



## All Means All – The Australian Alliance for Inclusive Education

### INQUIRY INTO CHILDREN AND YOUNG PEOPLE WITH DISABILITY IN NEW SOUTH WALES EDUCATIONAL SETTINGS

HEARING – 22 APRIL 2024

#### SUPPLEMENTARY QUESTIONS - RESPONSES

Date: 13 May 2024

Contact:

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- 1. Some opponents of inclusive education argue that it is not possible for every single child with a disability to be accommodated in a mainstream school because of the extent of the adjustments required to meet the differing needs of each student with a disability. Would a 'single classroom' model intended to include all children regardless of their disability exclude the possibility of exceptions in certain circumstances? If so, what do you say to those people who argue that we cannot end segregated education on the basis that not all children can in their view be accommodated into inclusive education environments, even if they are well-resourced?**

**Answer:**

All Means All believes that **ALL** students, including students with disability, have a right to receive an inclusive education. Australia has a corresponding obligation and commitment to ensure an inclusive education system for students with disability, having ratified the Convention on the Rights of Persons with Disabilities in 2008.

This means **ALL** students with disability, regardless of perceived level of disability and support needs.

When we talk about **inclusive education**, we do not mean segregated, separate or self-contained programs or classes for students with disability or learning or behavioural differences in schools.

The work of All Means All is guided by a human rights framework including the principles embodied in:

- the *United Nations Convention on the Rights of the Child*; and
- the *United Nations Convention on the Rights of Persons with Disabilities (CRPD)*, the most authoritative expression of the human rights of people with disability, including the right to inclusive education under Article 24, which was explained in the General Comment No. 4 (Right to Inclusive Education)<sup>1</sup> outlining the proper interpretation and application of Article 24, including the responsibilities of States Parties.

All Means All advocates for reforms to build a single-tracked universally accessible, quality and inclusive education system that is responsive to the diversity of the Australian student population. It is where students with and without disability learn together, are assumed to have the capacity to learn and progress in their education, and where the system of teaching and learning is flexible, adapted and delivers individualised supports as needed to meet the learning needs of different types of students.

An inclusive education is where diverse students share their education experience in a 'common learning environment' (this is the legal and policy concept adopted by New Brunswick<sup>2</sup> and other Canadian jurisdictions to refer to all students together in the regular classroom). It does not mean a rigid 'one-size-fits-all' approach.

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<sup>1</sup> General comment No. 4, 'Right to Inclusive Education' (2016) CRPD/C/GC/4.

<sup>2</sup> In the current *School Education Act 1997 (NB)* as well as the 2023 Bill that is proposed to replace it as a New Education Act, the term 'common learning environment' is defined to mean 'an inclusive learning environment (a) in which instruction is designed to be delivered to pupils in similar age groups and of various abilities at their

The systemic architecture of the 'parallel' mainstream/special education system in Australia perpetuates a false binary along the lines of normal/abnormal that inhibits the development of a universally accessible and genuinely inclusive general education system, that would also benefit students with a range of diverse attributes, including attributes that intersect with disability (e.g., disabled First Nations students, neurodivergent LGBTQIA+ students).

We envisage the delivery of inclusive education to diverse students in the same classroom through inclusive frameworks, pedagogies and strategies<sup>3</sup> such as universal design for learning<sup>4</sup> and differentiated instruction, delivered through a 'multi-tiered system of support' (MTSS) framework to address a wide range of academic, social and wellbeing supports needs for all students.

MTSS is an evidence-based framework that organises education services within a school or classroom to respond to the diversity of each and every student. It responds to the needs of most students through accessible, high-quality classroom instruction (tier 1). It provides more targeted supports and interventions to some students, including through usually short-term small groups of students within regular classrooms who are identified as needing intensified supports or interventions to maximise their learning and achievement (tier 2). And it adopts more individualised and intensive supports for students who require this, to the tier 1 and 2 supports.

This framework, which is an evidence-based<sup>5</sup> approach, allows for the comprehensive and flexible delivery of inclusive education within the general education system in a

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neighbourhood school for the majority of regular instruction hours, and (b) that is responsive to the pupil's individual needs as a learner, see Government of New Brunswick. (n.d.). Retrieved 4 May 2024, from <<https://laws.gnb.ca/en/document/cs/E-1.12>> and [https://www.legnb.ca/content/house\\_business/60/2/bills/Bill-46.pdf?\\_gl=1\\*19fy9dr\\*\\_ga\\*NzY0NzUyMTQ1LjE3MTQ3OTc1MDU.\\*\\_ga\\_F531P4D0XX\\*MTcxNDc5NzUwNC4xLjE1MTcxNDc5NzYwMi4wLjAuMA](https://www.legnb.ca/content/house_business/60/2/bills/Bill-46.pdf?_gl=1*19fy9dr*_ga*NzY0NzUyMTQ1LjE3MTQ3OTc1MDU.*_ga_F531P4D0XX*MTcxNDc5NzUwNC4xLjE1MTcxNDc5NzYwMi4wLjAuMA).

<sup>3</sup> See for example, Graham, L. (Ed.). *Inclusive education for the 21st century* (2024). (2nd ed.) Allen & Unwin.

<sup>4</sup> King-Sears, M.E., Stefanidis, A., Evmenova, A.S., Rao, K., Mergen, R.L., Sanborn Owen, L., Strimel, M.M. 'Achievement of learners receiving UDL instruction: A meta-analysis' (2023) *Teaching and Teacher Education*, Volume 122, 103956. DOI: 10.1016/j.tate.2022.103956.

