

Response to research request

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Subject:	Children and young people with a disability in NSW educational settings
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Request

Portfolio Committee No. 3 - Education have commenced an inquiry into children and young people with disability in NSW educational settings.

The committee resolved on 14 December to engage the services of the DPS Research team to prepare a briefing paper to assist in informing members of the following:

- Definitions of disability in educational contexts
- The different educational settings for children and young people with disability
- The sources of funding for children and young people with disability in educational settings
- Recommendations arising from the review of the National Disability Insurance Scheme and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability



Response

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Key points

- The definition of disability used in the [Disability Discrimination Act 1992](#) (Cth) (s 4(1)) is the basis of most definitions of disability used in an educational context in Australia.
- All education providers must comply with the requirements of the [Disability Discrimination Act 1992](#) (Cth), and most must also comply with the [Disability Standards for Education 2005](#).
- There are [rules](#) that set out what supports are the responsibility of the National Disability Insurance Scheme. Some [supports regarding education](#) are the responsibility of other parties, including state and territory governments.
- The [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) made 15 recommendations regarding inclusive education.
- [Independent review into the National Disability Insurance Scheme](#) identified 5 actions regarding education or related issues.

Early childhood

- Early childhood education and care is delivered by a range of different providers, and primarily funded by the Australian Government through the [Child Care Subsidy](#).
- Funding to support the involvement of children with disability in early childhood education and care comes from Australian Government through its [Inclusion Support Program](#).
- The Australian Government also funds an [In Home Care](#) program for children who cannot access other types of early childhood education and care. This program includes, but is not limited to, children with disability.
- The NSW Government has a [Disability and Inclusion Program](#) that supports the involvement of children with disability in not-for-profit community preschools.

Primary and secondary schools

- The Australian Government and state and territory governments fund schools. State and territory governments are responsible for delivering public schools and regulating all schools.
- A disability loading applies at a national level to the [Schooling Resource Standard](#) that estimates the total amount of public funding a school requires to meet the educational needs of its students.
- A [disability loading](#) also applies in NSW to the distribution of funding to public schools. Additional targeted funding is also available for students with moderate to high needs through the NSW [Integration Funding Support](#) program.
- Some students with disability attend schools and/or classes outside of the mainstream that provide education specifically for children with disability. The approach to these schools was the basis of disagreement between Commissioners of the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#).

Further education

- Funding for higher education comes from the Australian Government through a framework set out in the [Higher Education Support Act 2003](#) (Cth).
- Arrangements for the national vocational education and training system are set out in the [National Skills Agreement](#). Funding comes from the Australian and state and territory governments.
- The Australian Government supports students with disability to participate in higher education through the [Higher Education Disability Support Program](#).
- The Australian and state and territory governments provide some fee-free TAFE places for students with a disability.

1. Definitions of disability in educational contexts

The definition of disability in the [Disability Discrimination Act 1992](#) (Cth) (DDA) is (s 4(1)):¹

disability, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person.

To avoid doubt, a **disability** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

The [Disability Standards for Education 2005](#) (disability education standards) are subordinate to the DDA, and accordingly use the same definition of disability. The purpose of the disability education standards is to clarify and elaborate the legal obligations set out in the DDA regarding education, and they specify how training and education are to be made accessible to students with disabilities. Contravention of the disability education standards is unlawful.

The annual [Nationally Consistent Collection of Data on School Students with Disability](#) (NCCD) uses the same definition of disability as the DDA. The NCCD 'collects information about Australian school students who receive a reasonable adjustment allowing them to participate in school education on the same basis as students without disability.'² The [NCCD guidelines](#) take the components of the DDA definition and apply them into 4 broad categories (Table 1).

¹ This definition is also the basis of the definition of disability used in the [Anti-Discrimination Act 1977](#) (NSW): s 4(1).

² Australian Government Department of Education, [Data on school students with disability](#), n.d., accessed 11 January 2024.

Table 1: Application of components of the DDA to the broad categories of disability used in the NCCD

NCCD category	Definitions from the DDA
Physical	Total or partial loss of part of the body The malfunction, malformation or disfigurement of part of a person's body The presence in the body of organisms causing disease or illness The presence in the body of organisms capable of causing disease or illness
Cognitive	Total or partial loss of the person's bodily or mental functions A disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction
Sensory	Total or partial loss of the person's bodily or mental functions The malfunction, malformation or disfigurement of part of a person's body
Social/emotional	A disorder, illness or disease that affects the person's thought processes, perception of reality, emotions or judgement, or that results in disturbed behaviour

Source: [Nationally Consistent Collection of Data on School Students with Disability: 2023 Guidelines](#).

The Australian Institute of Health and Welfare (AIHW) reports on [people with disability in Australia](#), including [engagement in education](#). This data is drawn from the 2018 Survey of Disability, Ageing and Carers (SDAC) conducted by the Australian Bureau of Statistics. The SDAC considers that a person has a disability if:

...they have at least one of a list of limitations, restrictions or impairments, which has lasted, or is likely to last, for at least 6 months and restricts everyday activities.

The limitations are grouped into 10 activities associated with daily living – self-care, mobility, communication, cognitive or emotional tasks, health care, reading or writing tasks, transport, household chores, property maintenance, and meal preparation. The SDAC also identifies 2 other life areas in which people may experience restriction or difficulty as a result of disability – schooling and employment.

The severity of disability is defined by whether a person needs help, has difficulty, or uses aids or equipment with 3 core activities – self-care, mobility, and communication – and is grouped for mild, moderate, severe, and profound limitation. People who always or sometimes need help with one or more core activities, have difficulty understanding or being understood by family or friends, or can communicate more easily using sign language or other non-spoken forms of communication are referred to in this section as 'people with severe or profound disability'.

The NSW Education Standards Authority (NESA) uses the definition of disability from the DDA.³

The disability strategy from the NSW Department of Education does not include a definition of disability.⁴

In 2016–17 the Legislative Council Portfolio Committee No. 3 – Education conducted an [inquiry on the education of students with a disability or special needs in NSW](#). The definitions used in this inquiry were (original references removed):

1.1 Children with a disability, learning difficulties and/or a behaviour disorder are referred to as 'children with special learning needs'.

1.2 Children with a disability are those who, in addition to falling within the broad definition of disability set out in anti-discrimination legislation, meet the disability criteria employed by the Department of Education. This criteria includes a range of conditions: language, physical disability, intellectual disability (mild, moderate and severe), hearing and vision impairment, mental health problems and autism.

1.3 Some children with learning difficulties do not meet the formal disability criteria but still require specific teaching adjustments or strategies to assist them in achieving quality educational outcomes. They may experience difficulties with learning in one or more areas of the curriculum, which may vary in cause, nature, intensity and duration.

1.4 For the purpose of this inquiry, the term 'students with disabilities and special needs' has been used to refer to students with diagnosed disabilities, additional learning needs, behaviour disorder and learning difficulties, unless otherwise specified.

It should be noted that in 2019 NESA changed its nomenclature, replacing the term 'students with special education needs' with 'students with disability'.⁵

³ NSW Education Standards Authority, [Students with disability](#), n.d., accessed 11 January 2024.

