

Submission
No 73

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

Organisation: People with Disability Australia (PWDA)

Date Received: 13 March 2024



**PEOPLE WITH DISABILITY
AUSTRALIA**

**A voice
of our
own**

Realising the right to inclusive education in NSW

Submission to the NSW Legislative Council Portfolio
Committee No.3 Inquiry into children and young people
with disability in New South Wales educational settings

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About PWDA

People with Disability Australia (PWDA) is a national disability rights and advocacy organisation made up of, and led by, people with disability. We have a vision of a socially just, accessible and inclusive community in which the contribution, potential and diversity of people with disability are not only recognised and respected but also celebrated.

PWDA was established in 1981, during the International Year of Disabled Persons. We are a peak, non-profit, non-government organisation that represents the interests of people with all kinds of disability. We also represent people with disability at the United Nations, particularly in relation to the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Our work is grounded in a human rights framework that recognises the CRPD and related mechanisms as fundamental tools for advancing the rights of people with disability.

PWDA is a member of Disabled People's Organisations Australia (DPO Australia), along with the First People's Disability Network, National Ethnic Disability Alliance, and Women with Disabilities Australia.

DPOs collectively form a disability rights movement that places people with disability at the centre of decision-making in all aspects of our lives.

The work of PWDA embraces the 'Nothing About Us, Without Us' motto of the international disability community and Disabled Peoples' International, the international organisation representing national organisations of people with disability in over 130 countries.

Terms of reference

This submission primarily responds to:

ToR 1 (a)

the experiences of children and young people within educational settings and measures to better support students with disability, and

ToR 1 (b)

the barriers to safe, quality and inclusive education for children with disability in schools, early childhood education services and other educational settings.

The submission does reference other ToR in the context of responding to the above.

Recommendations

Recommendation 1: Establishing a Ministerial Disability Advisory Council

As a priority, an independent **Ministerial Disability Advisory Council** should be established to advise the Minister for Education on relevant matters, such as those contained within this Inquiry's terms of reference. The proposed Ministerial Advisory Council must be comprised of members of NSW disability representative organisations and persons with lived experience of disability in education settings.

Recommendation 2: Adopt a CRPD compliant definition of inclusive education

The NSW Department of Education should adopt a definition of inclusive education that recognises inclusive education is dependent on setting, not just practice.

Recommendation 3: End segregated education

The NSW Department of Education should immediately develop a plan to transition fully to an inclusive education system and to end segregated education in NSW within 10 years as detailed in Australian Coalition for Inclusive Education, *Driving change: A roadmap for achieving inclusive education in Australia* (February 2021).

Recommendation 4: Amending the *Education Act 1990* (NSW)

Consistent with obligations on States parties under Article 4 of the *Convention on the Rights of Persons with Disabilities* (CRPD), the *Education Act 1990* (NSW) should be amended to

- recognise the CRPD and the *Convention on the Rights of the Child* (CRC) explicitly in the *Education Act 1990* (NSW)
- clearly reflect Articles 3, 5 and 24 of the CRPD, and Articles 28 and 29 of the CRC in the **principles** of the *Education Act 1990* (NSW)
- recognise the **human rights model of disability** as being a key **principle** upon which the *Education Act 1990* (NSW) is based
- provide that a key **object** of the *Education Act 1990* (NSW) is to give effect to rights contained in the CRPD, the CRC, and other relevant human rights instruments.

Recommendation 5: Awareness training on ableism, human rights and intersectionality

The NSW Department of Education should develop and deliver an education package to all NSW public education staff including teachers and student learning support officers focused on improving the understanding of the human rights model of disability, intersectional issues facing students with disability and their families, and challenging ableist perspectives. This proposed professional education package must be co-designed with people with disability.

Recommendation 6: Continue to fund the Disability Advocacy Futures Program

Funding for the NSW Department of Communities and Justice's **Disability Advocacy Futures Program** must be continued.

Recommendation 7: Review of the Integration Funding Support Program

The NSW Department of Education should review the **Integration Funding Support Program** (IFS) with a view to improving **access** to the IFS program, increasing the amount available under the IFS program, and providing clarity on the avenues and appeals processes for contested decisions.

Recommendation 8: Support in the classroom

The NSW Department of Education must increase the number of **School Learning Support Officers** available in NSW public schools.

The NSW Department of Education should provide that financial barriers to completing a Certificate III and Certificate IV in School Based Education Support are minimised.

The NSW Department of Education should offer existing Learning Support Officers financial and other support to upgrade qualifications such as to a Diploma or associate degree level in a relevant field.

Recommendation 9: Review of and funding for improved communication and deeper consultation between schools and families

The NSW Department of Education should provide special funding support to all schools to assist them to improve communication with families who have children with disability, and to undertake genuinely broad consultation with students with disability and their families in line with obligations under the Commonwealth Disability Education Standards 2005.

The NSW Department of Education should review its internal and all schools' consultation processes. This must include meaningful participation by people with disability and examine the underlying principles and assumptions of processes to ensure they reflect the general principles of participation outlined in Articles 3, 4, and 5 of the *Convention on the Rights of Persons with Disabilities*.

1 Introduction

PWDA welcomes the opportunity to provide feedback on the NSW Legislative Council, Portfolio Committee No. 3 – Education, *Inquiry into children and young people with disability in New South Wales educational settings* (the Inquiry).