<sup>5</sup> de Bruin K, Kestel E, Francis M, Forgasz H and Fries R. 'Supporting students significantly behind in literacy and numeracy: a review of evidence-based approaches' (2023) *Edresearch.edu.au*.

way that is designed to meet **all** students' needs without separating students on the basis of disability<sup>6</sup>.

This approach is being utilised with success in some Australian schools and across whole systems in some overseas jurisdictions (for example, a multi-tiered approach underpins inclusive education reforms for all students in Portugal, a country that has closed its segregated special schools, units or classrooms and has moved to a non-categorical and needs based approach to support and intervention to all students regardless of disability or other diversity attributes<sup>7</sup>).

State government education departments such as Western Australia and Tasmania have more recently begun to invest in evidence-based resources for the delivery of multi-tiered approaches in relation to literacy and numeracy, behaviour support<sup>8</sup> and wellbeing for example.

The adoption and implementation of inclusive frameworks, pedagogies and strategies requires not only proper resourcing but also effective resource allocation, professional development, and a commitment to the human right of every child to an inclusion education and an inclusive life, including in law and policy. This should be done in consultation with inclusive education experts to ensure sound evidence-based approaches and fidelity of implementation, expert teachers in inclusive education, students with disability and their families, and representative organisations for people with disability.

We know that there are many examples of 'lighthouse schools' in Australia and overseas that deliver inclusive education to all students and that their effectiveness

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<sup>6</sup> Sailor, W., McCart, A. B., & Choi, J. H. 'Reconceptualizing inclusive education through multi-tiered system of support' (2018) *Inclusion*, 6, 2-18. DOI: 10.1352/2326-6988-6.1.3.

<sup>7</sup> See Dr Paula Hunt 'Lessons from Portugal' (2024). Australian Association of Research Education (AARE) <https://www.youtube.com/watch?v=uyOTNVHsDmY&t=350s>; OECD, 'Review of Inclusive Education in Portugal, Reviews of National Policies for Education' (2022) *OECD Publishing*. Paris, <<https://doi.org/10.1787/a9c95902-en>>.

<sup>8</sup> see Department of Education of Western Australia (n.d.). Student Behaviour in Public Schools Procedures. Retrieved 4 May 2024, from <<https://www.education.wa.edu.au/web/policies/-/student-behaviour-in-public-schools-procedures>>; See Department of Education of Tasmania (n.d.). Reading in Tasmanian Government Schools. Retrieved 4 May 2024, from <https://www.decyp.tas.gov.au/learning/primary-school-to-year-12/literacy/>.

and success stem from the practices they adopt and their inclusive culture and ethos, rather than the characteristics of the students they have.

In the words of University of Vermont Professor Michael Giangreco:

*For every student who remains educationally segregated there are other students with similar attributes, abilities, and needs who are successfully included.*

*This simple fact suggests that whether a student with a disability is meaningfully included may have less to do with (their) characteristics and more to do with the attitudes, skills, structure, and practices of the adults responsible for providing education.*

The above quote goes to the core of the issue, that while student characteristics are a consideration in the educational process, the evidence suggests that the defining factors for successful inclusion often reside with the educational system itself.

**The right to inclusive education is for ALL, not some.**

Opponents of inclusive education often use the argument that ‘it is not possible for every single child with a disability to be accommodated in a mainstream school’ and often rely on singular extreme examples of complexity, to try to shut down interrogation of the practice of segregation of students with disability and the ‘dual tracked’ system architecture.

This viewpoint unfortunately also appeals to sensationalist media, promotes distorted perceptions of the inclusion of students with disability, encourages stigmatisation, and reinforces misconceptions that it is too challenging for education systems to accommodate student differences and implement an inclusive education system.

Further, there is often a related focus on poor practices or conditions in mainstream schools that are not inclusive, to imply the superiority of practices and conditions in segregated settings.

These claims about segregated settings, are generally taken at face value and rarely examined. For example, bullying of students with disability in mainstream schools is often advanced as a criticism of ‘inclusion’, when research in fact suggests that

students with disability, and in particular those with more complex disabilities, are particularly at risk of being victimized in segregated settings, more than students with complex disabilities in general education settings<sup>9</sup>.

There is also evidence of increased risk of sexual abuse for children with disability in segregated settings and in particular, severe and chronic sexual abuse in segregated settings<sup>10</sup>.

The call by opponents of inclusive education to maintain the ‘dual tracked’ education system and the defence of the ‘special education’ practice of segregating students on the basis of disability are not positions that can be supported on the basis of evidence,<sup>11</sup> or human rights. They often stem from limited perspectives about disability, outdated expertise, and a lack of vision for what truly inclusive environments can achieve.

All Means All acknowledges that the current ‘dual system’ of mainstream/segregated education as it is configured, organised and resourced plainly means that many students with disability are not able to be meaningfully and effectively included in

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<sup>9</sup> Rose, Chad A., Dorothy L. Espelage, Steven Aragon and John Elliott, ‘Bullying and victimization among students in special education and general education curricula’ (2011) *Exceptionality Education International* 21, 2-14; Rose, Chad A., Lisa E. Monda-Amaya, and Dorothy L. Espelage, ‘Bullying Perpetration and Victimization in Special Education: A Review of the Literature’ (2011) *Remedial and Special Education* 32 2 114-130, 125; Ari Kaukiainen, Christina Salmivalli, Kirsti Lagerspetz, Milla Tamminen, Marja Vauras, Hanna Mäki and Elisa Poskiparta, ‘Learning Difficulties, Social Intelligence, and Self-Concept: Connections to Bully-Victim Problems’ (2002) *Scandinavian Journal of Psychology* 43. 269-78; Mona O’Moore and B. Hillery, ‘Bullying in Dublin Schools’ (1989) *Irish Journal of Psychology* 10, 426–441.