⁴ NSW Government, Education, [Disability Strategy](#), last updated 3 May 2022, accessed 11 January 2024.

⁵ NSW Government, [Nomenclature change – students with disability](#), 3 May 2019, accessed 11 January 2024.

2. Arrangements and funding for education of children and young people with disability

This section groups the range of educational settings covered by this inquiry into 3 groups: early childhood, primary and secondary schools, and further education. Information is provided about the overall general arrangements for education within each group, as well as the specific programs and funding that exist for children with disability. This section also provides information about the responsibilities of the National Disability Insurance Scheme (NDIS) regarding education.

2.1 Early childhood

2.1.1 Overview of general arrangements for early childhood education and care

Early childhood education and care (ECEC) is delivered in the years before full-time school and can include preschool, childcare centres, family day care and in home care. ECEC providers can be for-profit, non-profit, community-based organisations or governments.⁶

The Australian Government subsidises the cost of childcare through the [Child Care Subsidy](#) (CCS). The CCS is paid directly to providers and passed on to families as a fee reduction.⁷ The Australian Government also runs grants programs and funds states and territories to deliver preschool. As well as funding and/or providing preschool services, state and territory governments approve ECEC providers and regulate ECEC services through a [National Quality Framework](#).⁸

ECEC services must comply with the requirements of the DDA and the disability education standards apply to preschools and kindergartens, but not childcare providers (cl 1.5).

The [Australian Children's Education & Care Quality Authority](#) (ACECQA) provides [resources](#) for ECEC services to help them understand their obligations under the DDA.

2.1.2 Programs and funding to support ECEC for children with disability

Through its [Inclusion Support Program](#) (ISP), the Australian Government provides tailored support and funding to ECEC services to enable children with additional needs to

⁶ Australian Government Department of Education, [About early childhood education and care in Australia](#), last modified 26 September 2023, accessed 11 January 2024.

⁷ Australian Government Department of Education, [Early childhood](#), last modified 15 December 2023, accessed 11 January 2024.

⁸ Australian Government Department of Education, [About early childhood education and care in Australia](#), last modified 26 September 2023, accessed 11 January 2024; Australian Government Productivity Commission, [Report on Government Services 2023 – 3. Early childhood education and care](#), latest update 6 June 2023, accessed 11 January 2024.

participate in ECEC.⁹ The ISP can provide professional support, specialist equipment and funding, and aims to:

- provide children with additional needs the opportunity to learn and develop next to their typically developing peers
- ensure all children have genuine opportunities to access, participate and achieve positive learning outcomes.¹⁰

The ISP is delivered through 'inclusion agencies', with one in each state and territory. The inclusion agencies provide free advice and support to services, as well as free access to specialist equipment (such as ramps, hoists and seating aids) to address barriers to inclusion.¹¹

The ISP also has an Inclusion Development Fund that can be accessed when barriers to inclusion cannot be resolved by support from the relevant inclusion agency. ECEC services that are eligible for the CCS can apply for funding, of which there are 4 types:

- Employment of an additional educator to increase the ratio of educators to children in an ongoing way
- Immediate or time-limited support that can be used for a limited period until suitable alternatives can be established
- A top up for family day care services to enable them to include a child with additional and ongoing high support needs
- Innovative solutions that provide flexible and tailored inclusion support that goes beyond what can be provided by the inclusion agencies.¹²

The [In Home Care](#) (IHC) program is an Australian Government program which is 'a flexible form of early childhood education and care where an educator provides care in the child's home. It is restricted to families who can't access other types of approved care.'¹³ The IHC program targets 3 cohorts of families: those with non-standard or variable work hours, geographic isolation from other types of care, and complex and challenging needs. Across

⁹ The [ISP](#) specifies that 'additional needs' are defined based on the National Quality Framework as 'the term used for children who require or will benefit or be able to participate more fully from specific considerations, adaptations or differentiation of any aspects of the curriculum, including resources and the environment.'

¹⁰ Australian Government Department of Education, [Inclusion Support Program](#), last modified 10 January 2024, accessed 11 January 2024.

¹¹ Australian Government Department of Education, [Inclusion Support Program](#), last modified 10 January 2024, accessed 11 January 2024.

¹² Australian Government Department of Education, [Inclusion Development Fund](#), last modified 23 November 2024, accessed 11 January 2024; Australian Government Department of Education, [Inclusion Support Program Guidelines Version 2.5](#), July 2023.

¹³ Australian Government Department of Education, [In Home Care](#), last modified 23 November 2023, accessed 11 January 2024.

all 3 cohorts there is a maximum of 3,200 IHC places nationally. These places are distributed to each state and territory, and are allocated by IHC support agencies that are in each state and territory.¹⁴

In the context of the education of children with a disability, in home care may be appropriate for families with complex and challenging needs, including for 'a child with additional needs or a disability whose early childhood education and care requirements cannot be catered for in another approved child care setting, or through other government funded or community-based services.'¹⁵ Families may still be eligible for in home care if the child receives support through the NDIS.¹⁶

The NSW Government has a [Disability and Inclusion Program](#) that provides 'funding and support to enable children with disability or additional needs in not-for-profit community preschools to participate in a quality early childhood education program on the same basis as their peers.'¹⁷ There are 4 components to the program:

- High learning support needs: funding to develop and deliver an individual learning plan for children with high learning support needs
- Inclusive environments: funding for minor environmental adjustments and specialised educational equipment and furniture
- Sector capacity building program: training and support program for preschool staff
- Early childhood inclusive education scholarships: scholarship program for early childhood teachers.

2.2 Primary and secondary school

2.2.1 Overview of general arrangements for school education

The school education system in Australia is complex, and it is beyond the scope of this response to describe it in detail. The NSW Parliamentary Research Service published an [overview of school education in NSW](#) in May 2023, and the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) (the Royal Commission) also provided an [overview of how the school system works](#) in its final report. [Volume 7 \(Part A\)](#) of the final report Royal Commission also provides an in-depth discussion about the right to inclusive education; data, legislation and policies about disability education; barriers to safe, quality and inclusive education; and makes recommendations for how inclusive education can be embedded in the Australian education system.

¹⁴ Australian Government Department of Education, [In Home Care](#), last modified 23 November 2023, accessed 11 January 2024.

¹⁵ Australian Government Department of Education, [In Home Care National Guidelines Version 1.7](#), July 2022, p16.

¹⁶ NSW Government, [Your early childhood education and care options](#), n.d., accessed 11 January 2024.

¹⁷ NSW Government, [Disability and Inclusion Program](#), last updated 5 December 2023, accessed 11 January 2024.

Key features of the school education system are as follows:¹⁸

- There are agreements between the Australian government and state and territory governments regarding funding, policy and other school reforms
- States and territories are responsible for establishing and maintaining public schools, and for regulating public and private schools
- State and territory governments and the Australian Government fund schools, with the funding based on the [Schooling Resource Standard](#) (SRS). The SRS is ‘an estimate of how much total public funding a school needs to meet its students’ educational needs.’¹⁹ There are also private funding sources (such as school fees)
- In NSW recurrent school funding (from both the NSW Government and Australian Government) is distributed to public schools using the [Resource Allocation Model](#) (RAM) which ‘uses a base and loading approach to ... [support] ... the allocation of resources based on the unique context of each school and levels of student need.’²⁰

The DDA and disability education standards apply to all schools.²¹

2.2.2 Funding and programs for students with disability

The SRS that is used to estimate the total amount of public funding that a school needs to meet its students’ education needs includes a number of loadings, including a student with disability loading (Table 2):

This loading provides extra funding, in addition to the SRS base amount, for students with disability. Students attracting the funding under this loading might also attract funding under other SRS loadings.