The right to an inclusive education for students with disability is embedded in Article 24 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

PWDA considers access to quality **inclusive education** for students with disability across early education, primary, secondary, vocational, and tertiary sectors as a fundamental human right, critical to the ‘full and effective realization of all other rights.’¹

Consistent with the Committee on the Rights of Persons with Disabilities (CRPD Committee), PWDA sees an inclusive education system as one where all students are recognised and valued as individuals with inherent dignity and autonomy, learn together in the same setting (classroom and playground), and are enabled by teaching practices, policy structures, reasonable adjustments and supports to participate fully in the learning environment and achieve their goals.

PWDA individual advocates support students with disability

PWDA is funded to provide cross-disability systemic advocacy on behalf of people with disability in NSW under the NSW Department of Communities and Justice’s Disability Advocacy Futures Program (DAFP). Through the DAFP our individual advocacy team supports students with disability to exercise their **right** to access an inclusive education in a NSW government primary or secondary public school.

Research indicates that students with disability who learn in an inclusive setting have better academic performance, social competence, psycho-social well-being, and higher participation in society after school, including in employment.² Significantly, evidence suggests that such inclusive education provides equal or better learning outcomes for *all* students, not just those with disability.³ Lastly, inclusive education

has been shown to significantly improve attitudes towards people with disability within the school and the wider community.⁴

Inclusive education is not progressing in NSW

Recent reports continue to identify an 'urgent' need to better support students with disability and improve the quality of inclusive education in all Australian jurisdictions.⁵

[D]espite Australia's early ratification of the CRPD, segregation remains entrenched as students with disability continue to experience persistent disadvantage, discrimination, segregation and exclusion within education systems and sectors.⁶

We contend that the NSW education system is not inclusive as it continues to segregate learning *settings* for students with disability, and *practices*, attitudes and structural barriers that restrict students with disability from full participation in learning environments persist.

We argue that to achieve an inclusive education system compliant with the CRPD, special/segregated education settings must be phased out, as recommended by Disability Royal Commission (DRC) Commissioners Bennett, Galbally and McEwin at Recommendation 7.14 of the DRC Final Report.⁷ However, PWDA regards the time frame for phasing out provided in that recommendation unduly conservative and recommends this occurs within 10 years.

The phasing out of segregated settings must progress alongside the removal of discriminatory attitudes, practices, and structures that continue to restrict the right of students with disability to inclusive education in NSW public schools.

To achieve a CRPD compliant inclusive education system, PWDA has previously called for the implementation of the *Driving change* roadmap for achieving inclusive education in Australia developed by the Australian Coalition for Inclusive Education.⁸ PWDA believes this roadmap will assist in phasing out segregated education settings within a reasonable timeframe.

Submission outline

This submission:

- (i) examines the right to inclusive education and states that the ongoing segregation by settings in NSW is a barrier to realising an inclusive education system
- (ii) draws upon the experience of PWDA's individual advocacy clients with NSW public schools to identify attitudes, practices and structures which continue to act as barriers to the full participation for students with disability in NSW public schools
- (iii) submits that the Australian Coalition for Inclusive Education's roadmap for achieving inclusive education in Australia provides an appropriate framework through which inclusive education in NSW can be achieved.

Recommendations

Recommendation 1: Establishing a Ministerial Disability Advisory Council

As a priority, an independent **Ministerial Disability Advisory Council** should be established to advise the Minister for Education on relevant matters, such as those contained within this Inquiry's terms of reference. The proposed Ministerial Advisory Council must be comprised of members of NSW disability representative organisations and persons with lived experience of disability in education settings.

2 Barriers to inclusive education: segregated settings

Article 24 (1) of the CRPD guarantees the right of persons with disability to an 'inclusive education system at all levels.' Article 24 of the CRPD and the CRPD Committee *General Comment No. 4* provides the **normative framework** for assessing how the right is being realised.⁹

All Australian Governments have an obligation to respect, protect and promote the rights outlined in the CRPD.¹⁰ States parties must not engage in activity that discriminates against persons with disability and must actively 'modify or abolish existing ... practices that constitute such discrimination.'¹¹ Such practices include '**segregated education laws and policies**', which are in direct contravention of Articles 5 and 24 CRPD.¹²

The attributes of a CRPD compliant inclusive education

Building an inclusive education system to realise the **right** to inclusive education entails

[A] transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to removing the barriers that impede that possibility.¹³

Inclusive education is to be **contrasted** with systems based upon

- **exclusion** (prevention from accessing education)
- **segregation** (providing a separate environment for children with disability in isolation from those without disability) and
- **integration** (placing a child in a mainstream class assuming they will adjust to standardised requirements).¹⁴

As the CRPD Committee states

Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. *Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organization, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion (emphasis added).*¹⁵

A key element of **inclusive** education is its actual setting – all students learn together in the same classroom with specific support they need to enable full participation.

PWDA submits that segregated education, which occurs in NSW, is not inclusive education.

The NSW Department of Education view of inclusive education

Students with disability attending NSW Government schools have the following options:

1. attendance in a mainstream classroom with support
2. attendance a mainstream school but placement in a separate support class in that school or
3. attend a school for special purposes (SSP).