<sup>10</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). A brief guide to the Final Report: Disability; Stephen J. Caldas and Mary Lou Bensy, ‘The Sexual Maltreatment of Students with Disabilities in American School Settings’ (2014) *Journal of Child Sexual Abuse* 23, 345-66.

<sup>11</sup> de Bruin, K. ‘Inclusive education: a review of the evidence’ (2024) In L. J. Graham (Ed.), *Inclusive Education for the 21st Century: Theory, Policy, and Practice* (2nd ed., pp. 95-114). Routledge.

DOI: [doi.org/10.4324/9781003350897-7](https://doi.org/10.4324/9781003350897-7); Krämer, S., Möller, J., & Zimmermann, F. (2021). Inclusive Education of Students With General Learning Difficulties: A Meta-Analysis. *Review of Educational Research*, 91(3), 432–478. DOI: [10.3102/0034654321998071](https://doi.org/10.3102/0034654321998071); Hehir, T., Grindal, T., Freeman, B., Lamoreau, R., Borquaye, Y., & Burke, S. ‘A summary of the evidence on inclusive education’ (2016). ABT Associates. ERIC.

<<https://files.eric.ed.gov/fulltext/ED596134.pdf>>; Oh-Young, Conrad & Filler, John. ‘A meta-analysis of the effects of placement on academic and social skill outcome measures of students with disabilities’ (2015) *Research in Developmental Disabilities*. 47. 80-92. DOI: [10.1016/j.ridd.2015.08.014](https://doi.org/10.1016/j.ridd.2015.08.014); Jackson, R. Inclusion or Segregation for children with an Intellectual Impairment: What does the evidence say? (2008) *Queensland Parents for People with a Disability*

<https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/StudyEducation/NGOs/AustraliaNationalCouncilIntellectualDisability2.pdf>.

mainstream schools, it is however essential to recognise that this is often because the social academic and at times personal care supports needed are denied to students in those settings. This is seen regularly in our local 'mainstream' schools where students with disability routinely must contend with lack of expertise, inadequate resourcing and a systemic culture of low expectations. Students with disability are already in the education system, accessing a range of services, but too often they are not delivered in mainstream schools.

The significant disruptions happening within education systems in Australia point to the need to reform and transform education to ensure 'education for all', not some or most, and realise every child's fundamental human right to a quality, accessible and inclusive education.

To continue the course of investing in and growing the 'dual tracked' education system architecture that continues to severely let down students with disability, and to fail to acknowledge separation of people on the basis of disability as a negative phenomenon, for them and for society, can never lead to inclusive education and inclusive futures.

All Means All urges this Committee to take the opportunity presented by this inquiry to recommend a commitment to the progressive realisation of a universally accessible quality and inclusive education system for all children in New South Wales, involving a plan for *phasing out* segregation and *phasing in* inclusion.

Commissioner Rhonda Galbally stated at the Public Hearing to conclude the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

*'I have heard that fear arises when non-disabled people do not have a strong relationship with disabled people, and that this fear can turn into loathing of disability and seeing disabled people as 'other'. I have learned that loathing from fear can then turn into violence, abuse, neglect and exploitation of people with disabilities and that this is further reinforced by the practice of keeping disabled*

*people ‘out of sight and out of mind’, often claiming it’s for their protection, thus enabling the fear, loathing and discrimination to continue.’*

No-one wants this for a child or their future.

**a) Are you concerned that a move to end segregated education could lead to the isolation of specifically children with more complex disabilities, in home schooling or in settings with a more limited group of peers?**

All Means All is a Co-Convenor of the Australian Coalition for Inclusive Education (ACIE) that developed and released ‘*Driving change: A roadmap for achieving inclusive education in Australia*’<sup>12</sup> that endeavours to provide guidance and set out clear goals to achieve inclusive education over a 10-year period.

Recommendation 7.14 of the Final Report of the Disability Royal Commission, similarly, recommends a phased process to implement inclusive education, over a significantly longer timeframe.

General Comment No.4 specifically recommends that State Parties adopt a plan:

*[...] detailing the process for the implementation of an inclusive education system. It should contain a timeframe and measurable goals, including measures to ensure consistency. The Plan should be informed by a comprehensive analysis of the current context pertaining to inclusive education in order to provide a baseline from which to progress, including data on, for example, current budgetary allocations, quality of data collection, numbers of children with disabilities out of school, challenges and barriers, existing laws and policies, key concerns of both persons with disabilities, families and the State party.*

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<sup>12</sup> Download at <https://acie.org.au/wp-content/uploads/2021/02/acie-roadmap-final-11-feb-2021.pdf>.

In our view, planning for the implementation of inclusive education must consider all students with disability, including those with the highest support needs, and monitor progression and impacts for **ALL**.

As De Bruin notes in a 2024 review of the evidence for inclusive education, the inclusion of students with complex disabilities in inclusive settings is equally supported by the research evidence:

*[The] evidence relating to positive benefits applies to students with a range of disabilities, including those with complex learning profiles, such as students on the autism spectrum and students with emotional and behavioural disorders.<sup>13</sup>*

As noted in our response to the first part of this question, the inclusion of students with disability depends more on the capacity of the system and practices for delivering education as well as the attitudes of those responsible for delivering it, than the student's characteristics. What we already know is that increased rates of homeschooling are being driven by poor practices and experience in the current 'dual-tracked' system.