The loading amount for a school depends on the numbers of students receiving additional support in the classroom to enable them to participate fully in school, and the level of that additional support.

The loading calculation uses information reported in the Nationally Consistent Collection of Data on School Students with Disability (NCCD). ...

¹⁸ Gotsis T, *School education: An overview of challenges and reforms*, Parliament of NSW, 2023; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 7 – Inclusive education, employment and housing – Part A*, 2023.

¹⁹ Australian Government Department of Education, *Schooling Resource Standard*, last modified 14 December 2023, accessed 15 January 2024.

²⁰ NSW Government, Education, *Resource Allocation Model*, last updated 20 October 2023, accessed 15 January 2024.

²¹ Australian Government Department of Education, *Information products for educators and education providers on supporting students with disability*, last modified 30 November 2023, accessed 15 January 2024.

Students who require the top 3 levels of additional support, known as extensive, substantial and supplementary, attract additional funding through the students with disability loading.

The NCCD captures a fourth level of support defined as 'support provided within quality differentiated teaching practice'. This is support provided within the classroom as part of standard teaching practice which is responsive to the needs of all students and delivered without the need for additional funding.

The student with disability loading is about 12.4 per cent of total Australian Government recurrent funding in 2024.

The Commonwealth will provide an estimated \$3.6 billion under the student with disability loading in 2024.²²

Table 2: Estimated 2024 student with disability SRS loading by NCCD level of adjustment

	Estimated SRS funding amount in 2024	Supplementary	Substantial	Extensive
Primary student	\$13,557	42% (\$5,694)	146% (\$19,793)	312% (\$42,298)
Secondary student	\$17,036	33% (\$5,622)	116% (\$19,762)	248% (\$42,249)

Source: Australian Government, Department of Education, [Schooling Resource Standard](#), 2023.

The RAM used by the NSW Government to distribute funding to public schools also includes a [loading for students with disability](#). The low level adjustment for disability equity loading is 'an allocation to support students with additional learning and support needs attending mainstream schools.'²³ The loading provides a learning and support teacher allocation for every school, as well as flexible funding that can be used for additional staffing or other purposes.

In addition to this equity loading, targeted funding is also available for students with moderate to high learning and support needs in mainstream schools through the [Integration Funding Support](#) (IFS) program. IFS funding is particularly targeted at students who have moderate to high learning and support needs and who need personalised support, adjustments and resources beyond existing school resources (such as those

²² Australian Government Department of Education, [Schooling Resource Standard](#), last modified 14 December 2023, accessed 15 January 2024.

²³ NSW Government, Education, [Low level adjustment for disability](#), last updated 27 October 2023, accessed 15 January 2024.

provided through the equity loading). The IFS is not available for students enrolled in specialist support classes in regular or special schools.²⁴

Support for students with disability and their families is also available through the [Disability Advocacy Futures Program](#) (DAFP). This is an existing program delivered by the NSW Department of Communities and Justice, and the NSW Department of Education has formed a partnership to expand the program in the area of the education:

The Department of Education has agreed to provide additional funding to DCJ to increase the capacity of DAFP's providers to deliver individual advocacy services for NSW public school students with disability and their families/guardians, and to support providers to work collaboratively with students, parents, carers and schools. Individual disability advocacy assists individuals to access services and supports. This includes state-wide services for Aboriginal and/or Torres Strait Islanders, and culturally and linguistically diverse disability advocacy, as well as location-based services.²⁵

2.2.3 Non-mainstream schools

One of the features of school education for children with disability is the existence of schools and/or classes outside of the mainstream that provide education specifically for children with disability. These are often called special schools and can also be known as segregated schools. According to the Royal Commission:

Government and private schools educate some students with disability in separate schools, classes or units where education is designed or used to respond to a particular disability or various disabilities. These facilities are usually separate from those for students without disability and, in Australia, are often called 'special' schools, units or classes.

There are government, Catholic and independent special/segregated schools and classes in almost every state and territory...²⁶

Drawing on data from the Australian Curriculum, Assessment and Reporting Authority (ACARA), the Royal Commission notes that the number of non-mainstream schools increased by 26% between 2010 and 2022, stating that the '... growth in special/segregated schools has outpaced the growth in the number of schools overall by 1.5 per cent. As a

²⁴ NSW Government, Education, [Integration Funding Support: Management Procedures](#), n.d., accessed 15 January 2024; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report: Volume 7 – Inclusive education, employment and housing – Part A](#), 2023, p134.

²⁵ NSW Department of Education, [Department of Education and DCJ Advocacy Funding Program – Program Guideline](#), January 2023, accessed 15 January 2024.

²⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report: Volume 7 – Inclusive education, employment and housing – Part A](#), 2023, p105.

result, the proportion of special/segregated schools (out of all schools) increased from 4.4 per cent in 2010 to 5.4 per cent in 2022.²⁷

Only a small proportion of children with a disability (12%) attend a non-mainstream school; those with severe or profound disability are more likely to attend (20% of children with severe or profound disability attend these schools, compared to 1-2% of children with other disability). Of the children with disability attending mainstream schools, 80% attend regular classes, with 20% attending special classes within the mainstream school.²⁸

In 2022 there were 181 non-mainstream schools in NSW, of which 114 were government schools, 14 were Catholic and 53 were independent.²⁹

In NSW public non-mainstream schools are known as 'schools for specific purposes' (SSPs). They provide 'specialist and intensive support in a dedicated setting for students with moderate to high learning and support needs.'³⁰ They cater for eligible children from kindergarten to Year 12, and support children with mental health issues, intellectual disability, autism, physical disability, learning difficulties, behaviour disorders and sensory impairment.³¹

Section 3.1 summarises the recommendations from the Royal Commission that relate to education, and the full text of these recommendations is provided in Appendix 1. The Commissioners agreed on most of the recommendations regarding education, but disagreed on those relating to non-mainstream schools:

- We agree mainstream schools need major reforms to overcome the barriers to safe, equal and inclusive education. However, the Commissioners hold differing views on certain aspects of inclusive education.
- Three Commissioners, Bennett, Galbally and McEwin, consider that to achieve inclusive education, all special or segregated education settings must be closed over a period of 28 years (beginning in 2024). They consider the segregation of people with disability, including in education, to be a significant human rights issue linked with violence against, and the abuse, neglect and exploitation of, people with disability.
- The Chair and Commissioners Mason and Ryan consider the policy choice is not between a non-mainstream school whose students are completely isolated from their

²⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 7 – Inclusive education, employment and housing – Part A*, 2023, p105.

²⁸ Australian Institute of Health and Welfare, *People with disability in Australia*, Last updated 5 July 2022, accessed 15 January 2024.

²⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 7 – Inclusive education, employment and housing – Part A*, 2023, p107.

³⁰ NSW Government, Education, *Schools for Specific Purposes (SSPs)*, n.d., accessed 15 January 2024.

³¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 7 – Inclusive education, employment and housing – Part A*, 2023, p135.

peers and a fully inclusive school system in which all students, regardless of the nature of their disability or the complexity of their support needs, are educated together at all times. They consider that educational authorities should ensure students with complex support needs engage regularly with their peers in mainstream schools in a variety of contexts. They also consider this to be consistent with the goal of a more inclusive society.³²

2.3 Further education

2.3.1 Overview of general further education arrangements

Further education includes higher education delivered by universities and other bodies, and vocational education and training (VET) that can be delivered by TAFE, community education and private training providers, as well as some universities and schools.³³

The framework for the delivery of higher education in Australia is largely set out in the [Higher Education Support Act 2003](#) (HESA), which provides for the Australian Government to give (s 3.1):

- ... financial support for higher education and certain vocational education and training:
 - (a) through grants and other payments made largely to higher education providers; and
 - (b) through financial assistance to students (usually in the form of loans).

HESA also provides for 'financial assistance to students undertaking certain accredited vocational education and training (VET) courses.' (s 3(30))

Arrangements for the national VET system are set out in the [National Skills Agreement](#). Under the agreement the Australian Government provides funding to support training systems in the states and territories, and manages national programs, while the states and territories continue to manage the state-funded VET system and determine the resource allocation within their system.³⁴

The Australian Government regulates further education through the [Tertiary Education Quality and Standards Agency](#) (TEQSA) for higher education and the [Australian Skills Quality Authority](#) (ASQA) for VET.

The DDA applies to all providers of further education,³⁵ and the disability education standards apply to (cl 1.5):

³² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report: Volume 7 – Inclusive education, employment and housing – Part A](#), 2023, p79.

³³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report: Volume 7 – Inclusive education, employment and housing – Part A](#), 2023.

³⁴ Federal Financial Relations, [National Skills Agreement](#), October 2023, A41-A42.

³⁵ Australian Human Rights Commission, [D.D. A guide: Getting an education](#), n.d., accessed 12 January 2024.

- (d) post-compulsory education and training authorities and providers, including:
 - (i) State or Territory Training Authorities; and
 - (ii) public providers that deliver education and training; and
 - (iii) private training providers, including business colleges, enterprises and commercial training businesses; and
 - (iv) community-based not-for-profit providers; and
 - (v) industry skill centres; and
 - (vi) Registered Training Organisations and group training providers that have satisfied the national criteria for provision of services and have been registered by a State or Territory training authority;
- (e) higher education providers, including:
 - (i) universities, that is, self-accrediting higher education institutions, established under State, Territory or Commonwealth legislation; and
 - (ii) any other organisations that offer higher education level courses and are accredited or approved under the relevant State or Territory legislation;
- (f) providers of adult and community education;

As well as complying with the DDA and disability education standards, registered training organisations (RTOs) are required to comply with the [Standards for Registered Training Organisations \(RTOs\) 2015](#). Under these standards RTOs need 'to determine the support needs of students and provide access to educational and support services as necessary, so that students can meet the requirements of the course they are enrolled in'.³⁶

2.3.2 Funding and programs for students with disability

The [Higher Education Disability Support Program](#) (DSP) is an Australian Government program that 'provides funding to eligible higher education providers, to assist with supporting students with disability to access, participate and succeed in higher education'.³⁷ Funding is allocated to higher education providers according to a formula based on the number of domestic enrolled students with a disability; this can be used to train staff, support students with a disability, and modify course content, teaching materials and delivery methods. Additional funding is available to reimburse providers for equipment and educational supports for students with high-cost needs.³⁸

³⁶ Australian Skills Quality Authority, [Providing quality training and assessment services to students with disabilities](#), 12 May 2016, accessed 12 January 2024.

³⁷ Australian Government Department of Education, [Higher Education Disability Support Program](#), last modified 30 May 2023, accessed 12 January 2024.

³⁸ Australian Government Department of Education, [Higher Education Disability Support Program](#), last modified 30 May 2023, accessed 12 January 2024. More detail about the funding available through this program is available in the [Higher Education Support \(Other Grants\) Guidelines 2022](#).

The DSP also funds the [Australian Disability Clearinghouse on Education and Training](#) (ADCET) which aims to ‘contribute to the improvement of the educational experiences and to the successful outcomes for students with disability in post-secondary education.’³⁹

The main focus of ADCET has been on providing information and guidelines for higher education; however ADCET has been funded by the Australian Government Department of Employment and Workplace Relations to undertake [3 projects to assist the VET sector](#) in supporting students with disability. ADCET states that the outputs of the projects were to be delivered in November 2022, but as at January 2024 they did not appear to have been released. The 3 projects are:

- Developing resources to build the capability of RTOs to support students with disability
- Developing resources for course designers to remove unnecessary barriers within training packages and accredited courses
- Reviewing enrolment practices within RTOs for students with disability.⁴⁰

Under the National Skills Agreement the Australian Government and state and territory governments agreed to offer [fee-free TAFE](#) and vocational education places. Some of these places are allocated to course areas of national priority, and some are allocated to priority groups, including people with disability.

The Australian Government also provides [Disability Australian Apprentice Wage Support](#), which is a weekly payment to employers who employ apprentices with a disability. Financial assistance can also be provided to RTOs supporting eligible apprentices with their off-the-job training.⁴¹

The NSW [Smart and Skilled Program](#) helps people get training in skills and industries that are in demand. Eligible students with disability are exempt from fees for any Smart and Skilled training. RTOs delivering Smart and Skilled training to students with disability are funded to support and make reasonable adjustments for students with disability. TAFE NSW is also provided with additional funding to provide support services, specialist staff and equipment for students with disabilities.⁴²

³⁹ Australian Disability Clearinghouse on Education and Training, [About ADCET](#), n.d., accessed 12 January 2024.

⁴⁰ Australian Disability Clearinghouse on Education and Training, [Supporting students with disability in VET](#), n.d., accessed 12 January 2024.

⁴¹ Australian Apprenticeships, [Support for Australian Apprentices with disability](#), n.d., accessed 13 January 2024.

⁴² NSW Government Education, [Smart and Skilled training for students with disabilities](#), last updated 24 July 2023, accessed 12 January 2024.

2.4 Intersection with the NDIS

The [National Disability Insurance Scheme](#) (NDIS) is a national scheme funded by the Australian Government that provides funding and support for people with disability and is implemented through local partner organisations within each state and territory. While it is beyond the scope of this response to provide detail of the operation of the NDIS, the intersection between NDIS responsibilities, funding and supports that relate to education, and those that relate to other parties is of relevance.

The [National Disability Insurance Scheme \(Supports for Participants\) Rules 2013](#) set out what supports can be provided or funded through the NDIS, and what is more appropriately provided or funded through other services (Schedule 1), including for early childhood (cl 7.8-7.10), school education (cl 7.13-7.14) and higher education and VET (cl 7.15-7.16). Table 3 provides a high-level summary of what is and is not the responsibility of the NDIS under these rules. These provisions are expanded in the [Applied Principles and Tables of Services](#) (APTOS) which have been agreed by the Australian and state and territory governments. The APTOS makes reference to the responsibilities of 'other parties', which will frequently be state and territory governments.