The NSW Department of Education defines inclusive education as

[All] students, regardless of disability, ethnicity, socio-economic status, nationality, language, gender, sexual orientation or faith, can access and fully participate in learning, alongside their similar aged peers, supported by reasonable adjustments and teaching strategies tailored to meet their

individual needs. Inclusion is embedded in all aspects of school life, and is supported by culture, policies and everyday practices.¹⁶

However, while the language reflects aspects of a human rights model of disability and the intent of Article 24 CRPD, inclusive education in the NSW public education system is primarily defined by practice, with settings taking a subordinate role. The NSW Department of Education states

The factors that form the basis of inclusive education – including adjustments to curriculum delivery and assessment, staff skills, teaching methods, and physical structures, as well as structured transition arrangements – **can operate in different educational settings**. These factors are also specifically enabled within specialist settings in NSW.¹⁷

This contrasts with the CRPD Committee and PWDA view of inclusive education of setting and practice operating together.¹⁸ There can be no inclusive education with segregated settings.

Furthermore, PWDA submits that inclusive *practice* itself in NSW is lacking. The contemporary experience of clients of our individual advocacy service continues to reflect findings from the Legislative Council Portfolio Committee No. 3 – Education (NSW) 2017 report on students with disability in NSW that

While there are many striking instances of excellence, the inclusive approach to education provision promoted in legislation and policy is not the reality experienced by many students with disabilities and special needs in New South Wales schools.¹⁹

Segregated education is increasing in NSW

The right to education is an economic, social, and cultural right.²⁰ Unlike a political right which must be implemented immediately, the right to education can be realised progressively, though some elements of inclusive education such as the right to reasonable adjustment *are* meant to be realised immediately.²¹

While PWDA acknowledges realising the right to inclusive education may be ‘ambitious’²² and not able to be achieved in a short period of time, there is an ‘obligation’ on States parties **‘to move as expeditiously and effectively as possible towards the goal.’**²³

Relevantly, in 2016 the CRPD Committee stated that **progressive realisation** ‘is not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system’²⁴ as PWDA submits occurs in NSW. In 2019 the CRPD Committee expressed concern with Australia about

[T]he significant increase in students with disabilities experiencing a segregated education, seclusion, isolation and a lack of age-appropriate settings, and about **insufficient funding for inclusive education in mainstream schools.**²⁵

The CRPD Committee urged the Commonwealth Government to take steps to curb this growth.²⁶ PWDA is concerned that NSW has not taken appropriate steps to curb segregated education, seclusion, or isolation of students with disability in line with the CRPD Committee’s recommendations.

The **increase** in segregated education is demonstrated in NSW by the continued development of Schools for Special Purposes (SSP), and expansion of segregated support classes in mainstream schools. For example:

- In 2010 there were 145 SSPs in NSW, and in 2022 there were 181 SSPs. In 2022, while 114 of those SSP were government schools, the biggest percentage increase in SSPs from 2010 to 2022 was in the Independent and Catholic sector.²⁷
- In February 2024 the NSW Government announced it was adding an additional 243 **support classes** in mainstream schools, bringing the total number of **support classes** in NSW public education settings to around 4,500.²⁸

PWDA identifies the following specific concerns with this growth:

- (i) Independent and Catholic schools are exempt from the transparency that is required of public schools. The experiences of students with disability and their learning outcomes are not as easily determined. Further, a lack of transparency gives rise to the examples of abuse, neglect, and exploitation that the Disability Royal Commission so articulately exposed.²⁹ We should discourage structures and frameworks that have the potential to give rise to these circumstances from recurring.
- (ii) Secondly, significant resources are allocated to maintaining the segregated system in NSW. Funding of SSP in NSW increased from \$302.6 million in 2019 to \$414m in 2023. Similarly, the resourcing of **support classes** grew from \$498.3m in 2019 to \$740.4m in 2023.³⁰

While PWDA would agree that any additional resourcing directed to supporting students with disability is welcome, we are concerned that funding for support classes is for separated classes in mainstream settings and is not funding directed to supporting students with disability in mainstream classes. This entrenches segregation, rather than confronting it.

As Disability Royal Commissioners Bennett, Galbally and McEwin reasoned:

[C]ontinued use of special/ segregated education stifles and impedes the reform of mainstream schools to deliver a truly inclusive education system. This is because the imperative to change is reduced by enabling a default segregated option. It limits the availability of resources (including specialised teachers and services) in the mainstream and perpetuates the existing ‘binary’ of ‘segregation or ‘integration’. It anchors ‘parent choice’ to these options. As long as ‘segregation’ exists, there are limited incentives and diminished opportunities to develop the mainstream system’s capacity to cater to full human diversity, including disability, and provide genuine inclusive education.³¹

Recommendations

Recommendation 2: Adopt a CRPD compliant definition of inclusive education

The NSW Department of Education should adopt a definition of inclusive education that recognises inclusive education is dependent on setting, not just practice.

Recommendation 3: End segregated education

The NSW Department of Education should immediately develop a plan to transition fully to an inclusive education system and to end segregated education in NSW within 10 years as detailed in Australian Coalition for Inclusive Education, *Driving change: A roadmap for achieving inclusive education in Australia* (February 2021).

3 Barriers to inclusive education: attitudes, practices, structures

Nationally, 4.4 million Australians have a disability, comprising approximately 17.7% of the population.³² In NSW 16.9% of the population have a disability, equivalent to 1,346,200 residents.³³

In 2022 approximately 20% (around 183,000) of students in NSW public schools had a disability, with at least 144,000 of those receiving additional adjustments to support their learning.³⁴ As of February 2024, the number of students with disability had increased to 206,000.³⁵

Ableist attitudes are widespread

Evidence before the Disability Royal Commission (DRC) highlighted ‘persistent negative attitudes towards students with disability and low expectations of their capabilities’.³⁶ This ableist ‘theme’ concerned the DRC given the critical role schools play in shaping attitudes toward people with disability and providing the skills and knowledge for people with disability to participate fully in society and exercise their autonomy.