While transition to inclusive education will inevitably present challenges, we cannot possibly be content to settle for the status quo of the existing system, on any measure, whether it is school experience, social and academic outcomes or lifelong outcomes. We note for example, research modelling using NDIS data published by the Disability Royal Commission's Data Analytics Team showing a strong link between segregated education and employment outcomes and autonomous decision-making for NDIS participants<sup>14</sup>. This research is consistent with international research showing post school impacts of inclusive education<sup>15</sup>.

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<sup>13</sup> de Bruin, K., 'Inclusive Education: A review of evidence' (2024) In Graham, L. J. (ed.). 2nd ed *Inclusive Education for the 21st Century: Theory, Policy, and Practice*. Abingdon UK: Routledge, p. 95-114 20

<sup>14</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'The association between segregated education and employment on the outcomes of NDIS participants' (2023) *Royal Commission's Data and Analytics Team* <<https://disability.royalcommission.gov.au/publications/association-between-segregated-education-and-employment>>.

<sup>15</sup> European Agency for Special Needs and Inclusive Education, 'Evidence of the Link Between Inclusive Education and Social Inclusion: A Review of the Literature' (2018) (S. Symeonidou, ed.). Odense, Denmark.

As discussed previously in this response, and as evidenced from experience in Australia and internationally, it is essential that the progressive realisation to an inclusive education system is done based on evidence-based practice and research and informed by the direct experience of students with disability and their families. The blurring of poor outcomes or failures of muddled, ill-informed and under resourced progression to inclusive education cannot be viewed as proof that inclusive education doesn't work. Experience and evidence demonstrate clearly that inclusive education 'done right' benefits everyone.

**b) As we transition to an inclusive education model, is there a danger that those children who are 'easier' to include will be brought into the mainstream, relieving some of the pressure to end segregated schooling but exacerbating discrimination felt by children with disability left behind?**

The right to education is a universal human right and the CRPD recognises that all people with disability regardless of disability categorisation or support needs, have a right to inclusive education. A transition process is about increasing the capacity of the education system to implement inclusive education progressively so that, in time, all children will be able to realise this right. The longer this process is deferred, the more children with disability will continue to be left behind and experience discrimination.

We note the clear statements by the CRPD Committee stating that segregation of students with disability is a form of discrimination. Further, we are not aware of other systems where this process has occurred, reporting these types of experience or concerns where progress towards inclusive education exacerbating discrimination felt by children with disability left behind. However, we agree with the question's recognition, albeit implicit, that segregation leaves children with disability behind.

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[https://www.european-agency.org/sites/default/files/Evidence%20%E2%80%93%20Review%20of%20the%20Literature\\_0.pdf](https://www.european-agency.org/sites/default/files/Evidence%20%E2%80%93%20Review%20of%20the%20Literature_0.pdf).

A well-developed transition plan should be sensitive to the nature of the process involved, and its impacts on all stakeholders and, relevantly, students with disability and their families.

**c) How do we plan to ensure that this doesn't happen?**

See our answer to part b. of this question.

**d) How can children from the Deaf community be fully included in mainstream education while respecting and encouraging their bilingual language needs?**

All Means All's position is that the general education system needs to be inclusive of all students including Deaf students, consistently with the goal of Article 24 of the CRPD and General Comment No.4 (Right to Inclusive Education)<sup>16</sup>. This includes ensuring access to sign language instruction in general education settings and the opportunity for Deaf students to connect with a broad range of peers, including Deaf peers.

However, we also acknowledge that Deaf people have a unique 'dual category status, being (seen as) both persons with disabilities and cultural-linguistic minorities'<sup>17</sup> under the CRPD and that inclusive bilingual sign language schools play a legitimate role in the preservation of cultural-linguistic diversity in accordance with a range of international human rights instruments such as the *United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities* adopted in 1992, which guarantee the liberty of religious, ethnic, cultural, or linguistic minorities to establish their own private schools provided they meet appropriate standards<sup>18</sup> including ensuring

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<sup>16</sup> General comment No. 4 (n 1).

<sup>17</sup> Murray, Joseph J., Maartje De Meulder, and Delphine le Maire, 'An Education in Sign Language as a Human Right?: The Sensory Exception in the Legislative History and Ongoing Interpretation of Article 24 of the UN Convention on the Rights of Persons with Disabilities' (2018) *Human Rights Quarterly* 40, no. 1: 37-60. DOI: [doi.org/10.1353/hrq.2018.0001](https://doi.org/10.1353/hrq.2018.0001), p. 39; CRPD Articles 24.3(b) and 30.4; GC4 para 35(b) and (c)).

<sup>18</sup> Graham, L. J., Medhurst, M., Malaquias, C., Tancredi, H., de Bruin, C., Gillett-Swan, J., Cologon, K, 'Beyond Salamanca: a citation analysis of the CRPD/GC4 relative to the Salamanca Statement in inclusive and special education research' (2023) *International Journal of Inclusive Education*, 27(2), 123–145. DOI: [doi.org/10.1080/13603116.2020.1831627](https://doi.org/10.1080/13603116.2020.1831627).

access to the regular curriculum and delivering ‘teaching [to] children who are deaf and other children who wish to be taught through the national sign language’<sup>19</sup>. This issue was considered in detail in the International Disability Alliance’s Global Report on Inclusive Education published in 2020, which was developed with the World Deaf Federation and affirms that ‘inclusive education is incompatible with a system of segregated education’<sup>20</sup> but also recognises the issue of deprivation of language for Deaf children and the role of inclusive bilingual sign language schools as part of an inclusive education system<sup>21</sup>.