Table 3: Responsibilities of the NDIS regarding education

Level of education	Responsibility of the NDIS	Not the responsibility of the NDIS
Early childhood	<p>Personalised supports specific to a child's disability which are additional to the needs of children of a similar age and beyond the reasonable adjustments of ECEC providers</p> <p>Early interventions for children with disability which are:</p> <ul style="list-style-type: none"> • Specifically targeted at enhancing a child's functioning to undertake activities of daily living • Likely to reduce a child's future support needs 	<p>Meeting the ECEC needs of a child with disability required by children of a similar age including through inclusion supports that enable children to participate in ECEC settings</p> <p>Clinical supports provided in the health system</p> <p>New-born follow up provided in the health system, including child and maternal health services</p>
School education	<p>Supports that a student requires that are associated with the functional impact of their disability on activities of daily living, such as personal care and support, transport to and from the school, and specialist supports for transition to further education or employment</p> <p>Any supports funded by the NDIS will recognise the operational requirements and educational objectives of schools</p>	<p>Personalising either learning or supports for students that primarily relate to their educational attainment, such as teaching, learning assistance and aids, school building modifications and transport between school activities</p>
Higher education and VET	<p>Supports that a student requires that are associated with the functional impact of their disability on activities of daily living, such as personal care and support and transport to and from the education facility, and specialist supports for transition to employment</p>	<p>Learning and support needs of students that primarily relate to their education and training attainment, such as teaching, learning assistance and aids, building modifications and transport between education or training activities and general education to employment transition supports</p>

Source: [National Disability Insurance Scheme \(Supports for Participants\) Rules 2013](#)

3. Recommendations regarding education for children and young people with a disability

3.1 Royal Commission into Violence, Abuse, Neglect and Exploitation of People Disability

The Royal Commission was established in 2019 to:

...inquire into what governments, institutions and the community should do to prevent and better protect people with disability from experiencing all forms of violence, abuse, neglect and exploitation, across all settings and contexts... [and also] ... what should be done to promote a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.⁴³

The [final report](#) of the Royal Commission included 222 recommendations, of which 15 related to inclusive education. Of note is that the Commissioners had different views regarding the issue of whether settings exclusively for people with disability (including education settings) should be phased out over time (see also section 2.2.3). The different views of the Commissioners are summarised in the following quotation, and reflected in the different approaches of Recommendations 7.14 and 7.15:

Some Commissioners regard the separation of people with disability from their peers and the community at large as 'segregation', which is incompatible with an inclusive society. Accordingly, they consider that special/segregated schools, which enrol only students with disability, should be phased out over 28 years and all students, regardless of support needs, should be educated together in mainstream schools...

They consider enterprises that employ only people with disability, usually at less than minimum wages, are segregated settings that should also be phased out over ten years. Similarly, they consider group homes and similar forms of accommodation constitute segregated accommodation and should be phased out over 15 years.

Other Commissioners consider that separate schools, accommodation or employment for people with disability should not necessarily be characterised as 'segregated' settings, depending on the particular circumstances. They say the choices are not between wholly separated and wholly inclusive settings, but are more nuanced.

Accordingly they do not consider a more inclusive society for people with disability necessarily requires the phasing out of schools, group homes or employment settings exclusively for people with disability.⁴⁴

⁴³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report: Executive Summary, Our vision for an inclusive Australia and Recommendations](#), 2023, p40.

⁴⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report: Executive Summary, Our vision for an inclusive Australia and Recommendations](#), 2023, p90.

The recommendations relating to education covered the following issues (see Appendix 1 for the full text of these recommendations):

- 7.1 Equal access to mainstream education and enrolment
- 7.2 Inappropriate use of exclusionary discipline against students with disability
- 7.3 Policies and procedures on the provision of reasonable adjustments to students with disability
- 7.4 Participation in school communities
- 7.5 Careers guidance and transition support services
- 7.6 Student and parental communication and relationships
- 7.7 Inclusive education units and First Nations expertise
- 7.8 Workforce capabilities, expertise and development
- 7.9 Data, evidence and building best practice
- 7.10 Complaint management
- 7.11 Stronger oversight and enforcement of school duties
- 7.12 Improved funding
- 7.13 National Roadmap to Inclusive Education
- 7.14 Phasing out and ending special/segregated education
- 7.15 An alternative approach

The 15 recommendations included more than 50 sub-recommendations, the majority of which were directed to state and territory governments and their education bodies. These are highlighted in bold in Appendix 1.

The Australian Government has established a [Commonwealth Disability Royal Commission Taskforce](#) to coordinate action across the range of Australian Government agencies and policy areas that are affected by the Royal Commission's recommendations. The Australian Government's response is being informed by a [consultation process](#) that closed on 19 January 2024.

The Taskforce chairs a Disability Royal Commission Inter-Jurisdictional Committee that includes representatives from all states and territories.

3.2 Independent Review into the National Disability Insurance Scheme

The [Independent review into the National Disability Insurance Scheme](#) (NDIS Review) was launched in October 2022 with the purpose of examining the design, operations and

sustainability of the NDIS, including markets and workforce.⁴⁵ The [report](#) made 26 recommendations and listed 139 actions that were required to achieve these recommendations. The broad areas covered by the recommendations were (see Appendix 2 for the full text of the 26 recommendations):

- Develop a unified system of support for people with disability
- Markets and support systems that empower people with disability
- Stewardship of the united ecosystem
- A five year transition.

Given the specific focus of the review on the operation and future of the NDIS, only a small number of actions related to education or related issues. Relevant recommendations and actions are:

- **Recommendation 1: Invest in foundational supports to bring fairness, balance and sustainability to the ecosystem supporting people with disability**
 - 1.8 National Cabinet should agree to jointly invest in a capacity building program for families and caregivers of children with development concerns and disability.
 - 1.12 National Cabinet should agree to jointly invest in early supports for children with emerging development concerns and disability.
 - 1.13 National Cabinet should agree to jointly invest in programs and initiatives to support adolescents and young adults with disability aged 9 to 21 to prepare for and manage key life transition points, such as secondary school, employment and living independently.
- **Recommendation 2: Increase the scale and pace of change in mainstream and community inclusion and accessibility and improve the connection between mainstream services and the NDIS**
 - 2.5 All Australian governments should take steps to protect the right to inclusive education for children with disability and developmental concerns in early childhood education and care and schools.
 - 2.8 The National Disability Insurance Agency and the Department of Education, with state and territory education and disability agencies, should develop a plan to better connect the NDIS and school education systems and improve educational outcomes for children with disability.

⁴⁵ NDIS Review, [Terms of Reference: Building a strong, effective NDIS](#), 18 October 2022, accessed 10 January 2024.

Appendix 1: Education recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Overcoming barriers to safe, quality and inclusive education

Recommendation 7.1 Provide equal access to mainstream education and enrolment

States and territories should amend education Acts (or the equivalent) to:

- create a legal entitlement for students with disability to enrol in a local mainstream school
- provide that the right to enrolment is subject only to 'unjustifiable hardship' in the sense used in the *Disability Discrimination Act 1992* (Cth).

