessibility software when undertaking examinations (rather than responses having to be handwritten), and marking considerations and flexibility in relation to oral presentations.

Once an accessibility plan has been completed and approved by the institution, it should be distributed to the staff relevant to the student's curriculum at the start of each semester. In practice however, our members regularly found this had not occurred, or that staff had not reviewed the provided accessibility plan. As a result, students are required to repeatedly advocate for the provision of previously approved accommodations at the beginning and throughout each semester. In many instances, approved resources (such as accessible lecture materials) were provided many weeks after they were required, or not at all.

### *Medical certificates and special consideration for assessment*

Our members also report that several education providers have not implemented policies which appropriately accommodate and manage scenarios where a student cannot attend an assessment date as a result of a medical condition, or where attending would require the student to undertake the assessment when unwell and therefore placing them at a disadvantage.

Whilst this is inappropriate for students without disability who are unwell and can produce the required medical certificate, this is particularly unsuitable for students with disability who have an accessibility plan. The existence of an approved accessibility plan contemplates and requires a degree of reasonable flexibility on the part of the educational institution, in order to facilitate the student's access and ability to equally participate in their education at the institution. It is difficult to reconcile this with the recounted rigidity shown by tertiary institutions, with our members reporting that very limited alternatives are usually offered, if offered at all (such as location or date alternatives for sitting the assessment, extended response time for a student, and other accommodations).

QLS submits that further review of these policies within tertiary educations should be urgently undertaken to ensure that the policy and its application does not directly or indirectly discriminate against students, particularly students with disability, and otherwise accords with the requirements of the Human Rights Act and the *Anti-Discrimination Act 1991* (Qld).

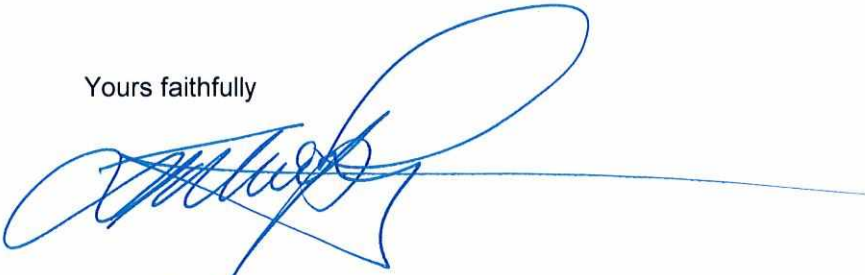
## Education Issues Paper

Significant improvements are required with respect to the communication of and distribution to relevant staff to ensure they are provided, have read, and are resourced to make the required accommodations set out in a student's accessibility plan. The obligation to ensure that these processes are comprehensively carried out and adhered to rests with the institution.

A description of some of the difficulties, including those relating to direct and indirect discriminatory practices and encountered by a QLS member in the course of their tertiary study is enclosed at **Annexure A**.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor Vanessa Krulin via email at [v.krulin@qls.com.au](mailto:v.krulin@qls.com.au) or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy  
**President**



13 August 2020

Our ref: HD-VK/KS

**Confidential**

Committee Secretary  
Select Committee on Autism  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**By email:** [autism.sen@aph.gov.au](mailto:autism.sen@aph.gov.au)

Dear Committee Secretariat

**Inquiry into services, support and life outcomes for autistic people in Australia and need for a National Autism Strategy**

Thank you for the opportunity to provide feedback on the current approaches and barriers associated with services, support and life outcomes for autistic people, and the need for a National Autism Strategy (the **Inquiry**). The Queensland Law Society (**QLS**) appreciates being consulted on this important issue and the related legal, social, and health frameworks.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

QLS is committed to promoting the principles and practices of diversity and inclusion in the Queensland Legal Profession and in the community more broadly. We support this important inquiry and particularly, the steps being taken towards understanding and working to improve early and ongoing access to support, funding for research and to reducing barriers for people with Autism.

This response has been compiled with the assistance of the QLS Health & Disability Law Committee, members of the QLS Diverse Abilities Network and with the assistance of our members who have lived experience in this area.

QLS has reviewed the terms of references and provides the following comments for the consideration of the Select Committee.