As the World Federation of the Deaf has sought to make clear, their position on Deaf education should not be misunderstood as legitimating segregated ‘special education’. This was explicitly stated by the World Deaf Federation representative Markku Jokinen in his 2015 speech at the Day of General Discussion held in Geneva in April 2015 for the purposes of developing General Comment No. 4, that ‘from the beginning, the WDF has neither demanded special or segregated education nor regard bilingual and bicultural education as special education’.

**2) In our inquiry we have heard evidence indicating that while people with disability overwhelmingly support inclusive education, parents and educators are more split on the issue. Why do you think this is?**

The majority of the Board members of All Means All are parents of children with disability, and some are also people with disability. Our member networks also include thousand of parents of children with disability who support inclusive education.

We do not agree with the suggestion that parents of children with disability do not support inclusive education and find that this issue, along with the issue of ‘parent choice’, are often misunderstood. In particular, the superficial ‘mantra’ of ‘parent

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<sup>19</sup> International Disability Alliance, ‘What an Inclusive, Equitable, Quality Education Means to Us: Report of the International Disability Alliance’, (2020) *International Disability Alliance*, Annex p. 9  
[https://www.internationaldisabilityalliance.org/sites/default/files/ida\\_ie\\_flagship\\_report\\_english\\_29.06.2020.pdf](https://www.internationaldisabilityalliance.org/sites/default/files/ida_ie_flagship_report_english_29.06.2020.pdf).

<sup>20</sup> Ibid, p.5.

<sup>21</sup> Graham et al (n 18).

choice' cloaks the complex dynamics of the exercise of limited options by parents in the current 'dual-tracked' education system of mainstream/segregated education.

We note research that suggests, consistently with our experience, that the mantra of 'parental choice' does not accurately reflect the actual and informed preferences of most parents of children with disability<sup>22</sup>, given their decision-making occurs within a system that evidences significant discrimination and coercion, including widespread 'gatekeeping'. 'Gatekeeping' is the formal or informal denial of access to, or discouragement of, students with disability attending mainstream schools,<sup>23</sup> - that operates to push students with disabilities into the separate segregated education system.

Dr Glenys Mann in her evidence at the Disability Royal Commission's public hearing 2, based on her academic research and parent interviews she conducted, spoke about parents feeling 'judged' and being 'worn down' by pressure to enrol their children with disability in special schools.

Dr Mann quoted a parent which she thought aptly reflected this circumstance which is often experienced by parents of children with disability:

*She put so much pressure on to me. It was horrible. And in the end I really – I could not – I was so guilt ridden I ended up putting him into special school because I could not find any more arguments in my head, and I still regret it deeply. I still hate the thought of it you know but I was so pressured. It was horrible. It was horrible. I was made to feel like I was nearly an abusive parent to keep him at the school. It was so bad.*

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<sup>22</sup> Lisa Stevens and Gerald Wurf, 'Perceptions of Inclusive Education: A Mixed Methods Investigation of Parental Attitudes in Three Australian Primary Schools' (2020) 24(4) *International Journal of Inclusive Education* 351, 353.

<sup>23</sup> The term 'gatekeeping' was used in the 2016 Australian Senate Report, see Education and Employment References Committee, Australian Senate; see also Shiralee Poed, Kathy Cologon and Robert Jackson, 'Gatekeeping and Restrictive Practices by Australian Mainstream Schools: Results of a National Survey' (2020) *International Journal of Inclusive Education*; Eleanor Jenkin, Claire Spivakovsky, Sarah Joseph, Marius Smith, *Improving Educational Outcomes for Children with Disability in Victoria* (Castan Centre for Human Rights Law, Monash University, 2018).

Dr Mann also spoke about the anxiety that parents feel about their children not being welcomed in general education settings, and the impact this has on their 'choices':

*[T]hey didn't want their children to be in a place where they weren't welcome. Even if they really wanted inclusion, if they really wanted their child to be in a regular school, very sensitive to whether or not the child would be wanted there or not.*

All Means All's experience and view, based on contact and networks of thousands of families nationally, is that the vast majority of parents of children with disability would choose to enrol their child in their local mainstream school if they were confident that their children would be welcomed and accepted and would receive the necessary supports.

It is worth noting that concerns about the impact of these types of issues on 'parental choice' were already recognised during the negotiations for the CRPD and Article 24. Delegates to the Ad Hoc Committee for the drafting of the CRPD, rejecting embedding the concept of 'choice' in Article 24, noting that 'choice' of segregated education is in fact 'a false choice enforced by lack of resources and access to support'<sup>24</sup>

### **3) How do we bring parents, educators and the broader public on board with a planned transition to inclusive education?**

While there are significant fears about a transition to inclusive education, there is also significant support for the principle at a high level. A planned transition would require leadership and a range of strategies involving different stakeholders, and a focus on communication, participation, and education, to build a supportive environment that embraces the transition process.

It is vitally important for government to clearly commit to the goal and explain its rationale for doing so, including as a human rights imperative. Further, the active involvement of relevant stakeholders, namely students with disability, parents and

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<sup>24</sup> Rosemary Kayess, 'Drafting Article 24 of the Convention on the Rights of Persons with Disabilities' (2019) In Gauthier De Beco, Shivaun Quinlivan and Janet E. Lord (eds), *The Right to Inclusive Education Under International Human Rights Law*, Cambridge, UK: Cambridge University Press, p. 122-140, 135.

educators, in the planning and implementation process would help to shift the narrative from one of *'should we have inclusive education?'* to *'how do we succeed to make our education system inclusive and better for everyone?'*. This could include co-creating policies, participating in pilot programs, and providing feedback on proposals.