Ableism can be linked to what has been referred to in the literature as ‘**gatekeeping**’ and appears widespread.³⁷ This occurs when a school may formally or informally discourage a student with disability from attending their school of choice, or only offer part time hours for example.

PWDA individual advocacy clients have identified experience with this, recounting that a school was reluctant to enroll a child in a mainstream classroom, suggesting instead that the child would be better off in a special school, a school support unit or even homeschooled, neither of which was wanted or appropriate for the student. Common reasons given for this by the school include a lack of resources or expertise with disability. Regardless of reason, gatekeeping is ‘discriminatory, devaluing and demeaning’.³⁸

PWDA argues that the persistence of ableist attitudes towards students with disability indicates a systemic problem and operates as a significant barrier to the full inclusion of students with disability in education and society. Ableism and the 'ingrained nature of historical approaches to students with disability' is used to justify ongoing segregation of students with disability, perpetuating a cycle of discrimination.³⁹

PWDA submits that progressing NSW towards a CRPD compliant inclusive education system must include a recognition that ableist attitudes towards students with disability exist and confront these throughout the education system.⁴⁰

Poor understanding of a human rights model of disability

The human rights model of disability replaces the medical model of disability which focused on 'personal impairment' as being the key barrier to community inclusion.⁴¹ It ignores the pervasive, systemic, structural, and attitudinal barriers that deny a person's full participation in society and the economy. Addressing structural barriers to participation reduces people's vulnerability and exclusion from full societal participation.

Central to the human rights model of disability is recognition that people with disability are holders of rights.⁴²

The CRPD Committee has stated that a **'failure to understand or implement the human rights model of disability' poses a significant barrier to accessing inclusive education for persons with disability.**⁴³ The model is described by the CRPD Committee thus:

The human rights model of disability recognizes that disability is a social construct and impairments must not be taken as a legitimate ground for the denial or restriction of human rights. It acknowledges that disability is one of several layers of identity. Hence, disability laws and policies must take the diversity of persons with disabilities into account. It also recognizes that human rights are interdependent, interrelated and indivisible.⁴⁴

Critically, the human rights model of disability recognises intersectionality. 'Intersectional discrimination' occurs where a person experiences multiple overlapping forms of inequality.⁴⁵

PWDA argues that using an intersectional lens to understand the experience of students with disability will assist in ensuring that measures to address disadvantage result in real inclusion and participation in educational settings and the wider community post school.⁴⁶

PWDA asserts that embedding the human rights model of disability and the rights and obligations on States parties contained in the CRPD into NSW Department of Education decision-making and relevant legislation provides a strong **normative influence** encouraging change in attitudes towards students with disability, and the removal of other systemic and structural barriers they face.

Access to reasonable adjustments and individual support is challenging

In 2023, almost a third of issues raised by PWDA individual advocacy clients were about students with disability seeking specific reasonable adjustments at a school.

However, most families receiving advocacy assistance from PWDA report that regardless of education setting type (mainstream classroom, support unit, or SSP), and levels of existing supports, there is insufficient *individualised* learning support for students with disability, and they wanted more support to engage in the classroom and the playground, as well as to attend and engage in school excursions and other school activities.

Reasonable adjustments are one of the primary elements of inclusion education. The CRPD Committee states that

The denial of reasonable accommodation constitutes discrimination and the duty to provide reasonable accommodation is **immediately applicable** and **not subject to progressive realization**.⁴⁷

Segregation occurs when students with disability are prevented from 'meaningful participation' in learning in the same setting as students without disability (i.e. in the

classroom and playground). Meaningful participation is facilitated not just by setting but also by the provision of reasonable adjustment, that is, **individualised support** attuned to addressing a student's own barriers to participation. Their learning experience is oriented to their own learning goals. This most often happens when a school culture supports and celebrates the individual's strengths and aspirations, free from ableist judgment.⁴⁸

PWDA believes that reasonable adjustments include access to all learning and communications **technologies** that support a student with disability to participate fully in learning. It extends to ensuring that each NSW public school is funded, equipped, and supported to deploy inclusive digital learning platforms and communication tools, utilise specific inclusive technology-based teaching practices, and generally develop digital literacy in all students with disability (a critical outcome necessary for post school employment).⁴⁹

Despite NSW Department of Education policy defining inclusive education as including reasonable adjustments, the experience of PWDA individual advocacy clients suggests access to reasonable adjustments is not always straightforward in the NSW public school system, a finding made previously by the NSW Legislative Council Portfolio Committee No. 3 – Education in its 2017 report *Education of students with a disability or special needs in New South Wales*.⁵⁰

Furthermore, PWDA individual advocacy clients indicate, in line with other research findings, that the onus to advocate for rights and reasonable adjustments continues to fall largely on students, parents and carers,⁵¹ creating a significant burden for individuals to manage.

Lack of understanding of disability by teachers and support staff

Families receiving individual advocacy support from PWDA have indicated concerns with

- Poor quality **Individualised Education Plans** (IEPs) and concern about the implementation of IEPs. Families are concerned that teachers and staff did not have sufficient time, knowledge, and skills to implement the plans and to work with children with disability

- **Learning and Support Plans** not being implemented consistently
- The **lack of formal qualifications** of Student Learning and Support Officers (SLSOs). Despite this, many families sought *more* SLSO hours for their child, in the absence of other options.