## **Inquiry into services, support and life outcomes for autistic people in Australia and need for a National Autism Strategy**

### a. Current approaches to barriers to consistent, timely and best practice Autism diagnosis

Our members report significant deficiencies in the areas of resourcing for support services and funding for research of Autism Spectrum Disorder (**ASD**). As a result, a research deficit in Australia requires clinicians, families and patients to rely on international studies to shape policies. Most studies on parental experiences of ASD diagnosis come from the United Kingdom, with some studies from the United States. Australia is vastly underrepresented in this field of research.

The release of guidelines by the Cooperative Research Centre of Living with Autism and the National Disability Insurance Agency provide guidance around shaping the process of diagnosing Autism in Australia<sup>1</sup> and are intended to bring uniformity and consistency to this process across the country.

The submission made to this inquiry by Reframing Autism strongly recommends that research is prioritised and funded to examine the requirements for positive, helpful and respectful diagnostic communication.<sup>2</sup>

In addition, the submission and recommendations made by the Autism Advisory and Support Service, include:

- Best practice should be a multi-disciplinary approach with a paediatrician, psychologist, and Occupational or Speech Therapist
- An assessment for any comorbid issues should occur at the same time to save time/money and prevent disjointed treatment of the child's needs
- Diagnostic funding should be available across the lifespan and not solely early intervention age groups.<sup>3</sup>

The recommendations from these key stakeholders supports the feedback from QLS members regarding the significant resourcing and research deficit, which negatively impacts access to healthcare, appropriate programs, equal education, employment, housing and social opportunities for people with ASD.

QLS strongly supports the implementation of these recommendations. Very importantly the implementation process must ensure that equal access to services is provided to persons and families who are located in regional and remote areas.

### b. Prevalence of Autism in Australia

QLS notes the submission of The Royal Australasian College of Physicians (**RACP**) refers to estimates of the prevalence of ASD in Australia stating that '*In 2018 Australia's largest ASD-specific service provider, Autism Spectrum Australia (Aspect) estimated that 1 in 70 people in Australia have ASD*'.<sup>4</sup>

QLS understands from other submitters to this inquiry that there is difficulty accessing reliable data as to the prevalence of ASD in Australia<sup>5</sup>. National databases, such as Centrelink and

<sup>1</sup> <https://www.autismcrc.com.au/knowledge-centre/resource/national-guideline>

<sup>2</sup> [Reframing Autism](#)

<sup>3</sup> [Autism Advisory and Support Service](#)

<sup>4</sup> RACP Submission to the Senate Select Committee on Autism, May 2020 at page 5.

<sup>5</sup> AMA Submission to Select Committee on Autism, 7 July 2020, page 1.



## **Inquiry into services, support and life outcomes for autistic people in Australia and need for a National Autism Strategy**

NDIS should be improved to enable the collation of statistics – in consultation with key consumer and healthcare stakeholders and with appropriate privacy protections built in.

Where there are difficulties determining prevalence due to constraints related to access to clinicians and diagnostic assessment<sup>6</sup>, it is critical that adequate funding is provided to enable diagnostic processes to be increased, and in doing so establish equitable access and support for children and adults with ASD.

Privacy issues do not warrant any constraints on the funded research for which QLS advocates. Researchers in the disability and health sectors have access to well-documented protocols for pseudonymisation and anonymisation of individuals' sensitive information for privacy protection.

### c. Misdiagnosis and under representation of females in Autism data, and gender bias in Autism assessment and support services

Significant research is urgently required to improve clinical knowledge of the presentation of ASD in females.

This must lead to the development of both a set of comprehensive and consistent guidelines for diagnosis of girls, and specialised training for professionals in differentiating ASD presentation between the sexes.

QLS is concerned that current clinical knowledge and under-diagnosis has culminated in significant discrimination of non-male persons with ASD. Diagnosis on the basis of perceived gender prevalence has led to delayed access to treatment and exclusion from early intervention programs.

The NDIA report provided to the COAG Disability Reform Council in March 2020 (the **NDIA report**) lists the percentage of male participants with plans based around autism to be 23% and females at 7%.