In addition, governments should invest in comprehensive information and resources that explain the benefits and practicalities of inclusive education, highlight successful case studies and present evidence. Community engagement about a planned transition would create opportunities to hear and address concerns or misconceptions about inclusive education through open dialogue and the delivery of clear, evidence-based responses.

Ultimately, both parents and educators will need to be confident that appropriate measures will be implemented to equip teachers and school staff with the skills and confidence to manage inclusive classrooms effectively (i.e., adequate resourcing and incentives to support the transition, comprehensive training and support for teachers and clear channels for educators to provide feedback and seek support.)

By focusing on education and empowerment of students, parents and educators, resource support and capacity building, open communication and collaboration, all stakeholders can be effectively engaged in and contribute positively to the transition towards inclusive education.

Finally, one of the most positive and significant outcomes of inclusive education is that the direct experience allows all stakeholders to learn and experience that students with disability are an added value to our school communities and systems. Available studies indicate that systems that segregate students based on minority attributes or academic ability, produce negative impacts not only for segregated students themselves, but also jeopardise the overall performance of education<sup>25</sup>. Unfortunately,

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<sup>25</sup> OECD (2012), 'Equity and quality in education: supporting disadvantaged students and schools, OECD Publishing, Paris; see also Todd Grindal, Thomas Hehir, Brian Freeman, Renee Lamoreau, Yolanda Borquaye and Samantha Burke, 'A Summary of the Research Evidence on Inclusive Education' (2016) <[https://alana.org.br/wp-content/uploads/2016/12/A\\_Summary\\_of\\_the\\_evidence\\_on\\_inclusive\\_education.pdf](https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf)>; National Council on Disability (USA, Independent Federal Agency), The Segregation of Students with Disabilities (Report, 2018) 9

students with disability are often positioned as a cost, a burden, or an extra, or 'additional' factor or area of work or a school. This is not only unfair but overlooks the fact that schools and our education system are greatly strengthened and enriched through the genuine inclusion of students with disability. It is only through the daily transactions within heterogenous school communities that welcome and include all students regardless of their individual attributes, that we will develop the broader public understanding and acceptance of people with disability that is so fundamental their inclusion in society and the realisation of their fundamental human rights, including their right to live free from discrimination, abuse and neglect.

We end this section with an excerpt from this Committee's 2017 Report into education of students with disabilities, and question whether NSW under its current 'dual-tracked' system, and the commitment by successive governments to continue to grow separate settings on the basis of disability, has made any inroads deep cultural issues that continue to drive the experience of students with disabilities in education:

For many inquiry participants, the discord between the principles of inclusion promoted in education policy and the lived reality of students with disabilities lies in a deep-seeded stigma and discrimination around disability and special needs that is being played out both openly and subtly. Some acknowledged that positive examples of acceptance and genuine inclusion within mainstream schools do exist, and these are considered throughout this chapter and the report. However, a real cultural problem within the education system around disability was highlighted by various stakeholders. Many attributed this culture to perceptions and assumptions about people with disability that label them as 'subhuman', incapable of learning, and burdensome.

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<[https://ncd.gov/sites/default/files/NCD\\_Segregation-SWD\\_508.pdf?fbclid=IwAR2E17a42DiSLc41f9nQgrZ7lnQxJpjgEI4A4\\_vNG5yqJ6jptdNj4lnkWPQ](https://ncd.gov/sites/default/files/NCD_Segregation-SWD_508.pdf?fbclid=IwAR2E17a42DiSLc41f9nQgrZ7lnQxJpjgEI4A4_vNG5yqJ6jptdNj4lnkWPQ)>; Kathy Cologon, Towards Inclusive Education: A Necessary Process of Transformation (Report, 2019); Robert Jackson, 'Inclusion or Segregation for Children with an Intellectual Impairment: What Does the Evidence say?' QPPD <<https://www.ohchr.org/Documents/Issues/Disability/StudyEducation/NGOs/AustraliaNationalCouncilIntellectualDisability2.pdf>>.

Ultimately, it is government that has the primary role in setting the cultural and systemic conditions, through leadership and the appropriate legal and policy frameworks, to enable progressive transformation of our education system to ensure that it is universally accessible and inclusive of all children and young people, including children and young people with disability.

**4) Were NSW to establish an independent complaints mechanism for families to raise issues within a school, what should this look like?**

**a. Would NSW benefit from establishing an office similar to Victoria's Independent Office for School Dispute Resolution?**

We understand that the Independent Office of School Dispute Resolution in Victoria is not independent of the Department of Education Victoria. We refer to the attached redacted confidential document, which we provide on the basis that it should not be published or disclosed to others outside the Parliamentary Committee (unless further permission is given). While the title 'Independent' in the Office's name, and publicly available information about it would seem to suggest that it is an independent body, the information contained in the attached document appears to indicate that this is not in fact the case.

Unfortunately, All Means All has not been able to obtain any data that that measures parent satisfaction with that service, including on how many people have had recourse to use the service, and we are therefore unable to comment on whether families are utilising and feel they have obtained any advantage by using it.