This corresponds with national findings from Children and Young People with Disability (CYDA) that 17.8% of students with disability did not have an IEP in place, 36.4% of families were not involved in the development of the IEP and 52.1% of families of students with disability felt that teachers and support staff did not have the training required to provide a supportive and enriching education environment for students with disability.⁵²

PWDA individual advocacy clients found it difficult to express to the school the specific support they needed. They required assistance with navigating the processes required to obtain support.

Assistance was most usually sought initially from the school, with the expectation the school would take a more pro-active approach towards understanding the student's disability and suggesting reasonable adjustments. The quality of assistance from schools on this was variable, and related to the school's culture of inclusion, and the degree to which teachers and staff had education, training and experience working with students with disability.

Communication issues between the family and the school is a common issue for PWDA individual advocacy clients. Parents have reported that even when they did know what they wanted, they felt the school was unresponsive. Specific issues around communication and engagement with the school comprised 17% of matters assisted with by PWDA individual advocates in the period July 2023 to December 2023, though it cut across many client experiences.

Behaviour management practices are causing distress to families and students with disability

In its 2019 national survey report, CYDA found that 14.7% of the students with disability it surveyed had been suspended in the previous 12 months, and 30.9% had

experienced restraint or seclusion.⁵³ The settings for seclusion included solitary confinement with and without supervision in a room, classroom, or staff office.

Ten percent of issues raised with PWDA individual advocates by families of students with disability in NSW from July 2023 to December 2023 involved seeking advocacy assistance over *specific* concerns with the school's behaviour management practices including reduced attendance hours, monitoring cards, detention, suspension, and expulsions. PWDA estimates this number is at least 10% higher as it was often raised during discussion of other matters, and thus not recorded as the primary reason for seeking advocacy support.

Families reported to PWDA individual advocates that they felt their children exhibited behaviour issues at school because they were not being properly supported, and that rather than addressing these, punitive measures were applied, creating further problems including stigma, low-self-esteem, and anxiety about school. This resulted in a student absconding from school, and/or refusing to attend school.

The use and appropriateness of behaviour management practices (not including restrictive practices) were linked to:

- school culture
- knowledge and training of staff in disability
- availability of appropriate support, including individualised support and
- communication and engagement practices between the school and the families.

Behaviour management intervention can arise because of a systems failure to provide appropriate early interventions to better support student/s with complex needs.

PWDA regards inappropriate **behaviour management practices** including reduced attendance hours, monitoring cards, detention, suspension, and expulsions as potential forms of **restrictive practice**, and is concerned these are applied too readily. Behaviour management interventions that exclude or prevent a student from learning constitute an attack on that student's **right** to inclusive education. The

current use of behaviour management tools is causing distress to students and their families.

PWDA recommends the NSW Department of Education review its behaviour management policies and restrictive practices policies.

PWDA supports the implementation of DRC Recommendation 6.36 *Immediate action to provide that certain restrictive practices must not be used* and DRC Recommendation 6.35 *Legal frameworks for the authorisation, review and oversight of restrictive practices*.⁵⁴ PWDA believes that the goal should be to eliminate, rather than reduce all forms of restrictive practices.

Recommendations

Recommendation 4: Amending the *Education Act 1990* (NSW)

Consistent with obligations on States parties under Article 4 of the *Convention on the Rights of Persons with Disabilities* (CRPD), the *Education Act 1990* (NSW) should be amended to

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The NSW Department of Education should review its internal and all schools' consultation processes. This must include meaningful participation by people with

disability and examine the underlying principles and assumptions of processes to ensure they reflect the general principles of participation outlined in Articles 3, 4, and 5 of the *Convention on the Rights of Persons with Disabilities*.

4 A roadmap for achieving inclusive education in NSW

To achieve an inclusive education system in NSW that aligns with the principles of the CRPD a clear roadmap for action is required, one that is based on a human rights model of disability and developed in collaboration with people with disabilities.

PWDA has endorsed and previously called for the implementation in NSW of the *Driving change* roadmap for achieving inclusive education in Australia developed by the Australian Coalition for Inclusive Education.⁵⁵ PWDA calls again for the *Driving change* roadmap to be implemented in NSW.

The roadmap is founded on a human rights model of disability and embeds the rights of students with disability as laid out in the CRPD.

It is underpinned by six pillars with measurable outcomes to meet each, providing a whole of system approach to *transforming* the current segregated education system in NSW to an inclusive one. These pillars (goals) are

1. Phase out segregated education
2. Increase educational outcomes
3. Stop gatekeeping and other discrimination
4. Eliminate restrictive practices
5. Prevent suspensions and expulsions
6. Ensure inclusive education
 - a. this means learning environments must be monitored to ensure practices and structures to support full participation are operating. It includes supporting cultural change within schools.

The *Driving change* pillars align closely with the barriers to inclusive education in NSW we identified in Part 2 and 3 of this submission which are

1. segregated education settings continue to exist and expand in NSW
2. ableism and gatekeeping is pervasive

3. understanding of a human rights model of disability and what this means for practices and structures remains low
4. accessing reasonable adjustments can be challenging
5. understanding of disability amongst teachers and support staff is low
6. behavior management practices and restrictive practices being used as a substitute for proper early intervention and adequate individual class support

This submission is based on the understanding of students with disability as holders of rights, as is the *Driving change* roadmap. Similarly, this submission is informed by the lived experience of students with disability and their families, as was the development of the *Driving change* roadmap.