Further, leading autism expert and clinical psychologist Professor Tony Attwood states:

*"Recently, a fascinating research study conducted in Scotland (Rutherford et al, 2016) showed prevalence rates across the genders at 5.5 boys for every 1 girl for very young children, 3.5:1 for children and adolescents overall, 2.3:1 for adolescents only, and 1.8:1 in adulthood. These findings indicate not only that the true prevalence of ASD in women is far higher than once thought, but also underlines that females are being diagnosed much later."*<sup>7</sup>

QLS supports recommendations from other submitters that differentiation in criteria from the male experience at every life stage is required to build a comprehensive understanding of ASD prevalence in the community. We also support recommendations to ensure that gender discrimination does not impact upon a person's possible diagnosis and access to treatment.

<sup>6</sup> See for example recommendation 1 of the Australian Medical Association, AMA Submission to Select Committee on Autism, 7 July 2020.

<sup>7</sup> <https://attwoodandgarnettevents.com/>



## **Inquiry into services, support and life outcomes for autistic people in Australia and need for a National Autism Strategy**

### d. International best practice with regards to diagnosis, support services and education, effectiveness, cost and required intensity

More effective integration and recognition of international research and practical experience of service providers would assist clinicians and families in Australia. QLS recommends that government consult with key stakeholders to assist in establishing these connections and fostering current Australian research. Alongside this, QLS recommends providing funding which will allow Australian service providers to build international best practices in training, diagnosis, education and support services available in Australia.

We note for example the work being undertaken in Australia by Associate Professor Amanda Webster whose research "is focused on creating inclusive learning communities to support the achievement and self-determination of individuals on the autism spectrum".<sup>8</sup>

This transfer of information and integration must include mechanisms to provide Australian families with accurate information about the evidence-base for – and against - analysis and intervention models, such as Applied Behaviour Analysis (**ABA**) and Early Intensive Behavioural Interventions (**EIBIs**). Information provided must be accessible and appropriately detailed to enable Australians with ASD and their families to make informed decisions about their healthcare choices, in keeping with common law principals of autonomy and self-determination. In relation to ABI and EIBIs, this should include any reasonable knowledge related to long term psychological harms or other adverse impacts which are associated with these treatments.

QLS is advised that international models which provide a comprehensive healthcare framework for diagnosis, support services and education may provide improved outcomes for individuals with a diagnosis of autism. This approach may include:

- training community nurses to identify Autism traits in males and females, so that they may flag any concerns;
- diagnosis by a multidisciplinary team consisting of paediatrician and/or psychologist and allied health professionals; and
- Diagnosis of ASD to be free, with consideration to be given to the provision of free testing to be expanded to include screening for common ASD comorbidities across the lifetime of the participant to capture any ongoing concerns that may arise.

### e. The demand for and adequacy of Commonwealth, State and local government services to meet the needs of autistic people at all life stages

Significant increases in funding, training and resources is required to improve outcomes of people with ASD in relation to health, education, employment, justice and housing. QLS recommends that a program of consultation with key stakeholders is undertaken for each of these sectors, to ensure that resources provided to improve each of these outcomes is appropriately targeted and funded.

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<sup>8</sup> [https://scholars.uow.edu.au/display/amanda\\_webster](https://scholars.uow.edu.au/display/amanda_webster)



## **Inquiry into services, support and life outcomes for autistic people in Australia and need for a National Autism Strategy**

A national strategy with intersecting funding to State and local government services must be developed to ensure that these services are accessible and, where necessary, tailored to meet the needs of particular communities, including Aboriginal and Torres Strait Islander peoples, persons with disability, and persons located in regional or remote locations.

Consideration should also be given to ensuring that evidence-based tests such as the Wechsler Preschool and Primary Scale of Intelligence, ("**WPPSI test**") is able to be accessed (where needed) by children. This should include those with a confirmed diagnosis of ASD and those children not yet diagnosed but who demonstrate behaviours which may be suggestive of ASD. This will ensure that families and schools are equipped with the comprehensive information they need to ensure that individual children's abilities and additional support needs are well understood. This will require all schools to receive adequate funding required to facilitate comprehensive cognitive testing (such as the WPPSI test) of individual students, allowing the student, parents/caregivers and the school to form an understanding of a child's baseline cognitive functioning and facilitate teaching strategies to deliver optimal learning outcomes for these students.