State and territory governments should take the following actions to prevent gatekeeping in mainstream schools:

- maintain a central record of decisions on enrolment refusal or cancellation and provide an annual report to the responsible minister for education on trends and any additional actions required to address barriers
- establish an independent review process to enable a parent or supporter of a child or young person with disability to challenge a refusal to enrol the child or young person in a school.

State and territory educational authorities should disseminate clear, accessible, transparent material for students with disability and their families on their rights, the obligations of schools relating to applications to attend a local school, and review processes.

Recommendation 7.2 Prevent the inappropriate use of exclusionary discipline against students with disability

State and territory educational authorities should review all regulations, rules, procedures and other instruments regulating exclusionary discipline to ensure they:

- adopt the principle that education providers:
 - should avoid the use of exclusionary discipline on students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff
 - in considering the use of exclusionary discipline, consider the student's disability, needs and age, and the particular effects of exclusionary discipline for young children
 - require steps to be taken before exclusion to ensure an individual behaviour plan and reasonable adjustments have been implemented

for the student, including consultation with the student and their family, carers or supporters.

- include a duty for principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management
- include a robust review or appeals process for students with disability and their families or carers and supporters
- ensure students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline
- support students with disability to re-engage in education post exclusion.

State and territory educational authorities should review provisions governing the registration of non-government schools to impose obligations relating to exclusionary discipline in the non-government sector that are commensurate with those of the government sector.

Section 22(2)(b) of the *Disability Discrimination Act 1992* (Cth) should be amended to cover 'suspension and exclusion' as well as expulsions.

Recommendation 7.3 Improve policies and procedures on the provision of reasonable adjustments to students with disability

- a. **State and territory educational authorities** should develop and make available in accessible form:
- guidelines to enable schools, principals and teachers to comply with their statutory obligations to provide adjustments for children and young people with disability
 - guidelines addressing the relationship between the statutory duty to provide adjustments and duties of care imposed on educational authorities, schools, principals, teachers and staff, such as those imposed by occupational health and safety legislation and the general law
 - guidelines addressing the processes for identifying, planning, implementing and evaluating adjustments required for individual students with disability
 - guidelines explaining the nature and content of the obligation under the Disability Standards for Education 2005 (Cth) (Education Standards) to consult with students with disability and their parents, carers and supporters
 - information explaining the sources of funding for providing supports to students with disability and the procedures governing the allocation of funds for that purpose

- requirements for schools and principals to keep records and to report on the provision of adjustments for individual students with disability
 - guidelines for developing individual learning plans for students with disability, including requirements for keeping records on the learning program for each student and for making the records available to parents, carers and supporters
 - guidelines for ensuring equal access to consent, relationships and sexuality education for students with disability through learning resources, including for neurodiverse students and LGBTIQ+ students.
- b. **State and territory educational authorities** should ensure that education providers have greater access to tools and resources to:
- assist principals and teachers to adapt the curriculum and teaching and assessment practices to enable diverse learners, especially those with complex communication or support needs, to participate in learning experiences on the same basis as students without disability enrolled in the same course (subject to the unjustifiable hardship qualification in the *Disability Discrimination Act 1992* (Cth))
 - support culturally safe adjustments to teaching strategies for particular students with disability, such as First Nations students and students from culturally and linguistically diverse communities.
- c. The Australian Government, through the responsible minister, should consider whether the Education Standards should be amended to address the proposals in a. and b.. However, any such consideration should not delay state and territory educational authorities implementing a. and b..

Recommendation 7.4 Participation in school communities

State and territory school educational authorities should:

- wherever practicable, locate any new non-mainstream schools and, over time, relocate existing non-mainstream schools within or in close proximity to mainstream schools
- facilitate, to the maximum extent feasible, participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers (whether with or without disability) enrolled in mainstream schools
- create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between students enrolled in each setting.

Recommendation 7.5 Careers guidance and transition support services

State and territory educational authorities should implement a careers guidance and transition support service for students with disability to aid transition from all educational institutions to further education and/or open employment. The service should:

- commence transition planning in year 9 in collaboration with students, their parents and carers to help students define and articulate their goals and aspirations beyond school
- take into account the diversity of students with disability, including students with higher levels of support needs, First Nations students and students from culturally and linguistically diverse backgrounds
- provide students with disability and their families access to clear and accessible information and resources about future study options and labour market opportunities
- provide students with opportunities to undertake work experience in open employment aligned with their goals and interests
- provide linkages to further education providers, employment service providers and government services (including the National Disability Coordination Officer Program, the National Disability Insurance Scheme (NDIS) School Leaver Employment Support, Disability Employment Services, and NDIS Local Area Coordinators).

Recommendation 7.6 Student and parental communication and relationships

a. **State and territory educational authorities** should update their policies and guidance for schools to support the implementation and continuous improvement of requirements for student and parental communication and relationships. These should:

- include clear, accessible material for students with disability and their families on their rights and school obligations
- target decision-making for individual students and at the whole-of-school-level
- cover applications to attend a local school and address how students and parents should expect to be involved in decision making, adjustments and complaints handling and informal resolution processes
- indicate types of decisions that require formal parental agreement, such as approaches to behaviour management
- be co-designed with people with disability and their families.

- b. **State and territory educational authorities** should develop material similar to that outlined in a. specifically for First Nations students with disability in consultation with First Nations students with disability, parents and kinship carers. The cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures should be considered in this process.
- c. **School principals** should work with their governing bodies and school communities to establish local school policies, procedures and practices to enable students with disability and their parents, carers and advocates to fully and effectively take part in the school community and decisions that affect a student's educational experience.
- d. In undertaking c., **school principals** should consult with First Nations parents and kinship carers and consider the cultural diversity and understanding of disability in Aboriginal and Torres Strait Islander cultures.
- e. The Australian Government, through the responsible minister, should consider updating the Disability Standards for Education 2005 (Cth) to:
 - ensure students with disability can participate as fully as possible in an age-appropriate manner in decision making concerning their educational programs and the adjustments they require
 - entitle parents, supporters and carers of students with disability to be assisted by schools or principals on decisions relating to school-wide adjustments to facilities and classroom practices of particular significance to students with disability.

Embedding inclusive education

Recommendation 7.7 Inclusive education units and First Nations expertise

- a. **State and territory educational authorities** should establish inclusive education units within the relevant departments. These units should provide:
 - advice to educational authorities, educational institutions and principals on inclusive education issues and policies, and on funding priorities
 - resources and advice to schools and teachers about implementing inclusive education.
- b. **Educational authorities** should ensure that inclusive education units contain First Nations expertise to allow them to take actions required to improve access to inclusive and culturally appropriate education for First Nations students with disability.

Recommendation 7.8 Workforce capabilities, expertise and development

Knowledge and skills

- a. The Education Ministers Meeting should commission the Australian Institute for Teaching and School Leadership (AITSL) to review and amend the Australian Professional Standards for Teachers (APST) to embed a human rights based approach to inclusive education for students with disability across teachers' careers.
- b. To provide guidance for teachers on the revised APST, the Education Ministers Meeting should instruct AITSL to develop an inclusive education capability framework, setting out the knowledge, skills and attitudes to deliver inclusive education.