This consistency between this submission and the six pillars in the roadmap provides confidence to decision-makers that measures detailed in the *Driving change* roadmap to achieve outcomes under its six pillars *will* give effect to the right of students with disability to access an inclusive education, and ultimately contribute to a more inclusive society for all.

5 Conclusion

People with disability experience discrimination and have poorer life outcomes across all life domains (including education attainment) when compared to people without disability.⁵⁶

Inclusive education systems based upon the principles of the CRPD are regarded as the key mechanism to tackle this ongoing marginalisation of people with disability. As the CRPD Committee states, inclusive education

[I]s the primary means by which persons with disabilities can lift themselves out of poverty, obtain the means to participate fully in their communities and be safeguarded from exploitation. It is also the primary means of achieving inclusive societies.⁵⁷

An inclusive education system recognises students with disability as holders of rights and seeks to give effect to those rights. Disability rights are human rights.

PWDA asserts that NSW does not have a human rights/CRPD compliant inclusive education system and that there is a gap between inclusive education 'policy and practice.'⁵⁸

PWDA submits that NSW is not moving as 'expeditiously and effectively as possible towards the goal' of inclusive education as it should be. The experience of the clients of our individual advocacy service indicates that in many respects little has changed since the 2017 report on students with disability by the NSW Legislative Council Portfolio Committee No. 3 – Education.

PWDA submits that achieving a human rights compliant inclusive education system in NSW requires that

- segregated education settings are dismantled, and
- attitudes, practices, and structures preventing a student with disability from full participation in the learning environment and achieving their potential are removed.

Addressing those two elements and achieving change requires a clear **roadmap** for action. This roadmap must be one based upon a human rights model of disability and developed with people with disability.

Appendix

Case studies

** All names have been changed*

Case study 1: Sidney

Sidney has autism spectrum disorder (ASD) and is in their first year (year 7) in a mainstream high school classroom. Sidney received several suspensions early in the academic year. Their parents were very frustrated and upset.

Sidney had no such issues at their previous mainstream primary school, appearing to have been coping well socially and academically. During a meeting with the school by the family about the suspensions it emerged from Sidney that they had been the subject of bullying behaviour from other students.

It was also identified that Sidney was receiving less individual support hours in high school than primary school, as well as being in a class with more students.

Sidney's family told PWDA advocates they felt the school was not open to discussing bullying matters and that they were not really listened to either. The family believed Sidney's behavior issues were also related to their reduced individual support hours.

The family stated that rather than try to solve the current issues, the school instead encouraged the family to transfer Sidney to a school with a separate autism support unit. The family told PWDA advocates they did not want to do that but saw no option if the resources were not going to be provided at the mainstream school, including ensuring it was safe.

PWDA advocates, with the family, initiated a further consultation with the school, where the issues around bullying and reduced support hours were clearly raised. The school agreed to investigate the bullying allegations, and re-state its anti-bullying stance throughout the school. It further agreed to allocate further individual support hours to Sidney in the classroom, as well as provide some support hours temporarily for them in the playground.

Case study 2: Adina

Adina is in year 8 and attends a mainstream classroom. They have attention-deficit/hyperactivity disorder (ADHD). The parents were concerned that Adina appeared to be doing well in some classes while they were getting into a lot of trouble in other classes. The parents told PWDA advocates that Adina did have a Learning and Support Plan, however it lacked detail and they felt that it was not being implemented consistently by teachers.

The PWDA advocate supported the parent to write a letter to the school, expressing their concerns and requesting a meeting. A meeting was held, where the school agreed to further develop the student's Learning and Support Plan in consultation with the student and their supports. PWDA asked for regular review dates to be included in the plan.

Case study 3: Peta

Peta is a child with disability who is in a mainstream kindergarten class in an NSW public school. Their mother contacted PWDA as she was concerned that Peta was not getting enough support in the classroom.

Peta's mother explained that Peta had not been accepted into a support unit and only had 1-2 hours of additional support from a Student Learning and Support Officer (SLSO) each day (including playground time). She said Peta was often left on their own in the classroom and was not being sufficiently encouraged to participate. She was also worried that the SLSOs did not understand how to support a child with Peta's disability.

Peta's allied health supports expressed similar concerns in observation reports. Peta's mother said she was very concerned that she would have to use Peta's NDIS funds at school, which would then leave Peta without those supports outside of school hours (for which they were intended).

Peta's mother organized a meeting with the school. A PWDA advocate supported her in the meeting and to also help explore what other options there might be to obtain

further support for Peta. At the meeting, the school agreed that Peta needed more support and said they were in the process of asking the Department of Education 'Panel' for a review of the funding for SLSO hours, as well as the support unit decision.

PWDA supported Peta's mother to explain some of the strategies that would work well for Peta at school and requested more communication from the teacher about Peta's progress. An agreement was reached to improve communication and support Peta better using existing resources.

Several weeks later, 'the Panel' found that Peta was still ineligible for placement in a support unit, apparently due to capacity issues, however, they agreed to increase funding for SLSO support by two hours per week. Peta's mother felt this would still not be enough and asked if she could submit her own appeal to the Panel. PWDA helped draft the appeal to the Panel. In the appeal letter, Peta's mother requested further funding and asked for the funding to be used to hire qualified professionals who understand Peta's disability.