Section 36 of the Queensland *Human Rights Act 2019* provides that:

*(1) Every child has the right to have access to primary and secondary education appropriate to the child's needs.*

*(2) Every person has the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all.*

Consideration should also be given to the particular barriers experienced by children and adults with ASD in regional and remote areas and how diagnostic tests and supports can best be delivered where practitioner resourcing 'on the ground' may be more limited.

f. The interaction between services provided by the Commonwealth, state and local governments including:

- i) health and mental health;
- ii) education
- iii) employment
- iv) justice; and
- v) housing

We refer to our response to item (e) above, and reiterate that services provided in relation to the identified sectors must be adequately resourced. However, it is important to recognise that issues impacting persons with ASD will rarely fall into just one of the categories set out above – in most circumstances, a shortfall in services in one sector will have a negative impact for a person in relation to another sector. For example, a person with ASD who regularly experiences discrimination in the recruitment process and is therefore unable to find stable employment may also struggle to obtain affordable housing. A person who is homeless is more likely to come into contact with the justice system – and so on. Accordingly, effective provision of services, with positive outcomes for people with ASD, depends on a strategic interaction between all levels of government.

## **Inquiry into services, support and life outcomes for autistic people in Australia and need for a National Autism Strategy**

It is therefore critical that Commonwealth, state and local government services intersect, and that there is a shared approach to and responsibility for overall outcomes and objectives to be adopted.

Significant improvements in education services and training are needed to positively impact on the overall health, social and economic prospects for children with ASD.

This includes:

- improved strategies for schools and parents to accommodate students with diverse needs;
- increased training and resourcing of special needs teachers – including availability and quality of tertiary courses;
- resources and funding to integrate children with ASD into schools, whilst ensuring that mainstream teachers and all students are properly supported in classes to achieve optimal learning outcomes. This should include increases to the numbers of special education, academic support, counselling and guidance staff for each school;
- assisting schools to develop policies of inclusion and diversity, including neurodiversity
- promotion and incentivising roles of Heads of Special Education Services and staff within schools and the community;
- implement a program teaching social skills within the national curriculum;
- removal of all restrictive practices and replace with evidence-based behaviour management strategies, behaviour-support plans, functional behaviour assessments and safeguards; and
- implement strategies to improve the relationship between the NDIS and the State school system. We note that parents sometimes are forced to apply for funding through the NDIS to fill gaps in education services. Professor Helen Dickinson has noted an increase in this practice to support remote learning for children with a disability during COVID-19 home-schooling periods.<sup>9</sup>

Improvements in relation to the other sectors outlined above would be supported by:

- Increases to advocacy services, including a robust complaints system to allow for timely investigations in relation to treatment of and impacts to persons with ASD;
- Development of a national autism agency/body that will manage and care for all issues related to having a diagnosis of ASD
- Increases at national, state and local levels, of support coordination for impacted families

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<sup>9</sup> <https://theconversation.com/only-one-fifth-of-school-students-with-disability-had-enough-support-during-the-remote-learning-period-143195>



## **Inquiry into services, support and life outcomes for autistic people in Australia and need for a National Autism Strategy**

- Extension of the Helping Children With Autism program so that it may be an option to anyone with an autism diagnosis whilst waiting for NDIS support.
- Education and training for service providers who support adults with ASD
- Government funded campaigns for inclusion and community understanding should be developed in consultation with advocacy groups, including a program promoting the skills that individuals with ASD have to offer to business and the broader community.

### **g. The social and economic cost of failing to provide adequate and appropriate services, including to support key life stage transitions of autistic people**

Data identified by the Australian Bureau of Statistics and referred to in the submission made to the Committee by Reframing Autism, states only 40.8% of persons identifying with ASD are employed. This is lower than persons with disability, and significantly lower than persons without disability. The data shows that over 31% of persons with autism are unemployed. This amounts to a substantial social and economic burden for these persons, and for the broader population.