Continuing professional development

- c. **State and territory educational authorities** should create and implement professional development strategies based on an inclusive education capability framework for principals, teachers, teaching assistants and teachers of deaf children.

Disability expertise and skills shortages

- d. The Education Ministers Meeting should expand the National Teacher Workforce Action Plan to identify actions that can strengthen initial teacher education in inclusive education and attract and retain people with disability and others with expertise in delivering inclusive education.
- e. **State and territory governments** should increase access to expertise in inclusive education in government schools by:
 - employing lead practitioners specialising in inclusive teaching, behavioural support and deaf education to work across schools in a regional catchment to initiate and lead activities that focus on improving educational opportunities for students with disability, including by establishing inclusive learning environments that meet the needs of students
 - employing skilled and qualified Auslan interpreters
 - setting employment targets for people with disability in government schools and working with all school sectors in their jurisdiction to increase disability employment.

Recommendation 7.9 Data, evidence and building best practice

Data development and collection

- a. The Education Ministers Meeting should:
 - commission a national project to develop data definitions and data collection methods to enable consistent and comparable reporting on educational experiences and outcomes of students with disability
 - ensure data and information (as detailed at the Appendix and disaggregated by Nationally Consistent Collection of Data on School Students with Disability (NCCD) category, gender, age, stage of schooling, First Nations students, students from culturally and linguistically diverse backgrounds and LGBTIQ+ status) is collected by state and territory departments on:
 - student experiences
 - school outcomes for students with disability
 - progress in addressing barriers to inclusive education practices.
- b. **State and territory governments** should enhance data systems and processes to enable all schools to submit at least the minimum data required in the prescribed format.
- c. **State and territory school registration authorities** should:
 - embed data requirements set by the Education Ministers Meeting in registration requirements for all schools in their jurisdiction
 - require parents registering children with disability for home schooling with the state or territory school regulator to submit standardised information about their child's educational, social and behavioural progress and support needs to improve understanding of students with disability who are being home schooled and their outcomes.

Monitoring and reporting

- d. **State and territory education departments** should annually report jurisdictional data to the Education Ministers Meeting on minimum data requirements for students with disability. Based on the jurisdictional data, the Education Ministers Meeting should monitor and publicly report annually on:
 - the educational experiences of students with disability
 - outcomes of students with disability
 - progress in addressing barriers to inclusive education practices.
- e. To improve reporting of disability data, the Education Ministers Meeting should:
 - publish school-level NCCD student numbers (by adjustment level) on the My School website, having due regard for privacy issues

- commission the Australian Curriculum Assessment and Reporting Authority to work with states and territories on data collection requirements to enable reporting on National Assessments Program – Literacy and Numeracy results for students with disability
- include broader school workforce characteristics and information about workforce shortages in state and territory and Australian Government annual inclusive education reporting.

Improving the evidence base

- f. To improve the evidence base for best practice for inclusive education, the Education Ministers Meeting should commission the Australian Education Research Organisation to:
- develop a research program about inclusive education practices, working with teachers, schools, education systems and people with disability
 - conduct and coordinate inclusive education research
 - support schools to translate research into school practices.

Recommendation 7.10 Complaint management

- a. **State and territory governments** should create or expand existing complaint management offices that operate within educational authorities at arm's length from schools to help resolve complaints about schools, specifically complaints concerning the treatment of students with disability. These offices should be empowered to:
- provide students and parents with information about their rights and options when managing complaints
 - request information and conduct conciliations, connecting families with advocacy support and specialist disability expertise where needed
 - initiate a formal investigation if a complaint is serious or otherwise indicates systemic issues
 - support and assist the complainant in referring matters to the appropriate regulator or independent oversight body if a complaint cannot be effectively resolved
 - work with schools to analyse complaints and regularly report on how education systems might improve to reduce future complaints
 - work with school principals to ensure school policies are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.
- b. The Australian Government should include new duties and measures relating to complaint management procedures in the Disability Standards for Education 2005 (Cth) (Education Standards) to help achieve national quality and consistency, and

ensure complaint handling processes are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate.

- c. **State and territory school registration authorities** should embed new complaint handling duties and measures for compliance, as defined in the Education Standards, in registration requirements for all schools in their jurisdiction as a basis to monitor and enforce compliance.
- d. **School principals** should ensure their school-level operating policies and procedures for handling complaints:
 - satisfy the Education Standards requirements
 - are student-centric, accessible, efficient, safe, trauma-informed and culturally appropriate
 - are observed in practice.

Recommendation 7.11 Stronger oversight and enforcement of school duties

- a. **State and territory governments** should strengthen the enforcement of inclusive education practices by expanding school registration requirements to include:
 - school enrolment policies (see Recommendation 7.1)
 - procedures to ensure members of the school workforce understand their obligations and are supported to access professional development (see Recommendation 7.8)
 - procedures to collect, analyse and report on complaints and the use of restrictive practices and exclusionary discipline (see Recommendations 7.2 and 7.10)
 - reporting on the use of funding for students with disability (see Recommendation 7.12).
- b. **State and territory school registration authorities** should monitor compliance with these requirements through cyclical reviews of schools and out-of-cycle reviews in response to individual complaints (or complaint trends) or other information that indicates possible non-compliance with regulatory requirements.
- c. The Western Australian, Australian Capital Territory and Northern Territory governments should identify appropriate mechanisms to ensure government schools in their jurisdictions are subject to these mandatory obligations, with appropriate monitoring, compliance and enforcement.

Recommendation 7.12 Improving funding

- a. The Australian Government should work with the Education Ministers Meeting to refine the Nationally Consistent Collection of Data on School Students with Disability (NCCD) levels of adjustments and associated funding for students with

disability in response to the findings of the *Student with disability loading settings review*.

- b. The Australian Government and the Education Ministers Meeting should review disability loading settings and total funding for adjustments every five years to ensure the funding allocated bears a close relationship to the actual cost of supporting students with disability in classrooms and to determine appropriate indexation and distribution of funding.
- c. **State and territory governments** should ensure they are using a disability funding model based on strengths and needs that aligns with enhanced NCCD levels of adjustment and Australian Government needs-based funding arrangements to enable students with disability to access and participate in education on an equal basis to their peers.
- d. **State and territory education departments** should improve transparency on the use of disability funding in the government school sector by:
 - developing a methodology and reporting template to record the use of all sources of school funding against defined categories of adjustments and support for students with disability
 - applying this methodology and template to record expenditure on services and staff commissioned by the department on behalf of schools for students with disability
 - publicly reporting on how the needs of students with disability are being met from all available resources, with early priority given to capturing the use of disability-specific loadings and other disability-specific program funding.
- e. **State and territory school registration authorities** should require schools to complete the funding template mentioned at d. and submit the template to the relevant state or territory education department

Recommendation 7.13 National Roadmap to Inclusive Education

- a. The Education Ministers Meeting should publicly release a 'National Roadmap to Inclusive Education' for students with disability. The roadmap should:
 - detail the outcome measures, targets, actions and milestones for delivering the Royal Commission's recommendations for inclusive education
 - provide public transparency on how the recommendations will be implemented and progress tracked and publicly reported.
- b. **State and territory education ministers** should report annually to the Education Ministers Meeting on progress against agreed milestones and associated outcome performance measures in the roadmap. Annual progress reports should outline actions to overcome identified barriers to progress and be publicly released.