More broadly, the issue of limited or no access to independent dispute resolution mechanisms is often raised in relation to the experiences of students with disability. We believe that a truly independent mediation service could be of value in addressing some disputes. Complaint mechanisms and resolution need to be carefully considered as part of any education reform going forward for students with disability.

It should be noted however, that ultimately it is our laws, policies and procedures that need to be stronger to enable students with disability to access and enforce their fundamental human right to an inclusive education so that the issues brought to the 'independent office' do not arise in the first place. In reality, it is a reactive mechanism that does not have any power to hold systems accountable, and therefore if parents go to a mediation process seeking, for example, a specific adjustment for their child, they are unlikely to obtain that outcome or any appropriate remedy. Many of the issues that parents often have with schools are not able to be resolved through mediation because, unless the complainant has the capacity to litigate to enforce legal rights, a respondent's incentive to mediate often disappears.

Finally, while many parents, in the absence of appropriate legal rights and remedies, may seek to mediate disputes about how their child is being treated at school, whether because they are being repeatedly sent home, or attending on a limited basis because there are no supports for them at school, or because they are being excluded from school camps or excursions, or not being provided appropriate social or academic supports, it is deeply unfair to place on them the burden of taking action to hold the system up to a standard it should have the legal obligation to meet. Ultimately bodies of this nature, even when acting on a robust and truly independent basis, have limited capacity to address the deep systemic failures experienced by students with disability and their families in the education system.

**b. Should the NSW Ageing and Disability Commissioner be resourced to proactively act to prevent discrimination against children with disability in our education system and ensure all children have an equal opportunity to learn in our schools?**

We refer to part a) of this question and repeat our comments in relation to the limitation of mediation and dispute resolution mechanisms and the underlying system issues that need to be addressed at a legal and policy level.

We call on this Committee to recommend not only robust processes for monitoring, enforcement and implementation of rights to inclusive education, including a mix of enforcement mechanisms - formal and informal, public and private, adversarial and consensus-based - but more importantly, the enactment of a legal and policy regime that aligns with Australia's human rights obligation to ensure an inclusive education system and drives coordinated systemic and cultural change at whole of system level, to ensure that outcome.

We note in particular in relation to this question 4, the obligations of governments under Article 13 of the CRPD, which requires them to ensure that people with disability enjoy 'effective access to justice' on an equal basis with others, including any procedural and age-appropriate accommodations that may be required to facilitate their effective role as participants in legal processes. We further note the recommendations of the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation and recommendations in relation to complaints mechanism for people with disability, including specifically Recommendations 7.6 and 7.10 in relation to effective complaints handling and informal resolution processes that are co-designed with people with disability and their families.

**5) Which recommendations from the Disability Royal Commission does All Means All support?**

As noted above, All Means All is a co-Convenor of the Australian Coalition for Inclusive Education and ACIE organisations have written to the Honourable Prue Carr MP, the Minister for Education in the New South Wales government, in relation to the Final Report of the Disability Royal Commission, and in particular Part A of Volume 7 in relation to Inclusive Education. Our response to this question is based on that letter, sent in October 2023 and titled 'Disability Royal Commission: Inclusive education for students with disability must include responsible transition and phasing out segregation'. In that letter we urged the

government of New South Wales to adopt and implement Recommendation 7-14 in full, in addition to Recommendations 7.1-7.13 to the extent that they are not inconsistent with, or undermine, the goal of Recommendation 7.14.

While we support the Final Report's important recommendations that are aimed at improving the 'mainstream system' and which echo many of the 'pillars' of ACIE's Roadmap for Inclusive Education, we also wish to emphasise Recommendation 7.13 that calls on all governments in Australia to agree to a national inclusive education roadmap that is time-bound, and which provides for targets, measures and milestones to implement inclusive education reforms. However, such a Roadmap should not be limited to implementation of the Royal Commission's recommendation and should oversee the implementation of a fully inclusive education system as required by the CRPD and as recommended in General Comment No.4 (The Right to Inclusive Education).

In particular, we strongly agree with Recommendation 7.14 put forward by the lived experience Commissioners, Dr Rhonda Galbally AC Dr Alastair McEwin AM who are persons with disability and Barbara Bennett PSM who is the parent and carer of an adult daughter with disability, that segregated education be phased out, and that Inclusive Education can only be achieved through a trajectory of continuous improvement of mainstream practices simultaneously with a phased and responsible transition away from segregated approaches – that is, away from 'special' schools, education support units co-located on mainstream school grounds and 'special' classes where students are separated on the basis of disability.

In our view, mainstream schools will not undertake the necessary transformation to ensure that they can provide education to all children on the basis of equality and non-discrimination and regardless of disability unless there is a deliberate, planned and phased reorientation of the system to the achievement of that goal and as long as removal of children with disability from mainstream settings continues to provide the systemic status quo with a 'pressure release valve' in

lieu of the necessary transformation of the system to progressively develop the capability to include all students. This is key to realising an inclusive education system where all children go to school together, play together, grow up together and learn, through authentic and reciprocal connection and relationships, to respect their various differences and to help build a more inclusive society into the future.

The struggle of people with disability against their segregation has been at the core of their fight for their human rights<sup>26</sup> and has been a key theme throughout the Disability Royal Commission<sup>27</sup>.

All Means All rejects, in the strongest possible terms the diverged position, and misguided rationales, proposed by Commissioners Sackville, Ryan and Mason, as set out in Part 5.3 of Part A of Volume 7, and their Recommendation 7.15, which would preserve segregated education for students with disability but propose a range of measures aimed at ensuring regular ‘interaction’ between students in those settings and those in mainstream settings. This approach is tokenistic would not drive the attitude changes needed for people with disability to be seen as equal citizens. Further, the approach has been attempted for decades, with minimal success.