Significant funding and expansion of services relating to equal education access for children with autism, as well as improved recruiting services and work training programs would improve employment figures for people with autism, and would result in improved social and economic outcomes.

More needs to be done generally to increase employment of people with ASD. We suggest that consideration may be needed into how artificial intelligence systems affects recruitment practices. For example, there is existing research into how conversational agents<sup>10</sup> may need to be adapted to effectively communicate with neurologically diverse applicants.<sup>11</sup> There are also questions around how *'emotion processing algorithms may misinterpret the facial expressions of someone with autism'*<sup>12</sup>

A fundamental tenet of privacy law is that a person's personal information should only be used in an open and transparent way. The use of a person's personal information in a context involving unfair algorithmic biases is contrary to this privacy principle and State and Federal anti-discrimination laws.

Employers should be provided with better skills and training to support their employees – including whole of staff worker diversity and training. Avenues of workplace complaint should be expanded to better manage relationships and treatment of employed persons with ASD. Whilst there are avenues for complaint under anti-discrimination laws, often by the time a complaint is made the working relationship has broken down to an irretrievable state. An early intervention workplace advocacy scheme, intended to address unfavourable treatment, including bullying and harassment, before the denigration of a relationship to a point at which

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<sup>10</sup> "Conversational agents provide conversational experiences to end users for various practical applications, including customer service [69], education [13], and health support [22]": <http://www.sigaccess.org/newsletter/2019-10/quo.html>.

<sup>11</sup> Special Interest Group on Accessible Computing, October 2019 Newsletter, 'Toward Fairness in AI for People with Disabilities: A Research Roadmap', <http://www.sigaccess.org/newsletter/2019-10/quo.html>.

<sup>12</sup> <http://www.sigaccess.org/newsletter/2019-10/quo.html> at para 2.1.1.

## **Inquiry into services, support and life outcomes for autistic people in Australia and need for a National Autism Strategy**

it cannot be salvaged would assist in better economic and social outcomes overall. Government guidelines and/or oversight may be useful to communicate the standard expected.

Additional consultation is urgently required to address shortfalls in obtaining housing for persons with ASD. As mentioned, this challenge is apparent for individuals who may encounter difficulty obtaining a job and subsequently also, affordable rental accommodation.

Housing is also a significant challenge for elderly persons with ASD, who may be seeking affordable independent living options in retirement villages, navigating the complex retirement villages system of entry, and finding a village with services and options to support the needs of a resident with autism.

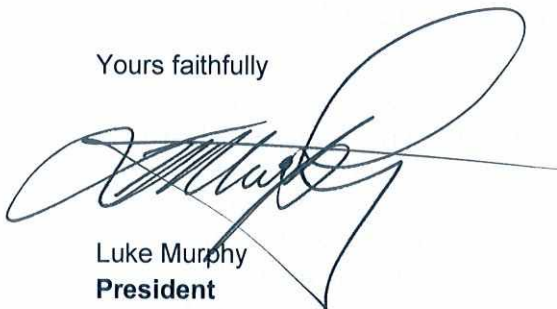
### k. Social inclusion and participation of autistic people with the economy and community

It is apparent that significant improvement in understanding, education, and working practices is required to progress social inclusion and participation of people with ASD in community and business settings.

Government funded campaigns to promote social inclusion and participation must be underpinned by an understanding of the anxiety that is often a constant part of the lives of individuals with ASD<sup>13</sup>. Whilst there is a need to understand and respond to the breadth of barriers and issues experienced by people with ASD (which must be informed by people with lived experiences); governments can also assist in promoting acceptance of ASD by: adequately funding and publishing research to prevent misinformation in the community and providing families and persons with ASD with holistic approaches to support to facilitate equitable access to education, the workforce and community life.

If you have any queries regarding the contents of this letter, please do not hesitate to contact Senior Policy Solicitor Vanessa Krulin at [v.krulin@qls.com.au](mailto:v.krulin@qls.com.au) or Policy Solicitor Kerryn Sampson at [k.sampson@qls.com.au](mailto:k.sampson@qls.com.au), or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy  
**President**

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<sup>13</sup> QLS member feedback based on lived experience.