- c. The Education Ministers Meeting should identify the National Roadmap to Inclusive Education in its 2024 report to National Cabinet as one of its priorities and include it in its workplan.

Achieving inclusion while phasing out special/segregated education settings

Recommendation 7.14 Phasing out and ending special/segregated education

Commissioners Bennett, Galbally and McEwin recommend:

- a. The Australian Government and **state and territory governments** should recognise that inclusive education as required by article 24 of the Convention on the Rights of Persons with Disabilities is not compatible with sustaining special/segregated education as a long-term feature of education systems in Australia.
- b. As part of the National School Reform Agreement 2025–2029, the Education Ministers Meeting should agree to:
 - the phasing out of special/segregated education
 - no new special/segregated schools being built or new special/segregated classes or units being included within schools from 2025
 - a process for work on milestones and activities related to ceasing special/segregated education by all jurisdictions.
- c. As part of the National School Reform Agreement 2030–2034, the Education Ministers Meeting should agree to milestones for phasing out and ending special/segregated education settings and financial penalties for failing to meet these milestones, including:
 - no new enrolments of students with disability in special/segregated schools from 2032
 - no new placements of students with disability in special/segregated units or classes from 2041
 - no students remaining in special/segregated schools by the end of 2051.
- d. The Education Ministers Meeting should update the Roadmap to Inclusive Education and Australia’s Disability Strategy to incorporate the milestones and actions to phase out and end special/segregated education settings included in the National School Reform Agreement 2030–2034.
- e. The Australian Government should consider the design of a ‘Transition Fund’ under the National School Reform Agreement from 2028 to provide discrete funding to schools that require additional support as part of their transition journey, with clear performance and reporting requirements.
- f. Consistent with phasing out and ending special/segregated education, **states and territories** should implement the following recommendations:

- when no students are in special/segregated schools, the sunsetting of:
 - measures to prevent gatekeeping (see Recommendation 7.1)
 - provisions to facilitate the engagement of students with disability enrolled in special/segregated schools with students and activities of mainstream schools (see Recommendation 7.4)
- to prevent stigmatisation and segregation of students with disability, ensure the careers guidance and transition support program for students with disability (see Recommendation 7.5):
 - is delivered alongside careers guidance for students without disability
 - has clear rules that no student with disability can be referred to work experience or employment through Australian Disability Enterprises.

Achieving inclusion and retaining choice

Recommendation 7.15 An alternative approach

The Chair and Commissioners Mason and Ryan recommend:

1. **State and territory educational authorities** should implement the following measures:
 - wherever practicable locate new non-mainstream schools (that is, schools that enrol exclusively or primarily children and young people with complex support needs) and relocate existing non-mainstream schools within or in close proximity to mainstream schools
 - create partnerships between mainstream and non-mainstream schools as a means of encouraging and arranging regular interchange between groups of students enrolled in the schools
 - facilitate to the maximum extent feasible participation by individual students and groups of students enrolled in non-mainstream schools in educational, cultural, sporting, recreational and celebratory activities with their peers in partnership with mainstream schools and other educational institutions
 - arrange for students in non-mainstream schools, where practicable, to participate in classes and educational activities with their peers in mainstream schools
 - establish programs for students enrolled in mainstream schools to participate in activities with their peers in non-mainstream schools
 - provide, where appropriate, for concurrent enrolment for individual students in both mainstream and non-mainstream schools

- assist non-mainstream schools to facilitate where appropriate, the transition of students with disability, particularly those with complex support needs, to mainstream schools, whether on a full-time or part-time basis
 - provide assistance to mainstream and non-mainstream schools in understanding the strengths and skills of students with disability for post-school transition, including assistance in planning and preparing for further study and training
 - ensure non-mainstream schools encourage and support students with disability completing their education to seek and obtain employment in the open labour market, rather than in Australian Disability Enterprises or similar environments.
2. The National Disability Commission (see Recommendation 5.5) should conduct or arrange for a comprehensive review of progress towards providing inclusive education for children and young people with complex support needs. The review's assessment should include the matters we have identified

Appendix 2: Recommendations from the Independent Review into the National Disability Insurance Scheme

The detailed actions specified under each recommendation are available in the [report of the review](#).

Develop a unified system of support for people with disability

1. Invest in foundational supports to bring fairness, balance and sustainability to the ecosystem supporting people with disability
2. Increase the scale and pace of change in mainstream and community inclusion and accessibility and improve the connection between mainstream services and the NDIS
3. Provide a fairer and more consistent participant pathway
4. Support all people with disability to navigate mainstream, foundational and NDIS service systems
5. Provide better support for people with disability to make decisions about their lives
6. Create a continuum of support for children under the age of 9 and their families
7. Introduce a new approach to NDIS supports for psychosocial disability, focused on personal recovery, and develop mental health reforms to better support people with severe mental illness
8. Fund housing and living supports that are fair and consistent, and support participants to exercise genuine choice and control over their living arrangement
9. Deliver a diverse and innovative range of inclusive housing and living supports

Markets and support systems that empower people with disability

10. Invest in digital infrastructure for the NDIS to enable accessible, timely and reliable information and streamlined processes that strengthen NDIS market functioning and scheme integrity
11. Reform pricing and payments frameworks to improve incentives for providers to deliver quality supports to participants
12. Embed, promote and incentivise continuous quality improvement in the market, supported by a dedicated quality function in the new National Disability Supports Quality and Safeguards Commission
13. Strengthen market monitoring and responses to challenges in coordinating the NDIS market
14. Improve access to supports for First Nations participants across Australia and for all participants in remote communities through alternative commissioning arrangements
15. Attract, retain and train a workforce that is responsive to participant needs and delivers quality supports

16. Deliver safeguarding that is empowering and tailored to individuals, their service needs and environments
17. Develop and deliver a risk-proportionate model for the visibility and regulation of all providers and workers, and strengthen the regulatory response to long-standing and emerging quality and safeguards issues
18. Reinvigorate efforts to urgently drive reduction and elimination in the use of restrictive practices

Stewardship of the united ecosystem

19. Embed effective quality and safeguarding institutions and architecture across the disability support ecosystem
20. Create a new compact between Australian governments
21. Clarify accountability for sustainability and governance of the disability ecosystem
22. Embed a highly skilled, person-centred, disability aware culture across all disability agencies and governments
23. Measure what matters, build an evidence base of what works, and create a learning system

A five year transition

24. Establish appropriate architecture to implement reforms
25. Coordinate and consult on amendments to relevant legislation to enact proposed reforms
26. Develop an implementation roadmap that factors in critical dependencies and risks and ensures a smooth transition for existing participants

Disclaimer

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Acknowledgement of country

The Parliament of New South Wales acknowledges and respects the traditional lands of all Aboriginal people and pays respects to all Elders past and present. We acknowledge the Gadigal people as the traditional custodians of the land on which the Parliament of New South Wales stands.