It is also important to note that the notion of separate schooling for students with disability with increased ‘interactions’ with mainstream students does not meet equality standards under human rights law, is not founded on any credible analysis of the right to education of people with disability, and is inconsistent with General Comment No.4 and the jurisprudence of the CRPD Committee. In

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<sup>26</sup> See the statements of United Nations experts who gave evidence at the Disability Royal Commission, being, Professor Gerard Quinn, the UN Special Rapporteur on the Rights of Persons With Disabilities (Statement, 12 December 2022, p.11); Ms Catalina Devandas-Aguilar then UN Special Rapporteur on the Rights of Persons With Disabilities (Transcript 19 Aug 2020, p.185); and Rosemary Kayess, then Chair of the CRPD Committee, (Transcript 6 December 2019, p.394-395)

<sup>27</sup> See for example the powerful Position Statement [‘Segregation is Discrimination and Must End’](#), which submitted to the Disability Royal Commission by peak disabled persons and representative organisations and endorsed by more than 50 civil society organisations around Australia, expressed their significant concerns in relation to existing law, policy and practice frameworks that segregate people with disability from community life, including in the context of education.

addition, the position is inconsistent not only with the expert legal opinion of Emeritus Professor Andrew Byrnes, who was Commissioned by the Disability Royal Commission to examine the right to education, but also the testimony of the United Nations experts who gave evidence at Public Hearings of the Royal Commission, who comprised the then Special Rapporteurs on the Rights of Persons With Disabilities and then the Chairperson of the Committee on the Rights of Persons With Disabilities. At best, increasing ‘interactions’ as suggested in Recommendation 7.15 is a temporary measure in the course of transitioning to an inclusive education system but cannot be an ‘end goal’ for inclusive education. Further, not only does it represent negligible change to the status quo, it also has potential to further entrench segregation by affirming a qualified and limited right of students with disability to mainstream experiences and belonging.

We are similarly disappointed with the purported justification of segregated education on the basis of ‘choice’, by these Commissioners, with which Commissioners Galbally, McEwin and Bennett rightly disagreed. We know, and we heard during the Disability Royal Commission, that the ‘choice’ of segregated settings is often a last forced resort<sup>28</sup>. Like children and young people with disability, parents deserve real choices that do not result from, or lead to, discrimination.

The idea, further advanced by these three non-disabled Commissioners, that segregation needs to be preserved as a ‘choice’ by people with disability seems especially incongruous, given the long historical struggle of people with disability to end segregation. In reality, this ‘choice’ is usually made for children with disability, not by them. In his speech at the ceremonial closing, Commissioner McEwin said: ‘Many students and families gave up and felt they had no choice than to go to a ‘special’ school. A young advocate told us in a public hearing that mainstream schools are so inaccessible and so wrought with bullying that ‘it doesn’t feel like a choice anymore.’’ He also said: ‘I never had a parent tell me

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<sup>28</sup> See for example the evidence of Ms Mary Sayer, CEO of Children and Young People with Disability, to the Disability Royal Commission (Transcript 8 June 2022, p.202, 205) on systemically coerced ‘parent choice’.

that they wanted their child to go to a special school. They told me repeatedly of their attempts to work with their local mainstream school to include their disabled child in the classroom and the school community. I lost count of the many practical and easy solutions these families tried to implement with their local school and the structural and attitudinal barriers they continued to face.’

Unfortunately, the mantra of ‘choice’ has been used to stymie much-needed change. It continues to be placed at the centre of a polarising debate, where people with disability decry their continued segregation as a form of discrimination and a violation of human rights, while some parents of children with disability cling to segregation, because they are faced with the reality that regular schools fail to provide the services and supports their children need and these services and supports are delivered by segregated ‘special’ schools and other settings. Both groups agree that the current education system is not fit for purpose for students with disability.

Recommendation 7.14, put forward by the Commissioners with disability and Commissioner Bennett, honours the legitimacy of both the perspectives of disabled people and the concerns of parents, and is consistent with Australia’s international human rights obligations under the CRPD and other human rights treaties to progressively ensure a fully inclusive education system<sup>29</sup>, by proposing a phased and responsible transition, with practical and timebound targets and budgets, to end discrimination through segregation and build a universally accessible quality and inclusive education system, while serving the needs of our young people with disability during that transition.

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<sup>29</sup> See Byrnes, A. ‘Analysis of article 24 of the convention on the rights of persons with disabilities and its relation to other international instruments. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability’ (2020), *Royal Commission Into Violence, Abuse, Neglect and Exploitation* <<https://disability.royalcommission.gov.au/publications/public-hearing-24-andrew-byrnes-2020-analysis-article-24-crpd-and-note-travaux-preparatoires>.> confirming that ‘Article 24 of the CRPD obliges State Parties to transition to a system of fully inclusive education and this will involve over the medium-term to long-term the allocation of resources to general schools to support this transition and the eventual abolition of special schools or other forms of segregated education for children with disability.’

While we acknowledge that the longer timeframe proposed by Commissioners Galbally, McEwin and Bennett seek, in particular, to ensure there is sufficient time to implement reforms to transform mainstream education, ACIE's Roadmap aims for a transition over 10 years, and we would still like the end goal achieved within a more ambitious timeframe. A 28-year time frame is too long and will condemn another two generations of children and young people into a system where segregation on the basis of disability prevails and inclusion does not.