After a further few weeks, the Panel agreed to provide an additional 5 hours per week of SLSO support. Peta's mother was pleased that extra funding was agreed to. PWDA also provided advice to Peta and their mother around setting up a learning and support plan to formalise the support needs.

Endnotes

- ¹ Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [44].
- ² Sonja Krämer, Jens Möller, and Friederike Zimmermann, 'Inclusive Education of Students with General Learning Difficulties: A Meta-Analysis' (2021) 91(3) *Review of Educational Research* 432, 432, 466; Kate de Bruin, 'Learning in the shadow of eugenics: Why segregated schooling persists in Australia' (2022) *Australian Journal of Education*, 66(3) 218, 220; Seveda Clark, 'At the Intersection. The Right to Inclusive Education for Children with Disabilities in Australia' (2020) 14 *Court of Conscience* 58, 59.
- ³ Kathy Cologon, 'Is inclusive education really for everyone? Family stories of children and young people labelled with 'severe and multiple' or 'profound' 'disabilities'' (2022) 37(3) *Research Papers in Education* 395, 411.
- ⁴ See e.g., Ayse Kart and Mehmet Kart, 'Academic and Social Effects of Inclusion on Students without Disabilities: A Review of the Literature' (2021) 11 *Education Sciences* 11; Spencer J Salend and Laurel M Garrick Duhaney, 'The Impact of Inclusion on Students With and Without Disabilities and Their Educators' (1999) 20(2) *Remedial and Special Education* 114; Michael N Sharpe, Jennifer L York and John Knight, 'Effects of Inclusion on the Academic Performance of Classmates Without Disabilities: A Preliminary Study' (1994) 15(5) *Remedial and Special Education* 281; Emily Cukalevski and Cátia Malaquias, 'A CRPD analysis of NSW's policy on the education of students with disabilities – a retrogressive measure that must be halted' (2019) 25(2) *Australian Journal of Human Rights* 232.
- ⁵ *Improving Outcomes for All: The Report of the Independent Expert Panel's Review to Inform a Better and Fairer Education System* (Report, December 2023) 10.
- ⁶ Kate de Bruin 'Learning in the shadow of eugenics: Why segregated schooling persists in Australia' (2022) 66(3) *Australian Journal of Education* 218, 220.
- ⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) Recommendation 7.14 *Phasing out and ending special/segregated education*.
- ⁸ People with Disability Australia, *A Progressive Disability Agenda for NSW: 2023 NSW Election Platform* (2023) 8. Available at < <https://pwd.org.au/wp-content/uploads/2023/02/PWDA-NSW-Election-Platform.pdf>>; Australian Coalition for Inclusive Education, *Driving change: A roadmap for achieving inclusive education in Australia* (February 2021). Available at < <https://acie.org.au/acie-roadmap/#:~:text=The%20Australian%20Coalition%20for%20Inclusive.pillars%20under%20which%20short%2C%20medium>>
- ⁹ Bronagh Byrne, 'How inclusive is the right to inclusive education? An assessment of the UN convention on the rights of persons with disabilities' concluding observations' (2022) 26(3) *International Journal of Inclusive Education* 301.
- ¹⁰ Committee on the Rights of Persons with Disabilities, *General Comment No. 6 Equality and non-discrimination* CRPD/C/GC/6 (26 April 2018) [30]; Australian Human Rights Commission, *Free and Equal. A reform agenda for federal discrimination laws* (December 2021) 16; United Nations *Convention on the Rights of Persons with Disabilities* (13 December 2006) article 5.
- ¹¹ Committee on the Rights of Persons with Disabilities, *General Comment No. 6 Equality and non-discrimination* CRPD/C/GC/6 (26 April 2018) [30].
- ¹² Committee on the Rights of Persons with Disabilities, *General Comment No. 6 Equality and non-discrimination* CRPD/C/GC/6 (26 April 2018) [30], [63], [64].
- ¹³ Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [9].
- ¹⁴ Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [11].
- ¹⁵ Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [11].
- ¹⁶ Department of Education (NSW), *Disability Strategy: A living document. Improving outcomes for children and young people, and their families* (2019) 5.
- ¹⁷ Department of Education (NSW), *NSW Education specialist settings* (2023) 5.

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¹⁹ Legislative Council Portfolio Committee No. 3 – Education (NSW), Education of students with a disability or special needs in New South Wales (Report No 37, September 2017) Finding 1.

²⁰ United Nations International Covenant on Economic, Social and Cultural Rights (adopted 1966, entry into force 3 January 1976) article 13(1).

²¹ United Nations International Covenant on Civil and Political Rights, article 2; United Nations International Covenant on Economic, Social and Cultural Rights (adopted 1966, entry into force 3 January 1976) article 2(1).

²² Australian Human Rights Commission, *Inclusive Education for People with Disability*. Submission to the Royal Commission into violence, Abuse, Neglect and Exploitation of People with Disability (19 December 2019) [81].

²³ Committee on Economic, Social and Cultural Rights, General Comment No. 3 The nature of States parties obligations (14 December 1990) [9]; Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [40].

²⁴ Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [40].

²⁵ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of Australia CRPD/C/AUS/CO/2-3 (15 October 2019) [45](b).

²⁶ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of Australia CRPD/C/AUS/CO/2-3 (15 October 2019). See recently Catia Malaquias, 'Unrealised promises and hollow claims: Australia's failure to enact its international obligations under the CRPD for the education of students with disability' (2022) 66(3) *Australian Journal of Education* 235.

²⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) vol 7, part A, 105-107.

²⁸ Department of Education (NSW), 'More support classes in mainstream schools for students with disability' (Media Release, 19 February 2024).

²⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) vol 7, part A, 64.

³⁰ New South Wales Budget estimates hearing, Supplementary questions to Prue Car, Deputy Premier, Minister for Education and Early Learning, and Minister for Western Sydney (24 October 2023).

³¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) vol 7, part A, 91.

³² Australian Institute of Health and Welfare, *People with Disability in Australia 2022* (2022); Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (2019).

³³ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (2019).

³⁴ Department of Education (NSW), *Progress Report: Improving outcomes for students with disability* (Report, 2022) 5.

³⁵ Department of Education (NSW), 'More support classes in mainstream schools for students with disability' (Media Release, 19 February 2024).

³⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) vol 7, part A, 155-156.

³⁷ Sofia Mavropoulou, Glenys Mann and Suzanne Carrington, 'The Divide Between Inclusive Education Policy and Practice in Australia and the Way Forward' (2021) 18 *Journal of Policy and Practice in Intellectual Disabilities* 44, 48; Australian Coalition for Inclusive Education, *Driving change: A roadmap for achieving inclusive education in Australia* (February 2021) 10.

³⁸ Australian Coalition for Inclusive Education, *Driving change: A roadmap for achieving inclusive education in Australia* (February 2021) 10.

³⁹ Sofia Mavropoulou, Glenys Mann and Suzanne Carrington, 'The Divide Between Inclusive Education Policy and Practice in Australia and the Way Forward' (2021) 18 *Journal of Policy and Practice in Intellectual Disabilities* 44, 49.

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- ⁴⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) vol 7, part A, 155-156.
- ⁴¹ Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [4(a)].
- ⁴² Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [1].
- ⁴³ Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [4(a)].
- ⁴⁴ Committee on the Rights of Persons with Disabilities, *General Comment No. 6 Equality and non-discrimination* CRPD/C/GC/6 (26 April 2018) [9].
- ⁴⁵ See e.g., Beth Gaze and Belinda Smith, *Equality and Discrimination Law in Australia: An Introduction* (Cambridge University Press, 2017) 84; Beth Goldblatt, 'Intersectionality in international anti-discrimination law: addressing poverty in its complexity' (2015) 21(1) *Australian Journal of Human Rights* 47; Department of Education, Skills and Employment (Cth), *Final Report of the 2020 Review of the Disability Standards for Education 2005* (Report, 2020) 16.
- ⁴⁶ *Improving Outcomes for All: The Report of the Independent Expert Panel's Review to Inform a Better and Fairer Education System* (Report, December 2023) 101.
- ⁴⁷ Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education* CRPD/C/GC/4 (25 November 2016) [31].
- ⁴⁸ Seveda Clark, 'At the Intersection. The Right to Inclusive Education for Children with Disabilities in Australia' (2020) 14 *Court of Conscience* 58, 61.
- ⁴⁹ On strategies to teach students with disability see Australian Institute for Teaching and School Leadership, *Spotlight. Inclusive Education: Teaching students with disability* (December 2020) <<https://www.aitsl.edu.au/research/spotlights/inclusive-education-teaching-students-with-disability>>.
- ⁵⁰ Legislative Council Portfolio Committee No. 3 – Education (NSW), *Education of students with a disability or special needs in New South Wales* (Report No 37, September 2017) Finding 1.
- ⁵¹ See also, Department of Education, Skills and Employment (Cth), *Final Report of the 2020 Review of the Disability Standards for Education 2005* (Report, 2020) 15-16.
- ⁵² Children and Young People with Disability, *Time for change: the state of play for inclusion of students with disability. Results from the 2019 CYDA National Education Survey* (Report, October 2019) 4.
- ⁵³ Children and Young People with Disability, *Time for change: the state of play for inclusion of students with disability. Results from the 2019 CYDA National Education Survey* (Report, October 2019) 3-4. 1.8% of students reported they had been expelled.
- ⁵⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023).
- ⁵⁵ People with Disability Australia, *A Progressive Disability Agenda for NSW: 2023 NSW Election Platform* (2023) 8. Available at <<https://pwd.org.au/wp-content/uploads/2023/02/PWDA-NSW-Election-Platform.pdf>>; Australian Coalition for Inclusive Education, *Driving change: A roadmap for achieving inclusive education in Australia* (February 2021). Available at <<https://acie.org.au/acie-roadmap/#:~:text=The%20Australian%20Coalition%20for%20Inclusive.pillars%20under%20which%20short%2C%20medium>>.
- ⁵⁶ Rosemary Kayess and Therese Sands, *Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation* (September 2020); Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (2019); Australian Institute of Health and Welfare, *People with Disability in Australia 2022* (2022); Jeromey B Temple, Margaret Kelaher and Ruth Williams, 'Discrimination and avoidance due to disability in Australia: evidence from a National Cross-Sectional Survey' (2018) 18 *BMC Public Health* 1347; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023) vol 7, part A, 156.
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People with Disability Australia (PWDA) is a national disability rights and advocacy organisation made up of, and led by, people with disability.

For individual advocacy support contact PWDA between 9 am and 5 pm (AEST/AEDT) Monday to Friday via phone (toll free) on 1800 843 929 or via email at pwd@pwd.org.au

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